

Davis Bacon and the Related Acts (DBRA)

Labor Standards Provisions:
LABOR REQUIREMENTS
IN HUD PROGRAMS



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2016 Community Development Training Conference

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Huron, Ohio

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Labor Standards and Enforcement

Overview

The Office of Labor Standards and Enforcement (OLSE) is responsible for HUD's overall compliance with the Federal prevailing wage requirements applicable to HUD-assisted and insured housing and community development programs covered under the Davis-Bacon and Related Acts. Labor Standards and Enforcement also administers Federal prevailing wage requirements applicable to maintenance employees of public housing agencies and Tribally Designated Housing Entities.

I Want to

Find a Training Seminar
Determine if HUD is Holding Backwages for Me
File a Federal Labor Standards Complaint
Sign Up for Labor Standards Enforcement Updates
Get Involved in My Community

Resources

Labor Standards and Enforcement HQ Staff
Labor Standards and Enforcement Regional/Field Office Staff
Labor Standards and Enforcement Forms

OLSE Library

Information for Construction and Maintenance Laborers and Mechanics Working on HUD-Assisted Projects
Revised: A Practical Guide for States, Indian Tribes and Local Agencies (09/2011)
Contractors Guide for Prevailing Wage Requirements

Related Links

Common HUD Terms and Acronyms
DOL Davis-Bacon and Related Acts Homepage
HUD Regulations HUD Forms
On-Line Debarment List (also see OTM #16 in the OLSE Library)
Davis-Bacon Wage Decisions/DOL Regulations

In Focus

NEW: Department of Labor Prevailing Wage Seminars Schedule for 2015
Revised: A Practical Guide for States, Indian Tribes and Local Agencies (09/2011)
OLSE flash! bulletins available on-line
HUD launches Labor Standards and Enforcement bulletins for OLSE update subscribers. Sign up for OLSE updates.
Online Debarment List (also see OTM #16 in the OLSE Library)
HUD Handbook 1344.1 Rev 2, Federal Labor Standards Requirements in Housing and Community Development Programs
Contractor's Guide to Prevailing Wage Requirements

Federal Labor Standards Coverage in Major HUD Programs

A. HOUSING.

1. FHA non-single family mortgage insurance under the National Housing Act: Secs. 207; 213; 220; 221(d)(3), (d)(4), and (h)(1); 231; 232; 233; 234(d); 241 (supplemental loans only); and 242.

- a. **Statute:** Sec. 212 of the National Housing Act (for all programs except Sec. 241); Sec. 241(b)(5) (for Sec. 241 supplemental loans).
- b. **Regulation:** §200.33; §241.645 for supplemental energy loans in non-insured projects.
- c. **Contract Form:** HUD-92554M (*formerly HUD-2554*). See also references to the HUD-92554M in the MAP Guide, Secs. 12.2.B, and 12.16.C (August 2011).

d. **Notes:**

- (1) **Threshold:** DB applicability threshold for Sec. 220 and Sec. 233 is dwellings designed for 12 or more families. Threshold for Sec. 235(h)(1) is dwelling designed for 8 or more families. No threshold for Sec. 221(d)(3) and (d)(4).

Section 241 supplemental loans: are subject to DB only if the original mortgage was covered by DB – see §200.33(a)(2). [HUD regulations (§241.645) also require DB on supplemental loans for energy related loans in non-insured projects; however, this program has not been implemented].

- (2) **Overtime:** CWHSSA overtime provisions do not apply where no assistance other than mortgage insurance is given; however, under Sec. 212 of the National Housing Act, Sec. 242 workers must receive time-and-a-half overtime after 8 hours per day or 40 hours per week.
- (3) **Volunteers:** The Secretary may waive DB for volunteers in certain cases under Secs. 221(d)(3) and (d)(4), 221(h)(1), 231, 232, 236 and 242.
- (4) **Section 242:** The HUD Office of Insured Healthcare Facilities is responsible for labor standards administration and enforcement relating to projects insured under Section 242.

2. Section 202 Supportive Housing for the Elderly

- a. **Statute:** Sec. 202(j)(5) of the Housing Act of 1959
- b. **Regulation:** §891.155(d); see also §891.540(c) (loan disbursement procedures).

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- c. **Contract Form:** HUD-92554M
 - d. **Notes:**
 - (1) Threshold: DB applies to construction of housing with 12 or more assisted units.
 - (2) Volunteers: Exempt.
3. **Assisted Living Conversion Program (ALCP) for Sec. 202 Projects**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively through language in Notices of Funding Availability (NOFAs).
 - b. **Regulation:** See relevant NOFA.
 - c. **Notes:** NOFAs apply DB and CWHSSA overtime requirements where the total cost of physical conversion to an Assisted Living Facility (ALF) (and including any additional renovation work undertaken at the same time) is \$500,000 or more (including ALCP grant funds, owner funds, or third party funds ...) and in which the ALF portion of the project is 12 units or more.
4. **Sec. 811 Supportive Housing for Persons with Disabilities**
- a. **Statute:** Sec. 811(j)(6) of the Cranston-Gonzalez National Affordable Housing Act.
 - b. **Regulation:** §891.155(d); see also §891.540(c) (loan disbursement procedures).
 - c. **Contract Form:** HUD-92554M
 - d. **Notes:**
 - (1) Threshold: DB applies to construction of housing with 12 or more assisted units. A group home for persons with disabilities is not covered by DB (see §891.155(d)(1)).
 - (2) Volunteers: Exempt.
5. **Housing Finance Agency Risk-Sharing Program for insured affordable multifamily project loans (Sec. 542(c) of the HCD Act of 1992)**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively.
 - b. **Regulation:** §266.225; see also §§266.210(e) and 266.215(b).
 - c. **Notes:**
 - (1) Threshold: Under §266.225, DB applies if:
 - (i) advances are insured;
 - (ii) the project involves new construction or substantial rehabilitation; and,
 - (iii) the project will contain 12 or more units.
 - (2) Volunteers: Regulatory exemption for volunteers.
 - (3) Delegation: HUD may delegate to the HFA routine DB administration and enforcement functions.
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6. **Assisted Housing Drug Elimination Program**
 - a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively.
 - b. **Regulation:** §761.40(a)
 - c. **Notes:**
 - (1) **HUD wage rates:** The regulation also mentions HUD-determined prevailing wage rates for non-routine maintenance. This provision applies to the public housing component only, not to non-public assisted or insured housing.
 - (2) **Volunteers:** Exempt.

7. **Property Disposition: Up-Front Grants**
 - a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed in Grant Agreement.
 - b. **Regulation:** No Davis-Bacon requirement in regulation; see Article XIII of Sample Up-Front Grant Agreement.

8. **Property Disposition – Section 8 Project-based Assistance**
 - a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
 - b. **Regulation:** §886.313(c)(2)
 - c. **Notes:**
 - (1) **Threshold:** DB is applicable to projects with 9 or more Section 8-assisted units.
 - (2) **Volunteers:** Except.

9. **Repairs on HUD-Owned and HUD-MIP Property**
 - a. **Statute:** The Davis-Bacon Act (applies to direct Federal contracts in excess of \$2000 for construction, alteration, and/or repair).

10. **Housing Programs Not Covered**
 - a. Single family FHA mortgage insurance programs.
 - b. Sec. 223(f) mortgage insurance for refinancing (in general).
 - c. Sec. 8 contract renewals under Mark-to-Market program without new FHA mortgage insurance.

B. **PUBLIC HOUSING**

1. **Public Housing, including HOPE VI beginning in FY 2000**
 - a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
 - b. **Regulation:**
 - (1) Modernization -- §968.110(e) and (f)
 - (2) Mixed finance -- §941.610(a)(8)(vi)
 - (3) Preemption of higher State or local prevailing wage rates on development, maintenance and modernization (PHA projects) - - §965.101

- c. **Contract Forms:** HUD-5370 (Construction contracts >\$100,000, see Clauses 46 and 47); HUD-5370-EZ (Construction contracts \$2,000 - \$100,000, see Clause 14); HUD-5370-C (Non-construction contracts, see Section II).
- d. **Notes:**
- (1) Davis-Bacon - DB rates apply to public housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to public housing maintenance work (including “non-routine” maintenance, as defined in Modernization regulations in §968.105).
 - (3) Force Account - DB and HUD wage rates apply to PHA employees (“force account” workers) as well as to contractor employees.
 - (4) Threshold: No unit threshold for DB or HUD wage rate applicability to public housing. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (5) Preemption: Prevailing rates determined under State law that are higher than applicable DB or HUD-determined rates are inapplicable and may not be enforced. But PHA may choose to pay higher rates or bargain with unions to pay higher rates. See §965.101.
 - (6) Volunteers: Exempt.
2. **Section 8 Housing**
- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
 - b. **Regulation:** For tenant-based assistance that is project-based by a PHA: §983.11(c)(7); see also §983.104(b)(2)(v) (evidence of completion). See also Sec. 8 SRO regulations below, §882.804(b), applicable to McKinney Act SRO programs administered by CPD.
 - c. **Contract Form:** HUD-52531-B (Part II of the Agreement to Enter Into Housing Assistance Payments Contract) -- see Sections 2.4 and 2.8.
 - d. **Notes:**
 - (1) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
 - (2) Volunteers: Exempt.
3. **Public Housing Drug Elimination Program**
- a. **Statute:** No Davis-Bacon provisions under the Public and Assisted Housing Drug Elimination Act of 1990; however, Davis-Bacon or HUD-determined wage rates apply to public housing under Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
 - b. **Regulation:** §761.40(a)

- c. **Notes:** DB applies to physical improvements *except* that HUD-determined wage rates apply to non-routine maintenance on public housing.

C. **COMMUNITY PLANNING AND DEVELOPMENT**

1. **CDBG/NSP/Sec. 108/EDI/BEDI**

- a. **Statute:** Sec. 110 of Housing and Community Development Act of 1974.
- b. **Regulation:** §570.603; see also §570.200(c)(3) (public improvements not initially assisted with CDBG)
- c. **Contract Form:** Form HUD-4010, Federal Labor Standards Provisions
- d. **Notes:** DB applies only when construction work is financed in whole or in part with Title I assistance (i.e., CDBG/Sec. 108 loan guarantee/EDI/BEDI). Examples: Financing includes use of Title I assistance in permanent take-out loan, where Title I loan is known or contemplated when construction financing is arranged. Financing includes use of Title I assistance to pay principal or pay or subsidize interest on construction loan. Use of Title I assistance solely for non-construction expenses -- e.g., purchase of land, architect and engineering fees -- does not trigger DB.
- (1) **Threshold:** DB is applicable to residential property containing 8 or more units. Mixed-use property containing less than 8 units is covered unless entire rehab is clearly limited to residential portion.
- (2) **Volunteers:** Exempt.

2. **HOME**

- a. **Statute:** Sec. 286 of the HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez National Affordable Housing Act).
- b. **Regulation:** §92.354
- c. **Contract Form:** Form HUD-4010, Federal Labor Standards Provisions
- d. **Notes:** Unlike CDBG, DB is triggered regardless of whether HOME assistance finances construction or non-construction expenses (e.g., purchase of land).
- (1) **Threshold:** DB is applicable to contracts for the construction of affordable housing with 12 or more HOME-assisted units. Applicability depends on how many HOME-assisted units are under the contract; not how many units are in the HOME project.
- (2) **Sweat Equity:** DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.

- (3) Volunteers: Exempt.
3. **McKinney Act SRO Provisions**
- a. **Section 8 assistance for SRO dwellings under Title IV, Subtitle E of the McKinney-Vento Homeless Assistance Act (formerly Stewart B. McKinney Homeless Assistance Act)**
- (1) **Statute**: no statutory reference to labor standards – governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act.
- (2) **Regulation**: §882.804(b)
- (3) **Contract Form**: HUD-52538-B, Part II of Agreement to Enter Into Housing Assistance Payments Contract (Sec. 8 Moderate Rehab Program), see Clause 2.3.
- (4) **Notes**:
- (i) **Threshold**: DB is applicable to projects with 9 or more Section 8-assisted units.
- (ii) **Volunteers**: Exempt.
- b. **Shelter Plus Care component for moderate rehabilitation for SROs under Title IV, Subtitle F, Part 5 of the McKinney-Vento Homeless Assistance Act.**
- (1) **Statute**: No statutory reference to labor standards – governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act.
- (2) **Regulation**: §882.804(b), which is made applicable by Shelter Plus Care regulations in §582.100(d)(5)
- (3) **Contract Form**: Contact SNAPS; there is a contract form but it does not have a form number.
- (4) **Notes**:
- (i) **Threshold**: DB is applicable to projects with 9 or more Section 8-assisted units.
- (ii) **Volunteers**: Exempt.
4. **Loan Guarantee Recovery Fund (Church Arson)**
- a. **Statute**: No statutory requirement for Davis-Bacon; Davis-Bacon imposed administratively.
- b. **Regulation**: §573.9(d)
- c. **Notes**:
- (1) **Threshold**: DB is applicable to the rehabilitation of residential property only if the property contains 8 or more units.
- (2) **Volunteers**: Exempt.
5. **CPD Programs Not Covered**
- a. Housing Opportunities for Persons with AIDS (HOPWA)

- b. McKinney Act programs other than SRO moderate rehab, i.e., Emergency Shelter Grants, Supportive Housing, Shelter Plus Care other than SRO
- c. Rural Housing and Economic Development Assistance
- d. Self-Help Homeownership Opportunity Program (SHOP)
- e. Social Service Block Grants distributed in connection with Empowerment Zones
- f. Economic Development Initiative/Special Purpose (EDISP) Grants funded in appropriations acts

D. NATIVE AMERICAN PROGRAMS

1. Indian Housing Block Grants (IHBG) under NAHASDA

- a. **Statute:** Sec. 104(b) of NAHASDA, as amended.
- b. **Regulation:** §1000.16
- c. **Contract Forms:** HUD-5370 (Construction contracts >\$100,000, see Clauses 46 and 47); HUD-5370 (Construction contracts \$2,000 - \$100,000, see Clause 14); HUD-5370-C (Non-construction contracts, see Section II). Note: Clauses for inapplicability of higher State or tribal wage rates should be deleted; it does not apply to NAHASDA programs).
- d. **Notes:**
 - (1) Davis-Bacon - DB rates apply to affordable housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to affordable housing “operations”, which includes maintenance.
 - (3) Force Account - DB and HUD wage rates apply to TDHE employees (“force account” workers) as well as to contractor employees.
 - (4) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.
 - (5) Tribally-determined Prevailing Wage Rates: Exclusion from DB and HUD rates for contracts or agreements covered by laws or regulations adopted by an Indian tribe that require payment of not less than prevailing wages as determined by the Indian tribe.
 - (6) Threshold: No unit threshold for DB applicability to IHBG assisted housing. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (7) Volunteers: Exempt.
 - (8) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.

2. **Housing Assistance for Native Hawaiians under Title VIII of NAHASDA**
- a. **Statute:** Sec. 805(b) of NAHASDA
 - b. **Regulations:** §1006.345
 - c. **Notes:**
 - (1) Davis-Bacon - DB rates apply to affordable housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to affordable housing “operations”, which includes maintenance.
 - (3) Force Account - DB and HUD wage rates apply to Department of Hawaiian Home Lands employees (“force account” workers) as well as to contractor employees.
 - (4) Tribally-determined Prevailing Wage Rates: Exclusion from DB and HUD rates for contracts or agreements covered by laws or regulations adopted by an Indian tribe that require payment of not less than prevailing wages as determined by the Indian tribe.
 - (5) Threshold: No unit threshold for DB applicability to Native Hawaiian housing assistance. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (6) Volunteers: Exempt.
3. **ONAP Programs Not Covered**
- a. Indian CDBG (Davis-Bacon waived under statutory authority to waive; see 24 CFR 1003.603)
 - b. Sec. 184 Indian housing loan guarantees

SAMPLES OF PROJECTS AND CATEGORIES*

(*Excerpts from "Davis Bacon Construction Wage Determinations Manual of Operations")

Building Construction	Heavy
<ul style="list-style-type: none"> • Apartment buildings 5 stories and above • Non-Residential use (offices, etc.) • Nursing Homes • Arenas/Auditoriums/Civic Centers • Automobile parking garages • Hospitals • Industrial/Institutional buildings • Libraries/Schools • Mausoleum • Hotels/motels • Museums • Office Buildings • Police Stations • Post Offices • City Hall/Courthouses • Detention Facilities • Dormitories • Fire Stations • Restaurants • Subway Stations • Shopping centers • Theaters • Water and sewage treatment plant (building only) 	<ul style="list-style-type: none"> • Bridges • Canals • Demolition (not incidental to construction) • Docks • Drainage or dredging projects • Electrification projects • Flood control • Land leveling/reclamation • Locks, waterways/unsheltered piers • Pipelines • Pumping stations • Railroad construction • Reservoirs/viaducts • Sewage, collection, and disposal lines • Water and sewage treatment plants • Shoreline maintenance • Swimming pools • Subways (not the buildings) • Tunnels • Water mains • Wells
Residential Construction	Highway
<ul style="list-style-type: none"> • Apartment buildings 4 floors or less¹ • Single family homes • Town or row houses • Mobile home developments • Multifamily houses 	<ul style="list-style-type: none"> • Alleys • Bituminous treatments • Concrete pavements • Curbs • Excavation and embankment • Fencing (highway) • Grade crossing elimination (over & under passes) • Parking lots • Resurfacing streets and highways/Paving • Roadways and shoulders • Guardrails • Highway signs • Highway Bridges • Medians • Trails
<p>1 For Davis Bacon purposes, the exterior height of residential buildings in terms of stories is a primary consideration. The following criteria will apply in order to determine height.</p> <ul style="list-style-type: none"> • Basement- stories below grade used for storage, parking, mechanical system/ equipment, etc. are considered basement stories are not used in determining height. • First story- A lowermost story is considered a story if it contains the main entrance; is used for apartment space in a way substantial similar to upper floors; contains at least 50% living accommodations or related non-residential uses 	

- subject to variations in classification in exceptional instances as deemed by the U.S. DOL (e.g. "character similar," etc.)
- NOTE: There are some instances in which "LANDSCAPING" is a separate, sub-category.

