

Texas Department of Housing and Community Affairs (TDHCA) Multifamily – Davis-Bacon and Related Acts and Section 3 Step-by-Step Guide

INTRODUCTION

This guide provides an overview of the steps to be taken by owners awarded funds through the Texas Department of Housing and Community Affairs (TDHCA) for building projects with federal funds that are subject to Davis-Bacon and Related Acts (DBRA) and U.S. Department of Housing and Urban Development Section 3 requirements. For more detail, please see the TDHCA Preconstruction Guide at <https://www.tdhca.texas.gov/davis-bacon-and-related-acts>.

COMMON ACROYNMS/ABREVIATIONS

- CWHSSA: Contract Work Hours Safety Standards Act
- DBRA: Davis-Bacon and Related Acts
- DBA: Davis-Bacon Act
- DOL: Department of Labor
- DOL-WHD: Department of Labor Wage and Hour Division
- DOL-ETA: Department of Labor, Employment & Training Administration, Office of Apprenticeship
- GWD: General Wage Determination
- LSO: Labor Standards Officer
 - Identified by Owner to oversee project DBRA administration and enforcement.
- LSS: Labor Standards Specialist
 - TDHCA employee who provides technical assistance and oversees DBRA and labor standards
- NTP: Notice to Proceed
 - LSS issues the NTP to authorize rehab or construction work to begin
- Owner: Owner or developer of the project
- Prime: Prime Contractor/General Contractor
- SAM: System for Award Management
- TDHCA: Texas Department of Housing and Community Affairs
- UEIN: Unique Entity Identification Number

STEP 1: PRIOR TO APPLICATION

OWNER: Establish management control systems and procedures related to labor standards requirements

OWNER/PRIME (GENERAL CONTRACTOR):

Research DOL General Wage Determination (GWD), located at [SAM.gov](https://sam.gov), applicable to the County where the Project will be located to use as a reference when completing the construction budget. Review published worker classifications, wage rate, and fringe requirement, if applicable. Consider additional construction worker classifications not listed on GWD including wages and fringe benefit amount, if applicable.

DOL publishes four different General Wage Determinations that require worker wage pay mandates based on the type of construction work completed at a project. Generally, a project will only be subject to wage pay demands that fall under one of the four categories described under “General Wage Determination Categories”.

There are instances when the type of construction work needed at a project will trigger the applicability of more than one wage determination. The DOL Memorandum 236 and HUD Letter LR-21-01 define project construction types and conditions that may require the applicability of more than one wage determination.

- Memorandum Number 236 - [Department of Labor \(DOL\) Agency Memoranda](#)
- LR-21-01 Application of Department of Labor guidance concerning “projects of a similar character” - [Labor Relations Letters](#)
- DOL Memo 236 and HUD LR-21-01 - Project Example: If site work costs equal or exceed \$2.5 million or represent 20% of total project costs, the project may require the application of “Heavy” wage determination for the site work and “Residential” wage determination for the multifamily units

Important: Owner and Prime should conduct a thorough assessment of project development construction type needs and costs to determine if the project will require the application of only one or multiple wage determinations. When in doubt, reach out to the TDHCA Labor Standards Specialist (LSS) for assistance.

DOL General Wage Determination Categories

The following descriptions provide guidance:

Type of Construction	Description of construction
Highway Construction	Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, sidewalks, paths, parking areas, and other similar projects not incidental to building or heavy construction.
Building Construction	Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction such as structures, residential structures greater than four stories, the installation of utilities, and the installation of equipment, both above and below grade level, as well as incidental grading, utilities, and paving. Additionally, such structures need not be habitable to be building construction. The installation of heavy machinery and/or equipment does not generally change the project’s character as a building. Building examples also include nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, parking garages, and dormitories.
Residential Construction	Residential projects for DBRA purposes are those involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.
Heavy Construction	Heavy projects are those projects that are not properly classified as either building, highway or residential. Unlike these classifications, heavy construction is not a consistent classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

PRIME: Ensure DBRA laborer and mechanic pay mandates are accurately accounted for in the project budget and incorporated in the construction contract.

OWNER/PRIME: Prior to construction contract execution, conduct outreach efforts to eligible Section 3 businesses and workers, including, but not limited to, outreach to Texas or Local

Workforce offices announcing Section 3 job opportunities to eligible low income individuals in project service area.

