

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

Labor Standards Administration and Enforcement Guidelines for *HUD Program Participants*

Special Attention of:
Labor Standards Designees
Community Development Block Grant
Recipients, Public and Indian Housing
Authorities, and other Local Contracting
Agencies responsible for Labor Standards
Administration and Enforcement

DESK GUIDE LR-II
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Table of Contents

PREFACE

CHAPTER 1. STATUTORY AND REGULATORY BASES

1-1 Statutory Provisions

- a. Davis-Bacon Act (DBA)
- b. Contract Work Hours and Safety Standards Act (CWHSSA)
- c. Copeland Act (Anti-Kickback Act)

1-2 Fair Labor Standards Act (FLSA)

1-3 Regulatory Provisions

CHAPTER 2. LABOR STANDARDS COMPLIANCE PARAMETERS AND REPORTING REQUIREMENTS

2-1 Introduction

- 2-2 Contract Provisions
- 2-3 Responsibility of the Principal Contractor

SECTION 1-Compliance Parameters

- 2-4 Definitions
 - a. Laborer or Mechanic
 - b. Employee
 - c. Apprentice
 - d. Trainee
 - e. Wages
 - f. Fringe Benefits
 - g. Site of Work
 - h. Overtime
- 2-5 Prevailing Wages
 - a. Deductions
 - b. Proper Classification of Work
 - c. Split Classification
 - d. Additional Classifications and Wage Rates
- 2-6 Use of Apprentices and Trainees
 - a. Registration
 - b. Wage Rates
 - c. Ratio to Journeyworkers
 - d. De-certification

SECTION 2-Reporting Requirements

- 2-7 Payrolls and Basic Records
- 2-8 Certified Payroll Reports
 - a. CPR Format
 - b. Submission Requirements
 - c. CPR Preparation
 - d. No Work Payrolls
 - e. Weekly Payroll Certification
 - f. Falsification
- 2-9 Inspection of Records and On-Site Interviews
- 2-10 Requests by Outside Parties for Payrolls
- 2-11 Confidentiality
 - a. Privacy Act Release
 - b. DOL Investigatory Materials

CHAPTER 3. LABOR STANDARDS ADMINISTRATION, COMPLIANCE MONITORING AND ENFORCEMENT

- 3-1 Introduction

SECTION 1-Basic Responsibilities

- 3-2 LCA Responsibilities
- 3-3 Labor Standards Enforcement Files
 - a. Project Lead Files
 - b. Contractor/Subcontractor CPR Files

SECTION 2-Routine Compliance Monitoring

- 3-4 Routine Project Monitoring
- 3-5 On-Site Interviews

- a. Representative Sample
 - b. Confidentiality
 - c. Place and Timing of Interview
 - d. Completeness of Information Gathered
 - e. Observations and Comments of the Interviewer
 - f. Comparison to CPRs
 - g. Targeted Employee Interviews
- 3-6 Project CPR Reviews
- 3-7 Documenting the Review
- 3-8 Initial Payroll Reviews
 - a. Payroll Format
 - b. Addresses and Social Security Numbers
 - c. Incomplete Payrolls
 - d. Classifications and Wage Rates
 - e. Apprentices and Trainees
 - f. Overtime Hours Worked
 - g. Computations
 - h. Deductions
 - j. Signature
 - k. Comparison of CPRs to HUD-11 On-Site Interviews
- 3-9 Conforming Additional Classifications and Wage Rates to the Wage Determination
- 3-10 Minimum Review Requirements
- 3-11 Questionnaires
- 3-12 Restitution for Underpayment of Wages
 - a. Notification to the Prime Contractor
 - b. Review of Correction CPR
 - c. Unfound Workers
 - d. Withholding
 - e. Computing Restitution for Apprentices or Trainees
- 3-13 Reporting Wage Restitution of \$1,000 or More
- 3-14 Falsification of CPRs
 - a. Ratio of Laborers to Mechanics
 - b. Too Few or Irregular Hours
 - c. Discrepancies in Wage Computations
 - d. Extraordinary Deductions

PREFACE

Most HUD programs involve construction work that is subject to Federal prevailing (Davis- Bacon) wage requirements and related labor standards. HUD Labor Relations Field Staff perform administration and enforcement activities for construction projects administered directly by HUD. Local contracting agencies (LCAs), which include CDBG recipients, Public and Indian Housing Authorities, HOME participants, and others, are responsible for day-to-day administration and enforcement for HUD programs administered by its offices.

This Desk Guide (LR-II) was created especially for contracting agencies in response to requests from both HUD clients and staff. It is an effort to provide practical answers to commonly asked questions and suggestions for streamlining labor standards procedures that will yield effective administration and enforcement in the most efficient manner. The Guide is based upon a comparable issuance (LR-I) for HUD staff. As a result of comments and suggestions from LR-I we have made modifications to this Guide which we believe will make it more user friendly and informative. We are hopeful that you will find this Guide to be a useful training tool as well as a ready reference for compliance staff.

Desk Guide LR-II explains the requirements imposed by Davis-Bacon labor standards and provides guidance for the conduct of routine Davis-Bacon compliance reviews. There are three chapters in this Guide. The first chapter provides statutory and regulatory bases for labor standards administration and enforcement; the second chapter deals with labor standards compliance and reporting requirements; and the last chapter covers routine project compliance monitoring.

