

# Labor Standards Compliance Manual

Part of MFA HOME Program Manual  
New Mexico Mortgage Finance Authority

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## Chapter 7

### DAVIS-BACON LABOR STANDARDS

#### 1. Introduction

The Davis-Bacon and Related Acts (DBRA) apply to federally-funded construction projects in excess of \$2,000. The DBRA include the following:

- The Davis-Bacon Act (DBA): Requires the payment of prevailing wage rates, as determined by the U.S. Department of Labor, to all laborers and mechanics on federally-funded construction projects in excess of \$2,000. Construction includes alteration and repair, including painting and decorating, of public buildings or public works.
- The Contract Work Hours and Safety Standards Act (CWHSSA): Requires time and a half pay for overtime hours worked in excess of 40 in any workweek on a covered project. Applies to all federally-assisted contracts of \$100,000 or more, except where the assistance is a loan guarantee or insurance.
- The Copeland Act (Anti-Kickback Act): Makes it a federal crime for any employer on a federally-assisted project to “kickback” any part of their wages, and requires employers to submit weekly certified payrolls, in addition to regulating permissible deductions.
- The Fair Labor Standards Act (FLSA): Contains federal minimum wage rates, overtime and child labor requirements, which generally apply to any labor performed.

#### 2. Applicability

Most HUD-funded construction work is not directly covered by the DBRA, since HUD seldom contracts directly for such projects. However, the DBRA commonly apply to federally-funded affordable housing programs as a result of program-specific labor provisions, as described below.

##### 2.1. HOME

DBRA requirements are applicable to projects funded by HOME that assist *12 units or more*. Assisting units includes construction and non-construction activities such as acquisition, professional services (architecture, engineering, etc.), and homebuyer assistance. Although the threshold is only applicable to HOME funded units, once Davis Bacon is triggered, it is applicable to the entire project, including all portions of the project not funded by HOME. If a project is phased, such that less than 12 HOME units are constructed at one time, DBRA requirements will still apply to all project phases.

##### 2.2. 542c Risk Share Loan Program

The DBRA apply to projects using 542c Risk Share funds *only* if the funds are utilized during construction.

##### 2.2. Community Development Block Grant (CDBG) Program

The DBRA apply to projects funded in whole or in part by CDBG funds that involve rehabilitation or new construction of residential property containing *8 or more units* that are operated as one rental, cooperative or condominium project. Single-family homeowner properties are excluded from DBRA

applicability. Since CDBG funding is administered by the State of New Mexico Department of Finance and Administration (DFA), the provisions of the New Mexico Public Works Minimum Wage Act also apply to CDBG projects involving 8 or more units, as outlined in the CDBG Program Manual, issued by DFA.

### 3. Compliance Monitoring and Enforcement

In all projects in which MFA awards federal funds that trigger DBRA compliance, MFA must appoint a Labor Standards Officer (LSO) to monitor compliance and take responsibility for enforcement of regulations. The LSO will perform the following duties:

- Review bids, contracts and subcontracts for labor standards clauses and correct wage determination(s).
- Submit requests for additional wage classifications and wage rates.
- Provide contractor training regarding responsibilities for labor standards compliance.
- Review weekly certified payrolls for compliance and ensure employees are paid the correct wage rate.
- Conduct periodic employee interviews on site and verify payroll data to ensure employees are paid appropriate wages.
- Ensure Davis Bacon posters and wage determinations are posted on-site.
- Identify violations and enforce compliance with DBRA regulations.
- Report enforcement activities to the Department of Labor.

MFA will not allow an independent third-party to perform any portion of the responsibilities outlined above, with the exception of cases in which another funding agency also shares these responsibilities due to funding source requirements. In such cases, the responsibilities for DBRA compliance monitoring and enforcement may be negotiated and shared between MFA and the other agency, provided that both agencies are kept apprised of DBRA compliance status of all contractors and subcontractors on the project.

