

# TCAP/ Davis-Bacon Requirements

## Applicability and Timing of Applicability:

Any project in excess of \$2,000 which receives TCAP assistance will be required to comply with Davis-Bacon requirements. Note that the \$2,000 threshold applies to the total value of the project construction, not just the amount of TCAP assistance.

Davis-Bacon requirements will be effective prospectively, as of the date Recovery Act funding is approved for the project by VHDA. 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.

## Overview of Davis-Bacon Requirements:

Each Owner shall familiarize themselves with the laws, regulations, contacts and responsibilities of the Davis-Bacon Act. VHDA will provide each Owner with a copy of the HUD publication entitled [“Making Davis-Bacon Work, a Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects”](#).

### Construction Contracts:

Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. The applicable Davis-Bacon Wage Decision (see below) and the [HUD-4010, Federal Labor Standards Provisions](#), must be inserted into any construction contract that is subject to Davis-Bacon requirements. The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project.

### Wage Decisions

The Owner shall request Wage Decisions related to TCAP awards directly from VHDA, by providing VHDA with a completed [Project Wage Rate Sheet \(HUD- 4720\)](#). Please note- **Davis-Bacon Wage Decisions related to TCAP awards are to be obtained from VHDA, not from any other source such as Department of Labor or HUD.**

The Davis-Bacon wage decision (or wage determination) is a listing of various construction work classifications, such as Carpenter, Electrician, Plumber and Laborer, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid. Davis-Bacon wage decisions are established by the DOL for various

types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is “locked-in” and no future modifications are applicable to the contract or project involved.

To make reading lengthy wage decisions easier, the contract administrator for the Owner may prepare a [Project Wage Rate Sheet \(HUD-4720\)](#). This Sheet is a one-page transcript that will show only the classifications and wage rates for a particular project.

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.

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. The difference is that Davis-Bacon wage requirements are enforced beginning on the date TCAP assistance is approved for the project by VHDA. 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.

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.

The Prime Contractor on each property will be responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet) and a copy of a DOL poster called Notice to All Employees (Form WH-1321) at the job site in a place that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won’t be destroyed by wind or rain, etc. The Notice to All Employees poster will be provided by VHDA to each Owner.

### Compliance Reviews

VHDA or other inspector may visit the project site and interview some of the workers concerning their employment on the project. The DOL may also independently conduct its own reviews. In addition, VHDA will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. The Owner will be notified by VHDA if these reviews find any discrepancies or errors, and will be given instructions about what steps must be taken to correct any problems.

#### a. On-Site Interviews

Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with VHDA or other agency representative, or HUD or DOL representatives. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. The interviewer will record the interview information, usually on a form [HUD-11, Record of Employee Interview](#), and forward the interviews to the contract administrator.

#### b. Project Payroll Reviews

VHDA will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days, work classification and rate of pay. VHDA will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee or other authorizations for other deductions are submitted (where needed); etc.

#### Records and Reporting Requirements:

There are a few layers of Davis-Bacon records submission and retention requirements:

[Certified Payroll Reports](#) - 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. [Certified Payroll Reports](#) are submitted up the “chain-of-command” to VHDA: 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 VHDA.

Each construction employer must submit a weekly [certified payroll report \(CPR\)](#) beginning with the first week that each company works on the project and for every week afterward until the firm has completed its work. It’s always a good idea to number the payroll reports beginning with #1 and to clearly mark the last payroll for the project “Final.”

VHDA will provide each Owner with a form to use for the submission to VHDA of the payroll reports. The weekly payrolls are called certified because each payroll is signed and contains language certifying that the information is true and correct.

“No work” payrolls may be submitted whenever there is a temporary break in your work on the project. Please see page 2-4 of [“Making Davis-Bacon Work”](#), for more information on “no work” payrolls.

The prime contractor should review each subcontractor’s payroll reports for compliance prior to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid and for any liquidated damages that may be assessed for overtime violations. All of

the payroll reports for any project must be submitted to the contract administrator through the prime contractor.

### Payroll Retention

Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as time cards, tax records, evidence of fringe benefit payments, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

### **VHDA Davis-Bacon Compliance Administrator**

Questions and comments related to complying with TCAP-related Davis-Bacon requirements in Virginia should be directed to:

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