The HUD Labor Relations Field staff is your support team available to provide training, clarification, technical assistance and support to LCAs administering HUD programs subject to Federal labor standards provisions. Please feel free to call upon the Labor Relations Field staff for your jurisdiction at any time. In addition, HUD staff may be reached on the Internet. Contact your Labor Relations Field staff to obtain their Internet address(es).

Also, please visit the Office of Labor Relations at the HUD Home Page on the World Wide Web. You can learn about exiting developments in employment and training such as HUD's Step-Up program, and obtain copies of labor standards notices like Labor Relations Letters which contain policy and program guidance. The HUD Home page is updated frequently. The address is: <http://www.hud.gov>

P Look for these boxes throughout the text for time saving tips, cross references and other helpful information.

[Back to TOC](#) | [About OLR](#)

CHAPTER 1

Statutory and Regulatory Bases

1-1 Statutory Provisions.

a. Davis-Bacon Act (DBA). The Davis-Bacon Act provides that contracts in excess of \$2,000 to which the United States is a party for the construction, alteration and/or repair, including painting and decorating, of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.

HUD programs administered by LCAs are not covered by the DBA itself since LCAs are not equated to represent the United States in this context. Rather, Davis-Bacon wage rates apply to HUD programs by virtue of prevailing wage requirements expressed in HUD "Related Acts" such as the U. S. Housing Act of 1937, the National Housing Act of 1949, the Housing and Community Development Act of 1974, and the National Affordable Housing Act of 1990, as amended. The Related Acts (referred to in this Guide as Davis-Bacon and Related Acts or DBRA) vary considerably and contain different applicability parameters.

b. Contract Work Hours and Safety Standards Act (CWHSSA). The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance.

CWHSSA provides that all overtime (O/T) hours (defined as hours worked in excess of 40 during any workweek) must be compensated at a rate not less than one and one half times the regular basic rate of pay. In the event of O/T violations, the CWHSSA renders the contractor liable to the underpaid workers for wage restitution and to the United States for liquidated damages. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

P All HUD programs administered by LCAs exceed this threshold (i.e., are not solely a loan guarantee or insurance) and therefore are all subject to the CWHSSA. The CWHSSA does not apply to contracts of \$100,000 or less. (See also Labor Relations Letter SL-95-01, CWHSSA Coverage threshold for overtime and health and safety provisions.)

c. Copeland Act (Anti-Kickback Act). The Copeland Act makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports (CPRs) by all contractors and subcontractors.

Copeland Act CPR requirements do not apply to contacts of \$2,000 or less.

1-2 Fair Labor Standards Act (FLSA).

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

1-3 Regulatory provisions.

The DOL has published regulations corresponding to DBRA, CWHSSA and Copeland Act administration and enforcement at 29 CFR Parts 1, 3, 5, 6 and 7. Part 1 explains how the DOL establishes and publishes DBRA wage determinations and provides instructions on how to use the determinations. Part 3 describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions related to Davis-Bacon Act wage rates and the responsibilities of contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, Part 7 sets parameters for practice before the Wage Appeals Board.

[Back to TOC](#) | [About OLR](#)

CHAPTER 2

Labor Standards Compliance Parameters and Reporting Requirements

2-1 Introduction.

Basic labor standards compliance parameters involve the payment to all construction laborers and mechanics not less than the prevailing wage rate established in the wage determination for the type (classification) of work and the hours of work they actually perform. Contractors and subcontractors and any lower-tier subcontractors (employers) are required to prepare, certify and submit weekly payroll reports reflecting all of the laborers and mechanics (employees) engaged in construction on the site of the work. Employers may also be required to submit related documentation in order to demonstrate compliance with these standards. This Chapter is divided into two Sections. The first deals with compliance parameters - what employers are permitted or required to do. The second section deals with reporting requirements - what the employer must submit to demonstrate compliance. (See also DOL Regulations 29 CFR Part 5, 5.2 and 5.5.)

2-2 Contract Provisions.

Each contract subject to Federal (Davis-Bacon) labor standards requirements must contain the appropriate HUD contract provisions containing the labor standards clauses. These clauses correspond to the DOL Regulations prescribing the responsibilities of the contractor and obligating the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the LCA and HUD to enforce the Federal labor standards applicable to the project.

2-3 Responsibility of the Principal Contractor.

The principal contractor (also referred to as the prime contractor) is responsible for the full compliance of all employers (contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. For ease in reference, the term "contractor" shall mean the principal or prime contractor; "subcontractor" shall mean any and all subcontractors and lower-tier subcontractors; and the term "employer" shall include the contractor and any subcontractors and lower-tier subcontractors.

SECTION 1

Compliance Parameters

2-4 Definitions.

a. Laborer or mechanic. "Laborers" and "mechanics" are those individuals whose duties are manual or physical in nature including workers who are performing the work of a trade (e.g., Electrician). These terms include apprentices, trainees and helpers and, for contracts subject to

CWHSSA, watchmen and guards.

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

2) Exclusions. Persons whose duties are primarily administrative, managerial or clerical are not laborers or mechanics.

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

P See also Labor Relations Letter LR-96-01, Labor standards compliance requirements for self-employed laborers and mechanics.

c. Apprentice. An "apprentice" is a person employed and individually registered in a bona fide apprenticeship program, including Step-Up apprenticeship programs designed for Davis-Bacon construction work. Bona fide programs are those which have been registered with the DOL, Bureau of Apprenticeship and Training (BAT) or with a BAT-recognized State Apprenticeship Agency (SAC).