STEP 2: PROJECT APPROVED – FEDERAL AND TDHCA LABOR STANDARDS

- OWNER:** Identify Labor Standards Officer (LSO) who will oversee project DBRA administration and enforcement. MUST NOT be an employee of construction company or construction affiliate. The Appointment of Labor Standards Officer form can be found at: <https://www.tdhca.texas.gov/davis-bacon-and-related-acts>
- The designated LSO may change during contract or construction phase. If this occurs, the Owner must appoint a new LSO using the Appointment of Labor Standards Officer form and notify the TDHCA Labor Standards Specialist (LSS) within 30-days after the appointment of replacement LSO.
- LSO:** LSO must send a copy of the Prime’s [SAM.gov](https://sam.gov) clearance and Unique Entity Identification Number (UEIN)/or registration verification to TDHCA’s LSS prior to contractor’s contract execution. **See Construction Contract Requirements** in the [TDHCA Preconstruction Conference Guide](#).
- OWNER/PRIME/LSO:** Participate in TDHCA Preconstruction Conference that covers federal and state labor standards mandates. When the Preconstruction Conference is held, participants MUST include Prime, LSO and Owner/owner rep.
- LSS:** Confirms appointment of LSO prior to approval of first administrative or construction draw. Coordinates Preconstruction Conference with Owner/Prime/LSO.
- Releases TDHCA Notice to Proceed (NTP) prior to start of project construction. NTP is generally distributed after federal loan closes except in rare circumstances. A request to release NTP before TDHCA federal loan closes must be approved by TDHCA management. Release requires receipt of City Building Permit including verification of fee payment, if applicable. NTP Locks-In DOL workers prevailing wage mandates throughout project construction phase unless a new construction contract is executed during construction. Construction MUST begin within ten calendar days after receipt of NTP or updated NTP must be requested.

STEP 3: CONSTRUCTION PHASE - PREPARATION

- OWNER:** Ensure all contractor contracts (Prime, Subs, Lower-tiers) incorporate [HUD Federal Labor Standards Provisions \(HUD Form 4010\)](#) and applicable GWD. The Owner/Prime must establish adequate controls to ensure that all covered workers are paid under the

wage decision applicable to their respective construction work. Establish record-keeping procedures to ensure original labor records are maintained for three years after project construction is complete.

PRIME/LSO: Display the DOL Employee Rights under the DBRA Act poster in an area accessible to all workers. The Prime must also post the project applicable wage decision and DOL approved worker classifications DOL required Poster is located at <https://www.dol.gov/agencies/whd/posters/dbra>

Establish record-keeping procedures to ensure original labor records are maintained for three years after project construction is complete, ensuring all contractors maintain hired workers' addresses, full social security number (SSN) and telephone number during construction and for no less than three years after completion. LSO must make the records available to Prime (as applicable), TDHCA, HUD, and authorized individuals upon request.

Contractor(s) who distribute individual "start of construction" authorization notice(s) must send a copy to the TDHCA LSS. The date noted on the authorization to begin work is compared to the first payroll submitted by contractor to ensure compliance with DBRA payroll reporting mandates.

LSO Submit request for approval of worker classifications, as needed.

Work with LSS to obtain final approval determination from the Department of Labor – Wage and Hour (DOL-WHD) for proposed worker classification. Additional instructions for the submission of worker classification(s) approvals are found on **Exhibit A** of the [TDHCA Preconstruction Conference Guide](#)

STEP 4: CONSTRUCTION PHASE – CONTRACTORS PAYROLL RECEIPT AND REVIEW

PRIME: Ensure contractors complete [DOL Payroll-347 Payroll and Statement of Compliance](#) and submit weekly (every seven days), unless alternate payroll is approved by TDHCA LSS. Ensure all persons working on the job site are listed on the payroll. The employee identification number or last four digits (only) of social security number of the worker must be shown on the payroll. Do not enter full social security number.

PRIME/LSO: Review weekly payrolls for accuracy and completeness. Ensure contractors are paying workers weekly. Follow up on all discrepancies and require contractor to submit revised payroll – do not return original for correction.

Ensure the correct forms and consent authorizations are included with the **First Weekly Payroll**. Review **Payroll Reporting and Documentation** in the [TDHCA Preconstruction Conference Guide](#) for documentation required.

Follow through with violations of the Contract Work Hours Safety Standards Act (CWHSSA) and impose liquidated damages (penalties), as needed. For additional instructions, see **Exhibit B** of the [TDHCA Preconstruction Conference Guide](#). Collect amount owed in liquidated damages to send via check to TDHCA. Work with TDHCA LSS to complete and process all CWHSSA violations, ensuring to complete the TDHCA Liquidated Remittance and Liquidated Summary forms, found on <https://www.tdhca.texas.gov/davis-bacon-and-related-acts>.

STEP 5: CONSTRUCTION PHASE - PAYROLL REVIEW OBLIGATIONS

Worker Wage Restitution

Prime/Contractors: If underpayments of worker prevailing wages occur, the employer must pay wage restitution to affected employees/workers. Wage restitution must be paid promptly in the full amount owed to employee/worker, less any authorized deductions.