#### 3.1. Bids and Contracts

All bids and contracts subject to the DBRA must contain the following items:

- [Federal Labor Standards Clauses \(HUD 4010\)](#)
- Appropriate Davis-Bacon Wage Decision
- [Certified Payroll Form \(WH-347\)](#)
- Printouts for each contractor/subcontractor from EPLS [https://www5.hud.gov/Ecpcis/main/ECPCIS\\_List/main/ECPCIS\\_List.jsp](https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp) and SAM.gov <https://www.sam.gov/portal/SAM/##11>

The developer or project owner must ensure that all of the above items are supplied to MFA, with a copy of all bids and contracts, including subcontracts. Additionally, the developer or owner must also provide proof that contractors on the project are eligible. MFA must be in receipt of these documents **prior to the start of construction** on all DBRA-covered projects. MFA will not fund the first draw of project funds until these documents have been submitted and have proven to include the items specified above.

For CDBG projects, additional bid and contract documents must be included, as specified in Exhibit 4-A of the program manuals published by DFA. MFA's LSO will ensure that all required items are included. Additionally, within 10 days of the contract award, the LSO will submit a Contractor Clearance Form (Exhibit 4-F) and a Notice of Contract Award (Exhibit 4-G) to DFA for approval.

### 3.1.1. Contract Requirements

All construction contracts subject to the DBRA must adhere to HUD's General Conditions of the Contract for Construction (HUD-5370) <https://www.hud.gov/offices/cpo/forms/hud5370.pdf>. Additionally, the Federal Labor Standards Provisions (HUD-4010) ([https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12586.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12586.pdf)) must be included in all contracts.

### 3.1.2. Wage Decisions

Federal wage determinations may be found online ([www.wdol.gov](http://www.wdol.gov)). However, developers or project owners should contact MFA's LSO to obtain the correct wage decision **prior to the project going out to bid**. The federal wage decision for the county in which the project is located must be included in all bids and contracts. For bids, a clause that states the wage determinations are "for information purposes only" should be included. Wage decisions may change prior to the start of a project. The contract award date will lock-in the current wage determination.

### 3.1.3. Certified Payroll Reports

Bids and contracts should also include the certified payroll form, [WH-347](#). Certified payroll form WH347 and instructions are available on the DOL website: <https://www.dol.gov/whd/programs/dbra/wh347.htm>. Please note, although the form may be filled out electronically, MFA must receive original, hard-copy signed forms.

### 3.1.4. Contractor Eligibility

Prior to the start of construction, developers or project owners should provide MFA's Housing Development staff and the LSO with a complete list of contractors and subcontractors and proof that all contractors and subcontractors are eligible for federally-funded construction work. Such proof may be found at the EPLS website, [https://www5.hud.gov/Ecpcis/main/ECPCIS\\_List/main/ECPCIS\\_List.jsp](https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp) and at SAM.gov, <https://www.sam.gov/portal/SAM/##11>

## 3.2. Additional Wage Determinations

If the DOL wage decision does not include all work classifications that will be required on the project (roofer, soft floor layer, etc.), the developer should contact MFA **prior to the start of construction** so the LSO can request additional wage determinations from HUD and DOL.

The developer must submit the request to the LSO in writing on letterhead. The letter should include a list of all additional work classifications and wage rates to be requested. Additional work classifications should be requested **only if** they meet the following criteria:

- The classification is an accepted work classification used by construction contractors in the region in which the project is located;
- The work that will be performed is not already performed by another classification on the wage decision;

- The proposed wage rate is reasonable compared with other wage rates already listed on the wage decision; and
- The workers that will be employed in the added classification agree with the proposed rate.

Once the MFA receives this request, the LSO will then fill out [HUD-4230A](#) and submit the request to the regional Office of Labor Relations, who will then forward the request to DOL. HUD will review the request to ensure that it meets the criteria above, and if so, will advise MFA of tentative approval and forward the request to DOL for final approval. DOL will review and respond to HUD with the final determination.

The process of obtaining additional wage determinations can take 6-8 weeks. If construction begins before the proposed work classifications and wage rates are approved, contractors will be required to pay these workers the highest wage rate from the DOL wage determination.

### 3.3. Contractor Training

MFA's LSO will attend any pre-construction conferences held for DBRA applicable projects in order to provide initial training necessary to ensure compliance. This will help to establish an open line of communication with the general contractor and any sub-contractors in attendance regarding DBRA compliance and will allow any initial questions to be answered. Additional training will be provided on an as-needed basis.

