DIGITAL RESOURCE MANUAL: DAVIS-BACON 101

DAVIS-BACON LABOR STANDARDS

Title I of the Housing and Community Development Act of 1974 requires the payment of local prevailing wage rates (determined by the U.S. Department of Labor) to all workers on CDBG-DR construction projects in excess of $2,000. (42 USC §5310; 40 USC 3142(d)). These requirements apply regardless of whether the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process. Even if CDBG funds finance only a portion of a construction contract, Davis- Bacon requirements still apply to the entire construction contract. This includes cases where CDBG-DR funds serve as the non-federal match for FEMA Public Assistance projects.

Key Point

Davis-Bacon Labor Standards apply to all CDBG-DR *construction projects* in excess of $2,000

Activities financed by CDBG-DR that are not "construction work" do not trigger Davis-Bacon requirements. Non-construction work that is financed by HCDA funds such as CDBG-DR can finance activities other than construction work which do not trigger Davis-Bacon requirements, such as real property acquisition, purchase of equipment, architectural and engineering fees, other services (legal, accounting, construction management), other non-construction items (furniture, business licenses, real estate taxes, tenant allowances for such items).

Subrecipients, in partnership with GLO, must administer their CDBG-DR funds with systems to enforce Davis-Bacon requirements and to ensure workers' rights are protected. By executing the CDBG-DR Subrecipient Agreement, Subrecipients have agreed to administer and enforce all Davis-Bacon labor standards requirements and have accepted the responsibilities described here and in Chapter 9 of the **GLO CDBG-DR Implementation Manual**.

Analysis: Housing and Community Development Act of 1974

Keep in Mind

- If CDBG-DR funds finance only a portion of construction project, labor standards are applicable to the *entire* construction project.
- Labor standards provisions do not apply to employees of the subrecipient (force account workers) that may be engaged on an otherwise covered project. Note: The construction work is covered but these force account workers are excluded.
- Typically, single-family homeowner properties with seven or fewer units on one property are exempt from Davis-Bacon requirements. For example, a contract to rehabilitate any number of single family properties for homeownership is not covered by Davis-Bacon. However, property is not limited to a specific building and is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project.

Resource List

Below is a quick listing of resources that are accessible, relevant and valuable.

Icon denotes the most relevant resources at the Davis-Bacon 101 level.

CDBG-DR Resources	Links
GLO CDBG-DR Implementation Manual – Chapter 9	https://recovery.texas.gov/grant-administration/grant-implementation/implementation-manual/index.html
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/
Department of Labor Guidance on Davis-Bacon	https://www.dol.gov/whd/govcontracts/dbra.htm
Making Davis-Bacon Work – states and local agencies	https://www.hudexchange.info/programs/davis-bacon-and-labor-standards/
Making Davis-Bacon work - contractors	https://www.hudexchange.info/programs/davis-bacon-and-labor-standards/
System for Award Management (SAM)	https://www.sam.gov/SAM/
HUD Guidance on Davis-Bacon	https://www.hud.gov/program_offices/davis_bacon_and_labor_standards
GLO Davis-Bacon Forms	https://recovery.texas.gov/grant-administration/grant-implementation/infrastructure/index.html
Employee Rights Under the Davis-Bacon Act Poster	https://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf
Federal Labor Standards	https://files.hudexchange.info/resources/documents/CrosscuttingRegs_DavisBacon.pdf
Federal Labor Standards Training Module	https://files.hudexchange.info/resources/documents/Module3_TrainingSlides.pdf

Pertinent Citations

Federal

- Davis-Bacon Act (40 USC Chapter 31, Subchapter IV)
- Contract Work Hours & Safety Standards Act (CWHSSA)
- Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 3145)
- Fair Labor Standards Act
- 29 CFR Parts 1, 3, 5, 6, and 7

GLO CDBG-DR Harvey Housing Guidelines

- Section 5.H. – *Labor Standards*

GLO CDBG-DR Implementation Manual

- Chapter 9 – *Labor & Davis-Bacon*

Glossary

HUD has many existing resources in place to help understand CDBG-DR laws, regulations and practices. Below is a quick listing of relevant terms and phrases.

