

**MEMORANDUM OF UNDERSTANDING****BETWEEN****THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION****AND****THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF  
DAVIS-BACON AND LABOR STANDARDS**

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as “DOL/WHD” or “Department”), and the U.S. Department of Housing and Urban Development Office of Davis-Bacon and Labor Standards (hereinafter referred to as “HUD”) (collectively referred to as “the agencies” or “the parties”) recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern among the regulated community in the United States. The agencies are entering this memorandum of understanding (“MOU”) to more effectively and efficiently communicate and cooperate on areas of common interest, including cross training staff, providing employers and employees with compliance assistance information towards the goal of protecting the wages, safety, and health of America’s workforce, and sharing information as appropriate.

This MOU is intended to memorialize an understanding between the Department and HUD concerning compliance with the requirements of the Davis-Bacon and Related Acts (“DBRA”), the Contract Work Hours Safety Standards Act (“CWHSSA”), the Fair Labor Standards Act (“FLSA”), and other similar laws that protect the wages, safety, and health of workers. This MOU is a voluntary agreement that expresses the good-faith intentions of DOL/WHD and HUD, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This MOU does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This memorandum also outlines procedures to be followed by both DOL/WHD and HUD in working together to address the misclassification of workers as alleged “independent contractors.”

WHd is responsible for administering and enforcing numerous federal labor laws, including the DBRA, CWHSSA, the FLSA, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, and the Service Contract Act. Nothing in this agreement limits the WHD’s enforcement of these statutes.

Under the DBRA and Reorganization Plan No. 14 of 1950, DOL/WHD is responsible for determining prevailing wages, issuing regulations and standards to be observed by federal agencies that award or fund projects subject to Davis-Bacon labor standards, and overseeing consistent

enforcement of the Davis-Bacon labor standards, while HUD is responsible for day-to-day enforcement of these standards. Due to DOL/WHHD and HUD's shared responsibility for ensuring Davis-Bacon compliance under Reorganization Plan No. 14, HUD must frequently make decisions about issues that are subject to DOL/WHHD oversight. Both agencies accordingly benefit from early and frequent communication when questions regarding such decisions arise.

With the specific and mutual goals of providing clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders regarding compliance with the Davis-Bacon labor standards and the requirements of the FLSA, and compliance with related laws and regulations and of sharing resources and enhancing enforcement by sharing information, the parties have entered into this agreement.

**The parties agree as follows:**

**Purpose of Agreement:**

DOL/WHHD and HUD are entering this memorandum of understanding to more effectively and efficiently communicate and cooperate on areas of common interest, to share training materials, to provide employers and employees with compliance assistance information, and to protect the right of America's workforce to be employed in a manner that is compliant with laws and regulations administered by the respective agencies. The overarching goal of this agreement is to improve compliance to better protect the workers performing work on federally-funded projects subject to the Davis-Bacon labor standards. Areas of focus include correctly identifying covered projects and work, ensuring that covered contracts for construction contain the required contract clauses and wage determinations, requiring laborers and mechanics be paid the correct prevailing wage rates for their work, ensuring that workers covered under CWHSSA or the FLSA receive additional half-time for overtime hours worked, and preventing employees from being misclassified as "independent contractors." DOL/WHHD and HUD recognize and acknowledge that laborers and mechanics performing DBRA-covered work are protected by DBRA labor standards regardless of whether they are classified (or misclassified) as independent contractors. *See, e.g.*, 29 C.F.R. 5.5(a)(1).

**Agency Responsibilities:**

**Outreach and Education:**

- WHD intends to make training available to HUD staff to raise their awareness of DBRA compliance principles, including but not limited to coverage, application of wage determinations, and enforcement procedures, and compliance with the FLSA, including

misclassification of employees as independent contractors. HUD intends to promote such trainings and encourage staff to attend, to the extent allowable under law and policy.

- HUD programs provide grants, loans, loan guarantees, and mortgage insurance to facilitate the construction, substantial rehabilitation, purchase and refinancing of housing and community development projects that may be subject to the Davis-Bacon labor standards. HUD will host training event(s) whereby DOL/WHD independently or jointly with HUD will provide training for HUD clients (local housing authorities, community development agencies, developers, and general contractors) on compliance with DBRA, CWHSSA, and the FLSA. HUD will also share with WHD contact information for multi-family developer associations, localities, community development agencies, tribes and public housing authorities who may be interested in DBRA, CWHSSA, FLSA, and/or employment relationship training. No private personally identifiable information will be shared under this MOU.
- HUD also intends, in consultation with WHD, to explore the practicality of required, pre-funding trainings on Davis-Bacon labor standard for funding recipients to better ensure workers on covered projects are paid the prevailing wage in the first instance.
- Nothing in this agreement should be read to limit the parties' enforcement of laws under their respective jurisdiction. In particular, nothing in this agreement alters or in any way diminishes the parties' respective responsibilities for implementation and enforcement of the Davis-Bacon and Related Acts under Reorganization Plan No. 14 of 1950, the DBRA's implementing regulations at 29 CFR Parts 1 and 5, or any other authority.