LSO Must notify the Prime in writing of any underpayments found during payroll or other reviews. Notice to Prime must describe the underpayments and include instructions for computing and documenting the restitution owed to employee(s).

Advise Prime, in writing, they will have 30 days to correct assessed underpayments and provide verification of payment owed to employee(s).

The wage restitution is the difference between hourly wage paid to worker from date of hire and the wage rate published on applicable GWD (or **approved** DOL worker classification hourly wage that was not listed on GWD). The difference in the wage rates is called the adjustment rate. Multiply the employee(s) total number of hours where worker was underpaid by the adjusted rate to determine gross restitution amount owed to worker(s).

Prime: Responsible for ensuring any restitution owed to employee/worker is paid. If the wage restitution is owed by hired subcontractor, Prime must review pay restitution and payment verification documentation is accurate prior to sending to LSO.

LSS: Reviews support documentation submitted for completeness and accuracy.

Correction Certified Payrolls

Prime: An employer is required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6, or a beginning date and ending date).

The correction payroll will list:

- each employee to whom restitution is due and their work classification;
- the total number of work hours involved (daily hours are usually not applicable for wage restitution);
- the adjustment wage rate (the difference between the required wage rate and the wage rate paid);
- the gross amount of restitution due; and
- any deductions and the net amount actually paid.

Send to LSO the **Correction Certified WH 347 Payroll** (or TDHCA approved payroll form), including support documents, if applicable. Ensure authorized individual signs Statement of Compliance.

LSO: Must review **Correction Certified WH 347 Payroll** to ensure it is completed correctly and restitution amount paid is accurate (i.e., compare restitution difference with worker classification wage listed on project applicable GWD) and payroll is supported. Notify Prime in writing if discrepancies are noted and additional restitution payments are required. Submission of a supplemental correction payroll is required within 30-days.

Note: Except in the most extraordinary cases, HUD no longer requires employers to submit copies of restitution checks (certified, cashier's, canceled, or other) or employee-signed receipts or waivers.

Unfound Workers (Inability to locate worker)

Sometimes a worker moves and cannot be located. When this occurs, the Prime is held responsible for ensuring efforts are made to locate worker for a period of **three years after project completion** and is held liable for any wage restitution owed to project worker(s), including project workers employed by subcontractor or lower-tier contractor.

Prime: Place the restitution amount owed to unfound worker in an escrow or separate account. Send LSO escrow or separate bank account or separate information including name of each affected worker and restitution amount owed.

LSO: Must document efforts made to locate worker(s) entitled to restitution pay throughout the DBRA federal compliance period. After three years, any amount remaining in the escrow or separate bank account due to unfound worker(s) must be sent to TDHCA LSS who in turn will send monies owed to unfound workers to the HUD DBLS office.

STEP 6: CONSTRUCTION PHASE – ON-SITE WORKER INTERVIEWS

LSO: Conduct periodic on-site employee (worker) interviews that represent multiple classifications working throughout the project construction phase and record using [HUD Record of Employee Interview \(HUD Form 11\)](#). Compare results with applicable DOL 347-Payroll and follow up with all discrepancies. Review **LSO Responsibilities** in the [TDHCA Preconstruction Conference Guide](#) for additional instructions.

Employee interview sampling should be used as a tool to target interviews to projects or groups of workers where violations are suspected or alleged instead of interviewing workers based on classification sampling basis. HUD considers targeting a far more efficient and effective means of utilizing on-site interview resources.

LSO/PRIME: Follow through with all Labor Standards violations.

STEP 7: CONSTRUCTION PHASE – LABOR DISPUTES & DEBARMENT (AS APPLICABLE)

TDHCA/HUD/DOL: If a contractor has committed a serious or egregious violation of applicable labor laws, the labor standards clauses in the TDHCA program contract and HUD and DOL regulations provide for administrative reviews. Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of DBRA will be ineligible (debarred) to participate in any DBRA contracts for up to three years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest.

Debarment proceedings can be recommended by the Owner/LSO or can be initiated by the DOL on its motion. Debarment proceedings are described at 29 CFR 5.12.

Where there is a difference of views between the appointed LSO and any employer/contractor, the LSS facilitates resolutions of disputes between the LSO and the Prime and other hired contractors. The most common situations include:

Findings of Underpayment

Compliance reviews of payrolls or other investigations may result in findings of underpayment.

Prime/LSO: If the Compliance or other investigation resulted in **Findings of Underpayment**, the Prime will have an opportunity to provide additional information to the LSO that may explain apparent inconsistencies and/or resolve the discrepancies.