HUD > Program Offices > Labor Standards and Enforcement > Labor Relations Letter December 2, 1996

Labor Relations Letters

Date: December 2, 1996 (Rev 1)

Letter No. LR-96-03

Subject: Application of Department of Labor guidance concerning "projects of a similar character".

- I. DOL All Agency Memoranda #130 and #131.
- II. Definitions: "Incidental" versus "substantial".
- III. HUD policy and practice.
- IV. Considerations for residential construction.
- V. Mixed-use projects.
- VI. Important Notes about Multiple Schedules.
- VI. Case Studies.

U.S. Department of Labor (DOL) All Agency Memoranda (AAMs) #130 and #131 provide guidance as to identifying character of work (e.g., building, residential, heavy, highway) for the purpose of applying Davis-Bacon wage determinations. These memoranda are focused primarily toward public improvements such as water and sewage treatment plants and roadways rather than housing development projects. Questions, however, are raised from time to time concerning the application of AAMs 130 and 131 to HUD housing programs. The purpose of this *Letter* is to review the DOL policies in the context of HUD programs, in particular housing development.

The following is provided with the cooperation and advice of the DOL.

I. DOL All Agency Memoranda

AAM 130 provides definitions for four (4) broad categories of construction: residential; building; heavy and highway. AAM 130 generally states that a "project" is classified as belonging in *one* of the 4 categories and that a "project" would consist of *all construction necessary to complete a facility*. In a footnote, AAM 130 states that a multiple classification may be appropriate if there are substantial portions of the project that would fall into different categories (e.g., building *and* heavy).

AAM 131 provided clarification to AAM 130 by explaining that a literal application of AAM 130 guidance may be inappropriate in certain cases. AAM 131 emphasizes in particular the complexities inherent in the application of multiple wage schedules and cautions that agencies should proceed with multiple

schedules ¹ only after advance consultation. It is further stated that area practice is determinative for any question about the proper classification of construction.

We would note that the primary thrusts of AAM 130 and 131 are not to advise on the issuance of multiple schedules or to define "incidental" or "substantial". The overall purpose of these AAMs is to ensure the appropriate selection of the *one* category of construction that best suits the proposed work. We would also note that none of the examples given in AAM 130 or 131 where multiple schedules might be appropriate is a housing project.

II. Definitions: "Incidental" vs "substantial" Incidental items do not alter the overall character of the project but are installed for the purpose of the total project to which they relate in function. Incidental items are subject to the same wage schedule that applies to the overall project.

In addition to "incidental" relative to function, AAMs 130 and 131 discuss "incidental" relative to cost. Twenty percent of the project cost is offered as a rough guide for what is "incidental" in relation to the overall project, which *would not* warrant a multiple schedule.

Substantial is defined in terms of relative cost: *more* than 20% of the total project cost. In recognition that very large projects may contain components of a different character that may be sufficiently "substantial" to warrant a separate schedule even though these components may not exceed 20% of the total project cost, a \$1 million or more absolute cost was offered as a supplementary guide to help define "substantial."

III. HUD policy and practice.

HUD policy and practice is consistent with AAMs 130 and 131 in that HUD seeks to identify the (one) category of construction that best suits the proposed work and issues the (one) corresponding Davis-Bacon wage determination. Most HUD-assisted projects fit cleanly in a single construction category and incidental items are not "substantial." As a result, the issuance of multiple schedules has been rare for HUD-assisted construction projects and would represent a departure from the norm. (Some geographic areas may experience more multiple schedule activity because, for example, DOL wage decisions for heavy and highway construction are issued separately.)

IV. Considerations for residential construction

Residential construction is defined in AAM 130 as projects "involving the construction, alteration, or repair

of single family houses or apartment buildings of no more than 4 stories in height. *This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks*" (emphasis added).

The primary component, which determines the character of the project and the type of wage schedule that applies, is the housing. Elements such as site work, parking areas, etc., are *incidental* in that their purpose is to support the housing. Other items which may be incidental to housing construction include swimming pools, community buildings, storage sheds, carports and on-site management offices. However, such items constructed alone, without accompanying housing construction, would be the primary component and, accordingly, the character of the project and the type of wage schedule that applies would be determined on that item alone.

Recently on some projects involving housing development it has been estimated that the cost of certain incidental items such as site improvement might exceed the DOL guide for "substantial" by absolute or relative cost. The mere existence of cost that may be "substantial," however, does not justify the use of multiple wage schedules.

Generally, any housing development project (4 stories or less) is classified as "residential." This classification is not altered by the cost of incidental items, even if such costs exceed the guide(s) for "substantial." Except in the most extraordinary circumstances, such as where local industry practice clearly demonstrates otherwise, only residential wage schedules shall be issued for housing development projects. Multiple schedules shall not be issued because of the incidental items noted above and other similar items. HUD Field Labor Standards and Enforcement staff shall consult with the appropriate Headquarters Labor Standards and Enforcement representative in advance where the issuance of multiple schedules is contemplated for a housing development project.

V. Mixed-use projects.

Mixed-use projects are those which contain elements of different construction characters *but* these

different elements are *not incidental* to each other². Examples include a housing project that contains both low-rise and highrise buildings; and a 4-story apartment building with commercial space on the first floor. The different elements in these cases are components that each have their own purpose - they are not merely supportive of another element's function. Therefore, multiple schedules are appropriate where mixed-use projects are involved.

VI. Important Notes about Multiple Schedules:

- The project/contract specifications must clearly delineate the portions of the project subject to each wage decision issued.
- All wage decisions must be posted at the job-site with an explanation as to where each wage decision applies.
- The developer/prime contractor must agree to establish adequate controls to ensure that all laborers and mechanics are paid in accordance with the wage schedules.
- All employers (contractor, subcontractors, lower-tier subcontractors) must agree to prepare, submit and maintain accurate employee time and payroll records to demonstrate compliance with all wage decisions applicable to the project.
- *Use of multiple schedules is contingent upon the agreement and compliance with these conditions.*

VI. Case studies.

The following examples illustrate how the guidance in this *Letter* may be applied to various situations. And, how timely Labor Standards and Enforcement advice may relieve contractors and contracting agencies from inordinate administrative burdens. A description of the project is followed by the wage determination issuance decision and rationale.

1. a. **Project** The project involves the new construction of 60 family units in three 3-story walk-ups and 50 elderly units in a highrise building; other improvements include clearing and grading, streets, sewers, utilities, play areas, driveways, parking areas.

b. **Decision** Separate wage decisions, *residential* for the walk-ups and *building* for the highrise, may be issued for the construction of the buildings. These are distinguishable components which are substantial in their own right; neither can be considered "incidental" to the other, therefore, multiple wage decisions are issued *provided* that the contractor agrees to comply with the recordkeeping requirements in paragraph V above.

The site improvements must be considered as well. Since the improvements are incidental to the construction of the housing a separate wage decision need not be issued. To the extent that certain site improvements can be demonstrated to serve the walk-up buildings rather than the highrise building (e.g., parking areas, sidewalks, play areas dedicated to the family units) those site improvements may be

completed under the residential wage decision. The remainder of the improvements, i.e., those dedicated to the highrise and those common to both the family and elderly units must be completed using the building wage decision.

2. a. Project The project involves the rehabilitation of two large 4-story buildings containing retail/office space on the first floor and residential units on the upper floors. The residential units will each receive new interior walls, windows, doors, carpet, fixtures, appliances, and other finishings. Work in the retail/office spaces will include some electrical and HVAC upgrades, new windows, doors and other exterior finishings consistent with the improvements to the residential units. This work in the retail/office spaces represents 10% of the total rehabilitation costs on these structures.

b. Decision A single *residential* wage decision is issued for all work performed on the two 4-story buildings. Work on the first floor interiors and exteriors is incidental to the rehabilitation work on the upper three floors. This finding of incidental is additionally confirmed because the lower floor work represents less than 20% of the rehabilitation costs.

3. a. Project Assume the same project described in example #2 and add a 3-story parking garage that will be newly constructed adjacent to the two 4-story buildings to serve the residential and retail/office tenants, as well as hourly parking for the general public.

b. Decision The rehabilitation work would still be performed under a single residential wage decision. However, the parking garage would be subject to the *building* wage decision. The garage cannot be considered to be incidental to the rehabilitation work. The garage is substantial in its own right and has as its purpose a service well beyond the residential or retail/office tenants.

4. a. Project A public housing authority (PHA) has undertaken a 3 year comprehensive improvement program, e.g., CIAP project, at one of its larger family developments consisting of several 4-story walk-ups. The total program will involve rehabilitation to all of the housing units in varying degrees. For example, some units will require only cosmetic repairs and minor replacements which can be classified as nonroutine maintenance; other units will require extensive repairs including some "gut rehab," and others are being converted to accommodate larger families (e.g., 2-bedroom units grouped and converted into 5-bedroom units). Other improvements include sidewalk repairs, curb and gutter replacement, parking lot expansion and the installation of a security fence. The PHA has divided the "program" into phases so that the work will be more manageable and to minimize disruption to the residents. The first contract will be awarded for the security fence installation. Immediately thereafter, the PHA will advertise and award a contract for all of the rehabilitation work. The PHA is considering using its own work force to perform some of the work. The PHA sends a request for wage determination to the Labor Standards and Enforcement staff describing the work as "installation of security fence".

b. Discussion and Decision For this example, there could be several "right" answers. It would be correct to issue a *heavy* wage decision if the scope of work is limited to a security fence. The PHA's wage decision request and Labor Standards and Enforcement's response, however, may be shortsighted.

For example, if the PHA had grouped the security fence with a portion of the rehabilitation work (which calls for a residential wage decision), the security fence could be incidental to the residential work and performed under the same residential wage decision rather than a heavy wage decision (which often contains much higher wage rates). The same would be true for the sidewalks and other infrastructure improvements: combined with the rehabilitation work on the housing units, the infrastructure could be incidental to the residential work and performed under the same wage decision ³.

Client agencies may not fully grasp the impact of "phasing" and/or "packaging" certain work items. Labor Standards and Enforcement staff can play a significant role assisting client agencies, like PHAs, to plan work activities to its best advantage.

In this example, Labor Standards and Enforcement could suggest to the PHA that the work items be grouped as described above to secure residential wage rates for those activities. In addition, since the PHA is contemplating using its own maintenance workers (i.e., force account) to perform a portion of the work, the most logical activities for this force account crew are those that can be characterized as *nonroutine maintenance*. These activities will be subject to HUD-determined wage rates which oftentimes are closely related (or even based upon) the maintenance wage rates issued to the PHA. Since PHA force account workers must receive no less than whatever rate is applicable to the type of work they perform, the potential similarity of these wage schedules (maintenance and nonroutine maintenance) may result in less administrative burden to the PHA.

5. a. Project A PHA submits a wage determination request for minor repairs and replacements in 20 housing units which can be characterized as nonroutine maintenance; however, two of those units also require more extensive repairs that exceed nonroutine maintenance parameters.

b. Decision There are two options available to the Labor Standards and Enforcement staff and the PHA. Following consultation and depending on the PHA's local circumstances and its own needs, all of the work may be performed under the appropriate Davis-Bacon wage decision (residential or building depending on number of stories, etc.) or the two units needing extensive repairs can be separated from the nonroutine maintenance work and be performed under a Davis-Bacon wage decision while the nonroutine maintenance is performed under a HUD-determined wage schedule. (Note advance consultation requirement for multiple schedules.) Work items that require Davis-Bacon wage rates shall not be considered incidental to other work subject to HUD-determined wage rates.

Any questions concerning this Letter may be directed to the Office of Labor Standards and Enforcement at (202)708-0370 or, in the case of HUD program participants, to the HUD Field Labor Standards and Enforcement Staff with jurisdiction for your area.

CIR GENERAL

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210



MAR 17 1978

ALL AGENCY MEMORANDUM NO. 130

TO: ALL GOVERNMENT CONTRACTING AGENCIES AND THE
DISTRICT OF COLUMBIA

FROM: XAVIER M. VELA
ADMINISTRATOR

SUBJECT: Application Of The Standard Of Comparison "Projects Of A
Character Similar" Under The Davis-Bacon And Related Acts

The purpose of this memorandum is to set forth present policies of the Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. The guidelines contained in the memorandum are to be used by the contracting agencies in selecting the proper schedule(s) of wage rates from the Federal Register and in instructing contractors regarding the application of multiple schedules. This memorandum supersedes All Agency Memorandum No. 68 (July 19, 1966).

The Davis-Bacon and related Acts require the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work to which the determination will be applied. The Department's Wage Appeals Board in a decision specifically relating to high-rise apartment buildings (WAB Case No. stated:76-11, dated January 27, 1977) stated:

The test of whether a project is of a character similar to another project refers to the nature of the project itself in a construction sense, not to whether union or nonunion wages are paid or whether union or nonunion workers are employed. Since the 1935 amendments to the Davis-Bacon Act, the statutory focus has always been on the character of the project itself rather than on who was employed on the project or how much he or she was being paid.

Again, in a decision relating to a water treatment plant project (WAB Case No. 77-20, dated September 30, 1977), the Board stated: "When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project."

Generally construction projects are classified as either Building, Heavy, Highway or Residential. 1/ Below are descriptions of these classifications with an illustrative listing of the kinds of projects that are generally included within the classification. Contracting agencies should utilize these descriptions and illustrations in carrying out their responsibilities, to insure a uniform and consistent administration of the Davis-Bacon and related prevailing wage statutes. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply. Note, however, that the descriptions and illustrations are guides. Contracting agencies should seek a determination from the Department of Labor on close questions or when the appropriate classification is in dispute. In making this determination where a project does not readily fall within any category, the Department of Labor may consider wages being paid on analogous projects as an indication of the proper category. As stated by the Wage Appeals Board in WAB Case No. 77-23, dated December 30, 1977: "Wages, however, are only one indication. It is also necessary to look at other characteristics of the project, including the construction techniques, the material and equipment being used on the project, the type of skills called for on the project work and other similar factors which would indicate the proper category of construction."

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 of such structures, the installation of utilities and the installation of equipment, both above and below grade

I/ Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. Where a project, such as a water and sewage treatment plant, includes construction items that in themselves would be otherwise classified, a multiple classification may be justified if such construction items are a substantial part of the project. Further, however, a separate classification would not apply if such construction items are merely incidental to the total project to which they are closely related in function. For example, water or sewer line work which is a part of a building project would not generally be separately classified. Where construction is "incidental" in function, 20 percent of project cost is used as a rough guide for determining when construction is also "incidental" in amount to the overall project.

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.

Examples

Alterations and additions to buildings
Apartment buildings (5 stories and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
City halls
Civic centers
Commercial buildings
Court houses
Detention facilities
Dormitories
Farm buildings
Fire stations
Hospitals
Hotels
Industrial buildings
Institutional buildings
Libraries
Mausoleums
Motels
Museums
Nursing and convalescent facilities
Office buildings
Out-patient clinics
Passenger and freight terminal buildings
Police stations
Post offices Power plants
Prefabricated buildings
Remodeling buildings
Renovating buildings
Repairing buildings
Restaurants
Schools
Service stations
Shopping centers
Stores
Subway stations
Theaters
Warehouses Water and sewage treatment plants (buildings only)

RESIDENTIAL CONSTRUCTION

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four(4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

Examples

Town or row houses
Apartment buildings (4 stories or less)
Single family houses
Mobile home developments
Multi-family houses
Married student housing

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 homogeneous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of 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.