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

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

d. Trainee. A "trainee" is a person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the BAT.

e. Wages. The term "wages" means the basic hourly rate of pay plus any contribution irrevocably made by a contractor or subcontractor (employer) to a bona fide fringe benefit fund, plan or program.

f. Fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the above; unemployment benefits, life insurance, vacation or holiday pay; defraying costs of apprenticeship or similar programs; or other bona fide fringe benefits. In addition to contributions, fringe benefits may reflect the rate of costs to the employer which may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program. Fringe benefits do not include benefits required by other Federal, State or local law.

g. Site of work. The "site of work" is limited to the physical place or places where the

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

h. Overtime. Overtime hours are defined as all hours worked on the site of the work in excess of 40 hours in any work week. Overtime hours shall be compensated at not less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

2-5 Prevailing Wages.

All laborers and mechanics employed or working on the site of the work shall be paid unconditionally and not less often than once a week the full amount of wages and bona fide fringe benefits computed at rates not less than those contained in the wage determination. Employers who do not make contributions or payments to bona fide fringe benefits funds, plans, or programs shall pay an amount equivalent to the fringe benefit rate (if any) required on the wage determination directly to the employee added to the basic hourly rate of pay.

a. Deductions. The employer may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.

b. Proper classification of work. Each laborer and mechanic shall be classified in accordance with the work classifications listed on the wage determination and the actual type of work he/she performed and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of the level of skill.

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

d. Additional classifications and wage rates. If the wage determination does not include a work classification needed for the construction of the project, HUD may approve an additional classification and wage rate.

P Additional classification criteria and procedures are discussed in more detail in DOL Regulations 29 CFR 5.5 and HUD Handbook 1344.1.

2-6 Use of Apprentices and Trainees.

Apprentices and trainees may be compensated at rates less than prescribed by the wage determination

for their craft only in accordance with the following parameters.

- a. Registration.** The apprentice or trainee shall be individually registered in a bona fide program certified by the BAT or a SAC.
 - b. Wage rates.** Each apprentice and trainee shall not be paid less than the specified rate in the registered program for his/her level of progress. If the rate specified is represented as a percentage of the journeyworker rate for that craft, the percentage shall be applied to the corresponding wage rate contained in the applicable wage determination.
 - c. Ratio to journeyworkers.** The maximum number of apprentices or trainees employed on the site of work may not exceed the ratio of apprentices or trainees to journeyworkers permitted to the employer in the certified program. Apprentices or trainees who are employed at the site in excess of the allowable ratio, shall be paid the wage rate contained on the applicable wage determination for the classification of work actually performed. Compliance with the allowable ratio shall generally be met on a day-to-day basis.
 - d. De-certification.** In the event the BAT or SAC withdraws approval of an apprenticeship or trainee program, the employer shall no longer be permitted to utilize apprentices/trainees at less than the predetermined rate for the type of work performed, unless or until an acceptable program is approved.
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SECTION 2

Reporting Requirements

2-7 Payrolls and Basic Records.

Payrolls and basic records relating to such payrolls shall be maintained by each employer with respect to his/her own workforce employed on the site of the work. The principal contractor shall maintain such records relative to all laborers and mechanics working on the site of the work. Payrolls and related records shall be maintained during the course of the construction work and preserved by the contractor and all employers for at least 3 years following the completion of the work. Such records shall contain:

- a. The name, address and social security number of each laborer and mechanic;
- b. His or her correct work classification(s);
- c. Hourly rates of pay including rates of contributions or costs anticipated for fringe benefits;
- d. Daily and weekly number of hours worked, including any overtime hours;
- e. Deductions made and actual net wages paid;
- f. Evidence pertaining to any fringe benefit programs;
- g. Evidence of the approval of any apprenticeship or trainee program, the registration of each apprentice or trainee and the ratios and wage rates contained in the program.

P LCAs may obtain copies of the WH-347 from the HUD Labor Relations Field staff for their jurisdiction.

2-8 Certified Payroll Reports.

Certified weekly payroll reports (CPRs) shall be submitted with respect to each week any contract work is performed. Each contractor and subcontractor (employer) shall prepare and certify such payroll reports to demonstrate compliance with the labor standards requirements. The principal contractor is responsible for full compliance with regard to its own workforce and with regard to the compliance of every subcontractor. For this reason, all CPRs and any related records are submitted to the LCA through the principal contractor.

- a. CPR format.** CPR information may be submitted in any form provided that the LCA Labor Standards Designee can reasonably interpret the information to monitor employer compliance with the labor standards. Employers are encouraged to utilize DOL Payroll Form WH-347. The LCA shall make available to each principal contractor a limited number of copies of the WH-347 for the contractor's reproduction and use.
- b. Submission requirements.** CPRs shall be submitted for each contractor/ subcontractor (employer) beginning with the first week such employer performs work on the site of the work. CPRs shall be submitted promptly following the close of each such pay week.
- c. CPR preparation.** CPRs for each employer shall be numbered sequentially beginning with "1." The CPR for the last week of work to be performed on the project by each employer shall be clearly marked Final.

