



Arizona  
Department  
*of* Housing

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# Labor Standards Handbook

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## 1.0 OVERVIEW OF FEDERAL LABOR STANDARDS AND COMPLIANCE REQUIREMENTS

### 1.0 Introduction

This Labor Standards Handbook is intended to provide in-depth information about federal labor standards provisions and compliance requirements to those communities eligible for State of Arizona Community Development Block Grants (CDBG), Sub-recipients and Recipients funded by the Arizona Department of Housing (HOUSING). These requirements are applicable only to the State of Arizona's CDBG non entitlement program. This includes all counties except Maricopa and Pima, all of the incorporated cities and towns in Arizona except for those located within Maricopa and Pima Counties and the cities of Flagstaff and Yuma. Although most of the aspects of labor standards compliance are statutory and equally applicable to CDBG entitlement communities, many of the forms and procedures are unique to the HOUSING program. Thus, non-HOUSING funded entities are encouraged to communicate directly with HUD before relying on this handbook for guidance.

It is important for readers to understand that although the CDBG program is funded by the Department of Housing and Urban Development (HUD), the ultimate responsibility for enforcing federal labor standards lies with the Department of Labor (DOL) based on an Interagency Agreement. Thus, although HUD does monitor the State for compliance and provides handbooks and guidance, HUD must comply with DOL regulations, interpretations and guidance.

Each community that will implement a construction/public works project that will be bid to a private contractor and cost in excess of \$2,000 must adhere to the federal labor standards provisions as outlined in this handbook. The dollar amount refers to the TOTAL project cost, including labor and materials, whether paid for with CDBG or other funds. A project cannot be broken into smaller segments to avoid these provisions.

The payment of Davis-Bacon prevailing wages, as established by the U.S. Department of Labor, is only one aspect of such compliance. Throughout this handbook, the term "Davis-Bacon and Related Acts" or "DBRA" will be used interchangeably with the term "federal labor standards provisions" to refer to all the compliance issues required by such provisions.

Funding Recipients should read this handbook carefully to determine whether their project is DBRA-covered. Violations of these provisions can result in very time consuming and expensive corrective actions and restitution.

State of Arizona Department of Housing (ADOH) is aware that in many cases the recipient will contract out many of the responsibilities discussed in this handbook. However, by virtue of signing the contract with HOUSING, the recipient is ultimately responsible for adherence to all applicable federal labor standards provisions.

## 1.2 Applicable Laws

The term "federal labor standards" or DBRA refers to several statutes and their implementing regulations as listed and summarized below. These will be explained in detail throughout the Handbook.

Davis Bacon Act (DBA) 40 U.S.C. 3141-3144 and 3146-3148 The Davis Bacon Act was enacted in 1935 to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels. This law requires that laborers and mechanics employed directly on the site of the work receive not less than the wages determined by the Federal Department of Labor (DOL) to be "prevailing" in the area for the type of work performed. These are not necessarily the same as union wages. The law also requires the payment of fringe benefits as determined by the DOL, payments without authorized deductions or rebates; the withholding of funds from contractors to ensure compliance, and termination of the contract and/or debarment of contractors for serious and willful violations.

Davis-Bacon Related Acts (DBRA) Extended Davis Bacon prevailing wage requirements to other laws which provide federal assistance for construction through grants, loans, loan guarantees, and insurance as contrasted with direct federal government contracts for construction.

Per 29 CFR 5.2(m), laborers or mechanics (including apprentices, trainees, helpers) are defined as "workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade)" versus mental or managerial. The term does not apply to those workers whose duties are primarily clerical, administrative or executive.

Contract Work Hours and Safety Standards Act (CWHSSA) 40 U.S.C. 3701-3708 This law applies only if the construction contract is over \$100,000. It defines overtime as all hours worked over forty (40) in any work week; requires overtime compensation at not less than 1½ times the regular hourly rate (not including fringe benefits) be paid for such hours to all laborers, mechanics, watchmen and guards; and makes employers responsible for back wages and for liquidated damages at the rate of \$25 per day if there are violations. Intentional violations may result in debarment.

Copeland "Anti-Kickback" Act (CA) 40 U.S.C. 3145 and 18 U.S.C. 874 This law provides the following safeguards: prohibits "kickbacks" of wages and back wages; requires each contractor and subcontractor on covered projects to submit weekly a "Statement of Compliance"; regulates payroll deductions from wages; specifies methods of payments of wages.

Fair Labor Standards Act (FLSA) 29 U.S.C. 201 et seq. This covers minimum wages, overtime (even if the project is not subject to CWHSSA), record keeping and child labor laws for other employees hired by the contractor (i.e., those not covered by the federal labor standards provisions, such as secretaries, bookkeepers, janitors, engineers, etc.). This law also applies to local government employees. Unlike the other three statutes, HUD does not require the state to enforce or monitor for compliance with this law. However, if ADOH does identify violations it will notify the Department of Labor, which is responsible for enforcement. Applicants and recipients should note that they have certified to the fact that they are complying with all applicable federal, state and local laws, ordinances and regulations. The FLSA is very detailed and it is highly recommended that all recipients review it to ensure compliance.

### 1.3 Why Comply?

There are three bases for the applicability of federal labor standards provisions to funding received from ADOH, one statutory and 2 regulatory. These are:

1. Section 110 of Title I of the HOUSING and Community Development Act of 1974, as amended, is titled "Labor Standards." It states "All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this title (which establishes the CDBG program), shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended; Provided, that this section shall apply to the rehabilitation of residential property only if such property is designed for residential use for eight or more families....."
2. The State CDBG Program regulations found at 24 CFR 570.487(a) state that "...Certain statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms..." which includes federal labor standards. The Preface to these state regulations, issued November 1992, specifically states on page 53392..." The statutes and Executive Orders deleted (from the revised regulation) are...labor standards..." Further, Section 570.489 (l) is titled "Debarment and suspension," and requires that CDBG funds are not provided to excluded or disqualified persons.
3. 29 CFR Part 5: Labor Standards Provisions, published October 3, 1986, is titled "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction." These regulations define the term "labor standards" as "the requirements of the Davis Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland Act" and spell out all of the requirements of each act.

### 1.4 Thresholds of Applicability

Federal labor standards provisions apply if a project meets the following three criteria:

1. it is financed **in whole or in part** with CDBG funds, and
2. it is for construction, alteration or repair (including painting and decorating) of public buildings and public works and
3. the total cost is in excess of \$2000

Examples: street improvements; water or sewer replacements or installation; construction or rehabilitation of senior or community centers; removal of barriers, or rehabilitation of multifamily housing.

### 1.5 Site of Work

Whether an employee is DB covered is sometimes related to the definition of the site of the work. Per 29 CFR 5.2(l), this is defined as: the physical place or places where the building or work called for in the contract will remain and any other site where a significant portion of the building or work is constructed, provided that such a site is established specifically for the performance of the contract or project.

Fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards etc. are part of the site of work provided they are mainly or exclusively devoted to the project and are adjacent or virtually adjacent to the site of work. However, permanent home offices, branch plants, fabrication plants and tool yards which exist without regard to the particular federally assisted project are not part of the work site, even if they are used exclusively for the contract during the construction period,

Fabrication plants, batch plants, borrow pits, headquarters, tool yards, etc. of a commercial or material supplier that are established by a materials supplier for the project before the opening of bids and are not on the project site are excluded from the "site of work". even if for a time the operations are devoted exclusively or nearly so to the performance of work in support of a covered project.

Any questions that contractors, subs, and/or recipients may have about the site of the work should be brought up at the pre-construction meeting so that these concerns can be reviewed by the recipient and ADOH *prior to the start of the project.*

The precutting of parts and the prefabrication of assemblies are not considered to be part of the site of work unless they are conducted in connection with and at the site of the project or in a temporary plant set up elsewhere to supply the needs of the project and dedicated exclusively, or nearly so, to the performance of the contract or project.

## 1.6 Exempt Projects

The only projects that are exempt from these DBRA provisions, even though they may meet the three criteria above, are:

1. Rehabilitation of residential property consisting of eight (8) units or less. That is, DBRA applies ONLY to a building designed for eight or more units. DBRA does not apply to unrelated buildings, regardless of the number. Therefore, buildings designed for seven or fewer units can be bid at one time and rehabilitated under one contract as long as each is intended for or under separate ownership.
2. Clearance or demolition with NO subsequent activity to be financed with CDBG funds.
3. Tree planting *only*. Landscaping performed in conjunction with new construction or renovation work subject to DBRA is covered.
4. Projects implemented by the recipient's existing work force (i.e.- City or County labor) or new employees hired by the recipient specifically to conduct this project, whether on a permanent or temporary basis. However, such actions cannot be in conflict with the Arizona Revised Statutes, specifically A.R.S. §34-201, which mandates public bids for certain types of construction work by a public agency.
5. Projects for which CDBG funds are only a loan guarantee.
6. Transitional housing/group homes if;
  - a. The facility is designed in a manner similar to a single family residence in both lay out and scale where each "Family" has its own unit (even if such is shared) though there may be a shared kitchen and bathroom, and
  - b. Residents stay for a minimum of six (6) months.

Where CDBG funds are used exclusively for the activities listed below, the construction, which follows (to include reconstruction, rehabilitation and renovation), is NOT covered by Davis Bacon, even though it is considered part of the CDBG project for ERR and national objective benefit purposes. However, the construction funding must be clearly delineated from the CDBG funding for the listed activity (ies), and will generally be paid for by the local government or private sector monies.

7. Land acquisition.
8. The purchase of machinery or equipment; however, installation may trigger Davis Bacon.
9. Architectural and engineering fees.

**Note: The use of CDBG funds to purchase materials DOES trigger Davis Bacon if not used/installed by recipient staff, volunteers or offenders.**

## 1.7 Exempt Employees

The following persons are *exempt* from the payment of Davis Bacon wages, although the *project is still covered* by the other federal labor standards provisions.

1. Professional employees that are in require advanced knowledge in a field customarily accompanied by a prolonged course of specialized instruction. i.e., architects and engineers 19 C.F.R. 541.300
2. An on-site but non-construction superintendent or foreman, i.e., a person who does not perform “hands-on work.” However, if that person performs hands-on work, in addition to supervision, for 20% or more of his/her total work hours, s/he must be paid Davis Bacon wages and be reported as required for all hours during which s/he performs mechanic's or laborer's duties
3. Guards and watchmen, unless they are also performing jobs of laborers/mechanics. CWHSSA still applies to this group.
4. An apprentice employed under a bona fide apprenticeship program registered with the state apprenticeship agency, which is recognized by the DOL Employment and Training Administration (ETA).
5. A volunteer (see Section 12.1)
6. A utility company employee, under most circumstances (see Section 8.3.9)
7. Offenders/convicts (see Section 12.2)
8. An employee who owns bona fide 20% equity interest in the company and who is actually involved in its management. 29 CFR 541.101
9. Local government employees. Because DBRA applies to *contractors and subcontractors* performing on federally funded contracts, currently employed local labor is exempt. For example, County A has a CDBG street improvement project. The County Public Works Department staff will complete all the construction work. The County employees are exempt from the payment of Davis Bacon wages.

## 1.8 Recipient Responsibilities

The recipient is responsible for taking all of the actions listed below to ensure compliance with federal labor standards. Many of these responsibilities are discussed in detail in later parts of this handbook.

### 1.8.1 Identify an LS Monitor and Develop an LS Compliance Plan

The recipient must identify *one* person who will have primary responsibility for labor standards provisions compliance. This may or may not be the Grant Contact Person. However, whether that person actually takes all the actions listed or delegates some of them (as discussed below) s/he must be knowledgeable about labor standards provisions requirements in order to ensure that the delegated work is being accomplished correctly.

The recipient should also develop an "LS Compliance Plan." ADOH recommends that this be in writing but does NOT require its submittal to your Specialist. As LS compliance has many components and differs in scope from project to project, the Plan must determine what tasks must be met and by whom and the flow of paperwork and reporting responsibilities. For example, the LS Plan should indicate who will be responsible for the following: requesting the initial WRD, monitoring WD updates thereafter, ensuring that the bid and contract contain all LS required documents, submitting the LS-2/3s to ADOH, conducting the pre-construction conference and documenting such, visiting the work site on a regular basis and conducting interviews, desk monitoring the LS-4/5s, following up on LS-4/5 concerns, site inspections and investigating and resolving complaints. Different tasks may be assigned to different people, especially if the project is lengthy and involves both a prime contractor and several subcontractors. It is extremely important that responsibility for these tasks be determined *before* the project is initiated to ensure compliance.

Example: The Town Clerk, who is also the Grant Contact Person, will be the LS Monitor, and will investigate and resolve complaints. The engineer will be responsible for requesting the initial WRD and monitoring updates thereafter, submitting the LS-2/3s to ADOH, ensuring that the bid and contract contain the LS documents and for conducting the pre-construction conference. COG staff will document the conference, desk monitor LS-4/5s and conduct interviews and on-site inspections. The recipient's public works director will drive by the site regularly to monitor construction progress. On a weekly basis, the LS monitor will meet with all those involved to receive and review paperwork and discuss any outstanding concerns.

If the recipient chooses to contract out some responsibilities (e.g. to the project engineer or COG), the contract scope of work must clearly outline all phases of this responsibility. The contract must also contain provisions for recovery of any costs incurred by the recipient due to non-compliance.

### 1.8.2 Establish Files

The recipient must establish both a separate Construction Contract File and a Labor Standards File for each DBRA covered contract. A checklist for each file can be found in the Appendix. Note that all contractor payment requests and approvals for payment must be retained in the Financial Management File. Change orders and evidence of their approval should be in the Construction Contract File.

### 1.8.3 Request Initial WRD from ADOH

Using the LS-1 form, the recipient must request their initial wage determination from the ADOH (see details regarding this process in Section 2.4).

### 1.8.4 Prepare a Complete and Compliant Bid and Contract

The bid should include a clear statement indicating that it is a federally funded project that will require the successful bidder to adhere to federal labor standards provisions. The recipient *must* submit a copy of the bid and later of the contract to ADOH for review and approval. The recipient should use the Bid Document Construction Procurement Desk Monitoring form and the Construction Contract File Checklist to ensure that the bid/contract contains all of the required items. For quicker review and approval by ADOH, it is strongly recommended that a completed desk monitoring form be submitted along with the bid/contract. Refer to the *Procurement, Contracts, and Acquisition Handbook* for monitoring forms, checklists, and additional information on construction bids.

**NOTE:** ADOH will *not* review the detailed bid specs for technical accuracy. Thus, approval of the bid document is *not* approval of the technical design of the project; it is approval of the bid only in terms of compliance with labor standards requirements and other program requirements.

### 1.8.5 Verify All Contractors and Subcontractors

The recipient must verify that the prime contractor is eligible to receive federal funds by confirming eligibility in the SAM.gov system. (See also Sections 4.2 and 4.3.) ***Contractors must be verified before any contracts are signed.*** The recipient may request verification for several bidders to ensure that any of those selected can legally be awarded a contract. ADOH recommends including this requirement in bid documents to ensure up-front compliance. Refer to the *Procurement, Contracts, and Acquisition Handbook* for detailed information regarding SAM.gov and procurement policies.

### 1.8.6 Conduct and Document a Pre-Construction Conference

It is an industry standard, and highly recommended by ADOH, to hold a pre-construction conference before actual construction begins. Note that this is not the same as a pre-bid conference. During this conference, all aspects of DBRA compliance and the role of the recipient in monitoring for such compliance should be fully discussed as well as the technical job specifications and construction deadlines. This conference should be documented using the Pre-Construction Conference Report (LS-6).

### 1.8.7 Submit a Construction Status Report to ADOH

The recipient must provide to ADOH a Construction Status Report using form LS-8. This form will indicate the name of each contractor/subcontractor as well as other information about the bid opening and construction contract. This report must be mailed or emailed to ADOH within seven (7) days of contract award. If the entire project is not awarded to one contractor, this is to be noted on the LS-8.

### 1.8.8 Monitor Weekly Certified Payrolls/Statements of Compliance

The recipient must ensure that the contractor and all subcontractors submit Weekly Payroll Reports and Statements of Compliance (LS 4/5) within seven (7) days of the end of the workweek and that such forms are complete and signed. The monitoring of such documents includes a variety of actions discussed in detail in Section 8.

### 1.8.9 Conduct Employee Interviews and On-Site Inspections

The recipient must ensure that employee interviews are conducted using the LS-9 form (see also Section 10). The information obtained through the interview is then compared with the information provided on the LS-4/5 and documented.

In addition, the recipient must conduct on-site inspections using the LS-10 to ensure that the three required postings are visible and correct. As these inspections are usually conducted at the same time as Employee Interviews, the LS-10 has been combined with the LS-9. See also Section 10.

### 1.8.10 Request Conforming Classification

If the WD applicable to a project does not include an applicable and appropriate classification for the nature of the work of a specific laborer or mechanic, an LS-13 form (DOL Form SF 1444) is used to request that a classification be conformed by DOL. The LS-13 must be signed by the contractor/sub and should be signed by the employee(s), if such has/have been hired. A detailed discussion of this form and the conformance process appears in Section 2.6

### 1.8.11 Investigate and Resolve All LS Complaints/Violations Promptly

The recipient *must* investigate all complaints and allegations of violations promptly. Both the complaints and violations and their resolution, which may include restitution to employees, must be documented on the required forms. A detailed discussion of these forms appears in Section 11.8.

### 1.8.12 Submit Documents to ADOH to Obtain Funds

The recipient must provide ADOH with the initial LS-4/5 for the prime and any subcontractors as well as any corresponding employee interviews (LS-9) and/or on-site inspection forms (LS-10) after review by the recipient. These should be submitted within seven days of receipt by the recipient. ADOH will *not* approve a Request for Payment that includes construction contractor reimbursement until these two items have been received and approved unless the request is to reimburse for mobilization expenses.

**NOTE:** ADOH will require additional LS documentation for later payment requests if the initial payrolls were incorrect in any way, or the recipient has had prior LS problems. If a project is extensive in nature (i.e.: many subcontractors on site at various times, or continuing over an extended period) ADOH will require the submission of additional LS documentation as required by the CD&R Specialist. All LS documentation that was not submitted for desk monitoring will be reviewed at on site monitoring.