#### 3.3.1. Pre-construction Conference

At the pre-construction conference, MFA's LSO will distribute an informational packet to include the following, at a minimum:

- Summary sheet of [Labor Standards Applicability and Requirements](#)
- [MFA's Labor Standards Compliance Manual](#)
- Federal Wage Decision for the project
- Any additional wage determinations for the project
- Certified Payroll Form [WH-347](#)
- Labor Standards Posters, in [English](#) and [Spanish](#)
- [Start of Work Notice](#)
- [Termination of Work Notice](#)
- [Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects](#) (either in hard-copy or via website link)

If the project is CDBG funded, the following additional items should be included in the information packet to be distributed at the pre-construction conference:

- State Wage Decision for the project
- Wage Decision packet provided by the Department of Workforce Solutions
- Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements
- Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements

### 3.3.2. Required Documents

If they have not already been submitted for the project, MFA's LSO will notify the developer and contractors at the pre-construction conference that they must submit to MFA the following documents:

- Copies of all construction contracts (general and subs) prior to start of construction
- List of subcontractors and proof that they are not ineligible prior to start of construction
- For CDBG projects, Contractor's and Subcontractors' Certification Concerning Labor Standards and Prevailing Wage Requirements prior to start of construction
- Start Work Notice and Termination of Work Notice from each contractor (prime and subs), as they begin and end work on the project (not applicable to ARRA-WAP)
- Certified payroll reports, submitted weekly
- 

### 3.4. Payroll Review

On a weekly basis (or within 7 calendar days of receipt) MFA's LSO will review certified payrolls that have been submitted for DBRA-covered projects and provide feedback via email or written letter to the general contractor regarding corrections needed and/or restitution required. All communication concerning payroll review will be between the LSO and the general contractor, unless additional training is requested or further investigation of violations is necessary. The general contractor is responsible for submitting payrolls for itself and all subs and for submitting payroll corrections and proof of paid restitution, if necessary.

#### 3.4.1. Payroll Tracking & Review Documentation

In addition to documenting the payroll review through written communication with the general contractor, the LSO will keep accurate records of payroll submission and review by tracking the information in a spreadsheet for each project. At a minimum, the tracking spreadsheet will contain the following information:

- Contractor name
- Subcontractor name
- Date received
- Payroll end date
- Payroll number
- Reviewed by
- Date reviewed
- Corrections needed
- Corrections received
- Restitution needed
- Restitution received

MFA will retain all certified payrolls, corrections, correspondence, tracking spreadsheets and other documentation of reviews for three years after the completion of a project.

#### 3.4.2. Weekly Certified Payroll Requirements

Each payroll will be reviewed for completeness, ensuring that all of the following required information is present:

- Project name and number
- Contractor/subcontractor's name and address
- Week ending date
- Payroll number (optional, but strongly recommended)
- Employee's name and individually identifying number
- Work classification
- Hours worked, for each day and total for the workweek
- Gross amount earned
- Amount of specified deductions
- Net amount paid
- Statement of Compliance
- Original signature of authorized agent (principal of the firm or person authorized in writing to sign certified payrolls)

If the LSO determines that a payroll is incomplete, he/she will inform the contractor in writing that a correction is needed and document this correction in the tracking spreadsheet.

**NOTE:** In January 2009, DOL published revised regulations concerning information reported on payrolls for DBRA-covered projects (See [On the Mark #12](#)). Under the new rules, employee addresses and full Social Security Numbers shall not be included on the payrolls. Instead payrolls should include an individually identifying number (such as the last 4 digits of the SSN). Employers must maintain the address and SSN for each employee and provide this information upon request.

#### **3.4.3. Timely Submission**

The General Contractor on DBRA-covered projects has the responsibility for submitting certified payrolls for itself and all subcontractors to MFA's LSO on a weekly basis. The General Contractor will serve as the liaison between all subcontractors and the project's LSO for the purposes of payroll submission, corrections and restitution (see below).

#### **3.4.4. Nonperformance Payrolls**

Nonperformance, or "no work," payrolls must be submitted for every temporary break in work on the project. If a contractor knows in advance that they will not be working on the project for a period of time exceeding 4 weeks, they may substitute a letter to MFA stating that there will be a temporary break in work, providing the date when the contractor will halt and resume work on the project.

#### **3.4.5. Work Classifications**

The LSO will review each payroll to ensure that the correct work classifications and wage rates are being used and properly reported for each employee. Approved work classifications and wage rates are listed on wage decisions, issued by the Department of Labor, and on additional wage determinations, approved by HUD and DOL.

