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Upcoming Events

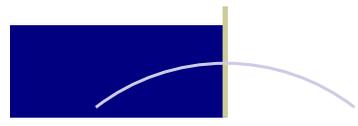
- **Agency Training**— The OLR Web site now includes all training scheduled for agencies and other clients. In Region VIII, we do send out invitations, mass Emails and faxes to notify potential participants, but please check the site frequently, as there may be training available in a nearby state. The URL is: <http://www.hud.gov/offices/olr/olrtrainingsem.cfm>
- **Special Training**—If your agency has any urgent need for labor standards training, please contact your HUD Labor Specialist.

Proverbs

See much
 Say little
 That way lies wisdom

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Region VIII Labor Relations News



I now take thee, in whole or in part....

This one's for recipients of Community Development Block Grants....

The Housing and Community Development Act of 1974, as amended (HCDA); Section 110 states:

All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed **in whole or in part** with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended...provided, that this section shall apply to the

rehabilitation of residential property only if such property contains not less than 8 units....

What does that really mean?

Many CDBG grant recipients use CDBG funds to leverage other funds to finance or assist projects. Sometimes the CDBG funds comprise a relatively small part of the cost of a construction work.

'In whole or in part' means if you introduce the least bit of CDBG funds into a construction or repair project that meets the threshold requirements for the CDBG program, Davis-Bacon applies to the entire project—even if the rest of the project is "privately funded."

Another question concerns the duration of Davis-Bacon requirements. Once introduced, when and for how long might - prevailing wage requirements apply?

Example 1: If you introduce CDBG funds to an on-going contract, then Davis-Bacon wage requirements will apply to all work under the contract (for prime contracts over \$2,000), even if the work began before the introduction of federal funds.

This issue typically arises in cases where a community wants to make use of an existing contract a municipality has with, say, a paving contractor. The municipality (using only its own funds) has a good price on city-wide paving, and the CDBG program wants to take advantage of the price the city got on the deal. But if the contract with the city calls for "city-wide" paving and the CDBG program just injects CDBG funds into that existing agreement, then Davis-Bacon requirements will apply to all paving work under the existing agreement.

Example 2: Another typical situation involves repairs to a structure. Let's say a community organization anticipates renovations totaling \$200,000, and asks the city to provide CDBG funds of \$50,000 to help defray the costs. To determine how prevailing wage requirements might apply, we look to the scope of work anticipated by the grant applicant, the scope of the grant agreement between the city and the community organization,

along with the timing and contracting arrangements for the work.

But it Can Get (More) Complicated: For a simple project, where the \$50,000 is applied to a project involving the total renovation of the structure, the applicability of Davis-Bacon is straightforward. However, work is not always performed under a single prime contract or within a limited time. CDBG funds might be applied to stopgap or emergency work notwithstanding the need or desire to perform more extensive modernization at a later time. Would Davis-Bacon apply to the work performed at a later time or only to the work directly funded by CDBG? It depends. Let's look at some more examples.

Example 3: A facility requires much work,



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In Whole or In Part, continued

some of which might at first glance appear separable (roof repair vs. parking lot repaving), yet CDBG funds may not be applied narrowly to specific work items when the overall construction work consists of the sum of many parts.

Whether or not the work contemplated by the grant application constitutes the entire “construction work” is relevant to determining the extent to which prevailing wage requirements apply.

Agencies should therefore require grant applicants to submit information sufficient to describe all of the work planned, not just what they plan to do with the CDBG funds.

According to the Department of Labor, a construction project

“consists of all construction activity necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place.”

[Davis-Bacon Construction Wage Determinations Manual of Operations, 1986]

Consider (**example 4**) a case in which a facility requires many repairs and major renovation. The roof requires repair or replacement, faulty wiring must be replaced, plumbing and bathrooms must be upgraded, and numerous code violations exist. It will take at least \$150,000 to complete all of the work necessary to address the code violations and renovate the facility.

Several work items are

identified by the CDBG agency as worthy of funding, and the agency agrees to provide \$15,000. The agency identifies in the grant agreement those work items for which CDBG funds will be used. Similarly, the contract identifies those items, without mentioning other necessary work at the facility.

At about the same time, a prime contractor is obtained to accomplish all the renovation work except for the work funded by CDBG.

Will prevailing wage requirements apply only to the work funded by CDBG or to all of the renovation work?

Given the facts as described here, Davis-Bacon would apply not only to the CDBG-funded work but to all renovation work. The construction work consists of the renovation of the facility, and all contracts appear to be closely related in purpose, time and place.

Nevertheless, the city should check with HUD to determine if there are separable items. The code violations issue provides a possible solution. Depending on immediate need, hazard, or public safety concerns, perhaps the correction of the code violations could be determined separate from the overall renovation work.

Some communities in Region VIII obtain commitments by grant recipients to comply with certain

requirements (such as providing affordable housing or providing a service) for periods of ten or fifteen years in exchange for receipt of CDBG funds.