## 2.0 WAGE DETERMINATIONS (WD)

### 2.1 Definition and Basis

A Wage Determination is defined as "the original wage decision plus any subsequent decisions modifying, superseding, correcting, or otherwise changing the rates and/or scope of the original decision." These are issued by DOL. Each determination has a specific number, which appears on the determination, and which must be referred to in correspondence, reports, etc. WDs have *no* expiration date although they are regularly modified or superseded. Additional information regarding modifications follows later in this section.

Wage rates for specific job classifications are issued based on mail and/or personal surveys conducted by DOL. They represent the wages of 50% or more of the people in that specific job classification or the average of all the persons in that job classification, excluding federally funded employees. Persons wishing further information about how, when or where DOL conducts such surveys should contact DOL as the process is very detailed and specific.

### 2.2 Project Classifications: Types of WDs

Generally, for WD purposes, a project consists of all construction necessary to complete a "facility" (building, road, sewer, etc.) regardless of the number of contracts or subcontracts involved so long as all contracts awarded are closely related in purpose, time and place. Thus, most often a project funded by ADOH will require only one type of WD. There are four classifications of wage determinations based on the type of project being implemented. These are outlined in All Agency Memorandum No. 130 "*Application of The Standard of Comparison of 'Projects of a Character Similar' Under the Davis-Bacon and Related Acts*" and explained here for your reference.

1. **Building** - construction generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
2. **Residential** - projects involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.
3. **Heavy** - construction is generally considered for all construction not properly classified as highway, residential, or building. Water and sewer line construction will typically be categorized as heavy construction.
4. **Highway** - projects include construction, alteration or repair of roads.

**NOTE:** Davis-Bacon requirements for rehabilitation of residential property applies **ONLY** to a building designed for eight or more units. DBRA does not apply to unrelated buildings, regardless of the number. Therefore, buildings designed for seven or fewer units can be bid at one time and rehabilitated under one contract as long as each is intended for ownership or owned by separate parties.

## 2.3 More than One Type of WRD per Project

Some projects will need two different wage decisions, e.g., a sewer improvement project, which includes both a treatment plant and lines, will require two decisions: a building decision for the plant and a heavy decision for the line work (see also the NOTE below).

To determine which projects will need more than one type of decision, the LS-1 form requests detailed information about the specific construction project. The rule of thumb as to whether a project will require more than one type of decision is as follows:

1. **Two types of decisions** will be issued if the separate construction activities are "substantial" in relation to the project cost, defined by DOL as more than 20% of the costs, or at least \$1,000,000.
2. **One type of decision** will be issued if the separate construction items are "incidental" to the overall character of the project, defined by DOL as 20% or less of the project cost (and costing less than \$1,000,000), *and* if there is not a substantial amount of construction in the second category.

**NOTE:** The 20% stated above is a general rule and may not always be applicable. All projects are unique. It is important that you talk with your specialist and clearly explain your project on the LS-1 to ensure that the appropriate process is followed for each project.

## 2.4 Requesting a Wage Determination: LS-1

Using the LS-1 form, the recipient must request a wage determination from ADOH *at least 15 working days* before bids are advertised. This ensures that there is plenty of time for ADOH to issue the LS-1 information to the recipient, for the recipient to incorporate the WD into their bid documents, and for ADOH to review and approve those bid documents. For detailed information on what needs to be included in bid documents, refer to the *Procurement, Contracts and Acquisition Handbook*. A separate request for a wage determination must be made for each project. The recipient cannot assume that an existing wage rate from one project is applicable to another.

ADOH will review the LS-1 and send the current WD applicable to the project to the recipient. Along with the LS-1, ADOH will also provide guidance on how the recipient will obtain any WD modifications (updates) issued by DOL prior to the Bid Opening Date. ADOH will verify the WD included in the bid documents when that desk review is performed. It is important to note that it is the recipient's responsibility to continue to check for WD updates until the bid opening date.

## 2.5 WD Modifications

WD modifications are issued by DOL. Sometimes WDs will update multiple weeks in a row and sometimes it will be months between modifications (updates). It is the recipient's responsibility to check for WD updates before the bid opening. Specific information regarding the timing of a WD modification release is listed below:

1. Ten days prior to bid opening, the Recipient must check to see if the wage decision has been modified. If so, Recipients should notify all potential bidders appropriately in conformance with local procurement procedures.

2. If a construction has not begun within 90 days of the award, any modifications received after the award will be effective.

## 2.6 Additional Job Classifications and Conformances

There are times when employees will be performing jobs that are not listed on the WD. In this circumstance, the contractor and recipient will need to work with ADOH and DOL to obtain an appropriate wage rate for that employee's classification. This process is referred to as obtaining a "conformance".

### 2.6.1 Additional Job Classifications

If a recipient determines, *prior to the BOD*, that an additional job classification (one not listed on the WD) is necessary, contractors can call DOL to obtain an *estimate* of wages in the area. This rate is an estimate only and may change once the project has started. However, per DOL regulations, conformances cannot be submitted prior to the issuance of a contract. Contractors are not required to obtain this information, but it may be helpful for them in preparing their bid.

It is beneficial however, to know if there are certain classifications that will need to have conformance requests submitted once a contract is executed. The sooner these are submitted to ADOH and subsequently to DOL, the easier it will be to ensure that appropriate wages are paid and restitution is avoided.

### 2.6.2 Conformances

If the recipient determines that a type of work is not being performed by any job class in the WRD, *after the BOD*, it may request that a job class be added by using the LS-13, which is DOL's form SF1444. DOL will only accept their standard form, but for historical purposes, ADOH has kept the LS-13 number associated with the DOL form and may reference it by that name.

The conformance is applicable only to a specific project and thus requires no back up documentation regarding the proposed wage rate. Instead, agreement between the contractor/sub, recipient, and the employee (if hired) is all that is necessary.

DOL requires that the request to conform meet the following criteria:

1. The work is not performed by any classification in the WD;
2. The class is utilized in the area by the construction industry;
3. The proposed wage rate and fringe benefits bear a reasonable relationship to the wage rates contained in the WRD; (see NOTE below)
4. There is evidence of agreement on the classification and proposed wage rate among the parties involved, i.e., the contractor(s) and sub(s), the employees (if known), the recipient and the state; and
5. The request does not involve wage rates for apprentices or trainees.

**NOTE:** The contractor must propose a wage for any classification for which they are requesting a conformance. Per DOL All Agency Memorandum 213, "the proposed wage rate, including any bona

vide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination." The Memorandum goes on to explain that contractors should "consider the entirety of the rates within the relevant category on the wage determination and to not generally use as a benchmark the lowest rate within that category." When they speak of categories, they are referring to the four general groups of classifications on a WD: skilled crafts, laborers, power equipment operators, and truck drivers. In order to determine a proposed wage, the contractor should look at the entirety of classifications listed within the applicable category and propose a rate that bears a "reasonable relationship" to those listed.

The LS-13/SF1444 includes all of the relevant data described above and may be submitted before specific employees have been identified. As such, the employee's signature on the form is not necessarily required.

After receiving the LS-13/SF1444 from the recipient, ADOH will review it for completeness and accuracy and submit it to DOL. However, the recipient must be aware that even if the request is approved by ADOH, it is *not* valid until DOL approves it. DOL has thirty (30) days to return conformance requests back to ADOH. If this approval is delayed beyond the time when an employee is hired to do the work, the recipient/contractor may pay that person the amount indicated in the LS-13/SF1444. However, should DOL issue a different wage rate, the recipient will be notified and will be required to notify the contractor and document that restitution was made to the underpaid employee(s). DOL issues responses by e-mail. ADOH will forward these to the recipient and a copy must be kept in the LS file.

Given the fact that conformance requests require review by multiple parties and this process can sometimes get lengthy, it is in the contractor and recipient's best interest to submit any conformance requests as soon as they are deemed necessary. Ideally, the contractors/subcontractors should review the WD immediately upon contract award and submit any conformances at that time. Because of the lack of detail in Arizona's WDs, it is very uncommon that a job can be completed without requesting a conformance. *Contractors must not force jobs to fit into certain classifications to avoid the need for a conformance.*

## 2.7 Wrong Determination or Omissions

If a recipient has used the wrong determination (e.g., a heavy vs. a highway determination for a street project, a determination that applies to the wrong county, or has forgotten to include the most recent modification), it must immediately amend the contract to include the correct WD. Further, the correct rates are retroactive to the date of the signing of the original construction contract. The recipient must compensate the contractor for any increase in wages due employees as a result of the correct WD. If the contractor was paying a higher wage, there is no liability in terms of LS compliance, as the law requires only that the contractor pay "at least the prevailing wage. If employees were not paid enough, the contractor must provide restitution to those affected. Documentation of this action must be kept in the LS file and forwarded to ADOH.

If a recipient does not include a wage rate in the bid and/or contract, it does *not* relieve the recipient or the contractor of liability. The recipient must rectify the situation immediately by amending the contract, and must make restitution to all employees per the wage determination, from the date of hire.

## 2.8 How to Read a Wage Determination

Reading and understanding a WD can be difficult. In order to determine if a Certified Payroll (LS-4) accurately reflects the job classifications required for the project, and to adequately conduct employee interviews, the LS monitor must take time before the project begins to become familiar with the WD. ADOH strongly recommends that the recipient consult with its engineer, public works director or architect prior to the beginning of a project to identify the job classifications that will most likely be used. This will assist the recipient to determine whether the Certified Payrolls accurately reflect the types of job classifications required for that project. The WD should be discussed with the contractor and subcontractor during the Pre-Construction Conference (see Section 5).

Note that each determination has the following: a Decision Number, superseded decision number, state (i.e.- Arizona), type of decision (heavy, highway, building, or residential.), counties to which it applies, modification number (with the original decision being considered "0"), and publication date of the original decision and each modification.

Each job classification is preceded by the name of the collective agreement which is the basis for DOL's "prevailing" wage determination, as well as the date the agreement was signed, e.g., ELEC0640, 07/01/2015 = International Brotherhood of Electrical Workers (IBEW) Local Union 640, Collective Bargaining Agreement updated July 1, 2015. . Where the wages are not based on a collective bargaining agreement, the job classes are listed under "SU" which stands for "Survey". These rather are determined by DOL through extensive surveys of local contractors and interested parties. Because we are located in Arizona, the "SU" is followed by "AZ" and reads "SUAZ" on the WD. Job classifications are listed alphabetically on the basis of the name of the union signing the collective bargaining agreement and the "SU" designation. Sometimes a union identifier is not the same as the job performed, so be sure to read through the entire WD if something appears to be missing. For example, power equipment operators as a job classification, but they are signed for by the engineering union (using ENG as their WD identifier) and thus fall under "E" alphabetically in the WD.

Union rates update whenever there is a change in that Union's Collective Bargaining Agreement. Survey Rates only change when a Davis Bacon survey is completed by DOL. When one of these changes takes place, a new Modification is issued for that specific WD.

Within each job classification there may be geographical categories or Zones. Zone pay is usually based on the location of the project relative to a specific site, e.g. City Hall, and typically has no relationship to where an employee lives. Zones are determined based on the distance from the *job site* to the closest of the four major cities: Phoenix, Flagstaff, Tucson, and Yuma.

Example:

Zone Pay: All Zones will be calculated from the nearest City Hall in Flagstaff, Phoenix, Tucson or Yuma.

- Zone 1: 0 to 59 miles from City Hall
- Zone 2: 60 to 100 miles, - ADD \$4.00
- Zone 3: 101 miles and over, - ADD \$5.00

A construction project located in Holbrook would be in the Zone 2 area since Holbrook is 91 miles from the closest major city (Flagstaff). The contractor therefore would be required to add an additional \$4.00 per hour to employee base wages.

An hourly rate and fringe benefit for each classification, by geographical location and/or further job class category, appears in the far right hand side of each determination. In some cases, there will be *no* fringe benefit listed or the fringe will be a percent of the hourly rate. If it is blank, no fringes are required. If it is listed as a percentage, carefully calculate the appropriate total wages.

### 3.0 FEDERAL LABOR STANDARDS PROVISIONS

The Federal Labor Standards Provisions HUD-4010 (the 4010) spell out the specific components of labor standards that are applicable to HUD funding. The 4010 also provides recipients with certain enforcement powers. A copy of the 4010 must be included in the bid specs and in the contract. Incorporation by reference is unacceptable. A copy of the 4010 is included in Appendix A

#### 3.1 Contractor Responsibility

Contractors are responsible for adhering to these provisions and ensuring that any subcontractors also comply. The highlights of these provisions *must* be reviewed during the pre-construction conference. Further, non-compliance can lead to civil and criminal prosecution and penalties. A separate document entitled *A Contractor's Guide to Prevailing Wage Requirements For Federally-Assisted Construction Projects* has been provided in the Appendix and should be given to contractors to help them comply with Davis-Bacon requirements.

#### 3.2 Components of the 4010

The most important components of the 4010 are:

1. The contractor agrees to meet minimum wage requirements for all employees.
2. The contractor agrees to abide by the Davis Bacon Act, Copeland Anti-Kickback Act and Contract Work Hours and Safety Standards Act.
3. The contractor will pay employees on a weekly basis and submit weekly payroll reports.
4. The contractor agrees to post the WRD at the project work site.
5. The contractor agrees to retain all payroll and other basic records for at least three years after the completion of the project. However, please note that *A.R.S. §35-214 requires a five-year retention period, which should be included in the construction contract.*
6. Fringe benefit are enumerated, and it is required that fringe benefit plans must be provided in writing to employees.
7. Apprentices and trainees are defined.
8. Grounds for contract termination and debarment are spelled out.
9. Contractors certify to their eligibility to receive federally funded contracts, and agree not to subcontract to any ineligible firms. (This is then documented with the LS-2 and LS-3.)
10. Complaints, proceedings and testimony by employees are described to include protection of the employee from discharge or any manner of discrimination.
11. Conditions under which the recipient can suspend funds to the contractor are described.
12. Health and safety requirements on the job are described.

## 4.0 CONTRACTOR/SUBCONTRACTOR CERTIFICATIONS AND VERIFICATION

### 4.1 Recipient Responsibility

It is the recipient's responsibility to verify the eligibility of each of its contractors paid in whole or in part with CDBG funds. CDBG funds *cannot* be used to pay a debarred/ineligible contractor. Thus, should a recipient sign a contract with a firm that is ineligible, no portion of the work performed by that contractor can be paid for by the grant.

### 4.2 Contractor Verification Process

#### 4.2.1 System for award management - SAM

The System for Award Management (SAM) is a combined database of several federal procurement systems including those formerly known as: Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS). The U.S. Government makes this information available on an official website: [www.SAM.gov](http://www.SAM.gov). Recipients must use this site to determine if contractors are eligible to receive federal funds.

Any contractor wishing to work on a federal job (and thus be paid in federal funds) must be registered on SAM. There is no cost to register or use the system. Contractors are responsible for maintaining and keeping their accounts current and active. Recipients may wish to create a user account to make searching the system easier and gain access to additional information.

When a search is performed, the recipient is looking to obtain an Entity Registration Summary and an Exclusion Summary. These typically appear on the same page once a contractor is selected from the search. The Entity Registration Summary gives brief details including the company name and most importantly notes their Registration Status, which should be listed as "Active". The Exclusion Summary will report if there are any Active Exclusion Records against a contractor. This should be listed as "No."

Sometimes a contractor is not yet registered in the system. If you search for a contractor and you receive a message that indicates "No Records Found" this does not mean the same as "No Active Exclusions." The contractor must either register or update their registration in the system so that their status can be viewed. If you run into this problem, talk to your potential contractor. *Remember, the contractor MUST be verified in SAM BEFORE a contract can be signed!*

#### 4.2.2 Arizona Registrar of Contractors - AZROC

In addition to verifying contractors at the federal level, it is a State requirement that contractors are registered to work within the State of Arizona. Recipients can verify this by visiting the Arizona Registrar of Contractor's website at: [www.azroc.gov](http://www.azroc.gov).

When a search is performed, it will return various details for the contractor including their license number and status. Recipients must verify that their license number matches that which they

provided with their bid documents and that their status is listed as “Active.” The search results must be printed, emailed to ADOH and copies maintained in the LS file.

#### **4.3 LS-2 and LS-3**

Both the LS-2 and LS-3 provide “tracking” for the contractor and subcontractor(s) so that the recipient and ADOH can keep track of who is working on the jobsite and should be submitting certified payrolls. The LS-2 is also used to verify that a contractor is eligible to work on a federally funded project. Both forms contain language in which the contractor/sub certifies that to the best of its knowledge it is not ineligible and will not subcontract work to any ineligible subcontractor (at any tier), or even to any sub if that sub has a substantial interest in any firm that is ineligible.

The forms also include a space where the WD and all applicable modifications are identified. Thus, the contractor/sub acknowledges that these are included in the contract. The recipient should verify this section to ensure that the contractor/subcontractor is acknowledging use of the appropriate WD.

#### **4.4 Inclusion in Bid Package and contract**

The LS-2 and LS-3 must be included in the bid package. The LS-2 must be completed and returned to the recipient along with the bid, so that the prime contractor’s eligibility can be determined. The LS-3 must be completed and returned to the recipient either before or within 10 days of the effective date of the contract between the prime and sub or a contract between two subs. This point should be *stressed* during the pre-construction conference. The LS-2 and any applicable LS-3s must be provided to ADOH.

Prior to signing a contract with the prime or general contractor, the recipient must ensure that there is a fully completed and signed LS-2 in the contract package AND that the contractor has been verified.

#### **4.5 Subcontractors**

Whenever possible, the contractor should identify all subcontractors prior to the signing of the contract, so that each can complete the LS-3 and attend the pre-construction conference. However, if that is not possible, the recipient must stress during the pre-construction conference that should the contractor or any of its subcontractors subcontract any additional work during the time of the contract, the subcontract(s) must contain the LS-3. As stated in Item #3 of the LS-2, the contractor agrees to provide the LS-3 to the recipient within 10 days of signature by the subcontractor. As soon as these are provided to the recipient, the recipient must send a copy of such to ADOH. It is important to note that, per 29 CFR Part 5; all Prime Contractors are ultimately responsible for compliance of all their subcontractors. Recipients may wish to remind prime contractors of this regulation so that they bring appropriate subcontractors to the job.

## 5.0 THE PRE-CONSTRUCTION CONFERENCE

The pre-construction conference is an industry standard and while it is not a federal requirement, ADOH *strongly* encourages all recipients to hold such a meeting prior to the start of construction. This conference is not the same as a pre-bid conference. The purpose of the pre-construction conference is to provide a forum for the recipient, the contractor, and all known subs to discuss all of the compliance requirements in the contract. In most instances, a significant portion of this conference will be devoted to a discussion of the technical nature of the construction project itself. Although this is very important to the successful completion of the project, that aspect of the conference is not covered by labor standards provisions and will not be discussed here.