Examples

Antenna towers
Bridges (major bridges designed for commercial navigation) 2/
Breakwaters
Caissons (other than building or highway)
Canals
Channels
Channel cut-offs
Chemical complexes or facilities (other than buildings)
Cofferdams
Coke ovens
Dams
Demolition (not incidental to construction)
Dikes
Docks
Drainage projects

2/ Major bridges contain elements of both heavy and highway construction.
See WAB Case No. 772 (October 21, 1977)

Page 5

Dredging projects
Electrification projects (outdoor)
Flood control projects
Industrial incinerators (other than building)
Irrigation projects
Jetties
Kilns
Land drainage (not incidental to other construction)
Land leveling (not incidental to other construction)
Land reclamation
Levees
Locks, waterways
Oil refineries (other than buildings)
Pipe lines
Ponds
Pumping stations (prefabricated drop-in units - not buildings)
Railroad construction
Reservoirs
Revetments
Sewage collection and disposal lines
Sewers (sanitary, storm, etc)
Shoreline maintenance
Ski tows
Storage tanks
Swimming pools (outdoor)
Subways (other than buildings)
Tipples
Tunnels
Unsheltered piers and wharves
Viaducts (other than highway)
Water mains
Water-way construction
Water supply lines (not incidental to building)
Water and sewage treatment plants (other than buildings)
Wells

HIGHWAY CONSTRUCTION

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

Examples

Alleys
Base courses
Bituminous treatments
Bridle paths
Concrete pavement
Curbs
Excavation and embankment (for road construction)

Page 6

Fencing (highway)
Grade crossing elimination (overpasses or underpasses)
Guard rails on highway
Highway signs
Highway bridges (overpasses; underpasses; grade separation)
Medians
Parking lots
Parkways
Resurfacing streets and highways
Roadbeds
Roadways
Runways
Shoulders
Stabilizing courses
Storm sewers incidental to road construction
Street Paving
Surface courses
Taxiways
Trails

In applying these guidelines contracting agencies are reminded that they have the authority only in the first instance to designate the appropriate wage schedule(s) from the Federal Register, and to determine the application of multiple schedules issued by the Wage and Hour Division in project wage determinations. Any questions regarding the application of the guidelines set forth in this memorandum to a particular project or any disputes regarding the application of the wage schedules are to be referred to the Wage and Hour Division for resolution, and the instructions of the Wage and Hour Division are to be observed in all instances. Furthermore, where multiple schedules are issued by the Wage and Hour Division, they must be utilized in the contract specifications unless the agency requests and receives a change in the wage determination from the Wage and Hour Division. To ensure that appropriate schedules are issued, contracting agencies are advised to provide the Wage and Hour Division in their requests for wage determinations with a sufficiently specific description of the project to be able to determine its character.

DAVIS BACON WAGE DETERMINATIONS

www.WDOL.gov



Wage Determinations OnLine.gov

Providing public access to federal wage determinations and related information.

WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce.

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Service Contract Act

- **Selecting SCA WDs**
- **e98**
- **Archived WDs**
- **WDs due to be revised**

Davis-Bacon Act

- **Selecting DBA WDs**
- **Archived WDs**
- **WDs due to be revised**

Related Information

- **Agency Labor Advisors**
- **Library**
- **DOL Wage and Hour Website**

Select DBA WD by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD. For example, VA3, NOT VA030003 or MD150 NOT MD030150.)

OR

By Selection criteria beginning with:

State:

County:

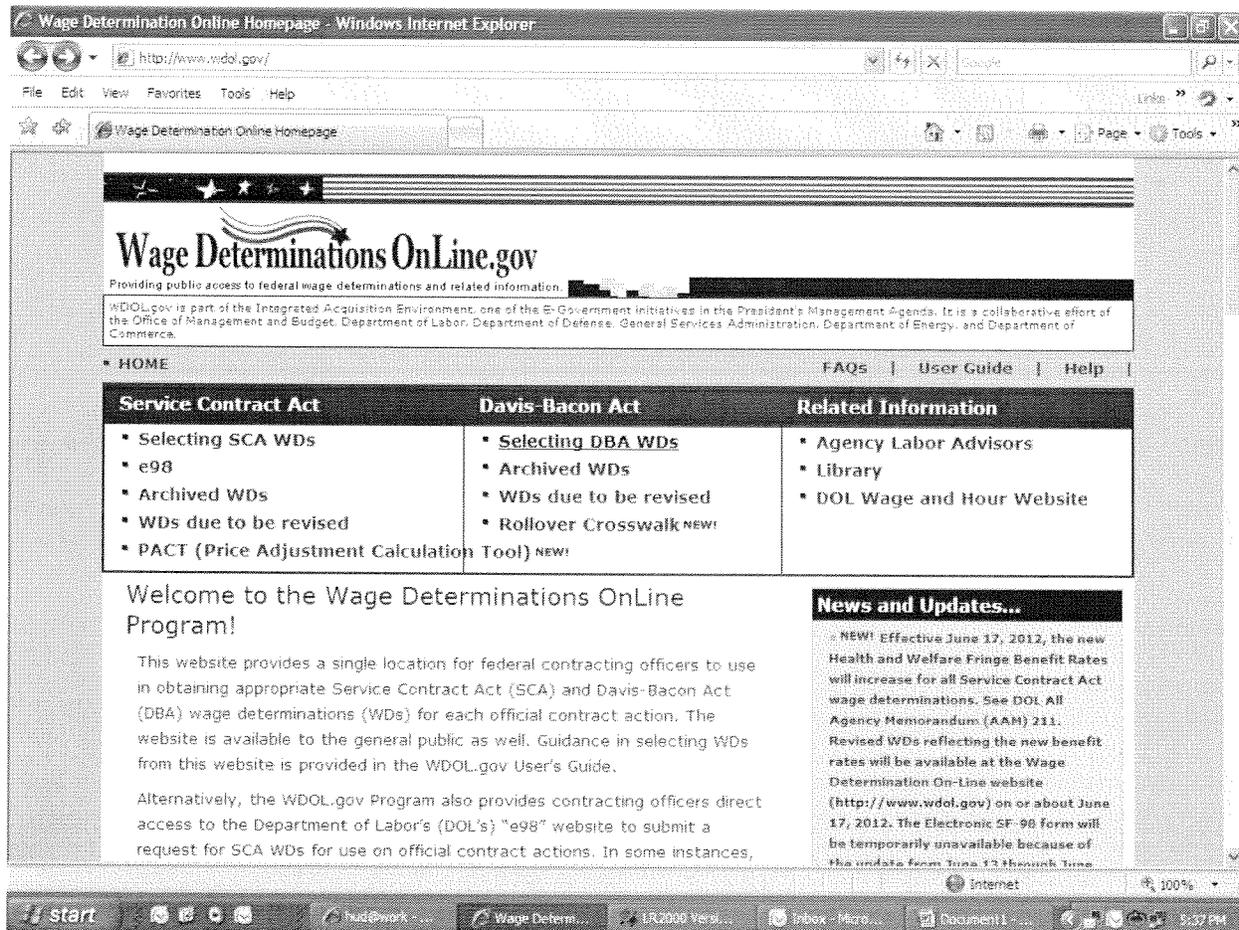
Construction Type: (Types of Construction Under DBA)

WD Number:

[Back](#)

How to Pull a Wage Decision

1. Go to www.wdol.gov



2. Look at the Firm Commitment for:

- Type of project (202 etc)
- Is it subject to Davis Bacon?
- How many floors?
- How many units?
- New construction/Renovation
- County/State

3. Determine what construction type the project is.

4. Fill in the State/County/Construction Type

5. Click on the Search button

How to Pull a Wage Decision

Wage Determinations Online - Windows Internet Explorer

http://www.wdol.gov/dba.aspx

File Edit View Favorites Tools Help

Wage Determinations Online

Select DBA WD by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD.
For example, VA3, NOT VA030003 or MD150 NOT MD030150.)

OR

By Selection criteria beginning with:

State:

County:

Construction Type: (Types of Construction Under DBA)

WD Number:

[Back](#)

Browse by state/territory.

[View the latest modifications and additions to the Davis-Bacon Database.](#)

[View the modifications or additions to Davis-Bacon Wage Determinations due to be issued and published on WDOL.gov.](#)

[View Archived Wage Determinations](#)

[Help](#) | [Privacy & Security Statement](#) | [Quality and Disclaimers](#) | [Contact Webmaster](#)

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How to Pull a Wage Decision

6. Print the wage decision

Wage Determinations Online - Windows Internet Explorer
http://www.wdol.gov/dba.aspx

Wage Determinations Online

Providing public access to federal wage determinations and related information.

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Service Contract Act	Davis-Bacon Act	Related Information
<ul style="list-style-type: none">Selecting SCA WDse98Archived WDsWDs due to be revisedPACT (Price Adjustment Calculation Tool) NEW!	<ul style="list-style-type: none">Selecting DBA WDsArchived WDsWDs due to be revisedRollover Crosswalk NEW!	<ul style="list-style-type: none">Agency Labor AdvisorsLibraryDOL Wage and Hour Website

CAUTION: Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

Selecting DBA Wage Decisions

The Wage Determination you have requested is below.

Please scroll down to review the WD carefully to ensure that it is appropriate for the specific contract action.

General Decision Number: WI120058 07/06/2012 WI58

State: Wisconsin

Construction Type: Residential

County: Milwaukee County in Wisconsin.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family

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General Decision Number: IL070039 07/27/2007 IL39 ← **Wage Decision Number**

Superseded General Decision Number: IL20030039

State: Illinois

Construction Type: Residential ← **Category**

County: Shelby County in Illinois.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number Publication Date

0 02/09/2007
1 06/29/2007
2 07/06/2007
3 07/13/2007
4 07/27/2007

← **Modification and Date Published**

* BRIL0013-003 05/01/2007

← **Classification; union local; date updated**

MOULTRIE AND SHELBY COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 25.34	13.60

* CARP0347-007 05/01/2007

	Rates	Fringes
Carpenter (Batt Insulation) (including Drywall).....	\$ 19.01	13.91

ELEC0146-006 09/01/2006

	Rates	Fringes
Electrician.....	\$ 18.43	7.20+3%

ENGI0965-007 05/01/2007

CHRISTIAN AND SHELBY COUNTIES

	Rates	Fringes
Backhoe.....	\$ 27.05	14.44

LABO0171-004 05/01/2004

	Rates	Fringes
Laborer, Unskilled.....	\$ 21.20	10.35

PAIN0288-004 05/01/2007

DE WITT, MOULTRIE, PIATT, and SHELBY COUNTIES

	Rates	Fringes
Painter		
Brush, Roller over 50 ft....	\$ 26.55	11.30
Paperhanger and Drywall		
Taping.....	\$ 25.55	11.30
Spray and Sandblasting.....	\$ 26.30	11.30
Spray over 50 ft.....	\$ 27.30	11.30

 * PLAS0103-007 05/01/2002

SHELBY (Excludes the towns of Cowden, Herrick, Lakewood, Moweaqua, Oconee, Shelbyville, Tower Hill, & Westervelt) COUNTY:

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 22.50	9.75

 * PLAS0539-004 05/01/2004

SHELBY (including the towns of Cowden, Herrick, Lakewood, Moweaqua, Oconee, Shelbyville, Tower Hill, & Westervelt) COUNTY:

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 21.70	10.55

 PLUM0065-005 06/16/2007

	Rates	Fringes
Plumber (Excluding HVAC).....	\$ 26.50	12.92

 * SHEE0218-007 06/01/2007

	Rates	Fringes
Sheet Metal Worker (Incl. HVAC).....	\$ 21.00	10.19

 SUIL1996-028 03/14/1996 ← **"SU"- SURVEY Not covered by a union local**

	Rates	Fringes
Rofer (including Built Up, Composition and Single Ply).....	\$ 12.67	

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
 =====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

Where/how to appeal a decision or wage

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

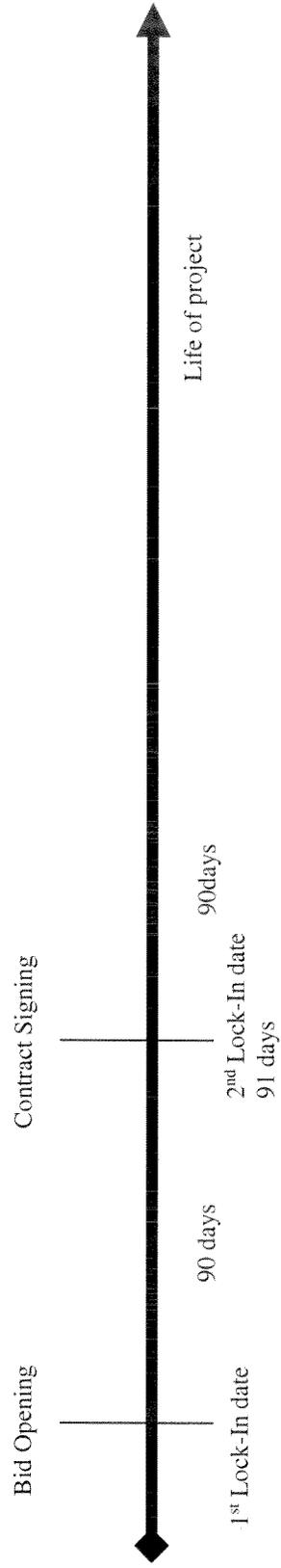
4.) All decisions by the Administrative Review Board are final.

=====
END OF GENERAL DECISION

LOCK-IN-DATES: HUD GRANTS (non-FHA projects)

FIRST LOCK-IN DATE: When **BIDS** are opened.

SECOND LOCK-IN DATE: Only if *more* than 90 days have passed from the **BID OPENING** to the **CONTRACT AWARD DATE**.



Code of Federal Regulations
Title 29- Labor, Volume 1
Part 1—Procedures for Predetermination of Wage Rates
Section 1.6 Use and effectiveness of wage determinations.

- (C) (3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if notice of such actions is published before contract award (or the start of construction where there is no contract award) except as follows:
- (i) In the case of contracts entered into pursuant to competitive bidding procedures, a modification, notice of which is published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the find is inserted in the contract file.
 - (iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.
 - (iv) If under paragraph (c) (3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (C) (3) (ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modification, notice of which is published in the Federal Register prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90 day period from the Administrator.

Contract Standards with Federal Labor Provisions

Multi Family Projects

- **(HUD-92554M replaced HUD-2554) - Supplementary Conditions of the Contract for Construction**

City Entitlements - This is the form that would be used for CPD, ICDBG, HOME funds etc.

- **(HUD-4010) - Federal Labor Standards Provisions**

Public Housing/Housing Commission - The two below forms are used for public housing (difference between forms is dollar thresholds)

- **(HUD-5370) - General Conditions of the Contract for Construction**
- **(HUD-5370-C) - General Conditions for Non-Construction Contracts - Section I , Section II**
- **(HUD-5370-EZ) - General Contract Conditions for Small Construction/Development Contracts**

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.

A. 1. (i) Minimum Wages. 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 conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) 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) (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; and

(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 and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the 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, 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 under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and 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 1215-0140.)

(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 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the 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 Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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, 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 1215-0140 and 1215-0017.)

(ii) (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 shall 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 <http://www.dol.gov/esa/whd/forms/wh347instr.htm> 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 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 1215-0149.)

(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.

(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 231 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 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 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 journeyman'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, fringes 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 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. (i) Certification of Eligibility. 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) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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 (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 (1) of this paragraph, in the sum of \$10 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 (1) of this paragraph.

(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 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 (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (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 (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 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 Title 29 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 USC 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.



Office of Labor Relations
LABOR RELATIONS LETTERS

Date: November 15, 2006

Letter No. LR 2006-03

Subject: Incorporation of Federal labor standards provisions and prevailing wage decisions into bid specifications and contracts

- I. Purpose**
- II. Federal labor standards provisions (HUD Forms)**
- III. Federal prevailing wage decisions**
- IV. Methods of incorporation**

I. Purpose

The purpose of this Letter is to explain HUD policy and to provide guidance for HUD staff and program participants regarding acceptable methods for incorporating Federal labor standards clauses and prevailing wage decisions into bid specifications and contracts for construction work subject to Davis-Bacon wage rates and maintenance work subject to HUD-determined prevailing wage rates.

Many HUD programs require the payment of Federal prevailing wage rates. Covered construction work is subject to prevailing wage rates determined by the Department of Labor (DOL) pursuant to the Davis-Bacon Act. Covered maintenance work (e.g., public and Indian housing operations) is subject to prevailing wage rates determined or adopted by HUD.

When covered construction or maintenance work will be performed by contract, the agency or other entity contracting for the work must incorporate certain mandatory Federal labor standards provisions and the applicable Federal wage decision in bid specifications and contracts. This Letter will discuss the acceptable means by which these provisions and wage decisions may be incorporated into these documents.¹

II. Federal labor standards provisions (HUD Forms)

HUD has developed forms which contain the contract labor standards provisions required for construction work covered by Davis-Bacon wage rates, and for maintenance work covered by HUD wage rates. These forms are available on-line at HUDClips (www.hudclips.org/cgi/index.cgi), or in hard copy from HUD's Customer Service Center at

¹ Note that for the Indian Housing Block Grant program, Federal labor standards provisions and Federal wage decisions are not applicable to contracts that are covered by tribally-determined prevailing wage rates.