 - 1) Employee information.** The first payroll on which each employee appears shall contain the employee's name, address and Social Security Number. Thereafter, the address and Social Security Number only need to be reported if there is a change in such information.
 - 2) Apprentices or Trainees.** The first payroll on which any apprentice or trainee appears shall be accompanied with a copy of that apprentice's or trainee's registration in an approved program. A copy of the approved program pertaining to the wage rates and rations shall also accompany the first CPR on which the first apprentice or trainee appears.
 - 3) Split classifications.** The division of hours worked in different classifications shall be accurately maintained and clearly reported. The employer may list the employee once for each classification, distributing the hours of work accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.
 - 4) Hours worked at other job sites.** The CPRs should reflect ONLY hours worked at the site of work. If an employee performs work at job sites other than the project for which the CPR is prepared, those hours should not be reported on the CPR. In these cases the employer should list the employee's name, classification, hours this project only, and the rate of pay and gross earnings the this project. Deductions and net pay may be reflected based upon the employee's total earnings (for all projects) for the week.

d. "No Work" payrolls. Employers are not required to submit CPRs for weeks during which no work was performed on the site of the work provided that the CPRs are number sequentially or that the employer has provided written notice that its work on the project has been suspended.

e. Weekly payroll certification. Each weekly payroll shall be accompanied by a "Statement of Compliance." The Statement of Compliance shall be executed by the original signature of the principal executive of the contractor/subcontractor or of a person authorized in writing by the principal. The Statement shall contain the language prescribed on DOL Form WH-348 or the reverse side of Form WH-347 which shall certify to the following:

- 1) That the payroll for the payroll period contains the information required to be maintained (see 2-7) and that the information is correct and complete;
- 2) That each laborer or mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set for in Regulations, 29 CFR Part 3; and
- 3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

f. Falsification. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

2-9 Inspection of Records and On-site Interviews.

Each employer shall make the required records (CPRs and related documents) available for inspection, copying or transcription by authorized representatives of the LCA, HUD or DOL. In addition, each employer shall permit authorized representatives to interview employees during working hours on the job site.

Failure by any employer to submit the required records or to make them available, or to permit on-site employee interviews may, after written notice to the contractor, cause a suspension of any further payment, advance or guarantee of funds. In addition, failure to submit the records on request or to make them available may be grounds for debarment action pursuant to 29 CFR 5.12.

2-10 Requests by Outside Parties for Payrolls.

In order to protect the personal privacy interests of employees, copies of weekly payrolls shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act (FOIA) unless the employees personal identifiers (e.g., name, address, social security number) are first deleted.

2-11 Confidentiality.

The identity of any person providing information concerning the labor standards compliance of any contractor or subcontractor shall not be disclosed in any manner to anyone other than authorized LCA or

Federal officials unless written consent is provided in advance by such person. Additionally, any portions of a statement or written document provided by such person which would reveal the identity of the source shall not be disclosed without prior written consent. Disclosure of such statements and documents shall be governed by the provisions of the FOIA and the Privacy Act of 1974.

a. Privacy Act Release. The LCA Labor Standards Designee shall make available a Privacy Act Release format to each person making a statement or providing documentation which alleges underpayment of wages. The format shall permit such person to indicate whether disclosure of identity is authorized.

P The LCA may develop a form for its use in its jurisdiction for this purpose.

b. DOL investigatory materials. From time to time, the DOL may furnish investigatory materials to the LCA or HUD in the course of its administration and enforcement operations. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than LCA or HUD staff responsible for administering the contract without prior approval from the DOL.

[Back to TOC](#) | [About OLR](#)

CHAPTER 3

Labor Standards Administration, Compliance Monitoring and Enforcement

3-1 Introduction.

Routine monitoring of project CPRs and related documents is performed to ensure the compliance of all employers with the applicable labor standards provisions. Monitoring identifies possible misunderstandings on the part of the employers, discrepancies in the record, and violations. Written monitoring reports to the principal contractor advise the contractor of the status of compliance, provide clarification where misunderstanding may exist, and advise the contractor of any additional submissions which may be required to correct discrepancies or to complete the record.

This Chapter is divided into two Sections. The first deals with basic responsibilities and second with routine compliance monitoring.

SECTION 1 Basic Responsibilities

3-2 LCA Responsibilities.

The LCA, through its Labor Standards Designee, is responsible for the administration and enforcement of labor standards provisions on HUD-assisted programs administered by the LCA. For each program and proposed project or contract the Labor Standards Designee shall:

- a. Determine the specific labor standards parameters applicable to the project.
- b. Obtain the Davis-Bacon wage determination and labor standards contract provisions applicable to the project from the HUD Labor Relations Field staff and ensure incorporation of same in the project specifications.
- c. Ensure that the wage determination is still current at bid opening or other appropriate wage determination effective date. (See also DOL Regulations 29 CFR 1.6, and HUD Handbook 1344.1.)
- d. Verify the eligibility of the principal contractor.
- e. Conduct a Preconstruction Conference to inform and instruct the contractor and subcontractors concerning their wage and reporting obligations.
- f. Identify and initiate requests for additional classifications and wage rates needed for the construction of the project.