The importance of the conference cannot be over emphasized. For those contractors and subs who have never had a contract covered by labor standards provisions, the conference provides the opportunity for the recipient to clearly and in detail describe the significance of all provisions the contractor has agreed to abide by. This can help ensure that there are no LS problems or violations. To ensure the conference is useful to the contractors and subs, the recipient may wish to develop a more detailed agenda, to include the many complexities of DBRA, and distribute "*A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*" (see the Appendix).

### 5.1 The LS-6

The LS-6 should be used as the agenda for the Labor Standards portion of the conference. Once completed, a copy should be maintained in the recipient's LS File. A carefully completed LS-6 can help the recipient if there is a dispute between the contractor and the recipient. Every single item on the form should be filled out. A blank will indicate that an item was not covered, which is not advisable or useful if an issue arises later. Most sections of the LS-6 are self-explanatory. They include the specific aspects of labor standards compliance; records retention, civil rights compliance requirements; and the recipient and contractor roles and responsibilities.

During the conference, the recipient should discuss in detail the responsibilities of all parties. For example, *recipient responsibilities* are to: conduct interviews, review Payroll Reports, do on-site monitoring for postings, and resolve all complaints and violations. *Contractor responsibilities* include: ensuring that all required documents are in all subcontracts (and all tiers of such); timely and complete LS-4/5s (Payroll Reports and Statements of Compliance); posting the WRD, Notice to Employees and Non-Discrimination posters; paying overtime for hours worked over 40; submitting documentation of a fringe benefit plan and communication of such to each employee; allowing for employee on-site job interviews; and maintaining actual time records for at least five years.

During this conference the recipient should also discuss: a) the need for any conformances; b) the types of job classes most likely to appear on the LS-4; c) the contractor's "work week;" and d) the timeline for construction tasks, i.e., when subs will be on site to assist the recipient in planning on-site visits.

The recipient should keep additional notes of the conference, specifically regarding questions raised by the contractor/sub and answers given by the recipient. It is also recommended that the recipient request those present to sign an attendance sheet to verify attendance. If there are additional notes or a sign in sheet, these should be attached to the LS-6 and placed in the Labor Standards File.

## 5.2 Notice to Employees: LS-7

During the discussion of the required job postings, the recipient should provide one or more LS-7s to the contractor and ensure that the contractor has the required EEO posting. The recipient must fill in the information relating to the Contracting Officer before providing the form to the contractor. Further information about the LS-7 is provided in Section 10.2.4

These posters are available online at the Department of Labor website in English and Spanish.

## **6.0 THE CONSTRUCTION STATUS REPORT: LS-8**

ADOH has developed a specific form, the LS-8, which all recipients must use to report on the status of their construction activities. The LS-8 must be completed and e-mailed to ADOH within seven (7) days after the contract award date.

The LS-8 serves a three-fold purpose. First, it allows ADOH to verify that the proper WD is being used. . Second, it provides the basis for a semi-annual Labor Standards Enforcement Report that ADOH must submit to HUD. Finally, it assists ADOH in tracking grant progress.

### **6.1 Partial Project under Contract**

If the recipient has not contracted out the entire project, this information is communicated to ADOH on the LS-8. This is done so that the recipient understands that they need to notify ADOH of any new bids and/or WD changes, and so that ADOH is aware of the project status.

## 7.0 **CERTIFIED PAYROLLS AND THE STATEMENT OF COMPLIANCE: LS-4/5**

The LS-4/5 consists of two components: the Certified Payroll and the Statement Of Compliance. The submission of both the LS-4 and LS-5 is required by language in the Labor Standards Provisions (the 4010), which the contractor has agreed to by signing the contract. Failure to submit the LS-4/5 is a breach of the contract, and thus can be grounds for withholding of funds by the recipient and/or debarment by the Department of Labor. Falsification of the LS-5, Statement of Compliance, is grounds for civil and/or criminal prosecution.

The Appendix includes two example forms. One sample is correct and includes highlighted items of note. The other sample has several errors and omissions which are outlined in detail on an attached list. Recipients are encouraged to review both examples to familiarize themselves with how a complete and correct LS-4/5 should look, as well as what types of errors and omissions are likely to appear on such reports.

### 7.1 **Required Information**

The law requires that all of the information on both the LS-4 and LS-5 be provided by the contractor (and sub(s)) to the recipient, which in turn must provide such to ADOH. However, it does not mandate the use of the specific LS-4/5 forms. The recipient should encourage the contractor (and sub(s)) to use the forms, thereby ensuring that all of the information is included. However, a contractor may choose to use its own forms, *as long as all of the information on the LS-4 and the exact language of the LS-5 is included*. If a contractor does use different forms, they must include the required information in a manner in which ADOH staff can easily locate and identify the required components. (e.g., each employee's name, the complete job class, standard vs. overtime hours, hourly rate vs. fringes, types of deductions, whether fringe benefits are paid in cash or to an approved plan and any exceptions to the payments of fringes).

### 7.2 **Timely Submission**

Per 40 U.S.C. 3145, contractors and subcontractors must provide, each week, a statement on the wages paid to each employee the prior week. *Davis Bacon regulations require that employees are paid weekly, regardless of the contractor's standard practice!* Work weeks, however, are at the discretion of the contractor and can be any seven days of the week, i.e., Monday through Sunday or Wednesday through Tuesday. HUD's instructions are that the recipient *must* withhold funds from a contractor that is excessively delinquent in the submission of these forms. ADOH interprets the term "excessively" as being more than seven (7) days late. Please note that this applies to LS-4/5's from both the prime contractor and *all* subs. ADOH will withhold payment from a recipient if they are out compliance with their submissions to ADOH.

### 7.3 **Separate Forms for Each Contractor and Subcontractor**

Each contractor and subcontractor must submit a separate LS-4/5. The subcontractor cannot include its employees on the same form as the contractor. Depending on the terms of the construction contract and as discussed at the pre-construction conference, the subcontractor may submit its LS-4/5 either to the contractor, who then submits it to the recipient, or directly to the recipient. However, the prime contractor is ultimately responsible for submission of its sub's LS-4/5's, and the recipient must deal with the prime, rather than the

sub regarding late or incorrect LS 4/5's, as it has a legal relationship (contract) only with the prime and not with any of the subs.

#### **7.4 Records Retention by Contractor**

The record retention period is governed by A.R.S. §35-214 which requires that the contractor and each subcontractor retain copies of the LS-4/5s *and* of all basic payroll records (e.g. payroll register, individual earnings card, canceled checks, etc.) for at least five (5) years after completion of the project. This should be explained to the contractor at the pre-construction conference.

#### **7.5 Privacy Rights**

In order to protect the personal privacy interests of employees, copies of LS-4's containing the individual's salary, work hours, claimed exemptions and tax status, and address shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act, unless any identifiers are first deleted. When payrolls are in the possession of state or local governments, the release of any information must be approved by HUD.8.0 reviewing THE certified payroll and statement of compliance (LS-4/5)

## 8.0 REVIEWING THE PAYROLL REPORT AND STATEMENT OF COMPLIANCE (LS-4/5)

### 8.1 Overview

#### 8.1.1 Sequential Numbering

Each Certified Payroll must be numbered sequentially, starting with #1 for each contractor or sub. For weeks when no work is undertaken by that contractor, there are two options. First, the contractor can continue the numbering sequence and indicate "No Work Performed" on the payroll and submit to the recipient that way. Alternately, the contractor can opt not to submit that week and then when work continues, the next payroll will then continue the sequence. This is a decision to be made between the recipient and contractor, but should be consistent with the contractor and any subs. This should be discussed at the pre-construction conference. The last payroll must be marked FINAL so that the recipient is aware that all work has been completed and no further payrolls will be submitted.

#### 8.1.2 Date of Receipt

The recipient must date stamp the receipt of the LS-4 and LS-5. Date stamping is very important based on the requirement that such payrolls must be received within seven (7) days of the end of that workweek, and that HUD recommends withholding funds from a contractor who is late with submittals.

#### 8.1.3 Timely Review

The recipient must examine the LS-4/5 as soon as possible but no later than seven (7) days after receipt. This early review will keep problems from multiplying and allow the recipient to conduct additional interviews if such appear to be necessary based on the review of the payroll, and/or have the contractor make restitution to workers while they are still readily available (construction workers tend to move from job to job fairly frequently). The person reviewing the LS-4/5 must sign or initial both documents and indicate on both the date that each was reviewed.

#### 8.1.4 Spot-Checking

During the first month that Ls-4/5s are received from each contractor and/or subcontractor, the recipient must ensure that the entire Certified Payroll is checked. Spot-checking is permissible only after the initial month, and *only* if prior payrolls indicate no or very minor errors/problems. It should be noted that all payrolls must be thoroughly reviewed prior to submission to ADOH. *ADOH is not the primary reviewer!*

### 8.1.5 Incomplete LS-4/5s

Except where falsification is suspected, an incomplete LS-4/5 should be returned to the contractor for completion. However, a copy should be retained by the recipient, along with a note indicating omissions and documenting the return to the contractor. A date for completion should be included, normally not more than 7 days after the return.

## **8.2 Detailed Review of the LS-4**

### 8.2.1 Computations

The recipient must do actual computations during the first month, in addition to checking other items on the LS-4, as discussed below. That is, s/he should actually multiply the hourly rate times the number of hours worked and subtract all of the deductions to determine whether the gross rate of pay is correct. If the recipient notices minor mathematical errors, s/he must contact the contractor and document such. A corrected LS-4/5 must be requested and placed in the Labor Standards File when received.

### 8.2.2 Complete Name, and ID Number Required

Each employee's full name and "individual identifying" number (i.e.-last four digits of social, employee ID, but NEVER the full social security number) must be listed on each payroll submitted.

### 8.2.3 Complete and Appropriate Job Classifications

The job classification listed must be complete (e.g., not just "truck driver" but "Truck Driver - Water Truck <3500 gal," or "Laborer - Group 2"); and match a classification listed on the WD or on a submitted conformance request. The classification should correspond to the job classifications either as discussed with the contractor during the pre-construction conference and/or as identified by the town engineer, architect, etc. Further, there should not be a disproportionate number of laborers to mechanics. (see a detailed explanation of this topic in Section 8.2.5).

It can sometimes be difficult to tell what type of work falls under each classification. If it cannot be immediately determined, the recipient should call the prevailing Union as listed on the WD and find out what their scope of work includes. Each Union will have a detailed description of the work they "claim" as part of their classification. If the Union fails to assist in this process, DOL will provide the scope to the recipient, but they should only be contacted as a last resort. If a classification is listed as a Survey ("SU") rate, a Union scope of work will not exist. In these instances, the recipient can call a few local contractors to inquire about the type of work typically performed by specific classifications.

### 8.2.4 Workers in More Than One Classification

Workers who work in more than one job classification must be listed within each separate classification with the number of hours worked and pay received shown as a separate line item for each classification. The employer must pay the employee the rate in the WD for the hours worked in each job class unless it chooses to pay the employee at the higher of the wage rates for the entire

time employed. The employer cannot pay the employee at the lesser of the rates for the two classifications.

### 8.2.5 Reasonable Number of Employees

The number of employees should appear reasonable based on the type and progress of work. This decision should be made in consultation with the engineer, architect or public works director if the LS monitor is not familiar with construction practices. Further, the recipient must ensure that someone visits the site frequently enough that s/he would be aware of potentially suspicious information on the Certified Payrolls.

A very common error, and one the recipient should watch out for, is the misclassification of General Laborers. Frequently payrolls will show one or two employees in a skilled classification and four, five, or more General Laborers. Contractors often use this category as a “catch-all” for job classifications that are not listed on the WD. This is not an acceptable practice. The work of a General Laborer is *strictly limited to that which does not require and “tools of the trade”*. This person should be performing clean up and organizational work *only* and this work must be done by hand. For example, sweeping or carrying empty buckets back to the truck at the end of the day are tasks that would be completed by a General Laborer. However, wire pulling, cutting pipe, moving soil, etc. are NOT tasks performed by a General Laborer and these job classifications, if not listed on the WD, require the contractor to submit a Conformance Request. For details on the Conformance procedure, refer to Section 2.6.

This problem (too many General Laborers on the Certified Payroll) requires immediate follow-up by the recipient. Additional interviews must be conducted to verify what the employees are actually doing on site. At this time, it is recommended that the recipient (or designated interviewer) stands to the side and watches what the employees are actually doing to verify if they are working as General Laborers or if they should be listed under a separate classification. The detailed observation must be logged as part of the interview.

### 8.2.6 Wages and Fringes "No Less Than" Amount Stated

The wages and fringe benefits must be "no less than" the amount stated in the WD for the specific job classification in that geographical area. Wages are paid based on the job classification regardless of the person's skill or any contract between the employer and the employee.

### 8.2.7 Cash Fringe Benefits

If fringe benefits are paid in cash, the LS-4 should indicate such with a line or slash between the hourly rate and the amount of fringe benefits shown in the box for the hourly rate. For example, “12.50/1.40” would reflect a \$12.50 base hourly rate plus \$1.40 for fringe benefits.

NOTE: A detailed discussion of fringe benefits is in Section 9.

### 8.2.8 Overtime Pay and Fringe Benefits

Overtime (OT) must be paid at not less than one and one-half (1 1/2) times the basic hourly rate for all hours worked over 40 in any single workweek. Fringe benefits for overtime, however, can be paid at the normal hourly rate.

**EXAMPLE:**

Base Hourly Rate = \$21.65 Fringe Rate = \$4.80 Standard Time Total = \$26.45

Overtime Calculation:  $21.65 \times 1.5 = 32.48 + 4.80$  (Fringe) = \$37.28 Minimum OT Rate

If an employee works over 40 hours during a workweek but not all of it is on the DB job, the employee **MUST** be paid 1 1/2 times the hourly rate after that 40th hour. However, the hourly rate is determined by which job the employee is working on at the time of the 40th hour. It should be noted that whenever an employee works part of a workweek on a LS job, the provisions of CWHSSA (which requires overtime pay) become applicable.

**8.2.9 Reasonable Hours**

The hours worked must appear reasonable. That is, there should be no “odd” hours such as 3.4 per day, which might indicate, “backing into” a wage. i.e. - A contractor needs to pay \$18.35/hr. according to the WD. The employee received \$600 for the week, so the contractor divides the \$600 by the \$18.35/hr. to get 32.7 hours when really the employee worked a 40-hour week, but they were not paid the proper wage. Nor should there be very few hours relative to the amount of work being done. The recipient must ensure that someone frequently visits the site and performs interviews, so that staff will be aware of suspicious hours shown on the payroll.

**8.2.10 Deductions vs. Fringe Benefits**

The recipient should note that deductions and fringe benefits are totally different items, even though the amount of the fringe benefit, if paid into an approved plan, is “deducted” from the employee’s actual weekly pay. Deductions are voluntary and are subtracted from either the *hourly rate* or total week’s pay, while fringe benefits are in *addition to* the hourly rate and are either provided directly to the employee at the end of each workweek (conceptually to enable that person to purchase his/her own benefit plan) or paid by the employee into an approved fringe benefit plan.

**8.2.11 Deductions**

All deductions from an employee’s pay must be permissible. Permissible deductions automatically include FICA, State and Federal taxes. They may also include court ordered payments, such as for child support. However, if deductions such as child support are shown, the initial LS-4/5 on which they appear *must* be accompanied by an LS-15 signed by the employee acknowledging such deductions or documentation of their legality. The recipient should periodically review the amount of FICA and taxes to ensure that the amount is reasonable.

Permissible voluntary deductions can include documented items such as medical, dental, retirement, pensions, life insurance, etc.

All such deductions must meet a four-part test in that they must:

- be in the interest/convenience of the employee;
- be consented to by the employee in writing in advance of the time the work is done;

- not provide profit or other benefit to the contractor; and
- not be otherwise forbidden by law.

Recipients shall require their contractors and subcontractors to verify all voluntary deductions by employees with an LS-15, Authorization for Deductions, a copy of which appears in the Appendix. The LS-15 must be signed by each employee and is necessary to verify compliance with the Copeland Anti-Kick Back Law. The LS-15 must accompany the initial LS-4/5 on which the deduction appears. The date on the LS-15 should indicate signature *before* the deduction is made. However, if for some reason the LS-15 is not signed until after some deductions are made, the employee must indicate the initial date these deductions were authorized. The LS-15 must be signed by *both* the employee and the employer or a designated representative.

If there are any changes in deductions, a new LS-15 must be submitted with a notation as to the effective date of the change.

### 8.3 Unique Classifications and Situations

#### 8.3.1 On-Site Non-Construction/Non-Hands on Employees

Most projects use some non-construction/non hands-on employees such as:

- superintendents
- inspectors
- engineers
- watch persons
- messengers
- clerical workers
- working foremen (see details in Section 1.7)

These employees are *exempt* from DB and are *not* shown on the LS-4. However, if any of these employees do perform hands on construction work for more than 20% of his/her time, they must be paid the proper wage and listed on the LS-4.

#### 8.3.2 Self-Employed Owners

If the worker is a "self-employed owner," the recipient must check that information against the LS-2 or LS-3 where the person must be listed on the LS-2 or LS-3 as an owner, partner or principal. The owner must also be able to document that the business is bona fide with a tax ID number (personal SSN is **not** acceptable), license, liability insurance or a subcontractors bond. A subcontractor who cannot document that the business is bona fide must be listed as an employee on the prime contractor's Payroll Report, LS-4. The "self-employed owner" must still list his/her work

classification and hours worked. However, instead of listing the hourly pay and fringes, the person should write "self-employed owner."

### 8.3.3 Relatives

Relatives of the owner are not exempt from Davis-Bacon prevailing wages, unless they are listed on the LS-2 or LS-3 as actual owners, partners or principals of the company. If their names do not appear on the LS-2/3, they must be paid DB wages. If a contractor/sub submits a revised LS-2/3 showing a relative as an owner, partner or principal *after* the recipient has identified this issue as a result of an LS-4/5 desk monitoring, the contractor or sub must submit additional documentation, such as Articles of Incorporation or other legal papers, or at a minimum a notarized statement with the "warning" listed at the bottom of the LS-2/3 clearly included. Further, the effective date of the change in ownership must precede the dates of work on the LS-4, i.e., there can be no retroactive change in ownership. Thus, if the contractor/sub adds a person as a partner, principal or officer, the waiver from payment of DB is only effective for workweeks *after* the legal change.