(800)767-7468.

These HUD forms are:

- (1) HUD-2554, Supplementary Conditions to the Contract for Construction [Housing programs – Davis-Bacon wage rates]
- (2) HUD-4010, Federal Labor Standards Provisions [Community Planning and Development programs – Davis-Bacon wage rates]
- (3) HUD-5370, General Conditions of the Contract for Construction [Public Housing programs (must be used where the contract value is greater than \$100,000) – Davis-Bacon wage rates]
- (4) HUD-5370-EZ, General Conditions for Small Construction/Development Contracts [Public Housing programs (may be used in lieu of the HUD-5370 where the contract value is greater than \$2,000 but no more than \$100,000) – Davis-Bacon wage rates]
- (5) HUD-5370-C, General Conditions for Non-Construction Contracts, Section II [Public Housing programs – HUD wage rates]

Note: The Offices of Labor Relations and Native American Programs are working on HUD forms that will contain Federal labor standards provisions specific to Indian housing programs. Once approved and issued, these forms will also be available at HUDClips.

III. Federal prevailing wage decisions

This Letter discusses two types of Federal prevailing wage decisions: Davis-Bacon wage decisions that are applicable to construction work; and HUD wage decisions that are applicable to public and Indian housing maintenance work.

Davis-Bacon wage decisions are available on-line at www.wdol.gov or may be obtained through HUD's Labor Relations staff.

HUD wage decisions are not yet available on-line through HUD. These may be obtained in hard-copy from HUD's Labor Relations staff.

IV. Methods of incorporation

The labor standards clauses and wage decisions may be incorporated into bid specifications and contracts by one or more of the following methods:

- (1) Incorporation by “hard-copy”. The applicable HUD form and wage decision may be physically bound/attached to the contract (and bid specifications, if applicable) as issued by HUD (HUD forms and HUD wage decisions) or DOL (Davis-Bacon wage decisions).
- (2) Incorporation into other documents. The clauses/text of the applicable HUD form and wage decision may be incorporated into other documents (e.g., into the program participant’s own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference (see paragraph 3, below). The HUD program participant (e.g., State, local, or tribal agency; owner/developer) is responsible for the accuracy of the content. In all cases, the requirements imposed by the applicable HUD form and wage decision remain in force.
- (3) Incorporation by reference. The applicable HUD form and wage decision, or other documents containing the HUD form clauses/wage decision, may be incorporated into the contract and any bid specifications by reference. The reference must be specific as to the exact form or clauses that are incorporated, and where the form or clauses may be accessed or obtained (e.g., HUDClips, agency web site). Davis-Bacon wage decisions may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the applicable wage decision. HUD wage decisions are not available at HUD’s web site; however, a public or Indian housing agency may post any applicable HUD wage decision to its own web site and reference that site. Program participants must provide hard-copies of any referenced forms, clauses, and/or wage decisions on request.

Any questions regarding this Letter should be directed to the Regional or Field HUD Labor Relations staff responsible for the jurisdiction involved. A list of Labor Relations staff and contact information is available at the Office of Labor Relations web site: www.hud.gov/offices/olr

/S/

Edward L. Johnson

Director

Office of Labor Relations

Project Wage Rate Sheet

U.S. Department of Housing and Urban Development
Office of Labor Relations

PROJECT NAME:			WAGE DECISION NUMBER/MODIFICATION NUMBER:			
PROJECT NUMBER:			PROJECT COUNTY:			
WORK CLASSIFICATION	BASIC HOURLY RATE (BHR)	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	LABORERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Bricklayers			\$			\$
Carpenters			\$			\$
Cement Masons			\$			\$
Drywall Hangers			\$			\$
Electricians			\$			\$
Iron Workers			\$			\$
Painters			\$	OPERATORS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Plumbers			\$			\$
Roofers			\$			\$
Sheet Metal Workers			\$			\$
Soft Floor Layers			\$			\$
Tapers			\$			\$
Tile Setters			\$	TRUCK DRIVERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
OTHER CLASSIFICATIONS						
			\$			\$
			\$			\$
			\$			\$

ADDITIONAL CLASSIFICATIONS (HUD Form 4230-A)

WORK CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	DATE OF HUD SUBMISSION TO DOL	DATE OF DOL APPROVAL
			\$		
			\$		
			\$		
			\$		

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

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.

OVERTIME

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.

ENFORCEMENT

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.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



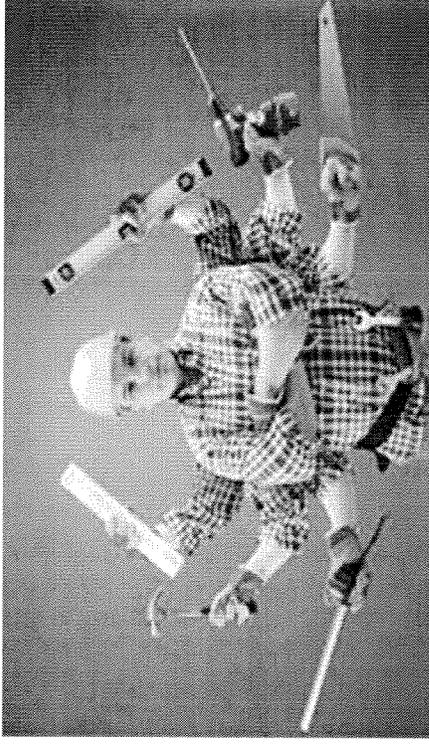
For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV



Check to see if the contractor is eligible!

This is a regulatory requirement and it will be checked during a monitoring review.

How?

Search records by entering their name
and their business' name into

www.SAM.gov

CONTRACTOR PROFILE FORM

(If additional space is needed, please attach a separate sheet.)

Project Name: _____ Project No. _____

Contractor/Business Name: _____

Business Address: _____

Telephone: (____) ____-____ Fax: (____) ____-____

Federal Tax ID #: _____ State Tax ID #: _____

Our contract is with _____ in the amount of \$ _____
 for _____
 (identify specific work to be performed)

Will any work be subcontracted out? Yes _____ No _____

If yes, to whom? _____

Person(s) authorized to sign (certify) Payroll reports: 1) _____
 2) _____

Identify work classification(s), base wage payment and total wage for each individual performing work on the project site. Attach additional sheets if necessary.

Work Classification from wage decision (include group number, if applicable)	Base Rate of Pay	Fringe	Total Wage (including Fringe)

The fringe benefit payment will be (check A, B or C below):

(A) _____ paid to a Union benefit plan (or plans) in the amounts indicated below:

Complete chart below or attach schedule of fringe benefits.

Benefit	Amount
Vacation and Holiday	
Union Dues	
Health and Welfare Benefits	
Pension	
Annuity	
Other (Identify)	

Benefit funds are deposited into accounts maintained by: _____

Address: _____

Telephone: (____) ____ - ____ Acct. #: (____) ____ - ____

(B) _____ paid directly (with the pay check) to each worker in the amount of \$_____

(C) _____ paid to an unfunded benefit plan (or plans) in the amounts indicated below:
*****If requested, copies of benefit plans to be submitted for review/approval.*****

Benefit	Amount
Pension	
Medical	
Dental	
Other (Identify)	

Benefit funds are deposited into accounts maintained by: _____

Address: _____

Telephone: (____) ____ - ____ Acct. #: _____

Is this a sole proprietorship or partnership business? Yes _____ No _____

Caucasian Owned – WBE _____ MBE _____

Owner/Principal Officer Name (Please Print)

Signature

Date

PAYROLL

(For Contractor's Optional Use; See instructions at www.dol.gov/whd/forms/wh347instr.htm)



Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1235-0008
 Expires: 02/28/2018

NAME OF CONTRACTOR OR SUBCONTRACTOR ADDRESS

PAYROLL NO. PROJECT AND LOCATION PROJECT OR CONTRACT NO.

FOR WEEK ENDING

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g. LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER

(2) NO OF WITHHOLDING EXEMPTIONS

(3) WORK CLASSIFICATION

(4) DAY AND DATE

(5) HOURS WORKED EACH DAY

(6) TOTAL HOURS

(7) RATE OF PAY

(8) GROSS AMOUNT EARNED

(9) DEDUCTIONS

FICA WITH-HOLDING TAX OTHER TOTAL DEDUCTIONS

NET WAGES PAID FOR WEEK

OT OR ST.

(over)

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, gathering existing data sources, gathering and maintaining 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

Public reporting burden for this collection of information is estimated to average 1 hour 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 non-sensitive and does not require special protection. This information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Employers engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the Secretary of Labor to all laborers and mechanics engaged on the construction work. On occasion, the applicable Davis-Bacon wage decision does not contain all of the work classifications and wage rates needed to complete the construction work. This information collection facilitates the addition of needed work classifications and wage rates for the construction work involved. This form is used by HUD and local agencies administering HUD programs to report employer request(s) for additional classification and wage rates so that an appropriate wage rate can be approved by the Department of Labor for the construction work. This information collection is required by Department of Labor regulations at 29 CFR 5.5. While no assurances of confidentiality are pledged to respondents, HUD generally discloses these data only in response to a Freedom of Information request.

Instructions

General:

Contractors/Employers: Do not need to complete this form. Submit a written, signed request to the responsible contracting agency naming the work classifications and the wage rates, including any fringe benefits, that are proposed.

Local Agency Staff: Complete items 2 through 10. Submit one copy of this form to the responsible HUD Labor Relations Office with a copy of the applicable Davis-Bacon wage decision and the written request from the employer naming the work classifications and wage rates that are proposed. (The employer's request must be made in writing and must be signed.)

1. For HUD or State CDBG Office use. Enter the name and address of HUD Office (or State CDBG office) submitting the report and to which the DOL reply should be sent.
2. Enter the name and number of the project or contract involved.
3. Enter the location of the project involved: city, county and state.
4. Describe the construction involved, e.g., new construction or rehabilitation, number and type of buildings, number of stories, number of units (as applicable). For example, New construction: 3 – 4-story buildings; 120 units.
5. Enter the character of construction as defined by DOL for Davis-Bacon prevailing wage rate purposes.
6. Enter the number of the Davis-Bacon wage decision applicable to the construction work. Include the number of wage decision modifications (if any) applicable to the work.
7. Enter the effective date of the wage decision for the project. (See DOL regulations at 29 CFR 1.6.)
8. Enter the work classifications and corresponding hourly basic wage rates and fringe benefit rates (if any) requested.
9. Self-explanatory.
10. If the requesting employer is not the prime contractor, enter the name and address of the subcontractor/employer making the request.

Remainder of Form: HUD Labor Relations/State CDBG use.

HUD Labor Relations/State CDBG Staff: Evaluate the employer's request against the criteria for approval (see DOL Regulations, 29 CFR Part 5, and related contract labor standards provisions). The criteria are reflected in "checklist" form to ensure that each factor is considered and to ensure that supporting documentation, including a copy of the applicable wage decision, is attached. Check the box next to each criterion that is met; do not check the box next to any criterion that is not met.

If the request meets all criteria, check the appropriate box, enter the name and telephone number of the HUD/State CDBG agency representative, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision and the written request from the employer involved.

If the request fails to pass all criteria, check the appropriate box, enter agency contact information, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision, the written request from the employer involved, *and* a cover letter explaining how the employer's request failed to meet one or more of the criteria.

Submission of Report

Completed forms shall be sent to: Branch of Construction Wage Determinations, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-3014, Washington, DC 20210.

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REPORT OF ADDITIONAL CLASSIFICATION AND RATE**

HUD FORM 4230A

OMB Approval Number 2501-0011
(Exp. 01/31/2010)

1. FROM (name and address of requesting agency)	2. PROJECT NAME AND NUMBER
	3. LOCATION OF PROJECT (City, County and State)

4. BRIEF DESCRIPTION OF PROJECT	5. CHARACTER OF CONSTRUCTION <input type="checkbox"/> Building <input type="checkbox"/> Residential <input type="checkbox"/> Heavy <input type="checkbox"/> Other (specify) <input type="checkbox"/> Highway
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6. WAGE DECISION NO. (include modification number, if any) <input type="checkbox"/> COPY ATTACHED	7. WAGE DECISION EFFECTIVE DATE
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8. WORK CLASSIFICATION(S)	HOURLY WAGE RATES	
	BASIC WAGE	FRINGE BENEFIT(S) (if any)

9. PRIME CONTRACTOR (name, address)	10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE (name, address)
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Check All That Apply:

- The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision.
- The proposed classification is utilized in the area by the construction industry.
- The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision.
- The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s).
- Supporting documentation attached, including applicable wage decision.

Check One:

- Approved, meets all criteria. DOL confirmation requested.**
- One or more classifications fail to meet all criteria as explained in agency referral. DOL decision requested.**

<div style="display: flex; justify-content: space-between;"> <div style="width: 40%; border-top: 1px solid black; text-align: center;"> Agency Representative <i>(Typed name and signature)</i> </div> <div style="width: 20%; border-top: 1px solid black; text-align: center;"> <i>Date</i> </div> </div> <div style="display: flex; justify-content: center; margin-top: 10px;"> <div style="width: 40%; border-top: 1px solid black; text-align: center;"> <i>Phone Number</i> </div> </div>	<p>FOR HUD USE ONLY</p> <p>LR2000:</p> <p>Log in:</p> <p>Log out:</p>
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Administrator's Interpretation No. 2015-1

July 15, 2015

Issued by ADMINISTRATOR DAVID WEIL

SUBJECT: The Application of the Fair Labor Standards Act's "Suffer or Permit" Standard in the Identification of Employees Who Are Misclassified as Independent Contractors.

Misclassification of employees as independent contractors is found in an increasing number of workplaces in the United States, in part reflecting larger restructuring of business organizations. When employers improperly classify employees as independent contractors, the employees may not receive important workplace protections such as the minimum wage, overtime compensation, unemployment insurance, and workers' compensation. Misclassification also results in lower tax revenues for government and an uneven playing field for employers who properly classify their workers. Although independent contracting relationships can be advantageous for workers and businesses, some employees may be intentionally misclassified as a means to cut costs and avoid compliance with labor laws.

The Department of Labor's Wage and Hour Division (WHD) continues to receive numerous complaints from workers alleging misclassification, and the Department continues to bring successful enforcement actions against employers who misclassify workers. In addition, many states have acknowledged this problematic trend and have responded with legislation and misclassification task forces. Understanding that combating misclassification requires a multi-pronged approach, WHD has entered into memoranda of understanding with many of these states, as well as the Internal Revenue Service.¹ In conjunction with these efforts, the Administrator believes that additional guidance regarding the application of the standards for determining who is an employee under the Fair Labor Standards Act (FLSA or "the Act") may be helpful to the regulated community in classifying workers and ultimately in curtailing misclassification.

The FLSA's definition of employ as "to suffer or permit to work" and the later-developed "economic realities" test provide a broader scope of employment than the common law control test. Indeed, although the common law control test was the prevalent test for determining whether an employment relationship existed at the time that the FLSA was enacted, Congress rejected the common law control test in drafting the FLSA. See *Walling v. Portland Terminal*

¹ Information about the Department's Misclassification Initiative and related memoranda of understanding is available at <http://www.dol.gov/whd/workers/misclassification/>.

Co., 330 U.S. 148, 150-51 (1947). Instead, the FLSA defines “employ” broadly as including “to suffer or permit to work,” 29 U.S.C. 203(g), which clearly covers more workers as employees, *see U.S. v. Rosenwasser*, 323 U.S. 360, 362-63 (1945).

In order to make the determination whether a worker is an employee or an independent contractor under the FLSA, courts use the multi-factorial “economic realities” test, which focuses on whether the worker is economically dependent on the employer or in business for him or herself.² A worker who is economically dependent on an employer is suffered or permitted to work by the employer. Thus, applying the economic realities test in view of the expansive definition of “employ” under the Act, most workers are employees under the FLSA. The application of the economic realities factors must be consistent with the broad “suffer or permit to work” standard of the FLSA.