- g.** Perform timely routine monitoring reviews of CPRs and related submissions for compliance with the labor standards.
- h.** Notify the principal contractor in writing of any labor standards deficiencies and required corrective actions.
- i.** Investigate complaints of underpayment or other labor standards violation. (HUD Labor Relations Field staff are available to provide technical support in the conduct of investigations.)
- j.** Prepare and submit to HUD reports on all enforcement activity.
- k.** As necessary, refers cases for administrative hearing (29 CFR, Part 5, 5.11) and/or makes recommendations for debarment (29 CFR, Part 5, 5.12).
- l.** As necessary, requires escrows to ensure the payment of outstanding wage or liquidated damages liability.
- m.** Disposes of any escrow accounts established for labor standards purposes.
- n.** Establishes and maintains full documentation of all labor standards administration and enforcement activities.

3-3 Labor Standards Enforcement Files.

The LCA Labor Standards Designee is responsible for the creation, maintenance and preservation of labor standards enforcement files for each project. The files shall be kept up-to-date, maintained in a consistent manner, and secured for the life of the active monitoring of the project and preserved for at least three (3) years following the completion of the project and the final disposition of any compliance issues. The Labor Standards Designee shall establish a system of labor standards enforcement files for each covered project. The following is a record system "model" which may be used:

- a. Project Lead Files.** Three lead files are established for each project. Each lead file bears the name of the file and the name and number of the project.
 - 1) Wage Decision File.** This file contains the applicable wage determination and copies of letters transmitting the wage determination to the project principals, the wage transcript schedule, any additional classifications and wage rates processed, primary project information including, for example, copies of the SF-308, Request for Wage Determination and Response to Request, contract award clearance, record of contractor eligibility verification, Preconstruction Conference Minutes, confirmation of contract award date, start of construction notice, 100% completion notice, final payment clearance, and confirmation of final payment.
 - 2) Correspondence/CPR Review File.** This file contains copies of all general correspondence and all project CPR review letters pertaining to the project.
 - 3) Transmittals/Cost Reports.** This file contains copies of any transmittals from the contractor that accompany CPR submissions and copies of any contract payment requests, construction progress reports and trip reports furnished by construction inspectors.

A fourth Lead File may be necessary where an escrow account is established at the close of the project.

4) Escrow/Disbursement File. This file contains the escrow agreement and schedule, evidence of deposit, copies of determinations of wages due and schedule of unpaid wages due, copies of locator letters, copies of vouchers for payment or refund, copies of checks (restitution and refund) and evidence of mailing and receipt (certified mail tickets and receipt cards), and copies of tax statements and transmittals for restitution payments.

b. Contractor/subcontractor CPR Files. A separate file is established for each employer submitting CPR's for the project. The file bears the name of the employer and the project name and number. The file contains all CPR's, correction and supplemental CPR's submitted by the employer, HUD-11 interview forms pertaining to that employer, copies of apprentice or trainee registration forms and program ratios and wage schedules, and copies of correspondence specific to that employer.

SECTION 2

Routine Compliance Monitoring

3-4 Routine Project Monitoring.

The LCA is responsible for conducting routine monitoring of contractor/subcontractor compliance. The two key aspects of routine monitoring include on-site interviews with laborers and mechanics employed on the project and regular reviews of project CPRs.

3-5 On-site Interviews.

Project inspectors, either the LCA Labor Standards Designee or other LCA inspectors, are responsible for conducting on-site interviews with laborers and mechanics and recording the information gathered on form HUD-11, Record of Employee Interview. HUD Labor Relations Staff are available to provide training and technical assistance, as needed, to the LCA Labor Standards Designee or other project inspectors concerning the conduct of such interviews.

a. Representative sample. The number of on-site interviews shall be sufficient to establish the degree of compliance and to assist in identifying the nature and extent of any violations. On-site interviews shall also be conducted to gather information from workers in various trades and from workers employed by different contractors and subcontractors. The number and range of interviews sufficient to establish a representative sample will vary between projects depending on the nature, size and duration of such projects.

b. Confidentiality. Each employee interviewed shall be informed that the information given during the interview is confidential and that his/her identity will only be disclosed with the prior written consent of the employee. (See Confidentiality, 2- 11.)

c. Place and timing of interview. All employees working on the site of the project shall be made available during working hours for interview by authorized representatives of HUD and the DOL.

The interview shall be conducted on the premises at a place and for a duration that shall permit privacy for the employee and cause the least amount of disruption to the on-going work.

d. Completeness of information gathered. The inspector shall ensure that all of the information requested on the HUD-11 interview form is complete and accurately reflects the project identification, date of interview and employee statements.

e. Observations and comments of the interviewer. The on-site observations of the interviewer are particularly important, especially where underpayments are indicated. The inspector shall make careful note of his/her observations on the job site, particularly with respect to the duties actually performed by the employee and any tools used. In addition, the interviewer's comments shall indicate whether the employee's statements and the interviewer's observations are consistent. Any discrepancies shall be noted by the interviewer on the HUD-11 in the space provided. The interviewer shall sign and date the HUD-11 at the completion of the interview.

f. Comparison to CPRs. Completed HUD-11's shall be promptly forwarded to the Labor Relations Staff. The HUD-11's shall be compared to the corresponding CPR during regular project CPR reviews. The result of the comparison, including any discrepancies, shall be noted in the space provided for the payroll examiner's comments. The payroll examiner shall sign and date each HUD-11 at the completion of such comparison.

g. Targeted employee interviews. Where the comparison of HUD-11's to CPRs or other reviews indicate that underpayments exist, it may be appropriate to target interviews to particular laborers or mechanics or to the employees of a certain employer(s). In such cases, the Labor Standards Designee shall conduct or request the appropriate project inspector to target on-site interviews, accordingly.