### 8.3.4 Apprentices, Trainees, Helpers, and Summer Youth

If a Certified Payroll indicates that persons are either apprentices, trainees, helpers, or summer youth, documentation of registration in that specific program must be attached to the initial LS-4/5 for that person.

#### **8.3.4.1 Apprentices and Trainees**

Per 29 CFR 5.2(n) an apprentice is defined as: a person employed and individually registered in a bona fide apprenticeship program registered with the US DOL, Employment and Training Administration (ETA), Office of Apprenticeship Training (OA), or with a State Apprenticeship Agency recognized by the ETA/OA, or a person in the first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not yet individually registered in the program, but has been certified by the ETA/OA/State to be eligible for probationary employment as an apprentice.

A trainee is defined as: a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the US DOL, ETA as meeting its standards for on-the-job training programs and which has been so certified by the ETA.

If any employees are listed on the WD as an apprentice or trainee, four (4) conditions must be met:

- The contractor/subcontractor must provide written evidence of program registration with DOL ETA, OA, or a State Apprenticeship Agency. The contractor/subcontractor must also provide the apprentice's certificate that clearly shows which level they are currently working at.
- As stated above, the registration of the individual apprentice(s) must be attached to the initial LS-4/5 on which that apprentice(s) is (are) listed, unless the person is in his/her first 90 days of probationary employment and has been certified as such.

- The contractor is limited to the number of apprentices/trainees permitted on the job site based on the allowable ratio of apprentices/trainees to journeymen specified in the approved program. This information must be provided by the contractor and attached to the LS-4/5. It is also important to note that compliance with the applicable ratio is determined on a *daily, not weekly*, basis.
- Apprentices/trainees must be paid the percentage specified in the approved apprenticeship or trainee program for their level of progression. They must also be paid any applicable fringe benefits as listed in their program, unless their program is silent on the matter in which case they must receive the full amount of fringe benefits listed on the WD. This information must be provided by the contractor and attached to the LS-4/5.

If any of the above conditions are not met, the contractor must pay the full journeyman's wage for all employees.

#### 8.3.4.2 Helpers 29CFR 5.2(n)(4)

Helpers are very rare on a Davis Bacon WD and will only be issued if all of the following are met:

- The duties of the helper are clearly defined and distinct from those of any other classification on the WD;
  - The use of such helpers is an established prevailing practice in the area; and
  - The helper is not employed as a trainee in an informal training program.
- Helpers may only be employed on a DB covered job when they are either listed on the WD or DOL has approved a conformance for such. It should be noted that DOL *very rarely* approves a conformance request for a Helper classification.

#### 8.3.4.3 Summer Youth

The Summer Youth Program requirements are: the person must be a bona fide student; employed only on a temporary basis during the summer; Employment is part of a bona fide youth opportunity program such as that sponsored by a union or government or community group; employment must be in accordance with statutory age and minimum wage requirements. The specific provisions of any such agreement between the contractor and recipient must be in writing and a report of such must be sent to DOL.

### 8.3.5 Truck Drivers

There is always a lot of discussion about truck drivers and when/if they are covered by DB. Truck drivers are covered under each of the following circumstances:

- They are a driver of a contractor or subcontractor and they are spending time working on the site. i.e.-water truck driver
- They are a driver of a contractor or subcontractor and the time they spend loading/unloading materials and supplies at the site of the work, if such time is not *de minimis*. i.e.-a dump truck driver who pulls on the site, dumps a load of gravel without leaving the cab of the truck and leaves, would not be covered. DOL considers *de minimis* in this case to be roughly 20% of the total work week on DB and non-DB jobs. So, if a truck driver works a 40-hour week and at

least 8 of those hours are spent on the DB jobsite, that driver is DB covered. If a contractor has truck drivers frequently coming and going at the site of the work, it is important that they keep detailed records of their time.

- They are transporting materials or supplies between a facility that is deemed part of the site of work and the actual construction site.

Material suppliers, those that deliver items such as sand, gravel, ready-mix concrete, etc., are not covered by DB as long as they are employed by the material supplier and not the contractor.

### 8.3.6 Equipment Installation

Installation of equipment is exempt from DBRA when it is “incidental” to the amount of construction work. If the installation requires substantial amounts of construction, reconstruction, alteration or repair work, DBRA is applicable.

EXAMPLE: Purchase of commercial kitchen equipment for use in a senior center. The refrigerator simply plugs in and the dishwasher requires a plug-in and basic install of flexible pipe to an already installed permanent drain. No DB is required. However, if the project also includes the installation of a walk-in freezer that will require 2x4 framing adjustments and re-wiring, Davis-Bacon wages are required.

### 8.3.7 Supply and Installation Contracts

DBRA does apply to installation work performed in conjunction with a supply or service contract covered by DBRA. For example, installation of a security system, air conditioning ducts, excavating outside cable trenches, laying cable or installing heavy generators, where a substantial amount of construction work is involved, is covered. This area functions in a manner similar to the examples for equipment installation.

### 8.3.8 Carpet and Drapery Installation

DBRA does apply when these actions are performed as an integral part of or in conjunction with new construction, alteration or reconstruction, but does not apply if no other construction is contemplated.

### 8.3.9 Utility Company Employees

Utility company employees, of private-for-profits, cooperatives, districts or public utilities, who perform construction type work, are *exempt* from federal labor standard provisions as long as the utility company furnishes its own materials and *extends its own utility system*, even if it contracts out for such work.

Situations in which employees of a utility company would be covered by federal labor standards are limited to relocation of a utility line at the option of the local government; installation of a utility line, which would then become the *property* of the recipient or a subrecipient; or any work not related to the utility extension.

### 8.3.10 Crane Owners and Operators

Crane operators must be listed on the Certified Payroll and paid appropriate wages. This classification frequently does not show up on a Wage Determination and will often require a Conformance. Depending on the extent of the work, the crane company will most likely be considered a subcontractor. There may be several jobs associated with the set-up and operation of the crane. If the company has a designated team of employees who visit jobsites specifically to perform set-up *only*, these employees are exempt from DB. However, the individuals that are operating the crane and any signalmen assisting in the operation are DB covered.

### 8.3.11 Survey Crews

Per DOL All Agency Memorandum No. 212, survey crews are covered under specific circumstances. If the surveying is performed immediately prior to and during actual construction, in direct support of construction crews, such activity is covered. If a member of a survey crew is also performing laborer or mechanic's work, i.e. if they clear brush or other types of manual work, they are covered. However, as a general matter, members of the survey team who hold the leveling staff and those that track measurements are not considered laborers or mechanics and are thus exempt from DB wages.

### 8.3.12 Flaggers and Traffic Directors

These jobs are covered because their work is integrally related and necessary to other construction activities at the site. However, a traffic service company that rents equipment to the contractor is not covered.

### 8.3.13 Drilling

If drilling is only to obtain data to be used in an engineering study or the planning of a project for which no funds have been authorized or appropriated, it is not covered by DBRA. However, if it is part of a public works project, such as a well for a water system, it is subject to DBRA.

### 8.3.14 Demolition

Demolition alone is not subject to DBRA. However, if an existing building is to be demolished so that further construction (that is subject to DBRA) can take place, the demolition becomes a covered activity.

## **8.4 Detailed Review of the LS-5**

### 8.4.1 Deductions

The LS-5 Statement of Compliance (SOC) must list all deductions. All employers must withhold at least FICA and federal and state withholding taxes for which normally no backup documentation is required. All other deductions shown on the LS-4 must also be listed and documented via court orders, similar paperwork, or an LS-15.

### 8.4.2 Fringe Benefits

The LS-5 must indicate whether fringe benefits are paid in cash or to an approved fringe benefit plan. If in cash, the amounts must appear on the LS-4 as monies paid to the employee.

If the LS-5 states that the fringes are paid to an approved plan, the contractor must: a) provide documentation of an approved plan to the recipient prior to the beginning of construction; and b) provide the LS-15, Authorization for Deductions along with the initial LS-4 on which the specific employee(s) name appears. Prior to the start of construction but no later than the submission of the initial LS-4/5, the recipient must verify the fringe benefit plan using the LS-14 and submit such to ADOH (see also Section 9).

If there are any exceptions to the method of payment of fringe benefits, these must be described on the LS-5. For example, the required fringe benefits are \$2.52/hour. The approved plan only costs \$2.00/hour. Thus, the cash paid is \$.52/hour and would be explained under "exceptions." Or, a union plan might cover only certain work classifications. Thus, some employees would have fringes paid into a union approved plan and others in cash.

### 8.4.3 Authorized Signature

The LS-5 must be signed and dated by the contractor/sub *after* the end of the payroll period or workweek. It must either be: 1) signed in *ink* by the owner or officer, as shown in the Contractor's or Sub's Certifications (LS-2 or LS-3), or by an employee designated in writing by the owner/officer as authorized to sign the SOC OR 2) signed electronically in an agency approved limited access web-based portal by the same parties mentioned in 1. If the owner/officer designates a specific employee as a signatory, this authorizing letter must be signed in ink. The contractor's signatory must be someone that fully understands Labor Standards regulations and understands the liability they assume for signing this document. The recipient must retain the original signed LS-5 and mail a copy to ADOH. If a recipient believes that an LS-5, Statement of Compliance has been falsified, it should notify ADOH *immediately*.

## 9.0 FRINGE BENEFITS

The issue of fringe benefits *must* be discussed at the pre-construction conference. If fringe benefits are not paid in cash, the prime contractor must be aware that until a fringe benefit plan is approved by the recipient (as documented by the LS-14), all fringe benefits must be paid in cash to each employee. Therefore, the contractor should be encouraged to submit information about its fringe benefit plan, or that of any subcontractor, *before* construction starts.

The recipient must document the validity of the fringe benefit plan following the steps below. If the plan or portions of the plan cannot be documented as allowable, the contractor or sub must pay fringe benefits or a portion of such in cash.

Fringe benefits are sometimes different for apprentices/trainees enrolled in bona fide programs. In these instances, contractors must obtain a copy of the apprenticeship program outlining the payment scale of these employees. Sometimes the payment scale will include information on how to properly pay fringe benefits (i.e.-a percentage of the full journeyman's fringe). However, if the program is silent, the *full journeyman's fringe benefit as listed on the WD must be paid to the apprentices.*

### 9.1 **Funded and Unfunded Fringe Benefit Plans**

A **funded** fringe benefit plan provides bona fide fringe benefits, which are irrevocably paid by the contractor into a fund, plan or program, and overseen by a third party on behalf of the employee. A contractor may take credit for such contributions as meeting all or part of the prevailing wage required fringe benefit without requesting approval from Department of Labor. In plain language, such a plan provides a guarantee that the funds are available for the employee when needed. Typical plans are for health, dental or pensions but they can include other benefits common to the construction industry.

An **unfunded** plan is one in which the funds are paid from the company's general assets and generally *not* administered by a third party, and thus a review is required by DOL. DOL may approve them on a case-by-case basis to determine if it is a bona fide plan. This type of plan tends to provide unconventional types of benefits. As there is no third party administration, the benefits are not as secure as those placed into a funded plan. A contractor *cannot* take credit for contributions to an unfunded plan before receiving approval from ADOH, HUD, and DOL. For a contractor to obtain credit for an unfunded plan, it is recommended that the funds be placed in an escrow account that is legally enforceable. Documentation must be provided to ADOH, which shall then attempt to obtain DOL approval.

### 9.2 **Fringe Benefit Payments**

A contractor may *not* take credit for any benefit required by law, such as Social Security or Worker's Compensation Insurance. The Davis-Bacon Act and 29 CFR 5.23 list fringe benefits to be considered and include life or health insurance, pension, vacation, holiday pay, and/or sick leave.

#### 9.2.1 Cash and Plan Combination

A contractor may offset monetary wages paid in excess of the minimum prevailing wage required by the WD to satisfy a fringe benefit obligation.

Example: the WD states that the hourly rate is \$13.00 with a \$3.00 FB. The contractor has four choices. It can pay 1) a total of \$16.00 in cash; 2) \$13.00 in cash and \$3.00 to an approved FB plan; 3) \$14.00 in cash and \$2.00 to an approved FB plan; or 4) \$12.00 in cash and \$4.00 in an approved fringe benefit plan. NOTE: The \$14 and \$2 and \$12 and \$4 combinations are examples to illustrate the concept that the contractor can break up cash and fringes in any mathematical combination, as long as the base rate does not go below required minimum wage.

### 9.2.2 Computing Hourly Fringe Benefit Equivalents

If a contractor/employer contributes to a hospitalization plan on a weekly basis, the *total* hours worked (DBRA covered and non-covered) each week by each employee should be divided into the contribution made by the employer on behalf of each employee to determine the hourly cash equivalent. If contributions are made on a bi-weekly basis, cash equivalents are computed on a bi-weekly basis, and if made quarterly, they would be computed on a quarterly basis. Remember that DB covered employees must be paid weekly regardless of the frequency of benefit contributions.

Example: the annual cost of a pension plan is \$15,000. The total actual working hours for the employee are 1,500 (both covered and non-covered). Thus, the cash equivalent paid into the FB plan is \$1.00 for each hour worked. As construction workers often do not work a full year, and payments to a pension plan may be made in advance of the year, the total hours worked the prior year can be considered as representative and that amount considered as a contribution to the fringe benefit plan. However, if a contractor decides to use this method, they must be able to provide clear documentation evidencing they work hours used to calculate the fringe benefit rate. The contractor can only take credit for the \$1.00 for each DB hour worked. Thus, if an employee worked 40 hours during a given work week, with 20 being DB covered and 20 uncovered, the employer can only count \$20.00 toward the DB required FB.

## 9.3 Required Forms

Two forms relate directly to fringe benefits:

- LS-14, which can demonstrate that the recipient has verified a fringe benefit plan as legitimate and acceptable; and
- LS-15, which authorizes deductions from an employee's pay for fringe benefits to be paid into an approved plan.

Both forms, when applicable, must accompany the LS-4/5 on which the initial fringe payment is noted for each employee. Thus, if an employee's name did not appear on a prior LS-4, and the fringe benefits are paid into a plan, the initial LS-4 on which *that* employee appears must be accompanied by an LS-15 signed by the employee.

### 9.3.1 Fringe Benefit Plan Verification and the LS-14

The recipient must be able to provide documentation verifying the fringe benefit plan to ADOH. The follow are ways in which the recipient can meet this requirement:

- Calling or e-mailing the company the contractor claims to pay benefits to and verifying that the contractor *is* paying into the fund and is *current* with his/her payments. This method is documented in detail on the LS-14; OR
- Requesting a copy of the most recent remittance statement from the company, which will verify the employees covered by the plan and the amount paid into the plan by the contractor for each employee. If the full remittance statement (including any employees that are listed on certified Payrolls) is provided to the recipient and subsequently to ADOH, the recipient does not need to complete the LS-14 unless they want a copy for their records; OR
- Calling the local union and verifying that the contractor is a signatory to the Trust Fund Account. This method is documented in detail on the LS-14.

NOTE: The recipient must compare the amount paid per employee on the remittance statement to the amount of fringe benefits required by the Wage Determination. If the remittance statement indicates an amount less than the prevailing fringe, the contractor must be notified in writing to pay the rest in cash to the employee.

### 9.3.2 Authorized Deductions, LS-15

The contractor must provide form LS-15 "Authorization for Deductions," signed by each employee covered by the fringe benefit plan. The LS-15 must also be provided to ADOH along with the first LS-4.

## **9.4 Other Conditions**

Recipients must keep in mind that payments to approved plans must also meet the following conditions:

- they must be made regularly and at least quarterly (29 CFR 5.5(a)(1)(i));
- they must be paid for straight time *and* overtime; however, the benefits are NOT included when computing the overtime rate (i.e., they are not paid at 1.5 times the normal amount);
- contributions must be made irrevocably to the trustee or third party;
- payments must be made with respect to the individual i.e.- the amount contributed for each employee must be determined separately and cannot be averaged across a group;
- vacation, holiday and sick leave plans are generally considered "unfunded" and are paid from the contractor's own account. (see detailed information regarding this in Section 9.6)

## **9.5 Transportation, Board and Lodging Expenses**

When an employer assigns employees who are regularly employed in their home community to perform a special job at a location outside their daily commuting distances, then as a practical matter, they return to their homes only on weekends, the assumption by the employer of the cost of lodging, board, and transportation (not customarily furnished by the employer), are considered as payment of travel expenses properly reimbursable by the employer and incurred for its benefit. Such payments are *not* considered bona

fide fringe benefits within the meaning of DBRA, are not part of the employee's wages, and do not constitute board, lodging or other facilities customarily furnished and deductible from the predetermined wage.

If an employee, as a normal condition of employment, is regularly employed outside the home community, the employer may deduct the cost of "board, lodging and other facilities" from the employee's wages. However, the contractor must document that employment outside the home community is a normal condition of the job, and must maintain and preserve records substantiating the cost of housing, fuel, merchandise provided through a company store, etc.

## 9.6 Unfunded Plans (Vacation, Sick, Holiday) 29 CFR Part 5.28

A fringe benefit plan or program which the contractor funds from the company's general assets (rather than by payments to a trustee or third party) is referred to as an unfunded plan. A contractor's reasonably anticipated costs in providing bona fide fringe benefits under such a plan may be creditable towards meeting DB fringe obligations if certain requirements are met. All such plans require DOL approval to be considered as counting towards DB wage requirements.

DOL considers most vacation, sick, and holiday plans as unfunded and an unfunded plan must meet a four-part test in order to receive consideration:

- the plan can reasonably be anticipated to provide allowable benefits as per DB;
- it represents a commitment that can be legally enforced;
- it is carried out under a financially responsible plan or program; and
- it has been communicated in writing to the affected employees.

If an unfunded plan does not meet these requirements, the firm will usually be required to establish an escrow account. To ensure that such plans are not used to avoid compliance with DB, DOL directs the contractor to set aside, in an account, no less often than quarterly, sufficient assets to meet the future obligations of the plan.

If the employee terminates prior to becoming eligible under the vacation, sick leave or holiday pay plans, the amounts credited toward the WD requirement must be paid to the employee.

The credit toward the WD fringe benefit requirement would be computed on the basis of the total amount contributed by the employer divided by the total number of hours worked per year, which determines the cost per hour worked. The creditable amount toward the fringe benefit would be the cost per hour times the number of DBRA worked hours.

