



# Implementation Manual

## Chapter 9–Labor Standards & Davis-Bacon

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**TEXAS GENERAL LAND OFFICE**

# Community Development and Revitalization Department

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*The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.*

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# CHAPTER 9—LABOR STANDARDS & DAVIS-BACON

## 9.1 Introduction

This chapter offers a brief description of the laws and regulations associated with federal labor standards administration and enforcement, including CDBG-DR and/or CDBG-MIT Subrecipient Agreement requirements for Davis-Bacon and Related Acts (DBRA) labor standards compliance and documentation.

Information about each requirement can be found on HUD’s website at the following link:

[https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/sech/13441](https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441)

The Office of Davis-Bacon and Labor Standards (DBLS) is responsible for HUD’s overall compliance with the federal prevailing wage requirements applicable to HUD funded CDBG programs. Title I of the Housing and Community Development Act of 1974 requires the payment of local prevailing wage rates (which are determined by the U.S. Department of Labor) to all workers on CDBG funded construction projects in excess of \$2,000. (42 USC §5310; 40 USC 3142(d)). **THESE REQUIREMENTS APPLY REGARDLESS OF THE PROCUREMENT METHOD. SEE CHAPTER 5 OF THIS MANUAL: PROCUREMENT.**

Activities financed by CDBG-DR or CDBG-MIT that are not “construction work” do not trigger Davis-Bacon requirements, for example:

Davis-Bacon requirements apply to the **entire** construction contract, even if CDBG funds finance only a **portion** of a construction contract.

Real property acquisition.

- Grant administration.
- Environmental services.
- Architectural and engineering services.
- Other professional services (Legal, accounting, testing, etc.)
- Other non-construction items (furniture, business licenses, real estate taxes)

**\*\*Note:** For questions, please refer to Department of Labor (DOL) Field Operations handbook, 15d05, for additional guidance.

## 9.2 Objectives of Davis-Bacon

The following five (5) key labor standard objectives must be accomplished by the subrecipient and/or GLO to administer and enforce DBRA requirements and protect workers’ rights. Davis-Bacon applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting) of public buildings or

public works. Davis-Bacon also applies to residential construction which consists of projects involving the construction, alteration, or repair of eight or more separate, contiguous single-family houses operated by a single entity as a single project or eight or more units in a single structure.

***Objectives for Davis-Bacon Labor Standards Compliance:***

- Apply Davis-Bacon requirements properly.
- Support subrecipient compliance with labor standards through technical assistance and guidance.
- Monitor subrecipient performance.
- Investigate probable violations and complaints of underpayment; and
- Pursue debarment and other available sanctions against repeat labor standards violators, if necessary.

By executing the CDBG-DR and/or CDBG-MIT Subrecipient Agreement, a subrecipient agrees to administer and enforce all Davis-Bacon labor standards requirements and accepts the responsibilities described in this chapter.

### **9.2.1 Apprentices and Trainees**

Apprentices are those persons employed under a bona fide apprentice program and registered with a state apprenticeship agency which is recognized by the Department of Labor Employment and Training Administration. (DOL, ETA). Trainees are those persons receiving on the job training. Generally, Apprentices and Trainees are paid a lower salary than Journeyman and fall under special rules that are in the DOL Handbook, Chapter 15, e, 01 and 02 found on the DOL website at <https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15#B15b06>. Particular care must be taken in observing the maximum ratio of Journeymen to Apprentices and when Apprentices and Trainees are working outside of their training or apprenticeship, such as serving as general laborers. Working outside their training or apprenticeship is a change to their job classification and is a common point of audit concern.

### **9.3 Labor Standards Compliance Steps**

A construction project covered by federal labor standards, including infrastructure and housing, requires a series of specific actions by labor standards personnel. Eight (8) of these must occur *prior to the actual start of construction*.

