

STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS

SUBJECT: Labor Standards Provisions of Davis-Bacon Act and “Related Acts”

NUMBER: 2.10.15

EFFECTIVE: June 2013

SANDY CDBG-DR

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APPROVAL: 
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PURPOSE:

To outline the policies and procedures for the Department of Community Affairs to document compliance with Labor Standards Provisions of the Davis-Bacon Act and “Related Acts”.

POLICY:

The Davis-Bacon Act (DBA) was first enacted in 1931 and amended in 1935 and 1964. Its purpose is to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels. However, since its inception in 1931, the reach of the DBA requirements has been extended by Congress through what are called “Related Acts”. A partial list, including 60 “Related Acts” (DBRA), is published in Part 5 of the 2011 version of Title 29 Code of Federal Regulations (CFR). These “Related Acts” often involve the award of grants, loans, loan guarantees or insurance from federal agencies to units of local government such as states, counties, cities and joint powers authorities.

In some cases certain CPD programs contain waivers and alternative requirements, relevant statutory provisions for grants provided under the Federal Notice issued for that program. In order to meet the requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) Program (Robert T. Stafford Disaster Relief and Emergency Assistance act of 1974 commonly referred to the “Stafford Act”) as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternate requirements for this crosscutting element. Note that wherever a conflict occurs between the crosscutting requirements and the special requirements as noted in the Stafford Act and the Disaster Relief Appropriations Act of 2013, the latter shall take precedence.

DISASTER RECOVERY WAIVERS OR ALTERNATE REQUIREMENTS:

None.

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I. DAVIS BACON AND RELATED ACTS (DBRA) OVERVIEW

The Davis-Bacon Act (DBA) was first enacted in 1931 and amended in 1935 and 1964. Its purpose is to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels. Originally DBA applied only to contracts awarded directly by a unit of the federal government, such as the U.S. Department of Housing and Urban Development (HUD) or the U.S. Department of Energy (DOE). However, since its inception in 1931, the reach of the DBA requirements has been extended by Congress through what are called “Related Acts” such as:

- Housing and Community Development Act of 1974, which includes the Community Development Block Grant (CDBG) program and the Section 108 Loan Guarantee;
- Cranston-Gonzalez National Affordable Housing Act, which includes the HOME Investment Partnerships (HOME) program;
- Housing and Economic Recovery Act of 2008 (HERA), which includes the Neighborhood Stabilization Program (NSP1);
- Economic Development Initiative (EDI);
- Brownfields Economic Development Initiative (BEDI); and
- American Recovery and Reinvestment Act of 2009 (ARRA), which includes the Community Development Block Grant-Recovery (CDBG-R) and the Neighborhood Stabilization Program (NSP2) programs.

A partial list, including 60 “Related Acts” (DBRA), is published in Part 5 of the 2011 version of Title 29 Code of Federal Regulations (CFR). These “Related Acts” often involve the award of grants, loans, loan guarantees or insurance from federal agencies to units of local government such as states, counties, cities and joint powers authorities. These units of local government will then award contracts for the construction, demolition, alteration or repair of housing, infrastructure, public and private facilities using federal funds pursuant to the related Act of Congress appropriating those funds. Those “Related Acts” awarding funds through HUD will be

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discussed throughout this chapter to build the expertise of program staff charged with implementing projects funded in whole or in part with federal grants, loans and loan guarantees.

Pursuant to the U.S. Department of Labor (DOL) regulations found at 29 CFR Part 5, the term “Labor Standards” includes the following:

- Prevailing wage requirements of DBRA;
- The Fair Labor Standards Act of 1938, as amended (FLSA), which includes minimum wage, overtime pay, recordkeeping and child labor standards affecting most workers;
- Contract Work Hours and Safety Standards Act (CWHSSA), which provides for overtime for all hours over 40 in a week; and
- Copeland Anti-Kickback Act which prohibits of kickbacks of wages and back wages from employees to employers.