If an employee works any part of a week in which a holiday occurs and was hired prior to the holiday, the employee must receive the entire holiday pay benefit, unless the WRD states otherwise. In some cases, the plan requires the employee to work the day before and the day after a holiday to be paid. If it can be shown that the employer arbitrarily lays off employees the day before and/or the day after the holiday to avoid payment of the holiday fringe benefit, back wages should be computed for failure to pay the fringe benefits.

The same principal applies if it can be shown that the employer transfers employees to non-DBRA covered jobs during a week in which holiday pay is due to avoid such payment.

Remember, these plans require prior approval by DOL before they can be counted towards meeting the DB wage requirements!

## 9.7 Eligibility Standards for Fringe Benefit Plan Participation

Eligibility standards are permissible in an otherwise bona fide plan. However, an employee who is excluded from a specific plan (e.g. a 3 month waiting period for health insurance) must be paid fringe benefits in cash, even if the company participates in an approved plan. Also, if an employee is excluded from a union plan for some reason, that employee must be paid fringe benefits in cash, even if the employer must contribute to the plan on behalf of that employee by the terms of the union contract.

## 9.8. Pensions and Profit Sharing Plans

For a plan to meet the WD fringe benefit, the contributions must be irrevocably made to a trustee or a third party, and the trustees must assume the usual fiduciary responsibilities imposed by law. However, the contractor may be a trustee of the plan. If the plan meets the requirements of the Employee Retirement Income Security Act (ERISA), it can be considered “bona fide” for DB purposes.

As a general rule, contributions to profit sharing plans providing pension benefits may not be creditable toward meeting the WD fringe benefit requirement because of the uncertainty or discretionary nature of the contribution provisions of the plan. As such plans are only operative if there is a profit, there is no guarantee that a contribution on behalf of the employee will be made at all, let alone quarterly, as required. However, contributions to such plans can be counted toward the WD requirement if the contribution is *irrevocably placed in an escrow account* at least quarterly, and is in an amount that is sufficient to meet any claimed FB credit counted towards meeting the DB wage requirements.

For a defined contribution pension plan that provides for a higher hourly rate of contributions to be made for DBRA workers than for non-covered work, the higher rate paid for DBRA work will be fully credited to the plan only if the plan provides for immediate participation and immediate vesting. If a plan does not provide for immediate vesting, DB contributions to the plan must be paid in the same amount as contributions made by the employer for all non-covered hours during the year. Example: a contractor's contribution to the pension benefit is \$2,000 a year for a specific employee who worked 1,500 hours on non-covered jobs and 500 hours on this DBRA covered job. Thus, only \$500 can be creditable toward the WRD fringe requirement.

## 9.9 Crediting Apprenticeship Training Costs

Costs incurred by a contractor or sub for a bona fide apprenticeship program that is registered with the Bureau of Apprenticeship and Training or a state apprenticeship agency, are creditable under DBRA but only for the actual training costs, i.e., books, tools, materials and instruction. The costs incurred for apprenticeship training for one job class cannot be used to offset the costs of another program, i.e., a contractor cannot claim credit for apprenticeship training costs incurred for electricians to satisfy the applicable WD benefit requirements for carpenters.

## 9.10 Administrative Expenses

The administrative costs incurred by a contractor or sub in connection with the administration of a bona fide plans are *not* creditable towards the WD amounts. For example, a contractor cannot take credit for the cost of an office employee who fills out medical insurance claim forms to submit to the insurance carriers.

## 10.0 EMPLOYEE INTERVIEWS AND ON-SITE INSPECTIONS

### 10.1 **Employee Interviews 29 CFR 5.6(a)(3)**

The purpose of conducting employee interviews is to determine if the contractor is adhering to the various labor standards provisions. Although a review of LS-4/5s provides one piece of evidence of labor standards compliance, interviews with the employees are a necessary component of compliance documentation. Interviews are frequently the only way that a recipient will become aware of a violation, as LS-4/5s are prepared by the contractor, whereas employee interviews provide first-hand information about contractor compliance. The recipient should budget sufficient resources (i.e., staff time and/or funds to pay a subcontracted entity) to fulfill this task, which will vary greatly depending on the location of the project (thus, the drive time), the length of the project, the number of subs and the variety of job classes.

Construction work by its very nature is rather transitory. Many employees work on a job site for only a few days or weeks. Therefore, conducting the required number of interviews on a regular basis, beginning the initial week of construction, is extremely important. Trying to track down employees later to conduct interviews can be a very time consuming and costly activity.

During the pre-construction conference, the recipient should try to obtain information regarding the number and type of subs that will be on the job, and the timetable/work flow, i.e., which subs will be working during which phases of the job and for how long, which job classes will be on-site during which phases of the project and how long each is likely to take. This information, in the form of a project schedule, should be updated weekly by the contractor and provided to the recipient. This will assist the recipient in planning to ensure that sufficient interviews are conducted.

The interviews must also be compared to the LS-4/5s. In most cases the LS-9 and LS-4/5 can provide sufficient documentation that the contractor is in compliance or can become the basis for an investigation regarding alleged non-compliance.

#### **10.1.1 The Interviewer**

The person who conducts the interviews should be either the LS monitor or someone designated by the LS monitor. The interviewer should have attended the pre-construction conference and be familiar with the proposed job activities, the types of work classifications likely to be used by the contractor, the WD and appropriate wages per job classification.

Although more than one person may conduct interviews, the recipient should try to assign this task to a single person for the duration of the project, so that s/he can become familiar with the faces of employees and knowledgeable about the project itself. *Conducting interviews is ultimately the recipient's responsibility* although it may be contracted out to someone such as the project engineer. If so, the contract should clearly outline what is to be done during those interviews, the number of interviews to be conducted, etc. Interviews *cannot* be conducted by the contractor/sub or its employees.

To fulfill the requirements of the interview process the interviewer must have a copy of the WD readily available *and* be familiar with it and the job classifications to recognize a wage rate stated by the employee that is *less* than the stated rate. Additionally, the interviewer must be knowledgeable

about the types of work and different terms used to describe the same job classification. Working with the contractor, engineer, or public works director should help identify the most common job classifications and other terms frequently used to describe those jobs.

The interviewer should be familiar with the questions and consider what type of follow up questions may be appropriate. It may help to conduct a mock interview prior to conducting the initial interview. The interviewer should always carry several stamped, self-addressed envelopes that s/he can provide to employees in instances where follow up information is requested, i.e., copies of pay stubs, more information about hours worked, etc. The interviewer should also always carry some form of identification such as a business card to verify his/her relationship to the project.

### **10.1.2 Interview Location**

Interviews should be conducted on the job site whenever possible, unless such a site does not provide privacy for the interview or there is a health or safety concern. If the recipient has any reason to suspect that the employee will be subject to reprisal as a result of the interview, the interview should be conducted elsewhere. Off-site interviews should be noted and explained on the LS-9.

Interviews should always be conducted unannounced and on random days (i.e., not every Tuesday at 10:00 a.m.). However, the recipient should discuss with the contractor/sub, preferably during the pre-construction conference, the most and least convenient times for interviews, so that the actual project is not interrupted unnecessarily.

If the job is complete, and the recipient has failed to conduct an appropriate number of interviews or needs to conduct additional interviews, these may be conducted either by telephone (preferable) or by mail (last resort). However, every attempt to make an in person interview must be made. Simply waiting until the end for convenience is not appropriate nor an excuse. Under those circumstances where an in person interview cannot be accomplished, the recipient should note and explain such on the LS-9.

### **10.1.3 Who and When to Interview**

Because the interview process is by nature a spot-check of the certified payroll, there isn't a hard and fast rule as to how many employees to interview and when. However, ADOH does have minimum requirements that the recipient must make every attempt to meet. If for some reason a recipient anticipates not being able to meet these minimums, they must contact ADOH and discuss the matter with their Specialist. These requirements are as follows:

1. The recipient must interview at least 50% of all laborers. Laborers tend to be the classification that yields the most trouble on payrolls. Interviewing a larger pool of such employees will provide adequate data to crosscheck the certified payrolls.
2. In addition to laborer interviews, the recipient must interview 20% or at least one (1) employee from each additional class listed on the certified payroll. For example, if a payroll includes the skilled trades of a carpenter, electrician, and plumber and there are two employees in each of these classifications, the recipient must interview at least one carpenter, one electrician, and one plumber. However, if there are ten electricians onsite, two must be interviewed to meet the 20% requirement.

3. The recipient must interview all employees listed as apprentices or trainees on the certified payroll.
4. Interviews must be conducted no less often than monthly. If the job lasts for many months, the conditions of #1, 2, and 3 above must be met each month.

Recipients should obtain information about who to interview based on information provided at the pre-construction conference, project knowledge and review of payroll reports. As employees working in certain classifications may only be on-site for a very brief period, such interviews will need to be carefully coordinated with the prime contractor or conducted off site. Off-site interviews should only be conducted if absolutely necessary. Part of the interview process is to observe what the employee is actually working on at the job site. If the interview is conducted off-site, this critical piece of information is lost. If a contractor is giving the interviewer excuses as to why they cannot conduct interviews, they should be reminded that regulations permit the interviewer to enter the job site and conduct interviews at any time during the project.

If the recipient notices a high rate of turnover or encounters problems or discrepancies between the interviews and the payroll reports, the recipient must increase the number of interviews conducted and discuss the issue with ADOH.

#### **10.1.4 The LS-9, Record of Employee Interviews**

The interview must be conducted using the LS-9 as it appears in the Appendix. Questions should not be skipped or modified. Answers must not be prefilled by recipient staff. These interviews are a critical part of LS compliance and they must be treated as such. Most of the items on the form are self-explanatory. However, please note the following:

If the contractor has stated that only the self-employed owner(s) will be doing hands-on work on the project, the recipient must still document that these are the only people actually working on site. In order to do so, the recipient must use the LS-9, Employee Interview Record. In addition to observing the self-employed owner(s) at work and describing the duties, the interviewer must state whom s/he saw working, by name. This requires that the interviewer be familiar with the self-employed owner(s). Such a meeting can take place at the pre-construction conference or at any other appropriate time prior to the start of construction. If the interviewer sees anyone other than the self-employed owner(s) at work on the job-site, the interviewer must conduct a regular interview.

## **10.2 On-site Inspections**

On-site inspections are required to determine whether the three required appropriate notices and posters are posted. These are: Wage Determination (including any conformance requests), Notice to Employees, and an EEO Non-Discrimination poster.

These posters and others that are required are available in both English and Spanish at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf> (WH-1321 Davis-Bacon Poster (English) or <http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>. (WH-1321 Davis Bacon Poster (En Español).

### **10.2.1 The LS-10, On Site Inspection**

The on-site inspection must be documented by the recipient using the LS-10. A copy of it appears in the Appendix. The form is self-explanatory. In most instances, the person who completes this form will be the same person who conducts the interviews.

### **10.2.2 Frequency and Location**

Inspections must be conducted *at least once during the first 30 days and one time thereafter*. Ideally, the first inspection will occur within the first week of construction. If problems are noted, such as lack of required postings, or employees indicating in interviews that they could not find the postings, inspections should be increased and reports filed for each. If the location of the job site changes or there are several job sites, each new location should be inspected at least once.

### **10.2.3 Follow-Up**

If the LS-10 indicates that required postings were not posted, or not posted in convenient locations, the recipient's Labor Standards File must document that appropriate actions were taken to rectify the situation, e.g. a letter was sent to the contractor notifying it of this issue. Further, if the Notice to Employees contains the name of a person other than the name, which the recipient provided, the recipient must take swift and immediate action to rectify the situation. It should request in writing that the contractor explain why the name was changed, and indicate whether any complaints were received by the person listed, as well as the status of such complaints and the employees who made them. This letter should also note that the 4010 prohibits retaliatory action against employees for filing complaints. The contractor must immediately put up a correct Notice, which is later verified.

### **10.2.4 Notice to Employees, LS-7**

This form must be posted on the job site and verified as such on the LS-10. It provides employees with the various federal labor standards compliance requirements, to include minimum wage, any conformances, overtime and apprentices, and must have the name and telephone number of the person employees can contact if they have a problem. That name *cannot* be that of the employer or any person associated with or employed by the contractor. It must be the recipient or someone designated by the recipient (engineer/inspector) who is easily accessible to employees with problems, complaints, etc., and who has no conflict of interest with the contractor.

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## 11.0 VIOLATIONS AND COMPLAINTS

Recipients are responsible for ongoing labor standards compliance monitoring of the contractor and subcontractors. In the course of such monitoring, the recipient may identify possible violations. These must then be investigated to determine if there are violations, and if so, the violations must be resolved. Labor standards investigations require *prompt action* and *documentation*. It is important to remember that there is a distinction between an *investigation*, which is based on a specific allegation of wrongdoing and an *inspection*, which is a routine check on the practices and procedures of the contractor and subs.

Investigations must be more thorough in order to resolve the allegations. Recipients are required by law to investigate all violations and complaints by employees and others, with complaints a priority. The recipient *must* by law, keep the identity of any complainant confidential unless otherwise permitted by the complainant. Regulations permit recipients to ask contractors/subcontractors for any type of documentation required to support their investigation. This could include the many items outlined in the following sections.

### 11.1 Contractor Responsibilities

The contractor is responsible for maintaining basic time and payroll records *in addition to* the Certified Payroll, LS-4. Time records (signed by both the employee and employer) include: payroll registers, individual earning cards, canceled checks, and proof of direct deposit. A check that has not been cashed is NOT evidence of payment.

NOTE: The prime contractor is responsible for any violations by subcontractors.

### 11.2 Employer/Employee disputes

Whenever there is a factual dispute between an employer (contractor) and an employee, the recipient should rely upon the statement of the employee, barring overwhelming evidence to the contrary, since the contractor (and not the employee) agreed to comply with all federal labor standards compliance requirements. For example, if there is a dispute between the contractor and the employee relating to the number of hours worked, and there are *no* time records signed by the employee, the recipient should accept the employee's statement as to number of hours worked, as the contractor agreed to maintain time records.

### 11.3 Complaints

Complaints may come to the recipient either through an Employee Interview, or other means, e.g. a worker just walking into or telephoning the town hall to complain, or a local newspaper editorial inveighing against certain alleged violations on the job site. *Each and every such complaint must be investigated and resolved.*

The recipient must notify the prime contractor and ADOH in writing, within 5 working days, of any alleged violations, the status of an investigation, or required actions to resolve the violation. The recipient should maintain documentation of such items via certified mail, return receipt requested, or hand-delivery, receipt requested.

## 11.4 Restitution by the Contractor

Underpayments can be the result of several issues including: 1) mathematical errors by the contractor; 2) use of an incorrect hourly wage and/or fringe benefit; 3) use of an incorrect job classification; 4) payments made into an unapproved fringe benefit plan and which must then be paid in cash; or 5) lack of appropriate payments for overtime hours worked. Restitution is the act of paying to the employee the difference between the amount originally paid and the actual amount due. If the recipient determines because of an investigation that there is restitution due the recipient must require confirmation of such restitution in the form of a revised certified payroll. This will require the contractor to complete and submit to the recipient documentation in the form of one LS-4/5 for the entire period of the underpayment.

The correction payroll must list:

- each employee to whom restitution is due and their work classification
- the total number of work hours involved (daily hours are usually not applicable for wage restitution)
- the adjustment wage rate (the difference between the require wage and the wage paid)
- the gross amount of restitution due
- deductions and the net amount actually paid.

A properly signed LS-5, Statement of Compliance must accompany the correction payroll. The recipient must provide the restitution payroll documents to ADOH within 10 working days of resolution of the investigation.

The recipient must notify the contractor that if the underpayment is not corrected and properly documented within 30 days of the notification, the recipient will withhold funds. DOL regulations governing federal labor standards actually prohibit payments to contractors or subcontractors who have failed to comply with this provision. DOL regulations also permit ADOH to cross-withhold funds from a non-compliant contractor. This means that if a contractor has a job in which they are not paying employees in Community A, ADOH can withhold funds if that same contractors has a job in Community B. If this is to take place, notification to the prime contractor must be sent certified mail, return receipt requested or hand delivered, evidence of receipt maintained.

## 11.5 Overtime Violations and Penalties

If the construction contract is over \$100,000 and thus subject to CWHSSA, in addition to restitution due as a result of incorrect overtime payments the contractor can also be assessed liquidated damages (a penalty) in the amount of \$25 per day per worker for each day overtime payments were not correct,. The recipient must notify ADOH of any overtime violations using forms LS-11 and LS-12. ADOH then notifies HUD Labor Relations, which sends a Notice of Intent to Assess Liquidated Damages to the contractor. The contractor has 30 days in which to respond. The response can indicate that such violations were inadvertent or that the recipient was wrong in its investigation. HUD makes the final decision as to whether the contractor shall be assessed liquidated damages.

## 11.6 Sanctions

**Any** violation of the Federal Labor Standards Provisions including an incomplete or late payroll, or a willful underpayment, is technically a breach of contract and can result in termination of the contract. Although recipients rarely terminate contracts for other than willful violations, there are specific sanctions for violations, which form the basis for the Federal Labor Standards Provisions:

*Davis Bacon Act* violations can result in payment suspension by the recipient until the violation is discontinued or compensation is made. Continued or willful violations can result in debarment. Debarment

is defined as becoming ineligible to receive any federally assisted contracts and/or funds including federal loans. It is imposed on the basis of evidence of aggravated or willful violations.

CWHSSA violations can result in liability for unpaid wages and liquidated damages. Intentional violations are a federal misdemeanor, which is punishable by a fine of up to \$1,000 or imprisonment for up to 6 months or both.

*Copeland Anti-Kickback Act* violations can result in criminal prosecution by federal authorities, which can result in a fine of up to \$5,000, imprisonment of up to 5 years or both.

## 11.7 Investigative and Enforcement Reports, LS-11 and LS-12

An LS-11, Investigative Report, must be completed by the recipient any time an investigation is conducted and must be sent to ADOH within 30 days of the completion of the investigation. A copy of the LS-11 can be found in the Appendix.

An LS-12, Enforcement Report must be completed by the recipient any time the investigation proves there were underpayments of \$1,000 or more or that the violations were willful or aggravated. A copy of that report, along with the LS-11 and LS-4 (for restitution) if applicable, must be sent to ADOH in addition to being maintained in the labor standards file.

## 11.8 Conducting an Investigation

The following guidance is intended to list the various steps that are typically undertaken when conducting an investigation.