The Pre-Construction Tasks Are:

1. Designate a Labor Standards Officer
2. Obtain an Applicable Wage Determination (WD) for the construction project. (Note: Wage Determination and Wage Decision are used interchangeably by different federal agencies. HUD's preferred term is Wage Decision.)
3. Include the Wage Determination in the Bid Documents

4. Ensure the Wage Determination is Current Before Bid Opening
5. Confirm the Recommended Construction Contractor's Eligibility Status
6. Award the Construction Contract
7. Conduct a Pre-Construction Conference to Explain Labor Standards
8. Submit the Labor Standards Record to the GLO

The Post "Start of Construction" Tasks Are:

1. Submit Weekly Payrolls During Construction
2. Review Certified Payroll Reports During Construction
3. Submit a Labor Standards Officer (LSO) Payroll Certification Form
4. Conduct Employee Interviews During Construction
5. Submit Construction Completion Reports—GLO Certificate of Construction Completion (COCC) & GLO Final Wage Compliance Report (FWCR)

The Subrecipient must comply with the following tasks:

- Designate a Labor Standards Officer (LSO) (Pre-Construction)

The appointment and maintenance of a LSO is required for all Subrecipient Agreements with construction activities, including those utilizing Force Account. Force Account is a situation in which a governmental entity uses their own staff to administer and/or construct all or part of a project. If the project otherwise meets the requirement to adhere to federal labor standards, those portions of the project not completed "in house" must meet all fair labor standards requirements. For questions, please see Chapter 15 of the Department of Labor field operations handbook at <https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15#B15b06>. The use of the GLO Appointment of Labor Standards Officer Designation Form is a required form and must be submitted to GLO. If the individual designated as the LSO changes, a new Appointment of LSO Designation Form must be submitted prior to submitting any associated requests for payment or related documentation. The LSO may be an employee of the subrecipient or a private consulting firm. The primary qualification of an LSO is a good understanding of HUD's overall compliance requirements with the federal prevailing wage obligations applicable to HUD funded CDBG programs.

The LSO is responsible for the regulatory administration and enforcement of the federal labor standards provisions on all Subrecipient Agreements covered by Davis-Bacon requirements. Tasks include:

- Providing labor standards preconstruction advice and support to the subrecipient and other project principals (for example, the owner, sponsor, architect), including ensuring that no prime or sub-contract is awarded to a construction contractor that is ineligible

(e.g., debarred) for federally assisted work.

- Providing the proper Davis-Bacon prevailing wage rate and ensuring that wage rate and applicable provisions are incorporated into all construction contracts and subcontracts.
- Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing weekly payroll reports ensuring that the applicable Davis-Bacon wage rate and the Department of Labor's "Notice to All Employees" federal posters are displayed at the job site.
- Overseeing any enforcement actions that may be required.
- Documenting timely compliance of required tasks and deliverables in the local file and as required by GLO.
- Obtain an Applicable Wage Determination for the Construction Project (Pre-Construction)

Wage Determinations:

- Are established by the U.S. Department of Labor (DOL).
- List construction work classifications (such as: Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates, fringe benefits and geographic location of the prevailing wage rate.
- Are categorized into four groups (Building, Heavy, Highway, and Residential Construction).
- Apply to specific geographic areas, usually a county or group of counties; and
- Are modified regularly to keep them current.

The LSO must obtain the applicable Wage Determination for each specific CDBG-DR and CDBG-MIT construction contract where DBRA regulations apply. Wage Determinations are available at <https://sam.gov/content/wage-determinations> and are required to be posted at the job site.

### Type of Construction for Wage Determinations

The following descriptions and illustrations are provided as guidelines. The advertised and contract specifications should identify the segments of work to which the schedules will apply as specifically as possible.

*Building Construction*—Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction such as structures, residential structures, the installation of utilities, and the installation of equipment, both above and below grade level, as well as incidental grading, utilities, and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

*Heavy Construction*—Heavy projects are those projects that are not properly classified as either building, highway or residential. Unlike these classifications, heavy construction is not a consistent classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished based on their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

*Highway Construction*—Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, sidewalks, paths, parking areas, and other similar projects not incidental to residential, building, or heavy construction.

*Residential Construction*—Residential projects include the construction, alteration, or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks. NOTE: HUD has determined new construction and rehabilitation of single-family residence/property is exempt from Davis-Bacon labor standards if such property contains less than eight (8) contiguous units. Property is defined as one or more buildings on an undivided lot or on contiguous lots/parcels which are commonly owned and operated as one rental or project.

