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An Intermittent OLR Publication  
 Winter/Spring 2008

**Upcoming Events**

**Agency Training**— The OLR Web site now includes all training scheduled for agencies and other clients. In Region VIII, we do send out invitations, mass emails and faxes to notify potential participants, but please check the site frequently, as there may be training available in a nearby state. The URL is: <http://www.hud.gov/offices/olr/olrtrainingsem.cfm>

(Register for these classes online)

**Proverb**

*An optimist thinks this is the best possible world. A pessimist fears this is true.*

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**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

# Region VIII Labor Relations News



## Training Programs and Public Housing Authorities

As we **SPRING** into action this year, the Office of Labor Relations (OLR) would like to share with you essential matters regarding employment & training programs. We also want to remind **public housing authorities** (PHA's) of their responsibilities concerning employment and training programs on work subject to either the Davis-Bacon wage rates or HUD-determined wage rates (this includes routine and non-routine maintenance work).

It is the responsibility of the HUD OLR to approve or disapprove any employment and training program prior to implementation by a PHA. Your PHA may have been contacted about being designated as an employment and training site for individuals in a special employment and training program in your area. Or your PHA may have established an employment and training program for its residents or employees. If this sounds like something your agency is doing, and your PHA has not obtained OLR approval, please contact your Labor Relations Specialist for guidance as soon as possible.

Job training programs and on-the-job training are essential parts of HUD's overall employment and training strategy. Nevertheless, prevailing wage requirements under either the Davis-Bacon and Related Acts or the U.S. Housing Act of 1937 must be met on PHA properties subject to an Annual Contributions Contract.

- Section 12 of the 1937 USHA covers routine or non-routine maintenance work performed in the operation of a PHA. HUD determines the prevailing wage rates for such work.
- The Davis-Bacon and Related Acts apply to construction work (new construction or substantial rehabilitation/

modernization work) performed in the development of a PHA.

So you can see, wage rates for either type work are pre-determined by HUD or the Department of Labor, and must be paid to all laborers and mechanics employed by the PHA or its contractors.

The good news is exceptions may be made for trainees under certain circumstances.

For routine and non-routine maintenance work subject to the USHA, there are employment and training programs under which HUD OLR can approve a special training wage rate that is less than the prevailing rate otherwise required. Our ability to do this may provide additional incentives for PHAs to establish or participate in training programs.

On Davis-Bacon covered contracts, apprentices and trainees must be registered with the U.S. Department of Labor (DOL), Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or a State agency recognized by DOL in order to pay less than the minimum rate required.

Also, Section 12(b) of the USHA which was added by Section 955 of the National Affordable Housing Act of 1990 (NAHA), exempts certain volunteers from wage requirements set forth in Section 12(a) of the USHA. This exemption applies to individuals who would not be covered by prevailing wage requirements. Volunteers must meet the criteria for volunteers and record keeping requirements as stated in Section 70.4 of the 24 CFR, which also requires HUD's approval.

Contact your Labor Relations Specialist for more details regarding Special Employment and Training programs.

**Office of Labor Relations**

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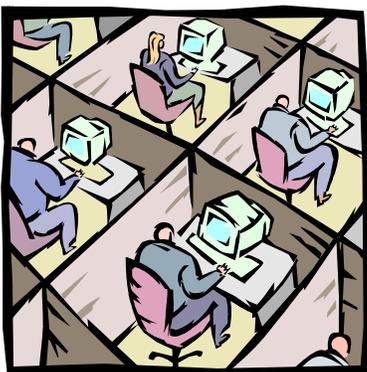
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**Project Deposits**

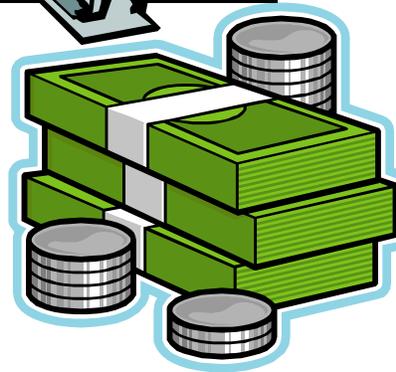
If there are unresolved wage underpayment issues that cannot be resolved prior to the completion of a project, a deposit requirement must be imposed before the contract is paid in full. In these cases, the contractor deposits the required restitution funds into an account designated and maintained by the agency. The agency enters into an agreement with the contractor (Deposit Agreement) that stipulates the terms of the deposit, and the funds are held by the agency while it attempts to find workers and otherwise settle the account.

