

# **Davis-Bacon & Related Acts**

**Introduction to the Federal  
Labor Regulations for  
Developers and Contractors**

*Developed By:*



# Welcome and Introductions



# Who We Are

- **Training sponsored by:**
  - **New York State DHCR**
- **Training developed by ICF International**
  - **Gary Truelsen, Presenter**
- **Who are you?**
  - **Name and Organization**
  - **Experience/Interest in Davis Bacon?**

# Ground Rules

- **Ask questions**
- **Share ideas and thoughts**
- **Come back from breaks and lunch on time**
- **Mute cell phones**

# Agenda

- **What are Davis Bacon and Federal labor standards ?**
- **Impact on LIHTCs and TCAP ?**
- **Do they apply to my project?**
- **What do I have to do?**
- **What are consequences?**

# Overview of Federal Labor Standards



# Federal Labor Standards

- **Davis Bacon is one of several federal laws re: labor standards**
- **These laws require**
  - **Prevailing wages paid at least once a week**
  - **Premium pay for overtime**
  - **Unauthorized deductions are prohibited**
  - **Submit payrolls**
  - **And more ...**

# **Federal Labor Standards**

- **Triggered by federal funds / programs**
  - Exclusions for some programs / some situations
- **Responsibilities go with funds**
  - Feds to States / local governments
  - States / local to developers/ contractors
  - Developers/ contractors to contractors/ subs

# Federal Labor Laws

- **Davis-Bacon Act**

- **40 USC, Chapter 3, Section 276a-276a-5**

- **Davis-Bacon Related Acts**

- **Laws that govern specific federal programs**

- **Other laws**

- **CWHSSA, Copeland, FLSA**

# **The Purpose of DBA**

- **Provide a fair opportunity to compete in bidding programs funded by the Federal government**
- **Prevent contractors from bidding below an area's prevailing wages**

# **The Davis-Bacon Act (DBA)**

- **Requires payment of prevailing wages**
  - **Versus union, federal minimum, state minimum, state prevailing, local**
- **Determined by DOL**
  - **Surveys**
  - **Modifications**

# **The Davis-Bacon Act (DBA)**

## ■ **Generally applies to:**

- **Federally funded or assisted projects valued at more than \$2,000**
- **Contracts for the following types of work on public buildings or public works:**
  - **Construction**
  - **Alteration and/or repair**
  - **Painting and decorating**

# **Davis-Bacon Related Acts (DBRA)**

- **DBRA are laws that govern specific Federal programs**
- **DBRA that cover HUD Programs:**
  - **U.S. Housing Act of 1937**
  - **National Housing Act of 1949**
  - **Housing and Community Development Act of 1974**
  - **National Affordable Housing Act of 1990**

# Other Laws

- **Contract Work Hours & Safety Standards Act**
  - Workers shall not work more than 40 hours/week unless they get overtime & projects must comply with safety standards
- **Copeland Anti-Kickback Act**
  - Requires payment once a week & only permissible payroll deductions
- **Fair Labor Standards Act**
  - Federal minimum wage & overtime requirements

# Reference Materials

- **See your training manual for a complete list, includes:**
  - **Making Davis Bacon Work: Contractor's Guide**
  - **Title 29 CFR Department of Labor**
  - **Payroll form and certification**
  - **Wage decisions**

# Summary

- **Davis Bacon / federal labor standards trigger prevailing wage rate and more**
- **Does it apply to my project?**
- **Hey, what about TCAP?**

# **Tax Credit Assistance Program**



# **ARRA / Stimulus Bill**

- **TCAP is one of many programs**
- **Federal strings attached**
  - **May not waive fair housing, non-discrimination, labor standards, environment**
  - **May request waiver for other regs to expedite use of funds**

# ARRA / Stimulus Bill

## ■ TCAP Overview

- \$ for capital investments in LIHTC projects
- Goes to State and other (NYC) HC agencies
- Competitive
- Loans or grants
- Deadlines / use or lose