This Administrator’s Interpretation first discusses the pertinent FLSA definitions and the breadth of employment relationships covered by the FLSA. When determining whether a worker is an employee or independent contractor, the application of the economic realities factors should be guided by the FLSA’s statutory directive that the scope of the employment relationship is very broad. This Administrator’s Interpretation then addresses each of the factors, providing citations to case law and examples. All of the factors must be considered in each case, and no one factor (particularly the control factor) is determinative of whether a worker is an employee. Moreover, the factors themselves should not be applied in a mechanical fashion, but with an understanding that the factors are indicators of the broader concept of economic dependence. Ultimately, the goal is not simply to tally which factors are met, but to determine whether the worker is economically dependent on the employer (and thus its employee) or is really in business for him or herself (and thus its independent contractor). The factors are a guide to make this ultimate determination of economic dependence or independence.³

I. The Economic Realities Factors Should Be Applied in View of the FLSA’s Broad Scope of Employment and “Suffer or Permit” Standard

² While most misclassified employees are labeled “independent contractors,” the Department has seen an increasing number of instances where employees are labeled something else, such as “owners,” “partners,” or “members of a limited liability company.” In these instances, the determination of whether the workers are in fact FLSA covered employees is also made by applying an economic realities analysis.

³ The analysis in this Administrator’s Interpretation should also be applied in determining whether a worker is an employee or an independent contractor in cases arising under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and the Family and Medical Leave Act (FMLA). MSPA expressly adopts the FLSA’s definition of “employ” as MSPA’s definition of “employ” and thus incorporates the broad “suffer or permit” standard for determining the scope of employment relationships. *See* 29 U.S.C. 1802(5) (“The term ‘employ’ has the meaning given such term under [the FLSA, 29 U.S.C. 203(g)].”); *see also* 29 C.F.R. 500.20(h)(1)-(4). The FMLA also adopts the FLSA’s definition of “employ” for employer coverage and employee eligibility purposes (subject to additional eligibility requirements). *See* 29 U.S.C. 2611(3); 29 C.F.R. 825.105.

The FLSA's definitions establish the scope of the employment relationship under the Act and provide the basis for distinguishing between employees and independent contractors. The FLSA defines "employee" as "any individual employed by an employer," 29 U.S.C. 203(e)(1), and "employer" as including "any person acting directly or indirectly in the interest of an employer in relation to an employee," 29 U.S.C. 203(d). The FLSA's definition of "'employ' includes to suffer or permit to work." 29 U.S.C. 203(g). This "suffer or permit" concept has broad applicability and is critical to determining whether a worker is an employee and thus entitled to the Act's protections.

The "suffer or permit" standard was specifically designed to ensure as broad of a scope of statutory coverage as possible. See *Rosenwasser*, 323 U.S. at 362-63 ("A broader or more comprehensive coverage of employees . . . would be difficult to frame."); *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992) ("employ" is defined with "striking breadth"). The Supreme Court "has consistently construed the Act 'liberally to apply to the furthest reaches consistent with congressional direction,' recognizing that broad coverage is essential to accomplish the [Act's] goal . . ." *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 296 (1985) (quoting *Mitchell v. Lublin, McGaughy & Assocs.*, 358 U.S. 207, 211 (1959)) (internal citation omitted).

The history of the "suffer or permit" standard highlights its broad applicability. Prior to the FLSA's enactment, the phrase "suffer or permit" (or variations of the phrase) was commonly used in state laws regulating child labor and was "designed to reach businesses that used middlemen to illegally hire and supervise children." *Antenor v. D & S Farms*, 88 F.3d 925, 929 n.5 (11th Cir. 1996). A key rationale underlying the "suffer or permit" standard in child labor laws was that the employer's opportunity to detect work being performed illegally and the ability to prevent it from occurring was sufficient to impose liability on the employer. See, e.g., *People ex rel. Price v. Sheffield Farms-Slawson-Decker Co.*, 225 N.Y. 25, 29-31 (N.Y. 1918). Thus, extending coverage of child labor laws to those who suffered or permitted the work was designed to expand child labor laws' coverage beyond those who controlled the child laborer, counter an employer's argument that it was unaware that children were working, and prevent employers from using agents to evade requirements.

Unlike the common law control test, which analyzes whether a worker is an employee based on the employer's control over the worker and not the broader economic realities of the working relationship, the "suffer or permit" standard broadens the scope of employment relationships covered by the FLSA. Indeed, the FLSA's statutory definitions (including "suffer or permit") rejected the common law control test that was prevalent at the time. As the Supreme Court explained:

[I]n determining who are "employees" under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance. This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.

Walling, 330 U.S. at 150-51 (internal citation omitted); *see also Darden*, 503 U.S. at 326 (FLSA’s “suffer or permit” standard for employment “stretches the meaning of ‘employee’ to cover some parties who might not qualify as such under a strict application of traditional agency law principles.”); *Antenor*, 88 F.3d at 933 (“Indeed, the ‘suffer or permit to work’ standard was developed to assign responsibility to businesses that did not directly supervise putative employees.”). Thus, the scope of employment under the FLSA is the “broadest definition that has ever been included in any one act.” *Rosenwasser*, 323 U.S. at 363 n.3 (quoting from statement of Senator Black on Senate floor).

An “entity ‘suffers or permits’ an individual to work if, as a matter of economic reality, the individual is dependent on the entity.” *Antenor*, 88 F.3d at 929. The Supreme Court and Circuit Courts of Appeals have developed a multi-factor “economic realities” test to determine whether a worker is an employee or an independent contractor under the FLSA. *See, e.g., Tony & Susan Alamo*, 471 U.S. at 301 (noting that the test of employment under the FLSA is economic reality); *Goldberg v. Whitaker House Co-op, Inc.*, 366 U.S. 28, 33 (1961) (the economic realities of the worker’s relationship with the employer control, rather than any technical concepts used to characterize that relationship). The factors typically include: (A) the extent to which the work performed is an integral part of the employer’s business; (B) the worker’s opportunity for profit or loss depending on his or her managerial skill; (C) the extent of the relative investments of the employer and the worker; (D) whether the work performed requires special skills and initiative; (E) the permanency of the relationship; and (F) the degree of control exercised or retained by the employer.⁴

In undertaking this analysis, each factor is examined and analyzed in relation to one another, and no single factor is determinative. The “control” factor, for example, should not be given undue weight. The factors should be considered in totality to determine whether a worker is economically dependent on the employer, and thus an employee. The factors should not be applied as a checklist, but rather the outcome must be determined by a qualitative rather than a quantitative analysis. The application of the economic realities factors is guided by the overarching principle that the FLSA should be liberally construed to provide broad coverage for workers, as evidenced by the Act’s defining “employ” as “to suffer or permit to work.”

In applying the economic realities factors, courts have described independent contractors as those workers with economic independence who are operating a business of their own. On the other hand, workers who are economically dependent on the employer, regardless of skill level, are employees covered by the FLSA. *See, e.g., Hopkins v. Cornerstone Am.*, 545 F.3d 338, 343 (5th Cir. 2008) (“To determine if a worker qualifies as an employee, we focus on whether, as a matter of economic reality, the worker is economically dependent upon the alleged employer or is instead in business for himself.”); *Baker v. Flint Eng’g & Constr. Co.*, 137 F.3d 1436, 1440 (10th Cir. 1998) (the economic realities of the relationship govern, and the focal point is whether the individual is economically dependent on the business to which he renders service or is, as a matter of economic fact, in business for himself); *Brock v. Superior Care, Inc.*, 840 F.2d 1054,

⁴ The number of factors and the exact articulation of the factors may vary some depending on the court. Courts routinely note that they may consider additional factors depending on the circumstances and that no one factor is determinative.

1059 (2d Cir. 1988) (“The ultimate concern is whether, as a matter of economic reality, the workers depend on someone else’s business . . . or are in business for themselves.”). “Ultimately, in considering economic dependence, the court focuses on whether an individual is ‘in business for himself’ or is ‘dependent upon finding employment in the business of others.’” *Scantland v. Jeffrey Knight, Inc.*, 721 F.3d 1308, 1312 (11th Cir. 2013) (quoting *Mednick v. Albert Enters., Inc.*, 508 F.2d 297, 301-02 (5th Cir. 1975)).

Moreover, the economic realities of the relationship, and not the label an employer gives it, are determinative. Thus, an agreement between an employer and a worker designating or labeling the worker as an independent contractor is not indicative of the economic realities of the working relationship and is not relevant to the analysis of the worker’s status. *See, e.g., Scantland*, 721 F.3d at 1311 (“This inquiry is not governed by the ‘label’ put on the relationship by the parties or the contract controlling that relationship, but rather focuses on whether ‘the work done, in its essence, follows the usual path of an employee.’”) (quoting *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947)); *Superior Care*, 840 F.2d at 1059 (“[E]mployer’s self-serving label of workers as independent contractors is not controlling.”); *Robicheaux v. Radcliff Material, Inc.*, 697 F.2d 662, 667 (5th Cir. 1983) (explaining that “[a]n employee is not permitted to waive employee status,” and affirming that welders were employees despite having signed independent contractor agreements). Likewise, workers who are classified as independent contractors may receive a Form 1099-MISC from their employers. This form simply indicates that the employer engaged the worker as an independent contractor, not that the worker is actually an independent contractor under the FLSA. *See Olson v. Star Lift Inc.*, 709 F. Supp. 2d 1351, 1356 (S.D. Fla. 2010) (worker’s receipt of Form 1099-MISC from employer does not weigh in favor of independent contractor status). “Economic realities, not contractual labels, determine employment status for the remedial purposes of the FLSA.” *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 755 (9th Cir. 1979).

The ultimate inquiry under the FLSA is whether the worker is economically dependent on the employer or truly in business for him or herself. If the worker is economically dependent on the employer, then the worker is an employee. If the worker is in business for him or herself (i.e., economically independent from the employer), then the worker is an independent contractor.

II. The Economic Realities Factors Guide the Determination Whether the Worker Is Truly an Independent Business or Is Economically Dependent on the Employer

To help illustrate how the economic realities factors should be properly used to determine whether a worker is truly in business for him or herself, each factor is discussed in detail below. The distinction between workers who are economically dependent on employers and the narrower subset of workers who are truly independent businesspersons must not be eclipsed by a mechanical application of the economic realities test. The analysis whether the factors are met must focus on whether the worker is economically dependent on the employer or truly in business for him or herself. As a district court held in an enforcement action by the Department:

These factors are to be considered and weighed against one another in each situation, but there is no mechanical formula for using them to arrive at the correct result. Rather, the factors are simply a tool to assist in understanding individual cases, with the ultimate goal

of deciding whether it is economically realistic to view a relationship as one of employment or not.

Solis v. Cascom, Inc., 2011 WL 10501391, at *4 (S.D. Ohio Sept. 21, 2011); *see also Scantland*, 721 F.3d at 1312 (the economic realities factors “serve as guides, [and] the overarching focus of the inquiry is economic dependence”); *Usery v. Pilgrim Equip. Co., Inc.*, 527 F.2d 1308, 1311 (5th Cir. 1976) (The economic realities factors “are aids—tools to be used to gauge the degree of dependence of alleged employees on the business with which they are connected. It is dependence that indicates employee status. Each test must be applied with that ultimate notion in mind.”).

Each factor of the economic realities test is discussed below in order to highlight, using case law and examples, relevant considerations for each factor and how each suggests whether or not there is an employment relationship.

A. Is the Work an Integral Part of the Employer’s Business?

The policy behind the “suffer or permit” statutory language was to bring within the scope of employment workers integrated into an employer’s business. If the work performed by a worker is integral to the employer’s business, it is more likely that the worker is economically dependent on the employer. *See Rutherford*, 331 U.S. at 729 (workers were employees in part because work was “part of the integrated unit of production”); *Donovan v. DialAmerica Mktg., Inc.*, 757 F.2d 1376, 1385 (3d Cir. 1985) (“workers are more likely to be ‘employees’ under the FLSA if they perform the primary work of the alleged employer”). A true independent contractor’s work, on the other hand, is unlikely to be integral to the employer’s business.⁵

Courts have found the “integral” factor to be compelling. *See, e.g., Dole v. Snell*, 875 F.2d 802, 811 (10th Cir. 1989) (holding that work performed by cake decorators “is obviously integral” to the business of selling cakes which are custom decorated); *Sec’y of Labor v. Lauritzen*, 835 F.2d 1529, 1537-38 (7th Cir. 1987) (“It does not take much of a record to demonstrate that picking the pickles is a necessary and integral part of the pickle business . . .”). Work can be integral to a business even if the work is just one component of the business and/or is performed by hundreds or thousands of other workers. For example, a worker answering calls at a call center along with hundreds of others is performing work that is integral to the call center’s business even if that

⁵ Given that the “integral” factor particularly encompasses the “suffer or permit” standard and that the Supreme Court in *Rutherford* found the workers in that case to be employees, in part because they were “part of the integrated unit of production,” whether the worker’s work is an integral part of the employer’s business should always be analyzed in misclassification cases. Although a few courts, such as the Fifth Circuit, do not include the “integral” factor in their recitation of the factors that comprise the economic realities test, they nonetheless recognize that the factors comprising the test are not exclusive. *See, e.g., Cromwell v. Driftwood Elec. Contractors, Inc.*, 348 Fed. App’x 57, 59 (5th Cir. 2009) (describing the five factors it identifies as “non-exhaustive”); *Brock v. Mr. W Fireworks, Inc.*, 814 F.2d 1042, 1043 (5th Cir. 1987) (same).

worker's work is the same as and interchangeable with many others' work. Moreover (and especially considering developments such as telework and flexible work schedules, for example), work can be integral to an employer's business even if it is performed away from the employer's premises, at the worker's home, or on the premises of the employer's customers.

Example:⁶ For a construction company that frames residential homes, carpenters are *integral* to the employer's business because the company is in business to frame homes, and carpentry is an integral part of providing that service.

In contrast, the same construction company may contract with a software developer to create software that, among other things, assists the company in tracking its bids, scheduling projects and crews, and tracking material orders. The software developer is performing work that is *not integral* to the construction company's business, which is indicative of an independent contractor.

B. Does the Worker's Managerial Skill Affect the Worker's Opportunity for Profit or Loss?

In considering whether a worker has an opportunity for profit or loss, the focus is whether the worker's managerial skill can affect his or her profit and loss.⁷ A worker in business for him or herself faces the possibility to not only make a profit, but also to experience a loss. The worker's managerial skill will often affect opportunity for profit or loss beyond the current job, such as by leading to additional business from other parties or by reducing the opportunity for future work. For example, a worker's decisions to hire others, purchase materials and equipment, advertise, rent space, and manage time tables may reflect managerial skills that will affect his or her opportunity for profit or loss beyond a current job.

On the other hand, the worker's ability to work more hours and the amount of work available from the employer have nothing to do with the worker's managerial skill and do little to separate employees from independent contractors—both of whom are likely to earn more if they work more and if there is more work available. *See Scantland*, 721 F.3d at 1316-17 (“Plaintiffs’ opportunity for profit was largely limited to their ability to complete more jobs than assigned, which is analogous to an employee’s ability to take on overtime work or an efficient piece-rate worker’s ability to produce more pieces.”). The effect on one’s earnings of doing one’s job well or working more hours is no different for an independent contractor than it is for an employee.

⁶ The addition or alteration of any of the facts in any of the examples could change the resulting analysis. Additionally, while the examples help illustrate the discussion of several common factors of the economic realities test, no one factor is determinative of whether a worker is an employee or independent contractor.

⁷ This factor is sometimes articulated as “the degree to which the worker’s opportunity for profit and loss is determined by the alleged employer,” *Herman v. Express Sixty-Minutes Delivery Serv., Inc.*, 161 F.3d 299, 303 (5th Cir. 1998), or simply as “the worker’s opportunity for profit or loss,” *Baker*, 137 F.3d at 1440. This factor should not focus, however, just on whether there is opportunity for profit or loss, but rather on whether the worker has the ability to make decisions and use his or her managerial skill and initiative to affect opportunity for profit or loss.

Those considerations are not the product of exercising managerial skill and do not demonstrate that the worker is an independent contractor. As one court said:

There was no opportunity for increased profit or loss depending upon an alleged employee's managerial skill. While the alleged employees were free to work additional hours to increase their income, they had no decisions to make regarding routes, or acquisition of materials, or any facet normally associated with the operation of an independent business.

Cascom, 2011 WL 10501391, at *6; *see also Scantland*, 721 F.3d at 1317 (“An individual’s ability to earn more by being more technically proficient is unrelated to an individual’s ability to earn or lose profit via his managerial skill, and it does not indicate that he operates his own business.”); *Martin v. Selker Bros., Inc.*, 949 F.2d 1286, 1294 (3d Cir. 1991) (opportunity for profit or loss must depend on managerial skills to indicate independent contractor status); *Snell*, 875 F.2d at 810 (cake decorators’ “earnings did not depend upon their judgment or initiative, but on the [employer’s] need for their work”).⁸

Consistent with determining whether the worker is in business for him or herself, it is important not to overlook whether there is an opportunity for loss, as a worker truly in business for him or herself faces the possibility of experiencing a loss. *See, e.g., Snell*, 875 F.2d at 810 (possibility of loss is a risk usually associated with independent contractor status, but there was no way for cake decorators to experience a loss, and possible reduction in earnings was not the same as a loss); *Lauritzen*, 835 F.2d at 1536 (migrant farm workers had no possibility for loss of investment, only loss of wages, indicating that they were employees). In sum, in order to inform the determination of whether the worker is in business for him or herself, this factor should not focus on the worker’s ability to work more hours, but rather on whether the worker exercises managerial skills and whether those skills affect the worker’s opportunity for both profit and loss.