Apprentices	(1) any person employed under a bona fide apprenticeship program registered with a state apprenticeship agency which is recognized by the DOL Employment and Training Administration (ETA), Office of Apprenticeship Training, Employer and Labor Services (OA), or if no such recognized agency exists in a state, under a program registered with the OA itself; or (2) a person in the first 90 days of probationary employment as an apprentice in such an approved apprenticeship program who is not individually registered in the program, but who has been certified by OA or a state apprenticeship agency (as appropriate) to be eligible for probationary employment as an apprentice. All apprentices other than probationary apprentices must be individually registered in the approved program. Consistent with the level of training in the program, an apprentice will perform for the appropriate period of time all levels of work, from the lowest unskilled laborer's work to the highest skilled or craft work of the finished mechanic, under the supervision of the journeyworker.
Business Owners	≥20% bona fide equity ownership = exempt executive
Contract Work Hours and Safety Standards Act (CWHSSA)	Requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty

	($10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.
Copeland (Anti-kickback Act)	Makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally assisted project) to kickback (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.
Davis-Bacon Act (DBA)	Requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of $2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.
Davis-Bacon Wage Decision/Determination	A listing of various construction work classifications, such as Carpenter, Electrician, Plumber and Laborer, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid. Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is "locked-in" and no future modifications are applicable to the contract or project involved.
Debarment	Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the Davis-Bacon and Related Acts (DBRA) will be ineligible (debarred) to participate in any DBRA or Davis-Bacon Act contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest.
Deductions	Subrecipients may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" (i.e., give up) any of their earnings. Allowable deductions which do not require prior DOL permission include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.
Employee	Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship which may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least

	as much as the wage rate on the wage decision for the classification of work they perform. Note that there are no exceptions to the prevailing wage requirements for relatives or for self-employed laborers and mechanics.
Employer	All contractors as a group, including the prime contractor and all subcontractors/lower-tier subcontractors.
Fair Labor Standards Act (FLSA)	Contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.
Fringe Benefits	Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as some contributions to training funds. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.
Laborers and Mechanics	Defined in 29 CFR 5.2(m) and generally include workers whose duties are manual or physical in nature as distinguished from mental or managerial and include apprentices, trainees, and helpers (in the case of CWHSSA, see FOH 15j00). The terms do not apply to workers whose duties are primarily administrative, executive, professional, or clerical, rather than manual (see FOH 15e15). Generally, mechanics are considered to include any worker who uses tools or who is performing the work of a trade. The DBA requires payment of the applicable prevailing wage rate to all laborers and mechanics "regardless of any contractual relationship which may be alleged to exist."
Labor Standards Clauses	Describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. For CDBG-DR, subrecipient are directed to use the HUD-4010 form.
Labor Standards Officer (LSO)	Designated person from each subrecipient responsible for labor standards administration and enforcement. May be an employee of a city or county of private consulting firm, but should understand HUD's overall compliance requirements with the federal prevailing wage obligations applicable to HUD funded CDBG programs. The GLO

	Appointment of Labor Standards Officer Form must be completed by all subrecipients and submitted to GLO.
Prevailing Wages	Wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless you provide bona fide fringe benefits for your employees.
Proper Designation of Trade	Work classifications on the wage decision for each worker must be selected based on the actual type of work he/she performed and each worker must be paid no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters even if they aren't considered by you to be fully trained as a Carpenter. Remember, the only people who can be paid less than the rate for their craft are apprentices and trainees registered in approved programs.
Overtime	All hours worked on the contract in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and onehalf times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.
Prime Contractor	Responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, subcontractors generally should communicate with the contract administrator only through the prime contractor.
Restitution	Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project, including wage restitution, must be reported on a certified payroll report.
Site of Work	The location where the Davis-Bacon wage rates apply. Usually, this means the boundaries of the project. "Site of work" can also include other adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.
Subcontractor	All subcontractors involved in a federally funded construction project, including lower-tier subcontractors.