COMMUNITY DEVELOPMENT BLOCK GRANT & HOME PROGRAMS

FEDERAL COMPLIANCE MANUAL

REVISED December 26, 2023

ADMINISTERED BY:

BEXAR COUNTY
Economic & Community Development Department – Community Development Division
The County of Bexar, qualifying as an Urban County through the Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG)/HOME Program is responsible for assuring conformity with applicable program requirements as established by HUD. Bexar County’s Community Development Division is the administering agency and is charged with the responsibility of compliance as described herein and is mandated to pass on these requirements to those contracting with the County to carry out these programs.

Robert H. Reyna,
Community Development Director

__________________________
12/26/2023
Date

The ________________________________, as contractor, agrees to comply with all federal requirements and related administrative procedures governing the use of HUD funds, as specified in this Federal Compliance Manual, and with any changes or other new or applicable federal regulations propagated during the course of project implementation.

__________________________
Principal

__________________________
Company Name

__________________________
Date
## REQUIRED FEDERAL COMPLIANCE MANUAL DOCUMENTS

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Contractor</th>
<th>Subcontractor</th>
<th>Bidders</th>
<th>Submit By</th>
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<tr>
<td>2-1 Certification of Bidder Regarding Equal Employment Opportunity (Form HUD 950.1)</td>
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<td>During Bid Phase</td>
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<tr>
<td>2-3 Certification by Prime Contractor or Subcontractor (Form SMBE 100)</td>
<td>X</td>
<td>X</td>
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<td>Start of construction</td>
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<td>2-4 Certified List of Subcontractors (Form SMBE 101)</td>
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<tr>
<td>2-5 Request for Approval of Change to Original Certified List of Subcontractors (Form SMBE 102)</td>
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<td>2-6 Quarterly Report</td>
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<td>End of construction</td>
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<td>2-7 Anticipated and Actual Subcontracts</td>
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<td>Subcontracts over $15,000</td>
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<td>3-3 Payroll (Form WH 347)</td>
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<td>Section 3 Housing and Community Development Employer Certification Form 3</td>
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<td>Section 3 Action Plan Contracts $200,00 and over</td>
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<td>Start Work Notice</td>
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<td>Start of construction</td>
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<tr>
<td>Termination of Work Notice</td>
<td>X</td>
<td></td>
<td></td>
<td>End of Construction</td>
</tr>
</tbody>
</table>

1 Required if Bexar County is unable to conduct onsite labor interviews. County will reach out if this form is required.

2 Weekly certified payrolls are required; however, the use of WH 347 to satisfy this requirement is optional.

3 All employees on certified payroll for the project must fill out.

Send all required documents to Alexandra Alvarez, Infrastructure Manager at Alexandra.alvarez@bexar.org or 233 N. Pecos La Trinidad Suite 320 San Antonio, TX 78207.

Payments to subrecipient will be withheld if required documents are missing, incorrect, or incomplete.
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INTRODUCTION

Procedures established for the administration of the Community Development Block Grant (CDBG)/HOME Program require adherence to several other applicable Federal regulations. To aid in the identification of those regulations, and to establish uniformity in policies and procedures utilized for compliance with them, the Bexar County Community Development Division has compiled the attached "Federal Compliance Manual." The Manual is in no way meant to constitute a complete compilation of all duties imposed upon project sponsors by law or administrative ruling or to narrow the standards which such sponsors must follow.

The Manual is assembled to provide project sponsor responsibilities under each applicable Federal regulation. Identification, description, and inclusion of defined contract stipulations or requirements are outlined for each regulation specifically referenced in Title I of the Housing and Community Development Act of 1974. A table of contents identifying these regulations, and a "definition" section are included. Examples of reporting and other formats are also provided. Copies of all HUD forms required for compliance are attached to the Manual. Applicable laws and regulations discussed in Section I is on file in the Bexar County Community Development Division.

As Federal regulations are subject to change, amendments to this Manual will be issued by the Bexar County Community Development Division, as needed. Certain requirements defined in this Manual may not be the direct duty of the entity designated; nevertheless, the entity has ultimate responsibility for seeing that the requirement is met. All county departments, agencies, and other contractors receiving CDBG/HOME funds for the operation of a project are required to adhere to all applicable regulations included in this Manual.

Bexar County Community Development Division has been designated as administrator of the HUD grant for the County of Bexar. Any questions, interpretations, or clarifications required should be directed to this Department.

Bexar County Economic & Community Development
DepartmentCommunity Development Division
233 N. Pecos, Suite 320
San Antonio, Texas
78207(210) 335-6648

ii. DEFINITIONS

1. County Judge - The "Chief Executive Officer" authorized by Commissioners Court to enter into agreements on behalf of Bexar County.

2. Commissioners Court - Governing and policy-making body of Bexar County.

3. Contractor - A public or private entity contracting with the County for the implementation of a project or a program. As used in this Manual, the terms operating agency, sponsor, contractor, prime contractor, and project sponsor may be interchangeable.
4. CDBG - Community Development Block Grant.

5. DOL - The United States Department of Labor.

6. Environmental Review - An assessment of the impact that federally-funded activities will have on the quality of the human environment in the area where such activities are being undertaken.

7. Grantee/Recipient - Any entity receiving direct assistance for a project from HUD, including, but not limited to, mortgagors, developers, local public bodies, non-profit or limited dividend sponsors, builders or property managers.

8. HCD - The Housing and Community Development Act of 1974, as amended, under Title I that authorizes and provides funds for the administration of the CDBG Program.

9. HUD - The United States Department of Housing and Urban Development.

10. Issuing Office - The office which is identified as the sole point of contact in the RFQ or RFP.

11. OMB - The United States Office of Management and Budget.

12. Programs and Activities - Those undertakings of the contractor funded in whole or in part by the grant.

13. Project Sponsor/Subrecipient - Small cities, public or private non-profit and for-profit organizations responsible for the administration and execution of a project funded with CDBG/HOME funds.

14. Subcontractor - Any entity (other than a contractor or a person who is an employee of the contractor) that furnishes supplies or services to a contractor (other than standard commercial supplies, office space or printing services).
I. Section One: Management Guidelines

A. Federal Management Circular A-87. This Circular sets forth cost principles applicable to grants and contracts with State and local governments. This Circular provides principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the federal government.

1. Project Sponsors must ensure that all costs charged against the CDBG/HOME budget are allowable costs as defined in FMC A-87. Indirect costs charged must be in conformance with the County's "Cost Allocation Plan."

B. 24 CFR Part 85. This part establishes uniform administrative rules for federal grants and cooperative agreements and sub-awards to state, local and Indian tribal governments.

C. 2 CFR 200. This part establishes principles for uniform administrative requirements, cost principles, and audit requirements for federal awards.

1. Project Sponsors must ensure that all costs charged against the CDBG/HOME budget are allowable costs as defined in 2 CFR 200.

D. 24 CFR Part 84. This part establishes uniform administrative requirements for federal grants and agreements awarded to institutions of higher education, hospitals and other non-profit organizations.

E. It is the Project Sponsor's responsibility to ensure that:

1. Records effectively identify the source and application of funds for grant-supported activities.

2. Financial records, supporting documents, statistical records, and all other records pertinent to the grant program are retained for a period of three years. County procedures require retention of all records and supporting documentation applicable to the contract with the County for a period of three years after the receipt of the final payment from the County. In the event a contractor goes out of existence, it shall notify the County of that fact and arrange to turn the project records over to the County. The County shall receive such records and retain them for the required period. Records pertinent to the grant program will be made available to County representatives, or representatives of the Comptroller General of the U.S. for the purpose of making audit, examination, excerpts, and transcripts.

3. Accounting records are supported by source documentation.

4. Project Sponsors must ensure that the time elapsing between the transfer of funds to its depository and its disbursement of such funds does not exceed the three-day limit.

5. Project Sponsors must respond in a timely and acceptable manner to the Bexar County Infrastructure Service Department in resolving audit findings and recommendations.
Bexar County Community Development Division is the department responsible for responding directly to HUD in resolution of audit findings.

6. Project Sponsors shall report to the Bexar County Community Development Division all gross income earned by the grant-supported activities (program income) and shall assure that expenditure of such income is done in accordance with CDBG/HOME regulations. Project Sponsors shall record the receipt and expenditures of revenues related to the program as part of the grant program transactions.

7. For purchases or contracts involving over $25,000, the Project Sponsor shall ensure that bids or proposals are solicited through public advertising, and that all such bids received are opened in a public meeting. Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Procurement must meet State requirements.

8. The Project Sponsor shall ensure that bid guarantees, performance bonds and payment bonds are submitted by contractors and/or subcontractors as required for contracts and/or subcontracts.

9. Project Sponsors should make positive efforts towards utilization of small business, women and minority-owned business sources of supplies and services (see section on SWMBE Policy).


11. Project Sponsor officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors/subcontractors, and potential contractors and subcontractors or give the appearance of so doing.

12. Project Sponsors shall include provisions for the following in all contracts and subcontracts.

   a. Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

   b. All contracts shall contain suitable provisions for termination by the Project Sponsor, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

   c. In all contracts for construction or facility improvement, awarded Project Sponsors shall observe all bonding requirements.
d. All construction contracts awarded by Project Sponsors and their contractors or subcontractors having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in DOL Regulations (41 CFR, Part 60).

e. All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-kickback" Act (18 U.S.C. 874) as supplemented in DOL Regulations (29 CFR, Part 3). The Project Sponsor shall report all suspected or reported violations to the Bexar County Community Development Division.

f. When required by the federal grant program legislation, all construction contracts awarded by Project Sponsors and contractors in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) and as supplemented by DOL Regulations (29 CFR, Part 5). The Project Sponsor shall place a copy of the current prevailing wage determination issued by the DOL in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Project Sponsor shall report all suspected or reported violations to the Bexar County Community Development Division who will then report to the HUD Area Office.

g. Where applicable, all contracts awarded by Project Sponsors in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by DOL Regulations (29 CFR, Part 5). These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation of transmission of intelligence.

h. Contracts or agreements, the principle purpose of which is to create, develop, or improve products, processes or methods, or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Federal grantor agency (HUD). The contractor shall be advised as the source of additional information regarding these matters.
i. All negotiated contracts (except those of $25,000 or less) awarded by Project Sponsors shall include a provision to the effect that the grantee (the County), the Federal grantor agency (HUD), the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents papers and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions.

j. Contracts and subcontracts of amounts in excess of $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. Violations shall be reported to the HUD agency and the Regional Office of the Environmental Protection Agency by the Bexar County Community Development Division.

13. Project Sponsors must maintain records and give written approval of budget revisions in a project. No change will be considered in effect until Bexar County Community Development Division approval has been obtained.

14. For non-expendable property, Project Sponsors shall ensure that:

a. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of non-expendable property shall be investigated and fully documented.

b. Adequate maintenance procedures shall be implemented to keep the property in good condition.

c. An inventory of the property shall be available for Property Records use and is reconciled with property records at least once every two years.

d. Each item of non-expendable property purchased with grant funds must be affixed with an inventory number and maintained in the inventory control list of the Project Sponsor. Annual reports stipulating the location and general condition of the item must be submitted to the Bexar County Community Development Division.

F. Program Income. Federal grantor agencies require grantees to account for program income related to projects financed in whole or in part with Federal grant funds.

1. Program income means gross income earned by the grantee from grant-supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.
2. **Proceeds** from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with applicable regulations.

G. **Real Property**. Each Federal grantor agency shall prescribe requirements for grantees concerning the use and disposition of real property funded partly or wholly by the Federal Government.

1. Real property means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

2. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

   a. Title to real property shall vest in the recipient subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.

   b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

   c. When the real property is no longer needed as provided in a. and b. above, the grantee shall request disposition instructions from the Federal agency or its successor Federal agency. The Federal agency shall observe the following rules in the disposition instructions:

      (1) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

      (2) The grantee may be directed to sell the property under guidelines provided by the Federal agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.
(3) The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

(4) The rules in this section apply to real property under the recipient's control that received more than $25,000 of CDBG assistance.

(a) They apply until 5 years after grant closeout.

(b) They provide that a grantee may not change the use of the property from that for which the acquisition or improvement was made without citizen participation and unless either:

   i) the new use meets one of the three national objectives; or

   ii) the grantee's CDBG program is reimbursed in the amount of the fair market value of the property (less any portion of the fair market value attributable to non-CDBG expenditures). After the reimbursement, the property is no longer subject to any CDBG requirements.

(c) If the change of use occurs after grant closeout, the rules on program income received after close-out apply to the use of the funds reimbursed.

(d) The rules on the use of real property are designed to ensure that CDBG funds serve their intended purposes.
H. Attachment 1-1 Federal Requirements Checklist*

Project Title ___________________________________________________ Project Number __________________
Notice of Contract Award to Bexar County Community Development Division

Executive Order 11246 (as amended):

______ (1) Equal Employment Opportunity Clauses in contracts and subcontracts greater than or equal to $10,000
______ (2) "Certification of Bidder Regarding Equal Employment Opportunity" (Form HUD-950.1)
______ (3) Standard Form 100 (SF-100) (contracts greater than or equal to $10,000)
______ (4) "Certification of Proposed Subcontractor Regarding Equal Employment Opportunity" (Form HUD-950.2)
______ (5) Equal Employment Opportunity Quarterly Report: Q1 □ Q2 □ Q3 □ Q4 □
______ (6) Notification of HUD of Pre-Bid Conference
______ (7) Place Equal Employment Opportunity Posters on job site(s), etc. (in conspicuous places) (both federal and city)

Section 3:

______ (1) Contractor Affirmative Action Plan (contracts greater than or equal to $10,000)
______ (2) Subcontractor(s) Affirmative Action Plan (contracts greater than or equal to $10,000)
______ (3) Preliminary Statement of Work Force Needs
______ (4) Section 3 clause in all contracts and subcontracts

Federal Labor Regulations:

______ (1) Inclusion of wage determination in contracts/subcontracts
______ (2) Notification to DIS of bid opening date, time, location and agenda
______ (3) Federal Labor clauses in applicable contracts/subcontracts
______ (4) Notification to Bexar County Community Development Division and HUD of Pre-Construction Conference time and location
______ (5) Notification to Bexar County Community Development Division and HUD of "Start of Construction"
______ (6) Post wage determination and wage rate notice in area accessible to employees
______ (7) Maintenance of Labor Standards Enforcement File to include:
      ______ (a) Employee interview (Form HUD-11)
      ______ (b) Applicable wage determination
      ______ (c) Pre-construction conference report
      ______ (d) Correspondence related to project administration
______ (8) Appropriate information on apprentices and/or trainees used in the project must be on file
______ (9) Quarterly report on construction contract status: Q1 □ Q2 □ Q3 □ Q4 □
______ (10) Weekly payroll submission and compliance statements
______ (11) Final wage compliance report

2 CFR 200:

______ (1) Notification to Bexar County Community Development Division of planned budget revisions
______ (2) Notification to Bexar County Community Development Division of equipment needing County identification number
(3) Obtained following from contractors/subcontractors:
   (a) Bid guarantees
   (b) Performance bonds
   (c) Payment bonds

(4) Obtain bids for purchases and contracts over $10,000; and

(5) Open such bids in a public meeting

(6) Report to IDIS all program income and expenditures

(7) Resolve all audit findings in timely manner

(8) Adequate recordkeeping and accounting procedures

Acquisition and Relocation:
(1) Obtain HUD concurrence before making relocation payments in which the claim is in excess of $25,000

(2) Relocation assistance advisory program

(3) Notice of land acquisition procedures

(4) List of condemnation proceedings

(5) List of acquired parcels

(6) Case files on acquired property

Other regulations:
(1) Insert flood disaster, water pollution, noise control, lead based paint, physically handicapped and historic preservation clauses in contracts as applicable.

(2) Obtain flood insurance if required
II. Section Two: Equal Opportunity

A. Executive Order 11246, as amended by Executive Order 11375. The emphasis of Executive Order 11246 is on non-discrimination and equal opportunity in employment by government contractors and subcontractors. The special provisions of Section 202 of the Order need to be inserted in any contract related to the use of federal funds and are incorporated herein below. Section 205 provides for the appointment of compliance officers by anyone contracting with the Project Sponsor for implementation of the federal project. Executive Order 11246 also provides for sanctions and penalties which can be imposed for non-compliance with its requirements. Amendment 11375 prohibits discrimination on the basis of sex. Following are the special provisions of Section 202 of the Order:

1. During the performance of this contract, this contractor agrees as follows:

   a. The contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, handicap or political belief or affiliation. The contractor will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, national origin, religion, sex, age, handicap or political belief or affiliation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoffs, or terminations, rates of pay or other forms of compensation and selection for training, including apprenticeship.

   b. The contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided by the Bexar County Community Development Division setting forth the provisions of this non-discrimination clause.

   c. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

   d. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the Bexar County Community Development Division advising the labor union or workers' representative of the contractor's commitment under Section 202 of Executive Order 11246, as amended, and shall post copies of the notice on conspicuous places available to employees and applicants for employment.

   e. The contractor will comply with all provisions of Executive Order 11246 as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.

   f. The contractor will furnish all information and reports required by Executive Order 11246 as amended, and by rules, regulations, and orders of the Secretary of Labor,
or pursuant thereto, and will permit access to his books, records, and accounts by the Bexar County Community Development Division and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations and orders.

g. In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed (and remedies involved), as provided in Executive Order 11246 as amended, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

h. Exemptions to Above Equal Opportunity Clause (41) CFR Chapter 50:

(1) Contracts and subcontracts not exceeding $10,000 (other than government bills of lading) are exempt. The amount of the contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding $100,000 for standard commercial supplies or raw materials are exempt.

i. The contractor will include the provisions of Paragraphs "a." through "i." in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Bexar County Community Development Division may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Bexar County Community Development Division, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Anyone contracting with the County for federally-funded projects must insert the above clauses ("a." through "i." ) in all applicable subcontracts.
3. The project sponsor will ensure that the Form 950.1, Certification of Bidder Regarding Equal Opportunity (Attachment 2-1), is completed and submitted by bidders as an initial part of the bid on the federally-funded project. No contract shall be awarded to a bidder unless he has filed all compliance reports due. The HUD Form 950.2, Certification of Proposed Subcontractor Regarding Equal Opportunity (Attachment 2-2) must also be completed and submitted by a proposed subcontractor.

4. SMBE Forms 100 and 101 (Attachments 2-3 and 2-4) regarding subcontractors must be completed by the contractor and submitted to the Bexar County Community Development Division. If there is a change of subcontractors, SMBE Form 102 (Attachment 2-5) must be submitted to the Bexar County Community Development Division. Approval of subcontractors must be obtained from HUD.

5. The contractor will submit a Quarterly Report (Attachment 2-6) to the Bexar County Community Development Division three months after the start of work on the contract and every three months thereafter. Such report shall reflect, among other information, data on minority applicant flow, new hires, termination data, and reasons for terminations.

6. Show Cause Procedure- Should HUD determine a contractor to be in non-compliance with the equal opportunity requirements, procedures to "show cause" why funds should not be withheld will need to be reported, with a copy of the report going to the Bexar County Community Development Division.

B. Section 3 of the Housing and Urban Development Act of 1968, as amended. Section 3 of the Housing and Urban Development Act of 1968, as amended, requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.

1. The Issuing Office shall include the Section 3 clause below (24 CFR 75) in all contracts funded in part or in whole with federal funds from HUD.

   a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing & Urban Development, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 lu. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.
b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 75, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers’ representative of his commitments under the Section 3 clause, and shall post copies of applications for employment or training.

d. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 75, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 75.

2. The contractors and subcontractors for $10,000 or more shall submit a Section 3 Action Plan (AP).

3. Where the project sponsor sells, leases, transfers, or otherwise conveys land upon which work, in connection with a Section 3 covered project, is to be performed, each contract or subcontract for work on such land shall include a clause requiring the purchaser, lessee, or redeveloper to adhere to the Section 3 regulations.

4. The contractor shall determine the maximum number of trainees for each construction and non-construction occupation used in a Section 3 covered area and submit that determination to Bexar County Community Development Division as part of the Section 3 AP.
5. The contractor shall make a good faith effort to fill all training positions with lower income residents residing in the Section 3 covered area and that similar effort is made by contractors and sub-contractors.

6. Project Sponsors shall ensure contractors and subcontractors with contracts of $10,000 and over develop and submit a written Section 3 Action Plan to the Bexar County Community Development Division for review. Within seven days of receipt of the plan, the Bexar County Community Development Division will inform the contractor, in writing, of the plan's approval or disapproval. If disapproved, the contractor must resubmit an acceptable Section 3 plan within 5 working days.

7. Bexar County Community Development Division shall assure establishment and maintenance of all records related to the employment and training of women and minorities in a Section 3 covered area, in the Section 3 AP.

8. The Project Sponsor must forward to the Bexar County Community Development Division all preconstruction and bid negotiating reports for review.

C. Executive Order 11625. Executive Order 11625 prescribes that all Federal departments and agencies develop and coordinate a National Program for Minority Business Enterprise. This Executive Order is designed to outline Federal policy to provide full participation in our free enterprise system by Minority Business Enterprises and was adopted on October 13, 1971. Pursuant to the instructions of this Executive Order and the enforcement by various Federal agencies of its requirements, Bexar County has developed and implemented a policy to increase the utilization of Minority Business Enterprises in its construction, professional services, and purchasing contracts. This program is outlined in Item G of this Manual.

D. Bexar County Small and/or Minority Business Enterprise (SMBE) Policy

1. Policy. It is the policy of Bexar County, Texas to assist all Small, Minority, and Handicapped business entities in securing contracts issued by the Bexar County Purchasing Department and which are paid for through public funds as budgeted by Commissioners Court. Every effort shall be made to comply with the Small Business Act of 1975 as outlined in the Tex. Rev. Civ. Stat. Ann. Article 5190.3 (Vernon Supp. 1986) and Executive Orders MW-6, MW-7, and MW-8 dated May 19, 1983. There will be no preferential Bidders list and no set-asides will be made which will result in awards to any bidder over another except through fair and equitable competitive practices.

2. County Purchasing Agent. The Bexar County Purchasing Agent shall be designated the responsibility for implementation of procedures, goals, and policies regarding the SMBE policy in Bexar County. It will be the Purchasing Agent's responsibility to issue appropriate instructions, provide adequate definitions and guidelines, and identify all bidders qualifying as SMBE concerns. The Purchasing Agent shall establish realistic goals, participate in seminars, workshops or conferences aimed at providing information and instructions to further SMBE awards of Bexar County contracts, and maintain data and statistics which measure SMBE participation.
3. **Qualified Business Concerns.** Sources qualifying as SMBE potential contractors shall be those as defined in the Small Business Act of 1975 and outlined in the instructions for the Bexar County Bidder’s Mailing List Application.

4. **Federal Funds and Grants.** Bexar County shall comply with all administrative, legal, and contractual requirements set forth by any Federal Agency which funds, or partially funds, any contract issued by the Bexar County Purchasing Department, provided appropriate limitations and guidelines are made known to the Purchasing Department. All contracts issued shall contain appropriate contract provisions to insure compliance by Contractors and Subcontractors regarding bonds, insurance, wage scales, equal employment opportunities, trade practices, payments, and other federal programs outlined by Executive Orders 11246 and 11375.

5. In the event of the Contractor's failure or refusal to comply with this SMBE clause, either during the bidding process or at any time during the term of this contract, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be debarred from further contracts with Bexar County.

E. **Citizen Participation.** The citizen participation segment of the Housing and Community Development process should provide citizens with adequate information regarding the amount of funds available for community development and housing activities, the range and scope of activities eligible, as well as other important requirements as specified in the Bexar County Citizen Participation Plan.
FEDERAL COMPLIANCE MANUAL

Attachment 2-1 Certification of Bidder Regarding Equal Employment Opportunity

| U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT |
| CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY |

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their subcontractors, shall state as an initial part of the bid or negotiations of the contractor whether it has participated in any previous contract or subcontract subject to the equal employment opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

**CERTIFICATION BY BIDDER**

**NAME AND ADDRESS OF BIDDER (INCLUDE ZIP CODE)**

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
   - Yes  ☐   No  ☐

2. Compliance reports were required to be filed in connection with such contract or subcontract.
   - Yes  ☐   No  ☐

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.
   - Yes  ☐   No  ☐   None Required

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?
   - Yes  ☐   No  ☐

**NAME AND TITLE OF SIGNER (PLEASE TYPE)**

**SIGNATURE**

**DATE**

Replaces Form HUD-4238.CD-1, which is obsolete

Form HUD-950.1
**SUBCONTRACTOR’S CERTIFICATION**

<table>
<thead>
<tr>
<th>NAME AND ADDRESS OF SUBCONTRACTOR (INCLUDE ZIP CODE)</th>
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</table>

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
   - Yes  [ ]
   - No  [ ]

2. Compliance reports were required to be filed in connection with such contract or subcontract.
   - Yes  [ ]
   - No  [ ]

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.
   - Yes  [ ]
   - No  [ ]
   - None Required  [ ]

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?
   - Yes  [ ]
   - No  [ ]

**NAME AND TITLE OF SIGNER (PLEASE TYPE)**

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<th>SIGNATURE</th>
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CERTIFICATION BY PRIME CONTRACTOR OR SUBCONTRACTOR

This Certification is required pursuant to the Small and/or Minority Business Enterprise Program of Bexar County.

Please check one: □ Prime Contractor □ Subcontractor

Project Name: ____________________________ Project Location: ______________

Contract Amount: __________________________ Firm's Name: __________________

Address & Zip Code: ________________________

According to the Definitions on the Following Pages:

1. Firm is (Please check one):
   a. □ sole proprietorship  c. □ corporation  b. □ partnership  d. □ joint venture
   If joint venture includes a minority business enterprise, indicate the extent to which minority member will participate:

2. The ethnic or racial ownership of the firm (51% or more) is:
   a. □ White  b. □ Hispanic  c. □ Black  
   d. □ American Indian/Alaskan Native  e. □ Asian or Pacific Islander  
   f. □ Two or more different minority groups  g. □ Unknown

3. Firm is a small business enterprise: □ Yes  □ No

4. Firm is a female-owned business enterprise (51% or more): □ Yes  □ No

5. Firm is a handicapped-owned business enterprise (51% or more): □ Yes  □ No

6. If prime contractor, list proposed subcontractors participating in the project under this contract on Form No. SMBE 101 if applicable. Prime Contractors must submit Certification Form No. SMBE 100 for each subcontractor.

7. Please list solicitations to minority contractors for bids on project. If none, please explain (exclude successful bidders listed on Form No. SMBE 101 attached)

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<th>Name/Address</th>
<th>Trade</th>
<th>Type of Firm</th>
<th>Minority Group</th>
<th>Dollar Amount</th>
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CERTIFICATION AFFIDAVIT

The above information is true and complete to the best of my knowledge and belief. I understand and agree that this certification is a part of my contract with Bexar County and shall be attached thereto and become a part thereof.

Name and Title of Authorized Signer: ________________________________________

Signature: ____________________________ Date: __________

The County is currently compiling a directory of small, minority, female and handicapped-owned businesses. May we publish information provided on this form in the directory? □ Yes  □ No

Please Note: The County realizes that the categories on this form will not describe all possible types of business organizations. Should you find that categories on this form do not properly describe your business, please call the Bexar County Department of Housing and Human Services at 270-6780 for help in completing this certification.

Form Number SMBE 100
I. Definitions

1. **Prime Contractors.** Any person, firm, partnership, corporation, association or joint venture as herein provided which has been awarded a County contract.

2. **Subcontractor.** Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing under contract with a prime contractor on a County contract.

3. **Minority Business Enterprise.** Means a business enterprise that is owned and controlled by one or more minority person(s). Minority persons include Blacks, Mexican-Americans and other persons of Hispanic origin, American Indians, Alaskan Natives, and Asians or Pacific Islanders. Minority person(s) shall collectively own, operate, and share in payments from such an enterprise in the manner hereinafter set forth:
   a. For a sole proprietorship to be deemed a minority business enterprise, it must be owned by a minority person.
   b. For an enterprise doing business as a partnership, it is necessary that at least 51% of its assets or interests in the partnership property be owned by one or more minority persons.
   c. For an enterprise doing business as a corporation, it is necessary that at least 51% of its assets or interests in the corporate shares be owned by one or more minority persons.
   d. For a business enterprise to be controlled by one or more minority persons, primary power, direct or indirect, must rest with minority persons.
   e. Minority partners, proprietor or stockholders, of the enterprise, as the case may be, shall be entitled to receive 51.0% or more of the total profits, bonuses, dividends, interest payments, commissions, consulting fees, rents, procurements, and subcontract payments, and any other monetary distribution paid by the business enterprise.

4. **Female Owned Business Enterprise.** Means a sole proprietorship that is owned and controlled by a woman, a partnership at least 51% of whose assets or partnership interests are owned by one or more women, or a corporation at least 51% of whose assets or interests in the corporate shares are owned by one or more women.

5. **Handicapped Owned Business Enterprise.** Means a sole proprietorship that is owned and controlled by a handicapped individual, a partnership at least 51% of whose assets or partnership interests are owned by one or more handicapped individuals, or a corporation at least 51% of whose assets or interests in the corporate shares are owned by one or more handicapped individuals. A handicapped individual is a person with a physical or mental condition which substantially limits one or more major life activities.

6. **Joint Venture.** A joint venture means an association of two or more persons, partnerships, corporations, or any combination thereof, founded to carry on a single business activity which is limited in scope and direction. The degree to which a joint venture may satisfy the stated MBE goal cannot exceed the proportionate interest of the MBE as a member of the joint venture in the work to be performed by the joint venture. For example, a joint venture which is to perform 50.0% of the contract work itself, and in which a minority joint venture partner has a 50.0% interest, shall be deemed equivalent to having minority participation in 25.0% of the work. Minority members of the joint venture must have either financial, managerial, or technical skills in the work to be performed by the joint venture.

7. **Small Business Enterprise.** Means a corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than $1,000,000 in annual gross receipts and is designated a small business as provided by the Small Business Assistance Act of 1975 (64th Texas Legislature), Article 5190.3.
CERTIFIED LIST OF SUBCONTRACTORS

The bidder, ________________, as part of the procedure for the submission of bids on a project known as: ________________, submits the following list of subcontractors to be used in the performance of work to be done on said project.

<table>
<thead>
<tr>
<th>Name/Address</th>
<th>Trade</th>
<th>Minority Group</th>
<th>Dollar Amount</th>
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All subcontractors must submit a Certification Form No. ______ through the Prime Contractor. It is understood and agreed that, if awarded a contract by Bexar County, the Contractor will not make additions, deletions, or substitutions to this certified list without the consent of the Bexar County Community Development Division.

CERTIFICATION AFFIDAVIT

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that, if awarded the contract, this certification shall be attached thereto and become a part thereof.

Name and Title of Signer: ________________________________________________

Signature: ____________________________ Date: ______________

Form Number SBME 101
Attachment 2-5 Request For Approval Of Change To Original Certified List of Subcontractors

REQUEST FOR APPROVAL OF CHANGE TO ORIGINAL CERTIFIED LIST OF SUBCONTRACTORS

The Contractor, ______________________________________, performing work on a project known as ______________________________________, requests approval of the following addition(s) and/or deletion(s) on the Certified List of Subcontractors Form No. __________, as originally submitted as part of the bid on the above named project:

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<th>Check One for Each Transaction</th>
<th>Name</th>
<th>Trade</th>
<th>Minority Group</th>
<th>Dollar Amount</th>
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JUSTIFICATION

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

CERTIFICATION AFFIDAVIT

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that, if awarded the contract, this certification shall be attached thereto and become a part thereof.

Name and Title of Signer: ________________________________________________

Signature: ______________________________________ Date: ________________

Approved:
Executive Director
Economic and Community Development Director

Approved:
CDBG Program Manager

Form Number SMBE 102
Attachment 2-6 Quarterly Report

QUARTERLY REPORT

Project: ____________________________  Contractor: ____________________________  Contract Amount: ________________

Date of Report: ________________  Effective Date of Contract: ____________________________  Date of Commencement: ________________

Anticipated Date of Completion: ________________

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<th>JOB TITLE</th>
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APPLICATIONS RECEIVED/HIRED  TERMINATIONS  TOTAL STAFF AT END OF QUARTER

NOTE: Reasons for termination (please list employees names, dates of terminations and reasons for terminations on back of this form).
FEDERAL COMPLIANCE MANUAL

Attachment 2-7 Anticipated And Actual Subcontracts

Project Number: ___________________  Sponsor: ____________________________

ANTICIPATED AND ACTUAL SUBCONTRACTS

The following list is intended to provide information on anticipated subcontracts and to provide a record of actual subcontracts. The final record will be provided to HUD Equal Opportunity Division for their use as desired and to reflect affirmative action compliance by this company.

<table>
<thead>
<tr>
<th>COMPLETE FOR SUBMISSION WITH BID</th>
<th>THIS PORTION IS FOR RECORD KEEPING PURPOSES AFTER RECEIVING CONTRACT</th>
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<tbody>
<tr>
<td>Approximate</td>
<td>Subcontractor</td>
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<tr>
<td>Craft/Specialty</td>
<td>Project Area Business</td>
</tr>
<tr>
<td>$ Amount</td>
<td>Minority Owned Business</td>
</tr>
<tr>
<td>Date(^1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Name and Address</td>
<td>No</td>
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<td>Total</td>
<td>Yes</td>
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Goals for Subcontracts:

$ ___________________ Total Dollars to Area Businesses\(^2\)

$ ___________________ Total Dollars to Minority/Women Businesses\(^3\)

Codes:  B - Black   H - Hispanic   W - White   O - Other   F - Female   M - Male

1 - Approximate start and ending date of contract.
2 - Set Dollar amount goals for awarding of contracts to small or disadvantaged area business.
3 - Also set Dollar amount goals for awarding of contracts to minority and women owned business.
SAMPLE LETTER FOR RECRUITMENT SOURCES

Gentlemen:

(Contractor or subcontractor) is presently participating in the construction of a project which is funded by the Federal Government.

To assure compliance under various laws, we are committed to take affirmative action to recruit lower-income workers from the defined area of this project. We are also recruiting minorities and women. The area of recruitment is not limited to the project area in this case. We are an Equal Employment Opportunity employer (male and female). The designated area of this project is ____________________.

The crafts (by classification) shown below reflect our primary needs for manpower:

<table>
<thead>
<tr>
<th>Craft</th>
<th>Journeymen</th>
<th>Apprentice</th>
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The hiring office is located at:

Your assistance in our recruiting efforts will be appreciated.