II. DBRA PREVAILING WAGE REQUIREMENTS

DBRA requires the payment of prevailing wage rates to all laborers and mechanics working on Federally-assisted construction projects. The specific Davis-Bacon requirements are included in the Federal Labor Standards Provisions (HUD-4010) which, in summary, obligates the contractor to:

- Pay all laborers and mechanics who are employed or working upon the site of the work, unconditionally and not less often than once a week (bi-weekly and semi-monthly pay intervals are not permitted on DBRA projects);
 - Pay all laborers and mechanics the full amount of hourly wages and bona fide fringe benefits prescribed for their work classification as shown in the wage determination applicable to the contract;
 - Not withhold or otherwise deduct or rebate any part of wages due except as permitted by the Copeland Anti-Kickback Act (29 CFR Part 3);
 - Provide the grantee with Certified Payroll Reports (CPR) that accurately set forth certain information, including the employee’s name and identifying number, hours (or fractions thereof) worked by each employee in each respective work classification by day, date,
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regular and overtime, the total regular and overtime hours worked, the prevailing wage rate, gross pay for “this job” and “all jobs,” authorized payroll deductions, net pay, and attach a properly executed Statement of Compliance; and

- Retain all records for a period of three (3) years subsequent to the last day that laborers or mechanics perform work at the site of construction.

The Federal Labor Standards Provisions include clauses that provide for remedies in the event of a violation, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These clauses enable the grantee to enforce the DBRA requirements.

A. Fair Labor Standards Act of 1938 - The FLSA affects most employment in the United States, regardless of DBRA or any other applicable statute. FLSA contains the federal minimum wage rates, overtime and child labor requirements.

- **Minimum Wage:** Effective July 24, 2009, the federal minimum wage is \$7.25 per hour, but in many cases, employees are subject to a higher minimum wage by virtue of a state or local statute requiring the payment of a higher minimum wage rate.
- **Overtime:** Covered nonexempt¹ employees must receive overtime pay for hours worked over 40 per workweek.² Hours may not be averaged over two (2) or more weeks. The rate of pay for overtime is one and one-half times an employee’s regular rate of pay over 40 hours in a workweek.
- **Hours Worked:** Hours worked includes all time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.
- **Recordkeeping:** Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.
- **Child Labor:** The child labor provisions of FLSA are designed to protect the educational opportunities of minors and to prohibit their employment in jobs and under conditions detrimental to their health or well-being.

¹ An exempt employee pursuant to Section 13(a)(1) of FLSA is a bona fide executive, administrative, professional or outside sales employee, as determined by certain tests related to job duties. Exempt employees do not receive overtime but must be paid a minimum salary of \$455 per week, regardless of actual hours worked.

² A workweek is defined as any fixed and regularly recurring period of 168 hours, which is seven (7) consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day.

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B. Contract Work Hours and Safety Standards Act - The CWHSSA applies to federally-assisted construction contracts over \$100,000, providing most workers on federally-assisted contracts the right to receive time and one-half for overtime hours worked. There are certain exemptions to this requirement as prescribed in the Act. CWHSSA also prohibits unsanitary, hazardous, or dangerous working conditions on federally-assisted and federally-financed and assisted construction projects.

C. Copeland Anti-Kickback Act – Prohibits Kickbacks of Wages to Employers - The Copeland Anti-Kickback Act makes it a federal crime for anyone to require any laborer or mechanic employed on a federal or federally-assisted³ project to kickback (i.e. give up or pay back) any part of their wages. This law requires every employer to submit weekly CPRs and regulates permissible payroll deductions. According to 29 CFR §3.5, the following payroll deductions are permissible without application to or approval of the Secretary of Labor:

- Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.
- Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.
- Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, that the following

³ Except contracts for which the only federal assistance is a loan guarantee.

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standards are met:

- The deduction is not otherwise prohibited by law;
 - It is either:
 - Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or
 - Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;
 - No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and
 - The deductions shall serve the convenience and interest of the employee.
 - Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
 - Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
 - Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
 - Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
 - Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, that a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.
 - Any deduction not more than for the “reasonable cost” of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of
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1938, as amended, and Part 531. When such a deduction is made the additional records required under 29 CFR 516.25(a) shall be kept.

- Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either:
 - Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or
 - Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

According to the DOL website, www.dol.gov, “Any contractor or subcontractor who induces an employee working on a covered contract to give up any part of the compensation to which he or she is entitled is subject to a \$5,000 fine, or imprisonment for up to five years, or both. Willful falsification of the statement of compliance may subject the employer to civil or criminal prosecution and may be cause for contract termination or debarment. Contractors may challenge determinations on debarment before an Administrative Law Judge. Decisions of Administrative Law Judges may be appealed to the Administrative Review Board. Final Board determinations on debarment may be appealed to and are enforceable through the federal courts. Civil and criminal sanctions are pursued through the federal courts.”