3-6 Project CPR Reviews.

The Labor Standards Designee shall monitor the labor standards performance of each principal contractor and subcontractor, including timely CPR submission and reporting requirements. All CPRs shall be submitted through the principal contractor for the project. CPRs shall be date stamped upon receipt and initialed and dated by the Labor Standards Designee upon review. Ideally, CPRs and related documents would be reviewed for each project at least monthly. Resource limitations may not permit a 30-day review cycle. However, CPR review cycles should in no case exceed 90 days.

P Written employee authorization is not required for income tax and Social Security deductions.

3-7 Documenting the Review.

Reviews are documented by the written report to the principal contractor explaining the results of the review. The principal contractor shall be permitted 30 days within which to provide missing documentation, and correct any discrepancies or violations, including any underpayments of wages.

3-8 Initial Payroll Reviews.

The CPR reviews for the first weeks (e.g., 4 to 5 weeks, depending on the duration of the project) each employer is performing work on the job site shall be comprehensive. These reviews may provide a pattern of satisfactory labor standards performance on the part of the employer in which case subsequent reviews may be less intensive for that employer. Initial CPR review parameters and corrective actions required of the contractor shall include the following aspects:

a. Payroll format. Employers are urged to use Payroll Form WH-347 which accounts for all required information and includes the "Statement of Compliance" certification on its reverse side. Employers may utilize any other appropriate payroll form provided that it contains all of the required information and is accompanied by the Statement of Compliance Form WH-348 or a statement containing the identical wording on the WH-348.

Format Corrections. Employers who fail to submit an appropriate payroll format or Statement of Compliance shall resubmit the payroll for each such week in an appropriate form.

b. Addresses and social security numbers. Each employee's address and social security number shall be reported on the first payroll on which the employee appears. Afterward, the employer may omit this information provided that there are no other employees with the same name (so that one can be distinguished from the other) and that any change in such information is promptly reported. Address/SSAN Corrections. Employers shall be required to submit a supplemental CPR or other written documentation reflecting any missing addresses or social security numbers.

c. Incomplete payrolls. CPRs shall be examined to determine if they include all of the required information.

Incomplete CPR Corrections. If information is missing, the contractor shall be asked to submit a corrected or supplemental CPR. In no case shall a CPR be returned to the contractor.

d. Classifications and wage rates. The work classifications and wage rates reported on the CPRs shall be compared with the corresponding items on the wage determination to ascertain whether the classifications are consistent with those listed on the wage determination and the wage rates reported are at least equal to the rates required by the wage decision.

Work Classification and Rate Corrections. Employers shall be required to reclassify employees in accordance with the wage determination or may request an additional classification and wage rate. In the absence of a conformance request where underpayments are reflected on the CPR, the employer shall be required to begin paying the required wage rate and to make restitution to the effected employees. See restitution procedures in 3-12.

e. Apprentices and trainees. The first CPR on which an apprentice or trainee appears shall be accompanied by a copy of that apprentice/trainee's individual registration in a bona fide apprenticeship or trainee program. In addition, the employer shall provide a copy of the program relating to the allowable ratio of apprentices or trainees to journeyworkers and the apprentice or trainee wage schedule. The ratio of apprentices or trainees to journeyworkers on the job site may not exceed the ratio permitted to the employer in the approved program. Compliance with the ratio shall be reviewed on a daily basis. In addition, each apprentice or trainee shall be compensated in accordance with the wage schedule in the approved program based upon their level of progress.

Apprentice/Trainee Corrections. The employer shall be required to submit a copy of any registrations, or program ratio and wage rates which were not provided with the first CPR on

which an apprentice or trainee appears. Unregistered apprentices or trainees and any apprentice or trainee employed on the job site in excess of the allowable ratio shall be entitled to the wage rate on the wage decision for the classification of work actually performed and shall be paid restitution, accordingly. [See also, compliance instructions related to apprentices and trainees, at 2-4 (c) and (d) and restitution at 3-12(e).]

f. Overtime hours worked. Weekly hours shall be reviewed to determine whether overtime hours were worked and properly compensated.

Overtime Corrections.

1) Where CWHSSA overtime violations occur, the contractor shall be required to pay restitution to the effected employees, and shall be notified of liability for liquidated damages.

2) Only overtime hours worked on the covered project are subject to CWHSSA compensation. Overtime hours worked at other locations (i.e., non-covered sites) are subject to Fair Labor Standards Act overtime provisions. The contractor shall be notified of any apparent FLSA violations. The Labor Standards Designee may refer the matter to the DOL for further review.

g. Computations. Payroll computations (hours worked times rate of pay) and extensions (deductions, net pay) shall be spot checked to determine whether the payrolls are accurate. Infrequent minor errors may be ignored.

Computation Corrections. Frequent errors shall be brought to the contractor's attention instructing the employer to exercise greater care. Restitution shall be required where underpayments resulted from such errors.

h. Deductions. Deductions shall be reviewed for any non-permissible, unauthorized or otherwise unusual activity. Deductions may only be made in accordance with DOL Regulations 29 CFR Part 3. (See also, 2-5(a).)

Deduction Corrections. Employers shall be required to submit written authorization by any employee for deductions where such authorization is missing.