- Include the Wage Determination in the Bid Documents (Pre-Construction)

The wage determination (and any modifications) must be included in the bid package. (See Chapter 5: Procurement, for more information on the bid process and documents.) Review the various Wage Determinations for each county and choose the one that is most appropriate for the work to be done. The type of work and the locations where these decisions are applicable are listed in the first paragraph of the wage rate.

- Ensure the Wage Determination is Current Before Bid Opening (Pre-Construction)

The LSO must confirm the Wage Determination in the bid specifications for construction contracts is still current for the bid opening date or the Notice to Proceed for Housing Projects. The LSO must verify the Wage Determination is current and complete the GLO Ten-Day Confirmation Form ten (10) calendar days or less before the bid opening.

A completed GLO Ten-Day Confirmation Form, signed by the Labor Standards Officer, and a copy of the current Wage Determination must be retained in the local files with other labor standards documentation, and must be provided to GLO representatives upon request.

The date the wage rates were confirmed by the Labor Standards Officer must be recorded on the Labor Standard Record Form and submitted to GLO.

- For Housing: the “Bid Open Date” is the Notice to Proceed date. GLO staff are instructed to withhold the Notice to Proceed (NTP) until a Building Permit from local jurisdiction authorizes project construction and Loan Closing Specialist or GLO Grant Manager confirms the loan has closed or the grant is ready to proceed. The Owner/ Developer

must pay any fees noted on Building Permit and send evidence to the LSO and GLO with copy of Building Permit. The NTP is a 10-day window to begin construction. If construction cannot be started during that period, the LSO must pull the General Wage Decision (GWD) again. (Also see [Section 9.8 Multifamily Construction](#) for more information about the Notice to Proceed).

- For Competitive Sealed Bid: the “Bid Open Date” is the date sealed bids are opened.
- For Micro purchase, Small Purchase, Other Non-Sealed Bids: the “Bid Open Date” is the due date for Quotes. At a minimum the wages must be confirmed prior to the due date of when quotes were received.

Modifications to wage determinations published by DOL less than 10 days before bid opening may be disregarded if found and there is not sufficient time to notify bidders. If this occurs, the LSO must place a written explanation in the Subrecipient Agreement file. For more information see HUD Handbook 1344.1 Rev-3, Chapter 3, 3-10 A, found at <http://www.hud.gov/sites/dfiles/OCHCO/documents/13441C3SECH.pdf>.

The Ten-Day Confirmation form does NOT “lock in” wage rates.

- For Housing: Wage decision “locks-in” at construction contract award or start of construction, whichever occurs first.
- For Infrastructure: Wage decision “locks-in” at bid opening provided construction contract is awarded within 90 days. The LSO must confirm the wage decision if the construction contract is awarded beyond 90 days of the bid opening. See Task 6 below for additional information when the construction contract is awarded beyond 90 days of the bid opening.
- Confirm the Recommended Construction Contractor’s Eligibility Status (Pre-Construction)

The LSO must verify prior to awarding and executing any construction contract that all prime contractors (and their subcontractors) are not identified as “debarred” in the System for Award Management (<https://sam.gov/content/home>). See Resources—**Resource 9.1** at the end of this chapter. You will need to register to use SAM and look each contractor individually. Refer to the FAQs on the landing page for assistance in registration and searches.

The LSO must keep records of these verifications from the SAM website, retain copies in the local files, and must provide such documents to GLO representatives upon request.

The date the contractor is shown to be eligible to work on a federally funded project (the date the SAM check was conducted) must be recorded on the Labor Standards Record.

All contractors must be verified to be eligible to work on a federally funded project through the SAM website prior to any formal action authorizing the award of the construction contract.



- Award the Construction Contract (Pre-Construction)

Each construction contract subject to Davis-Bacon labor standards requirements must include the applicable Wage Determination(s) and provisions containing labor standards compliance clauses as indicated in the executed Subrecipient Agreement and program guidance.

The labor standards compliance clauses:

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages.
- Obligate the construction contractor to comply with the labor requirements.
- Provide for remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages.
- Enable the LSO to enforce the labor standards applicable to the project.
- **Best Practice:** Incorporate HUD Labor Standards Form 4010 in the construction contract and provide to contractor with pre-construction information.

