

Davis Bacon Compliance Procedures for ARRA Funded Weatherization Program

Background-Davis Bacon Requirements and Development of DHCR Compliance Procedures

The New York State Division of Housing and Community Renewal is the contract compliance officer for the weatherization program funded under the American Recovery and Reinvestment Act (ARRA). In this monitoring role DHCR is responsible for ensuring compliance with Davis Bacon requirements by weatherization subgrantees and their subcontractors.

The basis of Davis Bacon compliance procedures described below is as follows: Projects covered under the Davis Bacon law must pay at a minimum the total of the wage and fringe amounts established by the U.S. Department of Labor (DOL) for covered workers. It is the responsibility of DHCR to approve a project's specific wage rates for the subgrantee. The contractors (subgrantees and/or their subcontractors) must submit weekly payrolls to the designated compliance officer (DHCR) to certify Davis Bacon compliance.

The Davis Bacon compliance procedures were developed by DHCR in coordination and consultation with the US Department of Energy (DOE) and the US Department of Labor (DOL). The compliance procedures required for the weatherization program closely follow long established Davis Bacon regulations and procedures. However, since this was the first time that the weatherization program was required to comply with Davis Bacon regulations some flexibility was permitted by DOE and DOL in allowing DHCR to create some of its own forms and procedures for approving wage determinations for building/commercial projects and additional wage classifications for residential buildings. The small procedure modifications made by DHCR were thus designed to both insure Davis –Bacon compliance and maximization of subgrantee program production. Technical assistance in locating wage rates and/or completing required forms is readily available by contacting the DHCR Davis Bacon compliance unit
CMcPhillips@nysdhcr.gov

Compliance Procedures for Residential (1-4 story) and Commercial Buildings (Above 4 stories)

The specific procedures described below are designed to address the universe of scenarios that weatherization subgrantees operate within. The procedures used are distinguished from each other by whether the building is a residential structure (1-4 stories), or commercial (Above 4 stories) and whether the needed wage classifications currently exist on the USDOL wage determination site. DHCR is required to utilize the DOL forms and procedures (Request for Authorization of Additional Classification and Rate- SF1444) for requesting missing (not on DOL site) classifications.

To assist the weatherization program under ARRA, DOL issued a special residential Weatherization wage determination (S2009-NY-001) This wage determination created three new residential wage classifications and rates (by county) (Weatherization worker, Doors and window replacement worker, HVAC heating and cooling repair, installation, replacement worker) These wage classifications are used for residential projects only. Additionally, for the convenience of the weatherization subgrantee DOL included on (S2009-Ny-001) the existing residential wage determinations (found on the www.wdol.gov) for carpenters, electricians and plumbers. These wage classifications together with the new weatherization classifications should allow weatherization subgrantees to complete most residential projects without requiring additional classifications thereby minimizing the need to request additional classifications.

Wage classification procedures for buildings above four stories (5+) will utilize wage classifications and rates (approved by DHCR) found on the DOL wage determination site. www.WageDeterminationOnLine.gov. The wage determinations given/approved by DHCR will be based upon the effective date of the subgrantees contract.

1-4 story buildings

(There are (4) possible scenarios for residential buildings)

Scenario #1

Subgrantees working on projects in 1-4 story buildings using the S2009-NY-001 wage determination only (not requiring any additional wage determinations that are not listed on the S2009-NY-001) residential wage determination - subgrantees use this determination without any further action required by DHCR.

Action required by subgrantee and DHCR

None required

Time Frame Required For Response

Not Applicable

Scenario #2

Projects in 1-4 story buildings requiring missing wage rates for existing classifications on the S2009-NY-001.

For example, the S2009 wage determination for New York State was originally issued with (18) counties missing wage rates for plumbers. In order for a plumber to be used for those counties USDOL must set a wage rate.

Action Required

A Subgrantee must send the USDOL form SF1444 Request for Authorization of Additional Wage Classification and Rate required to DHCR (can be downloaded from DHCR website). DHCR will review and forward to USDOL for their review and approval.

Time Frame Required For Response

USDOL has indicated that the usual time required for their review and notification of DHCR is approximately (2- 4) weeks.

Scenario #3

Projects in 1-4 story buildings requiring additional residential wage rates for classifications not on S2009-NY-001 but which are found on the USDOL web site.