Employers shall be required to explain the authority and amount for any other "unusual" deduction activity. Questions concerning the permissibility of deductions shall be referred to the HUD Labor Relations Field staff for determination.

P Written employee authorization is not required for income tax and Social

i. Fringe benefits. Where fringe benefits are included on the wage determination or where the employer seeks credit for fringe benefit payments, the employer shall certify as to the payment of fringe benefits on the Statement of Compliance (WH-348 or reverse of WH-347) by marking either 4(a), that fringe benefits are paid to approved funds, plans or programs, or 4(b) that fringe benefits are paid in cash, and note any exceptions under 4(c).

Fringe Benefit Corrections. Employers shall be required to submit corrected CPRs where the CPR

does not indicate how the employer met any fringe benefit obligation contained in the wage determination. If fringe benefits are contained in the wage determination and the employer does not participate in a bona fide fringe benefits program(s), the employer shall pay the cash equivalent(s) of the required fringe benefits directly to the employees with the basic rate of pay. Where underpayments have occurred the employer shall be required to make restitution to the effected employees. **j. Signature.** Each CPR Statement of Compliance shall bear the original signature of the owner or an authorized payroll officer.

Signature Corrections. Where any CPR is not signed by the owner, or does not bear an original signature, or has been signed by an unauthorized person, the employer shall be required to submit a corrected Statement of Compliance bearing a proper original signature or an authorization for such person to execute the Statement of Compliance.

P Only one Statement of Compliance is required for each employer's weekly CPR regardless of the number of pages needed to report employee data.

k. Comparison of CPRs to HUD-11 on-site interviews. The information recorded on HUD-11 interview forms shall be compared to the corresponding CPR. The payroll examiner shall note the results of the comparison, including any discrepancies, and sign and date the interview form.

On-site Interview Corrections. Any discrepancies shall be brought to the attention of the contractor. The contractor shall be required to submit a correction CPR to resolve the discrepancies. Only the name of the employee interviewed, the date of the interview and the interviewer's observations can be released to the contractor; any statements of the employee can not be disclosed without prior written consent from the employee.

P The employee's name can be released since every employee must be made available for interview on the job site. This limited disclosure is a function of the interviewer's observation rather than a disclosure of the employee's statements.

3-9 Conforming Additional Classifications and Wage Rates to the Wage determination.

At the Preconstruction Conference, the Labor Standards Designee shall have reviewed the wage determination and the project description with the principal contractor and other attendees, in part, for the purpose of identifying any classifications missing from the wage decision which will be required for the construction of the project. If a needed classification is identified after the Preconstruction Conference, the principal contractor shall immediately notify the Labor Standards Designee and request a classification and wage rate appropriate for the work. (See also, 29 CFR Part 5, 5.5(a)(1)(ii)(A).)

3-10 Minimum Review Requirements.

If initial CPR reviews for any employer have demonstrated a consistent pattern of compliance, minimum reviews may be conducted for that employer's subsequent CPRs. Minimum review requirements shall cover the following:

- a. That each CPR bears the original signature of an authorized payroll officer.
- b. That CPRs have been submitted for each week work was performed on the job site (e.g., that CPRs are numbered sequentially or submitted for consecutive weeks or).
- c. That addresses and Social Security Numbers have been provided for any employees who appear for the first time on CPRs.
- d. That the CPRs are complete with respect to the information required.
- e. That work classifications agree with the classifications contained in the wage determination.
- f. That the rates of pay are not less than the rates contained in the wage determination for the corresponding classifications of work.
- g. That any overtime hours have been compensated properly.
- h. That required deductions (e.g., income taxes) appear reasonable and "Other" deductions have been authorized in writing by the employee.
- i. That the employer has indicated how fringe benefits have been paid where fringe benefits appear on the wage determination (e.g., certified on the Statement of Compliance by marking either 4(a) or (b)).
- j. That individual registrations have been provided for each apprentice or trainee who appears for the first time on CPRs.
- k. That information gathered during on-site interviews and recorded on HUD-11s agree with the corresponding CPRs.

3-11 Questionnaires.

Questionnaire packages are mailed to employees where there is reason to doubt the accuracy of the payrolls and underpayments are suspected. Questionnaires are used to test the accuracy of the payrolls, obtain the employees' version of working conditions, and to secure signed statements that may develop complaints of underpayment. Any language in the questionnaire package shall be objective, informing the employee that he/she is working on a project subject to labor standards provisions and that the LCA is gathering information to ensure compliance and shall contain a statement that assures the employee of confidentiality. The package shall include a work calendar (for transcription of hours worked on the project) and a Privacy Act Release. The Labor Standards Designee may develop a standard questionnaire package format for its use.

P Questionnaires may also be mailed on a very limited basis to random employees to test CPR accuracy where there is no allegation or suspicion of underpayment.

3-12 Restitution for Underpayment of Wages.

Where underpayments of wages have occurred, the employer shall be required to make restitution to the effected workers. Restitution shall be made promptly and in the full amounts due, less permissible and authorized deductions.

a. Notification to the prime contractor. The Labor Standards Designee shall promptly notify the principal contractor in writing of any underpayments disclosed in CPR monitoring or other reviews. The notice shall describe the underpayments, instruct the contractor to compute the amounts of restitution due and to pay the additional wages directly to the employees, and provide instructions for documenting the restitution paid. The principal contractor shall be permitted 30 days in which to correct the underpayments. Note that the principal contractor is responsible for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the principal contractor.