If the construction contract has not been awarded within 90 days after bid opening, any wage decision modification published prior to the award of the construction contract shall be effective for that construction contract.

**Best Practice:** Review construction term to ensure action to award is compliant with the contract term defined by the executed Subrecipient Agreement. If the award extends beyond the end date of the Subrecipient Agreement, a request for a contract extension as allowed by the executed Agreement must be submitted for GLO consideration.

### **Additional Classification and Wage Rate**

The LSO may request an additional classification in writing through the GLO Request for Additional Classification and Rate form along with a copy of the applicable wage decision for that construction contract. The request will represent the employers (prime contractor or subcontractor) proposed wage to perform a particular set of duties and must meet the following U.S. Department of Labor (DOL) regulations:

- The work to be performed by the additional classification is not performed by a classification already on the applicable Wage Decision.
- The classification is used by the construction industry in the area of the project; and
- The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage decision.

**NOTE:** As a general guide, the wage rate proposed for a trade classification (such as an Electrician) must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision. "Trade classifications" are generally all work classifications, excluding Laborers, Truck Drivers, and Power Equipment Operators.

Requests for Equipment Operators must specify the type(s) of equipment involved and the proposed wage rate(s) must be at least as much as the lowest wage rate for any Power Equipment Operator that appears on the applicable wage determination.

The Request for Additional Classification and Rate form must be submitted to the GLO Labor Standards Officer via email or uploaded to the GLO system of record, if available. The GLO Labor Standards Officer or designee will review the requested classification and proposed hourly rate and fringe rates to ensure that all required information is submitted.

GLO will refer the request to the DOL for a final determination, and provide the response to the Subrecipient upon receipt from the DOL. It can take 6-8 weeks to receive DOL's official response. GLO will forward the DOL response to the LSO upon receiving DOL's response. The LSO is responsible for providing a copy to the construction contractor and asking the contractor to post a copy on-site. The request and DOL response must be kept in the local file.

If the DOL *does not* approve the request, the DOL's response letter will include the conformance or approved wage rate that must be used for the work classification requested. It will also contain instructions about how to ask for DOL reconsideration if the subrecipient would like to pursue the issue further.

If construction ends prior to receiving the DOL's formal response, the LSO will proceed to submit the Final Wage Compliance Report and Grant Completion Report within the prescribed timeframe as indicated in the executed Subrecipient Agreement. The GLO contract does not need to remain active if DOL does not respond before the contract end date.

- Conduct a Pre-Construction Conference (Pre-Construction)

A pre-construction conference must be held with the subrecipient, developer/owner, engineer/architect, prime contractor, subcontractor(s), inspector(s), LSO, associated utility providers, and other personnel key to construction prior to the start of construction. The subrecipient and LSO must document and retain in the local file, the signed Pre-Construction Conference Report and required supporting documentation including meeting minutes, a list of attendees, and other applicable documentation in support of DBRA compliance discussed during the pre-construction conference.

The pre-construction conference must include:

- Advice to all parties regarding their responsibilities and obligations on a federally funded or federally assisted project.
- Discussion of applicable federal, state, local, and program guidelines.
- Discussion of all construction details, time frame of project, payment requirements, and labor standards requirements and penalties for failure to comply with requirements.
- Submission of all bonds and certificates of insurance to the subrecipient.

- Review of applicable Wage Determinations required labor posters, additional classifications and instructions to facilitate project completion.
- Provide Davis Bacon and Labor Standards related Project Signage (found here: <https://www.dol.gov/whd/regs/compliance/posters/davis.htm>); and
- Discussion of applicable special conditions identified in the Subrecipient Agreement and construction contract and identify responsibility for.

In addition to any required temporary or permanent signage as defined by the Subrecipient Agreement and as indicated in the construction contract, the prime contractor must post a copy of the Wage Determination and a copy of the DOL Davis-Bacon poster entitled “Employee Rights under the Davis-Bacon Act” (see Resources—**Resource 9.2** below for link) at the job site in a place that is easily accessible to all of the construction workers employed for the associated project. If the contractor requests additional classification(s) as described above, the contractor must also post a notice of the request and the associated wage decision on the job site.