Department of Community Affairs, Sandy Recovery Division policy on “Debarment and Suspension” provides additional guidance with regard to policy and procedures required by grantee and subrecipients on this topic.

III. APPLICABILITY TO CDBG-DR PROJECTS

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government construction projects in excess of \$2,000. Specifically for CDBG-DR program projects, Davis-Bacon Related Acts will apply when CDBG-DR pays in whole or in part for any direct costs of construction;

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AND the project meets one of the following thresholds:

- Residential (housing): Property has 8 or more units
- Non-residential: Any construction work valued at more than \$2,000

Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

IV. SUBRECIPIENT AND OTHER FUNDED ENTITY RESPONSIBILITY

Each Subrecipient, as well as other Funded Entities shall be required to administer and enforce the labor standards requirements set forth in Section 570.605 of the regulations of the Housing and Community Development Act of 1974. Each Subrecipient or other Funded Entity shall comply with process steps and procedures as detailed in the “[Labor Standards Flowchart](#)”.

V. APPOINT LABOR STANDARDS COMPLIANCE OFFICER

The Grantee will designate a Labor Standards Compliance Officer to ensure compliance with all applicable labor standard requirements. The Labor Standards Compliance Officer will be appointed prior to the start of any construction activity and his/her name specified in Subrecipient and other Funded Entity program guidelines, policy and procedures and contracts, agreements or memorandum of understandings for use of CDBG-DR funds.

VI. LABOR STANDARDS ENFORCEMENT FILE

The Subrecipient or other Funded Entity shall establish and maintain a "Labor Standards Enforcement" file for each construction project subject to labor standards provisions. All documentation must be available for the CDBG-DR DCA review. Such documentation shall include requests for wage decisions, bid documents containing applicable wage decisions and labor standards provisions, verification of contractor eligibility, executed construction contracts containing applicable wage and labor standards provisions, pre-construction conference minutes, notification of start of construction, weekly payrolls, apprentice registration records, on-site employee interviews and copies of correspondence, memoranda and forms relating to the administration and enforcement of labor standards provisions.

VII. SECURE WAGE RATE DETERMINATIONS

Grantees awarding any construction contract in excess of \$2000 shall obtain current Federal and

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State prevailing wage rates. The higher of the two wage rates shall be the wage rate used. Nothing, however, shall prohibit the payment of more than the prevailing wage rate to any workman employed on the construction project.

A. Wage Determinations - Federal prevailing wage rates shall be obtained from the Wage Determinations Online system: <http://www.wdol.gov/>

State prevailing wage rates may be obtained from the New Jersey Department of Labor, Office of Wage and Hour Compliance at:

http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevaling_wage_determinations.html

Applicable prevailing wage rates are those wages and fringe benefits in effect on the date the contract is awarded. All pre-determined rate increases listed at the time the contract is awarded must also be paid, beginning on the dates specified.

Rates may change between the time of issuance of the determination and the award of the contract. Therefore, verification must be made to insure that the rates contained in the determination are prevailing rates in effect for the specific location the work is being performed prior to the award of the contract.

B. Wage Determination Posting - Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily accessible place at the site of the work, or at such places as are used by them to pay workers.

A. Force Account Labor - Laborers and mechanics employed by a Subrecipient (State agency or unit of local government) will not be considered laborers and mechanics employed by a contractor or sub-contractor when performing construction work financed by the CDBG-DR Program and shall not be subject to prevailing wage requirements which are otherwise applicable.

VIII. PREPARE BID DOCUMENTS

The Subrecipient or other Funded Entity are required to ensure that all bid specifications include all applicable [Federal](#) and [State](#) wage rate determinations and the required [labor standards provisions](#)).

