



TCAP Questions and Answers: Davis-Bacon Prevailing Wage Requirements

The following questions and answers are intended to assist TCAP grantees understand the applicability of Davis-Bacon wage and reporting requirements under the Recovery Act labor standards provision at Section 1606. These questions and answers are not a substitute for reading and understanding the regulations and other interpretive guidance. For further assistance, please consult the HUD Labor Relations Specialist for your area. A list of Labor Relations staff, their contact information and the jurisdictions they serve, as well as other helpful information, may be found at the Office of Labor Relations website at www.hud.gov/offices/olr.

1. When do Davis-Bacon requirements apply? Are there any exemptions?

Answer: Davis-Bacon applicability under Sec. 1606 of the Recovery Act is very broad. Davis-Bacon applies to projects funded directly by or assisted in whole or in part...pursuant to this Act. There are no exemptions or thresholds beyond the standard Davis-Bacon Act \$2,000 threshold. Thus, any project in excess of \$2,000 which receives TCAP assistance is covered. Note that the \$2,000 threshold applies to the total value of the project construction, not just the amount of TCAP assistance.

2. What if the project is already under construction?

Answer: Pursuant to Department of Labor (DOL) guidance, Davis-Bacon requirements will not apply *retroactively* to a project for which the construction contract was awarded, and/or for which construction started prior to notice of Recovery Act funding. Instead, Davis-Bacon requirements will be effective *prospectively*, as of the date Recovery Act funding is approved for the project by the TCAP grantee. HUD has clarified with DOL that “notice” will mean the date that funding availability is announced by the TCAP grantee at the application level. Since TCAP grantees will distribute funds on a competitive basis, the “notice” date is the date that the grantee announces and invites applications for TCAP assistance.

3. What’s the difference between the “notice” date and when Davis-Bacon requirements are effective?

Answer: The “notice” date (for TCAP, the date the TCAP grantee announces and invites applications for assistance) identifies the projects that are eligible for prospective Davis-Bacon application. If a project falls into this category, Davis-Bacon requirements are effective beginning on the date TCAP assistance is *approved* for that project by the TCAP grantee.

4. Will project owners be required to amend their construction contracts?

Answer: Yes, the owner will need to amend the construction contract if the contract is already in place when TCAP funding is approved for the project and there will be more construction work performed under the contract after TCAP funding approval. The applicable Davis-Bacon wage decision and the HUD-4010, Federal Labor Standards Provisions, must be inserted into any construction contract that is subject to Davis-Bacon requirements. For construction contracts that have already been let or construction has started, the applicable wage decision and HUD-4010 must be inserted to be effective as of the date TCAP assistance is approved for that project by the TCAP grantee.

5. What wage decision is applicable?

Answer: The applicable wage decision is the wage decision that is in effect on the date that the construction contract is awarded or construction is started, whichever occurs first. In the case of construction contracts awarded via competitive bidding, it's the wage decision that is in effect on the date that bids are opened provided that the construction contract is awarded within 90 days after bid opening. If the construction contract is not awarded within 90 days after bid opening, the wage decision must be updated to the wage decision that is in effect at contract award.

6. What wage decision is applicable to projects that are under *prospective* Davis-Bacon applicability?

Answer: When Davis-Bacon requirements are applicable prospectively, the grantee must go back to pick up the wage decision that *would* have applied if Davis-Bacon requirements had been applicable from the very beginning. So, the same rules apply as above (question #5); i.e., the wage decision that was in effect at construction contract award or start of construction, etc. The difference is that Davis-Bacon wage requirements are *enforced* beginning on the date TCAP assistance is approved for the project by the TCAP grantee. For example, if construction started on a project on June 1, 2009, and TCAP funding was approved for the project on August 1, 2009, the applicable wage decision is the one that was in effect on June 1. The contractor must comply with the rates on wage decision beginning August 1.

7. What if the project construction is complete?

Answer: Projects that are complete prior to the "notice" of Recovery Act funds (for TCAP, "notice" is the date that the grantee announces and invites applications for TCAP assistance) are not subject to Davis-Bacon requirements because there is no

construction work that would be performed after approval of TCAP assistance for that project.

8. What does the TCAP grantee need to include in assistance agreements with project owners?

Answer: HUD is delegating labor standards administration and enforcement to the TCAP grantees. That means that the grantees will need to take steps to ensure that Davis-Bacon requirements are imposed and enforced. Just as HUD will include language in its agreements with TCAP grantees delegating responsibilities and obligating compliance, TCAP grantees must put language in its agreements with owners that obligates the owner to ensure full compliance on its own and the full compliance of its contractor(s) with Davis-Bacon wage and reporting requirements.

9. Can the TCAP grantee require that project owners get the Davis-Bacon wage decision from the grantee or directly from DOL?

Answer: Since HUD has delegated labor standards administration and enforcement to the TCAP grantees, TCAP grantees are responsible for providing support to project owners approved for TCAP assistance. Davis-Bacon wage decisions are obtained online at www.wdol.gov. The TCAP grantee can either provide the wage decision to the project owner or can require that the owner obtain the wage decision from the web site. Either way, the TCAP grantee is ultimately responsible for ensuring that the correct wage decision and the HUD-4010 are incorporated into covered contracts, as well as for ensuring the full compliance with Davis-Bacon wage and reporting requirements.

10. What Davis-Bacon records must be submitted to the TCAP grantee? What records must be maintained by the project owner?

Answer: There are a few layers of Davis-Bacon records submission and retention requirements. First, each construction employer (the principal contractor(s) and any subcontractors/lower-tier subcontractors) must prepare and certify a weekly payroll report for each week the employer works on the covered project, and must retain a copy of all payrolls and basic records related to the payroll information such as employee information, timecards, pay and deduction records, etc. Payroll reports are submitted up the "chain-of-command" to the grantee: lower-tier subcontractors to subcontractors; subcontractors submit lower-tier payrolls along with its own to the principal contractor; the principal submits all subcontractor payroll submissions (including any lower-tier subs) along with its own to the project owner; the project owner submits all payrolls collected to the grantee. Each level (lower-tier, sub, -principal, -owner, and -grantee) must retain the records received or generated for not less than 3 years after the project is completed.