For example, a subgrantee may require a roofer or other wage classification(s) to complete a job that is not on the S2009-NY-001 wage determination, but which is found on the USDOL wage determination site (residential section). For example, if a subgrantee's project in Onondaga County requires a residential roofer rate, to complete a project (incidental to the weatherization job); the subgrantee would be required to search the DOL site. When the subgrantee searches the appropriate wage modification section and finds a residential roofer rate wage classification then the subgrantee would be required to request that the wage classification be added to their project by completing and submitting the DHCR form 'Request for Davis Bacon Wage Classification/ Determination for 1-4 Story Buildings' (on DHCR website). DOL is allowing DHCR to approve the additional wage classification for inclusion in the subgrantee's contract. Upon approval the additional residential wage classification is added to the Elation site by DHCR for use by the subgrantee in preparing their weekly payroll reports,

Action Required

Subgrantee will use the DHCR form Request for Davis Bacon Wage Classification/Determination 1-4 Story Buildings only to request that the additional residential wage classification, as found on the USDOL site, be included for a specific project.

Time Frame Required for Response

DHCR can review request and respond to subgrantee within (5) business days of receiving request.

Scenario #4

Projects in 1-4 story buildings requiring additional residential wage rates for classifications which are not found on the USDOL site.

For example, a subgrantee may require a wage classification such as a roofer for a project that is not found on the DOL wage determination site for the specific county.

Action Required

The subgrantee must submit to DHCR (for forwarding to USDOL) the DOL form SF1444- Request for Authorization of Additional Wage Classification and Rate (can be downloaded from DHCR website). Once approved by USDOL, the rate will be available for use by the subgrantee.

Typical Response time required

USDOL has indicated that the expected time required for their review and notification of DHCR is approximately (2-4) weeks.

Above 4 story buildings

(There are (2) scenarios possible for commercial buildings)

Scenario #1

Projects in above 4 story (in most cases this means a 5+ story building) buildings requiring wage classifications which are on the USDOL site.

Action Required

This scenario requires that DHCR approve the correct wage rates before each (individual building) project begins. The subgrantee must submit the DHCR form 'Request for Davis Bacon Wage Classification/ Determination above 4 Story Buildings' (on DHCR web site) listing all wage classifications/determinations required for the job prior to beginning the job. DHCR will review and approve (check DOL site to verify the subgrantee is using correct wage rates). Once approved the wage rates given will not change for all buildings for the duration of the ARRA contract.

Typical Time Frame Required

DHCR will review /approve and inform the subgrantee by e-mail within (5) business days from receiving request.

Scenario#2

Projects in above 4 story buildings requiring wage classifications which are not on the USDOL site.

Action Required

Subgrantee will submit to DHCR for review (for forwarding to USDOL) the DOL form SF1444 Request for Authorization of Additional Wage Classification(s) and Rate.

Typical Time Frame Required for Response

USDOL has indicated that the expected time required for their review and notification of DHCR is approximately (2-4) weeks

NO PROJECT DELAY REQUIRED WHILE WAITING FOR WAGE DECISION

It is important to note that subgrantees should not delay starting or continuing a weatherization project while waiting for a wage determination from DOL/DHCR. While waiting for an official wage determination from DOL a subgrantee can simply establish an interim wage rate based on the subgrantee's best estimate of what the rate might be and proceed with the project. The worker is paid the proposed hourly \$ amount while waiting for a decision. When DOL informs DHCR of the wage decision (which in most cases requires 1-4 weeks for a decision to be rendered) the subgrantee will be required to pay any difference in wages owed from the start of the contract.

Significance of Subgrantee Contract Effective Date

Note: To determine the appropriate wage classification requires that a reference contract effective date be established (DOL direction). New York State has established that the contract effective dates for weatherization subgrantees under ARRA are 7/1/09 for regular subgrantees and 1/1/10 for the temporary subgrantees. The contract effective date is used for the wage determination search. For example, if a project in Saratoga County needs to search for building/commercial wage classifications on the USDOL web site it must select Saratoga County, and then select building, then list search. The wage decision number is displayed. The archived records are then searched (using the WD number) to determine which specific wage modification is to be searched. The modification selected is based on which modification was in effect on the date of the contract effective date. For example, if a regular subgrantee's (7/1/09 contract effective date) project is located in the county of Queens the modification selected from the archives would be the modification 6/26/09 which is the modification that was in effect on 7/1/09. (The effective date of the contract) The same process would be followed for Temporary subgrantees only using 1/1/10 as the effective date. The contract effective dates will remain the same for the duration of the ARRA contract.

For the ARRA funded weatherization program, subcontractors use the same contract effective date as the subgrantee that has contracted with them for determining the wage rates irrespective of the dates of contract between the subgrantee and subcontractor. The subcontractors receive their wage classifications from the subgrantee after they have been approved by DHCR.

Electronic payroll reporting for ARRA funded Weatherization Projects

DHCR has contracted with Elation Systems to provide an electronic payroll reporting system for subgrantees to submit certified weekly payroll reports which reflect Davis Bacon compliance based on the correct/approved wage rates which were determined by the procedures described above. The wage classifications are entered into the Elation system for each subgrantee thus the Elation system will not approve weekly payroll reports which contain wage classifications which have not been previously approved by DHCR.