Deposits are established for wage restitution known or suspected to be due individuals who performed physical work on the project. It is imperative contractors (or agencies) work diligently to promptly locate and ensure payment of wage restitution. Nevertheless, there are cases in which workers cannot be located and the funds held on deposit must be transmitted to the U.S. Treasury.

We want to help ensure you can act on information regarding the worker(s) due restitution. In most cases, funds remain on deposit and not in the worker's pocket because of insufficient information to locate the worker. Second, after holding funds for three years, you must transmit the funds to the

U.S. Treasury. There are minimum documentation requirements and procedures you need to know before transferring the funds.

At the heart of wage restitution and the establishment of deposits is documentation. Agencies must properly document wage restitution issues.



For each instance where a worker is due restitution, you must have the following worker information: full name, address, and Social Security Number. You must have calculations which show the dates and hours worked, along with the rate of pay received, the required prevailing rate of pay due, and the worker's classification. Any other relevant information must also be recorded. The payrolls on which the calculations are

based, contract documents and other relevant information must be retained until all restitution is disbursed and the case is closed, subject to HUD approval.

Once the agency has established a deposit, if the contractor cannot or will not find the workers and ensure payment, this duty becomes the agency's responsibility. The funds should never sit idle without any effort by the agency to put the money where it belongs: in the worker's hands.

If it becomes necessary to transmit the funds to the U.S. Treasury, please first contact your specialist in the Office of Labor Relations. Do not transmit funds before coordinating with the OLR.

Sending funds without sufficient information can result in misapplication of the funds or other problems.

We will help you determine if a transfer is necessary, help with the wire transfer, guide you on the deposit schedule which details the issues and amounts required, and we will prepare paperwork to establish the funds in our account at the U.S. Treasury.

## Overtime Violations and Liquidated Damages

Please be sure your agency follows through on overtime violations on Davis-Bacon projects. Ensuring payment of **wage restitution is only part of the picture**. Anytime a worker on a project subject to Davis-Bacon prevailing wage requirements (for prime contracts exceeding \$100,000) fails to receive overtime pay (time-and-a-half of the basic wage rate) for hours worked over forty per week, the employer becomes liable to pay **liquidated damages** in addition to wage restitution.

The Contract Work Hours and Safety Standards Act (CWHSSA) applies to all HUD programs which are subject to the prevailing wage requirements of the Davis-Bacon and Related Acts except where HUD's participation is solely in the form of a loan guarantee or insurance.

Violations render the contractor and subcontractor liable to the United States for liquidated damages. Liquidated damages are calculated at the rate of \$10 per calendar day for which each individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime rate.

There is a **procedure** for proper notification assessing liquidated damages, consideration of waiver requests, and payment method. Agencies must issue the appropriate notification **in every instance** where a violation has occurred for whatever reason. Contractors have sixty days in which to request a waiver or reduction of liquidated damages. **Grounds for waiver** are limited to: (a) the sum determined is incorrect, or (b) the violation was inadvertent notwithstanding the exercise of *due care*. Absent a contractor's request for waiver or reduction, the assessment is final, and the funds must be **wire transferred** to the U.S. Treasury.

**Before any funds are wire transferred** to the U.S. Treasury, please **contact your HUD OLR Specialist** in the Denver Office of Labor Relations to verify the final assessment and receive instructions for the wire transfer of funds. Final determination on the assessment of liquidated damages remains HUD's responsibility at the Field, Region and Headquarters levels. OLR field staff may waive or reduce amounts of \$100 or less; the regional labor relations officer may reduce or waive amounts of \$500 or less.



