

Submission Requirements for Labor Standards

Date: July 10, 1992

Letter No. LR-92-02

Subject: Submission requirements for §5.7 Labor Standards Enforcement Reports (Davis-Bacon and Related Acts)

U. S. Department of Labor (DOL) Regulations (29 CFR 5.7) require Federal agencies to submit a report to the Secretary of Labor on all enforcement actions where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful. These reports must be furnished to the DOL within 60 days after the completion of the investigation. (Note that the \$1,000 threshold refers to the underpayments of a single employer to his/her *entire* workforce and not to individual employees.)

HUD Handbook 1344.1 (REV-1, CHG-1) separates the reports into two categories: those which may be submitted to the DOL by the HUD Regional Labor Relations Officer and those that must be submitted through Headquarters. The reporting distinction is made based upon three criteria. A report may be submitted directly to the DOL by the Regional Office if the following conditions exist:

- 1) There is no reason to believe that the violations were aggravated or willful; and
- 2) Full restitution and required payments (e.g., liquidated damages) have been made; and
- 3) No further action (e.g., debarment) is recommended.

Where the Regional Office submits the report directly to the DOL, a copy of the report must be provided to Headquarters Labor Relations.

In *all* other cases, the report must be submitted to the DOL through Headquarters Labor Relations. (See Handbook, Chapter 6, *Reports*.) **Note** that *all* referrals for §5.11(b) hearings, *all* recommendations for debarment, and *all* referrals for decisions concerning the assessment of liquidated damages for CWHSSA overtime violations *must* be accompanied by a detailed §5.7 report.

Contracting agencies (e.g., PHAs, CDBG recipients, etc.) are also required to submit reports of enforcement activity [see Handbook, Chapter 3, 3-4(g)]. Enforcement reports from contracting agencies must be forwarded to the DOL *through HUD* in accordance with these guidelines. This requirement should be discussed during training sessions and made a part of routine technical assistance.

Timing of the Report

DOL regulations require submission of enforcement reports within 60 days after the completion of the investigation. "Investigation" for the purpose of this discussion is broadly defined as ranging from routine payroll reviews to "full-scale" investigations. Additionally, in this use "investigation" is meant to include all actions taken by the agency or contractor toward disposition of the case including settlement by restitution or refusal to pay and/or a request for a hearing under §5.11(b). Therefore, the §5.7 enforcement report should not be prepared until *after* final disposition at the local level (e.g., restitution, request for a hearing, request for a waiver or reduction of CWHSSA liquidated damages) has been reached. It is not necessary,

however, to wait until all of the underpaid workers are located or until disbursement is completed to prepare the report.

Where the report must be submitted to the DOL *through* Headquarters, the Regional Office must furnish the report to this office (Headquarters) sufficiently in advance of the due date to ensure timely submission to the DOL (i.e., within 60 days after completion of the investigation). Consequently, these reports must be received in this office not later than *forty-five (45) days* after completion of the investigation which will allow fifteen (15) days for Headquarters review and transmittal to DOL. (See also Handbook, Chapter 4, *HUD Labor Standards Investigations*.)

Content of the Report

The amount of detail needed in the report and any exhibits is directly related to the purpose the report will serve. Each report should contain basic coverage information, a description of the violation(s), and the disposition of the case, and must be accompanied by a schedule of the wages found due. A report submitted directly to the DOL by the Regional Office (i.e., where restitution has been paid, and there is no evidence of willful or aggravated action with respect to the violations, and no administrative sanctions are recommended) can be brief. Reports that refer a request for a hearing or that recommend debarment must be much more detailed in narrative and must be accompanied by exhibits which, together, are sufficient to substantiate the violations and document the investigative actions of the agency. Judgment must be used to determine the amount of detail and documentation that is appropriate in each case.

A sample format for §5.7 labor standards enforcement reports is attached. The basic format should be adequate in most cases where restitution has been paid and no further administrative action is recommended. Modifications may be made to appropriately reflect the circumstances of specific cases. The format will need to be expanded where a more detailed report is required (e.g., debarment recommendations, §5.11(b) hearing requests).

The LRAP software currently in development is expected to contain an enforcement report component. If necessary, the instructions contained in this Letter will be modified to ensure consistency.