Work classifications not listed on the project's wage decision must conform to those that are listed. Otherwise, additional wage determinations must be requested.



If the payrolls show work classifications that do not appear on the wage decision, the LSO will ask the contractor to reclassify the employees in accordance with the wage decision or will request additional work classifications. If reclassifications result in underpayment, the contractor will be required to pay restitution.

#### 3.4.6. Split-Classifications

For employees who perform work in more than one trade, a contractor may use a split-classification **only if** the contractor maintains accurate time records evidencing time spent in each classification. If these records are not maintained, the contractor will be required to pay the highest rate of all work classifications being performed. To report a split classification, the contractor must make a separate entry on the certified payroll for each classification of work performed, distributing hours worked to each classification accordingly.

#### 3.4.7. Helpers

Strict regulatory definitions preclude the use or addition of “Helper” as a work classification. If this classification appears on certified payrolls, it may indicate underpayment of semi-skilled or skilled workers. The LSO will follow-up with the contractor to determine the actual duties of “Helpers” and will not allow a change to “Laborer” unless the worker’s duties conform to that classification.

#### 3.4.8. Apprentices and Trainees

Only apprentices and trainees registered in an approved program may be paid less than the wage rate specified for their work classification. Approved programs are those registered with the DOL or with a DOL-recognized State Apprenticeship Agency. Appropriate documentation of registration and participation in an approved program is required, in addition to ratio requirements that dictate the maximum number of apprentices that may be on the job site.

#### 3.4.9. Findings of Underpayment

The LSO will review payrolls for appropriate work classification and corresponding wage rates, through comparison with the wage decision and inspection for correct overtime pay calculations (time and a half).

If underpayments are identified, the LSO will prepare a written request for restitution that describes the violation, provides a breakdown of the restitution owed for each employee, prescribes the required documents that will serve as proof of paid restitution, and identifies a timeline for correction. Acceptable proof of paid restitution will include the following:

- Certified correction payroll that includes:
  - Period of time for which restitution is due (beginning and end dates);
  - Each employee to whom restitution was paid and their work classification;
  - Total number of work hours involved (daily totals are not necessary);
  - Adjustment wage rate (difference between require rate and rate paid originally);
  - Gross amount of restitution due;
  - Deductions and net amount of restitution paid; and
  - Signed statement of compliance.
- Certifications of Paid Restitution signed by each employee to whom restitution was paid.

Restitution should be paid and proof of restitution provided within 30 days of the notification letter. If restitution is not paid during this timeframe, MFA may withhold payment from the general contractor and/or the general contractor may withhold payment from that subcontractor.

For CDBG projects, the LSO should utilize the Payroll Review Worksheet provided by DFA in the CDBG manual.

If wage restitution cannot be paid to an affected employee because the employee has moved and cannot be located, the employer must submit a list of any unfound workers (including SSN, address, and gross amount due) and will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. After 3 years, if the worker has not been located, the amount remaining will be credited by the MFA to HUD.

#### **3.4.9. Indications of Probable Falsification**

The following is a list of key indications of probable falsification on certified payrolls:

- Ratio of laborers to journeymen is too high (too many laborers)
- Too few or irregular hours
- Discrepancies in wage computations
- Extraordinary or unidentified deductions

### **3.5. Site Visits**

Periodically, the LSO must conduct site visits, during which he/she will conduct employee interviews and ensure that Davis-Bacon posters and wage decisions are posted on-site. MFA's LSO should work with members of the Housing Development Department to coordinate site visits, when possible. If the LSO is unable to perform site visits, he/she will designate another MFA representative to perform these duties.

#### **3.5.1. Posting Requirements**

The general contractor should post the following on-site in a place that is easily accessible to all construction workers employed at the project and where the documents will not be destroyed by wind, rain, etc.:

- [Davis-Bacon poster in English](#)
- [Davis-Bacon poster in Spanish](#)
- Federal wage decision
- Any additional wage determinations

#### **3.5.2. Employee Interviews**

The LSO will interview a sample of employees on every DBRA-covered project. There is no numeric requirement for employee interviews. It is up to the judgment of the LSO to determine how many interviews to conduct and how often to conduct them. These judgments should be primarily driven by payroll reviews, and interviews should be targeted to gathering information about potential or known violations. Interview forms ([HUD-11](#) and [HUD-11-SP](#)) and [instructions](#) are available electronically.