- Check the construction contract to ensure that it includes the required documents, i.e., the HUD-4010, signature and name on the Contractor's Certifications, the wage determination, etc.
- Review the LS-6, Pre-Construction Conference Report to determine who attended the conference, what topics were covered, what questions, if any, were raised, and the responses to those questions.
- Review the LS-4/5s, Weekly Payroll Reports/SOCs to see if the name (if a complainant) appears or a pattern is indicated.

Review the LS-9s/10s, Employee Interviews and On-Site Inspection Reports to see if a pattern appears that was previously missed.

- Conduct more employee interviews, if appropriate, to include some off-job site interviews, or telephone or mail interviews.
- Ensure the confidentiality of all complaints and/or persons interviewed.
- If appropriate to the specific investigation, notify the contractor, in writing, that you wish to review basic payroll and personnel records. Ensure that this is done in a manner so as not to reveal the complainant's name or identity, unless the person authorized such. Review these items and make copies if appropriate.
- Review documentation for apprentices, trainees, summer youth, in light of the complaint or alleged violation to ensure it is accurate and legitimate (i.e. a date or name has not been deleted or inserted that could have been overlooked when first desk monitored).

- Meet with the contractor and subs, if appropriate, to discuss your findings and attempt to determine whether the violations/complaints are accurate. Provide the contractor with every opportunity to refute your findings with objective documentation.
- Notify the contractor in writing of your findings and outline actions to be taken with a time line for such. If payment is being withheld pending the results of the investigation, the communication should specify this and cite the authority for the action.
- Prepare a report of the investigation and resolution using forms LS-11 and LS-12.

## 11.9 Example scenarios of inspections, Violations, Investigations and Resolutions

1. VIOLATION: Incomplete and/or incorrect LS-4 and LS-5  
 INSPECTION: Violation found during LS-4/5 review. LS Monitor emailed the contractor regarding the missing/incorrect information. The mistakes were found to be honest errors.  
 RESOLUTION: Contractor submitted a revised payroll that included all required documentation.
  
2. VIOLATION: Numerous incomplete and/or incorrect LS-4s and LS-5s not being addressed by the contractor  
 INVESTIGATION: Violations repeatedly found during LS-4/5 review. LS Monitor attempted to contact contractor several times with lack of response. LS Monitor verified work was taking place at the jobsite and interviewed all employees present at the time.  
 RESOLUTION: If the contractor continues to refuse to correct the payrolls, the LS Monitor should notify them that payment will be withheld until the issues are resolved. The situation should be documented on the forms LS-11 and LS-12 to outline the nature of the violations.
  
3. VIOLATION: Missing documentation for apprentice/trainee listed on certified payroll.  
 INVESTIGATION: LS Monitor interview employee who indicated they are an apprentice. The contractor was asked to submit documentation of enrollment in a bona fide apprenticeship program. The contractor indicated they were hired as an apprentice with this company, but not enrolled in a formal program.  
 RESOLUTION: Because the employee is not enrolled in a bona fide program and the contractor could not provide appropriate documentation demonstrating such, the employee is due the full journeyman's wage. The contractor must submit a revised certified payroll and make a restitution payment to the employee.
  
4. VIOLATION: LS-4 and LS-5 indicate that fringe benefits are paid into a plan but no evidence of the plan was included with the documentation submitted by the contractor.  
 INVESTIGATION: The LS Monitor emailed the contractor regarding the issue.  
 RESOLUTION: The contractor provided a remittance statement from the health insurance company clearly showing each enrolled employee and the amount the company pays into their individual plans.
  
5. VIOLATION: The contractor consistently fails to provide LS-4/5s in a timely manner.  
 INVESTIGATION: The LS Monitor emails the contractor regarding the issue.  
 RESOLUTION: The contractor is given a period in which to comply. If the deadlines are not met, the recipient will begin withholding funds.
  
6. VIOLATION: An employee interview show that the employee stated they worked 15 hours of overtime the previous week and the payroll only shows 10 hours.

INVESTIGATION: The LS Monitor emails the contractor requesting proof of the employee's time worked.

RESOLUTION: The contractor provides a time card, signed by the employee that indicates only 10 hours of overtime. The LS Monitor follows up with the employee who indicates that he made an honest mistake in reporting 15 instead of 10 hours to the interviewer.

7. VIOLATION: During an interview, an employee states that there are employees working who are not being paid Davis Bacon wages.

INVESTIGATION: The LS Monitor must monitor the jobsite closely and interview as many employees as possible. Interviews must be carefully compared to certified payrolls.

RESOLUTION: If the contractor is found to have made a willful violation and in fact did not pay and report all employees, the LS Monitor must report their findings to the contractor and ADOH and complete forms LS-11 and LS-12 documenting the situation.

8. VIOLATION: Employee calls LS Monitor and indicates that employees are made to pay back some of their wages to their employer in cash once their checks have processed.

INVESTIGATION: The LS Monitor must request detailed documentation from the contractor for the time on this job. All employees should be interviewed.

RESOLUTION: If the claims are found to be substantiated, contact ADOH immediately for directive on how best to proceed. Depending on the nature of the situation, the process may need to take different steps and DOL may need to be involved.

## 12.0 VOLUNTEER AND CONVICT/OFFENDER LABOR

### 12.1 **Volunteers/Donated Labor 24 CFR Part 70**

As a result of the passage of the National Affordable Housing Act of 1990, volunteers may be used on CDBG assisted projects, not subject to DBRA requirements, under the conditions as outlined below. Regulations published in the April 22, 1992 Federal Register and effective May 22, 1992 provide additional guidance on the use of volunteers.

NOTE: Although volunteers are exempt from prevailing wage requirements, the project remains a DB covered project. Thus, certain record keeping requirements continue to pertain to the project. The volunteers however, are allowed to be exempt from these requirements. Thus, the same project may use both volunteers and DBRA covered construction contract employees.

#### 12.1.1 Definition

A volunteer is an individual who performs services for a public or private entity on a HUD assisted project, which is subject to prevailing wage requirements, for civic, charitable or humanitarian reasons without promise, expectation or receipt of compensation for services. An individual shall be considered a volunteer if s/he offers her/his services freely and without any pressure and coercion, direct or implied from an employer; and *is not otherwise employed* at any time in the construction or maintenance work on the project for which s/he volunteers.

#### 12.1.2 Expenses, Reasonable Benefits or Nominal Fees

A volunteer may receive such without losing her/his status as a volunteer but *only* after HUD has made a determination, on a case-by-case basis, after examining the total amount of payments made in the context of the economic realities of the particular situation.

- A payment for an expense may be in the form of: a uniform allowance, reimbursement for reasonable cleaning expenses or wear and tear on personal clothing wore while performing the volunteer work; or approximate out of pocket expenses for meals and transportation.
- A reasonable benefit can include volunteer(s) in group plans for liability, health, life and disability insurance, workers' compensation or pension plans or length of service awards.

A nominal fee is *not* a substitute for compensation *and must not be tied to productivity*. It will be determined on a case-by-case basis based on economic realities, i.e., the amount of the fee must be judged in the context of what paid workers doing the same work would earn, e.g., a payment for basic necessities to a homeless volunteer which is an insignificant amount when compared with real wages.

#### 12.1.3 HUD Approval

HUD approval is required for all projects on which volunteers will be used including those where there will be a mix of volunteer and paid construction workers. HUD approval is also required if volunteers will be paid expenses, reasonable benefits or nominal fees. In these instances, if ADOH approves the recipient's Volunteer Plan (described in detail in the following section), it will submit

it to HUD, which must make a determination and issue a response\written waiver within 10 days of receipt of the plan.

HUD approval is NOT required for a project on which volunteer labor will be used if all the work will be done by volunteers, there are no paid construction employees and no volunteers will receive any monies for expenses, reasonable benefits or nominal fees. In this case, however, ADOH must collect the information indicated above, and provide a copy to HUD.

#### **12.1.4 ADOH Approval**

A written plan must be submitted to ADOH prior to initiating the use of the volunteer(s). The plan must address the following items:

1. The nature of the volunteers and how they were recruited, e.g., members of a local civic group, organization or union recruited by that group; persons who will benefit from the facility such as local senior citizens recruited as part of the public hearing process; local residents recruited through newspaper stories about the project, etc.
2. Estimated number of volunteers to be used.
3. An estimate of total work hours the volunteers will perform.
4. The type of work that the volunteers will perform.
5. A description of any "expenses" that may be incurred by volunteers; whether all volunteers will receive reimbursement, and if not, how reimbursement will be determined; the amounts per person, and the source of funds for such.
6. A description of any "reasonable benefits" to be provided to the volunteers; whether all volunteers will receive such and if not, how those to receive benefits will be selected; the amounts per person, and the source of funds.
7. A description of any "nominal fee(s)" to be paid to the volunteers; whether all volunteers will receive such and if not, how those receiving nominal fees will be selected; the amounts per volunteer, and the source of funds for such.
8. A description of how liability issues relating to the volunteers will be addressed.
9. A description of how the volunteers will be supervised, *at all times*.
10. The relationship of the volunteers to any construction contractors and their employees, and how communications with any contractors or local government employees on the same CDBG assisted project will be ensured. Note that this is *not* prohibited nor does it in any way negatively impact on approval of this plan.
11. The responsibility for record keeping (as described below) and a copy of the volunteer's time sheet to be used.
12. An estimate of the amount of funds that will be saved through use of volunteers rather than construction company employees based on DB wages. (This is required to ensure that the

statutory prescribed purpose of lowering construction costs is fulfilled by passing savings from the use of volunteers on to the sponsor or other body or agency rather than a windfall profit to a contractor or sub.)

13. The name and address of the agency sponsoring the project, i.e., the local government AND any subrecipient, if applicable.
14. A brief description of the project.
15. The location of the project.

### **12.1.5 Record keeping**

Even though volunteer labor is being utilized, the project is still considered a DBRA covered project and accurate records must be maintained. These include, at a minimum an LS-16 Volunteer Certification form and time records. An LS-16 must be completed by each volunteer to certify that s/he:

- is *not* otherwise employed at any time in the construction work for the CDBG assisted project by the contractor or any subcontractor authorized to work on this project (the recipient must also attest to this statement); and
- will receive either no funds for expenses, benefits or compensation, reasonable benefits, or a nominal fee (otherwise HUD approval is required and additional forms must be completed); and
- signs the form without any pressure or coercion, direct or implied.

The recipient must ensure that time records are maintained for all volunteers on a form that indicates:

- the name of the person working;
- the days and hours worked; and
- the nature of the work performed, e.g., landscaper, painter etc.

NOTE: Recipients may use the LS-4 form and cross out the non-applicable portions or may create their own form to track volunteer labor.

## **12.2 Convict/Offender Labor**

A recipient may use convict labor on a CDBG-funded project and *not* pay Davis Bacon wages *only* if the convicts qualify as: a) an extension of force account; or b) volunteers. In both instances, there must be written documentation to support the recipient's written request to ADOH for a waiver.

To qualify for the Force Account Exemption, there must be a written agreement or memorandum of understanding between the two governmental entities (e.g., recipient and the Arizona Department of Corrections; recipient and the Sheriff's Office, etc.). The convicts *must* work under the supervision of the recipient or another unit of local government, thus making them an extension of "force account;" or the same conditions apply as would to "force account" employed on a CDBG-funded project. There must be a record

of those working, hours worked, project name and location, and if the convicts/offenders are to be paid with CDBG funds (vs. just working on a CDBG-funded project without being paid), actual time records signed by the convict/offender and supervisor.

If a recipient is pursuing the Volunteer Exemption, it is important to note that convicts/offenders are *not* considered volunteers for the purpose of these exemption provisions based *solely on their status as inmates*. Inmates may apply for participation privileges and volunteer status in a program modeled after the Federal Short Term Community Based Projects or indicate community services as their sentence of choice.

The same conditions applicable to volunteers also apply to convicts/offenders (see Section 12.1). Thus, a Volunteer Plan, individual LS-16s and time records must be kept.

### **12.2.1 ADOH Approval**

A recipient must notify ADOH *in writing prior* to the initiation of the project or the signing of any documents relating to the use of such labor. This written notification must: describe the overall scope of the project; verify that no contractors will be employed on the project; include a copy of the draft agreement with the other unit of government (which must include the requirements that convicts are working under supervision; that a record is kept of their hours worked by project name and location; and that if any CDBG funds used to pay convicts it is so noted), and provide all of the information applicable per the Volunteer plan if such exemption is pursued.. ADOH will then forward such items to HUD for concurrence.

### **12.2.2 LS-16 Required**

If convict/offender labor qualifies as volunteer labor, the LS-16 should be completed the same as for volunteers. If inmates do not want to sign the LS-16 or if the authority feels it is a violation of confidentiality, the recipient must obtain the following information from the institution that oversees the offenders:

- a copy of the statutory reference or policy which would prohibit this information from being provided or that would allow an inmate to refuse to sign such a form due to confidentiality;
- a letter to the recipient explaining the situation;
- a notarized statement that each inmate has signed an LS-16 which is on file in the institution and the specific location identified;
- a list with other identifiers (vs names) if statute/policy allows such or a reference explaining why such is NOT allowed, along with information about the number of such persons who have signed the forms.

### 13.0 LABOR STANDARDS FORMS

To comply with program requirements relating to DBRA, recipients must use and submit to ADOH a number of forms. All such forms are identified by the letters **LS**. A list of all forms and a brief description of their use follows. Please note that ADOH may request any or all of these items at any time if it believes a review is necessary to document compliance with LS requirements. (**\* available in Spanish**)

All Labor Standards forms can be found on the ADOH website at: <https://housing.az.gov/documents-links/handbooks>

LS FORM	TITLE	USE/SUBMITTAL
LS-1	Wage Rate Request	Submitted to ADOH to obtain initial WRD.
LS-2	Contractor's Certification	Must be included in the bid and construction contract. Completed by the contractor and verified by the recipient along with SAM.gov and AZROC licensing documentation. Must be verified <i>before</i> a construction contract is signed. Submitted to ADOH.
LS-3	Subcontractor's Verification	Must be included in the bid and contract. Used for tracking subcontractors for DB compliance. Recipients do not need to verify subcontractor eligibility in SAM.gov. Submitted to ADOH.
LS-4/5	Weekly Payroll Report and Statement of Compliance (SOC)	Must be included in the bid and contract. To be submitted weekly by the contractor to the recipient; reviewed in detail by the recipient; submitted to ADOH to verify prior to issuing initial payment for construction services (excluding mobilization costs).
LS-6	Pre-Construction Conference Report	Documents the conference. This is an industry standard and highly recommended practice.
LS-7 *	Notice to Employees	Posted on job site by the contractor and verified via the LS-10.
LS-8	Construction Status Report	Mailed or emailed to CDBG within 7 days of the start of construction.
LS-9 *	Employee Interview	Any interviews associated with LS4/5s that are sent to ADOH must be submitted along with those documents; others retained in the recipient LS files.
LS-10	On-Site Inspection Report	At least one mailed or emailed to ADOH with the first LS-4/5s; others retained in recipient LS files.
LS-11	LS Investigation Report	Mailed or emailed to ADOH, if required.
LS-12	LS Enforcement Report	ADOH USE ONLY – CONTACT ADOH SPECIALIST
LS-13 (DOL Form SF 1444)	Request for Authorization of Additional Classification and Rate	Mailed or emailed to ADOH, if required. ADOH sends to DOL for approval/denial.
LS-14	Fringe Benefit Documentation	Mailed or emailed to ADOH along with any applicable LS 4/5(s).
LS-15 *	Authorization for Deductions	Mailed to ADOH along with any applicable LS-4/5(s)
LS-16	Volunteer Certification	Mailed or emailed to ADOH showing documentation for the duration of the project.



## LS-1. REQUEST FOR A WAGE RATE DETERMINATION

### Instructions

To determine which types of decision(s) are appropriate to a specific project and then provide these to the grantee, the LS-1 form requests a detailed description of the work to be included in that specific contract, and an estimate of the cost of the "separate/other" Construction Type, if such will exist.

The grantee must be as specific as possible and include quantitative data. For example:

Construction of a 2,500 square foot senior center to include site preparation costing about \$175,000, the paving of a 1,000 square foot parking lot, landscaping of the front area (30 feet x 10 feet) and the back area (50 feet x 30 feet) costing about \$25,000. This entire project would likely utilize a Building Decision.

Construction of a 3,500 square foot waste water treatment plant with 2 buildings, each approximately 1,500 square feet, costing about \$250,000; and installation of about 15,000 linear foot of sewer pipe, costing about \$190,000. Both a Building and a Heavy WRD would likely apply in this scenario.

**NOTE:** Per DOL separate WRDs are required if 20% or more of the total project cost is allocated to an additional Construction Type OR if total project funding (all sources) is at least \$5 million and any one of the Construction Type's cost is \$1 million or greater.

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LS-1 (REV. 11/2019)

**LS-2 Contractor’s Certification Concerning Labor Standards and Prevailing Wages**

 Arizona Department of Housing	<b>FORM LS-2</b> <b>CONTRACTORS CERTIFICATION CONCERNING LABOR</b> <b>STANDARDS AND PREVAILING WAGES</b>
<b>Recipient:</b> _____	<b>Contract No:</b> _____
<b>Activity Name:</b> _____	_____

1. I, the undersigned, am submitting a bid to (name of recipient): \_\_\_\_\_ for the construction of the (name of project): \_\_\_\_\_ and hereby acknowledge that the following items are included in the bid and will be incorporated by reference into the contract, should I be selected as the contractor for the project.
- a. Labor Standards Provisions (HUD 4010);
  - b. Wage Decision # \_\_\_\_\_ Modification # \_\_\_\_\_ Bid Open Date: \_\_\_\_\_; and that
  - c. The correction of any infractions of the aforesaid conditions, including infractions by any of my sub-contractors and lower tier sub-contractors, is my responsibility.

2. I hereby certify that:
- a. To the best of my knowledge, neither I nor any firm, partnership or association in which I have a substantial interest, is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended [40 U.S.C. 276a-2(a)].
  - b. No part of the aforementioned contract is or will be sub-contracted to any sub-contractor, if such sub-contractor or firm, corporation, partnership or association in which such sub-contractor has a substantial interest is, to the best of my knowledge, designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. I agree to obtain and forward to the aforementioned grantee a Sub-contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by each and every sub-contractor, preferably prior to or where circumstances do not allow within ten (10) days after the execution of any sub-contract, including those executed by his/her sub-contractors and any lower tier sub-contractors.