Sincerely,
III. Section Three: Wage and Labor Requirements


1. Bexar County shall include provisions relating to the following acts in each applicable contract.

   a. The Davis-Bacon Act (40 U.S.C. 2769-5) is applicable to all construction contracts awarded by grantees and subgrantees to contractors in excess of $2,000 and provides that all laborers and mechanics employed by the contractor or subcontractors in the performance of the construction work, financed in whole or in part with grants received, will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. These wage determination rates are to be included in the project contract. Violations may result in suspension of project payment and/or contract termination, suspension, or debarment in addition to unpaid wages to affected employee. This section shall apply to the rehabilitation of residential property only if such property is designated for residential use for eight or more families.

   b. The Copeland Act ("Anti-Kickback Act" -- 48 STAT. 948.40 U.S.C. 276(c) is applicable to all contracts awarded by grantees and subgrantees to contractors in excess of $2,000 for construction or repair and provides that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebates on any account except "permissible" salary deductions, the full amount due at the time of payment computed at wage rates not less than those contained in the wage determination issued by the Secretary of Labor. Appropriate weekly compliance statements and payrolls are required to be submitted each week from contractors and subcontractors. Violations may be grounds for termination of Contract.

   c. The Contract Work Hours & Safety Standards Act (40 U.S.C. 327-333) is applicable to all contracts awarded by grantees and subgrantees to contractors in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts, where federal funds are involved, and provides that no contractor or subcontractor shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a ratio of not less than 1½ times his basic rate of pay for all hours worked in excess of 40 hours in such work week. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages as well as to the United States for a sum of liquidated damages. Violations may also be grounds for termination of contract.

2. Project Sponsor Responsibilities in Addition to the Above:
a. Should an individual project determination be requested, HUD Form SF-308 (Attachment 3-1) may be used by the project sponsor. Area wage determinations and individual project (wage) determinations are issued by the Department of Labor. The applicable wage determination should be incorporated into the bid package supplied to prospective bidders on a project. Wage rates contained in the determination shall be the minimum wage rates to be paid under project contracts and subcontracts.

b. Bexar County Community Development Division shall ensure that the applicable wage decision and any additional classifications shall be posted at the site of the work in a prominent place readily accessible to workmen for the duration of the project.

c. Prior to the start of construction, project sponsors must conduct a conference to advise contractors and subcontractors of their responsibilities and obligations regarding the labor standards provisions in the contract documents. Documentation on pertinent data discussed and attendance at the conference must be retained in the Bexar County Community Development Division in a Labor Standards Enforcement File for the project. It is necessary for HUD to be notified of each such conference. The following procedures shall be used:

(1) The project sponsor will provide written notice of a preconstruction conference to the Bexar County Community Development Division and HUD (San Antonio Office) no less than thirty and again at ten calendar days prior to the scheduled meeting.

(2) The notice will state the conference time, date, location, name of the project, and the name of the contractor to whom the bid is awarded.

(3) The project sponsor will inform the Bexar County Community Development Division and HUD (San Antonio Office) of any changes, problems, or delays no later than three days prior to the originally scheduled conference date.

(4) If any delays are encountered and rescheduling occurs, the Bexar County Community Development Division and HUD (San Antonio Office) will require three full days advance notice of the rescheduled pre-construction conference.

d. The Bexar County Community Development Division will keep on file all material relevant to Labor Standards Enforcement on the project. Information to be in the file includes: 1) applicable wage determination; 2) minutes of pre-construction conference; and 3) payrolls and employee wage interviews, as well as copies of other correspondence, memos, etc., pertaining to the administration and enforcement of labor standards.
e. Weekly payrolls of both contractors and subcontractors utilized on the project must be filed in the Labor Standards Enforcement File. The Bexar County Community Development Division must ensure that payrolls are completed and submitted for file no later than seven working days following completion of the work week.

The Bexar County Community Development Division shall ensure that apprentices or trainees used on a project are individually registered under a bonafide apprenticeship program or are certified by the Bureau of Apprenticeship and Training or State Apprenticeship Agency. The allowable ratio of apprentices or trainees to journeymen in any craft classification must not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

Project employees will be interviewed (at random) by the Bexar County Community Development Division using HUD Form No. 11, Record of Employee interview (Attachment 3-), to determine compliance with wage rates, apprentice to journeymen ratios, etc. Such interviews shall become a part of data maintained in the Labor Standards Enforcement File in the Bexar County Community Development Division. HUD and Federal EEO officials may also conduct employee interviews for each project.

Project Sponsors must ensure, in accordance with the contract that the contractor/subcontractor agrees to comply with the following provisions as required by federal regulations. The clauses should be inserted in full in any contract/subcontract subject to the labor standards provisions, except those subject only to the Contract Work Hours Standard Act:
(1) **Minimum Wages.** All laborers and mechanics employed upon the work covered by this contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Bexar County Community Development Division for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of Section 5.5. (a) (1) (iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

(2) **Underpayment of Wages or Salaries.** In case of underpayment of wages by the contractor or by any subcontractor to laborers or mechanics employed by the contractor or subcontractor upon the work covered by this contract, the Bexar County Community Development Division, in addition to such other rights as may be afforded it under this contract shall withhold from the contractor, out of any payments due the contractor, so much thereof as the Bexar County Community Development Division may consider necessary to pay such laborers or mechanics the full amount of wages required by this contract. The amount so withheld may be disbursed by the Bexar County Community Development Division, for and on account of the contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs of any type of fringe benefit described in the applicable wage determination.
Payrolls and Basic Records. The contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Bexar County Community Development Division. The contractor shall submit weekly to the Bexar County Community Development Division one certified copy of all payrolls of the contractor and of the subcontractors, it being understood that the contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1 (b) (2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5 (a) (1) (iv) of Title 29, Code of Federal Regulations, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b) (2) (b) of the Davis-Bacon Act, the contractor or subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the Bexar County Community Development Division, and the United States Department of Labor. Such representatives shall be permitted to interview employees of the contractor or of any subcontractor during working hours on the job.
(4) **Employment of Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.15, or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour division of the U.S. Department of Labor written evidence of the registration of his program in apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall not be less than the appropriate percentage of the journeyman's rate contained in the applicable rates determination.

(5) **Employment of Trainees.** Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor Manpower Administration, Bureau of Apprentice and Training. The ratio of trainees to journeyman shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate and who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor is required to furnish a copy of the certification along with the payroll employee is first listed on. In event the Bureau of Apprenticeship and Training withdraws approval of a training program the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
Regulations Pursuant to So-Called "Anti-Kickback Act". The contractor shall comply with the applicable regulations (and herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 862: Title U.S.C., Section 874: and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

Subcontracts. The contractor shall insert in any subcontracts the clauses set forth in paragraph k of this Section I and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made. The contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors, and to give the contractor the same power as regards terminating any subcontract that the Owner may exercise over the contractor under any provision of the contract documents.

Contract Termination: Debarment. A breach of clause (1) through (7) may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

Project Sponsors must ensure, in accordance with the contract, that the contractor/subcontractor agrees to comply with the following provisions in any contract subject to the Contract Work Hours and safety Standards Act:

Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any work week in which he is employed on such work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of forty hours in such work week, as the case may be.
(2) **Violations: Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in sub-paragraph (1) the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in subparagraph (1) in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1).

(3) **Withholding and Unpaid Wages and Liquidated Damages.** The Bexar County Economic and Community Development Department shall withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractors, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2).

(4) **Subcontracts.** The contractor will insert in any subcontracts the Federal Labor Standards Provisions contained herein and such other clauses as the Department of Housing and Urban Development may, by instructions require, and also a clause requiring the contractor to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

Project Sponsors shall incorporate the above clauses into every applicable contract/subcontract negotiated under this project.

j. Project Sponsors shall ensure, in accordance with the contract, that no laborer or mechanic regularly employed in construction work for a Community Development Block Grant/HOME project is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and safety.

k. Project Sponsors must require submission of a weekly statement regarding wages paid during the preceding weekly payroll period to each employee engaged on project work from all contractors/subcontractors with contracts of over $2,000. Form WH 347, Payroll (for Contractor's Optional Use)(Attachment 3-3), or identical forms may be used.
FEDERAL COMPLIANCE MANUAL

I. The Bexar County Community Development Division will provide HUD with written notice of project completion, and will ensure payroll records are preserved for a period of three years from the date of completion of the contract, and that they are available for inspection at all times.

m. Project Sponsors must ensure no person employed in construction or completion repair of public work is induced, by any means, to give up any part of the compensation to which he or she is otherwise entitled.
Mail Your Request To:

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Branch of Construction Contract Wage Determinations
Washington, D.C. 20210

Requesting Officer (Typed name and signature)

Department, Agency, or Bureau

Phone Number

Date of Request

Estimated Advertising Date

Estimated Bid Opening Date

Prior Decision Number (If any)

Estimated $ Value of Contract

Type of Work

Under 1/2 Mil 1 to 5 Mil 1/2 to 1 Mil Over 5 Mil

Bldg. Resid. Highway

Address to which wage determination should be mailed. (Print or type)

Decision Number

Date of Decision

Expires

Supersedes Decision Number

Approved

Location of Project (City, County, State, Zip Code)

Description of Work (Be specific) (Print or type)

CHECK OR LIST CRAFTS NEEDED

(Attach continuation sheet if needed)

- Asbestos workers
- Boilermakers
- Bricklayers
- Carpenters
- Cement masons
- Electricians
- Glaziers
- Ironworkers
- Laborers (Specify classes)
- Lathers
- Marble & tile setters, terrazzo workers
- Painters
- Piledrivermen
- Plasterers
- Plumbers
- Roofers
- Sheet metal workers
- Soft floor layers
- Steamfitters
- Welders-rate for craft
- Truck drivers
- Power equipment operators

(Specify types)

Other Crafts

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We are conducting a review of federal labor standards compliance on the project named below. We are asking for certain information regarding your employment on this project. Sending this questionnaire to you does not imply that your employer has violated any law.

Please respond to all of the questions listed below. Your responses will be considered confidential and will not be released to anyone without your permission. Your answers should refer only to the time during which you worked on this project. Please return the completed form as soon as possible, using the envelope provided, which needs no postage.

**If you have any questions, please call:**

<table>
<thead>
<tr>
<th>Employer</th>
<th>Project name, number and location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Your name</td>
<td>2. Your job title</td>
</tr>
<tr>
<td>3. When did you work on this project?</td>
<td>4. Where did you work (job site, shop, etc)?</td>
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<tr>
<td>From:</td>
<td>To:</td>
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<tr>
<td>5. What duties did you perform on this project?</td>
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<tr>
<td>6. What tools did you use (if any) to perform your duties on the project?</td>
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<tr>
<td>7. How were you paid? (hourly wage, salary, piece work, etc.)</td>
<td>8. If your wage was based on piece work, how was your pay determined (i.e., $ per board, per unit, etc.)?</td>
</tr>
<tr>
<td>9. What was your hourly wage on this project? $</td>
<td>10a. Did you receive fringe benefits? Yes □ No □</td>
</tr>
<tr>
<td>10b. If yes, which fringe benefits did you receive? Vacation □ Medical □ Pension □ Other □ Specify:</td>
<td></td>
</tr>
<tr>
<td>11. On average, how many hours did you work each week?</td>
<td>12. Did you ever work over 40 hours in a single week? Yes □ No □</td>
</tr>
<tr>
<td>13. If you worked over 40 hours per week, did you receive overtime pay (at least 1½ times your regular rate of pay)? Yes □ No □</td>
<td></td>
</tr>
<tr>
<td>14. If you did not receive overtime pay for overtime hours worked, identify the number of weeks in which overtime was worked and/or total overtime hours</td>
<td></td>
</tr>
<tr>
<td>15. Attach copies of check stubs or a record of your hours and pay received</td>
<td>16. Attach any other comments or statements on separate sheet</td>
</tr>
</tbody>
</table>

☐ CHECK IF ATTACHED | ☐ CHECK IF ATTACHED
17. Identify other employees (name, address, phone) who worked with you and who could confirm the type of work you performed

18. Identify employees (name, address, phone) you supervised

I affirm that the information provided herein is accurate to the best of my knowledge.

Employee name (Please print clearly)  Home phone number (including area code)

Current address (Include apartment number, if any) (Street/City/State/Zip Code) Alternate phone number(s) (including area code)

Permanent/alternate address (if current address is temporary) Email address

Signature  Date

Disclosure Authorization

I authorize the HUD representative to disclose my name and the information I have submitted to the extent necessary to enforce my rights under the Acts administered by the U.S. Department of Housing and Urban Development.

Signature:  Date:

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered sensitive and will not be released without your approval. Provision of this is voluntary. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget (OMB) control number.

HUD and local agencies administering HUD-assisted programs must enforce Federal wage and reporting requirements on covered HUD-assisted construction and maintenance work. Enforcement activities include contacting laborers and mechanics and requesting information about their employment on covered projects.
<table>
<thead>
<tr>
<th>PAYROLL NO.</th>
<th>FOR WEEK ENDING</th>
<th>PROJECT AND LOCATION</th>
<th>PROJECT OR CONTRACT NO.</th>
</tr>
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</table>

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<tr>
<th>NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER</th>
<th>(2) NO. OF EXEMPTIONS</th>
<th>(3) WORK CLASSIFICATION</th>
<th>(4) DAY AND DATE</th>
<th>(5) TOTAL HOURS WORKED EACH DAY</th>
<th>(6) RATE OF PAY</th>
<th>(7) GROSS AMOUNT EARNED</th>
<th>(8) DEDUCTIONS</th>
<th>(9) NET WAGES PAID FOR WEEK</th>
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)
I, ___________________________ (Name of Signatory Party) ___________________________ (Title)
do hereby state:

(1) That I pay or supervise the payment of the persons employed by ___________________________ (Contractor or Subcontractor) on the ___________________________ (Building or Work): that during the payroll period commencing on the ______ day of __________, ______, and ending the ______ day of __________, ______, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said ___________________________ (Contractor or Subcontractor) weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 76 Stat. 967; 76 Stat. 967; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS:

in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

− Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

<table>
<thead>
<tr>
<th>EXCEPTION (CRAFT)</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

REMARKS:

NAME AND TITLE | SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF TITLE 31 OF THE UNITED STATES CODE.
Instructions For Completing Payroll Form, WH-347

- WH-347 (PDF)
  OMB Control No. 1235-0008, Expires 04/30/2021.

General: Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe
benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

**Contractor or Subcontractor:** Fill in your firm's name and check appropriate box.

**Address:** Fill in your firm's address.

**Payroll No.:** Beginning with the number "1", list the payroll number for the submission.

**For Week Ending:** List the workweek ending date.

**Project and Location:** Self-explanatory.

**Project or Contract No.:** Self-explanatory.

**Column 1 - Name and Individual Identifying Number of Worker:** Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

**Column 2 - No. of Withholding Exemptions:** This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

**Column 3 - Work Classifications:** List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

**Column 4 - Hours worked:** List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

<table>
<thead>
<tr>
<th>Column 1 - Name and Individual Identifying Number of Worker</th>
<th>Column 2 - No. of Withholding Exemptions</th>
<th>Column 3 - Work Classifications</th>
<th>Column 4 - Hours worked</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.</td>
<td>This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.</td>
<td>List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.</td>
<td>List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as &quot;overtime&quot;.</td>
</tr>
</tbody>
</table>
Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay (Including Fringe Benefits): In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "$12.25/.40" would reflect a $12.25 base hourly rate plus $0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds $100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "$163.00/$420.00" would reflect the earnings of a worker who earned $163.00 on a Federally assisted construction project during a week in which $420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.
Statement Required by Regulations, Parts 3 and 5: While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

**Items 1 and 2:** Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

**Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits:** If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

**Contractors who pay no fringe benefits:** If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

**Use of Section 4(c), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less...
than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Public Burden Statement: We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Note: In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at www.adobe.com/products/acrobat/readstep2.html.
IV. **Section Four: Other Program Requirements**

B. Federal Water Pollution Control Act, as amended. Generally, these two acts require that federally-funded activities not adversely affect the quality of the surrounding air and water.

1. Project Sponsors should insert the following clauses in HUD construction contracts:

   a. Compliance with Air and Water Acts. "During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended."

2. In addition to the foregoing requirements, Project Sponsors shall require by inserting a clause in the contract, non-exempt contractor and subcontractors to furnish the following:

   a. A stipulation by the contractor and subcontractors that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

   b. Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857C08) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

   c. A stipulation that, as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA list of Violating Facilities.

   d. Agreement by the contractor that he will include, or cause to be included, the criteria and requirements in Paragraph a through d of this Section in every nonexempt subcontract and requiring that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

3. The Project Sponsor shall also evaluate the impact of the proposed project/activity on the quality of water and air.

C. Flood Disaster Protection Act of 1973 (P.L. 93234). CDBG funds cannot be used for any activity located in an area designated as having special flood hazards, unless the locality is participating in the National Flood Insurance Program (Section 570.609).

1. Project Sponsors should determine if the location of a funded activity lies in flood hazard areas and evaluate the implication of locating a facility in this area.
2. Project Sponsors should insert the following clauses in applicable construction contracts:

   a. Flood Disaster Protection. "This agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93.234). No portion of the assistance provided under this agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said act, for use in an area identified by the Secretary as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 202(d) of said Act; and the use of any assistance provided under this agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

   Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this agreement shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigners to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this agreement."

D. Noise Assessment Guidelines - July 1979. It is the purpose of this departmental policy (HUD) to encourage the control of noise at its source in cooperation with other federal departments and agencies, to encourage land utilization patterns for housing and other municipal needs that will separate uncontrollable noise sources from residential and other noise-sensitive areas, and to prohibit HUD support to new construction on sites having unacceptable noise exposures. This Circular thus provides policy to guide the exercise of discretion afforded in legislation on the various HUD programs. The Circular is based on authority provided in:

1. The Department of Housing and Urban Development Act of 1965 (PL 89-174).

   a. Project Sponsors, with the help of the Bexar County Community Development Division, are responsible for evaluation of the environmental factors of a site on which HCD funded facility activities are to be located to investigate where excessive noise problems exist which may conflict with the use of the facility/activities.
b. If excessive noise problems do exist, Project Sponsors must assure that proper measures will be taken in the construction or rehabilitation.

3. Project Sponsors must insert the following in all construction contracts assisted with Community Development Block Grant funds:

   a. Noise Control Act of 1972. "The contractor agrees to comply with federal noise control regulations during the performance of this contract. This shall include, but not be limited to, compliance with the Noise Control Act of 1972 (86 STAT. 1234. Public Law 92-574), and Noise Assessment Guidelines, Departmental Policy, Implementation, Responsibilities and Standards."

E. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (Public Law 91-695) generally prohibits the use of lead-based paint for construction or rehabilitation of residential structures assisted by federal funds.

1. Project Sponsors must insert the following clauses in HCD funded construction/rehabilitation contracts of residential units:

   a. Lead-Based Paint Hazards. "Construction or rehabilitation of residential structures is subject to HUD Lead-Based Paint regulations, 24 CFR, Part 25. The contractor and subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under subpart B of said regulations. They will be responsible for the inspections and certifications required under Section 35.14(f) thereto."

2. The Bexar County Community Development Division will conduct inspections and certifications as specified in the Act.

F. Public Building Accessibility to Physically Handicapped (P.L. 90-480). This Act applies to any building or facility financed wholly or in part by a grant or a loan made by the federal government and may result in the employment or residence therein of physically handicapped persons. The Act requires that such building and facility be in compliance with standards for design construction or alteration issued by the federal government to ensure accessibility of physically handicapped persons. The Texas State Purchasing and General Services Commission reviews and approves all designs for conformance with State Architectural Barrier laws. The Administrator of General Services, in consultation with the Secretary of Health and Human Services, is authorized to prescribe such standards. Conformance with Texas law will assure conformance with PL 90-480.
1. Where parks, playgrounds, and miscellaneous facilities are designed in-house, Project Sponsors should ensure they conform with standards specified in this Act.

2. Compliance with and insertion of the following clause in all funded construction contracts are required:


G. Executive Order #115934 - Archeological and Historical Preservation Act of 1974 (P.L. 93-291). This federal legislation is aimed at the identification, preservation, restoration, and maintenance of historic or archeological buildings, sites, etc., through:

   1. Adding of significant properties to the National Register;
   2. Providing grants-in-aid to the states and the National Trust for Historic Preservation;
   3. Requiring the evaluation of the impact of projects sponsored to be funded with federal funds on sites, buildings, etc., of historic or archeological significance.

4. Project Sponsors shall insert the following provision in all construction contracts:

   a. National Historic Preservation Act of 1966. "The contractor agrees to contribute to the preservation and enhancement of structures and objects of historical, architectural, or archeological significance when such items are found and/or unearthed during the course of project construction and to consult with the State Historic Preservation Officer for recovery of the items. (Reference: National Historic Preservation Act of 1966 [80 STAT. 915, 16 U.S.C. 470], Executive Order 11593 of May 31, 1971 and Archeological and Historic Preservation Act of 1974 [88 STAT. 174, 16 U.S.C. 469])."

5. The Bexar County Community Development Division shall complete the Historic Preservation Section of the Environmental Review Record as required.

H. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 STAT. 1894, 42 U.S.C. 4601). This Act provides that uniform, fair and equitable treatment be afforded persons displaced as a result of federally-assisted projects so that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Also encourage and expedite the acquisition of real property for a federally-assisted project by agreements with owners of such property to avoid litigation and relieve congestion in courts to assure consistent treatment for owners of real property to be so acquired and to promote public confidence in federal land acquisition.
1. Relocation Responsibilities. To insure compliance with the Act, Bexar County has adopted the following Displacement Policy:

a. The Uniform Relocation and Real Property Acquisition Policy Act of 1970 (Uniform Act), as amended in 1974, requires recipient cities and urban counties of Community Development Block Grant (CDBG)/HOME funds to provide "reasonable benefits" to persons permanently and involuntarily displaced by activities funded through programs of the U.S. Department of Housing and Urban Development (HUD).

b. Where one or more CDBG/HOME activities could result in "Displacement", as defined in Title 24 Code of Federal Regulations (CFR) §570.612(a), the County of Bexar has developed, adopted and will make public a statement of local policy indicating steps to be taken. These steps shall be consistent with other goals and objectives of the CDBG/HOME program in minimizing displacement of persons from homes and neighborhoods and to mitigate the adverse effects of any such displacement on low to moderate income persons.

(1) Displacement (§570.612). "Displacement" means the involuntary movement, except temporary relocation, of a household from a dwelling unit resulting from its acquisition, rehabilitation, or demolition when:

(a) funded in whole or in part with CDBG/HOME funds;

(b) funded with non-CDBG funds where acquisition, rehabilitation, or demolition is a prerequisite for an activity carried out with CDBG/HOME funds (e.g. acquisition of land with local funds for a neighborhood facility to be constructed with CDBG/HOME funds).

(2) Displacement also means the involuntary movement, except temporary relocation, of a household from a dwelling unit necessitated by CDBG/HOME assisted code enforcement.

2. Reasonable benefits. Section 104(j) of the Act requires that benefits be provided to persons displaced by certain CDBG assisted activities for which the Uniform Act does not apply. This provision identifies these activities for which benefits are payable under Section 2104(j), the benefits required to be provided, and the circumstances under which persons will be entitled to receive such benefits.

a. Benefits must be provided for displacement resulting from the CDBG/HOME assisted acquisition of property, when it is acquired by any entity not defined as a "State agency" pursuant to Section 101(3) of the Uniform Act, or rehabilitation of property by any entity.
b. To be eligible to receive benefits under this provision, persons must be occupying the affected property on a tenant basis at the time of or immediately preceding the acquisition or rehabilitation (or as an owner in the case where property is acquired by a non-State agency under the power of eminent domain) and must be:

(1) Required to permanently vacate the structure they are occupying on such property; or

(2) In the case of a residential tenant in a structure being rehabilitated, unable to afford to occupy a unit in the structure following rehabilitation either because the rental cost would not be affordable or because they are required to vacate the structure temporarily but are not reimbursed for all reasonable additional out-of-pocket expenses occasioned by the temporary move.

c. Benefits required to be provided under this paragraph shall consist of the following:

(1) Payment of reasonable moving expenses;

(2) Provision of advisory services as needed to help in moving; and

(3) For a residential tenant, financial and/or advisory assistance sufficient, in the determination of the grantee, to enable the tenant to obtain decent, safe and sanitary housing at an affordable rental cost to the tenant. In providing advisory assistance to displaced persons to obtain such housing, grant recipient shall advise them of their individual rights under the Federal Fair Housing Law (Title VIII), and of replacement housing opportunities in such manner that, wherever feasible, the displaced have a choice between relocating within their own neighborhood and other neighborhoods consistent with the grant recipient's responsibility to affirmatively further fair housing.

d. For purposes of this Policy, the term "persons" includes individuals, families, non-profit organizations, businesses and farms.

e. For purposes of this Policy, rental cost shall be considered to be affordable if the rent (plus the high cost of utilities when not included in the rental rate) does not exceed the greater of the rent plus utilities paid by the tenant prior to the acquisition or displacement activity or the amount of the total TENANT PAYMENT that would apply to the tenant under 24 CFR 813.107(a).
3. The County of Bexar, in its first entitlement year, and as the governing body of the Community Development Block Grant/HOME program, has developed a general policy to be in conformity with Section 902 of the Housing and Community Development Amendments of 1978 (Pub. L. 95-557). This public law provides that, in the administration of Federal housing and community development programs, consistent with other program objectives and goals, involuntary displacement of persons from neighborhoods should be minimized. Thus, the County agrees to minimize displacement of persons from their neighborhoods; and should displacement of said persons occur, the County shall provide "displacement benefits" to property owners and occupants displaced by the use of CDBG/HOME and/or any other program funded under Title 1 of the Housing and Community Development Act of 1974, as amended.
HUD’s Section 3 Business Registry

GET CONNECTED TO LOCAL CONTRACTS

www/hud.gov/sec3biz
Registro comercial de Sección 3 de HUD

CONÉCTESE CON LOS CONTRATOS LOCALES

www/hud.gov/sec3biz

Para recibir copias adicionales, consulte la publicación número: HUD-9872-FHEO

Spanish
HUD Compliance and Monitoring?

HUD monitors the performance of recipients and contractors. HUD examines employment and contract records for evidence of actions taken to train and employ Section 3 residents and to award contracts to Section 3 businesses. HUD provides technical assistance to recipients and contractors in order to obtain compliance with Section 3 requirements.

What if it appears that an entity is not complying with Section 3?

There is a complaint process. Section 3 residents and business concerns may file complaints if they think a violation of Section 3 requirements has occurred where a HUD-funded project is planned or underway. Complaints will be investigated; if appropriate, voluntary resolutions will be sought. There are appeal rights to the Secretary. Section 3 residents and businesses may also seek judicial relief.

How can Section 3 businesses or residents complain about a violation of Section 3 requirements?

They can file a complaint in writing to the local HUD FHEO Office or to:

The Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 5100
Washington, DC 20410-2000
1-800-669-9777
1-800-927-9276 (TTY)


A written compliant should contain:
1. Name and address of the person filing the complaint;
2. Name and address of subject of complaint (HUD recipient or contractor);
3. Description of acts or omissions in alleged violation of Section 3;
4. Statement of corrective actions sought.
Section 3 Act

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (as amended), requires that economic opportunities generated by certain HUD financial assistance for housing (including Public and Indian Housing) and community development programs shall, to the greatest extent feasible, be given to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

Other HUD programs covered by Section 3 (to distinguish between HUD Public and Indian housing programs) are those that provide housing or community development assistance for housing rehabilitation, housing construction, or other public construction project.

Who are Section 3 residents?

Public housing residents including persons with disabilities.

Low and very low income persons who live in the area where a HUD assisted project is located.

What is a Section 3 business?

A section 3 business is one:

That is owned by Section 3 residents
Employs Section 3 residents or;
Subcontracts with businesses that provide opportunities to low and very low income persons.

What types of Economic Opportunities are available under Section 3?

- Jobs and Employment opportunities
- Training and Educational opportunities
- Contracts and Business opportunities

Who will provide the Economic Opportunities?

Recipients of HUD financial assistance and their contractors and subcontractors are expected to develop a Section 3 Plan to assure that economic opportunities to the greatest extent feasible, are provided to low and very low-income persons and to qualified Section 3 businesses. One element of that Plan is the use of a Section 3 clause which indicates that all work performed under the contract are subject to the requirements of Section 3.

Who receives Economic Opportunities under Section 3?

For training and employment:

- persons in public and assisted housing;
- persons in the affected project neighborhood;
- participants in HUD Youth-build programs;
- homeless persons.

For contracting:

- businesses which fit the definition of a Section 3 business.

How can individuals and businesses find out more about Section 3?

Contact the Fair Housing and Equal Opportunity representative at your nearest HUD Office.
¿Cómo obliga el HUD a cumplir la ley y cómo vigila su cumplimiento?

El HUD vigila el desempeño de los receptores de la asistencia y de los contratistas. El HUD examina las constancias de empleo y de las contrataciones para saber si se han tomado medidas para capacitar y dar empleo a los residentes según la Sección 3, así como para adjudicar contratos a las empresas según la Sección 3.

¿Qué se hace si alguna empresa parece no cumplir con la Sección 3?

Existe un procedimiento de denuncia. Los residentes y las empresas según la Sección 3 pueden presentar denuncias si consideran que ha ocurrido una infracción de los requisitos de la Sección 3 que afecta a un proyecto financiado por el HUD, planificado o en vías de realización. Estas denuncias se investigarán y se procurará resolverlas de forma voluntaria. Hay derecho de apelación ante el Secretario. Los residentes y las empresas según la Sección 3 también pueden recurrir al desagravio por vía judicial.

¿Cómo pueden quejarse las empresas o los residentes según la Sección 3 de las infracciones de la misma?

Pueden presentar una denuncia por escrito a la delegación local de HUD/FHEO o a:

The Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 5100
Washington, DC 20410-2000
1-800-669-9777
1-800-927-9276 (TTY)
www.espanol.hud.gov

En las denuncias por escrito se incluirán los datos siguientes:

- Nombre y dirección del denunciante;
- Nombre y dirección del denunciado (beneficiario o contratista del HUD);
- Descripción de los actos u omisiones que supuestamente han infringido la Sección 3;
- Declaración de las medidas correctivas que se solicitan.

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HUD-1476-FHEO Rev 2 (Spanish) (4/06)
Sección 3 de la Ley

Conforme a la Sección 3 de la Ley de Vivienda y Desarrollo Urbano de los Estados Unidos de 1968 (que figura en la Sección 1701u, enmendada, del título 12 del Código de los Estados Unidos), las oportunidades económicas que generen determinados tipos de asistencia financiera concedida por el Departamento de Vivienda y Desarrollo Urbano (HUD), incluida la destinada a la vivienda pública y la de los pueblos indígenas, se deberá proporcionar, en lo que sea factible, a las personas de ingresos bajos o muy bajos, especialmente a las que reciben asistencia pública para la vivienda, así como a las empresas que ofrecen oportunidades económicas a esas personas.

El HUD también administra otros programas conforme a la Sección 3. Para distinguir entre los programas para la vivienda pública y los destinados a los pueblos indígenas, estos otros programas proporcionan asistencia para la vivienda o para el desarrollo comunitario dirigida a la rehabilitación y construcción de viviendas o a otros proyectos de construcción pública.

¿Qué tipos de oportunidades económicas se ofrecen según la Sección 3?

- Oportunidades de trabajo y empleo
- Oportunidades de capacitación y educación
- Contracts and Business opportunities

¿Quién proporcionará las oportunidades económicas?

Los receptores de la asistencia financiera del HUD y sus contratistas y subcontratistas están obligados a elaborar planes conforme a la Sección 3 para asegurar que, en lo que sea factible, se proporcionen oportunidades a las personas de ingresos bajos o muy bajos y a las empresas que reúnan las condiciones que estipula la Sección 3. En esos planes se especificará que todos los trabajos efectuados conforme al contrato cumplan con los requisitos de la Sección 3.

¿Quién recibe las oportunidades económicas según la Sección 3?

Con fines de capacitación y empleo:
- Los residentes en viviendas públicas o subvencionadas;
- Los residentes en el vecindario de las viviendas públicas o subvencionadas;
- Los participantes en los programas del HUD de ayuda a la juventud (Youth-build programs);
- Las personas sin hogar.

Para conseguir contratos:
- Los negocios que se ajusten a la definición de las empresas según la Sección 3.

¿Cómo pueden las personas y las empresas recibir más información acerca de la Sección 3?

Deben comunicarse con el representante de la Oficina para la Equidad de Vivienda e Igualdad de Oportunidades (Fair Housing and Equal Opportunity, FHEO), en la delegación del HUD más cercana.

¿Quiénes son los residentes según la Sección 3?

Los residentes de viviendas públicas, incluidos los discapacitados.

Las personas de ingresos bajos o muy bajos que viven donde hay bloques de viviendas que reciben asistencia del HUD.

¿Cuáles son las empresas según la Sección 3?

Por una empresa según la Sección 3 se entiende:

- La que es propiedad de residentes según la Sección 3.
- La que emplea a residentes según la Sección 3.
- La que subcontrata a empresas que proporcionan oportunidades a personas de ingresos bajos o muy bajos.
FREQUENTLY ASKED QUESTIONS
for
SECTION 3
Published: March 25, 2021

The following is a guidance document published by the Department of Housing and Urban Development Office of Field Policy and Management for the purpose of providing answers to frequently asked questions about Section 3 of the HUD Act of 1968 (12 U.S.C § 1701u) and its associated regulations (24 C.F.R. Part 75). This document is intended to provide guidance for Section 3 funding recipients, subrecipients, contractors, subcontractors, workers, and other stakeholders.

This guidance document covers questions in several topic areas and is divided into parts that contain questions on that part’s topic.

I. GENERAL QUESTIONS REGARDING SECTION 3:
1. What is Section 3?
2. What Do “Best Efforts” and “to the Greatest Extent Feasible” Mean?
3. What Does “Section 3 Worker” Mean?
4. What Does “Targeted Section 3 Worker” Mean?
5. What Does “Section 3 Business Concern” mean?
6. How are low-income and very low-income determined?
7. What is YouthBuild?
8. As a funding recipient, what are my Section 3 reporting goals?
9. How does Section 3 differ from the Minority Business Enterprise/Women Business Enterprise programs?
10. What is a Section 3 project?
11. Who is considered a recipient of Section 3 funding?
12. What are funding thresholds and how do they apply to Section 3 covered financial assistance?
13. Which recipient agencies (or sources of HUD financial assistance) are required to comply with Section 3?
14. Can a non-profit organization be considered a business concern for the purposes of Section 3?
15. What is a “Service Area” or “Neighborhood of the project”?
16. What if my agency does not meet all benchmark goals for employment or contracting?
17. My agency has met all benchmark goals for employment and contracting, does this mean that we are considered in compliance with Section 3?

