



Department of Energy
Washington, DC 20585

WEATHERIZATION PROGRAM NOTICE BIL-6 REVISED
EFFECTIVE DATE: March 7, 2024

REVISIONS:

- *ENERGY MODELING AND WAGE DETERMINATIONS: Updates made to clarify established wage rates may be used when determining cost effectiveness of all multifamily buildings. Actual wages paid must align with the prevailing wages for the building type.*
- *ATTACHMENT 2: Frequently Asked Question added to clarify Energy Auditors and Inspectors work are not covered by the Davis-Bacon Act therefore do not need to be paid prevailing wages.*

EXECUTIVE SUMMARY: This document addresses the Davis-Bacon Act (DBA), as applicable, for units completed with Bipartisan Infrastructure Law (BIL) funds awarded by the Department of Energy (DOE) Weatherization Assistance Program (WAP).

- DBA applies only to work performed on multifamily buildings not fewer than 5 units using BIL funding.
- Grantees, Subgrantees, contractors, and subcontractors must include the applicable wage determinations in bid solicitations, assistance agreements, and the resulting contracts and grants.
- DOE has procured LCPtracker software to assist in streamlining compliance requirements for Grantees (if applicable), Subgrantees, contractors, and subcontractors, in certifying their payroll.
 - **Grantees/Subgrantees must use this system to comply with DBA requirements.** DOE will not require any retroactive filing in LCPtracker for certified payrolls already completed prior to launch of LCPtracker. However, Grantee/Subgrantee must maintain DBA records of all work performed subject to DBA, and make the DBA records available for review, as requested.
- DOE provides flexibility regarding determining the cost effectiveness used in the energy model by allowing use of established wage rates for modeling even if either a Residential or Building Wage Determination is used for paying workers.
- Grantees must submit a Semi-Annual Davis Bacon Act Enforcement Report bi-annually (April 21st and October 21st).

SUBJECT: Applicability of Davis-Bacon Act Prevailing Wage Requirements to WAP BIL

APPLICABLE TO: BIL Grants funded through the Weatherization Assistance Program

INTENDED AUDIENCE: WAP BIL, Sustainable Energy Resources for Consumers (SERC) and Enhancement and Innovation (E&I) BIL Grantees and Subgrantees

PURPOSE: To provide guidance on DBA as applicable to BIL grants.

SCOPE: The provisions of this Weatherization Program Notice (WPN) apply to Grantees or other entities named in the Notification of Grant Award as the recipient(s) of financial assistance under DOE WAP BIL.

LEGAL AUTHORITY: Title IV, Energy Conservation and Production Act (ECPA), as amended, authorizes the Department to administer the WAP (42 U.S.C. § 6861, *et. seq.*). All grant awards made under this Program shall comply with applicable law and regulations including, but not limited to, the WAP regulations contained in the Code of Federal Regulations (CFR) at [10 CFR 440](#), DOE Financial Assistance Rules at [2 CFR 200](#), and the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act), [Public Law 117-58](#).

BACKGROUND: With respect to work performed under WAP on a project assisted in whole or in part by WAP funding, BIL (Section 41101 and 40552) requires the payment of prevailing wages for work performed on multifamily buildings with not fewer than 5 units.

BIL includes the following amendments to the current statute:

SEC. 40551. WEATHERIZATION ASSISTANCE PROGRAM

(a) **AUTHORIZATION OF APPROPRIATIONS**—There is authorized to be appropriated to the Secretary for the weatherization assistance program established under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 *et seq.*) \$3,500,000,000 for fiscal year 2022, to remain available until expended.

(b) **APPLICATION OF WAGE RATE REQUIREMENTS TO WEATHERIZATION ASSISTANCE PROGRAM**—With respect to work performed under the weatherization assistance program established under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 *et seq.*) on a project assisted in whole or in part by funding made available under subsection (a), the requirements of section 41101 shall apply only to work performed on multifamily buildings with not fewer than 5 units.