4. Further, I certify that:
- a. The demographic and business information of the undersigned are:

Contractor Information									
Amount of Contract	Type of Trade Code*	Racial Code*	Hispanic (Y/N)	Women Owned (Y/N)	IRS Tax ID #	DUNS #	Section 3 (Y/N)	Construction Firm Legal Name Address, City, State, Zip	AZ License #
\$									

\* See Demographic and Trade Code table below for information

Demographic and Trade Codes	
<i>Race</i>	<i>Type of Trade Code</i>
11 White	1 New Construction
12 African American	2 Education/Training
13 Asian	3 Other (i.e. rehabilitation, administration, professional, public services)
14 American Indian or Alaskan Native	
15 Native Hawaiian or other Pacific Islander	
16 American Indian or Alaskan Native and White	
17 Asian and White	
18 African American and White	
19 American Indian or Alaskan Native and White	
20 Other Multi-racial	

b. The undersigned is:

- a sole proprietorship;
- a partnership;
- a corporation organized in the State of \_\_\_\_; or
- another organization (describe) \_\_\_\_

c. The name, title and address of the owners, partners or officers of the undersigned are (list any other legal names/doing business as (dba)):

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
_____	_____	_____

d. The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned and the nature of the interest, are: (indicate if NONE)

<u>NAME</u>	<u>ADDRESS</u>	<u>NATURE OF INTEREST</u>
_____	_____	_____

e. The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are: (indicate if NONE)

<u>NAME</u>	<u>ADDRESS</u>	<u>TRADE CLASSIFICATION</u>
_____	_____	_____

5. I hereby certify that I have the legal authority to complete and submit this document on behalf of:

- a. Name of Contractor: \_\_\_\_\_
- b. Signature (in ink): \_\_\_\_\_
- c. Typed or Printed Name: \_\_\_\_\_
- d. Title: \_\_\_\_\_
- e. Date: \_\_\_\_\_

WARNING: U.S. Criminal Code, Section 1010, Title 18, U.S.C. provides in part: "Whoever...makes, passes, utters or publishes any statement, knowing the same to be false...shall be fined under this title or imprisoned not more than two (2) years, or both."

**LS-3 Sub-Contractor’s Certification Concerning Labor Standards and Prevailing Wages**

	<b>Arizona Department of Housing</b>	<b>FORM LS-3 SUB-CONTRACTORS CERTIFICATION CONCERNING LABOR STANDARDS AND PREVAILING WAGES</b>
<b>Recipient:</b> _____	<b>Contract No:</b> _____	
<b>Activity Name:</b> _____		

1. I, the undersigned, having submitted a bid or having executed a contract with:

(name of contractor or sub-contractor): \_\_\_\_\_

for (name of project): \_\_\_\_\_

for (nature of work): \_\_\_\_\_

in the amount of \$ \_\_\_\_\_ certify that:

- a. The Labor Standards Provisions (HUD 4010) are included in the aforementioned contract or bid;
- b. Wage Decision # \_\_\_\_\_; Modification # \_\_\_\_\_ are included in the aforementioned contract or bid.

2. I hereby certify that:

- a. To the best of my knowledge, neither I nor any firm, partnership or association in which I have a substantial interest, is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR. Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended [40 U.S.C. 276a-2(a)].
- b. No part of the aforementioned contract has been or will be sub-contracted to any sub-contractor, if such sub-contractor or firm, corporation, partnership or association in which such sub-contractor has a substantial interest is, to the best of my knowledge, designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. Further, I certify that:

- a. The demographic and business information of the undersigned are:

Contractor Information									
Amount of Contract	Type of Trade Code*	Racial Code*	Hispanic (Y/N)	Women Owned (Y/N)	IRS Tax ID #	DUNS #	Section 3 (Y/N)	Construction Firm Legal Name Address, City, State, Zip	AZ License #
\$									

\* See Demographic and Trade Code table below for information

Demographic and Trade Codes	
<i>Race</i>	<i>Type of Trade Code</i>
11 White	1 New Construction
12 African American	2 Education/Training
13 Asian	3 Other (i.e. rehabilitation, administration, professional, public services)
14 American Indian or Alaskan Native	
15 Native Hawaiian or other Pacific Islander	
16 American Indian or Alaskan Native and White	
17 Asian and White	
18 African American and White	
19 American Indian or Alaskan Native and White	
20 Other Multi-racial	

b. The undersigned is:

- a sole proprietorship;
- a partnership;
- a corporation organized in the State of \_\_\_\_; or
- another organization (describe) \_\_\_\_

c. The name, title and address of the owners, partners or officers of the undersigned are (list any other legal names/doing business as (dba)):

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
_____	_____	_____

d. The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned and the nature of the interest, are: (indicate if NONE)

<u>NAME</u>	<u>ADDRESS</u>	<u>NATURE OF INTEREST</u>
_____	_____	_____

e. The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are: (indicate if NONE)

<u>NAME</u>	<u>ADDRESS</u>	<u>TRADE CLASSIFICATION</u>
_____	_____	_____

5. I hereby certify that I have the legal authority to complete and submit this document on behalf of:

- a. Name of Contractor: \_\_\_\_\_
- b. Signature (in ink): \_\_\_\_\_
- c. Typed or Printed Name: \_\_\_\_\_
- d. Title: \_\_\_\_\_
- e. Date: \_\_\_\_\_

WARNING: U.S. Criminal Code, Section 1010, Title 18, U.S.C. provides in part: "Whoever...makes, passes, utters or publishes any statement, knowing the same to be false...shall be fined under this title or imprisoned not more than two (2) years, or both."

LS-3 (REV. 11/2019)



Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the \_\_\_\_\_ (Contractor or Subcontractor)

\_\_\_\_\_ ; that during the payroll period commencing on the \_\_\_\_\_ (Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full \_\_\_\_\_ (Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

(4) That:

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

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

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

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

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

**LS-6 Pre-Construction Conference Report**

 <p>Arizona Department of Housing</p>	<p><b>FORM LS-6</b> <b>PRE-CONSTRUCTION CONFERENCE REPORT</b></p>
<p><b>Recipient:</b> _____</p>	<p><b>Contract No:</b> _____</p>
<p><b>Activity Name:</b> _____</p>	<p>_____</p>

This report is to be completed during or immediately after the pre-construction conference. Attach detailed notes or minutes of the conference and a sign-in sheet, if possible.

1. a. Conference Date: \_\_\_\_\_

b. Location: \_\_\_\_\_

2. Prime Contractor:

a. Name: \_\_\_\_\_

b. Address: \_\_\_\_\_

c. Phone: \_\_\_\_\_

3. Prime Contract Amount: \_\_\_\_\_

4. Sub-contractors, if any are known:

NAME

ADDRESS

PHONE

5. Participants (or attach a sign in list):

NAME

TITLE

ENTITY REPRESENTED

**6. Items Covered:**

<b>I. Labor Standards Issues</b>	<input type="checkbox"/>
a. Payment of Davis Bacon Wages	<input type="checkbox"/>
b. Overtime pay and when applicable	<input type="checkbox"/>
c. Fringe benefits (cash or approved plan)	<input type="checkbox"/>
d. If fringe benefit plan, need information and approval	<input type="checkbox"/>
e. Allowable deductions and documentation	<input type="checkbox"/>
f. Use of apprentices, trainees, etc. and documentation	<input type="checkbox"/>
g. Exempt employees	<input type="checkbox"/>
h. Timely submission of LS-4/5s (by contractor and subcontractors)	<input type="checkbox"/>
i. Review LS-4/5 and questions answered	<input type="checkbox"/>
j. Anti-kickback provisions	<input type="checkbox"/>
k. Posting WD, Notice to Employees, EEO posters	<input type="checkbox"/>
l. Employee interviews	<input type="checkbox"/>
m. Labor standards provisions in all subcontracts at all tiers	<input type="checkbox"/>
n. Timely submission of LS-3s for all new subcontractors	<input type="checkbox"/>
o. Responsibility for subcontractors	<input type="checkbox"/>
p. Definition of "actual time records"	<input type="checkbox"/>
q. Restitution and liquidated damages (includes subcontractors)	<input type="checkbox"/>
r. Sanctions and withholding payments	<input type="checkbox"/>
s. Debarment	<input type="checkbox"/>
t. Confidentiality of complaints and prohibition on retaliation against employees	<input type="checkbox"/>
u. The 4010	<input type="checkbox"/>
<b>II. Retention and access to all actual time records for five (5) years</b>	<input type="checkbox"/>
<b>III. Civil rights compliance (non-discrimination and Section 3)</b>	<input type="checkbox"/>
<b>IV. Recipient's role and responsibilities</b>	<input type="checkbox"/>
<b>V. Contractor's role and responsibilities</b>	<input type="checkbox"/>
<b>VI. A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects provided to the contractor</b>	<input type="checkbox"/>
<b>VII. Other:</b>	<input type="checkbox"/>

**7. Report Prepared By:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature (in ink): \_\_\_\_\_ Date: \_\_\_\_\_

LS-7 Notice to Employees (English and Spanish)

# EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

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

**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.



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243  
TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)



WH1321 REV 10/17

# DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

## PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

### SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

### SOBRETIEMPO

Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

### CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempos debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempos. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

### APRENDICES

Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

### PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:



o póngase en contacto con la División de Horas y Salarios del Departamento de Trabajo de los EE.UU.



DIVISIÓN DE HORAS Y SALARIOS  
DEPARTAMENTO DE TRABAJO DE LOS EE.UU.

1-866-487-9243  
TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)



WH1321 SPA REV 10/17

LS-8 Construction Status Report

	Arizona Department of Housing	<b>FORM LS-8</b> <b>CONSTRUCTION STATUS REPORT</b>
Grantee:		CDBG Contract No:
Activity Name:		

**This report is to be mailed to ADOH WITHIN SEVEN (7) DAYS OF CONTRACT AWARD DATE. Skip to line 15 if:**

- a. **There is a change in the contract scope of work from procured construction to construction by public employees, volunteers/offenders; or**
- b. **Contract termination.**

1. This contract utilizes all of the funds within the contract. <input type="checkbox"/> Yes <input type="checkbox"/> No (This project is being bid in segments and ADOH should be notified via LS-1 of any new bids and WRD changes.)		
2. Prime Contractor	3. Total Contract Amount	4. CDBG Amount
5. Subcontractors (Indicate if None)		
6. Contractors and Subcontractors certified/approved (LS-2/3) by: <input type="checkbox"/> CDBG Staff <input type="checkbox"/> Other (identify)		
7. Date of Bid Opening:		
8. Date of Award:		
9. Date Contract Signed:		
10. WRD number in signed contract:                      Mod #:                      Date:		
11. Date(s) of Pre-Construction Conference:		
12. Date(s) of Notice to Proceed, if one is issued:		
13. Date(s) of Start of Construction:		
14. Estimated Completion Date:		
15. <input type="checkbox"/> Community is using public employees/volunteers or offenders; <input type="checkbox"/> Contract is being/has been terminated.		
16. This report was prepared by:		
_____	_____	
Signature	Date	
_____	_____	
Printed Name	Phone Number	

LS-9 Employee Interview (English and Spanish)

 <p>Arizona Department of Housing</p>	<p><b>FORM LS-9</b> <b>RECORD OF EMPLOYEE INTERVIEW</b></p>
<p><b>Recipient:</b> _____</p>	<p><b>Contract No:</b> _____</p>
<p><b>Activity Name:</b> _____</p>	<p>_____</p>

**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 and physical safeguards to ensure their security and confidentiality. The information collected herein is voluntary, and any information provided shall and must be kept confidential.

**A. TO BE COMPLETED AT THE JOBSITE, PRIOR TO INTERVIEW**

1. Date: \_\_\_\_\_
2. a. Contractor: \_\_\_\_\_ b. Subcontractor: \_\_\_\_\_
3. **Observe employee at work. Describe the duties you saw him/her engaged in and the tools used:**  
 \_\_\_\_\_  
 \_\_\_\_\_

**B. INTERVIEW**

- 1a. Your name: \_\_\_\_\_ 1b. Verification of identification:  Yes  No
2. Your phone number, home address, to include zip code, *and* mailing address if different:  
 \_\_\_\_\_
3. The last day you worked on this project (by day & date) **PRIOR** to today:  
 \_\_\_\_\_
4. The number of hours you worked on that day: \_\_\_\_\_
5. Your job classification (list all or indicate if unknown):  
 \_\_\_\_\_
6. Your hourly rate of pay (indicate also if paid in more than one classification or if unknown):  
 \_\_\_\_\_
7. a. Do you receive your fringe benefits in cash or are you covered by a fringe benefit plan?  
 Cash  Fringe Benefit Plan  Unknown
- b. If received in cash, amount per hour: \_\_\_\_\_
- c. If a plan, type of benefits received? (Check all that apply)  
 Vacation  Medical  Pension  Other : \_\_\_\_\_
8. Are you an apprentice or trainee?  
 Yes (Name of program: \_\_\_\_\_)  
 No
9. Describe your job duties *and* the tools and equipment you use:  
 \_\_\_\_\_
10. a. Have you worked any overtime on this project (more than 40 hours per week)?  Yes  No
- b. If yes, have you been paid at least time and a half for all such hours?  
 Yes  No (Explain: \_\_\_\_\_)

REV. 11/2019



**C. POST INTERVIEW AND PAYROLL EXAMINATION**

1. Does the Payroll (LS-4) indicate that the employee worked on the date and the number of hours s/he indicated in B.3. and 4. above on the day *prior* to the interview?

Yes  No

Comments: \_\_\_\_\_

2. Does the LS-4 indicate that the employee worked on the *date* of the interview?

Yes  No

Comments: \_\_\_\_\_

3. Does the LS-4 indicate that the employee's job classification is the same as that indicated by the employee in B.5. above?

Yes  No

Comments: \_\_\_\_\_

4. Does the Payroll indicate that the employee received the wages as s/he stated in B.6. above?

Yes  No

Comments: \_\_\_\_\_

5. Does the LS-4/5 indicate that the employee received the fringe benefits in the amount and as stated in B.7. above?

Yes  No

Comments: \_\_\_\_\_

6. Do the wages/fringes agree with the WD in the contract (to include modifications)?

Yes  No

Comments: \_\_\_\_\_

WD number (including modification): \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Payroll Examiner

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**LS-10 - ON-SITE INSPECTION REPORT COMPLETED AND ATTACHED?**

Yes  No

REV. 11/2019

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## LS-9. RECORD OF EMPLOYEE INTERVIEW

### Instructions

Keep in mind that both the interview and the information captured on Form 9 are considered confidential. Interviews should be conducted individually and in private. All employees on the work site should be ready and available for an interview if requested by the interviewer; however, the employee's participation is voluntary.

#### **Section A**

This section must be completed prior to the interview and should describe the actions rather than the job class, i.e., "laying water pipe in the trench" rather than Laborer Group 4. Item #3 requires that the Interviewer observe the employee at work prior to conducting the interview. **This is a very important part of the interview.** If possible, the observation should be conducted unobtrusively, so that neither the employee nor the supervisor/contractor is aware. The purpose of the observation is to ensure that the employee is actually doing the work as it is reported to the interviewer and as recorded on the LS-4, Payroll Report. It also prevents situations in which the employee is actually doing work that requires higher wages but switches to a lower wage activity as soon as the interviewer appears. For example, the employee is actually operating a backhoe, but suddenly starts carrying pieces of pipe and performing other laborer's duties as soon as the interviewer arrives.

If the interview is conducted away from the job site, a notation of the reason why and the location **MUST** be inserted here.

#### **Section B**

Prior to asking the questions in this section the interviewer should introduce him/herself in terms of his/her role as the recipient's agent and explain the purpose of the interview and its confidentiality. (Disclosure of employee statements is governed by the provisions of the Freedom of Information Act and the Privacy Act of 1974.)

Example: "My name is V.R. Smith, and I'm the Assistant Planning Director for Cactus City. Cactus City has received some federal funds from the Department of Housing and Urban Development (HUD) for this street widening project on which you are working. These federal funds require that the contractor comply with certain wage and labor laws. Also, they require that some of the employees on the job be interviewed. The (name of contractor or sub) knows that someone from the City will be interviewing people throughout the project. I'd like to ask you a few questions about your work on this project to determine your employer's compliance. All of the information that you give me will be kept confidential, as required by these laws, and your identity will be disclosed only with your written permission."

**Employees should be asked for verification of identification (like a driver's license) to verify his/her name, but having an ID is not required. Employees should be encouraged (but not required) to produce pay stubs or pay envelopes which document the wages received.**

The LS-9 form is for the Interviewer and thus s/he should feel free to make any additional notes on it as necessary, and to record additional information that may be important in determining contractor compliance.

#### **Other items to note are:**

3. This refers to the last day *prior* to the day of the interview that this employee worked on this project.
4. The interviewer should make it clear to the worker that these items relate only to project work, not to other work. As a double check on the number of hours worked on the project, the interviewer should ask the worker the time s/he started work on the project on the day in question, the time s/he stopped, and the time out for lunch. The interviewer is encouraged but not required to record these details on the LS-9 as the questions may help the worker to remember the number of hours worked.

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5. The worker may not be familiar with the classifications used on the wage determination and thus may use a descriptive term which may not be found on the determination, e.g., Rodperson. Further questioning will probably reveal the information that s/he installs reinforcing bars and, depending on the area and WD, the worker will agree that his/her work is that of an ironworker. These additional questions by the interviewer and comments by the employee should be noted on the LS-9, along with the correct job class title.
6. The interviewer should determine what the worker is being paid and should not be concerned if the worker is being paid a higher rate. However, if the hourly rate of pay stated by the worker is lower than the required rate, the interviewer should immediately question the worker further in an effort to determine whether the worker is mistaken or is really being underpaid.

For example, has the worker actually received at least one paycheck for work performed on this project, or is his/her statement based on the rate received for other work? If the latter, the interviewer should ask the worker to check his/her next check to determine the rate of pay for work on the project. The interviewer should try to arrange to re-interview the worker during the following week. If the worker states that s/he received wages less than the required rate, the interviewer must try to solicit substantiating evidence from the worker. For example, does the worker have a pay envelope, pay slip, pay check stub, or any other forms showing the hourly wage rate or hours worked and earnings available? If not, can they be provided at a later date?

- 13-15. If the employee does not know the location of the Wage Determination, Notice to Employees and non-discrimination posters, the interviewer should tell him/her where they are posted and note this on the LS-9.