IX. VERIFY CONTRACTOR ELIGIBILITY

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The Subrecipient or other Funded Entity prior to award of any contract, review the current eligibility status of all contractors **and** sub-contractors to be used on any construction project to ensure that they are “not excluded” from participation in Federally funded projects. Subrecipients or other Funded Entities must use the Federal System for Awards Management (SAM) to review and verify contractor and subcontractor eligibility. The SAM system is accessed at the following location: <https://www.sam.gov/portal/public/SAM/>

X. EXECUTE CONSTRUCTION CONTRACT

The Subrecipient or other Funded Entity will ensure that construction contract documents include all applicable wage determinations and labor standards provisions. Applicable wage rates are those in effect ten (10) days prior to bid opening, provided the construction contract is awarded within ninety (90) days of bid opening. All predetermined State labor rate increases listed at time of contract award must also be paid, beginning on the dates specified.

The “[Federal Labor Standards Provisions](#)” **must** be made part of all construction contracts.

XI. CONDUCT PRE-CONSTRUCTION CONFERENCE

The Subrecipient and other Funded Entities shall hold a pre-construction conference with the principal contractor and all available sub-contractors prior to the start of construction. At the pre-construction conference responsibilities and obligations regarding the Federal labor standards provisions contained in the contract documents will be discussed. Meeting minutes shall be prepared and retained in the Subrecipient or other Funded Entity’s files for each pre-construction conference. The pre-construction conference meeting minutes report will contain:

- Project name, location, and description
- Name of Contractor(s)
- Contract amount
- Date and place of conference
- Conference attendees
- Summary of items covered

(See Pre-Construction Checklist for Contractors)

XII. NOTIFICATION TO DCA OF START OF CONSTRUCTION

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The Subrecipient and other Funded Entities shall notify the designated DCA Disaster Recovery Division program representative of start of construction for any covered project. Start of construction means the beginning of initial site clearance and preparation; provided those activities are pursued diligently and are followed without appreciable delay by other construction activities.

XIII. USE OF APPRENTICES AND TRAINEES

A. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the US Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or are employed in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

Any employee listed on the payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (b) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined for the classification of work s/he actually performed. The contractor or sub-contractor will be required to furnish to the Labor Standards Compliance Officer of the Subrecipient or other Funded Entity written evidence of the registration program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work.

The wage rate paid apprentices shall not be less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination. Written evidence of apprentice registration shall consist of a copy of an Apprenticeship Standards/Apprenticeship Agreement Joint Approval form.

B. Trainees - Trainees (Except as provided in 29 CFR Part 5.16) will not be permitted to work at less than the predetermined rate for the work performed; unless they are employed pursuant to and individually registered in a program which has received prior approval from the US Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The

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ratio of trainees to journeyman shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined for the classification of work s/he actually performed.

The contractor or sub-contractor will be required to furnish the Labor Standards Compliance Officer of the Subrecipient or other Funded Entity written evidence of certification of his/her program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

C. Equal Employment Opportunity - The utilization of apprentices, trainees and journeyman under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

XIV. COMPLIANCE MONITORING - CONSTRUCTION SITE VISITS

Visits to the construction site by the Labor Standards Compliance Officer are an integral part of the compliance monitoring process. Careful observation of on-going construction work and asking questions of the workers involved may help to determine whether or not it is necessary to make a more detailed audit of payrolls and time-sheets. Progress reports, contractors' apprenticeship agreements and similar data, together with [interviews of employees](http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formId=12BF5D0E2DC4484685256CBC0062F375&viewType=DETAIL) (recorded) (<http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formId=12BF5D0E2DC4484685256CBC0062F375&viewType=DETAIL>) may be sufficient to develop information as to whether there is compliance with the Federal labor standards provisions.

The Labor Standards Officer will be required to ensure that wage determination decisions and other required material pertaining to the required labor standards provisions are posted by the contractor at the worksite in a prominent and accessible place. The Labor Standards Officer will be required to have **photographic evidence** that the required Department of Labor [poster](http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf) (<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>) and the prevailing wage determination for each project is conspicuously displayed which informs employees of their rights.

XV. COMPLIANCE MONITORING – WEEKLY PAYROLL REVIEW

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It is the responsibility of each contractor and sub-contractor to submit [weekly certified payrolls](http://www.dol.gov/whd/forms/wh347.pdf) for project work (<http://www.dol.gov/whd/forms/wh347.pdf>). . If no work is performed by a contractor or sub-contractor during a given work week, weekly payrolls need not be submitted. Initial and final payrolls must be so marked by each contractor and sub-contractor. Payrolls shall be completed and submitted no later than seven (7) work days following completion of the work week. The Subrecipient or other Funded Entity are required to “date stamp” weekly certified payroll submissions to evidence prompt submission.