Example: A worker provides cleaning services for corporate clients. The worker performs assignments only as determined by a cleaning company; he does not independently schedule assignments, solicit additional work from other clients, advertise his services, or endeavor to reduce costs. The worker regularly agrees to work additional hours at any time in order to earn more. In this scenario, the worker *does not exercise managerial skill* that affects his profit or loss. Rather,

⁸ In *Chao v. Mid-Atlantic Installation Servs., Inc.*, 16 Fed. App’x 104, 106-07 (4th Cir. 2001), the Fourth Circuit identified “the business acumen with which the Installer makes his required capital investments in tools, equipment, and a truck” and the “decision whether to hire his own employees or to work alone” as indicative of the managerial skill that suggests independent contractor status. The court also identified the workers’ skill in meeting technical specifications and their ability to control earnings by working more or fewer hours as indicative of managerial skill. *Id.*; *see also Express Sixty-Minutes*, 161 F.3d at 304 (relying on workers’ “ability to choose how much they wanted to work” as indicative of managerial skill). These latter considerations do not helpfully distinguish between workers who are in business for themselves and those who are economically dependent on the employer.

his earnings may fluctuate based on the work available and his willingness to work more. This lack of managerial skill is indicative of an employment relationship between the worker and the cleaning company.

In contrast, a worker provides cleaning services for corporate clients, produces advertising, negotiates contracts, decides which jobs to perform and when to perform them, decides to hire helpers to assist with the work, and recruits new clients. This worker *exercises managerial skill* that affects his opportunity for profit and loss, which is indicative of an independent contractor.

C. How Does the Worker's Relative Investment Compare to the Employer's Investment?

Courts also consider the nature and extent of the relative investments of the employer and the worker in determining whether the worker is an independent contractor in business for him or herself. The worker should make some investment (and therefore undertake at least some risk for a loss) in order for there to be an indication that he or she is an independent business. An independent contractor typically makes investments that support a business as a business beyond any particular job. The investment of a true independent contractor might, for example, further the business's capacity to expand, reduce its cost structure, or extend the reach of the independent contractor's market.

Even if the worker has made an investment, it should not be considered in isolation; it is the relative investments that matter. Looking not just to the nature of the investment, but also comparing the worker's investment to the employer's investment helps determine whether the worker is an independent business. If so, the worker's investment should not be relatively minor compared with that of the employer. If the worker's investment is relatively minor, that suggests that the worker and the employer are not on similar footings and that the worker may be economically dependent on the employer.

For example, investing in tools and equipment is not necessarily a business investment or a capital expenditure that indicates that the worker is an independent contractor. *See Snell*, 875 F.2d at 810 (citing cases); *Lauritzen*, 835 F.2d at 1537. Instead, the tools and equipment may simply be necessary to perform the specific work for the employer. Even if the investment is possibly a business investment, the worker's investment must be significant in nature and magnitude relative to the employer's investment in its overall business to indicate that the worker is an independent businessperson. The Tenth Circuit determined, for example, that rig welders' investments in equipped trucks costing between \$35,000 and \$40,000 did not indicate that the rig welders were independent contractors when compared to the employer's investment in its business. *See Baker*, 137 F.3d at 1442 (comparing rig welders' investment to employer's "hundreds of thousands of dollars of equipment at each work site"); *see also Snell*, 875 F.2d at 810-11 (comparing cake decorators' \$400 investment in their tools to employers' business investments, including paying for rent, advertising, operating expenses, and labor, in addition to supplies and decorating equipment); *Lauritzen*, 835 F.2d at 1537 (reasoning that where workers provided their own gloves, and the employer provided the farm equipment, land, seed, fertilizers, and living quarters, their work was not independent of the employer); *Hopkins*, 545 F.3d at 344 (comparing each worker's individual investment to employer's overall investment in the

business); *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 755 (9th Cir. 1979) (strawberry growers' investment in light equipment, including hoes, shovels, and picking carts was "minimal in comparison" with employer's total investment in land and heavy machinery).

An analysis of the workers' investment, even if that investment is substantial, without comparing it to the employer's investment is not faithful to the ultimate determination of whether the worker is truly an independent business.⁹ Moreover, an analysis that compares the worker's investment to the employer's investment—but only to the employer's investment in the particular job performed by the worker—likewise disregards the ultimate determination by examining only a piece of the employer's business for the comparison.

Example: A worker providing cleaning services for a cleaning company is issued a Form 1099-MISC each year and signs a contract stating that she is an independent contractor. The company provides insurance, a vehicle to use, and all equipment and supplies for the worker. The company invests in advertising and finding clients. The worker occasionally brings her own preferred cleaning supplies to certain jobs. *In this scenario, the relative investment of the worker as compared to the employer's investment is indicative of an employment relationship between the worker and the cleaning company.* The worker's investment in cleaning supplies does little to further a business beyond that particular job.

A worker providing cleaning services receives referrals and sometimes works for a local cleaning company. The worker invests in a vehicle that is not suitable for personal use and uses it to travel to various worksites. The worker rents her own space to store the vehicle and materials. The worker also advertises and markets her services and hires a helper for larger jobs. She regularly (as opposed to on a job-by-job basis) purchases material and equipment to provide cleaning services and brings her own equipment (vacuum, mop, broom, etc.) and cleaning supplies to each worksite. Her level of investments is similar to the investments of the local cleaning company for whom she sometimes works. *These types of investments may be indicative of an independent contractor.*

D. Does the Work Performed Require Special Skill and Initiative?

A worker's business skills, judgment, and initiative, not his or her technical skills, will aid in determining whether the worker is economically independent. "[T]he fact that workers are skilled is not itself indicative of independent contractor status." *Superior Care*, 840 F.2d at 1060. Even specialized skills do not indicate that workers are in business for themselves, especially if those skills are technical and used to perform the work. *See id.* Accordingly, the conclusion that the skills of installing cable are indicative of independent contractor status because the skills are "akin to those of carpenters, construction workers, and electricians, who

⁹ *Cf. Mid-Atlantic Installation*, 16 Fed. App'x at 107 (analyzing workers' investment without comparing it to employer's investment); *Freund v. Hi-Tech Satellite, Inc.*, 185 Fed. App'x 782, 783-84 (11th Cir. 2006) (same).

are usually considered independent contractors,” *Mid-Atlantic Installation*, 16 Fed. App’x at 107, overlooks whether the worker is exercising business skills, judgment, or initiative. The technical skills of cable installers, carpenters, construction workers, and electricians, for example, even assuming that they are special,¹⁰ are not themselves indicative of any independence or business initiative. See *Selker Bros.*, 949 F.2d at 1295 (“the use of special skills is not itself indicative of independent contractor status, especially if the workers do not use those skills in any independent way”); *Superior Care*, 840 F.2d at 1060 (for skills to be indicative of independent contractor status, they should be used in some independent way, such as demonstrating business-like initiative); *Express Sixty-Minutes*, 161 F.3d at 305 (efficiency in performing work is not initiative indicative of independent contractor status); *Lauritzen*, 835 F.2d at 1537 (“Skills are not the monopoly of independent contractors.”). Only carpenters, construction workers, electricians, and other workers who operate as independent businesses, as opposed to being economically dependent on their employer, are independent contractors.

Example: A highly skilled carpenter provides carpentry services for a construction firm; however, such skills are not exercised in an independent manner. For example, the carpenter does not make any independent judgments at the job site beyond the work that he is doing for that job; he does not determine the sequence of work, order additional materials, or think about bidding the next job, but rather is told what work to perform where. In this scenario, the carpenter, although highly-skilled technically, is *not demonstrating the skill and initiative of an independent contractor* (such as managerial and business skills). He is simply providing his skilled labor.

In contrast, a highly skilled carpenter who provides a specialized service for a variety of area construction companies, for example, custom, handcrafted cabinets that are made-to-order, may be demonstrating the *skill and initiative of an independent contractor* if the carpenter markets his services, determines when to order materials and the quantity of materials to order, and determines which orders to fill.

E. Is the Relationship between the Worker and the Employer Permanent or Indefinite?

Permanency or indefiniteness in the worker’s relationship with the employer suggests that the worker is an employee. After all, a worker who is truly in business for him or herself will

¹⁰ A district court determined that the cable installation at issue in that case “did not require a special skill” and could be learned by workers with no experience in the field after six weeks of training. *Cascom*, 2011 WL 10501391, at *6; see also *Scantland*, 721 F.3d at 1318 (cable installers admitted that they were skilled workers; however, “[t]he meaningfulness of this skill as indicating that [they] were in business for themselves or economically independent . . . is undermined by the fact that [the employer] provided most [of them] with their skills”); *Keller v. Miri Microsystems LLC*, 781 F.3d 799, 809-810 (6th Cir. 2015) (denying summary judgment and contrasting carpenters, who have “unique skill, craftsmanship, and artistic flourish,” with cable technicians who do not need “unique skills” but rather are selected on the basis of availability and location).

eschew a permanent or indefinite relationship with an employer and the dependence that comes with such permanence or indefiniteness. Most workers are engaged on a permanent or indefinite basis (for example, the typical at-will employee). Even if the working relationship lasts weeks or months instead of years, there is likely some permanence or indefiniteness to it as compared to an independent contractor, who typically works one project for an employer and does not necessarily work continuously or repeatedly for an employer. *See, e.g., DialAmerica Mktg.*, 757 F.2d at 1384-85 (correcting district court for ignoring fact that workers worked continuously for the employer and that such evidence indicates that workers were employees); *Cascom*, 2011 WL 10501391, at *6 (workers who “worked until they quit or were terminated” had relationship “similar to an at-will employment arrangement”).

However, a lack of permanence or indefiniteness does not automatically suggest an independent contractor relationship, and the reason for the lack of permanence or indefiniteness should be carefully reviewed to determine if the reason is indicative of the worker’s running an independent business. As the Second Circuit noted, neither working for other employers nor not relying on the employer as his or her primary source of income transform the worker into the employer’s independent contractor. *See Superior Care*, 840 F.2d at 1060. The key is whether the lack of permanence or indefiniteness is due to “operational characteristics intrinsic to the industry” (for example, employers who hire part-time workers or use staffing agencies¹¹) or the worker’s “own business initiative.” *Id.* at 1060-61 (“the fact that these nurses are a transient work force reflects the nature of their profession and not their success in marketing their skills independently”); *see also Mr. W Fireworks*, 814 F.2d at 1054 (“We thus hold that when an industry is seasonal, the proper test for determining permanency of the relationship is not whether the alleged employees returned from season to season, but whether the alleged employees worked for the entire operative period of a particular season.”). A worker’s lack of a permanent or indefinite relationship with an employer is indicative of independent contractor status if it results from the worker’s own independent business initiative. *See Superior Care*, 840 F.2d at 1060-61.

Example:¹² An editor has worked for an established publishing house for several years. Her edits are completed in accordance with the publishing house’s specifications, using its software. She only edits books provided by the publishing house. This

¹¹ *See, e.g., Solis v. A+ Nursetemps, Inc.*, 2013 WL 1395863, at *7 (M.D. Fla. Apr. 5, 2013) (holding that nurses were employees of a temporary health care staffing agency; although nurses “enjoy[ed] a degree of flexibility . . . not shared by many in the work force,” had “an enhanced ability to ‘moonlight’ by working for more than one [staffing] agency at a time,” and had some flexibility in choosing “when and where to make themselves available for work,” the court concluded that when the nurses were working on assignment for the staffing agency they were, during those work weeks, its employees).

¹² This factor helps illustrate how no one factor alone is determinative of the economic realities of the relationship between a worker and an employer and how it can be difficult to isolate one factor. Here, the example necessarily includes relevant facts beyond just the permanence or indefiniteness of the editors’ relationships with the publishing houses to illustrate the existence, or not, of an employment relationship.

scenario *indicates a permanence to the relationship* between the editor and the publishing house that is indicative of an employment relationship.

Another editor has worked intermittently with fifteen different publishing houses over the past several years. She markets her services to numerous publishing houses. She negotiates rates for each editing job and turns down work for any reason, including because she is too busy with other editing jobs. This *lack of permanence* with one publishing house is indicative of an independent contractor relationship.

F. What is the Nature and Degree of the Employer's Control?

As with the other economic realities factors, the employer's control should be analyzed in light of the ultimate determination whether the worker is economically dependent on the employer or truly an independent businessperson. The worker must control meaningful aspects of the work performed such that it is possible to view the worker as a person conducting his or her own business. *See Scantland*, 721 F.3d at 1313 (“Control is only significant when it shows an individual exerts such a control over a meaningful part of the business that she stands as a separate economic entity.”) (quoting *Pilgrim Equip.*, 527 F.2d at 1312-13); *Baker*, 137 F.3d at 1441. And the worker's control over meaningful aspects of the work must be more than theoretical—the worker must actually exercise it. *See, e.g., Snell*, 875 F.2d at 808; *Mr. W Fireworks*, 814 F.2d at 1047 (“it is not what the operators *could* have done that counts, but as a matter of economic reality what they actually *do* that is dispositive”) (emphases in original).

For example, an employer's lack of control over workers is not particularly telling if the workers work from home or offsite. As the Third Circuit explained in *DialAmerica Marketing*, the fact that the workers could control the hours during which they worked and that they were subject to little direct supervision was unsurprising given that such facts are typical of homeworkers and thus largely insignificant in determining their status. *See* 757 F.2d at 1384 (“The district court therefore misapplied and overemphasized the right-to-control factor in its analysis.”); *see also Superior Care*, 840 F.2d at 1060 (“An employer does not need to look over his workers' shoulders every day in order to exercise control.”); *Antenor*, 88 F.3d at 933 (The “courts have found economic dependence under a multitude of circumstances where the alleged employer exercised little or no control or supervision over the putative employees.”). Moreover, workers' control over the hours when they work is not indicative of independent contractor status. *See, e.g., Snell*, 875 F.2d at 806 (“Of course, flexibility in work schedules is common to many businesses and is not significant in and of itself.”); *Doty v. Elias*, 733 F.2d 720, 723 (10th Cir. 1984) (“A relatively flexible work schedule alone, however, does not make an individual an independent contractor rather than an employee.”).

Technological advances and enhanced monitoring mechanisms may encourage companies to engage workers not as employees yet maintain stringent control over aspects of the workers' jobs, from their schedules, to the way that they dress, to the tasks that they carry out. Some employers assert that the control that they exercise over workers is due to the nature of their business, regulatory requirements, or the desire to ensure that their customers are satisfied.

However, control exercised over a worker, even for any or all of those reasons, still indicates that the worker is an employee. As the Eleventh Circuit explained:

[The employer] also argues that its quality control measures and regulation of schedules stemmed from “the nature of the business” and are therefore not the type of control that is relevant to the economic dependence inquiry. We disagree. The economic reality inquiry requires us to examine the nature and degree of the alleged employer’s control, not why the alleged employer exercised such control. Business needs cannot immunize employers from the FLSA’s requirements. If the nature of a business requires a company to exert control over workers to the extent that [the employer] has allegedly done, then that company must hire employees, not independent contractors.

Scantland, 721 F.3d at 1316. Thus, the nature and degree of the employer’s control must be examined as part of determining the ultimate question whether the worker is economically dependent on the employer.

Finally, the “control” factor should not play an oversized role in the analysis of whether a worker is an employee or an independent contractor. All possibly relevant factors should be considered, and cases must not be evaluated based on the control factor alone. *See, e.g., Superior Care, Inc.*, 840 F.2d at 1059 (“No one of these factors is dispositive; rather, the test is based on a totality of the circumstances.”). As discussed above, the FLSA’s statutory definitions (including “suffer or permit”) rejected the common law control test for determining employment that was prevalent at the time. *See Walling*, 330 U.S. at 150-51; *Darden*, 503 U.S. at 326. Indeed, the FLSA covers workers of an employer even if the employer does not exercise the requisite control over the workers, assuming the workers are economically dependent on the employer. The control factor should not overtake the other factors of the economic realities test, and like the other factors, it should be analyzed in the context of ultimately determining whether the worker is economically dependent on the employer or an independent business.