II. APPLICABILITY:
1. What HUD assistance does Section 3 apply to?
2. Do the requirements of Section 3 apply to grantees on a per project basis?
3. If a project is funded with non-HUD assistance, do the requirements of Section 3 still apply?
4. What recordkeeping responsibilities do contractors/subcontractors have if they receive Section 3 covered contracts?
5. Do the Section 3 requirements apply to material only contracts?
6. Do the Section 3 requirements apply to Section 8 project-based rental assistance contracts?
7. Are maintenance projects covered by Section 3?
8. Does the reduction and abatement of lead-based paint hazards constitute housing rehabilitation?
9. Are demolition projects covered by the requirements of Section 3?
10. Are professional service contracts required to be reported under Section 3?
11. Does Section 3 apply to labor hours by a CDBG-Entitlement recipient?
12. Does Section 3 apply to labor hours by a Public Housing Authority?

III. CONSISTENCY WITH OTHER LAWS:
1. Are recipients required to comply with Federal/state/local laws in addition to Section 3?
2. What is the relationship between Section 3 and Davis Bacon requirements?
3. What does the new rule mean for Tribes and Tribally Designated Housing Entities?

IV. RECIPIENT RESPONSIBILITIES:
1. What are the responsibilities of recipient agencies under Section 3?
2. What are the reporting requirements for legacy contracts entered into under the old Part 135 rule?
3. What are the reporting requirements for Section 3 projects for which assistance or funds are committed during the transition period?
4. What is the reporting timeline for Public Housing Authorities and other recipients of public housing financial assistance?
5. What are the reporting requirements for Public Housing Authorities and other recipients of public housing financial assistance during the transition period?
6. What are good strategies for targeting Section 3 workers and businesses?
7. Are funds provided to recipients so that they can comply with the requirements of Section 3?
8. Are Section 3 workers or business concerns guaranteed employment or contracting opportunities under Section 3?
9. Are recipients, developers, and contractors required to provide long-term employment opportunities, and not simply seasonal or temporary employment?
10. When might a recipient agency be exempt from the quantitative reporting requirements of Section 3?
11. Are recipients required to request developers or contractors to make payments into Section 3 training or implementation funds?

V. SECTION 3 CERTIFICATION:
1. How can a prospective Section 3 worker or business concern certify that they meet the eligibility requirements?
2. What documentation must be maintained by HUD recipients, contractors and subcontractors certifying that low- and very-low individuals and business concerns meet the regulatory definitions under Section 3?
3. What are examples of acceptable evidence to determine eligibility as a Section 3 worker?
4. What are examples of acceptable evidence for determining eligibility as a Section 3 business concern?
5. Are all public housing residents considered Section 3 workers regardless of their income?
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7. Can contracting with MBE/WBE businesses count towards Section 3 benchmarks?
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VI. ECONOMIC OPPORTUNITIES NUMERICAL BENCHMARKS:
1. How can low- and very low-income persons and businesses locate recipient agencies that are required to comply with Section 3 in their area?
2. How can I find Section 3 business concerns in my area?
3. Do the benchmark requirements only count toward new hires?
4. Should PHA’s report on staff hours?
5. What category of PHA Staff should be included?
6. Are recipient agencies required to meet the Section 3 benchmarks, or are they optional?
7. Will there be changes to the benchmark requirements?
8. What is considered "other" public construction?
9. What is the meaning of the safe harbor determination?

VII. SECTION 3 COMPLAINTS:
1. How should complaints be made?
2. Where else can I file complaints alleging denied employment and contracting opportunities?

I. GENERAL QUESTIONS REGARDING SECTION 3:

1. What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

2. What Do “Best Efforts” and “to the Greatest Extent Feasible” Mean?

“Best efforts” and “greatest extent feasible” are statutory terms, used in the statute in different contexts. As such, HUD uses both terms to track compliance, and there are many ways to interpret the language. Traditionally, HUD has used the terms interchangeably, as referenced in the statute, and will continue to be consistent with the statutory language. See 12 U.S.C. 1701u(b)-(d). These terms are integral to the statutory intent and provide flexibility, rather than administrative burden, to grantees or recipients of HUD funding.

HUD acknowledges that some perceive “best efforts” to be the more rigorous standard, while others perceive “greatest extent feasible” to be the more rigorous standard. HUD has determined not to define the difference between these two terms but rather to increase the emphasis on outcomes as a result of these efforts. A recipient’s reported results will be compared to the outcome metrics defined in the benchmark notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD included a list of examples in the regulation at 24 CFR §§ 75.15 and 75.25, including engagement in outreach efforts to generate job applicants who are Targeted Section 3
workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

3. What Does “Section 3 Worker” Mean?

A Section 3 worker is any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

1. The worker’s income for the previous or annualized calendar year is below the income limit established by HUD (see Question 6 of this part I of these FAQs, below);
2. The worker is employed by a Section 3 business concern (see Question 5 of part I, below); or
3. The worker is a YouthBuild participant.

4. What Does “Targeted Section 3 Worker” Mean?

A Section 3 targeted worker for Public Housing Financial Assistance projects is a Section 3 worker who:

(1) is employed by a Section 3 business concern; or
(2) currently fits or when hired fit at least one of the following categories, as documented within the past five years:

   (i) A resident of public housing or Section 8-assisted housing;

   (ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or

   (iii) A YouthBuild participant.

A Section 3 targeted worker for Housing and Community Development Financial Assistance projects is a Section 3 worker who:

(1) is employed by a Section 3 business concern; or
(2) currently fits or when hired fit at least one of the following categories, as documented within the past five years:

   (i) Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or

   (ii) A YouthBuild participant.

5. What Does “Section 3 Business Concern” mean?

A Section 3 business concern is a business that meets at least one of the following criteria, documented within the last six-month period:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

6. **How are low-income and very low-income determined?**

Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. HUD income limits may be obtained from: https://www.huduser.gov/portal/datasets/il.html.

7. **What is YouthBuild?**

YouthBuild is a community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.

YouthBuild participants learn vocational skills in construction, as well as in other in-demand industries that include health care, information technology, and hospitality. Youth also provide community service through the required construction or rehabilitation of affordable housing for low-income or homeless families in their own neighborhoods.

The Division of Youth Services within the Employment and Training Administration's Office of Workforce Investment at the U.S. Department of Labor administers the YouthBuild program. Each year, more than 6,000 youth participate in approximately 210 YouthBuild programs in more than 40 states. More information can be found here: https://www.dol.gov/agencies/eta/youth/youthbuild.

8. **As a funding recipient, what are my Section 3 reporting goals?**

Your Section 3 reporting goals depend on the type of assistance you are receiving, whether public housing financial assistance or housing and community development financial assistance.

For public housing financial assistance, the benchmark for Section 3 workers is set at 25 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA’s or other recipient’s fiscal year. The benchmark for Targeted Section 3 workers is set at 5 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA’s or other recipient’s fiscal year. This means that the 5 percent is included as part of the 25 percent threshold.

For housing and community development financial assistance projects, the benchmark for Section 3 workers is set at 25 percent or more of the total number of labor hours worked by all workers on a Section 3 project. The benchmark for Targeted Section 3 workers is set at 5 percent or more of the total number of labor hours worked by all workers on a Section 3 project. This means that the 5 percent is included as part of the 25 percent threshold.

9. **How does Section 3 differ from the Minority Business Enterprise/Women Business Enterprise programs?**

Section 3 is both race and gender neutral. The standards provided under this regulation are based on income-level and location. Section 3 regulations were designed to encourage recipients of HUD
funding to direct employment, training, and contracting opportunities to low-income individuals, and the businesses that employ these persons within their community regardless of race and/or gender.

Minority Business Enterprise (MBE) means a business enterprise that is at least 51% owned and controlled by one or more minority or socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or other similar causes.

Women’s Business Enterprise (WBE) is an independent business concern that is at least 51% owned and controlled by one or more women who are U.S. citizens or Legal Resident Aliens; whose business formation and principal place of business are in the U.S. or its territories; and whose management and daily operation is controlled by a woman with industry expertise.

Section 3 standards are race and gender neutral. A minority and/or woman owned business enterprise must provide evidence that it meets at least one criterion of a Section 3 business concern outlined above in order to receive preference under Section 3. However, the Department anticipates that Section 3 will serve to support, and not impede, contract opportunities for minority business enterprises.

The MBE designation may provide preferences promoted by other statutes and regulations, such as goals for MBEs and other socially and economically disadvantaged businesses.

To learn more about the Minority Business Enterprise and Women Business Enterprise programs, please contact HUD’s Office of Small and Disadvantaged Business Utilization at 202-708-1428, or visit their website, located at: https://www.hud.gov/program_offices/sdb.

10. What is a Section 3 project?

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000. The threshold is $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 et seq.; and/or the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.). (See Question 12 of this part I of these FAQs for more detail regarding Lead Hazard Control and Healthy Homes programs.)

The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing. The requirements of Part 75 apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

11. Who is considered a recipient of Section 3 funding?

A recipient is any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization. It does not include contractors or any intended beneficiary under the HUD program to which Section 3 applies, such as a homeowner or a Section 3 worker.
12. What are funding thresholds and how do they apply to Section 3 covered financial assistance?

Funding thresholds are minimum dollar amounts that trigger Section 3 requirements. There are no thresholds for public housing programs. The requirements of Section 3 apply to all programs receiving public housing financial assistance regardless of the amount of assistance received from HUD. Section 3 also applies to the entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance.

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000 (Lead Hazard Control and Healthy Homes (LHCHH) assistance is not included in calculating whether the assistance exceeds the $200,000 threshold).

The threshold is $100,000 when the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992. LHCHH programs require Section 3 compliance if there is over $100,000 of LHCHH funding for the project (neither HUD public housing financial assistance nor HUD housing and community development financial assistance is included in calculating whether the assistance exceeds the $100,000 threshold). Recipients of LHCHH funding will also be required to comply with Section 3 regulations and report on the entirety of the project when the total amount of HUD housing and community development financial assistance to the project exceeds $200,000 (LHCHH funding is not included in calculating whether the total assistance exceeds the $200,000 threshold), or if any public housing financial assistance is provided.

13. Which recipient agencies (or sources of HUD financial assistance) are required to comply with Section 3?

For public housing financial assistance, Public Housing Authorities (PHAs), regardless of size or number of public housing units, are required to comply with Section 3 and its reporting requirements. However, small PHAs (fewer than 250 units) are permitted to report qualitatively as permitted under 24 CFR § 75.15(d). Some examples of those qualitative efforts are listed in the answer to Question 15.

As previously stated, Section 3 also applies to projects with more than $200,000 in funding from housing and community development financial assistance programs. The following is a list of examples of such funds:

- Community Development Block Grant (CDBG)
- HOME Investment Partnership
- Housing Trust Fund (HTF)
- Neighborhood Stabilization Program Grants (NSP 1, 2 & 3)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Emergency Solutions Grants (ESG)
- University Partnership Grants
• Economic Stimulus Funds
• 202/811 Grants
• Lead Hazard Control Grants ($100,000 threshold; see Question 12, above, in this part I of these FAQs)
• Healthy Homes Production Grants ($100,000 threshold; see Question 12, above, in this part I)
• Rental Assistance Demonstration (RAD) (see most recent RAD Notice, found through HUD’s RAD website, www.hud.gov/rad/)

*Note: The requirements of Section 3 typically apply to recipients of HUD funds that will be used for housing construction, rehabilitation, or other public construction. Contact Section3@hud.gov to determine applicability to a particular project/activity.

14. Can a non-profit organization be considered a business concern for the purposes of Section 3?

Yes. A non-profit organization can be a business concern. Non-profit organizations must meet the criteria of a Section 3 business concern as defined at 24 CFR § 75.5 in order to receive Section 3 preference. See response to Question 5 above.

15. What is a “Service Area” or “Neighborhood of the project”?

“Service area” or the “neighborhood of the project” means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

16. What if my agency does not meet all benchmark goals for employment or contracting?

If reporting indicates that the agency has not met the Section 3 benchmarks, the agency must report in a method prescribed by HUD program offices on the qualitative nature of its activities and those its contractors and subcontractors pursued per 24 CFR § 75.15(b) and § 75.25(b).

Such qualitative efforts may, for example, include but are not limited to the following:

• Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
• Provided training or apprenticeship opportunities.
• Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
• Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
• Held one or more job fairs.
• Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
• Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
• Assisted Section 3 workers to obtain financial literacy training and/or coaching.
• Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
• Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
• Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
• Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
• Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
• Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act

17. My agency has met all benchmark goals for employment and contracting, does this mean that we are considered in compliance with Section 3?

Yes. Recipients will be considered to have complied with Section 3 requirements, in the absence of evidence to the contrary, if they meet all benchmark goals and certify compliance with prioritization requirements found in 24 CFR § 75.9 or §75.19. However, if subsequent HUD enforcement activities reveal that the recipient has failed to comply with the recipient responsibilities set forth at 24 CFR §75.13 or §75.23, this compliance determination may be rescinded.
II. APPLICABILITY:

1. What HUD assistance does Section 3 apply to?

Section 3 applies to both:

a) Public Housing Financial Assistance –
   
   (i) Development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act);
   
   (ii) Operations and management assistance provided pursuant to Section 9(e) of the 1937 Act;
   
   (iii) Development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act; and
   
   (iv) The entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in subsections (i) through (iii).

b) Housing and Community Development Financial Assistance expended for housing rehabilitation, housing construction, or other public construction. See Question #2 below for applicability thresholds.

2. Do the requirements of Section 3 apply to grantees on a per project basis?

Yes, for housing and community development financial assistance projects. Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000. The threshold is $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs. See Question 12 of part I of these FAQs.

Section 3 applies to all public housing financial assistance funds, regardless of the amount of assistance from HUD.

3. If a project is funded with non-HUD assistance, do the requirements of Section 3 still apply?

Section 3 applies to projects that are fully or partially funded with HUD financial assistance. Projects that are financed with state, local or private matching or leveraged funds used in conjunction with HUD funds are covered by Section 3 if the amount of HUD funding for the project exceeds the regulatory thresholds (listed in Section I, Question #11).

For RAD projects, Section 3 applies regardless of what money is used to pay for repairs. Per the RAD Notice, “While most RAD conversions do not utilize funding covered by Section 3, HUD has established the alternative requirement that any Work required by the conversion after the RAD Closing that involves housing rehabilitation or housing construction is subject to the Section 3 requirements applicable to housing and community development activities as set forth in 12 U.S.C. 1701u(c)(2) and (d)(2) and the regulations derived from such provisions except that, with the exception of transactions receiving HUD housing and community development assistance, such as CDBG (24 CFR part 570) or HOME (24 CFR part 92), first priority for employment and other economic
opportunities shall be given to residents of public housing or Section 8 assisted housing. Otherwise, the receipt of Section 8 rental assistance does not, in itself, trigger the applicability of Section 3.”

4. **What recordkeeping responsibilities do contractors/subcontractors have if they receive Section 3 covered contracts?**

Recordkeeping requirements for recipients are found at 24 CFR § 75.31. Recipients are required to maintain documentation to demonstrate compliance with the regulations and are responsible for requiring their contractors/subcontractors to maintain or provide any documentation that will assist recipients in demonstrating compliance, including documentation that shows hours worked by Section 3 workers, Targeted Section 3 workers, and any qualitative efforts to comply with Section 3. Examples of documentation can be found in 24 CFR §75.31.

5. **Do the Section 3 requirements apply to material only contracts?**

No. Section 3 does not apply to material only contracts or those that do not require any labor. For example, a contract for office or janitorial supplies would not be covered by Section 3. In this example, Section 3 would be encouraged but not required. However, a contract to replace windows that includes the removal of existing windows and the installation of new windows would be covered due to the involvement of labor.

6. **Do the Section 3 requirements apply to Section 8 project-based rental assistance contracts?**

No. Section 8 project-based voucher or project-based rental assistance housing assistance payment contracts, are not covered by the statute, including properties converted through the Rental Assistance Demonstration (RAD).

7. **Are maintenance projects covered by Section 3?**

Yes, but only for PIH funded programs administered by Public Housing Authorities.

8. **Does the reduction and abatement of lead-based paint hazards constitute housing rehabilitation?**

No, reduction and abatement of lead-based paint hazards focuses on mitigating lead paint hazards only, not conducting general rehabilitation activities.

9. **Are demolition projects covered by the requirements of Section 3?**

Yes. Recipients of assistance covered by Section 3 should, where feasible, comply with Section 3 benchmarks.
10. Are professional service contracts required to be reported under Section 3?

No, professional service contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as a part of total Section 3 labor hours. However, this exclusion does not cover all non-construction services.

However, professional services staff labor hours are permitted to be reported and PHAs will be given credit for reporting opportunities created for professional services by including professional services labor hours in the numerator, and not in the denominator, of the reported outcome ratios. The reporting structure in the rule allows a recipient to count any work performed by a professional services Section 3 worker or Targeted Section 3 worker as Section 3 labor hours and as Targeted Section 3 labor hours (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able to report Section 3 hires in the professional services context.

11. Does Section 3 apply to labor hours by a CDBG-Entitlement recipient?

Yes. If the recipient intends to use its HUD grant to perform housing construction, rehabilitation, or other public construction and the total HUD assistance to the project exceeds $200,000, then Section 3 applies to the project.

12. Does Section 3 apply to labor hours by a Public Housing Authority?

Yes. Section 3 applies to all Public Housing capital, operating, or development funds.
III. CONSISTENCY WITH OTHER LAWS:

1. Are recipients required to comply with Federal/state/local laws in addition to Section 3?

Yes. Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with existing Federal, state and local laws and regulations. Accordingly, recipients of Section 3-covered assistance are required to develop strategies for meeting both the regulatory requirements at 24 CFR part 75 and any other applicable statutes or regulations.

2. What is the relationship between Section 3 and Davis Bacon requirements?

Compliance with Section 3 must be achieved consistent with the requirements of Davis-Bacon. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and implementing U.S. Department of Labor regulations in 29 CFR Part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public housing projects are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. (24 CFR § 965.101).

3. What does the new rule mean for Tribes and Tribally Designated Housing Entities?

After the Section 3 new rule went into effect on November 30, 2020, Tribes and Tribally Designated Housing Entities under the Indian Housing Block Grant and Indian Community Development Block Grant programs are no longer required comply with Section 3 requirements.

The new rule at 24 CFR part 75 provides that contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.
IV. RECIPIENT RESPONSIBILITIES:

1. What are the responsibilities of recipient agencies under Section 3?

Recipients are required to ensure their own compliance and the compliance of their contractors/subcontractors with the Section 3 regulations, as outlined at 24 CFR part 75. These responsibilities include but are not limited to the following:

Designing and implementing procedures to comply with the requirements of Section 3: Recipient agencies must take an active role in ensuring Section 3 compliance. The first step is implementing procedures to ensure that all parties, including residents, businesses, contractors, and subcontractors, comply with Section 3 and maintain records verifying that compliance.

Facilitating the training and employment of Section 3 workers: The recipient agency must act as a facilitator, connecting Section 3 workers to training and employment opportunities.

Facilitating the award of contracts to Section 3 business concerns: The recipient agency must also work to link developers and contractors with capable Section 3 business concerns. Additionally, recipient agencies, when necessary, may direct Section 3 business concerns to organizations that provide capacity-building training.

Ensuring Contractor and Subcontractor Awareness of and Compliance with Section 3 Benchmarks and responsibilities: The recipient agency is responsible for ensuring that contractors and subcontractors are aware of, and in compliance with, Section 3 requirements.

Ensuring Compliance and Meeting Numerical Benchmarks: Recipient agencies shall ensure compliance with Section 3 by assessing the hiring and subcontracting needs of contractors; regularly monitoring contractor compliance; assisting and actively cooperating with the Secretary of HUD in obtaining the compliance of contractors; penalizing non-compliance; providing incentives for good performance; and refraining from entering into contracts with any contractor that previously failed to comply with the requirements of Section 3.

Reporting Requirements: Recipient agencies must document all actions taken to comply with the requirements of Section 3 and report these activities either through the Section 3 Performance Evaluation and Registration System (SPEARS), for Public Housing financial assistance, or any reporting system designated by program areas overseeing other funding.

2. What are the reporting requirements for legacy contracts entered into under the old Part 135 rule?

On and after November 30, 2020, Section 3 regulations codified at 24 CFR Part 135 (the old rule) have not applied and will not apply to new grants, commitments, contracts, or projects. Contracts executed or projects for which assistance or funds were committed prior to November 30, 2020 are still required to adhere to the requirements of the old rule. Recipients of such assistance or funds will still be expected to maintain records of Section 3 statutory, regulatory, and contractual compliance but will no longer be required to report Section 3 compliance to HUD in SPEARS.
HUD does not require funding recipients to change or alter contracts that were in place prior to the new Section 3 requirements becoming effective on November 30, 2020.

3. **What are the reporting requirements for Section 3 projects for which assistance or funds are committed during the transition period?**

Projects for which assistance or funds are committed between November 30, 2020 and July 1, 2021 are subject to the new Section 3 regulations found in 24 CFR part 75, and HUD expects that funding recipients will begin following this final rule’s requirements for new grants, commitments, and contracts. Recipients will be expected to maintain records of statutory, regulatory, and contractual compliance with Section 3 for these projects but will not be required to report to HUD on the requirements found in 24 CFR part 75.

During the transition period between November 30, 2020 and July 1, 2021, recipients are expected to plan and revise processes, systems, and documents to comply with the new rule’s requirements. During this time, funding recipients are still required to comply with Section 3’s statutory requirements by ensuring that, to the greatest extent feasible, recipients continue to direct economic opportunities generated by certain HUD financial assistance to low- and very low-income persons and businesses that provide economic opportunities to low- and very low-income persons.

Recipients and employers should use this time to update policies and procedures for tracking labor hours and other requirements to ensure compliance with the new rules for projects for which funds are committed on or after July 1, 2021.

4. **What is the reporting timeline for Public Housing Authorities and other recipients of public housing financial assistance?**

As of November 30, 2020, PHAs’ requirement to report their Section 3 activities and efforts starts 60 days after the end of their first fiscal year that begins after July 1, 2021. Please see the charts below for examples of PHA reporting schedules:

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5. **What are the reporting requirements for Public Housing Authorities and other recipients of public housing financial assistance during the transition period?**

All recipients of public housing financial assistance are required to follow the new Section 3 regulations found in 24 CFR part 75 beginning on November 30, 2020, and HUD expects that funding recipients and employers will begin following this final rule’s requirements for new grants, commitments, and contracts on and after this date. Recipients will be expected to maintain records of statutory, regulatory, and contractual compliance with Section 3 but will not be required to report in SPEARS on the requirements found in 24 CFR part 75 until the recipient’s first full fiscal year after July 1, 2021, as indicated in Question #4 above.

During the transition period between November 30, 2020 and a PHA or other recipient’s required reporting start date, employers and grantees are expected to plan and revise processes, systems, and documents to comply with the new rule’s requirements. During this time, PHAs and other recipients are still required to comply with Section 3’s statutory requirements by ensuring that, to the greatest extent feasible, PHA’s continue to direct economic opportunities generated by certain HUD financial assistance to low- and very low-income persons, tenants of public and assisted housing, and businesses that provide economic opportunities to low- and very low-income persons.

6. **What are good strategies for targeting Section 3 workers and businesses?**

In order to successfully target Section 3 workers and businesses for employment and contracting opportunities, recipients must establish and maintain an effective Section 3 program. HUD has found that hiring a Section 3 coordinator or assigning one individual the responsibility of coordinating all Section 3 related activities is instrumental in reaching Section 3’s employment and contracting goals.

It is recommended that recipient agencies establish procedures to certify Section 3 workers and Section 3 business concerns for employment and contracting opportunities. Thereafter, they should maintain a list of eligible workers and businesses by skill, capacity or interest and contact them on a periodic basis when employment and contracting opportunities are available. Refer to the Section 3 regulations at 24 CFR § 75.15(b) and § 75.25(b) for a listing of qualitative efforts.
7. Are funds provided to recipients so that they can comply with the requirements of Section 3?

No. Funding has not been appropriated for Section 3 compliance. Section 3 requirements are only triggered when the normal expenditure of covered funds results in employment, training, or contracting opportunities.

8. Are Section 3 workers or business concerns guaranteed employment or contracting opportunities under Section 3?

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and very low-income individuals and Section 3 business concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

9. Are recipients, developers, and contractors required to provide long-term employment opportunities, and not simply seasonal or temporary employment?

Recipients, developers, and contractors are required, to the greatest extent feasible, to direct employment opportunities to low- and very low-income persons, including seasonal and temporary employment opportunities. Benchmark goals include the calculation of all Section 3 worker and Targeted Section 3 Worker labor hours as a percentage of all labor hours worked on a project.

Recipients, developers, and contractors are encouraged to provide long-term employment to ensure that they meet the benchmark goals.

10. When might a recipient agency be exempt from the quantitative reporting requirements of Section 3?

A Small Public Housing Agency (less than 250 units) may elect to not report on labor hours. If the agency does elect not to report on labor hours, it is required to report solely on qualitative efforts as permitted in 24 CFR § 75.15(d).

11. Are recipients required to request developers or contractors to make payments into Section 3 training or implementation funds?

No. Recipients are not required to request contractors to make payments into a fund.
V. SECTION 3 CERTIFICATION:

1. How can a prospective Section 3 worker or business concern certify that they meet the eligibility requirements?

The individual or business must contact the agency or developer from which they are seeking employment or contracting opportunities (e.g., the PHA, city, or local government). They should identify themselves as a Section 3 worker, Targeted Section 3 worker, or Section 3 business concern and provide whatever documentation that the recipient agency requires under their certification procedures. Prospective Section 3 workers and business concerns may self-certify that they meet the requirements as defined in the regulations. HUD recipients, contractors and subcontractors may also establish their own system to certify Section 3 workers and business concerns.

2. What documentation must be maintained by HUD recipients, subrecipients, contractors, and/or subcontractors certifying that low- and very-low individuals and business concerns meet the regulatory definitions under Section 3?

There are many ways that a worker can be certified as either a Section 3 Worker or Targeted Section 3 Worker under 24 CFR part 75:

For a worker to qualify as a Section 3 worker, one of the following must be maintained:

(i) A worker’s self-certification that their income is below the income limit from the prior calendar year;
(ii) A worker’s self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
(iv) An employer’s certification that the worker’s income from that employer is below the income limit when based on an employer’s calculation of what the worker’s wage rate would translate to if annualized on a full-time basis; or
(v) An employer’s certification that the worker is employed by a Section 3 business concern.

(2) For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

For Public Housing Financial Assistance projects:

(i) A worker’s self-certification of participation in public housing or Section 8-assisted housing programs;
(ii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
(iii) An employer’s certification that the worker is employed by a Section 3 business concern; or
(iv) A worker’s certification that the worker is a YouthBuild participant.
For Housing and Community Development Financial Assistance projects:

(i) An employer’s confirmation that a worker’s residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

(ii) An employer’s certification that the worker is employed by a Section 3 business concern; or

(iii) A worker’s self-certification that the worker is a YouthBuild participant.

The documentation must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR § 200.334, Retention Requirements for Records (www.ecfr.gov/cgi-bin/retrieveECFR?n=se2.1.200_1334), which provides for retaining records for at least three years, as described in detail in that regulation.

A PHA or recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

3. What are examples of acceptable evidence to determine eligibility as a Section 3 worker?

HUD does not prescribe that any specific forms of evidence to establish Section 3 eligibility. Acceptable documentation includes, but is not limited to the following:

- Proof of residency in a public housing project; or
- Evidence of participation in the YouthBuild program.

4. What are examples of acceptable evidence for determining eligibility as a Section 3 business concern?

HUD does not prescribe that any specific forms of evidence be required to establish Section 3 eligibility. The business seeking the preference must be able to demonstrate that they meet one of the following criteria:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

5. Are all public housing residents considered Section 3 workers regardless of their income?

No. To qualify as a Section 3 Worker, an individual must meet one of the following criteria:

1. The worker’s income for the previous or annualized calendar year is below the income limit established by HUD;
2. The worker is employed by a Section 3 business concern; or
3. The worker is a YouthBuild participant.
6. **Does qualifying as a Section 3 businesses mean that the business will be selected if it meets the technical requirements of the bid, regardless of bid price?**

No. As provided in 2 CFR 200.318, contract awards shall only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. In order to meet the requirements of Section 3 and Federal and state procurement laws, recipient agencies must develop procedures that are consistent with all applicable regulations.

7. **Can contracting with MBE/WBE businesses count towards Section 3 benchmarks?**

It depends. Section 3 is race and gender neutral. Only MBEs/WBEs that meet the eligibility criteria as a Section 3 business concern set forth in the regulation can be counted towards the Section 3 labor hour calculation.

8. **Does a business have to be incorporated to be considered a Section 3 eligible business?**

No. A Section 3 business concern can be any type of business, such as a sole proprietorship, partnership, or a corporation, properly licensed and meeting all legal requirements to perform the contract under consideration.
VI. ECONOMIC OPPORTUNITIES NUMERICAL BENCHMARKS:

1. How can low- and very low-income persons and businesses locate recipient agencies that are required to comply with Section 3 in their area?

To find local recipients’ agencies, Section 3 residents or businesses should contact their local HUD office. To find your closest office, visit: www.hud.gov/localoffices.

2. How can I find Section 3 business concerns in my area?

Contact local recipient agencies to find Section 3 business concerns in your area. Section 3 business concerns that have registered in the Section 3 Business Registry are also available at: https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome.

3. Do the benchmark requirements only count toward new hires?

No, the rule does not apply to only new hires, but if someone is currently on staff and qualifies as a Section 3 resident under 24 CFR part 135, they will need to re-certify as either a Section 3 worker or Targeted Section 3 worker under 24 CFR part 75.

4. Should PHA’s report on staff hours?

Yes, but not all PHA staff qualify as Section 3 workers. Only PHA staff that meet the definition of a Section 3 worker or Targeted Section 3 worker would qualify to be counted toward total Section 3 or Targeted Section 3 labor hours. Once a PHA determines that a Section 3 worker or Targeted Section 3 worker is hired or currently employed, the PHA would just report those hours as the numerator over the total labor hours funded with public housing financial assistance as the denominator.

5. What category of PHA Staff should be included?

Both salaried and hourly workers need to be reported. There is a limited good faith assessment exception for PHAs and other recipient employers of hourly and salaried workers that are not subject to requirements specifying time and attendance reporting and do not have systems already in place to track labor hours. This exception is to address employers that do not already track labor hours without making changes in time and attendance or payroll.

6. Are recipient agencies required to meet the Section 3 benchmarks, or are they optional?

The Section 3 benchmarks are minimum targets that must be reached in order for the Department to consider a recipient in compliance. Recipient agencies are required to make best efforts, or to the greatest extent feasible, to achieve the benchmarks required for the number of labor hours performed by both Section 3 workers and Targeted Section 3 workers. If an agency fails to fully meet the Section 3 benchmarks, they must adequately document the efforts taken to meet the numerical goals (see Question #9 for a discussion of safe harbor.)
7. **Will there be changes to the benchmark requirements?**

The Secretary of Housing and Urban Development is required in the Benchmark Notice published in the Federal Register to review and update the Benchmarks by Federal Register notice no less frequently than once every three years.

8. **What is considered "other" public construction?**

Other public construction includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, and installing conduits for utility services.

9. **What is the meaning of the safe harbor determination?**

Recipients will be considered to have complied with the Section 3 requirements and met the safe harbor, in the absence of evidence to the contrary, if they certify that they have followed the required prioritization of effort and met or exceeded the applicable Section 3 benchmarks.

If a recipient agency or contractor does not meet the benchmark requirements but can provide evidence that they have made a number of qualitative efforts to assist low- and very low-income persons with employment and training opportunities, the recipient or contractor is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).
VII. SECTION 3 COMPLAINTS:

1. How should complaints be made?

Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. These offices can be found through the HUD website, www.hud.gov.

2. Where else can I file complaints alleging denied employment and contracting opportunities?

You may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about your rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: http://www.dol.gov/ofccp/.
1. Overview of Section 3 Requirements

A. WHAT IS SECTION 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) that is regulated by the provisions of 24 CFR 75. Section 3 regulations ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

B. PURPOSE OF THIS DOCUMENT

This plan outlines how Bexar County and its subrecipients, contractors and subcontractors will comply with HUD’s Section 3 requirements in implementing Bexar County’s CDBG program. Bexar County will, to the greatest extent feasible, ensure that employment and other economic opportunities are directed to low- and very low-income persons (Section 3 workers and Targeted Section 3 workers) and to eligible businesses (Section 3 Businesses) and requires the same of its contractors.

Bexar County may amend its Section 3 Policies and Procedures document as necessary to ensure continued compliance with HUD’s requirements and/or to reflect updated Section 3 guidance and outreach strategies.

C. APPLICABILITY

For housing and community development financial assistance, this plan applies to housing rehabilitation, housing construction, and other public construction projects that exceed $200,000 or more of housing and community development financial assistance from one or more HUD programs. Applicability is determined at the project level.

2. Section 3 Coordinator

Bexar County’s Section 3 Coordinator serves as the central point of contact for Section 3 compliance for its subrecipients and contractors and subcontractors supporting the program. Subrecipients, contractors, subcontractors and others are encouraged to reach out to Bexar County’s Section 3 Coordinator with questions regarding Section 3 compliance:

Alexandra Alvarez

Community Development Coordinator

Alexandra.Alvarez@bexar.org

3. Employment, Training, and Contracting Goals

A. SAFE HARBOR COMPLIANCE

Bexar County will be considered to have complied with the Section 3 requirements and met safe harbor, if they certify that they followed the required prioritization of effort and met or exceeded the Section 3 benchmarks, absent evidence of the contrary.
Prior to the beginning of work, contractors and subcontractors will be required to certify that they will follow the required prioritization of effort for Section 3 workers, Targeted Section 3 workers, and Section 3 business concerns as outlined below in section C. After completion of the project, contractors and subcontractors are required to certify that they followed the prioritization of effort requirements.

If the contractor and subcontractor does not meet the safe harbor requirements, they must provide evidence that they have made qualitative efforts to assist low and very low-income persons with employment and training opportunities.

**B. SAFE HARBOR BENCHMARKS**

Bexar County has established employment and training goals that subrecipients, contractors, and subcontractors should meet in order to comply with Section 3 requirements outlined in 24 CFR Part 75.19. The safe harbor benchmark goals are as follows:

1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

   Section 3 Labor Hours/Total Labor Hours = 25%

And

2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.

   Targeted Section 3 Labor Hours/Total Labor Hours = 5%

HUD establishes and updates Section 3 benchmarks for Section 3 workers and/or Targeted Section 3 workers through a document published in the Federal Register, not less frequently than once every 3 years. Given that the Section 3 benchmarks are subject to change every three years or sooner, Bexar County will review and update the Section 3 Plan every year, as needed.

It is the responsibility of contractors to implement efforts to achieve Section 3 compliance. Any contractor that does not meet the Section 3 benchmarks must demonstrate why meeting the benchmarks were not feasible. All contractors submitting bids or proposals to the recipient/grantee are required to certify that they will comply with the requirements of Section 3.