**Contacts:**

- Each agency intends to designate a Point of Contact responsible for coordinating the activities.
- Information regarding the contact person, including name, title, address, phone and email address, will be shared between the parties at the time of execution of the MOU and any time the identity of the contact person changes.
- The parties will also designate a representative to meet monthly, either in person, by teleconference, or other electronic means, with their counterpart in the other agency to review areas of common interest, the terms and conditions of the MOU and its implementation.

- The Points of Contact will be responsible for coordinating enforcement activities, data sharing, and exchange of information as necessary.

### **Agency Coordination on Administration of Labor Standards**

During the process of providing funding or other assistance to housing and community development projects subject to the Davis-Bacon labor standards, HUD makes initial determinations regarding Davis-Bacon coverage and the applicability of wage determinations. When questions regarding coverage and wage determination applicability arise and are not addressed in a timely manner, it can result in laborers and mechanics not receiving the prevailing wages owed to them for work performed on Davis-Bacon covered projects. Accordingly, if HUD wishes to consult with DOL prior to making an initial determination, or if an interested party wishes to contest HUD's initial determination, any such questions should be promptly referred to the designated DOL/WHM point of contact; questions can be referred as follows:

- Questions for referral include, but are not limited to:
  - whether a particular project or item of work is subject to the Davis-Bacon labor standards;
  - what category of construction, as defined by All Agency Memorandum 130, applies to a project or item of work;
  - whether wage determinations from multiple categories of construction are applicable to a project under All Agency Memoranda 130, 131 and 236, particularly when the amount of work in another category of construction is close to the typical thresholds for determining when such work is substantial;
  - whether construction is residential when housing has a lowermost story that is primarily below exterior grade on one or more sides, or has an unusual configuration, e.g., a partial top story, etc., and;
  - whether workers on a project are considered laborers or mechanics.
- Such referrals can be made by email or other appropriate means, and should include a complete description of the project in question and any other relevant information needed to address the issue.
- Such referrals should be reviewed by the designated points of contact as soon as possible, but in no case later than the next scheduled monthly meeting between the designated agency representatives.
- If the question(s) is not resolved as a result of these discussions, or if a written determination is otherwise required, a request for a written determination should be

submitted at the earliest practical time to the designated point of contact for WHD, by email or other appropriate means guaranteeing delivery.

**Enforcement and Data Sharing:**

Where the parties mutually determine it to be appropriate and allowable under law, and in accordance with the provisions of the Exchange of Information section below, the agencies may:

- Coordinate investigations and other enforcement activities within their respective jurisdictions to assist with enforcement and/or investigate cases jointly. Such enforcement activity could be based on the employer's business operations, address areas of mutual concern, or involve cases of overlapping jurisdiction, among other considerations
- Make referrals of complaints or potential violations of laws to the party with jurisdiction.
- Provide timely information in accordance with formal WHD notifications to withhold or release funds regarding settlements or other dispositions of cases to the other agency in a mutually agreed upon format so that appropriate follow-up may take place.
- Provide timely information regarding refusal-to-pay cases and potential debarment cases in accordance with the procedures set forth in All Agency Memoranda 182 and 215.
- Cooperate and coordinate with one another in criminal investigations where there is overlapping jurisdiction.
- Cooperate in providing testimony to support exchanged information which becomes the subject of administrative or criminal proceedings consistent with the Exchange of Information Section of this MOU.

WHD will send any information, data, and materials subject to this MOU to HUD at the following address:

Department of Housing and Urban Development, Office of Davis-Bacon and Labor Standards  
Attn: Amanda Herrmann Vasquez  
National Director  
451 7th Street S.W., Room 7122  
Washington, DC 20410

HUD will send any information, data, and materials subject to this MOU to DOL/WHD at the following address:

U.S. Department of Labor, Wage and Hour Division, Division of Government  
Contracts Enforcement  
Attn: Natalie Collins  
Senior Advisor  
200 Constitution Ave., NW, Room S-3502  
Washington, DC 20210

**Previous Agreements:**

- This agreement replaces and supersedes any previous MOU between the parties on this same subject.

**Effect of MOU Agreement:**

- By entering into this MOU agreement, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other.
- Nothing in this MOU agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.
- This MOU agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.
- Each party will bear its own expenses in connection with the preparation, negotiation, and execution of this MOU. Neither party shall be liable to the other party for such expenses.
- This MOU contains all the terms and conditions agreed upon between the agencies concerning the subject matter of the agreement. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the agencies. This agreement is not intended to confer any right upon any private person or other third party.

- Nothing in this MOU agreement will be interpreted as limiting, superseding, or otherwise affecting the agencies' normal operations. This MOU agreement also does not limit or restrict agencies from participating in similar activities or arrangements with other entities.
- This agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, and any other applicable federal laws.