Example: A registered nurse who provides skilled nursing care in nursing homes is listed with Beta Nurse Registry in order to be matched with clients. The registry interviewed the nurse prior to her joining the registry, and also required the nurse to undergo a multi-day training presented by Beta. Beta sends the nurse a listing each week with potential clients and requires the nurse to fill out a form with Beta prior to contacting any clients. Beta also requires that the nurse adhere to a certain wage range and the nurse cannot provide care during any weekend hours. The nurse must inform Beta if she is hired by a client and must contact Beta if she will miss scheduled work with any client. In this scenario, *the degree of control exercised by the registry is indicative of an employment relationship.*

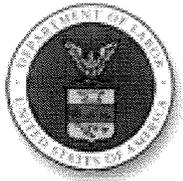
Another registered nurse who provides skilled nursing care in nursing homes is listed with Jones Nurse Registry in order to be matched with clients. The registry sends the nurse a listing each week with potential clients. The nurse is free to call as many or as few potential clients as she wishes and to work for as many or as few as she wishes; the nurse also negotiates her own wage rate and schedule with

the client. In this scenario, *the degree of control exercised by the registry is not indicative of an employment relationship.*

III. Conclusion

In sum, most workers are employees under the FLSA's broad definitions. The very broad definition of employment under the FLSA as "to suffer or permit to work" and the Act's intended expansive coverage for workers must be considered when applying the economic realities factors to determine whether a worker is an employee or an independent contractor. The factors should not be analyzed mechanically or in a vacuum, and no single factor, including control, should be over-emphasized. Instead, each factor should be considered in light of the ultimate determination of whether the worker is really in business for him or herself (and thus is an independent contractor) or is economically dependent on the employer (and thus is its employee). The factors should be used as guides to answer that ultimate question of economic dependence. The correct classification of workers as employees or independent contractors has critical implications for the legal protections that workers receive, particularly when misclassification occurs in industries employing low wage workers.

SAMPLE COPY



**U. S. DEPARTMENT OF LABOR
BUREAU OF APPRENTICESHIP AND TRAINING
APPRENTICE CERTIFICATION**

**TO: Martin Anderson Construction
Attention: Harry Potter
9978 South Marry Street
Chicago, IL. 60614 - 4554**

**CARPENTER LOCAL UNION 999
1234 Hands Road Carpenter, Illinois 65412**

The following individuals are apprentices registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training under the sponsorship of Program Number IL7845612.

<u>APPRENTICES ID</u>	<u>APPRENTICES NAME</u>	<u>TRADE</u>	<u>DATE REGISTERED</u>
97869855	John A. Hall	Painter	01/10/2000

Certified By:

David J. Mays

BAT REPRESENTATIVE

Date Issued

March 4, 2004

VOID 90 DAYS FROM ISSUE DATE

Apprentice Programs: SCHEDULES and RATIOS*

(SAMPLE Union Handbook Excerpt)

Apprentice Wage Progression/Schedule:

50%- 1st year (full benefits)

75%- 2nd year (full benefits)

90%- 3rd year (full benefits)

Journeymen to Apprentice Ratios*:

- One (1) journey worker to one (1) apprentice on a two (2) worker job.
- One (1) apprentice to two (2) journey workers on a three (3) worker job*.
- Two (2) apprentices to four (4) journey workers on a six (6) worker job.
- Three (3) apprentices to nine (9) journey workers on a twelve (12) worker job.
- Four (4) apprentices to twenty-five (25) journey workers.
- Five (5) apprentices to thirty-five (35) journey workers.
- Six (6) apprentices to fifty-five (55) journey workers
- One (1) apprentice to every twenty (20) workers thereafter

*Journeyman to apprentice ratios may be more than 1:1 in some instances!

**PLUMBERS UNION LOCAL 690
WAGE AND FRINGE BENEFIT RATES
EFFECTIVE MAY 1, 2007 THROUGH APRIL 30, 2008
READING and LEHIGH VALLEY
BUILDING TRADES**

MAY 1, 2007 contract increase of \$2.55

	04/30/2007	05/01/2007	INCREASE
WAGES	\$32.10	\$32.85	\$0.75
PENSION PLAN	\$ 5.87	\$ 6.62	\$0.75
S.R.P.	\$ 2.04	\$ 2.34	\$0.30
HEALTH PLAN	\$ 9.91	\$10.66	\$0.75
APPRENTICE PLAN	\$ 0.37	\$ 0.37	\$0.00
INDUSTRY FUND	\$ 0.24	\$ 0.24	\$0.00
SCHOLARSHIP FUND	\$ 0.05	\$ 0.05	\$0.00
TOTAL PACKAGE	\$50.58	\$53.13	\$2.55

SUMMARY OF INCREASE:

	INCREASE
WAGE	\$0.75
PENSION PLAN	\$0.75
S.R.P.	\$0.30
HEALTH PLAN	\$0.75
APPRENTICE PLAN	NO CHANGE
INDUSTRY FUND	NO CHANGE
SCHOLARSHIP FUND	NO CHANGE

Deduction from Hourly wages:

Deduct \$1.75 for Vacation Fund per hour paid from Net Wages
Deduct \$.10 cents Political Action and \$.07 cents Social Fund per hour from Net Wages
Deduct 2.52% of the Total Package (gross wages (\$32.85) Fringe Benefits (\$20.28) = Total Package \$53.13
Deduct \$.30 for Organizational Fund per hour paid from Net Wages for Journeymen
Deduct \$.15 for Organizational Fund per hour paid from Net Wages for Apprentices

Foreman Hourly Wage Rates:

Foreman (2-5 Journeymen) 107% of Journeymen Rate
Foreman (2-10 Journeymen) 110% of Journeymen Rate
Area Foreman 112% of Journeymen Rate
General Foreman 115% of Journeymen Rate (supervising 2 or more Foremen & 100 Journeymen or less)
General Foreman 120% of Journeymen Rate (supervising 2 or more Foremen & 101 Journeymen or more)

ALLOWABLE DEDUCTIONS*

(*REFERENCE: Prevailing Wage Resource Book ,US Dept. of Labor's Employment Standards Administration, WHD)

"The Copeland "Anti-Kickback" Act (CA) applies to Davis-Bacon Act and Davis-Bacon and the Related Acts contracts. The Copeland "Anti-Kickback" Act and implementing regulations in 29 CFR 3 collectively provide for the following safeguards:

...regulate payroll deductions from wages."

It goes on to state, "29 CFR 3.5 permits the following deductions from wages without the approval of the Secretary of Labor:

1. Deductions for social security or federal or state income tax withholding.
2. Deductions for bona fide prepayment of wages.
3. Deductions of court ordered payments.
4. Deductions for contributions to fringe benefit plans, provided that the deduction is not prohibited by law, that it is either voluntarily consented to by the employee in writing in advance of the time the work is done or provided for in a collective bargaining agreement, that no profit or other benefit is obtained by the contractor, and that the deduction serves the convenience of the employee.
5. Deductions for the purchase of US saving bonds when voluntarily authorized by the employee.
6. Deductions to repay loans or to purchase shares in a credit union.
7. Deductions voluntarily authorized for contributions to organizations such as the Red Cross, United Way, or other similar charitable organizations.
8. Deductions to pay union initiation fees and membership dues provided that a collective bargaining agreement provides for such deductions."

To summarize, there are several allowable deductions for which an employee's "voluntary consent" is required, and consequently, the only way to ensure such consent is to document it in writing (EMPLOYEE AUTHORIZATION) in the project file. There are other deductions for which no consent is required, however, to justify that these "other" deductions are allowable by the DOL, it is necessary for the contracting agency to document the legitimacy of such deduction (e.g. references to collective bargaining agreements, court ordered child support payments, and repayment of loans.) For the agency's convenience, this office requires such documentation only the first time the deduction appears on a payroll, and not every time such a deduction appears.

COMPANY LETTERHEAD

PROJECT NAME: _____

PROJECT NUMBER: _____

EMPLOYEE NAME: _____

PAYROLL DEDUCTION AUTHORIZATION:

I, _____, hereby authorize _____
(employee name) (name of employer/company)

to deduct \$ _____ from my paycheck.
(amount)

This deduction is for: *(must check appropriate item(s))*

- | | | |
|--------------------------|---------------------|----------------------------|
| _____ Loan Repayment | _____ Retirement | _____ Profit Sharing |
| _____ Advance | _____ Savings Bonds | _____ Charitable Donations |
| _____ Insurance Premiums | _____ Other: _____ | |

This deduction is to be made:

- | | | |
|------------------------------|--------------------|---------------|
| _____ One time only | _____ weekly | _____ monthly |
| _____ times over _____ weeks | _____ Other: _____ | |

Employee's Signature: _____ Date: _____

(You may make payroll deductions as permitted by DOL regulations 29CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" (i.e. give up or return to the employer) any of their earnings other than those defined.)

(You need to submit this documentation only one time per employee, unless changes in deduction amount or duration take place.)

WITHHOLDING ORDER PAYMENT OF CHILD SUPPORT

Case Number _____

IN THE _____ COURT OF _____, ALABAMA
(Circuit or District) *(Name of County)*

_____ v. _____
Plaintiff **Defendant**

Obligor (Employee)	Obligor's Employer
Obligor's Social Security Number *	Employer's Address
	City State Zip Code

This Withholding Order for payment of child support is entered pursuant to the provisions of §30-3-61 or §30-3-62 or §25-4-152, Ala. Code 1975.

It is therefore ORDERED by this Court as follows:

1. _____ is ordered to pay the sum of:
(Name of Obligor)
\$ _____ per _____ as current continuing child support; and
\$ _____ per _____ toward the total arrearage of \$ _____.
Arrears 12 weeks or greater? yes no
2. The obligor's present employer or any future employer or the Department of Industrial Relations is hereby ordered to withhold from income/benefits due or to become due the obligor:
\$ _____ per _____ for current continuing child support;
\$ _____ per _____ for arrearages
\$ _____ per _____ TOTAL.
THE TOTAL AMOUNT TO BE WITHHELD SHALL NOT EXCEED _____ % OF OBLIGOR'S DISPOSABLE EARNINGS/BENEFITS. Should the total amount ordered withheld exceed the percentage of the defendant's disposable earnings/benefits, the priority of withholdings is as follows: Any federal tax lien, any child support income withholding order by earliest date of service; and any garnishment by earliest date of service.
3. The employer/Department of Industrial Relations shall pay the total amount deducted to the **Alabama Child Support Payment Center, P. O. Box 244015, Montgomery, Alabama 36124-4015**, within seven (7) days of the date the obligor is paid the paycheck from which the support is withheld. If the obligor/employee's pay periods are at intervals which are more frequent than once each month, the employer may withhold at each pay period an amount cumulatively sufficient to equal the total monthly support obligation.
4. **When the total arrearage(s) have been withheld and remitted to the Alabama Child Support Payment Center, DEDUCT ONLY CURRENT, CONTINUING SUPPORT until further instructed by this Court.**
5. This Order shall be binding upon the obligor's employer/any successor employers/Department of Industrial Relations fourteen (14) days after service pursuant to the Alabama Rules of Civil Procedure and shall remain effective until further order of the Court.
6. A copy of this Order shall:
 Be served immediately upon the obligor's employer/Department of Industrial Relations by personal service or by certified mail.
 Remain in the Court's file until such time as an affidavit may be made by the obligee or obligor for service of such order.

*The disclosure of your social security number is mandatory. It is based on Section 466(a)(13) of the Social Security Act [42 U.S.C. 666(a)(13)], and it will be used under the state's child support enforcement program to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing support obligations.

Court Record – White

Plaintiff – Green

Defendant – Yellow

WITHHOLDING ORDER PAYMENT OF CHILD SUPPORT (Continued)

7. Costs of entering this order for income withholding are: taxed against plaintiff taxed against defendant waived not applicable.
Additional costs may be incurred and the Clerk is authorized to tax same if this order is served at a later date.
8. The obligor, the obligor's employer/any future employer/or the Department of Industrial Relations as required by law, must notify the clerk of the court of any changes in employment or termination of income/benefits.
9. The employer shall not use this order as a basis for the discharge of the obligor/employee.
10. This order shall not under any circumstances be waived by mutual agreement of the parties to the case.
11. An employer/successor employer/Department of Industrial Relations who willfully fails or refuses to withhold or pay the amounts as ordered may be found to be personally liable to the obligee for failure to answer or withhold and in such cases conditional and final judgment for the amounts ordered to be withheld may be entered by the Court against the employer.

12. Other: _____

The Clerk is hereby directed to mail a copy of this order to the clerk of the court which entered the original order of support, and to further notify the clerk when this Withholding Order is served upon an employer/Department of Industrial Relations and withholdings are to commence in accordance with §30-3-62(g) or §25-4-152, Ala. Code 1975.

If checked, the employer is required to enroll the child(ren) identified above in any health insurance coverage available through the employee's/obligor's employment.

DONE this the _____ day of _____, 20 _____.

Judge

Hints on a Quick and Thorough Review:

1. **PAYROLL NUMBER:** Payrolls must be numbered sequentially. For example #1 will be the marked “initial” and is the date that contractor/subcontractor is first performing work on the site. “Final” must mark very last payroll and last week the contractor/subcontractor will be performing work on the site.

If a prolonged break for a particular contractor must take place, this may be recorded in the file. A note can be added to the file by the PHA administrator after a conversation with the general contractor or a written letter explaining the reason for work stoppage (e.g. inclement weather, construction schedule requirements, etc.) and the dates and duration for which the stoppage is anticipated.

2. **DAY AND DATE:** The day of the week the payrolls begin, for example Wednesday through the following Tuesday, must be maintained throughout the life of the project for each contractor.
3. **WORK CLASSIFICATION:** The work classification must be specific and identified on the applicable general decision and additional classification approval (where necessary).
 - “Journeyman” is not acceptable.
 - If there is more than one group in the classification, such as Laborers Groups 1- 9, the specific group must also be specified.
 - “Apprentices” must have an accompanying BAT certificate and be in ratio (daily, not cumulatively).
4. **RATE OF PAY:** If 4(a)-Approved Plan is checked off on the Statement of Compliance, the rate should be equal to the applicable DB hourly rate. (A copy of the union benefit package broken down by the hour can be obtained from GC, if desired). If 4(b) is checked off on the Statement of Compliance, the Rate of Pay should equal the DB hourly wage plus fringe benefit rate.

A combination of the two is acceptable as long as the total value equals the DB rate.

5. **DEDUCTION- OTHER:** If there is an amount withheld here, the exact reason for the deduction must be specified and an Employee Authorization must be completed and signed by each employee affected. If the withholding is mandated by the courts, appropriate documentation must be provided such as a Child Support Court Order.
6. **DATE:** The Statement of Compliance date must cover only a single week and accompany each weekly payroll provided.
7. **FRINGE BENEFITS*(a):** If this checked off, benefits are paid into a DOL approved plan.
8. **FRINGE BENEFITS*(b):** If this is checked off, benefits are paid to the employee directly in cash and counted in his or her Rate of Pay.

*AT LEAST ONE BOX MUST BE CHECKED OFF!

9. **NAME AND TITLE:** If someone OTHER than a principal or officer of the firm is signing the payrolls, a letter stating that person is authorized to do so must first be submitted by a principal or officer of the firm.

Record of Employee Interview Instructions	U.S. Department of Housing and Urban Development Office of Labor Relations	OMB Approval No. 2501-0009 (exp. 10/31/2010)
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Instructions

General:

This form is to be used by HUD and local agency staff for recording information gathered during on-site interviews with laborers and mechanics employed on projects subject to Federal prevailing wage requirements. Typically, the staff that will conduct on-site interviews and use this form are HUD staff and fee construction inspectors, HUD Labor Relations staff, and local agency labor standards contract monitors.

Information recorded on the form HUD-11 is evaluated for general compliance and compared to certified payroll reports submitted by the respective employer. The comparison tests the veracity of the payroll reports and may be critical to the successful conclusion of enforcement actions in the event of labor standards violations. The thoroughness and accuracy of the information gathered during interviews is crucial.

Note that the interview itself and the information collected on the form HUD-11 are considered confidential. Interviews should be conducted individually and privately. All laborers and mechanics employed on the job site must be made available for interview at the interviewer's request. The employee's participation, however, is voluntary. Interviews shall be conducted in a manner and place that are conducive to the purposes of the interview and that cause the least inconvenience to the employer(s) and the employee(s).

Completing the form HUD-11

Items 1a - 1c: Self-explanatory

Items 2a – 2d: Enter the employee's full name, a telephone number where the employee can be reached, and the employee's home address. Many construction workers use a temporary address in the locality of the project and have a more permanent address elsewhere from which mail may be forwarded to them. Obtain a more permanent address, if available. Ask the employee for a form of identification (e.g., driver's license) to verify their name.

Items 3a – 4c: Enter the employee's responses. Ask the employee whether they have a pay stub with them; if so, determine whether the pay stub is consistent with the information provided by the employee.

Items 5 – 7: Be certain that the employee's responses are specific. For example, job classification (#5) must identify the trade involved (e.g., Carpenter, Electrician, Plumber) – responses such as "journeyman" or "mechanic" are not helpful for our purposes.

Items 8 – 12b: Self-explanatory

Items 13 – 15c: These items represent some of the most important information that can be gathered while conducting on-site interviews. Please be specific about the duties you observed the employee performing. It may be easiest to make these observations before initiating the interview. Please record any comments or remarks that may be helpful. For example, if the employee interviewed was working with a crew, how many workers were in the crew? Was the employee evasive?