- Submit the Labor Standards Record (Pre-Construction)

The LSO must submit the GLO Labor Standards Record (LSR) form to the GLO Grant Manager or upload in the GLO system of record if available. The GLO LSO will review the LSR and provide feedback as applicable. The LSR is required for each construction contract over \$2,000 and must be submitted prior to the first Request for Payment for construction work.

A separate LSR must be submitted for each prime construction contractor and must reflect all subcontractors listed under that prime contractor. Financial Interest Reports are also required for all construction contractors and subcontractors and must be submitted to the GLO as part of the contract startup phase. If subcontractors change or are identified during the construction period, the Supplemental LSR must be submitted to record subcontractor changes or additions.

The Labor Standards Record must be submitted after the preconstruction conference is held and before submission of the first Request for Payment for associated construction work.

**Best Practice:** Subrecipients should submit the complete and signed LSR upon construction contract execution and determination of the construction start date to allow sufficient time for GLO review and revisions, if necessary. Allow at minimum 5-7 business days for GLO review and feedback. LSR’s submitted less than five days prior to submission of the associated request for payment may lead to delays in processing or withdrawal of the request for payment.

- Submit Weekly Payrolls During Construction

Contractors and subcontractors are required to pay prevailing wage rates as identified in the associated Wage Determination for the project. A weekly certified payroll report must be submitted to the Subrecipient (owner of the project) by the prime contractor

and all subcontractors for the duration of the construction term. Employers may use the DOL's Wage and Hour Division Payroll Form WH-347, similar form, or an electronic format, if all required information is provided.

Form WH-347 is available online at the Davis-Bacon and Labor Standards (DBLS) website at [https://www.hud.gov/program\\_offices/\\_bacon\\_and\\_labor\\_standards/olrform](https://www.hud.gov/program_offices/_bacon_and_labor_standards/olrform) and on DOL's website at <https://www.dol.gov/whd/forms/wh347.pdf>.

Page 2 or the reverse side of Form WH347 may be used as the "Statement of Compliance" or another document that includes the same language. The owner or authorized designee must sign the "Statement of Compliance" in ink.

The certified payroll reports must be maintained in the Subrecipient file, beginning with the first week of construction on the project and for every week thereafter until the work is complete. The contractor must submit the payroll reports promptly after the end of each week for review by the LSO.

- Review Certified Payroll Reports During Construction (Post Start of Construction)

The Certified Payroll Reports submitted by the prime contractor and subcontractors must be reviewed by the LSO in a timely manner to ensure that:

- Workers are properly listed on the payroll for the days, work classification, and rate of pay (compare to interview forms).
- The payrolls are complete and signed.
- Employees are paid no less than the prevailing wage rate for the work classification reported.
- Apprentice and trainee certifications are submitted; and
- Employee payroll deduction authorizations for other deductions are submitted, if applicable.

The LSO is responsible for ensuring compliance and identifying any corrective action. The LSO must ensure the original certified payroll reports are maintained in the local subrecipient file and include evidence of payroll reviews. In addition, the LSO must complete and sign GLO LSO Payroll Certification Form to accompany each subrecipient request for payment that includes construction costs to which DBRA is applicable.

- Submit a Labor Standards Officer Payroll Certification Form (Post Start of Construction)

The LSO must submit a GLO LSO Payroll Certification Form (see Resources—**Resource 9.3** at the end of the chapter) with each subrecipient payment request for the applicable time period. This certification is completed by the LSO stating that all payrolls for the prime and subcontractors have been reviewed for the time period covered in the

request are in compliance with DBRA. The signed original weekly certified payroll report for all prime and subcontractors must be kept in the local Subrecipient file. If a Request for Payment is submitted for a period in which there is no Davis Bacon Related Act covered construction, then a Payroll Certification Form is not required. For GLO programs that perform reviews for all certified payroll reports before payment, the LSO Payroll Certification Form is not mandatory,

- **Conduct Employee Interviews During Construction (Post Start of Construction)**

The LSO or designee must conduct on-site visits to the project site and interview a proportion of the workers concerning their employment on the project. Interviews must be recorded on the GLO Record of Employee Interview form and compare the information collected and activity observed with the Wage Determination, certified payrolls, and other related documentation to ensure the contractor is in compliance with DBRA. If any discrepancies are identified, the interviewer must inform the subrecipient of any corrective action.

