

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION YouthBuild
	CORRESPONDENCE SYMBOL OWI-DYS
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-16

TO: STATE WORKFORCE AGENCIES
 STATE WORKFORCE LIAISONS
 STATE WORKFORCE ADMINISTRATORS
 STATE AND LOCAL WORKFORCE DEVELOPMENT BOARDS
 ALL YOUTHBUILD GRANTEES

FROM: PORTIA WU 
 Assistant Secretary

SUBJECT: YouthBuild Compliance with Davis-Bacon and Related Acts (DBRA)

1. **Purpose.** This Training and Employment Guidance Letter (TEGL) clarifies compliance with Davis-Bacon and Related Acts requirements for YouthBuild programs.

2. **References.**

- Workforce Innovation and Opportunity Act (Pub. L. 113-128 July 2014)
<https://www.gpo.gov/fdsys/pkg/PLAW-113publ128/pdf/PLAW-113publ128.pdf>
- Workforce Innovation and Opportunity Act Final Rule, 20 CFR Part 688
<https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-15975.pdf>
- Davis-Bacon and Related Acts Provisions and Procedures, 29 CFR Part 5
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=29:1.1.1.1.6>
- TEGL 06-15: Qualifying Work Sites and Construction Projects for YouthBuild Grantees and Their Role in Training https://wdr.doleta.gov/directives/corr_doc.cfm?docn=6610
- U.S. Department of Labor's Wage and Hour Division
<https://www.dol.gov/whd/govcontracts/dbra.htm>
- U.S. Department of Housing and Urban Development (HUD) Davis-Bacon Labor Standards <http://portal.hud.gov/hudportal/documents/huddoc?id=4812-LRguide.pdf>
- HUD Davis-Bacon and Related Acts HOME Investment Partnerships (HOME) and Community Development Block Grant (CDBG) Policies Manual
https://www.hudexchange.info/resources/documents/Davis-BaconandHOME_TrainingManual.pdf
- HUD Labor Standards and Enforcement Regional Staff Contacts
http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/laborrelstf

3. **Background.**

Department of Labor-funded YouthBuild programs must provide hands-on construction experience for participants receiving industry-recognized construction training. These

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programs must provide qualifying work sites, per TEGL 06-15, at which participants learn construction skills through the renovation, rehabilitation or new construction of low-income housing projects. Many grantees partner with local Public Housing Authorities to access such work sites, as well as with other developers or builders (partially or wholly Federally-funded) to construct or rehabilitate public housing. In such cases, the Davis-Bacon labor standards may apply.

Davis-Bacon Act requirements apply to federal contracts for construction of public buildings and public works. In addition, many federal laws authorize federal assistance for construction through grants, loans, loan guarantees, and insurance and require the application of Davis-Bacon labor standards, including prevailing wage requirements, to such construction. These laws are referred to as Davis-Bacon “related Acts” or DBRA. Several major HUD-administered laws that include Davis-Bacon requirements also set thresholds on coverage. In such cases, the DBRA requirements do not apply unless a specific coverage threshold is met. Two major examples are discussed below.

When DBRA applies, contractors and subcontractors must pay their covered laborers and mechanics employed under the contract no less than the locally prevailing wage rate (including fringe benefits) for corresponding work on similar projects in the area. DBRA directs the Department of Labor (hereafter, the Department) to determine such locally prevailing wage rates.

4. Determining DBRA Prevailing Wage Rate Applicability.

YouthBuild participants are **not exempt** from prevailing wage requirements determinations for any project to which DBRA labor standards apply. Therefore, YouthBuild participants must be paid prevailing wages on DBRA-covered construction. This is generally the equivalent to journeyworker’s level wages. This requirement necessitates planning by YouthBuild programs that see federally-assisted construction projects as valuable training sites for their youth, since YouthBuild programs do not generally budget for the prevailing wage rate. Many grantees struggle with finding suitable construction work sites that meet the minimum requirements to qualify for training purposes, and some of those that would qualify are, in whole or in part, federally-funded projects subject to DBRA.

As DBRA prevailing wage rate rules apply under a number of different HUD-administered statutes, determining when the Davis-Bacon requirements apply is important. For example, under some of these statutes, there are coverage thresholds below which prevailing wage rates do not apply. Two examples are in the “8 unit rule” under Community Development Block Grants (CDBG) and the “12 unit rule” under the HOME Investment Partnership Program (HOME):

- The **Community Development Block Grant (CDBG)** program provides communities with resources in order to address widely varying and locally identified community development needs. DBRA labor standards apply to construction work financed in whole or in part by CDBG funds. “Financed” includes both paying for construction work directly and also, for example, using CDBG assistance to reduce the interest rate on a construction loan. The CDBG “8-unit rule” is a threshold for DBRA labor standards

coverage, meaning that such standards only apply to construction on residential properties that contain 8 or more housing units. Typically, single family homeowner properties do not fall under DBRA prevailing wage requirements when funded by CDBG. However, “property” is not limited to a specific building; CDBG defines “property” as one or more buildings on an undivided lot or on contiguous lots or parcels that are commonly-owned and operated as one rental, cooperative, or condominium project. Examples of 8 or more unit properties which meet the threshold and trigger DBRA prevailing wage requirements may include: 4 townhouse buildings side-by-side which consist of 2 units each; 3 apartment buildings each consisting of 3 units and located on one tract of land; or 8 single-family (not homeowner) houses located on contiguous lots and operated as a single rental property. Properties below the threshold (i.e., with fewer than 8 total units) would not trigger DBRA prevailing wage requirements as a result of CDBG financing.

- The **HOME Investment Partnership Program (HOME)** provides formula grants to states and localities to fund a wide range of activities in local communities, including building, buying, and/or rehabilitating affordable to low-income housing. DBRA labor standards apply to *contracts for construction* covering 12 or more HOME-assisted units. Unlike CDBG, the standard for coverage is “*assisted*,” not “*financed*” – which provides for much broader application. This means that DBRA standards may be applicable without regard to whether the HOME funds are used for construction or non-construction activities, such as real property acquisition, engineering or architectural fees, or down payment assistance. HOME projects can contain units that are not assisted by HOME. The DBRA coverage threshold (12 or more units) applies only to the number of units assisted by HOME. However, once the threshold is met and DBRA requirements are triggered, the labor standards apply to construction of the entire project, including the portions of the project that are not assisted with HOME funds. Thus, DBRA prevailing wage requirements do not apply to HOME projects where there are only 11 or fewer HOME-assisted units.

These are not the only DBRAs that include coverage thresholds but they present examples where DBRA prevailing wage requirements may not apply due to coverage thresholds set forth in the statutory language in specific DBRAs. It is not possible to describe here every such threshold. The above examples are meant to indicate how important it is to determine where DBRA prevailing wage requirements apply.

If there are any questions as to the applicability of DBRA, YouthBuild grantees are directed to work with their HUD Labor Standards and Enforcement Regional/Field staff for assistance in determining whether DBRA applies to specific projects and to ensure YouthBuild programs are adhering to the federal wage requirements under DBRA where applicable. The HUD labor relations staff are regional experts who can help YouthBuild programs determine where DBRA prevailing wage rates apply, specify the applicable Davis-Bacon wage determination(s), and when YouthBuild participants may be allowed to work on federally-assisted construction projects without a requirement of prevailing wage rates. Contact information for HUD Labor Standards and Enforcement Regional staff can be located at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/lab_orrelstf.

5. DBRA, Apprentices, and Certified Training Programs.

Per DBRA, apprentices and trainees may be paid less than the applicable DBRA prevailing wage rates only if they meet specific conditions (see 29 CFR 5.5(a)(4)). The conditions can be met for apprentices individually registered in a bona fide apprenticeship program registered either with the National Office of Apprenticeship or a State Apprenticeship Agency recognized by the Office of Apprenticeship, or trainees individually registered in specific training programs that are certified by the Department's Employment and Training Administration (ETA). Being funded by a Department program (i.e., YouthBuild) is not equivalent to having a registered or certified training program as described above. Previously, ETA certified the YouthBuild-Trainee Apprenticeship Preparation (YB-TAP) standards as such a training program. During this time, YouthBuild programs that were registered under the YB-TAP standards were not required to pay prevailing wage rates on DBRA applicable construction sites but instead based pay on the rate related to the trainee's level of progress, as specified by the program documents. In 2012, the Employment and Training Administration de-certified YB-TAP as a training program and stopped offering these standards. Thus, YouthBuild participants may not be paid less than the prevailing wage rates listed in the applicable Davis-Bacon wage determination for the classification(s) of work they perform when they are engaged in DBRA-covered construction.

Additional information about the Davis-Bacon and Related Acts is available at <https://www.dol.gov/whd/govcontracts/dbra.htm>. For DBRA-specific questions, go to https://www.dol.gov/whd/contact_us.htm or call the Department's Wage and Hour Division's toll-free help line Monday-Friday, 8 a.m. to 5 p.m. Eastern time at

1-866-4USWAGE (1-866-487-9243)

TTY: 1-877-889-5627

6. Inquiries. Questions on this TEGL may be addressed to the appropriate ETA regional office.