### 3.6. Enforcement

MFA's LSO will be responsible for enforcing all regulations associated with the DBRA on covered projects.

#### 3.6.1. Notification of Probable Violations

Notification in writing (via email and/or letter) shall be made for all suspected and probable violations with DBRA regulations. The project's general contractor shall be notified of any violations of its subcontractors. Notification should be made in as timely a manner as possible, as soon as the violation has been identified and confirmed.

#### 3.6.2. Investigations

MFA's LSO is responsible for investigating suspected or probable violations. These may be identified during payroll review, through worker complaints, or via on-site employee interviews. Once a violation is suspected, the LSO must follow-up by requesting additional information from the contractor or subcontractor, interviewing additional employees, or by whatever means necessary to determine whether the violation was aggravated or willful. The LSO should work with the contractor and/or subcontractor to come up with an appropriate correction or resolution to the violation.

#### 3.6.3. Dispute Resolution

If informal and written exchanges between the LSO and the contractor and/or subcontractor do not result in agreement, the LSO may request a hearing on the matter before DOL. The request for hearing must be made in writing, explaining the findings in dispute and the reasons for the request. The LSO will submit the request to the HUD Office of Labor Relations, and HUD will make the request to DOL. In such cases, HUD is required to submit a report to DOL for review and further consideration.

The DOL will review the report and may affirm or modify the findings based on the materials presented. DOL will notify HUD and the LSO in writing of the results of its review. The contractor will be given the opportunity to make corrections or to request a hearing before a DOL Administrative Law Judge. The contractor may further request a review by the Administrative Review Board of the decision rendered by the DOL Administrative Law Judge.

#### 3.6.4. Withholding

MFA's LSO shall cause the withholding of payments due to the general contractor to ensure compliance with DBRA regulations. Withholding is considered serious and will not be taken unless warranted. If withholding is deemed necessary, the LSO will inform the general contractor in writing.

#### 3.6.5. Administrative Sanctions

Contractors and subcontractors who willfully or in an aggravated manner violate the federal labor standards provisions may face administrative sanctions imposed by HUD and/or DOL. Sanctions may include the following:

- DOL Debarment
- HUD Sanctions
  - Limited Denial of Participation (LDP)

- Debarment and Suspension
- Fines for Falsification of Certified Payrolls

#### 4. Reporting

MFA's LSO will be responsible for submitting enforcement reports documenting all labor standards enforcement activity.

##### 4.1. Enforcement Reports

MFA's LSO will submit the following enforcement reports to DOL:

- [Section 5.7 Memorandum](#)
  - For cases of restitution in excess of \$1000
  - Submission deadline: within 60 days of completion of investigation
  - [Submission requirements](#)
- [Semi-Annual Enforcement Report](#)
  - Submission deadlines: April 10<sup>th</sup> (October to March) and October 10<sup>th</sup> (April to September)
  - [Instructions](#)

##### 4.2. Final Wage Compliance Report

At the completion of all CDBG projects for which federal and state labor standards apply, MFA's LSO must submit a Final Wage Compliance Report to DFA, as specified in Exhibit 4-Q of DFA's CDBG manuals.

#### 5. Resources

##### 5.1. Documents

The following documents can be located

at: [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/OLRLibrary](https://portal.hud.gov/hudportal/HUD?src=/program_offices/davis_bacon_and_labor_standards/OLRLibrary)

[Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies](#)

[Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects](#)

[HUD Handbook on Federal Labor Standards Compliance \(Handbook No. 1344.1\)](#)

[HUD Office of Labor Relations Letters](#)

[HUD Office of Labor Relations On the Mark Series](#)

##### 5.2. Websites

[HUD Office of Davis Bacon and Labor Relations](#)

[DOL Wage and Hour Division](#)

[DOL Wage Determinations Online](#)

[DOL Regulations: 29 CFR Parts 1, 3, 5, 6 and 7](#)

[HUD Regulations: 24 CFR \(relevant parts for each program\)](#)

[HUDClips](#)

[EPLS \(Limited Denial of Participation\)](#)

[SAM.gov](#)