It is the responsibility of the Grantee's Labor Standards Officer to verify that proper wage and fringe benefit rates are being paid by all contractors and sub-contractors. The proper wage and fringe benefit rate for a particular job classification must be equal to or greater than the highest of the corresponding Federal or State prevailing wage rate and fringe benefit rate. Fringe benefits paid to approved plans, funds or programs must be verified by the Labor Standards Officer.

HUD policy affords prevailing wage protection for all laborers and mechanics regardless of contractual relationship. There is no exception to this protection for self-employed sub-contractors. The most frequent occurrence of self-employed workers involves mechanic/trade classifications. These mechanics may be represented as sole proprietors, self-employed mechanics, partners or corporate officers - all with no direct employees engaged in covered work. Certified payrolls reporting single or multiple owners (e.g., partners) certifying that they have paid to themselves the prevailing wage for their craft may not be accepted. These mechanics must be carried on the certified payroll of the contractor for whom they are working.

Owners of businesses working with their crew on the same job site may certify to the payment of their own prevailing wages in conjunction with the prevailing wages paid to their employees. This exception to reporting standards does not suggest that such owners are not likewise entitled to prevailing wages for their labor. Rather, it accepts the wage payment certification on weekly payroll reports by the owner for his/her own wages as that certification accompanies the certification offered for the payment of prevailing wages to his/her employees. Such owners need only list their name, work classification including “owner”, and the daily and total hours worked. Such owners do not need to list a rate of pay or amounts earned.

Contractor weekly payrolls and other basic records will be reviewed by the Labor Compliance Officer of the Subrecipient or other Funded Entity as part of the established compliance enforcement activity on every construction project. Submitted payrolls shall be examined to assure compliance with labor standards to establish that only classifications appearing on the wage determination are used. Additionally, the Labor Compliance Officer has check for disproportionate employment of laborers, helpers, apprentices or trainees in relation to the entire

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workforce of a contractor or subcontractor. All certified payrolls, employee interviews, photographs and any other materials shall be maintained and provided for review and monitoring at the request of the DCA Sandy Recovery Division, HUD of the Department of Labor at any time during the normal three (3) year term in which records must be maintained.

A. Payroll Forms - Contractors shall be required to use Department of Labor [Form WH-347](#), Payroll Form and [instructions on completing Form WH-347](#). If a contractor requests to use an alternative payroll of his/her own choice, such requests must be submitted to the Labor Compliance Officer and approved in writing by DCA Sandy Recovery Division.

B. Fringe Benefits - The required weekly statement of compliance, [Form WH-347, page 2](#), includes statements concerning the payment of the basic hourly wage rates.

Grantees and contractors are urged to obtain HUD publication “A Contractor’s guide to Prevailing Wage Requirements for Federally Assisted Construction”. The guide may be downloaded from the following HUD web site:

<http://www.hud.gov/offices/adm/hudclips/guidebooks/HUD-LR-4812/4812-LR.pdf>

C. Payrolls Must Be Obtained and Examined Promptly - Payroll Retention - The Subrecipient or other Funded Entity’s Labor Compliance Officer shall require the submission of all payrolls each week. The payrolls shall be examined upon receipt so that all necessary corrective action may be initiated before the problem multiplies, and may be accomplished while the workers are still available. Payrolls must be retained for three (3) years by the Subrecipient or other Funded Entity following completion of the project and then may be destroyed unless an investigation, disputed compliance action, or appeal remains outstanding. Clearance shall be obtained from the DCA Sandy Recovery Division prior to such destruction. Contractors and sub-contractors must retain their basic payroll records (payroll register, individual earning cards, etc.) for the same three (3) year period.

D. Employee Information - Effective January 18, 2009, payrolls shall not report employee addresses or full Social Security Numbers (SSNs). Instead, the first payroll on which each employee appears shall include the employee’s name and an individually identifying number, usually the last 4 digits of the employee’s SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting

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agency or other authorized representative responsible for federal labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractor’s records. DOL has modified form WH- 347, Payroll, to accommodate these reporting requirements.