The most updated wage determination is activated on the Elation site. Certified weekly payroll reports received are automatically compared by the Elation system to the authorized wage rates. Reports that indicate compliance issues are 'flagged' by the system for further review. Subgrantees and subcontractors also receive notification of the flagged payroll report allowing interaction between them to determine what issue(s) (system automatically displays the specific issue(s) have caused activation of the 'yellow' flag). The report can be resubmitted by the subcontractor to correct deficiencies. The report will remain flagged unaccepted until issues are resolved. If DHCR staff determines it is warranted (repeated flags etc.) they can contact the subgrantee for further follow-up. Technically any subgrantee contract payment to a subcontractor could be interrupted if compliance problems become serious enough. DHCR can also withhold contract payments to subgrantees for serious compliance violations.

USDOL Special Wage Determinations (residential 1-4 story) for ARRA Weatherization Projects

Determination S2009-NY-001 was specifically made by DOL for use by ARRA weatherization subgrantees (residential) for the duration of the ARRA contracts. If necessary, USDOL can update the special wage determination. (DOL has issued one update and one correction since the beginning of the ARRA contract (last one issued was effective 6/1/10).

If any changes or corrections are made by DOL DHCR will be informed by DOL/DOE when the changes will take effect. The rates will remain the same unless DOL issues corrections or updates during the remaining term of ARRA contracts. DHCR is responsible for notifying the subgrantees of the changes and the date the changes are effective. Subgrantees are responsible for notifying their subcontractors of the changed rates. To allow for a subcontractors' smooth transition between the old and new rates, the wage rate changes take effect for new subcontractor building contracts. DHCR will instruct its subgrantees that the Davis Bacon wage determinations for their existing building contracts with subcontractors can remain in force until those buildings are completed. New contracts (new buildings with the subcontractor will use the new rates). Changes to wage rates for the subgrantees own work crew are required to be made immediately upon notification by DHCR after the effective date determined by USDOL.

The Elation system will have the new rates therefore projects with old rates causing non conformance notices 'flags' will require manual overriding by DHCR compliance staff as necessary.

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Role of Subgrantee in Overseeing Subcontractors

DHCR has contracted with the subgrantee for performing weatherization contract activities. Subgrantee can elect to use their own work crew or a subcontractor for all or part of the contract. A subgrantee is responsible for ensuring that its subcontractors are Davis Bacon compliant- (using the correct wage classifications and rates). Since there are approximately (75) subgrantee contracts the number of potential subcontractor contracts that will be entered into by subgrantees will be in the hundreds. This will generate hundreds of weekly payroll reports that must be collected and reviewed by DHCR. Subgrantees that are responsible for and familiar with their subcontractors are in a better position to provide more direct oversight than DHCR can. Each subcontractor is registered separately with the Elation system and submits individual weekly certified payroll reports. The subgrantee is notified by Elations that a report has been submitted by their subcontractor and whether the report has been accepted or rejected. Notices to subcontractors are also automatically sent to the subgrantee. Subgrantees are expected to investigate rejected payroll reports by their subcontractors. It is critical for subgrantees to understand that they are contractually responsible for providing sufficient Davis Bacon compliance oversight of their subcontractors.

Technical Assistance to Subgrantees and Subcontractors

Subgrantees have direct access to DHCR for Davis Bacon compliance questions.

Although subcontractors are expected to utilize the relationship with their subgrantee to receive most of their Davis Bacon compliance information, they are not precluded from direct contact with DHCR.

Individual employees of subgrantees and subcontractors may also contact DHCR staff directly for information or to report non-compliance. These contacts must be treated seriously by all DHCR staff that are contacted or receive information of non compliance. DHCR may forward the compliance issues to USDOL for their investigation.

Subgrantee and Subcontractor Access to USDOL

For general questions concerning Davis Bacon compliance subgrantees and subcontractors can access DOL staff directly by contacting any one or more of the (10) DOL district offices throughout NY State. Subgrantees can receive much valuable information on Davis Bacon compliance from DOL regional offices. DHCR compliance

staff also has access to assigned DOL staff for receiving technical assistance on Davis – Bacon rules and regulations as they apply to the weatherization program.

However, subgrantees should be clear that DHCR has, in areas involving setting wage rates for subgrantees, responsibility for doing so. In situations where a subgrantee believes it has received conflicting information on compliance issues from DHCR and DOL DHCR will take the lead in resolving any discrepancies between DOL and DHCR.

List of Forms used by DHCR to Process Wage Determination Requests (all on DHCR website)

- Request for Authorization of Additional Classification and Rate SF1444 (USDOL)
- Request for Davis Bacon Wage Classification/Determination (Buildings More than Four (4) Stories in Height) (DHCR)
- Request for Davis Bacon Wage Classification/Determination (Less than Four Stories in Height) (DHCR)