

To All Local Weatherization Agencies:

As you are aware, the law requires Davis-Bacon Act compliance for the expenditure of Recovery Act funds. Yesterday agencies in 15 states received an email communication from the Department of Labor requesting wage and worker information in support of the establishment of a "weatherization worker" labor category under the Davis-Bacon Act and the issuance of prevailing wages for that category for every county of those states. *It is essential that all weatherization agencies in these states respond to the survey request. Failure to respond could result in prevailing wage determinations that do not reflect the locally prevailing wage rates for weatherization work.*

In the next few weeks, the Labor Department will be sending similar emails to every other local agency nationwide. The goal of this effort is to allow you to move forward in weatherizing homes by spending Recovery Act funding for labor related costs in full compliance with the Davis-Bacon Act.

It is critical to note that the Labor Department has established very strict and very short time frames for its survey of wages. *Responses to the survey sent to agencies in the first 15 states are due by Wednesday, July 15.* The earlier you respond, the better, since it will allow DOL to complete the work needed to issue wage determinations in an expeditious manner.

Please review the following points:

1. To determine the appropriate job classification, the DOL must survey ALL weatherization providers and determine prevailing wages in each county. A prevailing wage in an area is the wage paid a majority of the workers performing weatherization in that area or the weighted average of wages paid. For this reason, it is critical that you respond to the survey when contacted by DOL.
2. The survey should be nearly identical to what previously was forwarded to you by NASCSP.
3. If you are hoping that DOL's wage determination for this category will mirror what you currently are paying – YOU MUST COMPLETE THE SURVEY. Failure to respond to DOL's request within the required time frame (this will be stated in the email you will receive from DOL), could result in DOL relying on wage information that may not align with what you currently are paying. PLEASE RESPOND TO THE SURVEY!!! Responding does not guarantee that DOL's wage determination for your area will match the wages your agency pays, but it is the best chance of obtaining this result. If you need any assistance with the survey please contact your state agency, NCAF, NASCSP or my office at 202-287-1644 or gil.sperling@ee.doe.gov
4. Once the prevailing wage Surveys are completed, DOL will issue project wage determinations to DOE that will be specific to weatherization projects in your geographic area.
5. Until DOL issues prevailing wage determinations for weatherization workers in your area, you may use Recovery Act funds to begin weatherizing homes so long as you pay at least the wage amounts currently listed at <http://www.wdol.gov/Index.aspx> for residential construction or any other category that you believe is most similar to the work performed by your employees or those of the contractors you utilize. Please note that weatherization work will be defined by DOL and may not apply to the work performed by all of your employees. For example, replacement of HVAC systems by licensed contractors most likely will not be considered weatherization work. The wage determination for this work will be listed under another labor category. Please also note that the rates posted at the DOL site are minimums. If your agency currently pays higher wages, we recommend that you make no changes. Also, in the event that the prevailing wages for weatherization workers in your area are determined by DOL to be higher than what you currently pay, you will be required to adjust the compensation for weatherization workers retroactively for any workers paid with Recovery Act funds. Again, once DOL issues the prevailing wage determination for weatherization workers in your area, you must pay those workers no less than the amount listed on the DOL project wage determination and may be required to incorporate the project wage determination retroactive to the start of construction.
6. Recovery Act funds can be used to make up the difference in wages if the new wage rates retroactively applied to grants and contracts are higher than the existing rates.
7. Contracts entered into and grants issued after the weatherization job classification and

- appropriate wage determinations are issued should use the new rates and classifications.
8. Agencies in the following states will be surveyed beginning July 6, with responses due no later than Wednesday, July 15: CA, CT, IL, IA, MA, ME, MI, MN, MO, NH, NJ, NY, OH, PA, WI
 9. Agencies in 19 additional states will be surveyed beginning July 16 with eight business days to respond.
 10. Agencies in the remaining states will be surveyed beginning July 28 with eight business days to respond.
 11. If you already have completed the spread sheet distributed by NASCSP, completing the DOL survey should be simple – BUT:
 - a. DOL will question the reliability of the data if it is not presented precisely. For example, do not provide ranges of wages. Each worker should be listed separately by work description and specific wage. Do not group workers. You should not provide the names of employees or those of contractors. List by type of work performed and wage.
 - b. List all weatherization workers — those employed by you and those employed by the contractors that you have hired.
 - c. Explain any data that does not appear standard — for example, what would appear to be excessive leave should be explained by the circumstances (medical leave, family leave, military leave, etc).
 12. DOL has agreed to issue weatherization wage determinations within 10 days of the closing of the survey period.
 13. DOE will issue a program notice in the near future with more details regarding Davis Bacon Act compliance.

Thank you for your cooperation on this matter. We understand that the issues and correspondence regarding prevailing wage/Davis-Bacon Act have been very stressful to program operators on all levels. Your continued hard work and commitment is very much appreciated.

I envision a day in the hopefully near future where the major issue WAP deals with is what we do best — the quality weatherization of low-income homes!

Gil

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