Does this mean a grant recipient also incurs Davis-Bacon obligations for ten or fifteen years? Not according to the definition cited previously. Not if the documentation exists to clearly identify the scope of a project. While it is true that construction work can take a long period of time due to the scope of the work or unforeseen delays, prevailing wage compliance attends to the construction work or project. Once that project is completed, the obligation for Davis-Bacon compliance ends. Going back to our example (#4), if the owner of the facility later decides to build an annex to the renovated building, Davis-Bacon will not apply unless that subsequent work is federally funded or financed.

Still, agencies must be mindful that assisting part of a rehabilitation effort or inserting CDBG funds into ongoing work can affect prevailing wage requirements on the entire effort. It pays to ask the right questions, obtain complete documentation, and maybe even get the written opinion of your friendly HUD Labor Specialist.



Section 3 and Me (and You)

The purpose of Section 3 of the Housing and Urban Development Act of 1968 is to ensure employment, training, contracting and other economic development opportunities for low-income persons when federal funds are expended. Federal law requires that “to the greatest extent feasible” at least 30% of all new hires should be Section 3 Residents. Section 3 helps low-income residents gain the training, education and jobs needed to become self-sufficient.

HUD grant agreements and contracts require recipients to comply with the Section 3 requirements, which apply to the entire project or activity regardless of whether it is fully or partially funded by HUD.

The Office of Field Policy and Management has assumed a greater role concerning Section 3 by committing staff and other resources to perform outreach and technical assistance. In this new role, HUD field office management staff expect to work with each relevant program area to assist the Office of Fair Housing and Equal Opportunity expand awareness of and compliance with Section 3.

To learn more about HUD and Section 3, contact your Fair Housing and Equal Opportunity representative in your local HUD office, or visit our website at <http://www.hud.gov>



Employee Interviews

The on-site visit and interview constitute the eyes and ears of the labor standards reviewer. **Agencies must give adequate attention to this vital and mandatory function. Failure to do so constitutes a violation of HUD policy as described in HUD Handbook 1344.1 and subsequent published guidance.**

The interview process is crucial in the development of complaints or the completion of investigations concerning wage underpayments, kickbacks, failure to pay overtime, and more.

Moreover, the interviews help validate the accuracy of the payroll data and provide useful insight to potential problems that develop.

Through this process, the agency can “see” the work employees are performing and determine if the payrolls accurately reflect the work performed. The agency can also “see” who is on the work site and determine if the payrolls represent all of the trades and contractors on site.

In 1996, OLR initiated streamlining procedures enabling agencies to spend more time finding and correcting violations and less time on process and paperwork. Employee interviews were and are at the heart of these streamlining procedures.

Streamlining did not do away with interviews. Instead, streamlining measures provide greater flexibility for agencies in determining *how many* interviews/ observations to make, *when*, and *of whom*. The guidance published in HUD Handbook 1344.1 states that a “representative sample” of workers and trades should be interviewed. For many cases this will work fine. However, HUD encourages agencies to also employ “targeting” techniques to identify problem contractors and suspected issues (such as disproportionate numbers of laborers) by interviewing more workers of one trade and not worrying so much about known high performing contractors. In other words, agencies should pursue leads and discover the “interesting stories” that may be present on job sites.

OLR guidance suggests targeting may mean no interviews are conducted of employees of certain *contractors* so more interviews may be conducted where problems are indicated. Targeting does not

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 Apr 1— Sept 30 no later than **Monday Oct 8th**.

Contact your OLR specialist if you have any questions.



Employee Interviews, continued

FYI

Wage Decision Source— The official Web site for obtaining Davis-Bacon wage decisions is <http://www.wdol.gov>.

Agency “LRO”— Please be sure to designate a staff person or persons to be responsible for the enforcement of prevailing wage requirements (including, for housing authorities, HUD-determined prevailing wage requirements). This is what we call the agency’s “Labor Relations Officer.”

This primary contact is the person you should identify on Semi-Annual Enforcement Reports under “Agency Contact Person.” Generally, the contact person should bear primary responsibility for the management and enforcement of federal labor standards for the agency.

mean that interviews are dropped altogether as a matter of routine. The absence of interviews should be due to exceptional circumstances and for reasons which are clearly documented. Consider “targeting” more a matter of emphasis regarding enforcement activity.

Information given by employees is **confidential**. Do not disclose the employee’s identity to the employer unless the employee provides his/her written permission.

Employees are generally interviewed during working hours on the job, provided the interview can be properly and privately conducted on the premises. In cases of possible falsification of records, fear of reprisals, or intimidation, follow up interviews may be

conducted elsewhere, such as in the employee's home, at the agency's office, or another suitable place.

There *are* circumstances under which written permission is not a requirement. For example, if an employee is observed working out of classification, the observation and violation may be disclosed. However, if the *employee* provides the information and is not observed, the disclosure is confidential and must be addressed in a different manner so as to preserve confidentiality. Under no circumstances are HUD-11 interview forms to be given to contractors.

Disclosure of employee statements is governed by the

provisions of the Freedom of Information Act and the Privacy Act of 1974.



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Attention/Forward to:

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