# TCAP

- **CPD-09-03 issued May 4, 2009**
  - **June 2, 2009 submission due**
  - **Competitive**
  - **Expenditure deadlines**
  - **Public comments**
  - **Agreements**
  - **Rental housing + LIHTC**

# TCAP

- **Require add funding Section 42 IRC**
- **Capital investment**
- **Priority= Completed within 3 years**
- **Grants or loans**
- **Written agreements**
- **Federal grant requirements**

# TCAP

## ■ Davis Bacon

- **Contractors and subs hired with Stimulus funds**
- **If under construction already, DB applies as of TCAP award**
- **Must request per 29 CFR 1.6 (g)**

# What to Do

## ■ Plan and anticipate

- Prepare for competitive selection
- TCAP \$ for what ?
- Current LIHTC without DB / now DB
- Current LIHTC with DB/ new wage rate
- Contracts

## ■ Submit public comments

# **Does Davis- Bacon Apply to My Project?**





# Davis Bacon

- **Determining Davis Bacon applicability is challenging**

# Steps to Take

- Read the proposal / contract
- Assume any construction work more than \$2,000 will require prevailing wage
- Review regulations governing the specific HUD Program to determine why Davis-Bacon would **NOT** apply.
- Contact Grantee staff / HUD Labor Relations staff

# Thresholds for Davis Bacon

## ■ American Recovery and Reinvestment Act / Stimulus

- HOME / Tax Credit Assistance program
- CDBG, Public Housing Capital Fund, Homeless Prevention and Rapid Re-Housing,+++

## ■ Non- Stimulus ( Old funds)

- Tax Credits
- CDBG, HOME, +++

# **American Recovery and Reinvestment Act**

- **Section 1606- all labors and mechanics employed by contractors and subcontractors on projects funded in whole or part**
- **Tax Credit Assistance program, CDBG, Public Housing Capital Fund, Homeless Prevention and Rapid Re-Housing, +++**

# **CDBG Thresholds Non-Stimulus**

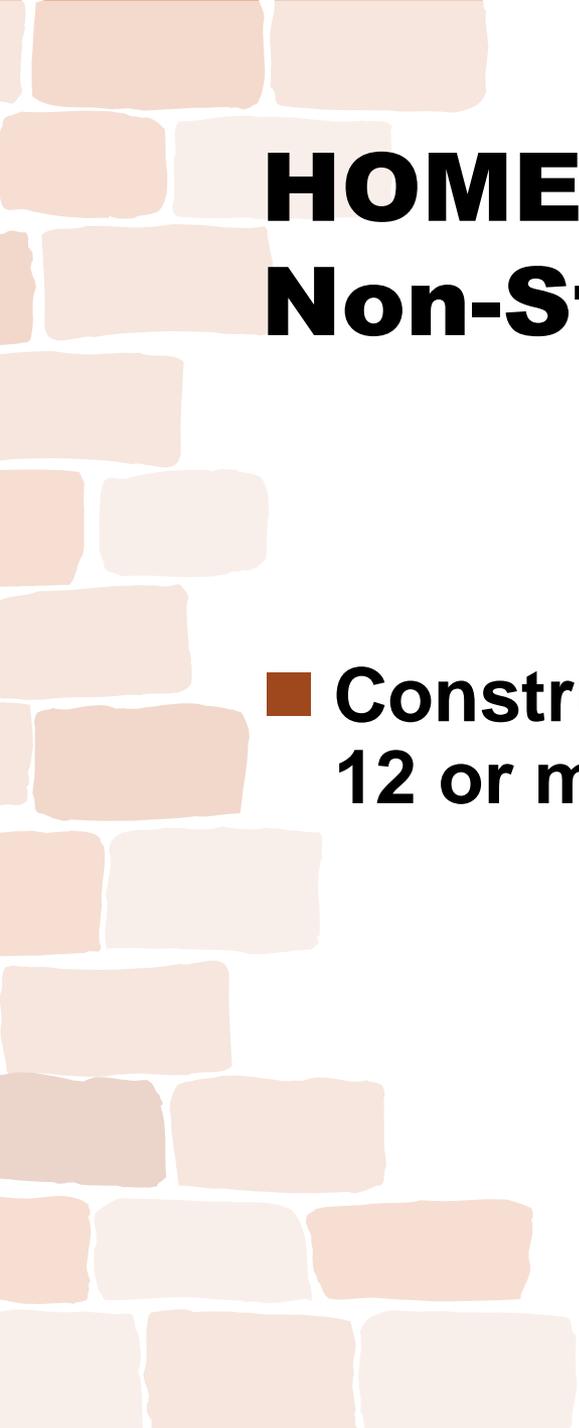
- **Construction meets one of the following thresholds:**
  - **Residential: Property has 8 or more units**
  - **Non Residential: Any construction work valued at more than \$2,000**