Although the interviewer should follow the questions as stated on the form and should never lead the employee into answers, it may also be necessary to deviate from the list of questions in some instances. For example, if the employee says that s/he worked overtime but was not paid time and a half at the WD rate, several follow-up questions may be necessary to ensure that such hours were worked on this job, rather than on some other non-federally funded job. Note these additional questions (or at least notes about the fact that other questions were asked) on the LS-9.

### **Section C**

This part of the form is completed *after* receipt of the payroll reports, LS-4/5 covering the week during which the interview was conducted. It is important that the LS-4/5 is received in a timely manner so that the recipient can compare and verify the interview information or attempt to investigate discrepancies. The Payroll Examiner can be the same person as the interviewer. If not, it must at least be someone familiar with the WD, labor standards provisions and the construction project.

If *any* of the questions in Section C are answered "NO," the recipient must investigate and resolve the issue, with documentation of the investigation and resolution in the Labor Standards File. For example, if the payroll indicates that the employee worked a different number of hours than the employee indicated, the recipient must: a) contact the employee and ask for clarification; or b) request the contractor's actual time records, depending on the significance of the discrepancy. This should be done without revealing the identity of the employee, i.e. by asking for all employee records for one work week.

If the employee said s/he worked 8 hours and the Weekly Payroll said 6 hours, the recipient could start with a quick visit to the employee and ask for clarification. "You told me you worked 8 hours, however, the payroll report shows you as having worked only 6 hours. How many hours were you paid for during that week and do you believe it's the correct amount for the hours you worked?" All questions should be stated in such a way or prefaced with a comment clearly indicating that the interviewer is *not* attempting to intimidate the employee.

However, if the difference in hours is great; if the employee insists the hours are correct and states that s/he was only paid for the lower number of hours shown on the LS-4; and/or if a number of persons interviewed state different hours than those shown on the payroll report, the recipient *must* request the actual time records and then conduct an investigation as described in the Handbook.

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 <p>Arizona Department of Housing</p>	<p><b>FORMULARIO LS-9</b> <b>HISTORIAL DE ENTREVISTA DEL EMPLEADO</b></p>
<b>Recipient:</b> _____	<b>Contract No:</b> _____
<b>Activity Name:</b> _____	

Información Confidencial: La información recopilada este formulario es considerada confidencial y está protegida por la Ley de Privacidad. La Ley de Privacidad requiere que estos archivos se mantengan con salvaguardas administrativas y físicos apropiados para garantizar su seguridad y confidencialidad. La información recopilada aquí es voluntaria y cualquier información proporcionada será mantenida como confidencial.

**A. COMPLETE (ON THE JOBSITE) ANTES DE LA ENTREVISTA**

1. Fecha: \_\_\_\_\_
2. a. El contratista: \_\_\_\_\_ b. El subcontratista: \_\_\_\_\_
3. **Observe al empleado en el trabajo.** Describa los deberes observados y las herramientas usadas:  
\_\_\_\_\_

**B. ENTREVISTA**

1. a. Su nombre: \_\_\_\_\_ b. Verificación de identificación?  Sí  No
2. Su número de teléfono, dirección residencial y código postal (y dirección el enviar si es diferente):  
\_\_\_\_\_
3. ¿Último día usted trabajó en este proyecto (por día y la fecha) antes de hoy?:  
\_\_\_\_\_
4. El número de horas que usted trabajó en ese día: \_\_\_\_\_
5. Clasificación(es) de su trabajo(s) (enumere todas o note si no sabe):  
\_\_\_\_\_
6. Su salario por hora (indique también si está pagado en más de una clasificación o si no sabe?):  
\_\_\_\_\_
7. a. Ud. recibe sus beneficios complementarios en efectivo o es usted está bajo un plan de los beneficios complementarios?:  
Efectivo  Plan de Beneficios complementarios  No sabe
- b. Si está recibido en efectivo, cuánto por hora?: \_\_\_\_\_
- c. Si un plan, ¿Cuáles tipos de beneficios recibe?  
Vacaciones  Médicos  Pensión  Otro : \_\_\_\_\_
8. ¿Es usted aprendiz?  
 Sí (Nombre del programa): \_\_\_\_\_  
 No
9. Describa sus deberes del trabajo y las herramientas o el equipo que usted utiliza:  
\_\_\_\_\_
10. a. ¿Usted ha trabajado tiempo suplementario en este proyecto (más de 40 horas por semana)?  
 Sí  No
- b. ¿Le paga al menos tiempo y medio por todas las horas trabajadas superior a 40 horas semanales?  
 Sí  No

REV. 07/2018

11. ¿Alguna vez ha sido amenazado, intimidado, o coercionado a entregar parte de su paga?

- Sí (Explique: \_\_\_\_\_)  
 No

12. ¿Sabe que ud. está trabajando en un proyecto financiado por asistencia federal y que debe ser pagado los salarios fijados por DOL (salarios de Davis Bacon)?  Sí  No

13. ¿Usted sabe en dónde se fija la Decisión de Salarios Davis Bacon para este proyecto?

- Sí (¿Ud. lo ha mirado?  Sí  No)  
 No

Comentarios: \_\_\_\_\_

14. ¿Usted sabe en dónde se fija el Aviso a los Empleados?

- Sí (¿Ud. lo ha mirado?  Sí  No)  
 No

Comentarios: \_\_\_\_\_

15. a. ¿Usted sabe en dónde se fija el cartel de no discriminación?

- Sí (¿Ud. lo ha mirado?  Sí  No)  
 No

Comentarios: \_\_\_\_\_

16. ¿Alguna vez se le ha discriminado en este proyecto debido a la raza, sexo, edad, etnicidad o incapacidad?

- Sí (Explique: \_\_\_\_\_)  
 No

*Nota: ¿Si el empleado no sabe en dónde se encuentran el WD, el Aviso a la los Empleados, o el cartel de No Discriminación, el entrevistador debería mostrárselos e instarle mirar todos los documentos!*

17. ¿Se ha enterado de o es ud. expuesto a condiciones inseguras o peligrosas en este proyecto que no encuentran normalmente en este tipo de trabajo?

- Sí (Explique: \_\_\_\_\_)  
 No

18. Tus comentarios deben incluir si los deberes observados y las herramientas usadas son iguales que éstos descritos por el empleado durante la entrevista: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

19. \_\_\_\_\_  
 Firma del Empleado Fecha

20. \_\_\_\_\_  
 Nombre del Entrevistador Su título

\_\_\_\_\_  
 Firma Fecha

REV. 07/2018



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REV. 3/2014

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REV. 3/2014

**LS-10 On-Site Inspection Report**

	Arizona Department of Housing	<b>FORM LS-10</b> <b>ON-SITE INSPECTION REPORT</b>
Grantee: _____		CDBG Contract No: _____
Activity Name: _____		

  

1. **Date Monitored** \_\_\_\_\_ **Time:** \_\_\_\_\_
2. **Location of Job Site:** \_\_\_\_\_
3. **Wage Determination (WD)**
  - a. Posted?  Yes  No
  - b. Location: \_\_\_\_\_
  - c. WD No: \_\_\_\_\_
  - d. Correct (same as in the contract)?  Yes  No
  - e. Comments (is location clearly visible, easily accessible to employees, etc. ):
4. **Notice to Employees**
  - a. Posted?  Yes  No
  - b. Location: \_\_\_\_\_
  - c. Identify name of Contracting Officer on Notice (indicate if blank): \_\_\_\_\_
  - d. Comments (to include if location is clearly visible and easily accessible to employees; contracting officer appears to be appropriate person, etc.; if in another language, where a significant number of employees may be of limited English-speaking ability):
5. **Equal Opportunity Employment/Non-discrimination in Hiring Posters:**
  - a. Posted?  Yes  No
  - b. Location: \_\_\_\_\_
  - c. Comments (to include if location is clearly visible and easily accessible; if in another language, where a significant number of employees may be of limited English-speaking ability):

  

6. **Printed Name of Monitor:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\_\_\_\_\_ **Date:** \_\_\_\_\_

Signature

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**LS-11 Labor Standards Investigation Report**

	Arizona Department of Housing	<b>FORM LS-11</b> <b>LABOR STANDARDS INVESTIGATIVE REPORT</b>
<b>Grantee:</b> _____		<b>CDBG Contract No:</b> _____
<b>Activity Name:</b> _____		

A separate form is to be used to document each investigation of potential or alleged violations of federal labor standards. It is to be maintained in the recipient's labor standards file and mailed to ADOH within 7 working days of completion.

1. a. Prime Contractor: _____
b. Address: _____
c. Telephone Number: _____
2. a. Subcontractor (if applicable or NA): _____
b. Address: _____
c. Telephone Number: _____
3. a. Date of the recipient's initial awareness of the situation: _____
b. Manner in which the recipient became aware of the possible violation:
c. Describe the nature of the alleged violation(s), e.g., underpayments; no overtime pay; worker(s) not listed on LS-4; unidentified and unverified subcontractor; intimidation of employee(s); kickbacks; undocumented use of apprentices; unsafe working conditions etc.
4. Detailed description of the conduct and extent of the investigation, i.e., who conducted it, who was contacted, what records were examined, and the dates of each.

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5. Facts disclosed by the investigation, i.e., did the allegations prove to be true, and if so, how? Were they disproved and if so, how?

6. Investigator's conclusions as to the reason for the violations (if proven), i.e., due to negligence, human error, lack of correct information, frequent changes in staff, willful violations etc.

7. If a violation did occur, how the issue was resolved, e.g., contractor agreed to additional training, corrected LS-4/5s were submitted along with canceled checks, etc.

8. Investigator's recommendations as to further actions to be taken by the recipient, the contractor, the subcontractor, and/or ADOH, with reasons for and facts to support the recommendations.

9. Report Prepared By:

Typed Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

Telephone Number: \_\_\_\_\_

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LS-13 Request for Authorization of Additional Classification and Rate (DOL Form SF1444)

AUTHORIZED FOR LOCAL REPRODUCTION				
<b>REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE</b>			CHECK APPROPRIATE BOX <input type="checkbox"/> SERVICE CONTRACT <input type="checkbox"/> CONSTRUCTION CONTRACT	OMB Control Number: 9000-0089 Expiration Date: 10/31/2019
PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0089, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.				
<b>INSTRUCTIONS:</b> THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.				
1. <b>TO:</b> ADMINISTRATOR, WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, DC 20210			2. <b>FROM: (REPORTING OFFICE)</b>	
3. CONTRACTOR			4. DATE OF REQUEST	
5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SERVICE CONTRACT ONLY)
10. SUBCONTRACTOR (IF ANY)				
11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)				
12. LOCATION (CITY, COUNTY AND STATE)				
13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION				
NUMBER:		DATED:		
a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (Service contracts only) <i>(Use reverse or attach additional sheets, if necessary)</i>		b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS	
14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)		15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE		
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE		TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE	
<b>TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SERVICE CONTRACT LABOR STANDARDS) OR FAR 22.406-3 (CONSTRUCTION WAGE RATE REQUIREMENTS))</b>				
<input type="checkbox"/> THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.				
<input type="checkbox"/> THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED. <i>(Send 3 copies to the Department of Labor)</i>				
SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE		TITLE AND COMMERCIAL TELEPHONE NUMBER	DATE SUBMITTED	
PREVIOUS EDITION IS USABLE			STANDARD FORM 1444 (REV. 4/2013) Prescribed by GSA-FAR (48 CFR) 53.222(f)	

LS-14 Fringe Benefit Documentation

	Arizona Department of Housing	<b>FORM LS-14</b> <b>FRINGE BENEFIT DOCUMENTATION FORM</b>
Grantee:		CDBG Contract No:
Activity Name:		
<b>1. Telephone/Email Contact</b>		
a) If email, attach email to this document and skip items b-f as long as info shows on email		
b) Name of the person making the telephone call(s): _____		
c) Date of telephone call(s): _____		
d) Name of entity called (union or company): _____		
e) Title and name of person contacted: _____		
f) Phone number of entity called: _____		
g) Name of fund: _____		
h) Is contractor current with payments: <input type="checkbox"/> Yes <input type="checkbox"/> No Date of Last Payment: _____		
i) Amount of payment: \$_____		
<input type="checkbox"/> Monthly <input type="checkbox"/> Other _____ (specify)		
(Please provide documentation of any calculations made)		
j) If a union was contacted, is contractor a signatory to the Trust Fund Account?		
<input type="checkbox"/> Yes <input type="checkbox"/> No Name and location of Trust Fund:		
Comments:		
<b>2. Remittance Statement</b>		
a) Remittance Statement is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Comments:		
b) The Statement compares to the LS-4/5: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Comments:		
<b>3. Certification. By my signature, I certify that: all of the information on this form is correct to the best of my knowledge; I am signing this statement of my own free will and under no coercion; and I understand that falsification of information may result in legal action being taken against me.</b>		
_____ Signature		
_____ Typed or Printed Name		_____ Date

LS-14 (11/2019)

**LS-15 Authorization for Deductions (English and Spanish)**

 <p>Arizona Department of Housing</p>	<p><b>FORM LS-15</b> <b>AUTHORIZATION FOR DEDUCTIONS</b></p>
<p><b>Recipient:</b> _____</p>	<p><b>Contract No:</b> _____</p>
<p><b>Activity Name:</b> _____</p>	<p>_____</p>

The undersigned authorizes deductions from his/her wages, as noted. It is understood that:

- the deduction(s) are in the interest/convenience of the employee,
- the deduction(s) are not a condition of employment,
- there is no direct or indirect financial benefit accruing to the employer,
- it is not otherwise forbidden by law; and
- if the deduction(s) are for fringe benefits, information regarding the fringe benefit plan has been provided to me in writing

<b>1. a. EMPLOYEE NAME</b>	<b>b. DATE(s)</b> (may cover all work performed for contract)	<b>c. AMOUNT</b>	<b>d. PURPOSE</b>
----------------------------	--	------------------	-------------------

_____	_____	_____	_____
Printed Name			
_____	_____		
Signature			
_____			
_____	_____		
Printed Name			
_____	_____		
Signature			
_____			
_____	_____		
Printed Name			
_____	_____		
Signature			

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2. Name of Contractor/Sub: \_\_\_\_\_

_____	_____
Signature of Authorized Representative	Date

_____	_____
Typed Name:	Phone Number

LS-15 (11/2019)

 <p>Arizona Department of Housing</p>	<p><b>FORM LS-15 (Spanish)</b> <b>AUTHORIZACION PARA LA DEDUCCION</b></p>
<p><b>Recipient:</b></p>	<p><b>Contract No:</b></p>
<p><b>Activity Name:</b></p>	

El firmante de abajo autoriza las deducciones, notadas de sus sueldos. Se entiende que:

- la deducción esta en el interés del empleado,
- la deducción no es una condición del empleo
- no hay beneficio directo o indirecto financiero acumulado por el empleador
- no esta prohibido por la ley, y
- si la deducción es para el beneficio adicional, la información con respecto al plan de los beneficios han sido proporcionados por escrito

<b>1. a EMPLOYEE NAME</b>	<b>b. DATE(s)</b> <small>(may cover all work performed for contract)</small>	<b>c. AMOUNT</b>	<b>d. PURPOSE</b>
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\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

(Page of )

2. Name of Contractor/Sub: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed Name:

\_\_\_\_\_  
Phone Number

LS-15 (11/2019)

LS-16 Volunteer Certification

 <p>Arizona Department of Housing</p>	<p><b>FORM LS-16</b> <b>VOLUNTEER CERTIFICATION</b></p>
<p><b>Recipient:</b> _____</p>	<p><b>Contract No:</b> _____</p>
<p><b>Activity Name:</b> _____</p>	<p>_____</p>

  

1. **Project**
  - a. Name: \_\_\_\_\_
  - b. Location: \_\_\_\_\_
  
2. **Volunteer Statement:**

In connection with the project described above, which is being funded in whole or in part with CDBG funds, I (*name*) \_\_\_\_\_ do hereby certify that I am performing volunteer work on this project and that:

  - a. I am **not** otherwise employed at any time in the construction work for this project by the contractor or any subcontractor authorized to work on this project; and
  - b. I will receive:
    - 1) Expenses, reasonable benefits or nominal fees: Yes  No  If No, proceed to 3.
    - 2) Expenses in the form of: \_\_\_\_\_
    - 3) Reasonable benefits in the form of: \_\_\_\_\_
    - 4) A nominal fee of: \_\_\_\_\_
  
3. **Certification**

I understand that this certification is required by federal guidelines relating to the Community Development Block Grant (CDBG) program which mandate compliance with federal labor standards and the payment of Davis Bacon wages, except under limited circumstances. Further, I hereby state that I am signing this statement of my own free will and under no coercion, and I understand that falsification of information may result in legal action being taken against me.

\_\_\_\_\_

Volunteer Signature \_\_\_\_\_  
Date

\_\_\_\_\_

Printed/Typed Name

**Recipient hereby affirms that (*volunteer name*) \_\_\_\_\_ is not employed in the construction work on this project by the contractor or any subcontractor authorized to work on this project.**

\_\_\_\_\_

Authorized Signature \_\_\_\_\_  
Date

\_\_\_\_\_

Printed/Typed Name \_\_\_\_\_  
Title

LS-16 (11/2019)

## 14.0 GLOSSARY

The following abbreviations and terms are used throughout this handbook:

4010	The specific federal labor standards required by HUD for all CDBG contracts, which must be included in all "covered" construction contracts
BOD	Bid opening date
Contractor	Usually refers to the prime contractor; at times refers to all private entities with whom the recipient has a covered contract
Covered	A project and its resulting contract that must comply with federal labor standards
CWHSSA	Contract Work Hours and Safety Standards Act
DBA	Davis Bacon Act; also sometimes used to stand for all the federal labor standards with which a "covered" CDBG contract must comply.
DBRA	Davis Bacon and Related Acts; often used synonymously with the term "LS" to indicate all of the federal labor standard requirements applicable to a covered CDBG project and resulting contract
DOL	Department of Labor (federal agency)
FB	Fringe Benefits as required by the WRD
FLSA	Fair Labor Standards Act of 1938, as amended
HUD	Department of Housing and Urban Development (federal agency)
LS	Labor Standards; includes DB, CWHSSA, Copeland and the applicable WD
OT	Overtime as defined by CWHSSA
Prime	The construction contractor with whom the recipient has the contract; the prime in turn may have one or several subcontracts and each of those may have one or several subs
SOC	Statement of Compliance (LS-5)
Sub	A bona fide and licensed subcontractor that has a contract with the prime contractor and may or may not have additional subs
WD	The wage determination as issued by DOL in its entirety