E. Incomplete Payrolls - Except where falsification is suspected, an incomplete payroll shall be returned to the prime contractor for completion. In most cases it will be better to require the prime contractor to supply the missing information by means of a new or supplemental payroll or a supplemental statement. If a payroll is false, it shall not be returned to the contractor. A report of such findings shall be referred to the DCA Sandy Recovery Division.

F. “No work” payrolls. “No work” payrolls may be submitted whenever there is a temporary break in work on the project, for example, if a contractor or subcontractor is not needed on the project right now but will be returning to the job in a couple of weeks.

However, if a contractor or subcontractor will not be working on the project for an extended period of time, they should inform Labor Compliance Officer about the break in work and provide an approximate date of return to the project. If payrolls are numbered consecutively or if notice has been provided to the Labor Compliance Officer, “no work” payrolls will not be required.

G. Classification and Wage Rates. Classification and wage rates reported on the payroll shall be compared with the corresponding items on the applicable wage determination decision to determine whether the rate reported is at least equal to the rate required by the decision. If a lesser wage rate is found, the Subrecipient or other Funded Entity must request in writing the contractor to begin paying the required wage rate immediately and to make restitution to workers for past underpayments.

H. Deductions - Deductions shall be reviewed for any non-permissible deductions. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life pay, defraying costs of apprenticeship or similar programs. Questions regarding permissible fringe benefits must be referred to the Labor Compliance Officer for determination. All benefits not paid in cash must be documented with written verification from the contractor or sub-contractor.

I. Piece-work. Some employees are hired on a piece-work basis. The employee’s earnings are determined by a factor of work produced. Employers may calculate weekly earnings based upon piece rates provided the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. Accurate time records must be maintained for any piece-work employees. If the weekly piece rate earnings are not sufficient, the employer must re-compute weekly earnings based upon the actual hours worked and the rate on the wage decision for

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the work classification(s) involved.

J. Signature - The statement of compliance must be signed by the owner, officer, or designated employee of the contractor. Written authority must be furnished by the owner or officer of the contractor when a designated employee signs the payrolls.

K. Requests by Outside Parties for Payrolls - In order to protect the personal privacy interests of employees, copies of weekly payrolls containing the individual's salary, work hours, claimed exemptions and tax status, and address shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act unless any identifiers are first deleted.

XVI. COMPLIANCE MONITORING – EMPLOYEE INTERVIEWS

The Labor Compliance Officer shall be responsible for employee interviews. Employee interviews shall be sufficient in number to establish the degree of accuracy of the records and the nature and extent of violations, if any. They shall also be representative of all classifications of employees on the project. Employees shall be encouraged to produce pay stubs or pay envelopes which document the wages received.

A. Confidentiality - The employee shall be informed that the information given is confidential, and that his/her identity will be disclosed to the employer only with the employee's written permission, and that s/he is being interviewed by an employee of the grantee.

B. Place of Interview - Employees currently employed may be interviewed during working hours on the job, provided that the interview can be properly and privately conducted on the premises. In cases of falsification of records, fear of reprisals, or intimidation, it may be advisable to conduct the interview elsewhere, such as in the employee's home, at the Subrecipient or other Funded Entity's office, or other suitable place where it may be arranged.

C. Initiating the Interview - The Labor Compliance Officer shall begin the interview by introducing himself or herself to the worker and shall confirm their identity by showing the worker proper credentials. The Labor Compliance Officer shall explain that the project is being constructed with the assistance of the Federal government, that the payment of prevailing wages on Federally-assisted construction projects is required by law, and that the purpose of the interview is to obtain information for use in determining whether the required wages are being paid. The Labor Compliance Officer shall inform the worker of the specific location at which the applicable wage determination decision is posted at the project site.

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D. Mail Interviews - Employees and former employees may be interviewed by mail.

E. Interview Time - If the interview is conducted on the job site it shall be arranged to cause the least inconvenience to contractors and subcontractors.

F. Oral Interview Statements - An employee interview need not be recorded in a signed statement when it serves merely to confirm what the records reveal, and it is not otherwise indicative of a violation, assuming no violation has been alleged and the records are adequate.