This topic is also covered in **HUD Handbook 1344.1, REV-1, CHG 1**.

## Miscellaneous but Essential

### It's Confidential!

We would like to remind everyone to place particular emphasis on payroll security and confidentiality. Payrolls contain sensitive personal data— most importantly, Social Security Numbers. Similarly, employee interview forms may include sensitive information that must not be casually transmitted to contractors. Please do not divulge payroll information to outside parties, not even under Freedom of Information Requests or comparable requests under state law without first checking with HUD OLR staff. Agencies using consultants must take care to ensure payrolls are secure.

### Housing Authorities: Is Everything Covered?

A reminder to public housing authorities about applicability: Repair work, modernization, new construction? It doesn't matter if the money to pay for the project comes from HUD, insurance reimbursement, or anonymous donor. Work performed on units covered by an Annual Contributions Contract is likely subject to prevailing wage requirements of some kind. Contact your Labor Specialist for specific guidance!

## HUD Mission

**Increase homeownership, support community development, and increase access to affordable housing free from discrimination.**

### HUD Goals

-  Increase Homeownership Opportunities
-  Promote Decent Affordable Housing
-  Strengthen Communities
-  Ensure Equal Opportunity in Housing
-  Embrace High Standards of Ethics, Management, and Accountability
-  Promote Participation of Faith-Based and Community Organizations

## Reminder... Semi-Annual Reports Are Due

Please don't forget to prepare and submit your Semi-Annual Labor Standards Enforcement Reports for the reporting period Oct 1-Mar 31, no later than **Thursday April 10th**.

Contact your OLR Specialist if you have any questions.



## ***FHASecure*—Insuring the American Dream**

### **Goodbye, Mrs. DuPont!**

Jennifer DuPont (you may remember her as Jennifer Kauntz) worked in the Jacksonville HUD Office of Labor Relations 2002-2006, then moved to the Region VIII HUD Office in Denver. Denver's loss is Atlanta's gain as Jennifer returns to the Region IV family and will be joining the Atlanta staff effective March 2, 2008. Jennifer will be serving our clients in North Carolina.

Atlanta says, "Welcome back, Jennifer. There are seven of your favorite coffee shops in the downtown area, two within easy walking distance. Your lattes are waiting, and so are we!"



Owning a home has always been at the center of the American Dream. For many homeowners, however, that dream is threatened by foreclosure.

Now, the Federal Housing Administration may be able to help. Families can avoid foreclosure by refinancing their mortgages using the new *FHASecure* product. *FHASecure* is a new refinance option offered to home owners facing difficulty maintaining their mortgage payments due to increasing interest rates and payments on their adjustable rate mortgages.

*FHASecure* gives homeowners with non-FHA mortgages, current or delinquent, the ability to refinance into a FHA-insured mortgage. With *FHASecure*, the lender will not automatically disqualify

the homeowner because he or she is delinquent on their loan, and the lender may offer the borrower a second mortgage to make up the differ-



ence between the value of the property and what is owed on it.

If the borrower is already delinquent, the mortgage must be an adjustable rate and the default must have been due to the payment shock of an interest rate reset or, in the case of an Option ARM, the

"recasting" of the mortgage to fully amortizing.

It is possible that *FHASecure* may help homeowners already in foreclosure but each situation is unique and depends upon the value of the home, how much is owed and if the lender is willing to offer a second mortgage. Homeowners facing foreclosure are strongly encouraged to talk with their lenders, possibly with the assistance of a HUD-approved housing counseling agency, to determine the best course of action. To find a HUD-approved housing counselor, please call 1-800-569-4287.

Borrowers may search online at [www.fha.gov/fhasecure](http://www.fha.gov/fhasecure) for the nearest FHA-approved lender. For more information phone: 1-800-CALL-FHA (1-800-225-5342).

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### **Attention/Forward to:**

**Agency staff responsible for Davis-Bacon & HUD determined prevailing wage enforcement**