

CHAPTER 23

LABOR STANDARDS ADMINISTRATION

- 23-1 **BACKGROUND.** This Chapter provides guidance on monitoring compliance with Davis-Bacon and Related Acts (DBRA) performance standards. These standards relate to the proper administration and enforcement of prevailing wage and reporting requirements associated with HUD-assisted construction work.
- 23-2 **APPLICABILITY.** HUD has delegated the primary responsibility for DBRA administration and enforcement to the agency administering the HUD program. HUD oversees agency performance through the Headquarters Office of Labor Relations (OLR) and Regional and local Field Office staff. Limitations in staff and travel resources affect the number of program participants that OLR can monitor. Community Planning and Development (CPD) staff thus assist in identifying program participants who may need additional technical assistance or training by conducting the limited labor standards monitoring provided in this Chapter. Determining which program participants are in need of labor standards monitoring is guided by the results of the risk analysis process referenced in Chapter 2 of this Handbook combined with information provided by OLR staff as to whether they have not conducted, or are not planning to conduct, monitoring of a particular program participant in the near future.
- 23-3 **OLR MONITORING COORDINATION.** OLR distributes an annual monitoring strategy that identifies program participants selected for review. CPD staff should refer to OLR's monitoring strategy to determine whether OLR already plans to monitor a particular participant. This coordination avoids duplicative effort by CPD staff. For program participants not being monitored by OLR which CPD will monitor, OLR staff will provide a synopsis of labor standards activities and any issues or concerns that could assist CPD staff in conducting their limited labor standards monitoring of the program participant. A listing of OLR field assignments is published at <http://www.hud.gov/offices/olr/laborrelstf.cfm>. OLR staff will work with CPD staff to determine whether the program participant is assisting (or planning to assist) work that triggers the labor standards requirements.
- 23-4 **PURPOSE OF LIMITED MONITORING.** Limited monitoring conducted by CPD staff serves to determine whether a program participant has functioning management systems and knowledgeable staff.
- 23-5 **COMMUNICATION OF MONITORING RESULTS.** Prior to conveying labor monitoring results to program participants, CPD staff shall consult with the OLR staff responsible (or that person's supervisor) for the program participant on the evidence, conclusions and required/recommended actions. The purposes of the consultation are to ensure consistency in handling any identified deficiencies and

to identify trends of systemic deficiencies. CPD will provide OLR copies of monitoring letters that include evaluation of labor standards administration.

23-6 LABOR STANDARDS PROVISIONS FOR MAJOR CPD PROGRAMS. The following list reflects the major CPD programs and the bases for Federal DBRA standards coverage and/or exclusion from coverage. The related statutory provision(s), regulatory citation(s), and notes are provided to assist reviewers in identifying particular situations where activities are covered or not covered. Reviewers are encouraged to contact the OLR specialist for the program participant if further clarification of labor standards coverage/exclusion is needed.

A. **Program:** Community Development Block Grant (CDBG)/Section 108 Loan Guarantees/Economic Development Initiative (EDI)/Brownfields Economic Development Initiative (BEDI)

Statute: Sec. 110 of Housing and Community Development Act of 1974.

Regulation: 24 CFR 570.603; see also 24 CFR 570.200(c)(3) for public improvements not initially assisted with CDBG.

Contract Form: Form HUD-4010, "Federal Labor Standards Provisions."

Notes: Davis Bacon (DB) applicability threshold for residential property is 8 or more units; for mixed-use property, there is no unit threshold except that, if the entire rehabilitation is clearly limited to the residential portion, the residential threshold applies.

DB applies only when construction work is financed in whole or in part with Title I assistance (i.e., CDBG, Section 108, EDI, BEDI). Examples: Financing includes use of Title I assistance in a permanent take-out loan, where the Title I loan is known or contemplated when construction financing is arranged. Financing includes use of Title I assistance to pay principal, or to pay or subsidize interest on construction loan. Use of Title I assistance solely for non-construction expenses -- e.g., purchase of land, architectural and engineering fees -- does not trigger DB.

Bona fide volunteers not covered (see 24 CFR Part 70).

B. **Program:** HOME

Statute: Sec. 286 of the HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez National Affordable Housing Act)

Regulation: 24 CFR 92.354.

Contract Form: Form HUD-4010, "Federal Labor Standards Provisions"

Notes: DB applicability threshold: Applies to contracts for construction of affordable housing with 12 or more HOME-assisted units. Applicability depends on how many HOME-assisted units are under the contract, not how many units are in the HOME project.

Unlike CDBG, DB is triggered regardless of whether HOME assistance finances construction or non-construction expenses, e.g., the purchase of land.

Bona fide volunteers not covered (24 CFR Part 70).

“Sweat equity:” DB inapplicable to family members who provide labor in exchange for acquisition of a property for homeownership in lieu of, or as a supplement to, rent payments.

C. **Program:** Youthbuild

Statute: Sec. 456(e) of the Cranston-Gonzalez National Affordable Housing Act (referring to labor standards provisions in the Job Training Partnership Act).

Regulations: 24 CFR 585.313. See also 24 CFR 585.502(j), “Certifications.”

Contract Form: Form HUD-4010, “Federal Labor Standards Provisions.”

Notes: Youthbuild trainees are not covered by DB, regardless of whether other Federal assistance is involved. DB not triggered where the Youthbuild grant is solely for classroom and/or on-the-job training and supportive services for Youthbuild trainees and the grant does not include housing project development costs (see 24 CFR 585.313).

D. **Program:** Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals (Title IV, Subtitle E of the McKinney Vento Homeless Assistance Act; formerly the Stewart B. McKinney Homeless Assistance Act)

Statute: No statutory reference to labor standards - governed by Section 8 program requirements, including labor standards under Sections 12(a) and (b) of the U.S. Housing Act of 1937.

Regulation: 24 CFR 882.804(b).

Contract Form: Form HUD-52538-B, Part II of Agreement to Enter Into a Housing Assistance Payments Contract (Section 8 Moderate Rehabilitation Program), clause 2.3.

Notes: DB applicability threshold: Applies to projects with 9 or more Section-8 assisted units.

Bona fide volunteers not covered (24 CFR Part 70).

- E. **Program:** Shelter Plus Care Moderate Rehabilitation component for SROs (Title IV, Subtitle F, Part 5 of the McKinney-Vento Homeless Assistance Act)

Statute: No statutory reference to labor standards - governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act of 1937.

Regulation: 24 CFR 882.804(b), which is made applicable by Shelter Plus Care regulations [see 24 CFR 582.100(d)(5)].

Contract Form: Form HUD-52538-B (12/04), Agreement to Enter Into a Housing Assistance Payments Contract (AHAP), Part II, clause 2.3.

Notes: DB applicability threshold: projects with 9 or more Section-8 assisted units.

Bona fide volunteers not covered (24 CFR Part 70).

- F. **Program:** Loan Guarantee Recovery Fund (Church Arson)

Statute: No statutory requirement for DB. DB requirements imposed administratively.

Regulation: 24 CFR 573.9(d).

Notes: DB applicability threshold: Rehabilitation of residential property covered only if property contains 8 or more units.

Bona fide volunteers not covered (24 CFR Part 70).

- G. **CPD Programs Not Covered:**

- Emergency Shelter Grants.
- Housing Opportunities for Persons With AIDS (HOPWA).
- Rural Housing and Economic Development.
- Shelter Plus Care (other than SRO).
- Supportive Housing Program.
- Social Service Block Grants (SSBG) distributed in connection with Empowerment Zones and Round II Empowerment Zone grants.