# Definition of Property

- Typically single-family homeowner properties are excluded
- However, property is not limited to a specific building
  - Property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels which are commonly-owned and operated as one rental, cooperative or condominium project.

# Examples

- **5 Townhouses side by side consisting of two units each**
- **3 apartment buildings each with 5 units located on one tract**
- **8 single-family (not homeownership) houses located on contiguous lots**



# HOME Thresholds Non-Stimulus

- Construction **contracts** that contain 12 or more “assisted units”

# **HOME Thresholds Non-Stimulus**

## **■ Important points to remember**

- A HOME Project cannot be divided into multiple contracts to avoid Davis-Bacon**
- A construction contract with 12 or more HOME-assisted units is covered, even if the contract involves more than one HOME project.**
- Assistance does not have to be directly for construction**

# Other HOME Issues

- **Group Homes can be counted as a single unit for HOME assistance or a group of single-room occupancy units**
- **If a pre-construction agreement is made with the owner/developer of a housing project AND construction contract covers 12 or more HOME-assisted units, Davis Bacon applies**

# **Section 8 Mod Rehab Non-Stimulus**

- **Moderate rehabilitation of Section 8 housing projects that use project-based certificates**

**AND**

- **Projects with 9 or more units assisted**

# **Public & Indian Housing Non-Stimulus**

- **No unit threshold. Davis-Bacon is triggered by any contract for assistance, sale, or lease for the development of low-income housing.**
- **Important Note: Davis-Bacon applies to public housing projects, even if Davis-Bacon is not mentioned in the specific laws that govern the funding program.**
- **Can be waived if in conflict with Tribal laws**



# Possible Exclusions

- Volunteer labor
- Sweat Equity

# Exemptions

## ■ Davis-Bacon may NOT apply to:

- Emergency Shelter Grant (ESG)
- Housing Opportunities for Persons with AIDS (HOPWA)
- McKinney Act Homeless Programs (except Section 8)
- Self-Help Homeownership Opportunity Program (SHOP)

# Summary

- **Davis-Bacon Act requires payment of prevailing wage rates to laborers and mechanics on most Federal construction projects**
- **Don't forget CWHSSA, Copeland, FLSA**
- **If Davis Bacon applies, now what ?**

# **The Role of the Developer / Contractor**

## **What Do I Need to Know and Do?**



# **Know the wage rate**

- **Location of work**
- **Type construction**
- **Job classifications / groups**
- **Incidental / substantial**
- **Salary and fringe**

# **What is a Wage Determination?**

## **DOL Definition:**

**“A list of wage rates and fringe benefit rates for each classification of laborers and mechanics determined by DOL to be prevailing in a given area for a particular type of construction”**

# Types of Wage Determinations

## ■ General Wage Determination

- Reflects rates that are prevailing in a specific geographic area for a specific type of construction

## ■ Project Wage Determination

- These rates are applicable to a specific project

## ■ Supersedeas and modifications to Wage Determination

# Where do I get a Wage Decision?

- Online at [www.wdol.gov](http://www.wdol.gov)
- <http://www.gpo.gov/davisbacon/allstates.html>
- By State, then by County
- Four construction categories
  - Building, Residential, Heavy, Highway

# 4 Construction Categories/Types

## ■ Residential

- Projects of up to four stories in height
- Includes all incidental items

## ■ Building

- Residential projects of 5 or more stories
- Fire stations, hotels, office buildings, subway stations, warehouses, etc.