LSO: The LSO may cause **withholding** of payments owed to the Prime to ensure the payment of wages, which are believed to be due and unpaid. For example, an LSO may recommend to Owner to hold the amount of restitution wages owed to workers from draw payment to Prime, if the Prime has not resolved underpayment citation or submitted verification that workers were paid owed restitution after having received 30 days written notification.

Deposits and Escrows/Separate Bank Accounts

If corrective actions or disputes continue after the project is completed, provisions must be made to ensure that funds are available to pay any wage restitution due. In these cases, TDHCA may allow the project to proceed to final closings and payments, provided that the Prime deposits an amount equal to the potential liability for wage restitution and liquidated damages in a special account.

Owner/LSO: All worker restitution draws from the escrow or separate bank account require review by the Owner and/or appointed LSO. When a decision is rendered regarding wage payment(s) owed to workers, the LSO will send documentation that supports worker wage payment to the TDHCA LSS for review and final approval. The Owner will then approve disbursement from the account to pay restitution owed to worker(s).

Prime/Owner: Prime and Owner are the parties responsible for establishing an escrow or separate bank accounts to correct an Administrative Review of Labor Standards. Escrow or separate accounts are established when:

- The parties have agreed to amounts of wage restitution that are due but the employer has not yet furnished evidence that all the underpaid workers have received their back wages.

- The deposit in the escrow or separate bank account is equal to the amount of restitution due to workers not yet supported by adequate documentation of payment. As proper documentation is received, amounts corresponding to worker owed wages are approved and released to the worker. Amounts for any workers who cannot be located are held in the escrow or separate bank account for three years and sent to TDHCA as described above. See Step 5 for Unfound Worker.
- Underpayments are suspected or alleged and an investigation has yet been completed.
 - The deposit is equal to the amount of wage restitution and any liquidated damages that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow or separate bank account, the escrow or separate bank account will be reduced to the final amount required to be held by Prime. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow or separate account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described Step 5.
- Parties do not agree on the escrow or separate bank required amount.
 - Parties can request a TDHCA administrative hearing. While parties wait for the outcome of the administrative review, the escrow or separate bank deposit must be equal to the original assessed amount of wage restitution and liquidated damages that have been determined due. Once a final decision is rendered, disbursements from the escrow or separate account are made in accordance with the decision.

TDHCA: When there is an Escrow or Separate Bank Account, TDHCA may allow the project to proceed to final closings and payments, provided that the Prime deposits an amount equal to the potential liability for wage restitution and liquidated damages in a special account.

STEP 8: CONSTRUCTION PHASE – FRAUD, WASTE, OR ABUSE (AS APPLICABLE)

PRIME/LSO: The Prime or LSO must report fraud, waste, or abuse if they believe or suspect that money or assistance TDHCA uses for its operations, or money or assistance that TDHCA

has provided to an organization, person, or affordable housing property may have been lost, stolen, or misused. For more information, visit TDHCA’s Report Fraud, Waste and Abuse (<https://www.tdhca.texas.gov/fraud-waste-abuse>) page or call toll free 1-800-TX-AUDIT (1-800-892-8348)

Note: On-Site Worker Interviews as explained in Step 6 may reveal fraudulent worker underpayment violations. If violation is suspected or verified, notification to TDHCA LSS is required.

STEP 9: TDHCA LABOR STANDARDS RELEASE OF RETAINAGE CONDITIONS

OWNER/LSO: For DBRA, the Owner/LSO must submit accurately completed MF-DB06 Final Wage Compliance Report and MF-DB07 Certification of Construction Completion located <https://www.tdhca.texas.gov/davis-bacon-and-related-acts> to TDHCA LSS. The Owner/LSO must attach list of all contractors (Prime, Subs and lower-tier) hired during construction including, name, address, contract amount, and telephone.

Prime/LSO: For Section 3, Prime/LSO will coordinate to ensure completion of Section 3 responsibilities described in the TDHCA Preconstruction Conference Guide. TDHCA encourages completing and submitting the TDHCA Section 3 Cumulative Report (Form S302) to describe qualitative Section 3 efforts, ratios of Section 3 labor hours to total labor hours, and worker training, pursuant to creating economic opportunities for low- and very low-income persons.

If DBRA applies to a project, the required certified weekly payrolls may serve as verification of Section 3 labor worked hours, replacing the use of HUD-4737A, only if payroll is supported with Section 3 low-income employee and/or business certifications.

STEP 10: FOLLOW-UP

OWNER/LSO: The Owner/LSO must:

- Evaluate labor standards success and improved procedures for future projects.
- Maintain labor records for three years after construction.
- Make records available to authorized individuals.