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## Section II Production

### Appendix 4.1

## HUD Labor Standards and Enforcement Protocol Section 232 and 241(a)

Protocols set forth herein are applicable when Davis-Bacon applies, as indicated in Section II, Chapter 2.

#### A. Early Commencement of Construction Processing

1. When an application for Early Commencement of Construction is submitted, the U/W will contact ~~the Regional Davis-Bacon~~ Labor Standards ~~and Enforcement Officer (RLSEO)(DBLS) Deputy Director~~ in the manner specified below in the Firm Commitment Processing section. If the application is acceptable, ORCF will issue an Early Commencement Approval Letter, which will include language requiring Davis-Bacon compliance. The wage decision effective date is the construction start date. The FHA Lender's ~~pre-construction conference coordinator~~ PreConstruction Conference Coordinator (PCCC) must notify the ~~RLSEO DBLS Deputy Director and the HUD Construction Manger (CM)~~ of the actual date of start of construction.

#### B. Firm Commitment Processing

1. When the Firm application is submitted, the ORCF Underwriter (U/W) will contact the ~~RLSEO DBLS Deputy Director~~ via email to initiate coordination with the Office of ~~Davis-Bacon and Labor Relations (OLR Standards (DBLS))~~. A list of the ~~RLSEO's DBLS Deputy Directors~~ and their contact information ~~is~~are posted at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/labor\\_standards\\_enforcement/laborrelstfh](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/laborrelstfh)

[https://www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/laborrelstf#R8](https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/laborrelstf#R8)

2. The U/W shall furnish to the ~~RLSEO DBLS Deputy Director~~ (or his/her designee) via email the Lender's Narrative (the Memo for Post-Commitment Early Start of Construction Request should also be included, when applicable), and Division I (when using the MasterFormat 1995) or Division 00 73 00 (when using the MasterFormat 2010), of the Specifications, which includes the Davis--

44 Bacon Wage Decision, and the Supplementary Conditions of the Contract for  
45 Construction. The Lender's Narrative will contain the following information:

- 46
- 47 a. Project location.
- 48
- 49 b. Number of stories.
- 50
- 51 c. Details on ~~any~~ commercial areas (square footage, percentage of gross  
52 floor area and description).
- 53
- 54 d. -A statement as to whether all units have both a kitchen/ or kitchenette  
55 and bathroom. For purposes herein, a kitchen can include a kitchenette  
56 consisting of a sink, countertop, microwave and refrigerator. A  
57 bathroom must consist of a sink, toilet (water closet) and a shower or  
58 tub.
- 59
- 60 e. -The contact information (name, phone number and email address) for  
61 the PCCC.
- 62

63 ~~2.3.~~ The ~~RLSE~~ORDBLS Deputy Director /designee shall review the Narrative and  
64 specifications and determine whether the specifications contain the correct Davis-Bacon  
65 wage decision based upon the project description. The ~~RLSE~~ORDBLS Deputy Director  
66 /designee shall notify the U/W via email either confirming the wage decision is correct,  
67 or advising the wage decision must be changed. The ~~RLSE~~ORDBLS Deputy Director  
68 /designee shall attach an electronic copy of the correct wage decision if a change is  
69 required. Upon receipt, the U/W will email a copy to the OHP Construction Manager  
70 (CM) and to the PCCC.

71

72 The wage decision is subject to modification and must be verified as current by  
73 ~~ORDBLS~~ during initial closing clearance. The effective date of the wage decision/s  
74 is/are the date of initial endorsement provided that construction starts within 90 days.- For  
75 projects utilizing a Post-Commitment Early Start of Construction (Early Start), the wage  
76 decision effective date will be the construction start date. On Early Start projects, the  
77 PCCC must notify the ~~RLSE~~ORDBLS Deputy Director of the actual date of start of  
78 construction to verify the most current applicable Davis-Bacon wage rate/s.

79

80 ~~3.~~ The Firm Commitment will include language requiring Davis-Bacon compliance, as  
81 follows:

82

83 *The borrower(s), its contractors and subcontractors, shall comply with all*  
84 *applicable Federal labor standards provisions as expressed in the Supplementary*  
85 *Conditions of the Contract for Construction, in connection with the construction*  
86 *of said Project.*

87

88

89 **C. Initial Closing Clearance**

- 90
- 91 1. The PCCC shall notify via email the RLSEODBLS Deputy Director /designee, the ORCF
- 92 Closing Coordinator (Closer) and the CM of the proposed location, date and time of the
- 93 Pre-ConstructionPreConstruction Conference and Initial Closing. Such email shall attach
- 94 the most recent version of Division I of the Specifications.
- 95
- 96 2. The RLSEODBLS Deputy Director /designee shall review the contract specifications to
- 97 determine whether the current and correct Davis-Bacon wage decision and the
- 98 Supplementary Conditions of the Contract for Construction are incorporated. The
- 99 RLSEODBLS Deputy Director /designee shall provide initial closing clearance via email
- 100 which shall include the contact information for the Labor RelationsStandards Specialist
- 101 (LRSLS) that will be responsible for Davis-Bacon technical support, compliance
- 102 monitoring, and enforcement.
- 103 Initial closing clearance may be conditioned upon the incorporation of a corrected wage
- 104 decision (e.g., updated) and/or the Supplementary Conditions of the Contract for
- 105 Construction in the contract specifications. If so, the RLSEODBLS Deputy Director
- 106 /designee shall attach an electronic copy of the current/correct wage decision(s) to the
- 107 clearance email.
- 108
- 109 3. At the Pre-ConstructionPreConstruction Conference the PCCC will notify all appropriate
- 110 parties (general contractor, architect and borrower) of the contact information for the
- 111 LRSLS staff.
- 112
- 113 4. The PCCC shall notify the LRSLS of the actual date of initial endorsement.
- 114
- 115

116 **D. Construction Phase**

117

- 118 1. The project architect and the PCCC shall notify, via email (followed by a hard copy), the
- 119 CM of the date of construction start, and the CM will then notify the LRSLS via email
- 120 of the date construction started. Construction must start promptly after initial closing to
- 121 avoid cost over-runs and expiration of the wage decision. In the event construction did
- 122 not begin within 90 days after initial endorsement, the LRSLS shall determine whether
- 123 the wage decision had been modified and whether any updates must be incorporated into
- 124 the Contract. The LRSLS shall promptly notify the CM via email if the contract wage
- 125 decision must be updated and will attach an electronic copy of the required wage
- 126 decision.
- 127
- 128 2. During construction, the CM will provide the LRSLS with electronic versions of the
- 129 Record of Employee Interview (HUD-11) and HUD Representative's Trip Report (Form
- 130 HUD-95379-ORCF) completed by the HUD Inspector.
- 131
- 132 3. During construction and should an investigation occur, the LRSLS will provide electronic
- 133 notice and summaries of said investigations and findings (excluding confidential
- 134 information) to the CM.
- 135

- 136 4. Should the LRSLS or the U.S. Department of Labor instruct withholding of  
137 requisitions/advances, the CM shall be notified via email of such instructions (including a  
138 copy of the proposed notice to the contractor and the withholding amount required). The  
139 CM shall work with the LRSLS or the U.S Department of Labor staff to implement such  
140 instructions or address the concerns (if at all possible). Should requisitions/advances be  
141 withheld, the CM shall work with the LRSLS or the U.S Department of Labor staff to  
142 determine when or if the requisitions/advances shall be resumed.  
143
- 144 5. At approximately 70% construction completion, the CM shall notify the LRSLS via  
145 email, to encourage the LRSLS to address any labor relations issues well in advance of  
146 construction completion.  
147
- 148 6. The CM shall notify the LRSLS via email of any requests for retainage reductions. The  
149 CM and LRSLS will recommend approval/disapproval of such request in an expeditious  
150 manner.  
151

#### 152 **E. Final Closing Clearance**

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- 155 1. For each new construction, substantial rehabilitation, or 241(a) project subject to labor  
156 standards provisions, the LRSLS must ensure that any/all labor standards issues are  
157 resolved or that provisions are made to ensure the payment of wage restitution that may  
158 be found due. At the earlier of at least 10 days prior to Final Closing or when the Final  
159 Closing documents are received, the Closer will request via email ORDBLS clearance  
160 to proceed with the Final Closing.  
161
- 162 2. The LRSLS shall perform a final project review and shall provide final closing clearance  
163 based on the results of this review.  
164

165 If there are no labor standards issues outstanding the LRSLS shall provide final closing  
166 clearance without conditions via email to the Closer. The Closer will notify the Closing  
167 Attorney and lender of such clearance via email.  
168

169 If there are outstanding labor standards issues the LRSLS shall provide conditional final  
170 closing clearance via email to the Closer. The Borrower or general contractor will be  
171 required to deposit to a specified U.S. Treasury account, via Fedwire, funds sufficient to  
172 satisfy any deficiencies. The LRSLS shall attach wire transfer instructions; a deposit  
173 agreement and a schedule detailing the purpose(s) and amount(s) to the conditional  
174 clearance email. The Closer shall forward this email to the Closing Attorney. The  
175 LRSLS shall likewise notify the Borrower or general contractor of the deposit  
176 requirement.  
177

- 178 3. No later than the day of the final closing and before the closing concludes, the depositor  
179 must furnish evidence of deposit in the amount required (e.g., bank receipt, wire transfer  
180 advice) and the depositor must execute the deposit agreement. The Closer shall promptly  
181 deliver to the LRSLS the original, signed deposit agreement and the deposit evidence.