G. Interview Form - Employee interviews are to be recorded on [Form HUD-11](#), Record of Employee Interview.

H. Comparison of Payrolls and Interviews - Grantees must ensure that:

1. Construction contractors designate the job classification of employees listed on the payroll.
2. The hourly rate includes the fringe amount as listed in the wage determination governing the project. Fringe benefits paid to approved plans, funds or programs must be verified in writing.

XVII. COMPLIANCE MONITORING – VIOLATIONS AND CORRECTIVE ACTION

When any violation of labor standards requirements results in an underpayment of wages to employees, the Subrecipient or other Funded Entities must take corrective action. Where wage adjustments become necessary, the Labor Compliance Officer must notify the prime contractor (the one responsible for the correction of all violations) in writing to make such adjustments. Should the violations not be corrected within thirty (30) calendar days of notification, the Labor Compliance Officer upon written notice to the contractor may withhold amounts due the contractor as may be necessary to ensure payment of laborers and mechanics the rate of pay which should have been received by such laborers and mechanics and to cover liquidated damages under the Contract Work Hours and Safety Act (CWHSSA), if any and if applicable. Only an amount necessary to ensure payment of back wages and/or liquidated damages shall be withheld.

Failure to ensure that proper wages are paid during the course of the project will result in the Subrecipient or other Funded Entity bearing the burden of restitution whether or not sufficient funds remain in the grant budget.

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XVIII. MONITORING VISITS

During the monitoring visit the DCA Representative will:

- A.** Meet with the Subrecipient or other Funded Entity’s Labor Compliance Officer.
- B.** Review the Subrecipient or other Funded Entity’s Labor Standards Enforcement file and complete the [Labor Standards Monitoring Checklist](#).