The level of specificity that is warranted is directly related to the extent to which interview(s) or other observations indicate that there may be violations present. If interviews indicate that there may be underpayments involving a particular trade(s), the interviewer is encouraged to interview as many workers in that trade(s) that are available.

Items 16 – 17b: The information on the form HUD-11 may be reviewed for general compliance, initially. For example, are the job classification and wage rate stated by the employee compatible with the classifications and wage rates on the applicable wage decision? Are the duties observed by the interviewer consistent with the job classification?

Once the corresponding certified payroll reports are received, the information on the HUD-11 shall be compared to the payroll reports. Any discrepancies noted between the HUD-11 information and that on the payroll report shall be noted in Item 16, Remarks. If discrepancies are noted, follow-up actions to resolve the discrepancies must be taken.

Record of Employee Interview

U.S. Department of Housing and Urban Development Office of Labor Relations

OMB Approval No. 2501-0009
(exp. 10/31/2010)

Public reporting burden for this collection of information is estimated to average 15 minutes 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. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. **Sensitive Information.** The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. **The information collected herein is voluntary, and any information provided shall be kept confidential.**

1a. Project Name			2a. Employee Name		
1b. Project Number			2b. Employee Phone Number (including area code)		
1c. Contractor or Subcontractor (Employer)			2c. Employee Home Address & Zip Code		
			2d. Verification of identification? Yes <input type="checkbox"/> No <input type="checkbox"/>		
3a. How long on this job?	3b. Last date on this job before today?	3c. No. of hours last day on this job?	4a. Hourly rate of pay?	4b. Fringe Benefits?	4c. Pay stub?
				Vacation Yes <input type="checkbox"/> No <input type="checkbox"/> Medical Yes <input type="checkbox"/> No <input type="checkbox"/> Pension Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

5. Your job classification(s) (list all) --- continue on a separate sheet if necessary

6. Your duties

7. Tools or equipment used

	Y	N		Y	N
8. Are you an apprentice or trainee?	<input type="checkbox"/>	<input type="checkbox"/>	10. Are you paid at least time and ½ for all hours worked in excess of 40 in a week?	<input type="checkbox"/>	<input type="checkbox"/>
9. Are you paid for all hours worked?	<input type="checkbox"/>	<input type="checkbox"/>	11. Have you ever been threatened or coerced into giving up any part of your pay?	<input type="checkbox"/>	<input type="checkbox"/>

12a. Employee Signature	12b. Date
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13. Duties observed by the Interviewer (Please be specific.)

14. Remarks

15a. Interviewer name (please print)	15b. Signature of Interviewer	15c. Date of interview
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Payroll Examination

16. Remarks

17a. Signature of Payroll Examiner	17b. Date
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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:

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

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Labor Relations
FEDERAL LABOR STANDARDS QUESTIONNAIRE

HUD FORM 4730
 OMB Approval Number 2501-0018
 (Exp. 11/30/2016)

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:
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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.

9b. If you know, what was the required prevailing wage for this project? \$ _____		Benefits: Yes <input type="checkbox"/> No <input type="checkbox"/>		Vacation <input type="checkbox"/> Medical <input type="checkbox"/> Pension <input type="checkbox"/> Other <input type="checkbox"/> Specify: _____	
11. On average, how many hours did you work each week?	12. Did you ever work over 40 hours in a single week? Yes <input type="checkbox"/> No <input type="checkbox"/>	13. If you worked over 40 hours per week, did you receive overtime pay (1½ times your regular rate of pay)? Yes <input type="checkbox"/> No <input type="checkbox"/>	14. If you did <u>not</u> receive overtime pay for overtime hours worked, identify the number of weeks in which overtime was worked and/or total overtime hours		
15. Identify other employees (name, address, phone) who worked with you and who could confirm the type of work you performed					
16. Identify employees (name, address, phone) you supervised					

How may we contact you?

Current address (Include apartment number, if any) (Street/City/State/Zip Code)	Home Phone Number (including area code)
Permanent/Alternate Address (if current address is temporary)	Alternate Phone Number(s) (including area code)
Email address	Cell Phone 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.

Yes No

SUBMIT PRINT

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 information 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.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Labor Relations
FEDERAL LABOR STANDARDS COMPLAINT INTAKE FORM

HUD FORM 4731

OMB Approval No. 2501-0018
 (Exp. 08/31/2010)

Name of complainant	Social Security Number
Current address of complainant (Street/City/State/Zip Code)	Permanent address, if different from current address
Telephone (including area code) (Home/Cell/Other)	E-Mail address
Project name, location and contract/project number	Prime contractor company name
Employer (company) name	Employer: name of owner/responsible party
Employer address	Employer: contact information (Telephone/Cell/Other)

Check one: <input type="checkbox"/> Current employee <input type="checkbox"/> Former employee <input type="checkbox"/> Other (specify)	Period employed on the project From: _____ To: _____
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Occupation/job title: _____

Duties performed (be specific) _____

Tools used and/or equipment operated _____

Wage Rate: \$ _____ per Hour Day Week Piece Other (specify): _____

Hours usually worked on the project

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

Usual start and stop times Start work time: _____ End work time: _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Labor Relations
FEDERAL LABOR STANDARDS COMPLAINT INTAKE FORM

HUD FORM 4731
 OMB Approval No. 2501-0018
 (Exp. 08/31/2010)

Name of complainant	Social Security Number
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	Yes	No		Yes	No
Were meal breaks taken? If yes, how long were the breaks? _____	<input type="checkbox"/>	<input type="checkbox"/>	Did the employer keep time records?	<input type="checkbox"/>	<input type="checkbox"/>
Paid Overtime (time and ½) after 40 hours?	<input type="checkbox"/>	<input type="checkbox"/>	Did the complainant keep time records?	<input type="checkbox"/>	<input type="checkbox"/>
Paid for all hours worked?	<input type="checkbox"/>	<input type="checkbox"/>	Does complainant have other personal records (pay stubs, log books, etc.) he/she can provide?	<input type="checkbox"/>	<input type="checkbox"/>
Was/is the complainant an Apprentice?	<input type="checkbox"/>	<input type="checkbox"/>	Were fringe benefits paid?	<input type="checkbox"/>	<input type="checkbox"/>

If fringe benefits were paid, check all that apply:

- Cash in lieu of fringe benefits
 Life insurance
 Pension
 Health insurance
 Dental insurance
 Holiday/Sick/Vacation

Identify other fringe benefits paid _____

Names of others affected by the alleged violation(s) _____

Names of others who can verify/attest to the complainant's allegations _____

- Continuation sheets attached
 Complainant's personal interview attached

Complaint taken by:

Name (print clearly)	Phone number (including area code) and E-mail address
Title	Agency, office
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 information 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 collecting information from laborers and mechanics and other interested parties regarding information about their employment on covered projects.

Date:	Project No:
	Project Name:

In order to induce the Department of Housing and Urban Development (HUD) to provide or complete the program assistance associated with this project while issues remain outstanding in connection with amounts that may be due as wages under the Davis-Bacon and Related Acts and/or as liquidated damages under the Contract Work Hours and Safety Standards Act, the undersigned (*Depositor*) submits confirmation of deposit, by electronic funds transfer, to the account specified by HUD in the amount of \$ _____.

Depositor agrees that this deposit is made shall be held by HUD for the purpose(s) and disposition(s) as indicated, below, and as indicated on the attached Schedule for Deposit: (HUD Labor Relations staff: Check boxes, below, as applicable to deposit.)

<input type="checkbox"/>	1. Where there is no dispute as to the amount of unpaid wages due but <i>without awaiting receipt of evidence that the workers named on the attached Schedule have received the wages due them</i> , in the respective amounts listed on the Schedule for Deposit;
<input type="checkbox"/>	2. Where HUD or the U.S. Department of Labor (DOL) has reason to believe that there may be unpaid wages due for work performed in the construction of the project but <i>without awaiting an administrative determination of the wages which may be due and unpaid</i> by employers named on the attached Schedule in the respective amounts estimated by HUD or DOL and listed on the Schedule for Deposit;
<input type="checkbox"/>	3. Where HUD or DOL has made its determination of wages due but <i>without awaiting the outcome of an appeal which has been filed or is to be filed with HUD or DOL</i> by or on behalf of the <i>Depositor</i> , the principal contractor, subcontractor, other employer involved contesting the finding of HUD or DOL that wages for work performed in the construction of the project are due and unpaid to the workers named on the attached Schedule in respective amounts listed on the Schedule for Deposit; and/or
<input type="checkbox"/>	4. Where <i>liquidated damages</i> have been calculated and/or assessed for overtime violations of the Contract Work Hours and Safety Standards Act, as reflected on the attached Schedule for Deposit.

Disposition of Deposit Account

Items 1 through 4: In all cases involving unpaid wages ultimately found due, wage payments will be made directly to the affected workers by the responsible employer or the *Depositor*, or by HUD from the funds submitted herewith. If the wages are paid to the affected workers by the responsible employer or the *Depositor*, a refund equal to the amount(s) paid shall be made to the *Depositor* as wage payment evidence, in the form of a certified payroll report(s), is provided to HUD. HUD will retain on behalf of affected employees any amount(s) deposited for wages found due that are not paid by the responsible employer or *Depositor*, and will also retain any liquidated damages that are assessed.

Where items 2, 3, and/or 4 have been checked, when the amount of unpaid wages has been finally determined by HUD or DOL, funds sufficient to pay the total gross amount of wages and any liquidated damages computed and/or assessed for overtime violations, as applicable, shall be held by HUD and the balance of the funds deposited, if any, shall be returned to the *Depositor*. If the final HUD or DOL determination and/or liquidated damages assessment is appealed, when the appellant and HUD or DOL have agreed on any amounts due or have exhausted any rights of appeal, funds sufficient to pay the total gross amount of the wages and any liquidated damages found due by the highest authority which has ruled in the matter shall be held by HUD, and the balance of the funds deposited, if any, shall be returned to the *Depositor*.

Depositor:	Street Address:
By: (signature)	City, State, Zip Code:
Name and Title:	Telephone Number:
Depositor Tax ID Number (required to process refund):	Deposit Ticket Number: LR- -DT- -

Schedule for Deposit (attached)

Wire Transfer Instructions for Labor Standards Deposit Accounts <i>(Office of Labor Relations Use Only)</i>	U.S. Department of Housing and Urban Development Office of Labor Relations
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The information on this form provides instructions to financial institutions for electronic transfer of funds to a HUD account for labor standards deposits.

Section 1 is required information for Bank Use Only. The HUD Labor Relations staff or designee shall determine the amount required for deposit and enter this amount in item 6 in the third column under Field Contents.

Section 2 will be completed by the HUD Labor Relations staff or designee and shall contain the Deposit Control ID, Deposit Ticket number, and project name.

(HUD CLIENT: Please contact the HUD Labor Relations field staff for your area for the Deposit Control ID and Ticket Number prior to transmitting funds for Labor Standards Deposit Accounts.)

Section 1 - Required Data for Bank Use Only (Note: These instructions support wire transfer and are not valid for ACH/direct deposit.)

Item	Field Tag #	Field Contents
1. Message Description	1100	
2. Acceptance Time Stamp	1110	
3. OMAD	1120	
4. Type/Subtype Code	1510	
5. IMAD	1520	
6. Amount	2000	\$
7. Sender FI	3100	
8. Sender Reference	3320	
9. Receiver DI	3400	021030004 TREAS NYC
10. Business Function	3600	
11. Beneficiary	4200	86010300

Section 2 - Deposit Ticket/Project Information

Wire Transfer Agent: Please transmit characters shown below exactly as seen.

Item	Field Tag #	Field Contents
12. OBI – Line 1 (LR2000 Control ID and Deposit Ticket Number)	6000	6758LR- -DT- -
13. Project Name	9000	

Control ID/Transaction No:	Tax ID No:
<input type="checkbox"/> Refund: LR- -VR- - (Not taxable) <input type="checkbox"/> Payment: LR- -VP- -	<input type="checkbox"/> Issue 1099
Prompt Payment Act – Not Applicable	

Direct Deposit (Refunds/Optional for Wage Restitution):

To:	Bank Name:	
	Address:	
	City/State:	
ACH/Direct Deposit:	ABA Routing No:	
For Credit To:	Account No.	
	Payee Account Name:	

Wage Restitution Check:

Payee Name & Address

Amount of Refund/Payment:	\$
Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment. (Name/Signature)	Date:

Regional Labor Relations Officer

Evidence of deposit: (HQLR)

Attached
 FHA List Page
 Date of last disbursement:

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment. (Name/Signature)	Date:
Authorized Approving Official, Office of Labor Relations	

29 CFR 5.7 - Reports to the Secretary of Labor.

Section Number: 5.7

Section Name: Reports to the Secretary of Labor.

(a) Enforcement reports. (1) Where underpayments by a contractor or subcontractor total less than \$1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as ``letters of notice''), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under Sec. 5.8.

(2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) Semi-annual enforcement reports. To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) Additional information. Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) Contract termination. Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in Sec. 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

Agency Name:	Agency Type: <small>(e.g., CDBG, PHA, TDHE/IHA)</small>	State:	LR2000 Agency ID #: <small>(HUD Use Only)</small>
Period Covered: Check One and Enter Year(s)			
<input type="checkbox"/> Period 1: October 1, ____ to March 31, ____		<input type="checkbox"/> Period 2: April 1, ____ to September 30, ____	
Agency Contact Person:		Agency Contact Phone/E-mail:	

PART I - CONTRACTING ACTIVITY*
Pertains ONLY to projects awarded during the reporting period.

1. Number of prime contracts subject to the Davis-Bacon and Related Acts (DBRA) and/or the Contract Work Hours and Safety Standards Act (CWHSSA) awarded this period
 Note: Do not include contracts included in previous semi-annual reports

2. Total dollar amount of prime contracts reported in item 1 above \$

3. List for each contract awarded this period:

Project Name/Number	Contract Amount	Wage Decision Number	Wage Decision Lock-In Date
EXAMPLE: "Boy's Club Renovation # CD54005-65"	"\$0,000,000.00"	"FL040001/Mod 3, 6/25/04, Building"	"07/02/04 bid open date" ◀ Lock

*Use additional pages if necessary

WHAT IS THE LOCK-IN DATE? For contracts entered into pursuant to competitive bidding procedures, the bid opening date "locks-in" the wage decision **provided** that the contract is awarded within 90 days. If the contract is awarded more than 90 days after bid opening, the contract award date "locks-in" the wage decision. For contracts, purchase orders or other agreements for which there is no bid opening or award date, use the construction start date as the lock-in date. However, for projects receiving assistance under Section 8 of the U.S. Housing Act of 1937 or contracts involving a *project* wage determination, the lock-in rules may vary from above. See Department of Labor Regulations, 29 CFR, Part 1, Section 1.6 and/or HUD Handbook 1344.1, or consult the HUD Labor Relations staff.

WHAT IT ISN'T: Do not use the wage decision publication date, unless that happens to correspond to one of the trigger events described above. If you are not sure about any of this, please feel free to contact the Labor Relations staff in your state or region.

Agency Name:	Agency Type: <small>[e.g., CDBG, PHA, TDHE/IHA]</small>	State:	LR2000 Agency ID #: <small>(HUD Use Only)</small>
Period Covered: Check One and Enter Year(s)			
<input type="checkbox"/> Period 1: October 1, ____ to March 31, ____		<input type="checkbox"/> Period 2: April 1, ____ to September 30, ____	
Agency Contact Person:		Agency Contact Phone/E-mail:	

PART II - ENFORCEMENT ACTIVITY*
Pertains to all projects, not just contract(s) awarded during the reporting period.

4. Number of employers against whom **complaints** were received (list employers and projects involved below):

Employer	Project(s)
-----------------	-------------------

5. (a) Number of cases (employers) referred to HUD Labor Relations for investigation or §5.11 hearing (list referrals below):

(b) Number of cases (employers) referred to the Department of Labor (DOL) for investigation or §5.11 hearing (list referrals below):

Employer	Project	HUD or DOL	Invest. Or Hearing
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6. (a) **Number of workers for whom wage restitution was collected/dispursed:**
Report only once; if you previously reported workers for whom restitution was collected, do not report the same workers when funds are disbursed. Include workers to whom restitution was paid directly by the employer.

(b) **Total amount of straight time wage restitution collected/dispursed during this period:** \$
Report only once; if you report funds collected, do not report the disbursement. Include restitution amounts paid directly by the employer as reported on correction certified payrolls.

(c) **Total amount of CWHHSA overtime wage restitution collected/dispursed during this period:** \$
Report only once; if you report funds collected, do not report the disbursement. Include restitution amounts paid directly by the employer as reported on correction certified payrolls.

(d) **Total amount of liquidated damages collected:** \$

* Use additional pages if necessary