#### **On-site Interviews**

Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the LSO, GLO's representative, HUD representative or DOL representative.

Employee Interviews should be representative of all classifications of employees on the project. The number and quality of interviews documented should reflect that the LSO is diligently ensuring that workers are paid at least minimum prevailing wage rates, the interviews are confidential, and the employee will be asked the type 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 on-going work. Interview information must be recorded on the Record of Employee Interview. If employees are not available for interview during the LSO's on-site visit, the LSO must document the date of the on-site visit, the reason employees were not available, and the attempt to obtain the required information through other means, such as sending questionnaires by mail.

- **Submit Construction Completion Reports—GLO Certificate of Construction Completion (COCC) & GLO Final Wage Compliance Report (FWCR) (Post Start of Construction)**

Upon completion of the construction contract, after all the work has been completed including punch list items, a final inspection must be conducted, and all parties must agree the work is acceptable. A final inspection is required for each prime construction contract and documents to support acceptance of the project must be signed by the subrecipient, engineer, and contractor. The GLO Certificate of Construction Completion (COCC) form is required to document construction is complete and must reflect the final construction costs, including all change orders and performance metrics. The COCC must match the information entered on the Final Wage Compliance Report.

A Final Wage Compliance Report (FWCR) signed by the LSO is required for each prime

construction contract subject to Davis-Bacon Labor Standards. wage restitution and liquidated damages are documented on the FWCR, if applicable. The LSO must ensure the required corrective action has been taken and appropriately documented in the subrecipient file.

**Note:** The COCC and FWCR must be received and accepted by GLO in addition to the Record Drawings or As-Built Plans prior to reimbursement of the final draw for each prime construction contract and the final engineering draw. These documents are required to satisfy the construction contractor's obligations and must be completed prior to the contractor's final payment.

**Best Practice:** Subrecipients should submit the COCC, FWCR, and As-Built drawings for review in advance of submitting the final construction retainage draw to allow sufficient time for GLO review and revisions, if necessary. Allow at minimum 5-7 business days for GLO review and feedback. COCC, FWCR, and As-Built drawings submitted less than five days prior to draw submission of the associated request for payment may lead to delays in processing or withdrawal of the request for payment.

## 9.4 Restitution for Underpayment of Wages

Where underpayments of wages have occurred, the employer must pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less any permissible and authorized deductions.

### Notification to the prime contractor

The LSO must notify the prime contractor in writing of any underpayments found during payroll or other reviews.

The notice must describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments and is responsible to the LSO for ensuring 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.

### 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.

### Overtime and underpayment

Overtime hours are defined as all hours worked on the work site more than 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits. If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

- If the project is greater than \$100,000 and is therefore subject to Contract Work Hours and Safety Standards Act (CWHSSA) *overtime* requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project.
- The employer will also be liable to United States for liquidated damages (overtime violation dollar penalty) computed at \$32 per day per violation. This rate is applicable on or after 1/16/2024 or as amended annually by DOL and defined at <https://www.dol.gov/agencies/whd/government-contracts/cwhssa>.
- Once liquidated damages are computed, the subrecipient shall notify the prime contractor in writing of the fine and wage restitution owed. A check (payable to GLO) in the amount of the liquidated damages must be forwarded to GLO to be processed for HUD:

Employers are not required to submit checks (certified or otherwise) to GLO to correct underpayments, unless requested. The employer reports and certifies restitution payments on a correction payroll, which is kept in local files.

**Checks will be sent to:**

Texas General Land Office

**Attn:** Agency Receiver

PO Box 12873

Austin, TX 78711-2873

- The employer may request a reduction or waiver of liquidated damages under one or both of the following reasons:
  - The computation of liquidated damages is incorrect; and/or
  - the violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer
- The employer’s request must be made in writing within 60 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted; and
- If Liquidated Damages are equal to or less than \$100.00, the employer is encouraged to seek a reduction or waiver of liquidated damages from the GLO Labor Standards Officer.

**Correction payrolls**

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, 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 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 to be paid. A verified signed Payroll must be sent to the LSO.

### Review of corrected payroll

The LSO will review the corrected 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, and documented on a supplemental correction payroll, within 30 days.