**Exchange of Information:**

To the extent permitted by law, including the Privacy Act of 1974, the agencies understand that in order to effectuate the purposes and provisions of this MOU, it will be necessary, from time to time, to exchange information, some of which may be considered confidential. It is the policy of each of the parties to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with its own statutory obligations and enforcement efforts. It is the view of the parties that an exchange of information in which both agencies are proceeding with a common legal interest is to their mutual benefit. The agencies to this MOU agreement recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or making a public disclosure.

In consideration of these concerns, and subject to any applicable laws and regulations regarding the handling of such information, the agencies agree as follows:

- The agencies agree to exchange information on laws and regulations of common concern and interest, to the extent practicable and allowable by law and policy.
- The contacts will establish a methodology for efficiently exchanging investigative leads, complaints, and referrals of possible violations, to the extent practicable and allowable by law and policy.
- The parties will make themselves available to discuss and provide information to one another on topics of mutual interest, overlapping jurisdiction, or certain areas of expertise, when able.
- Exchange of information to one another pursuant to this MOU is not considered a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.
- Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under federal law.

Confidential information may include: the identity of persons who have given information to the agencies in confidence or under circumstances in which confidentiality can be implied; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal employees, including (but not limited to) investigators and supervisors; any records that would otherwise not be subject to disclosure under law as non-final, intra- or inter-agency documents; information or records covered by the attorney-client privilege and the attorney work-product doctrine; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets.

- When confidential information is exchanged, it shall be used and accessed only for the limited purposes of carrying out activities pursuant to this agreement as described herein. The information shall not be duplicated or re-disclosed without the written consent or authority of the agency providing the information (hereinafter the “donor agency”) or a court order, or as required by law, including the Freedom of Information Act and the Privacy Act.
- When a Freedom of Information Act (FOIA) request is received regarding documents provided under this MOU, the agencies will notify each other such that each agency has sufficient opportunity to submit objections regarding the release of the documents that are being requested pursuant to their particular regulatory requirements under FOIA.
- In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of WHD’s employees sought, WHD requires that HUD notify WHD.
- In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of HUD’s employees sought, HUD requires that WHD notify HUD.
- Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU agreement, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest doctrine, to preclude or restrict the production of such information for ten (10) business days, and shall promptly notify the donor agency that such a request or subpoena has been received, so that the donor agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.



- Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
- The agencies will notify one another, through the agency point of contact identified in this MOU, upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this agreement.
- For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU agreement remains the responsibility of the donor agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated contact person when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next business date following the agreed upon delivery date. Confidential data, not used in a formal investigation, will be destroyed no later than thirty (30) days after its use and may be transmitted via secure FTP. Use includes the time period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards.
- For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.
- However, in the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this MOU agreement, the agency experiencing the incident or disaster will send formal written electronic notification to the donor agency's designated contact person immediately within 3 days after detection of the incident or disaster. The written electronic notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOU agreement may have been inadvertently disclosed.
- At the conclusion of an investigation and prosecution by either party, the receiving agency will return any and all confidential information to the donor agency, except as required by law, including the Records Retention Act.

Subject to the foregoing constraints:

- The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
- The agencies will establish a methodology for efficiently exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law and policy.
- The agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographic areas, if possible.
- The parties will make themselves available to discuss and provide information to one another on topics of mutual interest, overlapping jurisdiction, or certain areas of expertise, when able.

**Dissemination of Factual Information:**

- The agencies agree to jointly disseminate outreach materials to the regulated community and the workers covered under the laws described herein, when appropriate.
- All public materials bearing the United States Department of Labor, DOL or WHD name, logo, or seal must be approved in advance by DOL. All public materials bearing the United States Department of Housing and Urban Development or HUD name, logo, or seal must be approved in advance by HUD. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out under this MOU shall state that they are the responsibility of the party carrying out the activity and do not necessarily represent the opinions, interpretation, or policy of the other partner. Any such materials shall acknowledge the support of the United States Department of Housing and Urban Development, the United States Department of Labor, WHD, and, if funded with other federal funds, the applicable federal funding agency.

**Resolution of Disagreements:**

- Disputes arising under this MOU agreement will be resolved informally by discussions between appropriate Agency officials and staff upon request for such discussion made by the agency Points of Contact.

**Period of Agreement:**

- This MOU agreement becomes effective upon the signing of both parties and will expire five (5) years from the effective date. This MOU agreement may be modified in writing by mutual consent of both agencies. The MOU may be cancelled by either party by giving thirty (30) days advance written notice prior to the date of termination. Renewal of the agreement may only be accomplished by written agreement of the agencies.

Provisions related to the confidentiality and handling of information exchanged pursuant to this agreement shall survive the termination of this agreement.

This agreement is executed as of the 30 day of November, 2022.

Jessica Looman  
Principal Deputy Administrator  
United States Department of Labor  
Wage & Hour Division

Michele Perez  
Assistant Deputy Secretary  
United States Department of Housing  
and Urban Development  
Office of Field Policy and Management

 11/30/22  
Date

 11/30/22  
Date