# 4 Construction Categories/Types

## ■ Highway

- Roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas not incidental to building or heavy construction

## ■ Heavy

- Antenna towers, canals, chemical complexes, dams, docks, etc.

# **Choosing The Right Wage Statement**

- **Need to determine the scope of the project**
- **Need to determine whether all components are incidental to the primary construction or substantial that are separate and distinguishable items**

## Project Components

# Incidental vs. Substantial

- **Incidental: Uses same wage determination as entire project**
  - **Function: Does not alter overall character of project; AND**
  - **Cost: Is not >20% of total project cost**
- **Substantial: Requires an additional schedule of wages for project**
  - **Function: Alters overall character of project; OR**
  - **Cost: >20% of overall project cost OR => \$1 million**

# Multiple Schedules

- **The contract must clearly state the portions of the project that are subject to each wage decision**
- **All wage decisions must be posted**
- **Prime contractor must ensure that all employees are paid in accordance with appropriate determination**
- **Payrolls must demonstrate compliance with all schedules**

# Do Job Classifications Fit?

- **Classifications**
- **Groups**
- **Need additional ?**

# Adding Labor Classifications

- **A Local Grantee must request an additional classification and wage rate, if the work classification needed is not in the wage decision**
  - **First, determine whether there is a classification similar enough to be used**
  - **Workers affected or their representatives must agree with proposed wage**

# **Conditions for Approving Additional Classifications**

- **Must be existing classification in the county where the project is located**
- **Work to be performed is not already performed by another classification already on the wage decision**
- **Proposed wage rate is  $\geq$  the lowest rate for the same trade classifications in the wage decision**

# **Process for Additional Classifications Request**

- 1. Prime contractor (or sub through the prime) identifies classification and recommends a wage rate to the Local Grantee**
- 2. Local Grantee discusses with HUD Labor Relations Staff to avoid any delays or problems**
- 3. Local Grantee submits written request to HUD Labor Relations Staff**

# **Process for Additional Classifications Request**

**(continued)**

## **4. HUD will review the request**

- **HUD approves then refers to DOL for final approval**

**OR**

- **HUD does NOT approve then refer to DOL with explanation supporting denial**

# **Process for Additional Classifications Request**

**(continued)**

## **5. DOL will review the request**

- **DOL approves: Classification must be posted at job site with approval notice and wage decision**
- **DOL does NOT approve: Local Grantee will be notified about what classification rate to use. Local Grantee may request DOL reconsideration**

# Related Issues

## Wage surveys

- How often?
- How conducted?
- When do they apply?

## Wage rate lock in

# **A Developer's / Contractor's Responsibilities**

- **Know the wage rate**
- **Inform appropriate persons / assign responsibilities**
- **Contract language**
  - **Labor standards clauses**
  - **Wage Decisions**

# **A Developer's / Contractor's Responsibilities**

- **Budget**
- **Check contractor eligibility**
- **Know definitions**

# Definitions of Common Terms

- **Apprentice**
- **Employee**
- **Fringe Benefits**
- **Laborer/Mechanic**
- **Overtime**
- **Site of Work**
- **Trainee**
- **Wage Determination/  
Wage Decision**
- **Wages**

# **A Developer's / Contractor's Responsibilities**

- **Post work sites**
- **Perform work/ submit payrolls**
- **Monitor compliance**
- **Corrections if needed**
- **Retain files**

