

Memorandum

Date: March 26, 2014

CDBG Policy Guidance

Policy: 13-04

Nebraska Department of Economic Development, 301 Centennial Mall South, Lincoln, NE 68509

<http://www.neded.org/>

Effective: March 26, 2014

Subject: CDBG Labor Standards Policy Update
Clarification on Grantee Responsibilities Regarding Contract Work Hours and Safety Standards Act (CWHSSA) Liquidated Damages

The Contract Work Hours and Safety Standards Act (“CWHSSA”) is one of the federal labor standards laws that must be complied with when carrying out projects funded with Community Development Block Grant (“CDBG”) funds. In general, the CWHSSA provides that work in excess of 40 hours per week shall be compensated for at rates not less than one and one-half times the basic rate of pay. Employers that fail to properly compensate CWHSSA overtime hours worked shall be required to make wage restitution to the affected workers. Restitution shall be made promptly and in the full amounts due. In addition to the requirement that restitution be made to affected workers, violations of the overtime compensation requirements of the CWHSSA also require the calculation of liquidated damages, and may result in the assessment of such liquidated damages.

The purpose of this memorandum is to clarify the responsibilities of CDBG grantees in regard to enforcement of CWHSSA requirements relating to liquidated damages. This memorandum does not otherwise address the applicability of labor standards provisions, or other labor standards project administration requirements. For more information about these topics, please consult the Nebraska Department of Economic Development’s (“Department”) CDBG Administration Manual (“Administration Manual”).

As detailed in the Administration Manual, the grantee’s local labor standards compliance officer (“LSCO”) will complete payroll verifications. If during the verification process, the LSCO determines that proper overtime compensation has not been made in accordance with the CWHSSA overtime compensation requirements, the LSCO must work with the employer in order to ensure prompt resolution of such noncompliance. When the actual amount of restitution due to employees has been determined, the LSCO must calculate applicable liquidated damages. As required by the CWHSSA, liquidated damages are calculated with respect to each employee at the rate of \$10 for each day on which the employee was required or permitted to work in excess of the standard (40 hour) workweek without payment of the premium overtime pay required by the CWHSSA. Liquidated damages must also be calculated in situations where an employee is paid overtime at an incorrect rate of premium pay.

Once liquidated damages are calculated, the grantee must inform the employer, in writing, of the amount that may be assessed. Such notice must be provided by receipted mail (e.g. certified mail with return receipt), and the Department must be a copy recipient on the written notice. If the employer is not the prime contractor, the notice must also be sent to the prime contractor with notice of its responsibility to ensure correction of the employer’s violations (payment of restitution and liquidated damages (if assessed)). **It is important to note that the grantee’s responsibility is not to determine whether liquidated damages will be assessed, but to calculate the liquidated damages, and inform the employer that such liquidated damages may be assessed.** There is no exception to the calculation and

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notification requirement; and neither the grantee, nor the Department has the authority to determine whether liquidated damages will actually be assessed (whether payment of such damages to the federal government will be required). The decision as to whether assessment, or payment of liquidated damages will be required, will be made by the United States Department of Housing and Urban Development (“HUD”) (or HUD may refer such decision to the United States Department of Labor (“DOL”)).

The written notice to the employer must **inform the employer that employer has sixty (60) days to file a written request with HUD for a reduction or waiver of liquidated damages, and that absent a timely reduction or waiver request, the determination shall be final.** Any such request must be in writing and must explain the reason(s) why a reduction or waiver is warranted. Specifically, the request must demonstrate either the alleged violations did not occur, the violations occurred inadvertently notwithstanding the exercise of due care, or that the assessment of liquidated damages was computed improperly. The written request must be submitted to the Department’s Regional Labor Relations Officer at HUD.

The mailing information for Department’s HUD RLRO is as follows:

Director, Office of Labor Relations
Attn: Fannie Woods
HUD Region VII
400 State Street, Gateway Tower II
5th Floor
Kansas City, KS 66101

Upon providing notification to the employer (and prime contractor, if employer is not the prime contractor), the grantee shall then begin making efforts to resolve any disputes and ensure restitution payments are made to affected workers. If the wage violations are not corrected within 30 days after notification to the employer (and prime contractor), the grantee may cause withholding from payments due to the prime contractor, in the amount needed to ensure full payment of restitution and liquidated damages computed for CWHSSA overtime violations. Only amounts necessary to meet potential back wage and CWHSSA liquidated damages should be withheld.

The grantee is encouraged to inform the Department of CWHSSA overtime violations as soon as possible. Some issues may be complex, and those issues should be referred to the Department so that the Department may provide assistance to the grantee and/or seek appropriate guidance and support from HUD.

For more information on the process for calculating or assessing CWHSSA liquidated damages, please consult the HUD Handbook 1344-1, Rev 2, Chapter 5-12 Assessing CWHSSA liquidated damages.

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