Accordingly, per part (b) above, any BIL-funded WAP work, as well as BIL SERC and BIL E&I work on multifamily buildings with not fewer than 5 units, funded in whole or in part by WAP is required by BIL (Section 41101 and 40552) to pay prevailing wages. Grantees must ensure all laborers and mechanics engaged in the construction, alteration, or repair of those multifamily buildings (whether employed by the Grantee or Subgrantee, a contractor or subcontractor) are paid wages “at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor.” Current Wage Determinations are accessible at <https://sam.gov/content/wage-determinations>.

OVERVIEW: DBA Prevailing Wage requirements apply to any projects for construction, alteration, or repair that are funded in whole or in part by BIL funding.

DBA requires all laborers and mechanics performing work on WAP multifamily building projects be paid wages and fringe benefits determined by the Secretary of Labor to be prevailing for corresponding classes of employees engaged on similar projects in the locality, unless that laborer or mechanic is a direct employee of a local, Tribal, or state government. If the Grantee or Subgrantee contracts out WAP BIL funding for weatherization work that is for a building with not fewer than 5 units, it must ensure that DBA requirements flow down to the entities that employ laborers and mechanics that do the work.

On projects where DBA prevailing wages must be paid, the requirements are stipulated in the U.S. Department of Labor (DOL) regulations at 29 CFR Parts [1](#), [3](#), and [5](#). Federal agencies directly contracting for weatherization projects, or providing assistance under BIL to other entities for such projects, must include the standard DBA contract clauses found in [29 CFR 5.5\(a\)](#) in their bid solicitations, assistance agreements, and resulting contracts and grants. They must also mandate the requirements are applied to any contracts or subcontracts for the performance of the work. The recipient of BIL funding is responsible for the compliance of its Subgrantees, contractors and subcontractors with all contract clauses. Subgrantees are responsible for compliance of its contractors and subcontractor through contract clauses as well.

Grantees, Subgrantees, contractors, and subcontractors must include the applicable wage determinations in bid solicitations, assistance agreements, and the resulting contracts and grants. Pursuant to [29 CFR § 1.6\(f\)](#), if it is determined that an inaccurate wage determination has been incorporated into a grant or contract, the proper wage determination, as issued by the DOL Wage and Hour Division (WHD) Administrator, will be incorporated into that contract or grant retroactively to the beginning of BIL-assisted, or funded, construction. The Subgrantee, contractor, and/or subcontractor must be compensated for any wage increases resulting from such change. In the event of such a change, BIL program operations funds may be used to cover adjustment costs.

WAGE DETERMINATIONS: WAP projects can fall under two different wage determinations, depending on the building construction – *Residential* (for buildings with no more than four stories) and *Building* (for buildings, including residential buildings, with 5 or more stories). Under BIL, weatherization work must be paid the wage aligning with the building type. **To ensure the correct wage determination for weatherization work is being used, agencies should carefully review how the number of stories is determined in relation to the WHD’s website.**

Once the WAP project’s building type has been determined, the agencies can determine the prevailing wage for each weatherization task in their area on the [SAM.GOV wage determination page](#). Note that the application of DBA requirements for WAP funded projects under §40551 of BIL is based on the number of *units* in a building, while the applicability of wage determinations, posted by Construction Type (Residential vs. Building), depends on the number of *stories*.

ENERGY MODELING AND WAGE DETERMINATIONS: Due to potentially higher wage rates required by DBA, weatherization measures installed on multifamily buildings may exceed the cost-effectiveness requirement (see [10 CFR 440.21\(d\)](#)).