P Employers are no longer required to submit checks (certified or otherwise) to correct underpayments. Restitution payments are reported and certified by the employer on a correction payroll.

1) Correction CPRs. The contractor shall be required to report the restitution on a correction CPR. The correction CPR shall reflect the previous CPRs or period of time for which restitution is due (e.g., Payrolls #1 through #6; or a beginning date and ending date). The CPR shall list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are generally not applicable in this case); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount to be paid. A properly executed Statement of Compliance shall accompany the correction CPR.

2) Employee signature. Each employee who has received restitution shall sign the correction CPR as evidence of their receipt of the payment.

b. Review of correction CPR. The Labor Standards Designee shall itself compute the amounts of restitution due and shall compare its computations to the correction CPR to ensure that full restitution was made. The contractor shall be notified in writing of any discrepancies and shall be required to make additional payments, if needed, evidenced on a supplemental correction CPR within 30 days.

c. Unfound workers. The amount of wages due to any employee who is entitled to restitution and is not paid (e.g., signature of the employee is not on the correction CPR, or otherwise provided to the Labor Relations Staff) shall be placed in an escrow account for unfound workers at the completion of the project.

d. Withholding. If the violations are not corrected within 30 days after notification to the principal contractor, the Labor Standards Designee may cause withholding from payments due to the contractor of an amount necessary to ensure the payment of restitution and, if applicable, to cover any liquidated damages computed for overtime violations pursuant to the CWHSSA. Only the amounts necessary to meet the contractor's liability shall be withheld.

e. Computing restitution for apprentices or trainees. Where the Labor Standards Designee

finds that apprentices or trainees have been employed on the project in excess of the allowable ratio, or that unregistered apprentices or trainees have been employed on the project, restitution shall be computed for the effected employees. Computations shall be made as to the wage rate(s) contained in the applicable wage decision for the type of work actually performed. Where there is a question as to the proper classification of work for restitution purposes, both the employer and effected employees should be consulted.

P The type of work performed by an apprentice/trainee is not necessarily the target journeyman classification for which the apprentice or trainee was to receive training. Bear in mind that many first year apprentices/trainees are assigned to "laborer" type duties.

3-13 Reporting Wage Restitution of \$1,000 or More.

Whenever the wage underpayments of a single employer (contractor or subcontractor) total \$1,000 or more, the Labor Standards Designee shall prepare a labor standards enforcement report in accordance with DOL Regulations 29 CFR 5.7(b). The report shall be submitted to the HUD Labor Relations Field staff for that jurisdiction. (See also, Labor Relations Letter SL-92-02, Submission requirements for 5.7 Labor Standards Enforcement Reports.)

3-14 Falsification of CPRs.

Contractors who willfully violate the labor standards provisions may falsify CPRs to conceal the violations. A willfully violating contractor's CPRs often contain indicators that permit Labor Standards Designee to determine whether CPR's are falsified. Where falsification is suspected, it may be appropriate to send questionnaires to the employees and to request HUD-11 interviews targeted to those employees in order to gather more information independent of the CPR's to determine the nature and extent of any violations.

In order to resolve violations involving falsified CPR's, it is often necessary to conduct an investigation to determine the true work and wage payment activity and to "reconstruct" the payroll. It is important to realize that even where CPR's are falsified in some aspects, other aspects may be accurate.

P CPR's are rarely falsified in ALL respects. For example, the employer may accurately report the identity of the employees working on the site as well as the work classification, rate of pay and gross and net earnings but falsify (e.g., reduce) the hours worked in order to give the appearance of compliance. Therefore, it is just as important to learn what CPR information may be reliable as it is to identify what information is false.

Common indicators of falsification and willful violations follow.

a. Ratio of laborers to mechanics. Except for concrete, landscaping and similar contractors, the ratio of laborers to mechanics should not exceed 1 : 1. A higher ratio of Laborers normally indicates misclassification, that is, the Laborers are likely performing some or all of mechanic's

work. The false information on the CPR may be limited to the classification of work.

b. Too few or irregular hours. Most workers are employed on a regular 40 hour per week basis. CPRs that consistently reflect less than 40 hours per week for all or certain groups of employees, or that reflect erratic work schedules (e.g., the crew works only a few hours per day scattered throughout the workweek), indicate that the hours may have been reduced to give the appearance of compliance. The falsification in these cases may be limited to the hours worked.

c. Discrepancies in wage computations. CPRs that reflect frequent discrepancies in wage computations, e.g., even gross wage payments (\$400/week) computed from an uneven hourly wage rate (\$15.67/hour), indicate that the employees may be working on a piece rate basis or at an even (\$10/hour) wage rate. Here, the falsification may involve the hours worked or the rate of pay, or both.

d. Extraordinary deductions. Unexplained or unusually high deductions may indicate that the employee is being required to kick-back a portion of their earnings. While this would indicate willful violations, it does not necessarily indicate falsification. The information on the CPR may otherwise be accurate.

The HUD Field Labor Relations staff shall be promptly informed where compliance reviews disclose possible falsification of CPRs. The HUD Labor Relations staff shall determine whether an investigation is warranted based upon its review of the information provided by the LCA.

[Back to TOC](#) | [About OLR](#)