### Inability to locate worker

Sometimes wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The LSO will continue to attempt to locate workers entitled to restitution for 3 years after the completion of the project. After 3 years, any amount remaining in the account for workers restitution will be credited and/or forwarded by the LSO to GLO-CDR.

## 9.5 Labor Disputes

### Administrative Review on Labor Standards Disputes

The labor standards clauses in the CDBG-DR and/or CDBG-MIT Subrecipient Agreement and DOL regulations provide for administrative review of issues by GLO-CDR where there is a difference of views between the LSO and any employer. The most common situations include:

- Findings of underpayment: Compliance reviews and other investigations may result in findings of underpayment. The employer will have an opportunity to provide additional information to the LSO that may explain apparent inconsistencies and/or resolve the discrepancies.
- Withholding: The LSO may cause withholding of payments due to the prime contractor to ensure the payment of wages which are believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor.

**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.**

### Deposits and Escrows

If corrective actions or disputes continue after the project is completed, provisions must be made to ensure that funds are available to pay any wage restitution that is found due. In these cases, GLO-CDR allows the project to proceed to final closings and payments *provided* the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the LSO. When a final decision is rendered, the LSO makes disbursements from the account in



accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- Where the parties have agreed to the amount of wage restitution that are due, *but* the employer has not yet furnished evidence that all the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers not supported by adequate documentation of payment. As proper documentation is received, amounts corresponding to the documentation are returned to the prime contractor. Amounts for any workers who cannot be located are held in the escrow account for three years and disbursed as described above (See Restitution on Underpayment of Wages).
- 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 is 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 prime contractor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above. If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained earlier.
- Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed 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.

## 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 DBLS will be ineligible (debarred) to participate in any DBLS contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the LSO or can be initiated by the DOL on its motion. Debarment proceedings are described at 29 CFR 5.12.

## 9.6 Exemptions

With the exception of the situations listed in this section, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under the CDBG-DR or CDBG-MIT program shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

The following contracts and activities are exempt from Davis-Bacon labor standards requirements except where indicated:

- Prime Construction contracts of \$2,000 or less.
- Single-Family, Owner-Occupied Residences.
- Rehabilitation of residential properties designed for fewer than eight (8) families.
- Volunteer labor as long as nominal benefits cannot be tied to productivity, hours worked, or in any way be construed as wages.
- Convict labor is subject to DBRA, there are no exemptions for convict/prison inmate labor on DBRA covered contracts unless another exemption applies.
- Employees of the Local Subrecipient (Force Account labor).
- Only private or local funds used for rehab or construction unrelated to the CDBG-DR project.
- Holding/maintaining properties (land bank).
- Some Demolition Activities may be exempt. However, demolition, clearance, and debris removal are covered by DBRA when planned as part of the same construction contract or subsequent construction is contemplated as part of a future construction project under another DBRA eligible activity.
- Construction Contracts of \$100,000 or less are exempt from Contract Work Hours and Safety Standards Act (CWHSSA) only.
- Professional service activities such as acquisition, engineering, architectural, and administrative services are exempt and do not require an LSR.
- Labor/installation charges on equipment or materials purchases if that portion of the contract is less than 13 percent of the total cost of the item(s) purchased.
- Construction work performed by a public utility (such as a city owned electric company or drainage district) extending its own utility system. \*

\*The subrecipient must notify its GLO Grant Manager in writing if pursuing this method prior to construction. GLO may request documentation prior to authorizing payment that the price charged by the public utility is less than the price that would be anticipated if the construction had been procured by sealed bids.