Therefore, for purposes of calculating cost-effectiveness, a Subgrantee may use its established labor rates instead of the prevailing wage rates when modeling the cost-effectiveness of the project. This is *only* for calculating the installation cost of measures in energy audit models; **actual wages paid must align with the prevailing wages for the building type.**

CONTRACTING REQUIREMENTS: Grantees and Subgrantees, and contractors and subcontractors, must attach applicable wage determinations to bid solicitations, assistance agreements, and resulting contracts or grants. A Grantee or Subgrantee, and contractors or subcontractors, who solicits bids for weatherization work, must provide/post the wage determination 10 calendar days prior to opening the bids. If a competitively bid contract is not awarded within 90 days of bid opening, any updated wage determinations need to be incorporated into the final contract, unless the contracting agency has obtained an extension from the DOLWHD, for a wage determination used in the bid solicitation.¹

The wage determination incorporated into a bid solicitation, and related contract award, establishes the minimum prevailing wage rates and fringe benefits, to be paid for the entire contract term. Some contracts, with multiple award schedules, may need to update wage determination with each award. Contact the [local DOL WHD](#) staff, with questions on contracts with multiple award schedules.

If an ongoing construction project was awarded prior to BIL or was not assisted or funded in whole or part, by BIL funds, and then becomes subject to BIL funding, agencies must insert the appropriate wage determination(s) in relevant contracts and federal assistance agreements,

¹ 48 CFR § 22.404-6 - Modifications of wage determinations.

effective the date the BIL assistance is approved for use on the project. Determinations must then be included in any contracts or subcontracts for the covered work.

The following chart outlines tasks required in the implementation of DBA. “X” indicates levels of required compliance (including specifications required at each level of participation in granting or contracting related work).

TASK	DOE	Grantee ²	Subgrantee ³	Contractor	Subcontractor
Include DBA specifications and requirements in all awards/contracts.	X	X	X	X	
Certify prevailing wages were paid to laborers and mechanics for work performed on buildings with not fewer than 5 units.		X (if serving as Subgrantee)	X (if crew-based)	X	X
Oversight/Monitoring to ensure compliance.	X	X	X	X	
Record retention, document compliance.	X	X	X	X	X

DOCUMENTATION & RECORDKEEPING: DBA wage stipulations shall be included in all contracts in which DBA applies. Agencies and companies working on these projects must maintain and submit accurate, and complete, weekly certified payrolls from the start of construction⁴.

Certified payroll records, submitted prior to the inclusion of the proper wage determination, must be reviewed. Any employees paid less than the determined wage rates must be compensated for the difference in all hours worked on the project. Additionally, contractors must be compensated for any increases in wages resulting from such a change.

To streamline compliance requirements, DOE has procured [LCPtracker](#) software to assist Grantees (if applicable), Subgrantees, contractors, and subcontractors, in certifying their payroll. This software is comprehensive and user-friendly, ensuring compliance while also providing “read only” access to Grantee and federal staff, to complete oversight responsibilities associated with DBA compliance.

² Grantees that are not units of government (e.g., awardees under the competitive grants) may be subject to DBA requirements if performing work on units. Grantees should review the Frequently Asked Questions and consult with their respective Project Officer, if unsure of applicability.

³ If the Subgrantee is a unit of local government, certain requirements may not apply.

⁴ [eCFR: 29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction \(Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act\) 5.5\(a\)\(3\)\(ii\)\(B\)](#)

This system provides assurance that labor on a project funded, or assisted in whole or part, with BIL funds are paid weekly and verifies the submission of weekly certified payroll records to contracting and administering agencies⁵.

LCPtracker is the DOE authorized certified payroll compliance reporting system. Grantees should notify their respective Project Office (ideally, two months prior to the start of the project) to coordinate the process and set up access to LCPtracker.

Grantees/Subgrantees must use this system to comply with DBA requirements. DOE will not require any retroactive filing in LCPtracker for certified payrolls already completed prior to launch of LCPtracker. However, Grantee/Subgrantee must maintain DBA records of all work performed subject to DBA, and make the DBA records available for review, as requested.