EXHIBIT 1

DCA Sandy Recovery Division LABOR STANDARDS COMPLIANCE ACTIVITIES

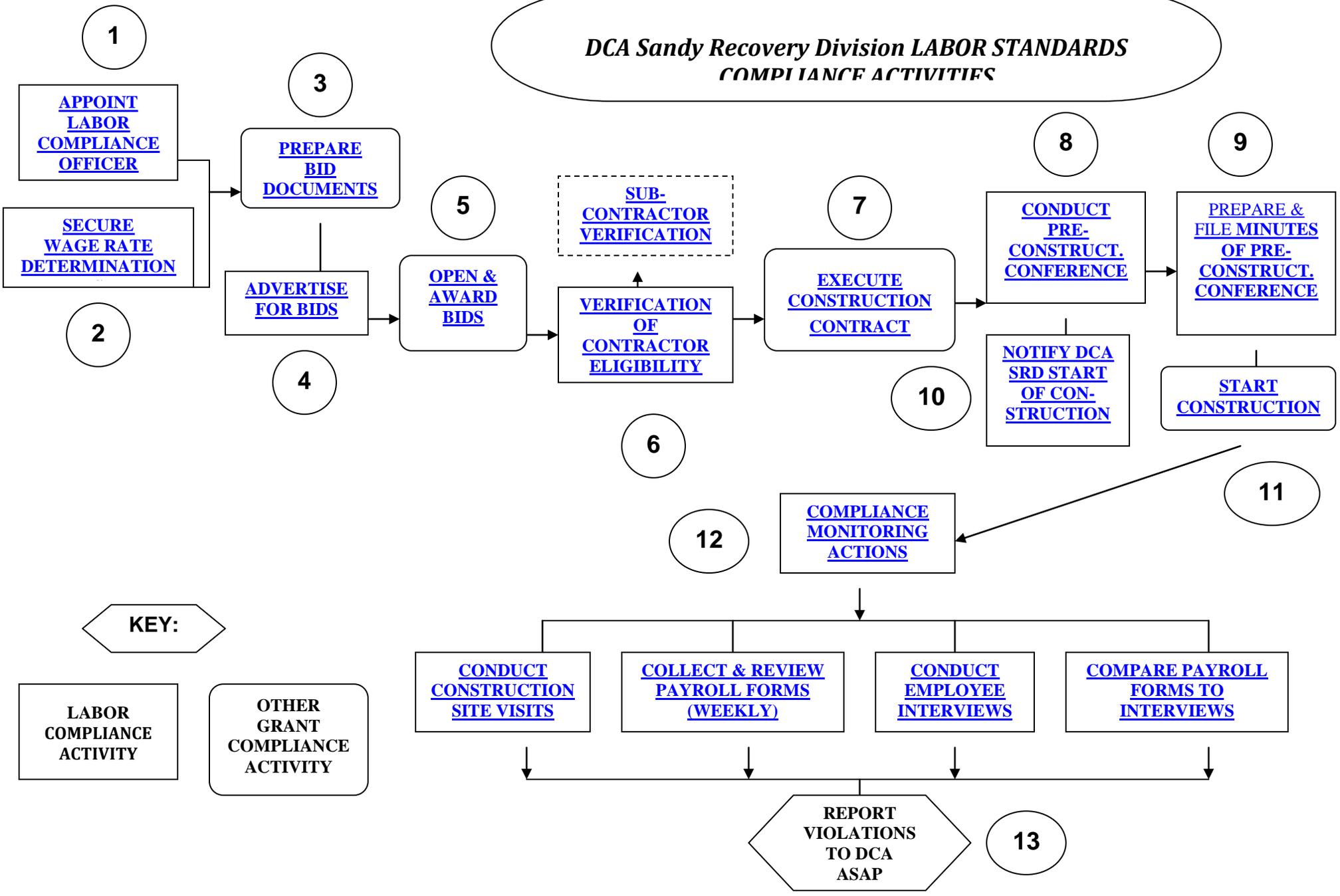


EXHIBIT 2
CDBG-DR Program
Labor Standards Monitoring Checklist

Subrecipient/Funded Entity
Agreement #: «Agreement»

Date: «Date»
Program Representative: «ProgramRep»

1. Contract Identification

Project Name _____

Name of Contractor _____

Description of Work _____

Bid Opening Date _____

Contract Award Date _____

Contract Amount _____

Start of Construction _____

Force Account Used _____

2. Contract Documents And Administration

Yes No N/A N/R

A. Prevailing wage rates in bid specification? _____

B. Notification of contractor eligibility in the file? _____

C. Prevailing wage rates in contract?

Date of State decision _____

Date of Federal decision _____

D. Are minutes of pre-construction conference in the file? _____

3. Payroll Review

A. Payrolls submitted weekly? _____

B. Payrolls numbered consecutively? (initial, second, etc., final) _____

EXHIBIT 2
CDBG-DR Program
Labor Standards Monitoring Checklist

		<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>N/R</u>
C.	Payrolls signed by employer or authorized representative?	_____	_____	_____	_____
D.	Statement of Compliance prepared for each payroll?				
E.	Proper wages paid based upon a random sample of listed job classifications?	_____	_____	_____	_____
F.	Were proper fringe benefits paid?	_____	_____	_____	_____
G.	Were fringe benefits paid to approved plans or programs verified?	_____	_____	_____	_____
H.	Apprenticeship/Trainee registration certification from US Dept. of Labor?	_____	_____	_____	_____
I.	If not, are journeyman rates being paid?	_____	_____	_____	_____
J.	Record of additional classifications? (not covered in wage decisions)	_____	_____	_____	_____
K.	Is payroll review correspondence in file?	_____	_____	_____	_____
4.	<u>Employee Interviews</u>				
A.	Were employee interviews conducted by the grantee?	_____	_____	_____	_____
B.	Were a representative number of trades covered?	_____	_____	_____	_____

EXHIBIT 2
CDBG-DR Program
Labor Standards Monitoring Checklist

5. Assessment Of Subrecipient/Funded Entity Labor Standards Administration

A. Has the Subrecipient or Funded Entity have designated a Labor Compliance Officer? _____

Name: _____

B. Does the Subrecipient/Funded Entity maintain full documentation attesting to the administration and enforcement of labor standards as indicated below:

	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>N/R</u>
a. Labor standards enforcement file for each construction project?	_____	_____	_____	_____
b. Is the labor standards enforcement file organized to enable review based on chronological events?	_____	_____	_____	_____
c. Is all labor standards enforcement documentation maintained at the same location?	_____	_____	_____	_____
C. Is there a need for technical assistance?	_____	_____	_____	_____

Comments And Findings

EXHIBIT 3

Federal Labor Standards Provisions

Federal Labor Standards Provisions

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

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

EXHIBIT 3

Federal Labor Standards Provisions

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

EXHIBIT 3

Federal Labor Standards Provisions

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

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

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

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the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

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(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