**C. CERTIFICATION OF PRIORITIZATION OF EFFORT FOR EMPLOYMENT, TRAINING, AND CONTRACTING**

**EMPLOYMENT AND TRAINING**

Under the Bexar County’s Section 3 Program, contractors and subcontractors should make best efforts to provide employment and training opportunities to Section 3 workers in the priority order listed below:

Provide employment and training opportunities to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located in the priority order listed below:

1) Section 3 workers residing within the service area or the neighborhood of the project, and
2) Participants in YouthBuild programs.

Contractors and subcontractors will be required to certify that they will and have made best efforts to follow the prioritization of effort requirements prior to the beginning work and after work is completed.

**CONTRACTING**

Under the Bexar County’s Section 3 Program, contractors and subcontractors must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order or priority:

1) Business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which assistance is located in the following order of priority (where feasible):

   a) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project; and

   b) YouthBuild programs.

Contractors and subcontractors will be required to certify that they will and have made best efforts to follow the prioritization of effort requirements prior to the beginning work and after work is completed.

**4. Section 3 Eligibility and Certifications**

Individuals and businesses that meet Section 3 criteria may seek Section 3 preference from Bexar County or its contractors/subcontractors for training, employment, or contracting opportunities generated by housing and community development financial assistance. To qualify as a Section 3 worker, Targeted Section 3 worker or a Section 3 business concern, each must self-certify that they meet the applicable criteria.

Businesses who misrepresent themselves as Section 3 business concerns and report false information to Bexar County may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities.

**A. SECTION 3 WORKER AND TARGETED SECTION 3 WORKER CERTIFICATION**

A Section 3 worker seeking certification shall submit self-certification documentation to the recipient contractor or subcontractor, that the person is a Section 3 worker or Targeted Section 3 worker as defined in 24 CFR Part 75. For the purposes of Section 3 worker eligibility, Bexar County will use individual income rather than family/household income to determine eligibility. The income limits will be determined annually using the guidelines published at https://www.huduser.org/portal/datasets/il.html. Persons seeking the Section 3 worker preference shall demonstrate that it meets one or more of the following criteria currently or when hired within the past five years, as documented:

1) A low or very low-income resident (the worker’s income for the previous or annualized calendar year is below the income limit established by HUD); or

2) Employed by a Section 3 business concern; or
3) A YouthBuild participant.

Persons seeking the Targeted Section 3 worker preference shall demonstrate that it meets one or more of the following criteria:

1) Employed by a Section 3 business concern or

2) Currently meets or when hired met at least one of the following categories as documented within the past five years: a) Living within the service area or the neighborhood of the project, as defined in 24 CFR Part 75.5; or

   b) A YouthBuild participant.

Section 3 workers and Targeted Section 3 workers who are seeking preference in training and employment must submit the Section 3 Worker and Targeted Section 3 Worker Certification Form.

B. SECTION 3 BUSINESS CONCERN CERTIFICATION

Bexar County, should encourage contractors and subcontractors to make best efforts to award contracts and subcontracts to Section 3 business concerns.

Businesses that believe they meet the Section 3 Business requirements can may self-register in the HUD Business registry, here: http://www.hud.gov/Sec3Biz. Businesses may seek Section 3 Business Concern preference by demonstrating that it meets one or more of the following criteria:

1) At least 51 percent of the business is owned and controlled by low- or very low-income persons; or

2) At least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing; or

3) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers.

Businesses that seek Section 3 preference shall certify, or demonstrate to Bexar County, contractors or subcontractors, that they meet the definitions provided in the above. Businesses may demonstrate eligibility by submitting the Section 3 Business Concern Certification Form.

Section 3 Business Concern Certification Forms must be submitted at the time of bid/proposal. If Bexar County previously approved the business concern to be Section 3 certified, then the certification can be submitted along with the bid, as long as the form is submitted within the prescribed expiration date. The Section 3 Business Concern Certification Form will expire after 12 months. Establishing a 12 month certification of eligibility period allows Bexar County the ability to assess contractor performance to ensure the business is striving to meet the required goals.

5. Assisting Contractors with Achieving Section 3 Goals

In an effort to assist contractors with meeting or exceeding the Section 3 goals, Bexar County will do the following:

1) Share Section 3 Plan with contractors and subcontractors and explain policies and procedures

2) Require contractors wishing to submit a bid/offer/proposal to attend pre-bid meeting
3) Require contractor to sign the Section 3 Plan at pre-construction conference

4) Review Section 3 benchmarks and prioritization of effort with contractors and subcontractors to ensure that the goals are understood. It is not intended for contractors and subcontractors to terminate existing employees, but to make every effort feasible to meet Section 3 benchmark goals by utilizing existing qualified workforce and by considering qualified eligible Section 3 workers and Targeted Section 3 workers (per the prioritization of effort outlined in Section #3) before any other person, when hiring additional employees is needed to complete proposed work to be performed with CDBG.

5) At the time of bid, require the contractor to present a list, of the number of total labor hours, Section 3 worker labor hours, and Targeted Section 3 worker labor hours expected to be generated from the initial contract and a list of projected number of available positions, to include job descriptions and wage rates.

6) Maintain a local Section 3 worker/Targeted Section 3 worker database and provide the contractor with a list of interested and qualified Section 3 workers and Targeted Section 3 workers and contact information.


8) Require contractors to notify Section 3 Coordinator of their interests regarding employment of Section 3 workers prior to hiring.

9) Encourage local business to register on the HUD Business Registry and direct contractors to the HUD Section 3 Business Registry https://www.hud.gov/section3businessregistry

10) Leverage Bexar County’s communication outlets (social media, website, etc.) to effectively communicate employment and contracting opportunities that arise.

11) Require contractors to submit a list of core employees (including administrative, clerical, planning and other positions pertinent to the construction trades) at the time of contact award.

6. Section 3 Outreach

A. OUTREACH EFFORTS FOR EMPLOYMENT AND TRAINING

Contractors and subcontractors should employ several active strategies to notify Section 3 workers and Targeted Section 3 workers of Section 3 job opportunities, including:

1) Clearly indicating Section 3 eligibility on all job postings with the following statement: “This job is a Section 3 eligible job opportunity. We encourage applications from individuals that are low income and/or live in Public Housing and/or receive a Section 8 voucher”;

2) Including the Section 3 Worker and Targeted Section 3 Worker Self-Certification Form in all job postings
3) Working with the Section 3 Coordinator to connect Section 3 worker and Targeted Section 3 workers in Bexar County’s database with opportunities and/or utilize the Section 3 Opportunity Portal to find qualified candidates

4) Establishing a current list of Section 3 eligible applicants

5) Contacting local community organizations and provide them with job postings for Section 3 eligible applicants; and

6) Coordinating a programmatic ad campaign, which results in widespread job posting across diverse ad networks including:
   a) Advertising job opportunities via social media, including LinkedIn and Facebook;
   b) Advertising job opportunities via flyer distributions and mass mailings and posting ad in common areas of housing developments and all public housing management offices
   c) Contacting resident councils, resident management corporations, and neighborhood community organizations to request their assistance in notifying residents of available training and employment opportunities

7. Section 3 Provisions/Contract Language

Bexar County will include standard Section 3 language in all of its contracts to ensure compliance with regulations in 24 CFR Part 75. Bexar County will take appropriate actions upon finding that a contractor is in violation of 24 CFR Part 75 and does not knowingly contract with any contractor that has been found in violation of the Section 3 regulations. On a periodic basis the Section 3 Coordinator will audit contractors for compliance with the minimum Section 3 requirements outlined in the Section 3 Plan.

In addition, contractors and subrecipients are required to include language in all Section 3 covered contracts or agreements for subcontractors to meet the requirements of 24 CFR Part 75.19 (for housing and community development financial assistance).

For businesses, noncompliance with HUD’s regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

8. Reporting Requirements

For Section 3 covered contracts, contractors must submit the Section 3 Performance and Summary Report to Bexar County’s Section 3 Coordinator on a monthly basis, and the annual reporting requirement set forth in that form’s instructions.

A. ANNUAL REPORTING

1) Once a project is completed, contractors must submit a final Section 3 cumulative report for the program year.

2) Upon the completion of a project, Bexar County’s Section 3 Coordinator will conduct a final review of the project’s overall performance and compliance.
3) Bexar County’s Section 3 Coordinator will submit the Section 3 data into IDIS for HUD’s review.

10. Internal Section 3 Complaint Procedure

In an effort to resolve complaints generated due to non-compliance through an internal process, Bexar County encourages submittal of such complaints to its Section 3 Coordinator as follows:

1) Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR Part 75.

2) Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation.

3) An investigation will be conducted if complaint is found to be valid. Bexar County will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.

4) Bexar County will provide written documentation detailing the findings of the investigation. Bexar County will review the findings for accuracy and completeness before it is released to complainants. The findings will be made available no later than thirty (30) days after the filing of complaint. If complainants wish to have their concerns considered outside of Bexar County a complaint may be filed with:

The HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. These offices can be found through the HUD website, www.hud.gov/.

Complainants may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about complainant rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: http://www.dol.gov/ofccp/.
SECTION 3 ACTION PLAN

Project Name: ________________________________________________

Company Name: ______________________________________________

Proposed Contract Amount: ____________________________________

Contact Name: ________________________________________________

Phone number: Email Address: ________________________________

Part 1. Provide the Following Information:

1. Strategies for hiring Section 3 residents will include:

2. Strategies for contracting with Section 3 business concerns will include:
3. Efforts to conduct aggressive outreach and notification to potential Section 3 residents and business concerns of contracting and employment opportunities will include (check all that apply):

☐ Outreach efforts to generate job applicants who are Public Housing Targeted Workers.
☐ Outreach efforts to generate job applicants who are Other Funding Targeted Workers.
☐ Direct, on-the-job training (including apprenticeships).
☐ Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.
☐ Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
☐ Outreach efforts to identify and secure bids from Section 3 business concerns.
☐ Technical assistance to help Section 3 business concerns understand and bid on contracts.
☐ Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.
☐ Provided or connected residents with assistance in seeking employment including: drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.
☐ Held one or more job fairs.
☐ Provided or connected residents with supportive services that can provide direct services or referrals.
☐ Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.
☐ Assisted residents with finding childcare.
☐ Assisted residents to apply for, or attend community college or a four-year educational institution.
☐ Assisted residents to apply for, or attend vocational/technical training.
☐ Assisted residents to obtain financial literacy training and/or coaching.
☐ Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
☐ Provided or connected residents with training on computer use or online technologies.
☐ Promoting the use of a business registry designed to create opportunities for disadvantaged and small businesses.
☐ Outreach, engagement, or referrals with the state one-stop system, as designed in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.
☐ Other. Specify: ____________________
Part 2. Statement of Commitment:

By signature below, the undersigned acknowledges to Bexar County that the undersigned has been provided with information and documents regarding the County’s Section 3 Plan which explains the obligations and requirements of any construction project which is funded in part or whole by HUD sourced funds. The undersigned certifies to its commitment to comply with the County’s Section 3 Plan, all Section 3 laws and regulations, and to use the County’s Section 3 business list in connection with the above described project. The undersigned further certifies that the information contained in this Section 3 action plan is accurate and correct. The undersigned understands that the County may impose penalties and sanctions for the submission of any false and inaccurate statements within this document, fails to achieve the Section 3 contracting and employment goals for the project, and/or fails to comply with the County’s Section 3 Plan, Section 3 laws and regulations, or its contract obligations.

Signature of Authorized Representative _______________________ Date ________________

Position of Authorized Representative_________________________
Section 3 Business Concern Certification for Contracting

Instructions: Enter the following information and select the criteria that applies to certify your business’ Section 3 Business Concern status.

Business Information
Name of Business ___________________________________________________________
Address of Business _________________________________________________________
Name of Business Owner _____________________________________________________
Phone Number of Business Owner ______________________________________________
Email Address of Business Owner ______________________________________________

Preferred Contact Information
☐ Same as above
Name of Preferred Contact _____________________________________________________
Phone Number of Preferred Contact ______________________________________________

Type of Business (select from the following options):
☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Joint Venture

Select from ONE of the following four options:
☐ At least 51 percent of the business is owned and controlled by low- or very low-income persons (Refer to income guidelines on page 2).
☐ At least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
☐ Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers (Refer to definition on page 2).
☐ None of the above apply

Business Concern Affirmation
I affirm that the above statements (on the frontside of this form) are true, complete, and correct to the best of my knowledge and belief. I understand that businesses who misrepresent themselves as Section 3 business concerns and report false information to [insert name of recipient/grantee] may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities. I hereby certify, under penalty of law, that the following information is correct to the best of my knowledge.

Print Name: ______________________________________________________________
Signature: ___________________________ Date: __________

*Certification expires within six months of the date of signature
Information regarding Section 3 Business Concerns can be found at 24 CFR 75.5
Income Limits:

See https://www.huduser.gov/portal/datasets/il.html for most recent income limits.

Section 3 Worker Definition:

- A low or very low-income resident (the worker’s income for the previous or annualized calendar year is below the income limit established by HUD); or
- Employed by a Section 3 business concern; or
- A YouthBuild participant.

Targeted Section 3 Worker Definition:

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years: • A resident of public housing; or
- A resident of other public housing projects or Section 8-assisted housing; or
- A YouthBuild participant.
Public reporting for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), and 12 U.S.C. § 1701u ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. The regulations are found at 24 CFR Part 75. This collection of information is required in order to ensure that a worker can be certified as an eligible Section 3 worker as outlined in 24 C.F.R. § 75.31. The information will be used by the Department to ensure compliance with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31, to assess the results of the Department’s efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients to ensure they are complying with their recordkeeping requirements found in the regulation, and as a self-monitoring tool.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2501-0041. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. No assurances of confidentiality are provided for this information collection.

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31. To qualify as a Section 3 worker, the United States legal resident’s annual income must not exceed the HUD income limits for the year before the worker was hired, or the individual’s current income annualized on a full-time basis for the year must be below the HUD income limit. Additionally, an individual can qualify as a Section 3 worker and Targeted Section 3 worker, if an employee of a Section 3 Business Concern. To qualify as a Targeted Section 3 worker, an employer can confirm that the employee lives within the service area or neighborhood of the project.

Please provide the following information about the business/employer:

Name of Business: ____________________________________________________________

Street Address: ______________________________________________________________

City: __________ State: __________ Zip: __________

Phone #: __________ Email: ____________________________________________________

<table>
<thead>
<tr>
<th>Street Address</th>
<th>City</th>
<th>State</th>
<th>Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone #:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Please Provide the following information about the worker/employee:

Printed Name of Worker: ____________________________________________________________

Street Address (Not a PO Box)  Apt#  City  State  Zip

Phone #: ______________________ Email: ____________________________________________

Please indicate which of the following is true for the worker listed above: (Select all that apply)

___ Worker’s income from your employment is below the income limit based on a calculation of what the worker’s wage rate would translate to if annualized on a full-time basis*

___ Worker is employed by a Section 3 Business Concern (Select if your business qualifies as a Section 3 Business Concern)

___ Worker’s residence is within the service area or neighborhood of the project

*Currently or at the time of hire if hired within the past 5 years.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and certifies that the worker identified above meets the definition of a Section 3 worker. WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802)

___________________________________  ___________________________
Signature        Date
If your income is within these limits, circle which is applicable:

<table>
<thead>
<tr>
<th>FY 2022 Income Limit Category</th>
<th>Persons in Family</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Very Low (50%) Income Limits ($)</td>
<td>29,050</td>
</tr>
<tr>
<td>Extremely Low Income Limits ($)*</td>
<td>17,400</td>
</tr>
<tr>
<td>Low (80%) Income Limits ($)</td>
<td>46,450</td>
</tr>
</tbody>
</table>
Section 3 Final Report

Contactor: ____________________________________________

Project Name: _________________________________________

<table>
<thead>
<tr>
<th>Total Labor Hours:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3 Worker Hours:</td>
</tr>
<tr>
<td>Targeted Section 3 Worker Hours:</td>
</tr>
</tbody>
</table>

Benchmarks

Section 3 Worker Hours / Total Labor Hours = ________ %

Met Safe Harbor Benchmark? (25%): Yes ____ No ____

Targeted Section 3 Worker Hours / Total Labor Hours = ________ %

Met Safe Harbor Benchmark? (5%): Yes ____ No ____

Nature of Agency Efforts

This section is required if, based on the reporting above, the reporting agency did not meet the safe harbor benchmarks.

Check all that apply. Maintain records available for HUD review to document any efforts checked.

☐ Outreach efforts to generate job applicants who are Public Housing Targeted Workers.

☐ Outreach efforts to generate job applicants who are Other Funding Targeted Workers.

☐ Direct, on-the job training (including apprenticeships).

☐ Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.

☐ Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

☐ Outreach efforts to identify and secure bids from Section 3 business concerns.

☐ Technical assistance to help Section 3 business concerns understand and bid on contracts.
☐ Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.

☐ Provided or connected residents with assistance in seeking employment including: drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.

☐ Held one or more job fairs.

☐ Provided or connected residents with supportive services that can provide direct services or referrals.

☐ Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.

☐ Assisted residents with finding childcare.

☐ Assisted residents to apply for, or attend community college or a four-year educational institution.

☐ Assisted residents to apply for, or attend vocational/technical training.

☐ Assisted residents to obtain financial literacy training and/or coaching.

☐ Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

☐ Provided or connected residents with training on computer use or online technologies.

☐ Promoting the use of a business registry designed to create opportunities for disadvantaged and small businesses.

☐ Outreach, engagement, or referrals with the state one-stop system, as designed in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

☐ Other. Specify: ____________________
## FY 2022 Income Limits Documentation System

FY 2022 Income Limits Summary

Selecting any of the buttons labeled "Click for More Detail" will display detailed calculation steps for each of the various parameters.

<table>
<thead>
<tr>
<th>FY 2022 Income Limit Area</th>
<th>Median Family Income</th>
<th>FY 2022 Income Limit Category</th>
<th>Persons in Family</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Antonio-New Braunfels, TX HUD Metro FMR Area</td>
<td>$83,500</td>
<td>Very Low (50%) Income Limits ($)</td>
<td>1 2 3 4 5 6 7 8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>29,050 33,200 37,350 41,450 44,800 48,100 51,400 54,750</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extremely Low Income Limits ($)*</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>17,400 19,900 23,030 27,750 32,470 37,190 41,910 46,630</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Low (80%) Income Limits ($)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>46,450 53,050 59,700 66,300 71,650 76,950 82,250 87,550</td>
<td></td>
</tr>
</tbody>
</table>

**NOTE:** Bexar County is part of the San Antonio-New Braunfels, TX HUD Metro FMR Area, so all information presented here applies to all of the San Antonio-New Braunfels, TX HUD Metro FMR Area. HUD generally uses the Office of Management and Budget (OMB) area definitions in the calculation of income limit program parameters. However, to ensure that program parameters do not vary significantly due to area definition changes, HUD has used custom geographic definitions for the San Antonio-New Braunfels, TX HUD Metro FMR Area.

The San Antonio-New Braunfels, TX HUD Metro FMR Area contains the following areas: Bandera County, TX; Bexar County, TX; Comal County, TX; Guadalupe County, TX; and Wilson County, TX.

* The FY 2014 Consolidated Appropriations Act changed the definition of extremely low-income to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit or the poverty guideline as established by the Department of Health and Human Services (HHS), provided that this amount is not greater than the Section 8 50% very low-income limit. Consequently, the extremely low income limits may equal the very low (50%) income limits.

Income Limit areas are based on FY 2022 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2022 Fair Market Rent documentation system.

For last year's Median Family Income and Income Limits, please see here:

[FY2021 Median Family Income and Income Limits for San Antonio-New Braunfels, TX HUD Metro FMR Area](https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn)

---

Select a different county or county equivalent in Texas:

- Bandera County
- Bastrop County
- Baylor County
- Bee County
- Bell County
- Bexar County

Select any FY2022 HUD Metropolitan FMR Area's Income Limits:

- San Antonio-New Braunfels, TX HUD Metro FMR Area
- Select HMFA Income Limits Area
<table>
<thead>
<tr>
<th>Select county or county equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Or press below to start over and select a different state:</td>
</tr>
<tr>
<td>Select a new state</td>
</tr>
<tr>
<td>Update URL For bookmarking or E-Mailing</td>
</tr>
</tbody>
</table>

Prepared by the Program Parameters and Research Division, HUD.
Contractor’s Guide message:

Message from the Secretary

Construction workers that are employed on many HUD-assisted projects are entitled to prevailing wage rates under the Davis-Bacon and Related Acts. These men and women who work to improve our communities and increase affordable housing in America not only deserve fair compensation — they have a legal right to receive prevailing wage rates. HUD takes seriously its responsibility to ensure that these rights are protected and enforced.

This Contractor’s Guide, *Davis-Bacon Labor Standards*, has been designed to support employer compliance and ensure that every contractor who does business with HUD understands how they can uphold their responsibilities. It describes Davis-Bacon wage and reporting requirements and what construction employers must do to meet them. The Guide also explains what construction employers can expect from HUD, and reflects the results of HUD’s Davis-Bacon Streamlining Initiative allowing our staff and our customers to focus less on paperwork and more on the people they serve.

I am pleased to offer HUD’s partners the most up-to-date information on Davis-Bacon compliance. For any further questions or concerns, I urge you to contact your area’s HUD Labor Relations staff who will work to assist you in any way they can.

As always, we welcome your input and thank you for your work supporting affordable housing and sustainable communities for all.

Shaun Donovan
What's new about Davis-Bacon payroll reporting?

Did you know that employee addresses and full Social Security Numbers are no longer included on payroll reports for Davis-Bacon projects???

The Department of Labor (DOL) published revised regulations concerning the information reported on payrolls for Davis-Bacon – covered projects. The revisions were published on December 19, 2008, and took effect on January 18, 2009, for contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after that date. In other words, the changes are not retroactive and do not affect solicitations, or projects or contracts in effect, prior to January 18, 2009. The revisions were made at 29 CFR §3.3 and §5.5.

Under the new rules, employee addresses and full Social Security Numbers (SSNs) shall not be included on the payroll. Instead, payrolls need to include an individually identifying number for each employee, for example, the last four digits of the employee’s SSN. Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for Federal labor standards compliance monitoring.

HUD’s Davis-Bacon labor standards forms (e.g., HUD-2554; HUD-4010; HUD-5370 and 5370-EZ) are being revised to reflect these changes.

Please contact the HUD Labor Relations staff for your area if you have any questions about labor standards requirements in HUD programs. A list of the Labor Relations field staff, the jurisdictions they serve, and contact information can be found at our web site by following this link: www.hud.gov/offices/olr/laborrelstf.cfm.
Start Work Notice

PLEASE RETURN TO THE FOLLOWING ADDRESS:

________________________________________________________________________
(Date)

REFERENCE: PROJECT NAME: ________________________________________________
PROJECT LOCATION: ________________________________________________________
(Street Address) (City and State)

HUD PROJECT NUMBER: ____________________________________________________
U.S. DEPT. OF LABOR WAGE DECISION NUMBER: ______________

This is to inform you that the ________________________________________________
(Name of Company)
of ________________________________________________ , ______________________
(Address) (Town/City)
______________________________ , has started work on the above referenced
(State) project covered by our contract with you, as of ________________________________
(Date)

Respectfully Yours,

________________________________
(Name of Company)

________________________________
(Signature)

________________________________
(Title)

Notification of start of construction should be submitted by each contractor/subcontractor
with the first (initial) payroll. The date of start work should be the first date work is shown
on the initial payroll.

All of the above information should be submitted; however, you may use any format you
desire in lieu of this form.
TERMINATION OF WORK NOTICE

Date: __________________

REFERENCE: PROJECT NAME: __________________________________________

PROJECT LOCATION: _____________________________________________________

______________
(Street Address)

______________
(City & State)

HUD PROJECT NUMBER: _________________________________________________

U.S. DEPARTMENT OF LABOR WAGE DECISION NUMBER: ________________

This is to inform you that the ______________________________________________

(Name of Company)

of ________________________________________________________________

(Address) __________________________ (Town/City) _______________________

________________________________________, has terminated work on the above referenced

project covered by our contract with you, as of ______________________________

(Date)

Respectfully Yours,

________________________________

(Name of Company)

________________________________

(Signature)

________________________________

(Title)

• Notification of the termination of work should be submitted by each contractor/subcontractor with

the final payroll. The date of work termination should be the last date work is shown on the payroll.

All of the above information should be submitted; however, you may use any format you desire in lieu

of this form.
LIST OF USEFUL LABOR RELATIONS WEB SITES

HUD WEB HOME PAGE
http://www.bud.gov/

HUD REGULATIONS
https://www.ecfr.gov/cgi-bin/ECFR?page=browse

HUD DAVIS-BACON AND LABOR STANDARDS
https://www.hud.gov/program_offices/davis_bacon_and_labor_standards

DAVIS-BACON AND LABOR STANDARDS (DBLS) LIBRARY
https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/OLRLibrary

HUD HANDBOOKS, FORMS AND PUBLICATIONS
https://www.hud.gov/program_offices/administration/handbks_forms

LIMITED DENIAL OF PARTICIPATION IN SPECIFIC HUD PROJECTS
https://www.hud.gov/sites/documents/LDP_POLICY_SUMMARY.PDF

DOL DAVIS-BACON AND RELATED ACTS HOMEPAGE
https://www.dol.gov/agencies/whd/government-contracts/construction

DBRA FORMS AND POSTERS
https://www.dol.gov/whd/programs/dbra/forms.htm

WAGE DETERMINATIONS
https://sam.gov/content/wage-determinations

PARTIES EXCLUDED FROM PARTICIPATING IN GOVERNMENT CONTRACTS
https://www.dol.gov/agencies/ofccp/debarred-list

Updated as of July 2, 2021
CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE
TO SUPERVISE PAYMENT OF EMPLOYEES

PROJECT NAME: ___________________________ DATE: _____________

LOCATION: ___________________________ PROJECT NO: ________

(I) (We) hereby certify that (I am) (we are) (the prime contractor) (a subcontractor) for

__________________________
(Specify "General Construction," "Plumbing", "Roofing", etc.)

in connection with construction of the above-mentioned project, and that (I) (we) have

appointed * ____________________________

whose signature appears below, to supervise the payment of (my) (our) employees

beginning _________________________, ___________; that he/she is in a position to

have full knowledge of the facts set forth in the payroll documents and in the statement of

compliance required by the so-called Kick-Back Statue which he/she is to execute with (my)

(our) full authority and approval until such time as (I) (we) submit to the

__________________________ a new
certificate appointing some other person for the purpose herein above stated.

* ____________________________

(Identifying Signature of Appointee)

Attest (if required): ____________________________

(Name of Firm of Corporation)

__________________________  By: ____________________________

(Signature)  (Signature)

__________________________  ____________________________

(Title)  (Title)

NOTE: This certificate must be executed by an authorized officer of a corporation, by a
member of a partnership, or the sole owner and shall be executed prior to and be
submitted with the first payroll. Should the appointee be changed, a new certificate must
be accompany the first payroll for which the new appointee executes a statement of
compliance required by the Kick-Back Statue.
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INTRODUCTION

This Guide has been developed as part of HUD’s communications strategy with its approximately 5,000 client agencies, and contractors performing work on construction projects that are assisted by the U.S. Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements. This Guide does not address contractor requirements involved in direct Federal contracting where HUD or another Federal agency enters into a procurement contract. While the guidance contained in this Guide is generally applicable to any Davis-Bacon-covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

This Guide has been designed to help agencies develop organizational and administrative policies that will enable them to meet labor standards contractual responsibilities in the administration of HUD-assisted programs as efficiently as possible. It is also useful as a training tool and a ready reference for compliance staff. Further, it may be used by contractors to provide further background. While this Guide is intended to address numerous situations, it was not written to cover every possible labor standards issue. If there is a labor standards issue not addressed in this Guide, please contact your local HUD Labor Standards Specialist (LSS). Throughout this Guide, the acronym “LCA” or “LCAs” shall mean state, tribal, and local agencies.

This Guide also provides information to assist with Davis-Bacon labor standards compliance. HUD’s Office of Davis-Bacon and Labor Standards worked with the U.S. Department of Labor’s Wage and Hour Division to ensure that the labor standards provisions required to be incorporated in Davis-Bacon contracts and the specifics of complying with them represent the latest information. The U.S. Department of Labor (DOL) has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts they either fund or assist in funding.

This Guide contains five main chapters. The first chapter includes basic DBA definitions that affect every Davis-Bacon-covered project. The second chapter lists the responsibilities of state, tribal, and local contracting agencies that administer HUD programs. The third chapter includes the laws and regulations associated with Federal labor standards administration and enforcement. The fourth chapter describes LCA flexibility for labor standards responsibilities. The fifth and final chapter discusses payroll compliance reviews and corrections.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. If you need assistance in determining whether Davis-Bacon wage rates apply to a project or if you need other related technical assistance, please contact the HUD Labor Standards Field staff for your area. If you do not know which staff to contact, a list of Labor Standards field offices with their geographic areas, telephone numbers and email addresses are located on HUD’s Home Page at the address below.

RESOURCE

Visit the Office of Davis Bacon and Labor Standards online:
www.hud.gov/program_offices/davis_bacon_and_labor_standards
KEY LABOR STANDARDS
OBJECTIVES OF THE GUIDE

The Office of Davis-Bacon and Labor Standards has identified five Key Labor Standards Objectives—the basics of what must be accomplished in order to protect workers’ rights. We also identified all the policies, procedures, and paperwork at our disposal—what we do ourselves and what we impose on contractors. HUD eliminated superfluous requirements and will not institute policies, procedures, or paperwork that is not required by statute or regulation, or that does not contribute to one or more of the Key Objectives.

Apply Davis-Bacon requirements properly

Make certain that labor standards, including Davis-Bacon prevailing wage rates, are applied where required. Ensure that any exemptions or exceptions are identified.

Through education and advice, support contractor compliance with labor standards

Provide basic training and technical support to contractors to ensure that they understand their obligations under prevailing wage and reporting requirements.

Monitor contractor performance

Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.

Investigate probable violations and complaints of underpayment

Thoroughly explore any evidence of violations, especially allegations of underpayment.

Pursue debarment and other available sanctions against repeat labor standards violators

Carry out a zero tolerance policy toward contractors who violate prevailing wage laws.

RESOURCE

Program technical guidance

For interpretations of program requirements or handbooks and instructions on the use of forms:
Housing Programs - See our Contact List for help.
BASIC DBA DEFINITIONS

There are several compliance principles, definitions, and interpretations that affect every Davis-Bacon-covered project.

Responsibilities of employers

All employers (contractors, subcontractors, and any lower-tier subcontractors) are required to pay all laborers and mechanics employed or working on the site of the work unconditionally and not less often than once per week the full amount of wages and bona fide fringe benefits computed at rates not less than those contained in the wage decision. Employers must prepare, certify, and submit weekly payroll reports reflecting all the laborers and mechanics (employees) engaged in construction on the site of the work. Employers may also be required to submit related documentation in order to demonstrate compliance.

Responsibilities of the principal (prime) contractor

The principal contractor (also referred to as the "prime contractor") is responsible for the full compliance of all employers (itself, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project.

Prime contractor

The principal contractor.

Subcontractor

All subcontractors and lower-tier subcontractors.

Employer

Any contractor, subcontractor, or lower-tier subcontractor that has engaged the services of laborers or mechanics on the project.

To make this Guide easier to understand, the term "prime contractor" will mean the principal contractor; "subcontractor" will mean all subcontractors including lower-tier subcontractors; and the term "employer" will mean all contractors as a group, including the prime contractor and any subcontractors and lower-tier subcontractors.

Laborers and mechanics

Those individuals whose duties are manual or physical in nature, including workers who are performing the work of a trade (e.g., electrician). "Laborers" and "mechanics" include apprentices, trainees, helpers, and, for contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), watchmen and guards.

Working foremen

Foremen or supervisors that perform construction work and devote more than 20% of their time as a laborer or mechanic are treated, for labor standards purposes, as "laborers" or "mechanics" for their time spent working as a laborer or mechanic.

Exclusions

Persons whose duties are primarily administrative, managerial, or clerical are not laborers or mechanics.
**Employee**

Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person.

**Working subcontractors**

Persons who perform the work of laborers or mechanics and who represent themselves to be owners of businesses, sole proprietors, or self-employed are not exempt from prevailing wage requirements. These laborers and mechanics are “employed” and are entitled to the prevailing wage for the type of work they perform, and must be reported on the payroll report for their craft, hours of work, and wages paid. For additional information, see LR-96-01, Labor Standards for Self-Employed Laborers and Mechanics.
Administrative allowances
HUD permits administrative allowances concerning payroll reporting and certification requirements relating to the following:
- Owners of Businesses Working with Their Crew
- Owner/Operators of Power Equipment
- Owner/Operators of Trucks

Apprentice
A person employed and individually registered in a bona fide apprenticeship program. Bona fide programs are those that have been registered with DOL, Employment and Training Administration, Office of Apprenticeship, or with a DOL-recognized State Apprenticeship Agency (SAA). (Note that an SAA must also partner with a State Apprenticeship Council (SAC). The SAC must consist of an equal number of representatives of employer and employee organizations.)

Probationary apprentice
A person in the first 90 days of probationary employment as an apprentice in a bona fide apprenticeship program but who has not yet been formally registered in such program may be considered an “apprentice” provided that DOL or SAC has certified that such person is eligible for probationary employment as an apprentice.

Pre-apprentice
A person who is employed as a “pre-apprentice”—that is, in a preparatory position which may result in registration in an apprenticeship program—is not considered to be an “apprentice.”

Trainee
A person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the Office of Apprenticeship Training.

Prevailing wages or wage rates
Davis-Bacon prevailing wage rates generally appear as a basic hourly rate plus fringe benefits, if any. “Prevailing wage” is made up of two interchangeable components: the basic hourly wage, and fringe benefits. The total of the basic hourly wage and fringe benefits comprises the “prevailing wage” obligation. This obligation may be met by any combination of cash wages and creditable “bona fide” fringe benefits provided by the employer. For example:

- The Davis-Bacon wage decision requires:
  - Basic Hourly Rate $10.00
  - Fringe Benefits $1.00
  - Total Prevailing Wage $11.00

Employers may comply by paying:
1. $11.00 in cash wages;
2. $10.00 plus $1.00 in bona fide fringe benefits; or
3. Any combination of wages and benefits that totals $11.00 per hour.
**Piece rate/piece work employees**

Employees whose earnings are calculated by the amount of work produced (rather than hours worked) must receive no less than the applicable DBRA/MWD (Davis-Bacon and Related Acts/Maintenance Wage Determination) wage rate based upon the hours of work performed. The employer must divide the piece rate earnings by the actual hours worked to determine the “effective” hourly rate. The effective hourly rate must be calculated for each week’s earnings and must be no less than the applicable prevailing wage rate. It does not matter whether the effective hourly rate changes from week to week as long as the result is at least as much as the prevailing wage rate. If the effective hourly rate is less than the applicable prevailing wage rate, the employee must be compensated at the prevailing wage rate for all hours worked.

**Fringe benefits**

Fringe benefits may include:
- Sick, vacation, or holiday pay;
- Costs to defray expenses of apprenticeship or similar programs;
- Medical or hospital care;
- Supplemental unemployment benefits;
- Life insurance;
- Pensions on retirement or death;
- Compensation for injuries or illness resulting from occupational activity;
- Other bona fide fringe benefits; or
- Insurance to provide any of the above.

**MORE INFO**

In addition, fringe benefits may reflect the rate of costs to the employer that may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program.

**MORE INFO**

Fringe benefits do not include employer contributions or payments required by other federal, state, or local law, such as FICA (Federal Insurance Contributions Act), workers’ compensation, or unemployment compensation.
Overtime

Overtime (O/T) hours are defined as all hours worked in excess of 40 hours in any workweek. Where governed by Federal labor standards, O/T hours shall be compensated at not less than one and one-half times the regular rate of basic pay plus the straight-time (S/T) rate of any required fringe benefits.

Deductions

The employer may make payroll deductions as permitted by DOL regulations in 29 CFR Part 3. These regulations prohibit the employer from requiring employees to “kick back” any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement contributions, 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 (which will require documentation).

Site of work

The “site of work” is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed. “Site of work” includes other adjacent or nearby properties used by the contractor/subcontractor in the construction of the project (e.g., fabrication sites) provided they are dedicated exclusively or nearly so to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

Proper designation of trade

Each laborer and mechanic shall be classified in accordance with the work classifications listed on the wage decision and the actual type of work they perform and shall be paid the appropriate wage rate and fringe benefits for the 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 the employer 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.

Split classification

Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification provided that the employer maintains time records that accurately set forth the time spent in each classification in which the work was performed. If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rates for the classifications in which work was performed.
LCA RESPONSIBILITIES

State, tribal, and local contracting agencies (LCAs) that administer HUD programs agree to administer and enforce Davis-Bacon requirements as a condition for receiving HUD program assistance. LCAs have the following responsibilities:

1. Designate appropriate staff (e.g., a Contract Administrator) before the start of construction to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. Provide the name(s) of the staff to the appropriate HUD Field Office of Davis-Bacon and Labor Standards.

2. Establish a construction contract management system that meets the standards of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

3. Ensure that all bid documents, contracts, and subcontracts contain the applicable Davis-Bacon wage decision and Federal labor standards provisions.

4. Ensure that no contract is awarded to a contractor that is ineligible (e.g., debarred) for Federally-assisted work.

5. Conduct on-site inspections including interviews with laborers and mechanics employed on the construction project. Ensure that the applicable Davis-Bacon wage decision, DOL’s Davis-Bacon poster (Form WH-1321), and additional classifications are displayed at the job site.

6. Review certified payroll reports (CPRs) and related documentation. Identify any discrepancies and/or violations. Ensure that any needed corrections are made promptly, including the payment of wage restitution as needed, and the assessment and collection of liquidated damages, as appropriate.

7. Maintain full documentation of Federal labor standards administration and enforcement activities.

8. Refer potential criminal or complex enforcement actions to HUD, in addition to CWHSSA liquidated damages assessments for O/T violations and debarment recommendations.

9. Comply with all HUD requirements concerning statutory, program, and/or other requirements.

LAWS AND REGULATIONS

The Davis-Bacon Act (DBA)

The DBA, enacted in 1931, applies to contracts in excess of $2,000 for construction, alteration, and/or repair of public buildings or public works, including painting and decorating, to which the United States or the District of Columbia is a party. This type of applicability is referred to as direct Davis-Bacon Act or DBA coverage. An example of DBA coverage is when HUD contracts directly for repairs to HUD-owned properties. HUD’s Office of the Chief Procurement Officer manages these types of contracts. The DBA requires that the advertised specifications for such contracts contain a provision stating that the minimum wages to be paid to various classes of laborers and mechanics must be based upon the wages found to be prevailing by the Secretary of Labor.

Most HUD construction work is not covered by the DBA since HUD does not usually contract directly for construction work. Rather, Davis-Bacon wage rates apply to HUD programs because of prevailing wage requirements expressed in HUD “Related Acts” such as the U. S. Housing Act of 1937 and the Housing and Community Development Act of 1974, as amended. The Related Acts (referred to throughout this Guide as the Davis-Bacon and Related Acts or DBRA) are discussed further in Section 5.9.

The DBA includes provisions that:

1. Require the contractor or subcontractor to pay all mechanics and laborers at least once per week;

2. Prohibit contractors or subcontractors from taking deductions or rebates from wages earned by laborers and mechanics;

3. Require the contractor or subcontractor to pay Davis-Bacon wages to all laborers and mechanics employed on the site of the work regardless of their skill level, and regardless of any contractual relationship alleged to exist between the laborers and mechanics and the contractor or subcontractor;

4. Require the contractor or subcontractor to post the scale of wages to be paid (i.e., the applicable Davis-Bacon wage decision) in a prominent and accessible place at the work site;

5. Define prevailing wages to include fringe benefits;

6. Permit the withholding of payments due to the contractor on account of wage restitution that may be found due to the laborers and mechanics;

7. Permit the payment of wage restitution from amounts withheld from contract payments;

8. Permit the termination of the contract where it is found that any laborer or mechanic is underpaid; and

9. Permit the debarment of persons or firms found to have disregarded their obligations to employees and subcontractors.

The Contract Work Hours and Safety Standards Act (CWHSSA)

The CWHSSA applies to both direct federal contracts and to federally-assisted contracts where those contracts require or involve the employment of laborers and mechanics and where federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of Public Housing Agencies (PHA), Tribally Designated Housing Entities (TDHE), and Indian Housing Agencies (IHA) developments.
CWHSSA O/T provisions do not apply to laborers and mechanics employed directly by PHAs or IHAs. However, O/T provisions generally apply to these workers under the Fair Labor Standards Act (FLSA). HUD does not have authority to enforce FLSA violations. Refer complaints of FLSA violations to DOL, Wage and Hour Division.

CWHSSA provides that all O/T hours (defined as hours worked in excess of 40 during any workweek on the CWHSSA-covered project site) must be compensated at a rate not less than one and one-half times the regular basic rate of pay. Where CWHSSA O/T provisions are applicable, compensatory time in lieu of premium pay for O/T hours is not permissible. In the event of O/T violations, the CWHSSA renders the contractor liable to the underpaid workers for wage restitution and to the United States Government for liquidated damages computed per person per day at a rate that DOL publishes annually. It is a federal criminal misdemeanor to intentionally violate CWHSSA standards.

Exemptions:
- CWHSSA O/T provisions do not apply where the federal assistance is only in the nature of a loan guarantee or insurance.
- CWHSSA O/T provisions do not apply to prime contracts of $100,000 or less.

RESOURCE

DOL posts current fines at:
https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp
The Copeland Act (Anti-Kickback Act)

The Copeland Act concerns three facets of prevailing wage compliance:

1. The “anti-kickback” provision prohibits contractors and subcontractors from inducing an employee working on a covered contract to give up any part of the compensation to which he or she is entitled. Violations are a criminal offense and are punishable by a $5,000 fine or imprisonment up to five years, or both.

2. Associated DOL regulations restrict payroll deductions to those that are permissible without DOL approval as explained at 29 CFR § 3.5; deductions that require advance DOL approval are explained at 29 CFR § 3.6.

3. The Act requires the submission of weekly CPRs accompanied by a Statement of Compliance by all contractors and subcontractors engaged in such construction, prosecution, completion, or repair. The willful falsification of a CPR or statement of compliance may subject the employer to civil or criminal prosecution under § 1001 of Title 18 and § 3729 of Title 31 of the United States Code (USC), and may also be a cause for debarment.

Exemptions:

- Copeland Act CPR requirements are applicable only where Davis-Bacon (DBA or DBRA) prevailing wage provisions are applicable.
- Copeland Act anti-kickback provisions do not apply where the only federal assistance is a loan guarantee.
The Fair Labor Standards Act (FLSA)

The FLSA governs matters such as federal minimum wage rates and O/T. These standards are generally applicable to any labor performed and may be pre-empted by other (often more stringent) federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.

Portal-to-Portal Act (PA)

The PA applies to the DBA and prevents the commencement of any court suit for unpaid S/T wages more than two years after performance of the work (three years in the case of willful violations), where permissible under the law. However, DOL’s position is that the PA does not apply to administrative actions initiated through Administrative Law Judge (ALJ) hearing procedures; thus, the PA does not preclude corrective administrative action after two (or three) years.

The PA does not apply to federally-assisted (DBRA) projects. Instead, the various State statutes of limitations apply to such projects in private actions where they are judicially determined to be permissible under the law. The Federal six-year statute of limitations applies in government enforcement actions.

McNamara-O’Hara Service Contract Act (SCA)

The SCA governs maintenance and other service work and applies when the Federal Government or the District of Columbia contracts directly for such services and the value of the contract exceeds $2,500. SCA coverage in HUD programs is limited because HUD infrequently enters into direct contracts for services in the administration of its programs. By way of example, however, a contract for maintenance service at an HUD-owned multifamily property would be covered by the SCA. Like DBA contracts, SCA contracts are managed under the auspices of HUD’s Office of the Chief Procurement Officer. SCA enforcement authority resides solely with DOL.

Davis-Bacon Regulations

DOL has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in Title 29 CFR Parts 1, 3, 5, 6, and 7. Part 1 explains how DOL establishes and publishes DBA wage determinations (also referred to as wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly CPRs. Part 5 covers the labor standards provisions that are in contracts relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Finally, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws. DOL Regulations are available online: [www.ecfr.gov/current/title-29](http://www.ecfr.gov/current/title-29)
Construction Contract Provisions and Labor Standards Administration

Labor standards administration involves the activities that take place primarily before construction begins. Administration sets the stage for the compliance activities that occur during the construction phase. The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. The Factors of Labor Standards Applicability (see Appendix II-6) should be helpful. Most HUD-assisted construction work is covered by Davis-Bacon, but there are some exceptions. The best and safest approach is to first assume that Davis-Bacon requirements will be applicable whenever the contract/project involves construction work valued in excess of $2,000, then look more closely to see if there is any reason for non-coverage. Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are normally wound into the contract specifications.

The labor standards clauses
The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and labor standards clauses. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the Davis-Bacon wage and reporting requirements and with the O/T provisions of the CWHSSA (applicable only when the prime contract is valued at over $100,000).

The labor standards clauses also provide for remedies in the event of violations, including the withholding of payments due to the contractor to ensure the payment of wages or liquidated damages that may be found due, and sanctions should violations occur. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-92554M, Supplementary Conditions Of The Contract for Construction, which is issued primarily for FHA (Federal Housing Administration) multifamily housing and other construction projects administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG (Community Development Block Grant) and HOME (HOME Investment Partnerships Program) projects; and the HUD-5370, General Conditions for Construction Contracts (construction contracts >$150,000) or the HUD-5370-EZ, General Contract Conditions for Small Construction/Development Contracts (construction contracts >$2,000 but ≤$150,000) which are used for Public and Indian Housing projects. These should be wound into the contract specifications or incorporated by specific reference in the bid/contract documents (see Labor Relations Letter 96-03).

RESOURCE
A fillable version of this form is available online at HUDClips www.hud.gov/program_offices/administration/hudclips/forms
Contact the contract administrator monitoring the project for assistance with a Project Wage Rate.
Specific Davis-Bacon Related Act (statute) for the program involved

Related Acts are program statutes that contain provisions requiring compliance with the wages that the Secretary of Labor finds to be prevailing pursuant to the Davis-Bacon Act. These are commonly referred to as the Davis-Bacon and Related Acts or DBRA.

HUD Related Acts include (but are not limited to) the:
- National Housing Act;
- U. S. Housing Act of 1937;
- Housing and Community Development Act of 1974;
- National Affordable Housing Act of 1990; and

Many of the labor provisions in HUD Related Acts contain applicability thresholds based upon the number of dwelling units involved. Some thresholds are based upon the amount of HUD assistance or the use of HUD funds or assistance. In addition, most HUD Related Acts contain exemptions from prevailing wage coverage for bona-fide volunteers. It is important for DBLS and LCA staff to be familiar with the statutory provisions and how these are interpreted.

The labor provisions found in current HUD Related Acts are excerpted for reference in Appendix II-1 to this Guide. Applicability factors relating to specific HUD Related Acts are in Appendix II-6.

Labor Standards Letters

This special directives series is designed to provide current and thorough guidance on Davis-Bacon issues in HUD programs. Popular topics include Davis-Bacon applicability, and prevailing wage requirements concerning self-employed laborers and mechanics. Labor Standards Letters are available online at the Davis-Bacon and Labor Standards Library: www.hud.gov/program_offices/davis_bacon_and_labor_standards/olr_lrl

HUD Guides

These Guides complement the guidance and instructions provided in HUD Handbook 1344.1, Federal Labor Standards Compliance in HUD Programs. These Guides are also available at the Davis-Bacon and Labor Standards Library.

Davis-Bacon Wage Decisions

The term "wage decision" includes the original decision and any subsequent decisions that modify, supersede, correct, or otherwise change the provisions of the original decision. The term "wage decision" is used within this Guide to mean the Davis-Bacon wage decision. The terms "wage decision" and "wage determination" are used interchangeably. A wage decision is a schedule of construction work classifications, wage rates, and fringe benefits that represent the minimum rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas, usually by county.
or group of counties, and four general characters of construction work.

**Davis-Bacon Wage Decisions**

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**Character of work**

There are four basic categories (or characters) of wage decisions based on the type of construction. DOL established these categories and provides details of each one in All Agency Memoranda Nos. 130 and 131. DOL provides further guidance in All Agency Memorandum 236, Prevailing Wage Resource Book, and Field Operations Handbook, Chapter 15. The four categories include:

1. **Residential**: Residential construction includes the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This typically includes all incidental items unless there is an established area practice to the contrary.

   Incidental items are elements of a project whose function is to support the principal purpose and do not change the overall character of work. Examples of incidental items include sidewalks and handrails installed to support residential or building projects. While sidewalks intrinsically constitute “highway” construction, this element considered in conjunction with a residential or building project becomes incidental to the principal purpose of the construction and is subject to the same wage decision that applies to the principal purpose.

**RESOURCE**

All current Davis Bacon wage decisions can be accessed online at no cost at www.sam.gov

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Agency/Contractor Guide
Character of work (continued)

2. Building: Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This category includes buildings exceeding four stories in height that have housing units and buildings of four stories or less that do not have housing units. This category also includes incidental items such as grading, sidewalks, and utilities. Building examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, parking garages, and dormitories.

3. Highway: Highway construction includes the construction, alteration, or repair of roads, streets, highways, alleys, parking areas, and other similar projects not incidental to the main category of construction, which is either residential or building for housing development projects.

4. Heavy: Heavy construction includes those projects that are not properly classified as “residential,” “building,” or “highway.” Some examples include antenna towers, canals, landscaping, drainage and irrigation projects, permanent erosion control, storm sewers, and storage tanks.

General wage decisions

Most Davis-Bacon wage decisions are general wage decisions. DOL usually publishes these annually and may modify or supersede them throughout the year. LCAs and HUD Labor Standard Specialists (LSS) may use general wage decisions without advance notice or approval from DOL. Most Davis-Bacon wage decisions are available as published general wage decisions.

General wage decisions and project wage decisions may be modified from time to time to keep them current, correct errors, and for other purposes. Modifications may be limited to one or more particular work classifications and wage rates. Modifications are effective to a project if HUD or an LCA receives them, or if notice of the modification is published at www.sam.gov prior to the lock-in date. Modifications to a project wage decision expire on the same date as the original project wage decision. A modification to a general wage determination remains in effect until it is superseded by a subsequent modification, or the original general wage decision is superseded or cancelled.

Project wage decisions

If an appropriate wage decision (by location, character of work, or specific trade required) is not published in the general wage decisions, a project wage decision shall be requested from DOL. Project wage decisions are applicable only to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision. Like general wage decisions, project wage decisions may be modified.

A project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved. For example: A project involves only roof replacement on a 4-story apartment building and the only classification needed for the entire contract is a roofer.
Project wage decisions (continued)
A general wage decision is published for residential construction in the county in which the project is located; however, the general wage decision does not include a roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision may be requested from DOL.

RESOURCE

General wage decisions and modifications are available at www.sam.gov
This is the only online location endorsed by DOL. Project wage decisions must be requested on a case by case basis from DOL.

Project wage decisions, as needed
The LCA or LSS shall submit a completed SF-308, Request for Wage Determination And Response to Request, to the DOL National Office, allowing 30 days for receipt of the project wage decision from DOL.

Selecting the correct wage decision
The responsible contracting officer (also referred to as the contract administrator) selects and assigns wage decisions to specific contracts or projects. For HUD-administered projects (e.g., FHA-insured multifamily development), the responsible contracting officer is the LSS. In addition, the LSS provides technical support and oversight to LCAs administering HUD programs in selecting and assigning appropriate wage decisions. Determining wage decisions is dependent upon the geographic location and the character of work (Residential, Building, Highway, and/or Heavy) assigned to the project.

A request for additional classification and wage rates may be made only after contract award. The request must originate with the contractor/employer and must be submitted by the LCA to DOL.

MORE INFO

Conformances (additional classifications)
At times, the wage decision will not contain some of the work classification and wage rates that are needed for the construction work. In these cases, send a form SF 1444 to DOL at whd-cbaconformance_incoming@dol.gov
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**RESOURCE**

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An additional classification and wage rate will be approved by DOL where:
1. The requested work classification is used in the area of the project by the construction industry;
2. The work that will be performed is not performed by a work classification already contained in the wage decision;
3. The proposed wage rate bears a reasonable relationship to the wage rates on the wage decision; and
4. The workers that will be employed in the requested work classification (if known) or the workers’ representatives (if any) agree with the proposed wage rate.

**Provide contractor training**

The LCA must make certain that the contractor understands its responsibilities for Davis-Bacon compliance: The principal contractor is 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. LCAs may also wish to provide formal training separate from the contracting process for contractors that are interested in performing work on HUD-assisted contracts and want to learn more about what is involved.

A request for additional classification and wage rates may be made only after contract award. The request must originate with the contractor/employer and must be submitted by the LCA to DOL.

**Verify contractor eligibility**

Once the LCA has selected the contractor to whom they wish to award the contract, the LCA must verify that the contractor is not ineligible (e.g., debarred) from participation in Federal programs. Only the eligibility of the prime contractor needs to be verified. The U.S. General Services Administration (GSA) maintains a list of ineligible contractors, which can be accessed online at www.sam.gov.
CONTRACTOR RESPONSIBILITIES

See Section 4 in the Contractor Addendum.

CONTRACT ADMINISTRATOR RESPONSIBILITIES

See Section 5 in the Contractor Addendum.

LCA FLEXIBILITY FOR LABOR STANDARDS RESPONSIBILITIES

While some aspects of labor standards administration are inflexible, such as which wage decision is applicable to a specific project, the following aspects are not. For these, HUD leaves the preference of how to achieve end results with the LCA.

LCAs may hold preconstruction conferences for labor standards purposes.

HUD acknowledges that there are many good reasons to hold a preconstruction conference (PCC), and these conferences are strongly encouraged in order to have the opportunity to discuss topics such as construction inspections, progress and contractor payment requirements, Section 3 employment and training, and other issues particular to the project. However, HUD has determined that the time and resources used to conduct and document PCCs for labor standards purposes do not yield measurably better results.

Many contractors have prior Davis-Bacon contract experience and have demonstrated successful performance. These contractors do not require the repetitive basic training that is provided at most PCCs. Contractors new to Davis-Bacon projects that understand the basic requirements and choose not to comply will likely not be persuaded to fully comply just because they attended a PCC.

LCAs may prepare Project Wage Rate Sheets

Some general wage decisions cover large areas (e.g., several counties or different characters of construction) and may contain wage rates that do not apply to the contract/project to which the wage decision applies. Such wage decisions can be difficult to decipher and confusing to contractors and subcontractors, and to the workers reviewing the wage decision to determine whether they are being paid correctly. For ease of reference for the LSS/LCA, the prime contractor and any subcontractors, and the workers, the LSS/LCA may prepare a form HUD-4720, Project Wage Rate Sheet, which should reflect the most commonly used work classifications and wage rates as contained in the wage decision applicable to the project. The Project Wage Rate Sheet does not replace the wage decision; it is only provided as a convenience. If there is a conflict between the Project Wage Rate Sheet and the wage decision, the wage decision prevails.

LCAs can prepare a Project Wage Rate Sheet for contracts using the onscreen fillable versions in either the HUD Forms or DBLS websites. HUD DBLS staff is available to provide assistance to LCAs in preparing Project Wage Rate Sheets. HUD strongly recommends incorporation of the full wage decision text into bid solicitations and contracts, either in hard copy or by specific reference.
LCAs may develop their own labor standards file system

HUD believes that LCAs can best determine how to maintain their files provided that certain minimum requirements are met. The minimum requirements include compliance with DOL regulations that certified payrolls and basic records relating to the payrolls be preserved for no less than three years after completion of the project and the resolution of any enforcement actions that may carry over after completion. In addition, the files must be maintained in such a way that the LCA can utilize them to demonstrate its own compliance with its labor standards administration and enforcement responsibilities. For example, the LCA must, at HUD's request, demonstrate how it has documented that the eligibility of the prime contractor was verified for each contract.

LCAs may target on-site interviews with laborers and mechanics

HUD is interested in using on-site interviews as a proactive enforcement tool rather than to meet a “representative sampling” quota. Instead of conducting interviews randomly for the sake of assembling a sample, LCAs are encouraged to target interviews to projects or groups of workers where violations are suspected or alleged. In this way, on-site interviews can be used to support a specific ongoing enforcement action. HUD realizes that this approach may mean that fewer on-site interviews may be conducted randomly; HUD considers targeting a far more efficient and effective means of utilizing on-site interview resources.

LCAS may limit payroll reviews to spot-checks and HUD-11 (Employee Interview Form) comparison

The goal: to detect falsification. HUD believes that serious violations involving underpaid workers and significant wage restitution may be overlooked because the contract administrator is overtasked with HUD-mandated payroll review minutiae. HUD recognizes that it is not possible to conduct payroll reviews in 100% of cases; therefore, it is not possible to identify and correct every discrepancy and underpayment. It is also the case that the violations disclosed behind falsified payrolls are much more egregious (both in terms of affected workers and the amount of underpayment) than violations that appear on the face of the payroll records. Accordingly, HUD has prioritized payroll reviews so that the objective is to detect falsification, and so that enforcement activities will yield the greatest impact. HUD has developed guidance on how to detect falsification through spot-checks and HUD-11 interview comparison. (See Willful Violations and Falsification Applicability in Appendix III-1.)
LCAS may limit payroll reviews to spot-checks and HUD-11 (Employee Interview Form) comparison (continued)

Routine payroll review results may be communicated to the prime contractor by telephone and documented with a record in the file. Many times, the types of deficiencies that come to the attention of the contract administrator can be handled more efficiently and just as effectively with good informal communication (e.g., a telephone call, email, etc.) with the employer/prime contractor rather than with formal letters. Examples of the types of issues that could easily be addressed informally—assuming the cooperation of both sides—include a missing payroll report or missing apprenticeship certificates, requests for employee authorizations for deductions, small underpayments that appear on the face of the payroll, and similar matters. With the prime contractor’s cooperation, these matters can be disposed of quickly with a telephone call and a brief note to the contract file documenting the call. If the employer/prime contractor does not respond appropriately to this type of communication, it may be necessary to resort to more formal means.

RESOURCE

The Department of Housing and Urban Development (HUD) one stop forms resource page.

www.hud.gov/program_offices/administration/hudclips/forms
RESOURCE
See LCA DBRA Checklist online at the link below:
https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/OLRlibrary

REVIEWING PAYROLLS
See Section 7 in the Contractor Addendum.

REPORTING PAYROLLS
See Section 8 in the Contractor Addendum.

PAYROLL COMPLIANCE REVIEWS AND CORRECTIONS

Compliance reviews
The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. DOL may also independently conduct its own reviews (see 10.2.2 in the Contractor Addendum). In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. Contractors will be notified by the contract administrator if these reviews find any discrepancies or errors, and will be given instructions about what steps must be taken to correct any problems.

On-site interviews
Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other agency representative (or HUD or DOL representative). The interviews are confidential and the employees will be asked about the number of hours they work, the kind of work they perform, and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the ongoing work. The interviewer will record the interview information, usually on a form HUD-11, Record of Employee Interview, and forward the interviews to the contract administrator. Completed HUD-11s must be compared to the corresponding contractor and subcontractor certified payrolls to test and verify the accuracy of the payroll information.

RESOURCE
HUD 11 forms are available online in English and in Spanish in a fillable format via the HUD Forms website (www.hud.gov/program_offices/administration/hudclips/forms) and at the DBLS website (www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrf form).
Project payroll reviews
The contract administrator will compare the information on the inter-
view forms to the corresponding payrolls to ensure that the workers
are properly listed on the payrolls for the days and hours worked on
the job site, work classification, and rate of pay. The contract adminis-
trator will also review the payroll submissions to make certain that the
payrolls are complete and signed, that employees are paid no less than
the wage rate for the work classification shown, that apprentice and
trainee certifications are submitted (where needed), that employee or
other authorizations for other deductions are submitted (where need-
ed), etc. Contract administrators should be particularly alert for indi-
cations of payroll falsification—misinformation on payrolls to conceal
underpayments. Falsification on payrolls indicates that a contractor or
subcontractor is aware of its obligations, is knowingly underpaying its
employees, and is attempting to avoid detection of the violations. See
Appendix III-1 for an explanation of willful violations and falsification
indicators.

Typical payroll errors and required corrections
Contract administrators must ensure the full correction of all discrep-
ancies disclosed during compliance monitoring conducted by the LCA,
HUD, or DOL. This includes the collection of documentation to demon-
strate that corrective measures have been successfully completed. They must:

1. Examine and resolve probable violations and complaints of un-
derpayment. Contract administrators must explore probable vi-
olations—particularly those involving falsification of payrolls and
complaints alleging underpayments. In addition to the HUD-11,
Record of Employee Interview, HUD has developed a question-
naire form (HUD-4730) and a complaint intake form (HUD-4731)
for HUD and LCA use. The forms are available in onscreen fillable
formats at the HUD forms website and via the DBLS website;

2. Refer complex issues and/or falsification cases to HUD or DOL.
Some issues may be more complex than LCAs are able to address.
HUD encourages LCAs to consult with the LSS for their area to
secure appropriate guidance and support. HUD has decided, in
consultation with DOL, that it will refer to DOL cases involving fal-
sification of payrolls or related documents for DOL investigation.
HUD strongly suggests that LCAs employ this strategy for cases
involving falsification;

3. Take steps to ensure the full resolution of any monetary liability
that has or may be imposed for labor standards reasons. Con-
tract administrators must take prompt action to ensure that funds
will be available to satisfy any labor standards liability that may
be imposed. Actions include the withholding of contract payments
due to the contractor and requiring funding for an escrow account
to guarantee the satisfaction of any restitution and/or liquidated
damages assessment that may be pending at contract closeout;
Typical payroll errors and required corrections (continued)

4. **Recommend debarment against repeat violators.** HUD has implemented a zero tolerance policy against contractors who are repeat violators of Davis-Bacon labor standards. The first time an employer is found in violation, the employer is required to pay full restitution to all affected workers and to pay any CWHSSA liquidated damages (for O/T violations) that may be assessed. In addition, the employer must provide written assurance of future compliance. If the employer promptly completes these corrective actions, HUD will not object if the LCA does not recommend debarment against the employer unless there are extenuating circumstances that warrant debarment. If the employer is found in violation again, the LCA must require full correction of any underpayments and payment of CWHSSA liquidated damages assessed. A debarment recommendation made by the LCA against the employer is expected; and

5. **Prepare and submit enforcement reports.** In accordance with DOL regulations (29 CFR Part 5, § 5.7), the contract administrator must prepare and submit to HUD an enforcement report in any case where an employer (contractor or subcontractor) has underpaid its employees by $1,000 or more or where there is reason to believe that the violations are aggravated or willful, and prepare and submit to HUD semi-annual enforcement reports concerning all Davis-Bacon labor standards administration and enforcement activities involving all HUD-assisted programs. Enforcement reports cover wage underpayments by contractors and subcontractors. Note that enforcement reports concern only wage violations associated with projects or contracts subject to the labor standards provisions of the DBRA.

**Employer-specific enforcement reports**

These enforcement reports are used for three general purposes. First, to report to the Secretary of Labor on Davis-Bacon enforcement actions successfully completed in the field by all federal, state, and local agencies. Second, to refer to the Wage and Hour Administrator investigative findings that are in dispute (e.g., where the employer contests findings of underpayment made against it and requests a hearing to appeal the findings). Third, to make recommendations for debarment and other sanctions and for recommendations concerning liquidated damages computed for CWHSSA O/T violations. (See Labor Relations Letter LR-92-02 for additional guidance concerning employer-based enforcement reports.)

6. **Semi-Annual Enforcement Reports.** HUD is required to furnish to DOL semi-annual reports (SARs) concerning the volume of DBRA-covered activities and the compliance and enforcement of DBRA labor standards provisions in HUD programs. The reports are due to DOL by April 30 and October 31 of each calendar year and cover the periods of October 1 through March 31 and April 1 through September 30, respectively. (See DOL regulations at 29 CFR § 5.7(b) and All Agency Memorandum 189.)
Typical payroll errors and required corrections (continued)

To prepare the SAR, HQLS (Headquarters Office Davis-Bacon and Labor Standards) collects data from the LSIS (Labor Standards Information System) and from each RLSO (Regional Labor Standards Officer), and then submits the report to DOL, which accepts electronic submittals of the semi-annual reports in lieu of paper copies at SemiAnnualReport@DOL.gov. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all HUD-assisted Davis-Bacon construction activity. The report may be completed onscreen, saved, and attached to an email message for submission purposes.

RESOURCE
A copy of the Semi Annual Report form (HUD 4710) and instructions (HUD4710i) for LCAs and are available at HUDClips (www.hud.gov/program_offices/administration/hudclips/forms) and at the Davis Bacon and Labor Standards Forms page (www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform).

MORE INFO
States may report directly to DOL, as the state chooses. PHAs, IHAs, and TDHEs should send data for Davis Bacon projects only; data relating to HUD determined maintenance wage rate projects or projects subject to Tribally determined wage rates (for construction or maintenance work) should not be included.
**Common errors**

The following paragraphs describe common payroll errors and the corrective steps that must be taken.

**Inadequate payroll information**

If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate (e.g., does not contain all the necessary information that would be on the optional form WH-347), the employer will be asked to resubmit the payrolls on an acceptable form.

**Missing identification numbers**

If the first payroll on which an employee appears does not contain the employee’s individually identifying number, the employer will be asked to supply the missing information. This information can be reported on the next payroll submitted by the employer if the employer is still working on the project. Otherwise, the employer will be asked to submit a correction certified payroll.

**Incomplete payrolls**

If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a correction certified payroll.

**Classifications**

If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision, or the employer may request an additional classification and wage rate (see Section 9 in the Contractor Addendum). If reclassification results in underpayment (i.e., the wage rate reported on the payroll is less than the rate required for the new classification), the employer will be asked to pay wage restitution to all affected reclassified employees (see Section 10 in the Contractor Addendum for instructions about wage restitution).

**Wage rates**

If the wage rates on the payroll are less than the wage rates on the wage decision for the work classifications reported, the employer will be asked to pay wage restitution to all affected employees.

**Indications of falsification on payrolls**

The greatest threat to construction workers entitled to a statutorily-mandated prevailing wage for their craft is from employers who know what is required, choose not to pay the required prevailing wage rates, and falsify CPRs to conceal the underpayments. Such willful violators see the workers’ underpayment as their own gain and engage in deception to increase this gain. In addition, willful violators that successfully escape detection and are not required to pay prevailing wages will continue to bid on Davis-Bacon contracts until their violations are disclosed and administrative sanctions such as debarment are imposed.

**Falsification indicators**

HUD has prepared a list and explanation of four common falsification indicators that are detectable during payroll "spot-checks."
Information reported on payrolls that indicate falsification suggests willful, much more serious violations in terms of the amount of back wages that may be due and the number of employees affected.

Such cases most often warrant investigation, which can include on-site interviews, mailing questionnaires to employees, taking written statements or complaints, and other methods to gather and assess the facts of the case. See Appendix III-1 for an explanation of willful violations and falsification indicators.

**Apprentices and trainees**

If a copy of the employee’s registration or the approved program ratio and wage schedule are not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice’s or trainee’s registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is not registered in an approved program must receive the journeyman’s wage rate for the classification of work they performed.

**Overtime**

If the employees did not receive at least time and one-half for any O/T hours worked on the project, the following will occur:

1. If the project is subject to CWHSSA O/T requirements, the employer will be asked to pay wage restitution for all O/T hours worked on the project.

The employer may also be liable to the United States for liquidated damages computed at $26 per day per violation, and indexed to increase annually. Or,

2. If the project is not subject to CWHSSA, the employer will be notified of the possible FLSA O/T violations.

Also, the contract administrator may refer the matter to DOL for further review.

**Computations**

If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.

**Deductions**

If there are any “Other” deductions that are not identified, or if employee authorization isn’t provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization, or explain unusual deductions, as necessary.

HUD does not enforce or attempt to provide advice on employer obligations to make deductions from employee earnings for taxes or Social Security. However, HUD may refer to the IRS or other responsible agency copies of CPRs that show wages paid in gross amounts (i.e., without tax deduction) for its review and appropriate action.
Fringe benefits
If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid (neither 4(a) nor 4(b) is marked on the Statement of Compliance), the employer may be asked to submit correction certified payrolls and will be required to pay wage restitution if underpayments occurred.

However, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate plus the fringe benefit rate), no correction is necessary.

Signature
If the payroll Statement of Compliance is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected. If the Statement of Compliance is signed by a person who is not a principal of the firm and that person has not been authorized by principal to sign, the employer will be asked to provide an authorization or to resubmit the Statement(s) of Compliance bearing the signature of a principal or other authorized signatory.

On-site interview comparisons
If the comparison of on-site interviews to the payrolls indicates any discrepancies (e.g., the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a correction CPR.

Correction certified payroll
Any and all changes to data on a submitted payroll report must be reported on a certified correction payroll. In no case will a payroll report be returned to the prime contractor or employer for revision.

Restitution for underpayment of wages
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 CPR. If a violation of labor standards requirements results in an underpayment of wages to employees, the LCA should notify the prime contractor to either make wage restitution or direct its subcontractor to do so. Where restitution amounts are in excess of $10 per worker, the employer must attest to wage restitution paid on a correction certified payroll.

Notification to the Employer/Prime contractor
The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.
Notification to the Employer/Prime contractor (continued)

MORE INFO

The contract administrator may communicate directly with a subcontractor when the underpayments are plainly evident and the subcontractor is cooperative. It is best to work with the prime contractor when the issues are complex, when there are significant underpayments, and/or the subcontractor is not cooperative. In all cases, the subcontractor must ensure that the prime contractor receives a copy of the required documentation.

Computing wage restitution

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due. Alternatively, wage restitution may be computed by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages due.

Total hours worked times (x) adjustment rate (DB rate – rate paid) = wage restitution due; or

Total wages earned minus (-) total wages paid = wage restitution due.

Correction certified payrolls

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period for which restitution is due (e.g., Payrolls #1 through #6, or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification, the total number of work hours involved (daily hours are usually not applicable for wage restitution), the adjustment wage rate (the difference between the required wage rate and the wage rate paid), the gross amount of restitution due, deductions, and the net amount actually paid. A properly signed Statement of Compliance must accompany the correction payroll. HUD no longer requires the signature of the employee on the correction payroll to evidence employee receipt of restitution payment. In addition, except in the most extraordinary cases, HUD no longer requires employers to submit copies of restitution checks (certified, cashier’s, canceled, or other) or employee-signed receipts or waivers.

MORE INFO

In the course of basic enforcement and corrections, the employer need only submit a correction CPR to evidence wage restitution paid. Other documentation such as copies of checks, copies of cancelled checks, receipts signed by the employees, employee signatures on the correction CPR, etc., is not required.
Review of correction CPR
The contract administrator will review the correction certified payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed, documented on a correction certified payroll within 30 days.

Withholding payments due to the contractor
If wage violations are not corrected within 30 days after notification to the prime contractor, the LCA may cause the withholding of payments due to the contractor in the amount needed to ensure the full payment of restitution and, if applicable, liquidated damages computed for CWHSSA O/T violations. Only the amounts necessary to meet the potential back wage and CWHSSA liquidated damages liabilities should be withheld.

Unfound workers
Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and cannot be located. After wage restitution has been paid to all the workers who could be located, the employer must submit a list of any workers who could not be found and paid (i.e., unfound workers), providing their name, Social Security number, last known address, and the gross amount due. In such cases, at the end of the project the prime contractor will be required to place in a deposit or labor standards escrow account an amount equal to the total gross amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue attempts to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to HUD. Contact the HUD LSS for your area if you encounter this situation.
ADDITIONAL WORK CLASSIFICATION AND WAGE RATES

See Section 9 in the Contractor Addendum.

SANCTIONS AND RESTITUTION

See Section 9 in the Contractor Addendum.

APPENDIX

- Appendix I-1 Reorganization Plan No. 14 of 1950
- Appendix I-2 Delegations of Authority
- Appendix I-3 Labor Standards Core Work Activities
- Appendix II-1 HUD Davis-Bacon Related Acts
- Appendix II-2 Davis-Bacon Act Copeland Anti-Kickback Act
- Appendix II-3 Contract Work Hours and Safety Standards Act
- Appendix II-4 Federal Labor Standards Coverage in Major HUD Programs
- Appendix II-5 Factors of Labor Standards Applicability
- Appendix III-1 HUD’s Willful Violations and Falsification Applicability
- Appendix III-2 Sample Deposit Schedule
- Appendix III-3 Sample Tax Withholding Notice
- Appendix III-4 Unfound Worker Schedule
- Appendix III-5 Refund of Deposit Memorandum Template
- Appendix IV-1 Acronyms and Symbols
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INTRODUCTION

This Guide has been prepared for you as a contractor performing work on construction projects that are assisted by the Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements. This Guide does not address contractor requirements involved in direct Federal contracting where HUD or another Federal agency enters into a procurement contract. In this latter case, the Federal Acquisition Regulations (FAR) are applicable. While the guidance contained in this Guide is generally applicable to any Davis-Bacon covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

Our objective here is to provide you with a guide that is simple and non-bureaucratic yet comprehensive, and will help you better understand and comply with Davis-Bacon labor standards. HUD’s Office of Davis Bacon and Labor Standards worked closely with the Department of Labor’s Wage and Hour Division to make sure that the labor standards provisions in your contract and the specifics of complying with them represent the latest information. It is the Department of Labor that has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts that they either fund or assist in funding.

This Guide contains six main chapters. The first chapter includes the laws and regulations associated with Federal labor standards administration and enforcement. The second chapter lists the responsibilities of contractors and of state, tribal, and local contracting agencies that administer HUD programs. The third chapter lists wage basics, including wage decisions, wage classifications, and wage rates, to provide background for the rest of the Guide. The fourth chapter discusses reviewing and reporting payrolls. The fifth chapter delves into additional work classifications and wage rates. The sixth and final chapter discusses sanctions and restitution. For further background, the DBLS Agency Guide may be used as a reference.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. Should you wish assistance in determining whether Davis-Bacon wage rates apply to a particular project or if you need other related technical assistance, please consult with the HUD Labor Standards Field staff for your area.

RESOURCE

Visit the Office of Davis Bacon and Labor Standards online: www.hud.gov/program_offices/davis_bacon_and_labor_standards

BASIC DBA DEFINITIONS

See Section 3 in the Agency Guide.
LAWS AND REGULATIONS

The Davis-Bacon Act (DBA)

The Davis-Bacon Act (DBA) requires the payment of prevailing wage rates (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. Most HUD construction work is not covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if DB applies to a HUD project is it because of a labor provision contained in one of HUD’s “Related Acts” (see 5.9 in the Agency Guide). The Related Acts are often referred to as the Davis-Bacon and Related Acts or DBRA.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (OT) hours (over 40 in any workweek) worked on a covered project. The CWHSSA applies to both direct federal contracts and to federally-assisted contracts where those contracts require or involve the employment of laborers and mechanics and where federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of Public Housing Agencies (PHA), Tribally Designated Housing Entities (TDHE), and Indian Housing Agencies (IHA) developments.

Exemptions:
CWHSSA O/T provisions do not apply where the federal assistance is only in the nature of a loan guarantee or insurance.
CWHSSA O/T provisions do not apply to prime contracts of $100,000 or less.

The Copeland Act (Anti-Kickback Act)

The Copeland 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 to submit weekly certified payroll reports, and regulates permissible payroll deductions.

The Fair Labor Standards Act (FLSA)

The FLSA governs matters such as federal minimum wage rates and O/T. These standards are generally applicable to any labor performed and may be pre-empted by other (often more stringent) federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.

Davis-Bacon Regulations

DOL has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in Title 29 CFR Parts 1, 3, 5, 6, and 7. Part 1 explains how DOL establishes and publishes DBA wage determinations (also referred to as wage decisions) and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly CPRs. Part 5 covers the labor standards provisions that are in contracts relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Finally, Part 7 sets parameters for practice before the Administrative Review Board. These regulations are used as the basis for administering and enforcing the laws.

DOL Regulations are available online: www.ecfr.gov/current/title-29
Construction Contract Provisions and Labor Standards Administration

Labor standards administration involves the activities that take place primarily before construction begins. Administration sets the stage for the compliance activities that occur during the construction phase. The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. The Factors of Labor Standards Applicability (see Appendix II-6) should be helpful. Most HUD-assisted construction work is covered by Davis-Bacon, but there are some exceptions. The best and safest approach is to first assume that Davis-Bacon requirements will be applicable whenever the contract/project involves construction work valued in excess of $2,000, then look more closely to see if there is any reason for non-coverage. Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are normally wound into the contract specifications.

The labor standards clauses

The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and labor standards clauses. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the Davis-Bacon wage and reporting requirements and with the O/T provisions of the CWHSSA (applicable only when the prime contract is valued at over $100,000). The labor standards clauses also provide for remedies in the event of violations, including the withholding of payments due to the contractor to ensure the payment of wages or liquidated damages that may be found due, and sanctions should violations occur. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-92554M, Supplementary Conditions Of The Contract for Construction, which is issued primarily for FHA (Federal Housing Administration) multifamily housing and other construction projects administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG (Community Development and Block Grant) and HOME (HOME Investment Partnerships Program) projects; and the HUD-5370, General Conditions for Construction Contracts (construction contracts >$150,000) or the HUD-5370-EZ, General Contract Conditions for Small Construction/Development Contracts (construction contracts >$2,000 but ≤$150,000) which are used for Public and Indian Housing projects. These should be wound into the contract specifications or incorporated by specific reference in the bid/contract documents (see Labor Relations Letter 96-03).
Davis-Bacon Wage Decisions

The term "wage decision" includes the original decision and any subsequent decisions that modify, supersede, correct, or otherwise change the provisions of the original decision. The term "wage decision" is used within this Guide to mean the Davis-Bacon wage decision. The terms "wage decision" and "wage determination" are used interchangeably. A wage decision is a schedule of construction work classifications, wage rates, and fringe benefits that represent the minimum rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas, usually by county or group of counties, and four general characters of construction work.

RESOURCE

The Department of Housing and Urban Development (HUD) one stop forms resource page.

www.hud.gov/program_offices/administration/hudclips/forms

RESOURCE

All current Davis Bacon wage decisions can be accessed online at no cost at www.sam.gov
CONTRACTOR RESPONSIBILITIES

The principal contractor is 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 their subcontractors, subcontractors generally should communicate with the contract administrator only through the prime contractor. (See Contract Administrator Responsibilities, below.)

CONTRACT ADMINISTRATOR RESPONSIBILITIES

The contract administrator is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. This term is used to represent the person (or persons) who will provide labor standards advice and support to contractors and other project principals (e.g., owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see 6.1, The Wage Decision) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see Section 12, Payroll Compliance Reviews and Corrections, in the Agency Guide) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee or agent of HUD, or of a city or county or public housing agency. For HUD projects administered directly by HUD staff, usually FHA-insured multifamily projects, the contract administrator will be the HUD Labor Standards field staff. But many HUD-assisted projects are administered by local contracting agencies such as PHAs, TDHEs, and States, cities and counties under HUD’s CDBG and HOME programs.

In these cases, the contract administrator will likely be local agency staff. In either case, the guidance for contractors remains essentially the same.

DOL also has a role in monitoring Davis-Bacon administration and enforcement. In addition, DOL has independent authority to conduct investigations. A DOL investigator or other DOL representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information.

RESOURCE

Program technical guidance

For interpretations of program requirements or handbooks and instructions on the use of forms:

Housing Programs - See our Contact List for help.
WAGE BASICS

The Wage Decision

Davis-Bacon labor standards stipulate the wage payment requirements for skilled workers, operators, truck drivers, and laborers—for example: carpenters, electricians, plumbers, roofers, rollers, screeds, bulldozers, water wagons, dump trucks, and other construction work classifications that may be needed for the project. The Davis-Bacon wage decision that applies to the project contains a schedule of work classifications and wage rates that must be followed.

Remember, the wage decision is contained in the contract specifications along with the labor standards clauses. See 5.12 in the Agency Guide.

The work classifications and wage rates

A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications.

You'll want to make sure that the work classifications you need are contained in the wage decision, and make certain that you know exactly what wage rate(s) you will need to pay. Some wage decisions cover several counties and/or types of construction work (e.g., residential and commercial work) and can be lengthy and difficult to read. The contract administrator (HUD Labor Standards field staff or local agency staff) is available to assist with any trouble reading the wage decision or finding the applicable work classification(s).

To make reading lengthy wage decisions easier, a contract administrator may prepare a Project Wage Sheet (HUD-4720). This sheet is a one-page transcript that will show only the classifications and wage rates for a project. A blank copy of a Project Wage Rate Sheet is provided in the Appendix.

Posting the wage decision, Davis-Bacon poster, and Additional Classifications wages

The prime contractor is responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet), a copy of the DOL Davis-Bacon poster titled Employee Rights Under the Davis-Bacon Act (Form WH-1321), and Additional Classifications wages at the job site in a place that is easily accessible to all the construction workers employed on the project and where the wage decision and poster will not be destroyed by wind, rain, etc. The purpose of this posting is to provide information to the construction laborers and mechanics working on the project about their entitlement to the prevailing wage for their trade, and to advise them whom to contact (the contract administrator) if they have any questions or want to file a complaint.

RESOURCE

A fillable version of this form is available online at HUDClips www.hud.gov/program_offices/administration/hudclips/forms

Contact the contract administrator monitoring the project for assistance with a Project Wage Rate.

The Employee Rights Under the Davis Bacon Act poster replaces the Notice To All Employees. The new poster is available in English and Spanish online at:

REVIEWING PAYROLLS

Certified Payroll Reports (CPRs)

To demonstrate compliance with labor standards requirements, each employer shall prepare, certify, and submit payroll reports for each week to the sponsor, applicant, or owner for any contract work that is performed. See 29 CFR § 5.5(a)(3)(ii) for information on CPRs.

CPR format

Employers on an FHA project are required to use the HUD-authorized Electronic Payroll System (EPS) to submit CPR reports. If an approved electronic payroll reporting system is not being used by the LCA, the employer must ensure that all information from DOL Payroll Form WH-347 is included and that the LSS can reasonably interpret it. Form WH-347 is available online at www.dol.gov/whd/forms/wh347.pdf.

Submission requirements

Each employer shall submit payroll reports beginning with the first week such employer performs work on the site of the work. Employers shall submit reports promptly following the close of each such pay week.

“No Work” payrolls

Employers are not required to submit reports for weeks during which no work was performed at the site of work, provided that the payroll reports are numbered sequentially or that the employer has provided written notice that its work on the project has been suspended.

Weekly payroll certification

Each weekly payroll submitted shall be accompanied by a “Statement of Compliance” that bears the original signature of the owner, executive/corporate officer, or a designee authorized by the owner or officer. The signature must be in ink; pencil is not acceptable. Signature stamps, photocopies, and facsimiles are not acceptable. The employer may utilize the reverse side of the DOL Payroll Form WH-347 as its Statement of Compliance or another document that contains the same language prescribed on the reverse of the WH-347.

False Submissions

The falsification of any of the above certifications may subject the employer to civil or criminal prosecution under § 1001 of Title 18 and § 231 of Title 31 of the United States Code (USC).
**Payroll Review and Submission**

The prime contractor should review each subcontractor’s payroll reports for compliance prior to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for O/T violations. All the payroll reports for any project must be submitted to the contract administrator through the prime contractor.

An alert prime contractor that reviews subcontractor payroll submissions can detect any misunderstandings early, prevent costly underpayments, and protect itself from financial loss should underpayments occur.

**Payroll Retention**

Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records—such as employee addresses and full SSNs, time cards, tax records, evidence of fringe benefit payments—for a Davis-Bacon project for at least three years after the project is completed. The prime contractor must keep a complete set of all the payrolls for every contractor (including subcontractors) for at least three years after completion of the project.

**Payroll Inspection**

In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their own copy of the payrolls and other basic records available for review or copying to any authorized representative from HUD or DOL.
REPORTING PAYROLLS

Completing a Payroll Report

Each employer shall maintain payroll records with respect to their own workforce employed at the site of the work. The prime contractor shall maintain such records relative to all laborers and mechanics working at the site of the work during the course of the construction work for at least three years following the completion of the work. Such records shall contain:

Project and contractor/subcontractor information
Each payroll must identify the contractor or subcontractor’s name and address, the project name and number, and the week ending date. Week dates must be indicated in the spaces provided. Numbering payrolls is optional but strongly recommended.

Employee information
The name and an individually identifying 4-digit number for each laborer and mechanic. Employers must always maintain each employee’s address and full Social Security number (SSN) during the construction of the project and for no less than three years following completion. This information must be made available to the prime contractor, HUD, and/or the LCA upon request.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for Federal labor standards compliance monitoring. Prime contractors may require a subcontractor to provide this information for the prime contractor’s records. DOL has modified form WH-347, Payroll, to accommodate these reporting requirements.

Work classification
Each employee must be classified in accordance with the wage decision based on the type of work they perform.

Apprentices or trainees
The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice’s or trainee’s registration in a registered or approved program. A copy of the portions of the registered or approved program pertaining to the wage rates and ratios shall also accompany the first payroll on which the first apprentice or trainee appears.

Split classifications
For an employee that worked in a split classification, make a separate entry for each classification of work performed, distributing the hours of work to each classification accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.

Hours worked
The payroll should show only the regular and O/T hours worked on one particular project. The employer must show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those “other job” hours should not be reported on the payroll. In these cases, employers should list the employee’s name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for all projects. Deductions and net pay may be based upon the employee’s total earnings (for all projects) for the week.

Rate of pay
Employers must show the basic hourly rate of pay for each employee for one particular project. If the wage decision includes a fringe benefit and the employer does not participate in approved fringe benefit programs, the employer must add the fringe benefit rate to the basic hourly rate of pay, and must list the O/T rate if O/T hours were worked.
**Piece-work**
For any piece-work employees, the employer must compute an effective hourly rate for each employee each week based upon the employee’s piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any O/T hours.

The effective hourly rate must be reflected on the certified payroll. This hourly rate may be no less than the wage rate (including fringe benefits, if any) on the wage decision for the classification of work performed. It does not matter that the effective hourly rate changes from week to week, only that the rate is no less than the rate on the wage decision for the classification of work performed.

Remember, the O/T rate is computed at one and one-half times the basic rate of pay plus any fringe benefits. For example, if the wage decision requires $10/hour basic plus $5/hour fringe benefits, the O/T rate would be: ($10 x 1.5) + $5 = $20/hour.

**Gross wages earned**
Show the gross amount of wages earned for work performed on a particular project. Note: Employees with work hours and earnings on other projects may show gross wages for a particular project over gross earnings from all projects (e.g., $425.40/$764.85) and base deductions and net pay on the “all projects” earnings.

**Deductions**
Show the amounts of any deductions from the gross earnings. “Other” deductions should be identified (e.g., Savings Account or Loan Repayment). Any voluntary deduction (i.e., not required by law or by an order of a proper authority) must be authorized in writing by the employee or provided for in a collective bargaining (union) agreement. A short note signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears. The note needs to show the type, amount, and frequency of the deduction. A new deduction authorization is required when any of the aforementioned items change.

**MORE INFO**
Only one employee authorization is needed for recurring (e.g., weekly) “other” deductions. Written employee authorization is not required for income tax and Social Security deductions.
Net pay
Show the net amount of wages paid.

Statement of Compliance
The Statement of Compliance is the certification. It is located on the reverse side of a standard payroll form (WH-347). Employers must be sure to complete the identifying information at the top, particularly if attaching the Statement of Compliance to an alternate payroll form such as a computer payroll. Also, the employer must check either 4(a) or 4(b) if the wage decision contains a fringe benefit. Checking 4(a) indicates that the employer is paying required fringe benefits to approved plans or programs; and 4(b) indicates that the employer is paying any required fringe benefit amounts directly to the employee by adding the fringe benefit rate to the basic hourly rate of pay. If the employer is paying a portion of the required fringe benefit to programs and the balance directly to the employee, the employer must explain those differences in box 4(c).

Signature
For paper payrolls submitted, the payroll is signed with an original signature in ink. The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer, or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. For paper payrolls, signatures in pencil, signature stamps, Xerox copies, PDFs, and other facsimiles are not acceptable.

MORE INFO
Only one Statement of Compliance is required for each employer’s weekly payroll no matter how many pages are needed to report the employee data.
CONTRACTOR GUIDE ADDENDUM

ADDITIONAL WORK CLASSIFICATION AND WAGE RATES

After contract award, if it is determined that additional work classifications are required because the wage decision lacks all the necessary classifications and wage rates, the prime contractor and, if applicable, its subcontractors employing workers in such classifications shall request an additional work classification and propose a wage rate and fringe benefits for such classification on form SF-1444, Request for Authorization of Additional Classification and Rate. The contractor or subcontractor shall make its request for a final decision through the LSS or LCA, as appropriate, to DOL at whd-cbaconformance_incoming@dol.gov. The LSS/LCA shall assist the employer in preparing the request and, if necessary, provide guidance on the policies and procedures involved.

Note: Additional work classifications and wage rates may be requested only after the effective wage decision “lock-in” date. (See DOL Regulations at 29 CFR Part 5 § 5.5(a)(1)(ii).)

Additional Work Classification and Wage Rate Parameters

Signature
Additional work classifications must be signed by DBLS for FHA-insured projects managed by HUD and signed by the LCA contracting officer for projects managed by LCAs, then forwarded to DOL with the applicable wage decision where:

The requested work classification is used in the area of the project by the construction industry;

The work that will be performed by the requested work classification is not performed by a work classification that is already contained within the applicable wage decision;

The proposed wage rate for the requested work classification bears a reasonable relationship to the wage rates on the wage decision; and

The workers that will be employed in the requested work classification (if it is known who the workers are or will be) or the workers’ representatives agree with the proposed wage rate.

General guide
The wage rate and fringe benefits proposed for any classification must be in accordance with the guidance available in All Agency Memorandum 213. The proposed wage rate and fringe benefits should bear a reasonable relationship to the entirety of the rates within the relevant category. There are four basic categories: skilled crafts, laborers, truck drivers, and power equipment operators. Additional classifications proposed for power equipment operators must specify the type(s) of power equipment involved.

Making the Request
Although a request for additional work classification and wage rate may be prompted following an LSS/LCA review, the proposal must originate with the prime contractor/employer that will utilize the work classification. The prime contractor/employer must submit the request in writing. A basic request must identify the contract/project involved, the work classification requested, and the wage rate, including any bona fide fringe benefits proposed. In some cases, it may be necessary for the prime contractor/employer to describe the work that the requested work classification would perform. The prime contractor/employer should use form SF-1444, Request for Authorization of Additional Classification and Rate, to submit the request.
LSS/LCA Review of Request

The LSS/LCA will review the prime contractor/employer’s request to determine if it satisfies the approval criteria at 5.12.1.9.2. The LSS/LCA will contact the prime contractor/employer if clarification or additional information is needed to complete the review.

Signing the request, reporting to DOL

If the LSS/LCA review finds that the requested work classifications and wage rate/fringe benefits meet the criteria at 5.12.1.9.2, the LSS/LCA submits the completed SF-1444, related documentation, and the applicable wage decision to the DOL National Office for final decision using DOL’s dedicated email address:

whd-cbaconformance_incoming@dol.gov

Disagreement with the request; referring for DOL decision

If the LSS/LCA review finds that the requested work classification and wage rate/fringe benefits fail to meet the approval criteria or if the parties do not agree on the proper classification or wage rate/fringe benefits for the work described, the LSS/LCA shall prepare an SF-1444 and a written report explaining the results of the review and any issues in dispute among the parties, and shall forward these along with a copy of the applicable wage decision to the DOL National Office for its decision using the same dedicated DOL email address.

DOL decision

DOL regulations permit 30 days for DOL to respond to the SF-1444. DOL will notify the LSS/LCA in writing of its decision.

DOL approval

When DOL approves the requested additional work classification and wage rate/fringe benefits, the LSS/LCA shall provide a copy of the DOL notice of approval to the prime contractor/employer with instructions that the additional work classification and wage rate/fringe benefits must be posted on the job site with the wage decision.
DOL disapproval
When DOL disapproves the requested work classification and wage rate/fringe benefits, DOL will notify the LSS/LCA in writing of the reasons why the request cannot be approved. DOL may also indicate what work classifications/wage rate/fringe benefits could be approved for the work involved if a modified request is submitted.

Notification to the prime contractor/employer
The LSS/LCA will notify the prime contractor/employer in writing of the results of the LSS/LCA review and/or DOL decision and provide a copy of the DOL notice.

Requests for DOL reconsideration
The LSS/LCA, the prime contractor/employer, or other interested parties may request reconsideration of the DOL decision on a requested additional work classification and wage rate/fringe benefits. Such requests must be made in writing accompanied by a full statement of the interested party’s views and any supporting wage data or other pertinent information.
SANCTIONS AND RESTITUTION

Introduction

Even in the best of circumstances, things can go wrong. In a Davis-Bacon context, “things going wrong” usually means there’s a difference of opinion or a dispute about whether and to what extent underpayments have occurred. These disputes are usually between the contract administrator and one or more employers (the prime contractor and/or a subcontractor). The dispute may involve something simple such as an additional classification request that is pending before DOL, or something as significant as investigative findings following a complaint of underpayment. This chapter discusses some of the things you might expect, and what you can do to make your views known and to lessen any delays in resolving the problem or issue.

Administrative Review on Labor Standards Disputes

The labor standards clauses in the contract and DOL regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

Additional classifications and wage rates

Additional classification and wage rate requests are sometimes denied by DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.

Reconsideration

DOL normally identifies the reasons for denial in its response to the request. Any interested person (e.g., the contract administrator, employer, or representatives of the employees) may request reconsideration of the decision on the additional classification request.

The request for reconsideration must be made in writing and must thoroughly address the denial reasons identified by DOL. Employer requests for reconsideration should be made through the contract administrator but may be made directly to DOL. (See DOL Regulations 29 CFR § 1.8.) All requests initiated by or made through the contract administrator or HUD must be submitted through HQLS (Headquarters Office Davis-Bacon and Labor Standards).

Administrative Review Board

Any interested party may request a review of the Administrator’s decision on reconsideration by DOL’s Administrative Review Board. DOL regulations 29 CFR Part 7 explain the procedures for such reviews. (See also 29 CFR § 1.9.)

Findings of underpayment

Compliance reviews and other follow-up enforcement actions may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreements about who may have been underpaid and how much wage restitution may be due, and to promptly deliver restitution to any underpaid workers. The contract administrator will usually work informally with employers to reach such agreements.

Rulings and interpretations unrelated to findings of underpayment

DOL is the authority for rulings and interpretations unrelated to findings of underpayments. This includes disputes concerning the prevailing wage rates as determined by DOL, DBRA applicability, character of work decisions, and interpretation and application of DOL regulations at 29 CFR Parts 1, 3, and 5. These and other such matters must be referred to the DOL Wage and Hour Administrator for their ruling and/or interpretation per 29 CFR § 5.13. Any request for a ruling or an interpretation from the DOL Administrator via DBLS must be submitted through HQLS with a copy to the local LSS.
Disputes concerning findings of underpayment
Underpayments usually occur when a contractor or subcontractor does not properly pay wages according to the approved wage determination and it has been identified as part of a Davis-Bacon and DBLS enforcement action. There may be other situations that also create underpayments, and they can originate from the employer, prime contractor, or any other interested party. Any underpayment decision by DBLS will include a formal decision letter with a Notice of Right to Appeal.

DOL review
DOL will review the contract administrator’s report and the arguments against the findings presented in the hearing request. DOL may affirm or modify the findings based upon the materials presented. You will be notified in writing by DOL of the results of its review. If DOL concludes that violations have occurred, you will be given an opportunity to correct any underpayments or to request a hearing before a DOL ALJ. (See DOL Regulations 29 CFR § 5.11 (b) and 29 CFR Part 6, Rules of Practice for Administrative Proceedings.)

Administrative Review Board
Contractors and/or subcontractors may request a review by the Administrative Review Board of the decision(s) rendered by the DOL ALJ in the administrative hearing process. See DOL regulations 29 CFR Part 7 for more information about this proceeding.

Withholding
The contract administrator shall cause the withholding of payments due to the prime contractor to ensure the payment of wages that are believed to be due and unpaid (e.g., if wage underpayments or other violations are not corrected within 30 days after written notification to the prime contractor). DOL may also direct the withholding of contract payments for alleged wage underpayments. Withholding is serious and is not taken unless warranted. If withholding is deemed necessary, the contractor will be notified in writing. Only the amounts needed to meet the contractor’s (and/or subcontractors’) liability shall be withheld.
Deposits and Escrows

In some situations, certain labor standards issues are not or cannot be resolved in time to meet project closeout schedules. In order to permit a final closing/closeout to proceed while certain labor issues are outstanding, a deposit account (HUD-administered projects, e.g. multifamily housing-insured and grant programs) or an escrow account (LCA-administered projects, e.g., CDBG, HOME, HOPE VI (Housing Opportunities for People Everywhere)) may be established as a guarantee to ensure the payment of any wages that have been or may be found due to workers that were employed in the construction of the project. Deposit and escrow accounts may also hold fringe benefits payments that are due to plans or programs and/or liquidated damages that are assessed for violations of CWHSSA O/T provisions. The deposit or escrow account is controlled by the contract administrator. When a final decision is rendered, the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

MORE INFO

Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. See 3.2, Responsibilities of the Principal Contractor, and 12.4, Restitution for Underpayment of Wages, in the Agency Guide.

Where the parties have agreed to amounts of wage restitution that are due, but the employer hasn’t furnished evidence yet that all the underpaid workers have received their back wages (e.g., unfound workers)

The amount of the deposit is equal to the total gross amount of restitution due to workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, amounts corresponding to the documented payments are returned to the depositor. Amounts for any workers who cannot be located are held in the deposit/escrow account for three years and disposed as described in Section 11.4.1 of this Guide;

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and cannot be located. After wage restitution has been paid to all the workers who could be located, the employer must submit a list of any workers who could not be found and paid (unfound workers). See 12.4.6 in the Agency Guide for more information.

Where underpayments are suspected or alleged and an investigation has not yet been completed

The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that are estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to the workers will be paid by the employer. As these workers are paid and proper
documentation is provided to the contract administrator, the gross amounts corresponding to the documented payments are returned to the depositor;

If the employer is unable to make the payments to the workers (e.g., lacks the funds necessary), the contract administrator may make disbursements directly to the workers in the net amounts calculated by the employer. The amounts withheld from the workers for tax deduction will be returned to the employer as payments to workers are made. The employer shall be responsible for reporting and transmitting withholdings to the appropriate agencies.

If the employer is not cooperating in the resolution, the contract administrator shall make disbursements to the workers in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described in Section 13.4.6 in the Agency Guide.

If the parties do not agree and an administrative hearing is requested, the escrow will be maintained.

**MORE INFO**

Remember, if you have any questions or need assistance concerning labor standards requirements, help is always available. Contact the contract administrator for the project you’re working on or the HUD Field Labor Standards staff in your area.

Where the parties are waiting for the outcome of an administrative hearing that has been or will be requested contesting a final determination of wages due

The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

**Administrative Sanctions**

Contractors and/or subcontractors that violate the labor standards provisions may face administrative sanctions imposed by HUD and/or DOL.

**DOL 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 DBRA will be ineligible (debarrd) to participate in any DBRA or Davis-Bacon Act contracts for up to three years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contract administrator or initiated by DOL. Debarment proceedings are described in DOL regulations 29 CFR § 5.12.

**HUD sanctions**

HUD sanctions may include Limited Denials of Participation (LDPs), debarments, and suspensions.
Limited Denial of Participation
HUD may issue to the employer an LDP, which prohibits the employer from further participation in HUD programs for a period of up to one year. The LDP is usually effective for the HUD program in which the violation occurred and for the geographic jurisdiction of the issuing HUD Office. HUD regulations concerning LDPs are found at 24 CFR §§ 24.700-24.714.

Debarment and suspensions
In certain circumstances, HUD may initiate its own debarment or suspension proceedings against a contractor and/or subcontractor in connection with improper actions regarding Davis-Bacon obligations. For example, HUD may initiate debarment where a contractor has been convicted for making false statements (such as false statements on certified payrolls or other prevailing wage certifications), or initiate suspension where a contractor has been indicted for making false statements. HUD regulations concerning debarment and suspension are found at 24 CFR Part 24.

Falsification of Certified Payroll Reports
Cases that involve certified payroll falsification may be referred to DOL for its investigation at the outset or referred to DOL for administrative review/hearings or other sanctions.

All referrals suggesting consideration for criminal prosecution must be submitted through the established hierarchy:

States may submit any such recommendation to DOL directly.

MORE INFO
Remember, if you have any questions or need assistance concerning labor standards requirements, help is always available. Contact the contract administrator for the project you’re working on or the HUD Field Labor Standards staff in your area.
Common Mistakes Contractors Make on Davis-Bacon Projects: Part 1

Published date: 05/25/2023

Making mistakes is a part of any learning process.

When you are a public works contractor, however, well, let's just say they might not always be so forgiving. Which is why it can be so important to learn from others' mistakes before you make them yourself.

Most prevailing wage compliance violations can be avoided simply by having a good understanding of the regulations set forth in the Davis-Bacon Act (DBA) and the expectations that come from them. That being said, none is perfect. Even with a compliance process in place, there is still so much that can be overlooked. Sometimes even small blunders can quickly become something much bigger, and they often can go unnoticed... until it's too late. "The wolves and penalties come into play so that, let's take a look at common mistakes contractors make on prevailing wage projects. This will be the first installment in a series of blog posts covering this topic.

Simply Paying the Incorrect Wage Rate

The first and most obvious, yes. But this still happens to be one of the most rampant mistakes and for many different reasons.

Whether this mistake is made honestly or done on purpose to try to save a buck, there is no excuse for paying insufficient wages. Per the DBA, contractors have a legal obligation to adhere to the wage determinations and pay all correct prevailing wage rates.

Failure to do so could result in wage violations and penalties. These types of wage violations can occur in several ways, such as:

1. Failing to pay workers the prevailing wage rate
2. Failing to pay workers overtime or other benefits
3. Misclassifying workers exempt from prevailing wage requirements (more on this in the next section)

When a contractor violates prevailing wage laws, workers may file anonymous complaints with the USDOL or other regulatory agencies. The contractor may then face an investigation and be required to pay back wages, damages, and penalties. These types of wage violations can also harm a contractor's reputation, require them to self-report on bid documents, and make it difficult to secure future contracts.

Misclassifying Workers

Contractors must correctly classify their workers. This requires contractors to consider two key points about where workers stand regarding their classification:

1. Whether or not the type of work qualifies for prevailing wage, and
2. The specific craft classification (dependent on the type of work being performed)

Determining if workers are covered by prevailing wage comes down to a couple simple questions. Is the project federally funded (or assisted if we're talking about the Davis-Bacon Related Acts), and worth more than $2,000 in contract value? If the answer is yes to both, then prevailing wages are in order. Note: even when a project is indeed subject to prevailing wages, there are some exceptions for particular kinds of work. (i.e. certain types of trucking, testing, surveyor work, etc.). These exceptions can also fluctuate among states with their own prevailing wage laws.

As for the craft classification, contractors are required to adhere to the USDOL's defined craft classifications and their respective rates to ensure workers are being properly compensated for their actual work. These are listed on wage determinations and should be provided to the contractor by the project owner or public agency awarding the job. If you're ever unsure about whether a worker qualifies for prevailing wage, visit the USDOL's website for more info.