In addition to uploading information into the LCPtracker, Grantees, Subgrantees, contractors, and subcontractors on weatherization projects funded or assisted in whole or part by BIL funds, shall maintain payrolls, and basic records, relating to payroll during the work, to be preserved for three years, or as designated in the grant document.⁶

All Federal agencies must report to DOL, in accordance with 29 CFR Part 5, Section 5.7(b), the Semi-Annual DBA Enforcement Report (OMB Control Number 1910-5165). For DOE to comply with this reporting requirement, **Grantees must submit through PAGE the Semi-Annual DBA Enforcement Report every six months (by April 21 and October 21 of each year).**

ASSOCIATED COSTS OF COMPLIANCE: Grantee and Subgrantee costs for training staff on how to comply with DBA requirements is an allowable use of training and technical assistance (T&TA) funds. Grantee costs associated with DBA compliance and oversight can be charged as an administrative or T&TA cost. Subgrantee costs for compliance and contractor oversight must be charged as an administrative or program operation cost.

TRAINING RESOURCES: DOE is coordinating with multiple entities to create a list of resources, including material developed by DOL. When available, DOE will update the resources, including training resources specific to the use of the LCPtracker software to assist in training our network. These resources will be posted on the [WAP DBA](#) web page.

FREQUENTLY ASKED QUESTIONS: DOE developed “Frequently Asked Questions” to accompany the training resources. Questions may be sent to wapta@hq.doe.gov. As questions are sent forward, DOE will periodically update resources to ensure broad-based questions are

⁵ See 29 CFR Part 5.5(a)(ii)(A)-(D) for additional requirements relating to the submission of weekly certified payroll records.

⁶ See 29 CFR Part 5.5(a)(3)(i) for the payroll and record-keeping requirements, including a list of the required contents of the records and for additional record-keeping requirements.

available to the full network to review. Questions and responses are included as Attachment 2.

CONCLUSION: DOE WAP acknowledges the countless hours and effort the network has expended since issuing BIL guidance in March of 2022. In addition to submitting applications, Grantees and Subgrantees have gone above and beyond to ramp up efforts to meet the expectations of the Administration. Completed units are beginning to be reported and more low-income Americans are benefiting from the tremendous work of the Weatherization network.

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Attachment 1: DBA Resources for WAP

Attachment 2: DBA Frequently Asked Questions on WAP

Attachment 1

DBA Resources for WAP

DOE DBA Website:

DOE created a web page applicable to all grants that must comply with the Davis Bacon Act. Once available, please use this link: <https://www.energy.gov/infrastructure/davis-bacon-act>.

WAP DBA website:

WAP created a web page to host WAP-specific resources for Grantees and Subgrantees. As resources are available, they will be posted at:

<https://www.energy.gov/scep/wap/davis-bacon-act-applicable-bil-wap>.

LCPtracker Software Tool Training:

This tool, procured by DOE for certifying payroll and ensuring DBA compliance, includes training information, posted on the [DOE DBA website](#) for easy access.

Knowledge Center | LCPtracker Certified Payroll Software

This site includes webinars and training documents published by LCPtracker. such as an Administrator User Manual. Contractors (including Prime Contractors) will be able to access Prime Approver Guide, and Contractor User Manual for step-by-step instructions.

LCPtracker is developing training videos specifically for WAP on Project and Contractor set-up. These resources will be available on the [WAP DBA](#) web page.

DOL Resources:

General information on [DBA](#) and additional resources such as the [DOL Field Operations Handbook](#), the [Prevailing Wage Resource Book](#), [FAQs for Davis-Bacon and the Bipartisan Infrastructure Law](#), [FAQs for Wage Determinations and Conformances](#), and the [Davis-Bacon Conformance Guide](#) are available through these links.

Additionally, the following webinars, slides, and scripts for specific topics relevant to WAP, are posted on the DOL website including:

- Webinar: [Davis-Bacon Act Coverage](#) (YouTube)
 - Slides: [Davis-Bacon Coverage](#) (PDF) and [Script](#) (PDF)
- Webinar: [Davis-Bacon Wage Determinations](#) (YouTube)
 - Slides: [Davis-Bacon Wage Determinations](#) (PDF) and [Script](#) (PDF)
- Webinar: [DAVIS-BACON/DBA Compliance Principles](#) (YouTube)
 - Slides: [DAVIS-BACON/DBA Compliance Principles](#) (PDF) and [Script](#) (PDF)