## 9.7 Recordkeeping Requirements

To show compliance with Davis Bacon regulations, the subrecipient must maintain a file with the following documentation for each construction contract (see the links in Resources—**Resource 9.3** at the end of this chapter to find forms online): (*\*Must be submitted to GLO*)

- Appointment of Labor Standards Officer. \*
- Copy of Wage Determination(s).
- Ten-Day Confirmation Form(s).
- Additional Classification request(s). \*

- Eligibility Verification printouts from SAM (for each prime and/or subcontractor).
- Pre-construction conference report, meeting minutes and sign-in sheet(s).
- Labor Standards Record. \*
- Supplemental LSR, if any. \*
- Financial Interest Report. \*
- Section 3 Contractor Report for contracts over \$100,000. \*
- Payrolls, with evidence of compliance review.
- Employee interviews.
- Compliance with Section 3, Fair Housing construction, EEO, and HUB mandates.
- Interim inspection reports (Housing Only).
- Wage violations (amount of restitution, number of hours and days).
- Liquidated damages fees and documentation (if any); \*
- Certificate(s) of Construction Completion; \* and
- Final Wage Compliance Report(s)\*

## 9.8 Multifamily Construction

CDBG-DR and/or CDBG-MIT housing construction consisting of properties with 8 or more residential units is subject to Davis Bacon regulations. Subrecipient of CDBG-DR and/or CDBG-MIT housing-related projects meeting DBRA criteria are subject to Labor Standards requirements contained within this chapter and the following, as applicable:

- For the State Affordable Rental Program, the LSO must obtain the construction Notice to Proceed (NTP) from the appropriate GLO staff or agency designee prior to any project construction activity. The NTP authorizes project construction to start and locks in the general wage decision issued for the project. Wages must be re-verified if construction does not begin within 10 days of the NTP.

The subrecipient must also adhere to all provisions of the Subrecipient Agreement and comply with all local, state, and federal laws, rules, and regulations and agencies as referenced in the Land Use Restriction Agreement (LURA).

## 9.9 Laws and Regulations

- DAVIS-BACON ACT (40 USC Chapter 31, Subchapter IV)
- CONTRACT WORK HOURS & SAFETY STANDARDS ACT (CWHSSA)
- COPELAND (ANTI-KICKBACK) ACT (18 USC 874; 40 USC 3145)

## FAIR LABOR STANDARDS ACT

The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). 29 CFR Parts 1, 3, 5, 6 and 7. See Resources—**Resource 9.4** at the end of this chapter for links to Davis-Bacon Laws and Regulations.

## 9.10 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 9.1	System for Award Management (SAM)	<a href="https://www.SAM.gov/content/home">https://www.SAM.gov/content/home</a>	N/A
Resource 9.2	Employee Rights Under the Davis Bacon Act Poster	<a href="https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf">https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf</a>	N/A
Resource 9.3	Required Subrecipient Davis-Bacon Forms:	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Appointment of Labor Standards Officer	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Labor Standards Officer Payroll Certification	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Ten Day Confirmation Form	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Request for Additional Classifications and Rates	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards

	Pre-Construction Conference Report	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Labor Standards Record	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Financial Interest Report	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Procurement
	Record of Employee Interview	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Final Wage Compliance Report	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	US Dept of Labor Wage and Hour Division Payroll Form WH-347	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Construction Contract Change Order	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Certificate of Construction Completion	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
<b>Resource 9.4</b>	Davis-Bacon Laws and Regulations:		
	US DOL Davis-Bacon and Related Acts	<a href="https://www.dol.gov/agencies/whd/government-contracts/construction">https://www.dol.gov/agencies/whd/government-contracts/construction</a>	N/A

	Contract Work Hours and Safety Standards Act as Amended (CWHSSA)	<a href="https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/safe01.pdf">https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/safe01.pdf</a>	N/A
	Copeland (Anti-Kickback) Act	<a href="https://webapps.dol.gov/elaws/elg/kickback.htm">https://webapps.dol.gov/elaws/elg/kickback.htm</a>	N/A
	Fair Labor Standards Act	<a href="https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf">https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf</a>	N/A
	29 CFR	<a href="https://www.ecfr.gov/cgi-bin/text-idx?SID=2fbe76ba1ebf6d4c076736e8f3a82dcd&amp;mc=true&amp;tpl=/ecfrbrowse/Title29/29cfrv1_02.tpl#0">https://www.ecfr.gov/cgi-bin/text-idx?SID=2fbe76ba1ebf6d4c076736e8f3a82dcd&amp;mc=true&amp;tpl=/ecfrbrowse/Title29/29cfrv1_02.tpl#0</a>	N/A

*\*Note: Individuals have reported a better experience when using **Internet Explorer or Safari** to view files. If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with **Adobe Acrobat**. If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>*

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).