Contractors who fail to correctly classify their workers risk underpaying their workers and facing significant penalties. These mistakes might seem trivial at times. For example, if a contractor misclassifies an employee as a "tile setter" instead of a "tile finisher," then it's possible that employee is not making their full entitled wage - given that "tile setter" and "tile finisher" could have different wages. If mistakes like these are discovered during an audit or an onsite visit (yes, public agencies can occasionally show up on your jobsite unannounced to observe work and interview workers), the contractor could be subjected to an investigation and required to pay back wages and possibly even additional penalties for any mistakes caught.

Not Providing Fringe Benefits

In addition to paying the workers their prevailing wage rate for public works projects, contractors are also required to provide fringe benefits. These could include health insurance, retirement benefits, sick leave, and vacation pay. These benefits are designed to help ensure that workers are able to maintain a reasonable standard of living and that they are able to plan for their future.

The fringe benefit is listed in the wage determination of each craft. Fringe benefit violations can occur in several ways, such as:

1. Offering benefits that do not meet the minimum standards required by the wage determination
2. Offering benefits that do not provide essential services
3. Misclassifying workers (e.g., eligible employees)

When a contractor violates the fringe benefit requirements, again - workers can enlist the help of the USDOL or other state regulatory agencies. Contractors who are caught falling to meet this requirement will be required to pay restitution and penalties.

Curious about other common aspects of labor compliance that contractors typically struggle with? Stay tuned for our next blog in the series covering common prevailing wage mistakes...

And if you are looking to take an even deeper dive to learn the "ins and outs" of Davis-Bacon and prevailing wage compliance, check out our online courses at https://lcptracker.com/academy/

These materials are being issued with the understanding that LCPtracker is not engaged in rendering legal or other professional services and is providing these for informational purposes only. If legal, accounting or tax expert assistance is required, the services of a competent legal, accounting or tax professional should be sought.
You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

Robert H. Reyna, Manager
Bexar County
Economic and Community Development
(210) 335-1098
rhreyna@bexar.org

or contact the U.S. Department of Labor’s Wage and Hour Division.
DERECHOS DEL EMPLEADO
BAJO LA LEY DAVIS-BACON

PARA OBREROS Y MECÁNICOS
EMPLEADOS EN PROYECTOS DE
CONSTRUCCIÓN FEDERAL O CON
ASISTENCIA FEDERAL

SALARIOS PREVALECIENTES
No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

SOBRETIEMPO
Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

CUMPLIMIENTO
Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

APRENDICES
Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

PAGO APROPIADO
Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:

Alexandra Alvarez, Gerente de Infraestructura
Condado de Bexar
Departamento de Desarrollo Económico y Comunitario
(210) 335-6967
alexandra.alvarez@bexar.org

o póngase en contacto con la División de Horas y Salarios del Departamento de Trabajo de los EE.UU.
INSERT WAGE RATE DOCUMENT (web retrieval)
DAVIS-BACON AND RELATED ACTS: CHECKLIST
FOR ENFORCING DAVIS-BACON LABOR
REQUIREMENTS

Planning the Project:

1. Determine if Davis-Bacon or Related Acts apply, given project and funding source.

   *NOTE: Prior to the start of the project during the contract negotiations or at the contract’s execution date, the best and safest approach to ensuring compliance is to hold a preliminary orientation meeting of the project sub-grantee/sub-recipient/project provider; project monitor.*

2. Determine the proper wage determination: Building, Residential, Heavy, or Highway.

3. Obtain the Davis-Bacon wage decision and labor standards contract provisions applicable to the project and include them in the bid specifications. Include language in the bid documents that the contract is covered by Federal Davis-Bacon wage requirements and that not less than the prevailing wage rate be paid to workers at the construction site, as set forth in the included wage determination.

   *The Davis Bacon Wage decision or wage determination is a listing of various construction work job classifications such as carpenter, electrician, plumber, etc. and the minimum wage rates and fringe benefits that people performing work in those classifications must be paid. Wage decisions are established for various types of construction categories (e.g., residential, building, heavy, highway) and apply to specific geographic areas.*

4. Ten (10) days before the bid opening check to see if decision is still current by checking the Website or calling HUD Labor Relations staff.

   - If no change occurred, document this to the file.
   - If a change occurred, determine if sufficient time exists to notify all bidders.

5. Determine if a modification affects your project activities, and, if so, send out notice to bidders.

6. Verify eligibility of principal contractor through the Federal Debarment Listing.

7. Award contract. Each contract subject to Davis-Bacon requirements must include the wage decision, Form HUD 4010, and the appropriate HUD contract provisions containing the labor standards clause.

8. If construction has not started within 90 days of award, new wage decision is required.
Building the Project:

1. Pre-construction meeting (required). Hold a pre-construction conference.

   Hold a preconstruction meeting/conference to be attended by: CDBG/HOME Division, Project contractor, subcontractors, Project Engineers/Architects. At meeting provide the necessary labor provisions, identify responsibilities, and obtains the proper wage decisions for all classifications on the job and disseminates information.

   ✍️ Project Engineer/Architect provides the minutes of the meeting for the file.

2. Routine Monitoring

   ✍️ Review Weekly Certified Payroll Records (includes ensuring that proper classifications are used).
   ✍️ Conduct On-site interviews.
   ✍️ Investigate anything that indicates a possible violation.
      Note: Contractor must resolve discrepancies.
DAVIS-BACON AND RELATED ACTS: Additional Resources

Wage Determinations:
https://sam.gov/content/wage-determinations

Federal Debarment Listing:
https://www.dol.gov/agencies/ofccp/debarred-list

Department of Labor:
http://www.dol.gov

HUD:
http://www.hud.gov

HUD Publications:

**Davis-Bacon and Labor Standards**: Contractor Guide Addendum

(Replaces *Making Davis-Bacon Work: A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*)

**Davis-Bacon and Labor Standards**: Agency/Contractor Guide

(Replaces Labor Relations Desk Guide- LR04.DG *Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies*)

**HUD Forms:**
https://www.hud.gov/program_offices/administration/hudclips/forms

1. CDBG- Housing and Community Development Act of 1974
2. HOME- National Affordable Housing Act of 1990

Federal Regulations:
DAVIS-BACON AND RELATED ACTS: Responsibilities

Responsibilities: The contractors/subcontractors, organization, and the funding entity each have distinct and separate responsibilities for compliance to Davis-Bacon.

A. Contractors/Subcontractors: (Any entity involved in construction of project)

1. Prepare bid proposal using appropriate Davis-Bacon wages/classifications, when applicable.
2. Comply with labor standards and requirements throughout duration of project.
3. Contractor responsible for submitting weekly certified payroll reports to Bexar County. Subcontractors submit to prime contractor.
4. On the job site, post a copy of the wage decision and DOL poster, Notice to Employees.
5. Maintain set of payroll and other basic records for at least 5 years after project completion.

B. Funded Agency/Organization: (Subrecipient)

2. Include Federal Labor provisions in contract, including the wage decision and HUD Form 4010.
3. Conduct a pre-construction conference with appropriate parties and personnel.
4. Establish files for each contractor and document activities.
5. Review weekly certified payroll reports and submit to Bexar County.
6. Maintain project files for at least 5 years after project completion.
7. As necessary, investigate and report any violations and take appropriate corrective actions.

C. Funding Entity: (Community Development Division)

The funding entity has the same responsibilities as the funded organization, and is ultimately responsible for compliance of Federal Labor Standards and Davis-Bacon. In addition:

1. Verify that vendors, contractors and subcontractors are not listed on the Federal debarment listing.
2. Provide wage determinations, HUD Form 4010, and DOL poster and disseminate to subrecipient and contractors.
3. Provide copies of reporting tools.
4. Maintain files for a minimum of 5 years.
5. As required, report labor violations and corrective actions to HUD.
DAVIS-BACON AND RELATED ACTS: Purpose and Applicability

**Purpose:** Provides local laborers and contractors a fair opportunity to compete and participate in building programs that are wholly or partially funded by the Federal government. Protects local wage standards by preventing contractors from basing their bids on wages lower than the prevailing wages in the area.

The Davis-Bacon Act is one of the Federal Labor Standards that is applied to federally funded or assisted projects. Federal Labor Standards ensure:

1. Workers are paid no less than the area’s local prevailing wages for similar kinds of work.
2. Workers receive premium pay for overtime hours worked.
3. Wages are paid at least once per week.
4. Unauthorized deductions from a worker’s pay is prohibited.

**Applicability to HUD Programs:**

Community Development Block Grant (CDBG); Housing and Community Development Act of 1974 as amended, Section 110; HUD Regulation 24 CFR570.603:

Davis-Bacon requirements are applicable when CDBG funds are used in whole or in part to finance construction work. **Applicability is triggered if CDBG funds pay for any direct costs of construction and when one of the following thresholds are met:**

- Residential: Davis Bacon and Related Acts (DBRA) apply to residential properties only if the properties contain 8 or more units. Single – family homeownership units are usually not covered, because each unit is viewed as a single residential property containing one unit.

- Non-residential: any construction work financed valued over $2,000 and financed with CDBG funds.

- Clearance of land or site improvements.

HOME Investment Partnerships Program (HOME); National Affordable Housing Act of 1990, Section 286 (a); HUD regulation 24 CFR 92.354:

Residential: Construction contracts, which contain 12 or more “assisted units,” are covered by prevailing wage requirement. Davis-Bacon requirements are applicable when HOME funds are used for ANY eligible project costs, including construction and non- construction costs (direct and indirect), so long as the contract for construction contains 12 or more HOME-assisted units.

Homeownership: If a pre-construction agreement is made with the owner/developer of a housing project that HOME funds will be used to assist homebuyers with buying the housing, and the construction contract covers 12 or more HOME-assisted units, Davis- Bacon Labor Standards apply.

If both CDBG and HOME are involved in a residential project, the lower CDBG threshold would apply.
A. APPLICABILITY

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

(1) MINIMUM WAGES

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor (which is attached hereto and made a part hereof), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conforming under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place, where it can be easily seen by the workers.

(ii) Additional Classifications.

(A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division ("Administrator"), Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget ("OMB") under OMB Control Number 1235-0023.)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)
D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)

(2) Withholding. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(3) Payrolls and basic records.

(i) Maintaining Payroll Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification(s), hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1235-0023 and 1215-0018)

(ii) Certified Payroll Reports.

(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee’s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/agencies/whd/forms or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1235-0008.)

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract; and

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by subparagraph (a)(3)(ii)(b).

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph (a)(3)(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency (where appropriate), to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen’s hourly rate) specified in the contractor’s or subcontractor’s registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.
If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

(6) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs (1) through (11) in this paragraph (a) and such other clauses as HUD or its designee may, by appropriate instructions, require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility. (i) By entering into this Contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802.

(11) Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic, to whom the wage, salary, or other labor standards provisions of this Contract are applicable, shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The provisions of this paragraph (b) are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph B(1) of this paragraph, the contractor, and any subcontractor responsible therefor, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph B(1) of this paragraph, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages, as provided in the clause set forth in subparagraph B(2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph B(1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs B(1) through (4) of this paragraph.

C. HEALTH AND SAFETY

The provisions of this paragraph (c) are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.
### Request for Taxpayer Identification Number and Certification

**Form W-9**

**Department of the Treasury**

**Internal Revenue Service**

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Part I</strong></td>
<td><strong>Taxpayer Identification Number (TIN)</strong></td>
</tr>
<tr>
<td>1</td>
<td>Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see how to get a TIN, later.</td>
</tr>
<tr>
<td>2</td>
<td>Note: If the account is in more than one name, see the instructions for line 1. Also see What Name and Number To Give the Requester for guidelines on whose number to enter.</td>
</tr>
<tr>
<td><strong>Part II</strong></td>
<td><strong>Certification</strong></td>
</tr>
<tr>
<td>1</td>
<td>Under penalties of perjury, I certify that:</td>
</tr>
<tr>
<td>2</td>
<td>a. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and</td>
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<tr>
<td>3</td>
<td>b. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and</td>
</tr>
<tr>
<td>4</td>
<td>c. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.</td>
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</tbody>
</table>

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN. If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.
By signing the filled-out form, you:
1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners’ share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See What is FATCA reporting, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester’s form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:
- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.
- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity; and
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:
1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

**Backup Withholding**

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**
1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See Exempt payee code, later, and the separate instructions for the Requester of Form W-9 for more information.

Also see Special rules for partnerships, earlier.

**What is FATCA Reporting?**

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See Exemption from FATCA reporting code, later, and the Instructions for the Requester of Form W-9 for more information.

**Updating Your Information**

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are a tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

**Penalties**

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.
Specific Instructions

Line 1

You must enter one of the following on this line: do not leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. Individual. Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as shown on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. Sole proprietor or single-member LLC. Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. Partnership, LLC that is not a single-member LLC, C corporation, or S corporation. Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. Other entities. Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. Disregarded entity. For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is THEN check the box for . . .

• Corporation Corporation
• Individual Individual/sole proprietor or single-member LLC
• Sole proprietorship, or
• Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.
• LLC treated as a partnership for U.S. federal tax purposes,
  • LLC that has filed Form 8832 or 2553 to be taxed as a corporation,
  • LLC that is disregarded as an entity separate from its owner but
  the owner is another LLC that is not disregarded for U.S. federal tax purposes.
• Partnership Partnership
• Trust/estate Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

• Generally, individuals (including sole proprietors) are not exempt from backup withholding.
• Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
• Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
• Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
2—The United States or any of its agencies or instrumentalities
3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
5—A corporation
6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
7—A futures commission merchant registered with the Commodity Futures Trading Commission
8—A real estate investment trust
9—An entity registered at all times during the tax year under the Investment Company Act of 1940
10—A common trust fund operated by a bank under section 584(a)
11—A financial institution
12—A middleman known in the investment community as a nominee or custodian
13—A trust exempt from tax under section 664 or described in section 4947
The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

<table>
<thead>
<tr>
<th>IF the payment is for . . .</th>
<th>THEN the payment is exempt for . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest and dividend payments</td>
<td>All exempt payees except for 7</td>
</tr>
<tr>
<td>Broker transactions</td>
<td>Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.</td>
</tr>
<tr>
<td>Barter exchange transactions and patronage dividends</td>
<td>Exempt payees 1 through 4</td>
</tr>
<tr>
<td>Payments over $600 required to be reported and direct sales over $5,000</td>
<td>Generally, exempt payees 1 through 52</td>
</tr>
<tr>
<td>Payments made in settlement of payment card or third party network transactions</td>
<td>Exempt payees 1 through 4</td>
</tr>
</tbody>
</table>

1 See Form 1099-MISC, Miscellaneous Income, and its instructions.

2 However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with “Not Applicable” (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see How to get a TIN below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner’s SSN (or EIN, if the owner has one). Do not enter the disregarded entity’s EIN. If the LLC is classified as a corporation or partnership, enter the entity’s EIN.

Note: See What Name and Number To Give the Requester, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write “Applied For” in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering “Applied For” means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see Exempt payee code, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.
1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. “Other payments” include payments made in the course of the requester’s trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account: Give name and SSN of:

1. Individual

The individual

2. Two or more individuals (joint account) other than an account maintained by an FFI

The actual owner of the account or, if combined funds, the first individual on the account

3. Two or more U.S. persons (joint account maintained by an FFI)

Each holder of the account

4. Custodial account of a minor (Uniform Gift to Minors Act)

The minor

5. a. The usual revocable savings trust (grantor is also trustee)

The grantor-trustee

b. So-called trust account that is not a legal or valid trust under state law

The actual owner

6. Sole proprietorship or disregarded entity owned by an individual

The owner

7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(ii)(B))

The grantor

For this type of account: Give name and EIN of:

8. Disregarded entity not owned by an individual

The owner

9. A valid trust, estate, or pension trust

Legal entity

10. Corporation or LLC electing corporate status on Form 8832 or Form 2553

The corporation

11. Association, club, religious, charitable, educational, or other tax-exempt organization

The organization

12. Partnership or multi-member LLC

The partnership

13. A broker or registered nominee

The broker or nominee

For this type of account: Give name and EIN of:

14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments

The public entity

15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(ii)(B))

The trust

1 List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person’s number must be furnished.

2 Circle the minor’s name and furnish the minor’s SSN.

3 You must show your individual name and you may also enter your business or DBA name on the “Business name/disregarded entity” name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

4 List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see Special rules for partnerships, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

• Protect your SSN,

• Ensure your employer is protecting your SSN, and

• Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.
The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.
What is the Buy America Preference?

The Build America, Buy America Act (BABA) requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the “Buy America Preference (BAP)” and the specific requirements are codified in 2 CFR § 184.

This BABA CPD Overview Quick Guide provides grantees with the following details about the BAP:

- Products Covered by the BAP
- BAP Applicability to CPD-funded Projects and Activities
- When the BAP Doesn’t Apply
- BAP Implementation Timeline for CPD Programs
- Project/Product-Specific Waivers
- Project Implementation and Recordkeeping
Products Covered by the BAP

Products covered under the BAP include:

1. Iron and steel
2. Construction materials
3. Manufactured products

Products should be classified into just one of these categories. The classification must be made based on the product’s status when brought to the work site.

Iron and Steel

*What is it?*

Items that consist completely or predominantly of iron, steel, or a combination of both. "Predominantly" means the cost of the iron and steel content exceeds 50% of the total cost of all the item’s components.

*Production Requirements*

All manufacturing processes, starting from the initial melting stage and continuing through the application of coatings, must occur in the United States.

Grantees are encouraged to work closely with subrecipients, developers, and contractors to ensure that products used in federally funded infrastructure projects are produced in the United States as required. Federal financial assistance includes grants, cooperative agreements, non-cash contributions or donations, direct assistance, loans and loan guarantees, and other financial assistance.

Construction Materials

*What is it?*

Articles, materials, or supplies used for construction activities that consist of only one of the items described below. For the purposes of the HUD Phased Implementation Waiver timeline described below, construction materials are divided into two categories: specifically listed construction materials and not listed construction materials.

Specifically Listed Construction Materials: Items include (1) non-ferrous metals; (2) lumber; and (3) plastic- and polymer-based composite building materials, pipe, and tube.

Not Listed Construction Materials: Items include (1) all other plastic- and polymer-based materials (such as polymers used in fiber optic cables), (2) glass, (3) fiber optic cable, (4) optical fiber, (5) engineered wood, and (6) drywall.

*Construction Material Standards (2 CFR 184.6)*

All manufacturing processes for the construction material must occur in the United States.

Minor additions of materials, supplies, or binding agents to a construction material (such as the binding agent used in engineered wood) do not change the categorization of the construction material.
Manufactured Products

What is it?

Manufactured products include articles, materials, or supplies that have either been:

1. Processed into a specific form or shape, or
2. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

A manufactured product may include components that are construction materials or iron and steel products, unless the manufactured product also meets the definition of iron and steel or construction materials. In such instances, the product should be recategorized in the appropriate category.

Determining the Cost of Components for Manufactured Products (2 CFR 184.5)

Manufactured products must meet two production requirements. First, the final product must be manufactured in the United States. Second, at least 55% of the cost of the components making up the manufactured product must be associated with components that were mined, produced, or manufactured in the United States.

What materials and activities aren’t covered by the BAP?

1. Temporary products and materials that are removed at or before project completion, such as temporary scaffolding, equipment, or tools
2. Equipment and furnishings such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure
3. Technical assistance and management costs
4. Design and planning costs, project scoping, or advance assistance. However, domestic preferences must be considered in planning to ensure compliance for construction projects e.g., design-build contracts
5. Acquisition and demolition projects where there are no articles, materials, or supplies that are incorporated into an infrastructure project

1 Cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives (collectively known as Section 70917(c) materials) are generally exempt from the BAP. However, Section 70917(c) materials may be used to produce a manufactured product, such as pre-cast concrete. Manufactured products that incorporate Section 70917(c) components are subject to the BAP.
BAP Applicability to CPD-funded Projects and Activities

CPD-funded infrastructure projects, as broadly defined by 2 CFR 184, are subject to the BAP once the obligation date has passed according to HUD’s Phased Implementation Waiver (see section below), unless the project is covered by another general waiver. For the purposes of the BAP, an infrastructure project is defined as any project that includes construction, alteration, maintenance, or repair of infrastructure regardless of whether infrastructure is the primary purpose of the project.

<table>
<thead>
<tr>
<th>Examples of CPD-funded activities that may be subject to the BAP:</th>
<th>Examples of CPD-funded activities that may NOT be subject to the BAP:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Rehabilitation of buildings and real property</td>
<td>• Acquisition of real property</td>
</tr>
<tr>
<td>• Construction of public facilities and improvements, such as water and sewer facilities, streets, sidewalks, neighborhood centers, and the conversion of buildings for eligible purposes</td>
<td>• Relocation and demolition</td>
</tr>
<tr>
<td>• Utility installation or improvements</td>
<td>• Public services</td>
</tr>
<tr>
<td>• Water systems (drinking water and wastewater)</td>
<td>• Shelter or public facility operating expenses</td>
</tr>
<tr>
<td>• Electrical transmission facilities and systems</td>
<td>• Supportive services</td>
</tr>
<tr>
<td>• Broadband infrastructure</td>
<td>• Special economic development activities</td>
</tr>
<tr>
<td>• Transportation infrastructure</td>
<td>• Administrative activities</td>
</tr>
<tr>
<td></td>
<td>• Disaster and emergency response</td>
</tr>
</tbody>
</table>

Projects that exclusively use CDBG-DR, CDBG-MIT, CDBG-CV, ESG-CV, and/or HOPWA-CV funding are not subject to the BAP because funds for disaster and emergency purposes are exempt from the BAP.
When the BAP Doesn’t Apply

In addition to the Phased Implementation Waiver described in the section below, HUD has approved three Department-wide public interest general waivers for BAP applicability. If all the conditions for a general waiver are met, the BAP requirements may be waived for that project, or a portion of the materials used in a project.

CPD grantees can employ these waivers without the need for a formal request to HUD and should maintain records to substantiate the waiver’s application to a project. For example, a grantee may write a memo to the project file documenting how it determined that a general waiver applied to a specific project.

<table>
<thead>
<tr>
<th>HUD General Waivers</th>
<th>What is it?</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exigent Circumstances</strong></td>
<td>This public interest general waiver is effective through November 23, 2027, for projects that must be completed immediately to protect life, ensure safety, or prevent the destruction of property</td>
<td>A HOME-funded multi-family rental development is damaged by a burst hot water pipe in the middle of winter. Repairs to the damaged structure must be completed immediately to protect the life, safety, and property of the residents of the housing development. Following a tornado, CDBG funds are used to repair public facilities made structurally unsound during the disaster. Stabilizing these buildings is critical to prevent further destruction of property.</td>
</tr>
<tr>
<td><strong>De Minimis and Small Grants</strong></td>
<td>This public interest general waiver is effective through November 23, 2027, for projects whose total cost (from all sources) does not exceed the simplified acquisition threshold value ($250,000), OR If covered BAP materials for a portion of the project comprise no more than 5 percent of the total cost of covered materials used in a project (not to exceed $1 million), the BAP can be waived for that portion of the project.</td>
<td>A homeless service provider is rehabilitating an emergency shelter to update bathroom facilities. The provider is using $100,000 in ESG funding for the project and a State grant is contributing an additional $100,000. Because the total project cost does not exceed $250,000, the BAP does not apply. A city is using CDBG funds for construction of a playground. The total cost of materials used in the project is $1 million. The city can source domestic materials for nearly all the items needed for the playground but cannot find a domestically produced equivalent of a particular slide. The slide costs $20,000. Because this is less than 5% of the total cost of materials used in the project, the city can use the De Minimis Waiver to waive the BAP for the slide. The other materials used in the project still must comply with the BAP.</td>
</tr>
<tr>
<td><strong>Tribal Recipients</strong></td>
<td>The BAP does not apply for HUD funds to Tribes, Tribally Designated Housing Entities, and other Tribal Entities covered by this public interest general waiver effective until May 23, 2024.</td>
<td>After receiving Tribal feedback, HUD will implement the BAP through an approach that does not serve as a major barrier to Tribal community efforts to develop infrastructure. HUD’s Phased Implementation Waiver does not apply to funds awarded to Tribes.</td>
</tr>
<tr>
<td><strong>Pacific Island/Territory Recipients</strong></td>
<td>HUD accepted public comment on a proposed general waiver for Pacific Island/Territory recipients through September 1, 2023.</td>
<td>HUD will consider the public comments received and base its decision for adoption of the BAP in Pacific Island/Territory Communities in a future general waiver published in the Federal Register.</td>
</tr>
</tbody>
</table>
BAP Implementation Timeline for CPD Programs

To facilitate a smooth transition to the BAP requirements, HUD established a Phased Implementation Waiver for its programs based on the date when funds are obligated (i.e., typically the date when HUD executes the grant agreement). As illustrated below, the BAP is phased both by program and the type of product (iron and steel, construction materials, and manufactured products).

The BAP will apply on or after the date HUD obligates new funds for the following:

- **CDBG Formula Grants**
  - Iron and Steel: Nov 15, 2022
  - FY24 appropriations
  - FY25 appropriations

- **Recovery Housing Program (RHP) Grants**
  - Iron and Steel: Aug 23, 2023
  - FY24 appropriations
  - FY25 appropriations

- **All CPD programs, except HOME and Housing Trust Fund**
  - Iron and Steel: Feb 22, 2024
  - FY24 appropriations
  - FY25 appropriations

- **All CPD Programs, including HOME and HTF**
  - Iron and Steel: Aug 23, 2024
  - FY24 appropriations
  - FY25 appropriations

HUD chose to initially implement the BAP for all iron and steel products used in CDBG infrastructure projects using funding obligated on or after November 15, 2022. The specific focus on iron and steel in infrastructure projects will gradually extend to encompass the full implementation of the BAP across all HUD programs.
A grantee is using FY2023 CDBG funds (grant agreement executed by HUD in September 2023) to construct a new senior center. Because the project is using funds obligated after November 15, 2022, the grantee must ensure that the iron and steel used in the project complies with the BAP requirements. However, the project does not need to comply with the BAP requirements for construction materials or manufactured products because the funds do not include funding obligated from FY24 or FY25 appropriations.

Senior Center New Construction

A participating jurisdiction (PJ) operates a single-family owner-occupied rehabilitation program using HOME funds obligated after August 23, 2024. The PJ determines that since the total project costs from all sources for each activity do not exceed $250,000, individual rehabilitation activities are covered by the Small Grant Waiver and do not need to comply with the BAP.

Single-Family Owner-Occupied Rehab Program
Project/Product-Specific Waivers

Project/product-specific waivers are available on a limited, case-by-case basis, after HUD’s review, a public comment period, and final approval from the Office of Management and Budget’s Made In America Office (MIAO). Project-specific waivers are generally available for three reasons:

- **Public interest**: Adhering to the BAP would be inconsistent with the public interest.
- **Nonavailability**: Covered materials are not produced in the USA in sufficient and reasonably available quantities or of a satisfactory quality.
- **Unreasonable cost**: Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25 percent.

If more than one Federal agency is funding an infrastructure project, project-specific waivers will require coordination among those Federal agencies prior to a determination by the MIAO.

Project Implementation and Recordkeeping

CPD grantees engaging in infrastructure projects must comply with the BAP. Since the terms and conditions of the BAP flow down to subrecipients, the BAP language found in the “Special Conditions” section should be incorporated into all agreements, even if the BAP does not yet apply based on the phased implementation date.

Grantees may want to use activity by grant expenditure reports to help identify which projects might be subject to BAP requirements. In some instances, grantees may need to amend existing agreements or other award documents.

The BAP requirements must be included in the terms and conditions for subrecipient agreements, contracts, subawards, and purchase orders for all infrastructure projects. Grantees must maintain documentation of compliance with BAP requirements or exemption due to a waiver in accordance with program-specific recordkeeping requirements and 2 CFR § 200.334 as applicable to Federal grants.

**CPD grantees should retain documentation that demonstrates:**

1. All the iron, steel, manufactured products, and construction materials used in infrastructure projects are produced in the United States in accordance with HUD’s Phased Implementation Waiver, or
2. The project is covered by a HUD general waiver and is therefore exempt from the BAP, or
3. A project/product-specific waiver was reviewed by HUD and approved by the MIAO.
Additional Resources

- **BABA on HUD Exchange**
- **BABA on HUD.gov**
- **2 CFR 184**
- **2 CFR 200.322**
- **What is Build America, Buy America Factsheet (OMB)**
- **Made in America (OMB)**
Overview of the Buy America Preference

The Build America, Buy America Act (BABA) requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the “Buy America Preference (BAP)” and the specific requirements are codified in 2 CFR § 184.

This BABA CDBG Quick Guide is intended to assist grantees in determining when an infrastructure project must comply with the BAP requirements. It is structured into three sections:

1. **PLANNING**
2. **PROJECT IMPLEMENTATION AND RECORDKEEPING**
3. **PROJECT COMPLETION**

See the BABA CPD Overview Quick Guide for information on the applicability, definitions, and requirements of the BAP.

For more information on BABA and the BAP, visit the BABA page on the HUD Exchange.
Planning

What projects are subject to the BAP?

In the planning phase of any CDBG-funded project, grantees should determine whether or not the BAP applies to the project, and if so, to which classification of materials. The following process outlines the criteria for CDBG projects subject to the BAP, with four potential outcomes:

1. Complies with the BAP according to HUD’s Phased Implementation Waiver, or
2. The BAP is not applicable to the entire project because it is not an infrastructure project, or
3. The BAP is not applicable to the project due to one of HUD’s general waivers, or
4. The BAP is not applicable because a project- or product-specific waiver was reviewed by HUD and approved by the Office of Management and Budget’s Made In America Office (MIAO).

Step 1: Type of project/activity

Are the funds being used for an infrastructure project, as defined by BABA?

• If yes, proceed to step 2.
• If no, the BAP does not apply. The BAP only applies to infrastructure projects.

Examples of CDBG projects that are considered infrastructure projects, according to BABA, include:
• Rehabilitation, maintenance, and reconstruction of buildings and real property, including housing, and
• Construction and repair of public facilities and improvements, such as water, sewer, or other utilities, roads, bridges, sidewalks, homeless shelters, or broadband infrastructure.

Step 2: Funding source

Identify the source(s) of the project funding, including HUD funding or other Federal agency funding that must comply with the BAP. Does the project funding include CDBG funding?

• If yes, proceed to step 3.
• If no, then the grantee does not need to comply with the BAP for CDBG funding but may need to comply with the BAP for other HUD or Federal funding sources.
Step 3: Materials

Identify and classify the products that will be used in each infrastructure project. Does the project use products subject to the BAP (iron, steel, construction materials, or manufactured products)?

- If yes, proceed to step 4.
- If no, then the BAP does not apply. The BAP only applies to covered materials.

For more guidance on covered products, see the BABA CPD Overview Quick Guide.

Step 4: Date of obligation

Identify the obligation date of the CDBG funds, which is the date HUD executed the CDBG grant agreement. For each classification of products required to complete the infrastructure project, determine whether the date of obligation for CDBG funds falls on or after the effective date of the BAP (see table on the right).

- If yes, proceed to step 5.
- If no, the BAP does not apply to covered products before the effective date.

<table>
<thead>
<tr>
<th>Covered Product</th>
<th>Obligation Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iron and Steel</td>
<td>The BAP applies to the purchase of iron and steel for infrastructure projects using CDBG funds obligated on or after November 15, 2022.</td>
</tr>
<tr>
<td>Specifically Listed Construction Materials (non-ferrous metals; lumber; and plastic- and polymer-based composite building materials, pipe, and tube)</td>
<td>The BAP will apply to the purchase of specifically listed construction materials beginning with funding obligations from FY2024 CDBG funds, as well as iron and steel.</td>
</tr>
<tr>
<td>Not Listed Construction Materials (all other plastic- and polymer-based products, glass, fiber optic cable, optical fiber, engineered wood, and drywall)</td>
<td>The BAP will apply to the purchase of not listed construction materials and manufactured products beginning with funding obligations from FY2025 CDBG funds, as well as specifically listed construction materials, iron, and steel.</td>
</tr>
<tr>
<td>Manufactured Products</td>
<td></td>
</tr>
</tbody>
</table>

*Covered Product*
Step 5: General waivers

Consider the available HUD General Waivers and determine if all or a portion of the project is covered by any of the following waivers:

1. **Exigent Circumstances Waiver:** Is there an urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community?
   - If yes, the **Exigent Circumstances Waiver** may apply, and the project would not be subject to the BAP.

2. **De Minimis, Small Grants, and Minor Components Waiver:**
   - Is the total cost of the project from all sources equal to or less than $250,000?
     - If yes, the **De Minimis, Small Grants, and Minor Components Waiver** may apply, and the project would not be subject to the BAP.
     - OR -
     - This waiver can be applied to a portion of the products used in an infrastructure project if the cumulative cost of those products does not exceed five percent of the total cost of covered products used in the project (up to $1 million). In such cases, the BAP would be waived for part of the project, but the rest would still need to comply with the BAP.

3. **Tribal Recipients Waiver:** Is the project being funded by a Tribal recipient?
   - If yes, the **Tribal Recipients Waiver** may apply and the project would not be subject to the BAP. Note that this is atypical for CPD programs.

If no to General Waiver questions 1, 2, and 3, proceed to Step 6.

Step 6: Project-specific waivers

Consider the criteria for project-specific waivers and determine if the project is eligible for a waiver due to the public interest, nonavailability of materials, or unreasonable cost.

1. Is applying the BAP to the project inconsistent with the public interest?
   - If yes, a project-/product-specific waiver may be considered.

2. Are the materials used in the project not produced in the United States or not available in sufficient quantities?
   - If yes, a project-/product-specific waiver may be considered.

3. Would the inclusion of domestically produced materials increase the cost of the overall project by more than 25 percent?
   - If yes, a project-/product-specific waiver may be considered.

If no to project-/product-specific waiver questions 1, 2, and 3, the BAP likely applies and the project documentation should demonstrate that materials were procured from domestic sources in compliance with the BAP.
Example Projects

Community Center Development

In September 2023, a grantee awarded $1 million in FY23 CDBG funds for the construction of a community center in a low- to moderate-income census tract.

• The project is an infrastructure project because it is funding construction of a building.
• The grant funds were obligated after November 15, 2022.
• The project’s total budget is $1 million.

**Does the BAP apply to this project?**

The BAP applies to any iron or steel used in this project. The project is not using FY2024 or later grant funds; therefore, the BAP does not apply to construction materials or manufactured products used in this project.

Community Park Rehabilitation

In September 2023, a grantee awarded $1 million in FY23 CDBG funds for the construction of a community center in a low- to moderate-income census tract.

• The grant funds were obligated after November 15, 2022.
• The project’s total budget is $500,000 even though it is only using $200,000 in CDBG funds.
• The project is an infrastructure project.

**Does the BAP apply to this project?**

Yes, the BAP applies to any iron, steel, or specifically listed construction materials used in this project. The BAP does not apply to not listed construction materials and manufactured products because the CDBG funds were obligated prior to the effective date for those products.

Owner-Occupied Rehab Program

A grantee operates an owner-occupied rehabilitation program using FY2024 and FY2025 CDBG funds. The maximum allowable rehabilitation budget for each property is $100,000.

• The grant funds were obligated after November 15, 2022.
• The per property budget does not exceed $250,000.

**Does the BAP apply to this project?**

No, the BAP does not apply to this program because the budget for each property (i.e., project) does not exceed $100,000 and thus each individual project is exempt from the BAP under the De Minimis and Small Grants Waiver.
Procurement and Subrecipient Selection

For projects using CDBG funds obligated by HUD on or after November 15, 2022, review existing procurement policies and procedures to ensure that new administrative steps are developed to implement the BAP requirements.

When revising administrative documents, make sure to incorporate the BAP into the terms and conditions of all CDBG awards for infrastructure projects. Additionally, it is recommended to assess whether any projects that are currently underway or in the planning stages are subject to the BAP for iron, steel or other classifications of products.

CDBG grantees engaging in infrastructure projects must comply with the BAP conditions in the FY2023 HUD grant agreement. Since the terms and conditions of the BAP flow down to subrecipients, the BAP language found in the “Special Conditions” section should be incorporated into all agreements, even if the BAP does not yet apply based on the phased implementation date. The BAP must be included in all subawards, contracts, and purchase orders for the products supplied to complete the work under a CDBG award.

Project Implementation and Recordkeeping

CDBG grantees should ensure that all relevant stakeholders are informed about the BAP requirements and determine whether a project is subject to the BAP and, if so, for which classification(s) of materials.

Grantees must maintain documentation in accordance with applicable program requirements for recordkeeping and record retention. It is the grantee’s responsibility to ensure that all records related to BABA compliance are properly maintained, including any records kept by third parties (subrecipients, contractors, etc.).
**Project Completion**

CDBG grantees must retain supporting documentation from subrecipients, contractors, and vendors to develop records demonstrating compliance with the BABA requirements on a project and material level basis, regardless of whether infrastructure is the primary purpose of the project.

For HUD to consider a project/product-specific waiver the CDBG grantee must provide the following details as required by the MIAO:

- A detailed justification for the use of materials produced or manufactured outside the United States with a description of efforts made (e.g., market research, industry outreach) to avoid the need for a waiver
- A certification of a good faith effort to source domestically produced products supported by terms contained in requests for proposals, contracts, and other communications with potential vendors
- Waiver type (nonavailability, unreasonable cost, or public interest)
- Recipient name and Unique Entity Identifier
- Federal financial assistance program name
- Federal financial assistance funding amount
- Financial assistance listing name and number
- Federal Award Identification Number (FAIN) (if available)
- Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code)
- Total cost of infrastructure expenditures, including all Federal and non-Federal sources (as known)
- Infrastructure project description and location (as known)
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from the BAP, including name, cost, country(ies) of origin (if known), and PSC and NAICS code for each
- Anticipated impact if no waiver is issued
- Any relevant comments received during the public comment period

BAP documentation should be maintained in compliance with CDBG’s record retention requirements.
Additional Resources

- BABA CPD Overview Quick Guide
- BABA on HUD Exchange
- BABA on HUD.gov
- 2 CFR 184
- 2 CFR 200.322
- What is Build America, Buy America Factsheet (OMB)
- Made in America (OMB)
United States
Department of Housing and Urban Development
Build America, Buy America (BABA)
HUD’s Implementation of BABA

Frequently Asked Questions

Revised: 10/25/2023
SECTION 1: What is BABA?

1. What is the Build America, Buy America Act (BABA; “ba ba”)?
   i. BABA is the Build America, Buy America Act. It was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act. In general, BABA requires that, when Federal agencies provide new “Federal Financial Assistance” (FFA), the Federal agencies impose a condition on the use of that FFA in an “infrastructure project” to make sure that all iron, steel, manufactured products, and construction materials used are subject to a domestic content procurement preference, which means that those items and materials were produced in the United States. This requirement to purchase materials made in America is called the “Buy American Preference” (BAP).
   ii. To learn about the Administration’s priority to maximize the use of products made in the U.S., please see Executive Order 14005.

2. What is the purpose of BABA?
   i. BABA is designed to bolster America’s industrial base, protect national security, and support high-paying jobs. Please see OMB Memorandum M-24-02 to learn more.

3. What is the “Buy American Preference” (BAP)?
   i. The “Buy American Preference” (BAP) is the “domestic content procurement preference.” The BAP requires that all iron, steel, manufactured products, and construction materials used in an infrastructure project funded by any Federal Financial Assistance (FFA) must have been produced in the United States.

4. What is “Federal Financial Assistance”?
   i. Under BABA, Federal Financial Assistance (FFA) includes any funding provided by the Federal government to a non-Federal entity (such as a state or local government, nonprofit, or tribe) that may be used for an infrastructure project. The BAP does not apply to funds used for disaster or emergency response infrastructure spending, such as CDBG-DR grants.

5. What is the effective date of the BABA implementation?
   i. The effective date for BABA implementation was May 14, 2022; however, HUD approved a waiver that extended the effective date for all programs until November 14, 2022.
   ii. HUD approved further extensions to the implementation dates through a Phased Implementation waiver that creates a schedule of when the BAP will apply to various HUD programs. For specific program application, please view the waiver here.
   iii. HUD has separately provided a waiver for applicable by all Tribal funding recipients through May 22, 2024.

6. Does BABA apply to awards made before May 14, 2022?
   i. No.

7. Does BABA apply to awards made before November 14, 2022?
   i. No; HUD approved a waiver exempting awards made between May 14, 2022 and November 14, 2022. The waivers may be reviewed here.

8. My HUD program is impacted by HUD’s Phased Implementation waiver. Does BABA apply to me and, if so, when?
   i. It depends. The effective date for BABA is May 14, 2022; however, HUD has specific effective dates for the application of all or parts of the BAP to HUD
programs through FY2025 depending on the program and the product. HUD’s Phased Implementation Schedule can be viewed below or on the page “Does BABA Apply to Me?”

<table>
<thead>
<tr>
<th>Program</th>
<th>FY23 Q1</th>
<th>FY23 Q2</th>
<th>FY23 Q3</th>
<th>FY23 Q4</th>
<th>FY24 Q1</th>
<th>FY24 Q2</th>
<th>FY24 Q3</th>
<th>FY24 Q4</th>
<th>FY25 Q1</th>
</tr>
</thead>
</table>

*Choice Neighborhoods, Local Housing Initiatives, and Healthy Homes Preservation Grants
**All other HUD FFA except HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects
***HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects

9. Does BABA apply to amendments or renewals of awards made on or after November 14, 2022?
   i. It depends. If HUD obligates any new or additional funds in connection with the amendment or renewal of prior awards, then all funds will be subject to BABA unless HUD grants a waiver. Any amendments made by a recipient using funds that it received from HUD before BABA became applicable, would not require the application of the BAP. However, if the recipient adds funds that are subject to the BAP to a project, the entirety of the project would be required to comply with the BAP unless HUD grants a waiver.

10. Does BABA apply to no-cost amendments?
   i. No. BABA requirements do not apply to no-cost amendments (i.e., no additional funding is added).

11. Whom should I contact if I have additional questions about BABA?
   i. For general waiver inquiries, please contact: BuildAmericaBuyAmerica@hud.gov.
   ii. For program-specific inquiries, please contact your local HUD Field Office.

12. Does BABA apply to Tribal recipients?
   i. HUD is currently in consultation with tribes regarding BABA. HUD has granted a waiver of BABA through May 22, 2024 while consultations are ongoing. The Tribal Consultation waiver can be found here.

13. Where can I find training on BABA and waiver submissions?
   i. Any future trainings will be advertised on HUD’s BABA website. Any recordings of trainings will be posted on HUD’s BABA website. In the meantime, please contact your local HUD Field Office for more information on the waiver process.

14. How long will BABA remain a requirement?
   i. BABA was enacted into law with no expiration date.

SECTION 2: Does BABA apply to me?

1. How will BABA impact recipients of FFA agreements (i.e., grants, cooperative agreements, and loans or subgrants/subawards)?
   i. Generally, if you have received Federal Financial Assistance (FFA) through HUD for an infrastructure project after November 14, 2022, you must follow BABA
requirements unless the application has been waived. This includes FFA used for the construction, maintenance, alteration, or repair of infrastructure.

ii. HUD has issued several general applicability waivers that postpones the application of BABA requirements for most recipients. Please review the schedule of BABA implementation for HUD recipients here.

iii. HUD has also issued general waivers of the application of the BAP in certain circumstances, such as in connection with small grants and for expenditures made in exigent circumstances. Please review these specific waivers here.

ii. Additionally, BABA requirements do not apply to funds used for disaster or emergency response infrastructure spending, such as CDBG-DR grants. If you have questions about whether your expenditures qualify as disaster or emergency response, please contact your local Field Office.

2. If I am a subrecipient of Federal Financial Assistance funding for infrastructure, does BABA apply?

i. Possibly. Recipients (the entities that receive FFA directly from HUD) that are subject to the BAP are required to notify and flow through BAP requirements to their subrecipients, unless HUD has issued an applicable waiver. Recipients must include the BAP in all subawards, contracts, and purchase orders for the work performed, or products supplied under the Federal award. The BAP flows down to subawards to subrecipients unless a particular section of the terms and conditions of the Federal award specifically indicate otherwise. Subrecipients should consult with the appropriate recipient and consult their specific agreements to determine whether their funding is subject to the BAP.

ii. Recipients receiving FFA covered by BABA are responsible for making sure their subrecipients follow BABA unless the application of BABA has been waived by HUD.

3. Does BABA apply to small grants?

i. BABA requirements apply to all infrastructure projects funded with Federal Financial Assistance (FFA) provided by HUD after November 14, 2022, unless a waiver applies.

ii. HUD has issued a waiver for infrastructure grants and expenditures whose total cost is equal to or less than the current Simplified Acquisition Threshold of $250,000.

iii. HUD has issued a waiver for a “De Minimis” portion of an infrastructure project, waiving BABA requirements for a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials, up to a maximum of $1 million.

iv. Information about the De Minimis and Small Grants Waiver can be found here.

4. I just received BABA funding, but I’ve already built some of my infrastructure project with funding that is not subject to BABA (e.g., foreign-produced steel). How do I remain in compliance with BABA?

i. The recipient may seek a waiver for the addition of supplemental funding by visiting the HUD BABA Website. If a recipient adds funds subject to BABA to an existing project, all project funding becomes subject to BABA. This is true even if the existing project was not originally subject to BABA.

5. Which HUD programs are subject to BABA requirements?

i. Any HUD program that provides Federal Financial Assistance (FFA) for the construction, maintenance, alteration, or repair of infrastructure as defined in
BABA is subject to BABA requirements once fully implemented by HUD. However, BABA requirements do not apply to funds used for disaster or emergency response infrastructure spending, such as CDBG-DR grants. For more information, please refer to the Phased Implementation Waiver [here](#). For more information about what constitutes disaster or emergency response spending, please contact [your local Field Office](#).

6. What would cause a HUD program to change BABA applicability status?
   i. BABA applicability may be affected by a waiver granted by HUD or if eligible uses of funding under the given HUD program change.
   ii. Additionally, if changes are made to the relevant definitions in [2 CFR 200](#), the applicability of BABA may change.

7. Is Force Account Labor subject to BABA?
   i. No. The use of Force Account Labor does not affect BABA applicability.
   ii. Force Account Labor is the use of directly hired staff to carry out eligible activities under a program instead of procuring services through contract. The applicability of BABA is not determined by how eligible activities are performed.
   iii. However, work performed using Force Account Labor may require the application of the BAP to the purchase of the materials used in the project.

8. I have questions about waiver applicability for Co-Funded Projects (subject to BABA). When a project receives funding from multiple FFA programs, how will the funding recipient determine which general applicability waivers or adjustment period waivers apply?
   i. The determination of the applicability of BABA will be on a case-by-case basis. In general, where the BAP is applicable, it will apply to all the FFA used in the project, regardless of which program provides the funds. Different sources of Federal Funds may have different timelines, obligations, or applicable waivers under BABA, so the recipient must ensure it is clear whether any of the FFA being used requires the application of the BAP. Moreover, HUD waivers do not affect the applicability of BABA in connection with other sources of Federal Funds. Even where HUD has not yet required application of the BAP or has waived its applicability, if another agency requires compliance, the entire project must comply with the applicable requirements.

9. I have questions about the waiver applicability for Co-Funded Projects (with funding from multiple Federal agencies). When a project receives funding from Federal assistance programs in multiple agencies (e.g., EPA and USDA; EPA, FEMA, and DOT), how will potentially different generally applicable or adjustment period waivers be implemented?
   i. You should inform HUD if other Federal programs are funding or will fund your project. If so, HUD will coordinate with those co-funding agencies to determine the optimal approach for your project. This approach will focus on BABA applicability, use of waivers, and minimizing disruption to your project.

10. I have funding from multiple Federal sources and need a waiver. Do I have to apply for a waiver from every agency contributing funding?
   i. Possibly. In order for a project to be excluded from BABA requirements, each agency contributing funding must have issued a waiver that is applicable for its funding. Agencies may have standing waivers that are applicable, or the funding recipient may need to seek a waiver from each funding source.
   ii. Federal agencies are working to develop a process to streamline this for recipients.
   iii. Note that each agency will issue a separate waiver for your project.
SECTION 3: What is “infrastructure”?

1. How does BABA define “infrastructure”?
   i. According to 2 CFR 184.4(d), recipients should define “infrastructure” to include the structures, facilities, and equipment for, in the United States—(A) roads, highways, and bridges; (B) public transportation; (C) dams, ports, harbors, and other maritime facilities; (D) intercity passenger and freight railroads; (E) freight and intermodal facilities; (F) airports; (G) water systems, including drinking water and wastewater systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; (K) buildings and real property; and (L) structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.
   ii. In general, the Federal awarding agency would consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.

2. What doesn’t the Buy America preference apply to?
   i. BABA applies to Federal Financial Assistance provided to Non-Federal Entities when used in connection with an infrastructure project. For the purposes of BABA, FFA does not include Federal funding used for pre or post disaster or emergency response expenditures, like CDBG-DR.
   ii. According to 2 CFR 184, BABA only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.
   iii. BABA requirements do not apply to:
      1) Tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed by the completion of the infrastructure project.
      2) Equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are not an integral part of or permanently affixed to the structure.
      3) For more guidance on definitions, please refer to the 2 CFR 184 or 2 CFR 200.

3. How does BABA define “Project”?
   i. BABA defines “project” as any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States. Specific guidance on how to define the project for purposes of BABA will be provided by the individual programs providing FFA.

4. If most of the project uses American made products and a small portion does not, what should I do?
   i. In this case, you may be able to rely on HUD’s “De Minimis” waiver. For this waiver, the requirement to buy American made products does not apply for a De Minimis portion of an infrastructure project. A De Minimis portion is a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials used in or incorporated into the infrastructure project, up to a maximum of $1 million.
   ii. For more information on the De Minimis and Small Grants Waiver refer here.
SECTION 4: How will BABA impact the products I purchase?

1. How can I find products that are made in America?
   i. Currently there is no official label or certifying body for BABA compliant products. When reviewing products to determine if they are made in America, please refer to the definitions for American made products stated in 2 CFR 184.
   ii. You may find American made products by working with the Hollings Manufacturing Extension Partnership (MEP), Trade associations, and local manufacturers/stores.
   iii. Please refer to the Q&A below for examples.
   iv. For additional information and the latest resources, please check the Made in America Office website.

2. For iron and steel products, does a manufacturer need to demonstrate compliance from initial melting through the finished product?
   i. Yes. According to 2 CFR 184, all iron and steel used in the project must have been produced in the United States. This means that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
   ii. For additional information and the latest resources, please check the Made in America Office website.
   iii. For more guidance on definitions, please refer to the 2 CFR 184 or 2 CFR 200.

3. For products made of iron and steel, what is the difference between predominantly and primarily iron and steel?
   i. According to 2 CFR 184, there is no difference between predominantly and primarily iron and steel for the purposes of BABA.
   ii. For additional information and the latest resources, please check the Made in America Office website.
   iii. For more guidance on definitions, please refer to the 2 CFR 184 or 2 CFR 200.

4. What is the definition of construction materials (with examples)?
   i. The Made in America Office of OMB defined “construction materials” in 2 CFR 184.6. “Construction materials” are defined as articles, materials, or supplies that consist of only one of the following items: non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood, and drywall.
   ii. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.
   iii. For additional information and the latest resources, please check the Made in America Office website.

5. What are manufactured products?
   i. “Manufactured products” is defined in 2 CFR 184.3. “Manufactured products” are articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
ii. Unless another law or standard applies to you, “manufactured products” that are compliant with BABA meet the following criteria:
   1. Manufactured in the United States; and,
   2. The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

iii. Please continue to check the Made in America Office website for updates.

6. Are products and materials that purposefully decay or decompose (such as biodegradable coir material used for erosion control) considered permanently affixed items that are subject to the BABA requirements?
   i. No. According to 2 CFR 184, BABA requirements do not apply to non-permanent fixtures. See Section 3 Question 2 of this FAQs list for more detail.
   ii. For additional information and the latest resources, please check the Made in America Office website.
   iii. For more guidance on definitions, please refer to the 2 CFR 184 or 2 CFR 200.

SECTION 5: What if I’m unable to find American made products?

1. What if I am unable to find American made products?
   i. If you are unable to find American made products, then you may seek a waiver. Before requesting a new waiver from HUD, first check that none of the existing waivers are sufficient to cover your situation. HUD may waive your requirement to use American made product(s) if it finds that:
      1. Requiring the use of the American made product would be inconsistent with the public interest;
      2. The product you need is not produced in the United States in sufficient quantities or of a satisfactory quality; or,
      3. The inclusion of the product produced in the United States will increase the cost of the overall project by more than 25 percent.
   ii. HUD reviews waivers before they are posted to the Federal Register for public comment and sent to MIAO for approval.

2. How do I apply for a waiver?
   i. Please visit the HUD BABA Website.

3. What types of general waivers has HUD already issued that may apply for all HUD recipients?
   i. For a summary of HUD’s current general waivers, please refer to the below table. HUD’s current list of general waivers can be found here.
   ii. Moreover, HUD has specific effective dates for the application of all or parts of the BAP to HUD programs through FY2025 depending on the program and the product. HUD’s Phased Implementation Waiver can be viewed here.
### General Waivers

<table>
<thead>
<tr>
<th>Small Grants</th>
<th>De Minimis</th>
<th>Exigent Circumstances</th>
<th>Tribal Consultation</th>
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<tr>
<td>BABA requirements do not apply to infrastructure projects whose total cost is equal to or less than the current Simplified Acquisition Threshold of $250,000. This waiver is currently in effect as of November 23, 2022.</td>
<td>BABA requirements do not apply for a De Minimis portion of an infrastructure project, meaning a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials, up to a maximum of $1 million. This waiver is currently in effect as of November 23, 2022.</td>
<td>This waiver applies when there is an urgent need by a recipient to immediately complete an infrastructure project because of a “exigent circumstances,” or a threat to life, safety, or property of residents and the community. This waiver is currently in effect as of November 23, 2022.</td>
<td>This waiver is effective for Tribal recipients through May 22, 2024. HUD issued a public interest waiver for the BAP as it applies to Tribal recipients to allow time for HUD to consult with Tribally Designated Housing Entities, and other Tribal Entities on how to apply the BAP.</td>
</tr>
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</table>

4. What should I do if I am covered by a program-wide waiver? Do I need to maintain documentation?
   - Yes. You should maintain appropriate documentation, consistent with the program guidance for your specific award.

5. Who may apply for a waiver and how do you apply?
   - Recipients subject to BABA may apply for a waiver. For a summary of BABA waivers and information needed to apply for these waivers, refer to the below table. Please contact your local HUD Field Office to apply.
Project/Product-Specific Waivers

<table>
<thead>
<tr>
<th>Non-Availability</th>
<th>Unreasonable Cost</th>
<th>Public Interest</th>
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<tbody>
<tr>
<td>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements because HUD and agrees that the product needed is not produced in the United States in sufficient quantities or of a satisfactory quality.</td>
<td>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements because the adherence to BABA requirements will increase the cost of the overall project by more than 25 percent.</td>
<td>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements requiring compliance with such requirements is inconsistent with the public interest.</td>
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<td>In their waiver request, recipients should:</td>
<td>In their waiver request, recipients should:</td>
<td>In their waiver request, recipients should:</td>
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<tr>
<td>• Demonstrate that they have conducted market research and adequately considered qualified alternate items.</td>
<td>• Demonstrate that BABA compliance increases total project cost by more than 25%.</td>
<td>• Explain how waiving the BABA requirement for this project or product serves the public interest.</td>
</tr>
<tr>
<td>• Describe the due diligence performed, including information, quotes, and/or responses from manufacturers, distributors, or suppliers.</td>
<td>• Determine the additional cost of BABA compliant products.</td>
<td>• Demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project.</td>
</tr>
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</table>

6. Can I submit one waiver submission that encompasses multiple projects?  
   i. If you are seeking a product-specific waiver for an item you will use in multiple projects, you may be able to submit one product waiver depending on your circumstances. If you are seeking a project-specific waiver, you must submit one waiver per project. If you are seeking a public interest waiver, the circumstances will dictate the number of waivers, but you generally would not be required to submit multiple requests for the same waiver.

7. How will I know if my waiver is accepted or denied?  
   i. HUD will inform you once the Department has approved or denied your waiver.  
      If approved, your waiver will also be posted in the Federal Register and on Made in America Office (MIAO) websites. You may track the final decision on these websites.

8. How can I check the status of my waiver application?  
   i. Contact your [local HUD Field Office](#).
How do I comply with BABA?

There are several steps Grantees must complete to comply with BABA.

1. Determine if you or your project are subject to BABA.
Please review the Does BABA Apply to Me? (/program_offices/general_counsel/build_america_buy_america/apply) section and the Frequently Asked Questions (FAQs) (/program_offices/general_counsel/build_america_buy_america/faqs) section.

2 Review implementation materials from all Federal agencies contributing FFA, including any relevant waivers issued by each agency.

Please refer to the Implementation Notices below.

3 Determine whether you will need to seek a waiver of the application of the BAP and which type of waiver you intend to seek from each agency.

HUD has issued several General Waivers that may apply to your award. If covered by an existing General Waiver, you may not have to submit a waiver application for your project. See What if I Need a Waiver?: General Waivers (/program_offices/general_counsel/build_america_buy_america/waiver#GeneralWaivers) to learn more.
If no existing waiver applies, you may apply to waive the domestic content procurement preference if:

- A waiver is in the public interest (Public Interest Waiver);
- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or satisfactory quality (Nonavailability Waiver); or,
- The application of the domestic content preference would increase the cost of the overall project by more than 25% (Increased Cost Waiver).

See What if I Need a Waiver?: Specific Waivers (/program_offices/general_counsel/build_america_buy_america/waiver#SpecificWaivers) to learn more.

Please review MadeInAmerica.gov (https://www.madeinamerica.gov/) for any additional information.

4 **Comply with steps to secure waivers from all funding sources. Conduct market research as needed.**

To maintain compliance, you must be sourcing compliant materials or requiring your contractor to do so. You may have to conduct market research to find domestic products. You may identify domestic products that comply with BABA definitions

The MEP has provided guidance on how to find domestic suppliers here (https://www.nist.gov/system/files/documents/2023/08/03/Finding%20US%20Suppliers%20with%20MEPNN-WEB.pdf). You may contact the NIST MEP supplier scouting team (mailto:scouting@nist.gov) for assistance to help you complete the opportunity synopsis and answer any questions. For MEP supplier scouting needs that are limited to state-based identification of potential manufacturers within an individual state, versus on a national scale, please contact the local MEP Center (https://www.nist.gov/mep/centers) for that state.

For the latest resources, please refer to MadeInAmerica.gov (https://www.madeinamerica.gov/).

Ensure contracts for covered activities require compliance.

Obtain documentation of compliance consistent with implementation requirements from all relevant agencies.
Grantees must keep proper documentation to demonstrate compliance with BABA for purchased products covered by the Act, which may include either documentation that the products are BABA compliant or manufactured in the U.S. For projects that are co-funded, there may be other requirements from other funding providers.

If the purchase of the products was covered under a General Waiver, keeping documentation is not required. If no existing waiver applies, but you believe that one of the other exemptions covers your project or products, you may apply to waive the domestic content procurement preference. If the waiver is granted, you should keep proper documentation of that as well.

Retain per agencies’ requirements.
Implementation Notices

- Community Planning and Development (/sites/dfiles/OCHCO/documents/2023-12cpdn.pdf)

Training

- Build America, Buy America (BABA) Virtual Outreach Event for Grantees (/program_offices/general_counsel/BABA/virtual_outreach_event_for_grantees) (November 9, 2023)
What if I need a Waiver?

If seeking a waiver, Grantees should refer to the following information regarding the HUD Phased Implementation Schedule, General Waivers, and Specific Waivers to determine if and which waiver is needed. However, prior to seeking a waiver, grantees should
determine if and how BABA applies to them (see Does BABA apply to me? (/program_offices/general_counsel/build_america_buy_america/apply) section) and grantees should follow measures to maximize their compliance with BABA (see How do I comply with BABA? (/program_offices/general_counsel/build_america_buy_america/comply) section).

General Waivers and Timeline

HUD Phased Implementation Schedule

HUD has waived application of the BAP until the specific effective dates depending on the program and the product listed in HUD’s Phased Implementation Waiver (/sites/dfiles/GC/documents/6331-N-10A BABA Updated Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America Buy America Provision.pdf). Please refer to HUD’s Phased Implementation Schedule below.
General Waivers

HUD has approved several general applicability waivers for specific public interest circumstances as summarized below. When the circumstances of any public interest general waiver are applicable to an infrastructure project, BABA's domestic content procurement preference does not apply.

Small Grants

BABA requirements do not apply to infrastructure projects whose total cost is equal to or less than the current Simplified Acquisition Threshold of $250,000. This waiver is currently in effect as of November 23, 2022.
Small Grants

Additional information on HUD’s general waivers can be found in the drop-down menu below.


Specific Waivers

In addition to HUD's general waivers, HUD may also request specific waivers from the BAP for covered FFA on a limited, case-by-case basis, after consultation and review with the MIAO at OMB.

Agencies may apply to waive the domestic content procurement preference if:

1. Requiring the use of the American made product would be inconsistent with the public interest (Public Interest Waiver);
2. The product you need is not produced in the United States in sufficient quantities or of a satisfactory quality (Nonavailability Waiver); or,

3. The inclusion of the product produced in the United States will increase the cost of the overall project by more than 25 percent (Unreasonable Cost Waiver).

See below for additional descriptions of waiver categories:

**Public Interest Waiver**

This waiver is granted if requiring the use of the American made product would be inconsistent with the public interest.

In their waiver application, Grantees should:

- Explain how waiving the BABA requirement for this project or product serves the public interest.

- Demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project.

**Non-Availability Waiver**

This waiver is granted if the product needed is not produced in the United States in sufficient quantities or of a satisfactory quality.

In their waiver application, Grantees should:
• Demonstrate that they have conducted market research and adequately considered alternate items that meet the definition of Made in America (https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements).

• Describe the due diligence performed, including information, quotes, and/or responses from manufacturers, distributors, or suppliers.

Unreasonable Cost Waiver

This waiver is granted if the inclusion of the product produced in the United States will increase the cost of the overall project by more than 25 percent.

In their waiver application, Grantees should:

• Demonstrate that BABA compliance increases total project cost by more than 25%.

• Determine the additional cost of BABA compliant products.

• Determine the dollar amount to be waived.

• Demonstrate that no domestic alternatives are available within the project budget.
How do I apply for a Specific Waiver?

HUD reviews waivers before they are posted to the Federal Register for public comment and sent to the Made In America Office (MIAO) for approval. In general, the BABA Waiver Process follows these steps for approval:

1. Contact the HUD Program Office for BABA technical assistance as needed.
2. Prepare a waiver application with the information required by the MIAO located [here (/sites/dfiles/Main/documents/BABA_Waiver_Form.pdf)].
3. Submits a waiver application with all necessary information to HUD at BuildAmericaBuyAmerica@hud.gov (mailto:BuildAmericaBuyAmerica@hud.gov). (Currently using email, new system forthcoming)
4. Provide additional information as requested by HUD during the review process to proceed with public comment in the Federal Register, and final approval by MIAO.
5. If approved, the waiver is posted on MadeInAmerica.gov (https://www.madeinamerica.gov/)

Note that more specific instructions will be detailed in HUD’s implementation notices. Implementation notices are forthcoming.

Please download the waiver application form here. (/sites/dfiles/Main/documents/BABA_Waiver_Form.pdf)
BUILD AMERICA BUY AMERICA WAIVER REQUEST

This data collection is for submitting a waiver request to the Build America, Buy America requirements. According to the Build America Buy America Act (BABAA), “none of the funds made available for a Federal Financial Assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Waivers are explained in the Office of Management and Budget Memorandum 22-11 and required by the Infrastructure, Investments and Jobs Act (IIJA) sections 70901 through 70952. Each waiver request must provide responses to the form questions, as applicable. Instructions are provided in the next paragraph. Contact your Department of Housing and Urban Development representative for your award or for additional assistance with completing this data collection.

Instructions: The applicant needs to complete questions 1 through 17, sign and certify the form, and email the waiver request to BuildAmericaBuyAmerica@hud.gov.

Required fields are marked with an asterisk (*)

Questions to be Answered by the Grantee

1. Submitter Contact Information

<table>
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<tr>
<th>Legal Name *</th>
<th>Unique Entity Identifier (UEI) *</th>
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2. Submitter Email *

3. Submitter Phone Number *
4. Federal Financial Assistance Identification Number (FAIN/Award Number) and Name *

4.1 Provide the SAM.gov Assistance Listing number. *

4.2 Provide the SAM.gov Assistance Listing name. *

5. Housing and Urban Development (HUD) Program Name *

6. Federal Financial Assistance Funding Amount *

7. Infrastructure Project *

7.1 State the Infrastructure Project description and location, to the extent known.

7.2 Is your project co-funded by other Federal Agencies beside HUD? *   Yes   No

- If yes: Complete section 7.2.1
- If no: Proceed to question 8

7.2.1 If you answered yes to question 7.2, does HUD provide the largest amount of funding to the project? Please note, if HUD is not the largest funder, you must apply for a waiver through the Federal Agency that provided the largest amount of funding to the project.   Yes   No

7.2.1a If you answered yes to question 7.2.1, please list the other Federal Agencies involved, including the Program, Office, and contact information for each Agency.

<table>
<thead>
<tr>
<th>Federal Agency</th>
<th>Office</th>
<th>Program</th>
<th>Contact Information</th>
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7.2.1b If you answered no to question 7.2.1, please explain why you are submitting a waiver application to HUD. You must apply for a waiver through the Federal Agency that provided the largest amount of funding to the project. Your application will not be reviewed by HUD unless an explanation is provided.

8. Total funding, including federal and non-federal shares: *
9. Total estimated infrastructure costs, including all federal and non-federal shares (to the extent known): *

10. Listing of Materials, Technical Specifications, and Quantity: *

HUD requires the name of the iron or steel item, manufactured product, or construction material proposed to be excepted from BABAA requirements, including name, cost, countries of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code. Please note if you have multiple products you would like HUD to review, please submit an waiver application for each product. Links to manuals that provide the PSC and NAICS codes:

- PSC Codes: https://www.acquisition.gov/psc-manual
- NAICS Codes: https://www.census.gov/naics/

10.1 Technical specification description of the item to be waived, if applicable.

10.2 Quantity required:

11. Waiver Type *

Choose ONE of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type.

- Nonavailability waivers: Complete section 11.1
- Unreasonable Cost waivers: Complete section 11.2
- Public Interest waivers: Complete section 11.3

11.1 Nonavailability Waiver

Applicable responses to the following are required:

11.1.1 A description of the due diligence performed by the applicant, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided. Attach documentation for additional support if needed.
11.1.2 In the instance that the lead time to obtain a BABA compliant item is excessive, please attach documentation which indicates: the sum of the project cost and product that was identified, the cost differential between the BABA compliant product and the Non-BABA compliant product that increases the overall project cost to be above the threshold of 25%, and any quality or quantity issues that were interfaced in the BABA compliant process. Attach documentation for additional support if needed.

11.2 **Unreasonable Cost Waiver** (BABA compliance increases total project cost by more than 25 percent)

Applicable responses to the following are required:

11.2.1 What is the additional cost of the BABA compliant item, compared to using iron and steel, manufactured products, and construction materials of non-domestic or unknown origin? Please demonstrate how the BABA compliant item increases the total project cost by more than 25 percent. Attach documentation of prices for BABA compliant and non-compliant items for the cost comparison. *Attach documentation for additional support if needed.*

11.3 **Public Interest Waiver**

11.3.1 Explain how waiving the BABA requirement for this project or product serves the public interest. Attach documentation for additional support if needed.
12. Additional Waiver Information

Provide any additional information for HUD’s consideration of the requested waiver.

13. Anticipated Impacts *

Identify any anticipated impacts if no waiver is issued. *Attach documentation for additional support if needed.*
14. Certification *
Certification that the Federal assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct.
WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §3729, 3802).

15. Certifying Official Name: *

16. Certifying Official Signature: *

17. Date of Certification: *
Public Posting of Waiver Request Information

The BABAA domestic sourcing requirements waiver authority generally requires the Federal awarding agency to post this waiver information for a period of public comment and review. The Department will not publicly post information considered to be personally identifiable information (PII), including signatures and specific contact information such as an email address and phone number. However, all other information contained in this form, along with any supporting documentation, may be publicly posted so that the public has adequate information to comment on your requested waiver of the BABAA domestic sourcing requirements. If you feel that some of the information contained in this waiver request is “proprietary information” and do not want this information disclosed, please follow the instructions in “Submission of Proprietary Information”, below. Please note that your designations of exempt material are not binding on the Department.

Submission of Proprietary Information

FOIA exempts from mandatory disclosure any “trade secrets or commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4) (Exemption 4). In accordance with Exemption 4, the Department will maintain as confidential any documents submitted by you, or prepared by the applicant or grantee, that are both customarily and actually treated as private by the applicant or grantee, or closely held and not publicly disseminated. If you feel that some or all of this submission falls within the scope of Exemption 4 and is entitled to confidential treatment, you must indicate the specific information the applicant or grantee considers proprietary in a cover attachment to this form. Please note that your designations of exempt material are not binding on the Department.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 2511-0002. Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit (with section 70914 of the Build America Buy America Act (Pub. L. No. 117-58 §§ 70901-70952)). If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact your assigned program officer directly.

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