- Webinar: [DAVIS-BACON/DBA Certified Payrolls](#) (YouTube)
 - Slides: [DAVIS-BACON/DBA Certified Payrolls](#) (PDF) and [Script](#) (PDF)
- Webinar: [Davis-Bacon Wage Determination Surveys](#) (YouTube)
 - Slides: [Davis-Bacon Wage Determination Surveys](#) (PDF) only
- Presentation: [DAVIS-BACON Question and Answer Overview](#) (PDF)
- Presentation: DOL “[Overview of the Davis-Bacon Act](#)” delivered at the 2022 Energy OutWest Conference (PDF)

DOE, in collaboration with DOL, will offer WAP specific training. Information is forthcoming.

Attachment 2**DBA Frequently Asked Questions for WAP**

DOL's WHD enforces the provisions of the Davis-Bacon and Related Acts (DBA), including the prevailing wage requirements for weatherization projects under WAP. The following FAQs will be updated as additional questions are submitted.

1. Is a 16-unit project comprised of four, four-unit buildings covered by DBA?

No, under [§ 40551](#) of BIL, DBA requirements apply to construction on a multifamily building where the building has not fewer than 5 units. WAP funded projects or contracts which include work on multifamily buildings or work on buildings with fewer than five units are not covered even when the total number of units among all buildings on the project exceeds five.

2. If a WAP project has multiple buildings – some with four or fewer units but others with five or more units - how will DBA requirements under § 40551 be applied?

Under § 40551 of BIL, DBA requirements apply to construction on a multifamily building where the building has not fewer than 5 units. Each building in a multi-building complex will be treated separately. Buildings with not fewer than 5 units will need to follow DBA requirements and buildings with four or less units do not need to follow DBA requirements.

3. Do the DBA requirements of WAP apply to projects in United States Territories?

Yes. BIL added federal funding triggering DBA requirements to WAP under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.).

4. Is there a “Weatherization Worker” classification that can be used?

No. Unlike during the American Recovery and Reinvestment Act there is not a “Weatherization Worker” classification. Grantees, Subgrantees, contractors, and subcontractors must use the appropriate labor classification for the work being performed.

5. What if a general wage determination for the type of construction in a particular geographic area is not posted on Sam.gov?

In limited instances, when there is no appropriate labor classification on the applicable general wage determination, DOL WHD may add or “conform” a new class of laborer or mechanic and a wage rate to a published wage determination for a specific contract. Conformance may only be granted when certain criteria are met. Grantees shall contact their DOE Project Officer and furnish the following information:

1. A sufficiently detailed description of the project to indicate the type(s) of construction involved. Separate attachments must be furnished, if necessary, for identification of the type of project.
2. The county (or other civil subdivision) and state in which the proposed project is located.
3. Proposed wage data for the requested classifications.

The DOE Project Officer will facilitate the request with WHD ([SF 308](#)).

The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing will take at least 30 days.

6. What if a general wage determination published on Sam.gov does not include a job classification for a classification of work to be performed on the project?

In the limited instances, when work to be performed on a project is not performed by any labor classifications on the applicable general wage determination, WHD may “conform” a new class of laborer or mechanic and a wage rate to the wage determination for a specific contract.

If a Grantee believes a new class of laborer or mechanic is needed, they shall contact their DOE Project Officer with details. The DOE Project Officer will facilitate the request with WHD ([SF-1444](#)). A conformance may only be granted when the following criteria are met:

1. The work performed by the proposed classification is not performed by a classification already listed on the wage determination.
2. The proposed classification is one that is used in the area by the construction industry.
3. The proposed wage rate bears a “reasonable relationship” to the existing wage rates on the applicable wage determination.

Please remember Weatherization Worker is not a current classification and therefore should not be requested.

[Agency Memorandum 213](#) explains the process for determining whether a proposed wage rate bears a reasonable relationship to those on the applicable wage determination.

7. Many weatherization crews have one employee performing work that crosses multiple classifications. How do contractors classify and pay accordingly, for example, paying different wage rates within a week for time spent working in different classifications?