# **Optional Preconstruction**

- 1. All parties attend preconstruction conference**
- 2. Confirm wage decision**
- 3. Determine contract administrator**
- 4. Be prepared**

# **Preconstruction Conference**

## **Be Prepared for Contract Administrator**

- 1. Who is responsible ?**
- 2. Contractors /subs**
- 3. Job classifications / groups**
- 4. Payroll form / signatures**
- 5. On site postings**

# Construction

## Post sites

- **Wage rate**
- **Labor Standards**

# Construction

## Payroll reports

- **Payroll format**
- **Certification**
- **No work payrolls**

# **Common Payroll Errors**

**Computations**

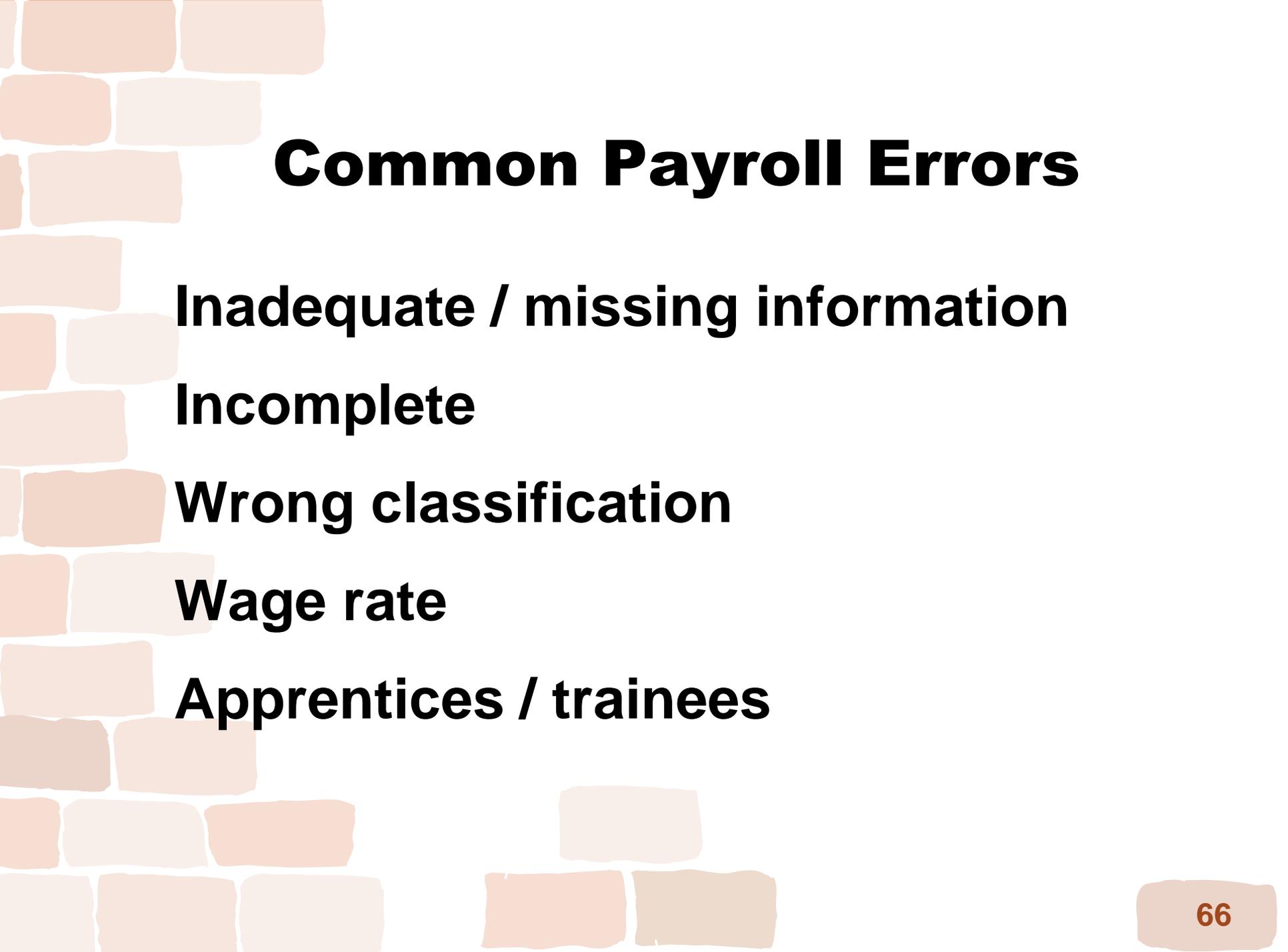
**Over time**

**Deductions**

**Fringe benefits**

**Signature**

**On site discrepancies**



# **Common Payroll Errors**

**Inadequate / missing information**

**Incomplete**

**Wrong classification**

**Wage rate**

**Apprentices / trainees**



# **Construction**

**Compliance inspections**

**Make corrections**



# Post Construction

- **Maintain payroll records and files**



# **Exercise on Payroll Review**

# “They” Are Watching



# **Subject to Review and Audit**

- **Contract Administrator reviews compliance:**

- **Payrolls**

- **Onsite inspections**

- **Postings**

- **Corrections**

- **Investigations**

# **If Employee Is Underpaid**

- **If underpayments, contractor must make restitution**
- **Steps include:**
  - **Grantee notifies the prime contractor**
  - **Computation of restitution & payment to worker**
  - **Contractor submits correct payroll**
  - **Grantee reviews of corrected payroll**
- **If workers not found, will escrow restitution and recipient will look for 3 years**
  - **After 3 years, amount is credited to HUD**

# Liquidated Damages

- **Contractors may also be liable for liquidated damages**
- **Money may be withheld to pay the liquidated damages**

# Investigations

- **Investigation if a discrepancy or a series of discrepancies**
  - **Review of documents show discrepancies in CPRs**
  - **On-site interviews with employees indicate possible problems**
  - **Employee Complaint**

# Resolution of Investigation

- **May result in the following:**
  - **Withholding of funds**
  - **Repayment Plan**
  - **Debarment of Contractor**

# **Disposition of Withheld Funds**

- **Retention of a portion of contract funds—standard practice for federally assisted projects**
- **Local Grantee may withhold as much of the accrued payments or advances as necessary to pay the full amount of wages required**

# **Disposition of Withheld Funds** *(continued)*

- **Refusal-to-pay cases resolved administratively by a hearing before a DOL administrative law judge.**
- **Thorough negotiations are encouraged before requesting a hearing**

# **If Laborers Cannot Be Located**

- **Funds will be placed by the Local Grantee into escrow for three years**
- **After three years, funds will be forwarded to HUD Labor Relations through a wire transfer, and will be used for other eligible program activities**

# Debarment

- Occurs when a contractor or subcontractor is declared ineligible for three years because it committed an aggravated or willful violation of the labor standards provisions of Davis-Bacon and Related Acts
- Payment of back wages does not eliminate possibility of debarment

# **Debarment** *(continued)*

## ■ **Conditions**

- **Submission of falsified CPRs**
- **Required kickbacks of wage or back wages by employees**
- **Committed subsequent violations of an identical nature**

# **New York Also Has..**

- **Spitzer Report / Employee Misclassification**
  - **Independent contractors**
  - **Off the books**
  - **Volunteers**
- **Investigative Teams formed**

# Summary

- **If inaccuracies are found in monitoring a project, a Local Grantee may decide to conduct an investigation**
- **If violations have been committed, sanctions that include debarment and assessment of liquidated damages on the contractor or sub**
- **In cases of refusal to pay back wages, the local grantee should withhold sufficient funds to pay the employees and notify the HUD Labor Relations Officer**



# **Review and summary**

**Thank you.**