



Department of Energy
Washington, DC 20585

WEATHERIZATION PROGRAM NOTICE 10-7
EFFECTIVE DATE: December 14, 2009

SUBJECT: REVISED DAVIS-BACON WAGE DETERMINATIONS FOR THE WEATHERIZATION ASSISTANCE PROGRAM

PURPOSE: To issue guidance on implementation of revised Wage Determinations (WD) issued by the Department of Labor (DOL) for Recovery Act funded grants under the Weatherization Assistance Program (WAP).

LEGAL AUTHORITY: Title IV, Energy Conservation and Production Act, as amended, authorizes the Department of Energy to administer the Weatherization Assistance Program. All grant awards made under this Program shall comply with applicable law including regulations contained in 10 CFR Part 440, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, the American Recovery and Reinvestment Act of 2009 and other procedures applicable to this program as DOE may, from time-to-time, prescribe for the administration of financial assistance.

BACKGROUND: The WAP was established in 1976. Historically, the program has not been subject to Davis-Bacon Act (DBA) prevailing wage requirements. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (Recovery Act) which included section 1606 that requires that all laborers and mechanics employed by contractors and subcontractors on any project "funded directly by or assisted in whole or in part by" Recovery Act funds to be paid prevailing wages as determined by the Secretary of Labor. WAP projects funded or assisted in whole or in part by Recovery Act funds are therefore subject to DBA prevailing wage requirements.

At the time of DOE's initial implementation of Recovery Act activities regarding the WAP, DOL's Wage Determinations (WDs) in place for residential construction work did not cover many of the activities undertaken when weatherizing a home under the WAP. Consequently, DOE requested that the DOL Wage and Hour Division provide project wage determinations applicable to the WAP that could be incorporated into Recovery Act funded grants awarded to States (Recipients) for weatherization work that would be performed by local agencies (Subrecipients) and their contractors. Based on DOE's request, DOL initiated a survey of prevailing wages for weatherization work in use by every local agency operating a weatherization program across the country. As a result of the surveys, DOL created a new worker classification entitled "Residential Weatherization Worker." DOL issued new WD's for weatherization work in August and September 2009, and DOE subsequently amended all of DOE's Recovery Act WAP grants to incorporate the Residential Weatherization Worker WDs. These amendments required States to flow down the new WDs to all their local agencies and contractors performing weatherization construction work.

After issuance of the new weatherization WDs, a number of inconsistencies regarding the new WDs were brought to the attention of DOE and DOL by States, local agencies and contractors. Some were clerical in nature, however most were due to incorrect survey information received by DOL. DOL therefore reexamined the basis for the WDs and intends to issue revised WDs for Residential Weatherization Workers for all 50 States and the District of Columbia. Not all revised WDs will change. Some rates will remain the same while others could be higher or lower depending on the results of DOL's review.

The revised WDs for Recovery Act funded grants under the WAP will be applicable to local agencies and their contractors on a prospective basis, and will not be retroactive as modifications and supersedeas or superseding wage determinations are not applicable to awarded contracts/grants in accordance with DOL regulations. Therefore, the revised WDs will only be applied prospectively and not to previously completed Recovery Act-funded jobs or task orders. This will also allow local agencies and their contractors to incorporate the revised wage rates into their contracts and certified payrolls with a minimum amount of disruption to their program operations and contract work.

The prospective application of the revised WDs is consistent with the July 24, 2009 Secretary of Energy Chu and Secretary of Labor Solis memorandum to WAP Grantees on "Wage Rates for the Department of Energy's Weatherization Program." This memorandum was issued prior to the completion of DOL's nation-wide surveys of weatherization work on residential projects and encouraged Recipients and Subrecipients of Recovery Act funded WAP grants to immediately begin weatherization work prior to the completion of DOL's surveys. The memorandum provided that DOL's survey based WDs would be incorporated into a "contract or grant retroactively to the beginning of ARRA assisted or funded weatherization work," and that "the contractor/subcontractor and grantee/subgrantee must compensate employees for any increases in wages resulting from such change, and grantees and subgrantees may use Recovery Act funds they have already received to cover the costs of adjustments." The memorandum also provided that "Projects starting after any new wage determinations are issued (or options exercised after new wage determinations are issued) should use the new wage determinations." The revised WDs are new wage determinations and are to be applied prospectively to new weatherization projects.

GUIDANCE: When the revised WDs are available, DOE will amend the WAP Recovery Act grants with States to incorporate the revised WDs. The revised WDs will be located at both <http://www.dol.gov/whd/recovery/dbsurvey/weather.htm> and at http://apps1.eere.energy.gov/weatherization/recovery_act.cfm.

The amendment language in the WAP Recovery Act grants will specify a prospective date when the revised WDs must be incorporated into all subawards and contracts for use by local agencies and contractors. This date will be no later than three to four weeks after issuance of the amendment to the State. Local agencies and contractors will be able to use one of the following options for incorporating the revised WDs:

1. Revised WDs will become applicable when a new task or job order for weatherization construction is issued by the local agency or contractor for work on a house, but no later than the prospective date specified. This option may prevent the revised WD from becoming applicable in the middle of work on a particular house.
2. Revised WDs will become applicable at the beginning of a local agency's or contractor's certified payroll period, but not later than the prospective date specified. This option may prevent a revised WD from becoming applicable in the middle of a pay period.

DOE anticipates that this approach should provide States, local agencies and their contractors a reasonable amount of time to modify subawards and contracts at each level, eliminate the need for multiple or revised payrolls, and ease the overall administrative burden to States, local agencies and contractors regarding incorporation and implementation of the revised WDs.

It is noted that DOL has also revised language that will be incorporated into all revised WDs that will clearly explain to users of the WDs the appropriate use of any classification (occupation) listed on the revised WD. This language is posted at both <http://www.dol.gov/whd/recovery/dbsurvey/weather.htm> and at http://apps1.eere.energy.gov/weatherization/recovery_act.cfm.

CONCLUSION: Implementation of the revised WDs should have a minimal impact on States, local agencies and their contractors regarding Recovery Act funded WAP grants for weatherization. DOE and DOL will work closely together to ensure a smooth incorporation of the revised WDs. DOE appreciates your cooperation and patience as we work together to achieve the Administration's goal of creating jobs and increasing the number of people who benefit from Recovery Act funded weatherization projects. Please contact Greg Reamy at 202.287.1872 or at greg.reamy@ee.doe.gov for further information.



Claire Broido Johnson
Acting Program Manager
Office of Weatherization and Intergovernmental Program
Energy Efficiency and Renewable Energy