When workers perform work under more than one labor classification in the same week, the Grantee, Subgrantee, contractor and/or subcontractor may, in accordance with [29 CFR 5.5\(a\)\(1\)\(i\)](#), pay them the different wage rates applicable to each classification, so long as the employer accurately tracks the actual hours worked in each classification and pays the differing

rates in accordance with that record. The workers should not estimate the hours worked in each classification or use an average. In instances where a worker's pay rate is not adjusted based on work performed (which is possible if the worker's rate meets or exceeds the minimum rate required for all classifications), the worker must still report hours worked in *each* classification and may not estimate the hours worked in each classification or use an average.

8. What classifications on a wage determination should be used to identify the prevailing wage for workers under WAP?

DOL provides compliance guidance on their [website](#) to help contractors identify the types of laborers and mechanics needed to perform weatherization work under WAP. Because labor classifications generally are based on trades or occupations, each labor classification may encompass many associated tasks, tools, and materials used by the labor classification. The scope of work performed by a labor classification may differ based on local practice, and a Subgrantee, contractor or subcontractor should carefully review the applicable wage determination and direct any questions regarding the scope of a classification to WHD.

Because local practice can have an impact on the classifications used, it is recommended Subgrantees contact their local [DOL WHD office](#) about questions on areas of practice to ensure accuracy of labor categories for work performed.

Potential Construction Classifications for WAP Projects

EXAMPLE ONLY-MUST BE BASED ON AREAS OF PRACTICE

Examples of Types of Work, Tasks, Tools, or Materials Used	Example Classifications of Laborers and Mechanics for DBA Compliance
Batt Insulation, Blown Insulation, Door Repair, Caulking, Drywall, Solar Film Insulation, Air Sealing, Water Pipe Insulation, Ductwork Insulation.	Carpenter or Drywall Hanger
Drywall Taper	Painter
Window Repair	Glazier, Carpenter
Furnace, Heating & Cooling Repair, Ventilation, Duct Sealing	HVAC Mechanic/ Sheetmetal Worker
Laborer	Laborer
Plumbing	Plumber
Electrical Work	Electrician
Minor Structural Repairs	Ironworker, Carpenter, Power Equipment Operator, etc.

*Note: This informational chart cannot be interpreted as legal advice regarding DBA requirements. The chart above is provided for informational purposes only. Contractors may wish to obtain their own legal advice to ensure they are complying with DBA requirements.

9. How often are employee interviews required to be conducted? Must an interview be conducted for every contractor?

DOL WHD recommends that employee interviews be conducted at least once for each contractor working on a contract. If Grantees decide to conduct employee interviews, please refer to the [Investigative Procedures](#) section within the Prevailing Wage Resource Book and consult your DOE Project Officer. If a contractor has significant turnover, or employees fear reprisals or intimidation, or it appears there is misclassification and/or falsification of payroll records, the local DOL WHD should be immediately notified along with the DOE Project Officer.

10. What if information on payroll does not match up with information provided from an employee interview?

If information on the certified payroll and that provided by employees during the interviews differ, you should try to obtain additional information from the contractor to clarify relevant information. If it is found that the wrong wages were paid, require the contractor to pay any wages owed to the covered worker and correct the certified payrolls (amend the certified payrolls) accordingly. Additionally, notify the DOE Contracting Officer to coordinate appropriate enforcement action with DOL.

11. Does a new determination need to be requested when BIL WAP funding is being added to a current project's scope of work?

Projects already subject to DBA labor standards would not require application of a new DBA wage determination upon receipt of WAP BIL funding unless such funding is for work not completed under the existing contract for construction or in the circumstances where WHD Administrator issues a new wage determination.

12. Are energy auditors and/or inspectors subject to DBA prevailing wages?

The DBA applies to laborers and mechanics employed at the work site. DBA is not applicable to energy auditors, inspectors, and other personnel not performing physical or manual work at the site of the construction work. The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial.