

Frequently Asked Questions about Ongoing Requirements Under the American Reinvestment and Recovery Act (ARRA)

Question 1: What do loan recipients have to report to the Michigan Department of Natural Resources and Environment (DNRE) during the construction of our revolving fund loan project?

Answer: The loan recipient must complete and submit a DNRE Davis-Bacon Act Compliance Certification form with each request for loan reimbursement that is submitted to the DNRE. Although submitted with the monthly request for loan reimbursement, the certification that the revolving fund loan project has remained in compliance with Davis-Bacon requirements must be based on a weekly review of contractor payroll records. The new certification form is available at: http://www.michigan.gov/documents/deq/deq-ess-mfs-ARRA-Davis-BaconCertForm_318662_7.pdf.

Question 2: Are there any other reporting requirements that apply during the construction of our revolving fund loan project?

Answer: In addition to the Davis-Bacon Act Compliance Certification form, the loan recipient must also submit an electronic report each quarter during construction to identify the number of jobs that were created or retained by their revolving fund loan project. An e-mail prompt for this reporting will be sent by the DNRE at least ten days before the report is due.*

Question 3: Beyond submittal of the new Davis-Bacon Act Compliance Certification form, what other Davis-Bacon requirements apply during the construction of our revolving fund loan project?

Answer:

- a. The loan recipient must review payroll submissions to confirm that its contractors' employees are paid weekly, without unauthorized payroll deductions and according to the wage determinations established in the contract.
- b. The loan recipient must collect signed certifications from its contractors of Davis-Bacon and Related Acts (DBRA) compliance for all weeks during project construction.
- c. The loan recipient must document that wage interviews were conducted periodically to verify that contractors and subcontractors are paying the appropriate wage rates.
- d. The loan recipient must verify that contractor fringe contributions were made as planned.
- e. The loan recipient must verify that contractors and subcontractors have the proper registrations/certifications for all apprentices and trainees working on the project.

- f. The loan recipient must verify that the ratio of apprentices and trainees working on the project is consistent with the ratio prescribed in the U.S. Department of Labor's approved program for apprentices and trainees.
- g. The loan recipient must verify that the Davis-Bacon wage poster and applicable Davis-Bacon wage rates are posted at the construction site.

Question 4: Must a certified weekly payroll be collected from the prime contractor during the construction of our revolving fund loan project?

Answer: Yes, the loan recipient must collect the payroll records, using DOL Form WH-347 or its equivalent, for all laborers and mechanics for all weeks of project construction. These payroll records must be collected from the prime contractor for each contract and checked each week. Form WH-347 is available at: <http://www.dol.gov/whd/forms/wh347instr.htm>.

Question 5: I would like to have the contractor submit the certified weekly payrolls with each month's payment request. Is this an acceptable frequency?

Answer: No, the certified payrolls must be collected weekly.

Question 6: Do the certified weekly payrolls requirements apply to "minor" subcontracts?

Answer: The payroll certification requirements apply to any contract worth more than \$2,000.

Question 7: Is there anything more I must do regarding the weekly payrolls beyond collection and record keeping?

Answer: The loan recipient must document, using General Services Administration Form SF-1445 or its equivalent, that wage interviews were conducted periodically to verify that contractors and subcontractors are paying the appropriate wage rates. We recommend that at least two interviews be conducted on every revolving fund loan project which will take six or fewer months to complete. A higher frequency is recommended for projects which will take twelve or months to complete or where the loan recipient finds a pattern of errors in weekly payroll submissions. Form SF-1445 is available at: <http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?viewType=DETAIL&formId=12BF5D0E2DC4484685256CBC0062F375>.

Question 8: My project is being handled under a construction management or design-build contract. Do Davis-Bacon requirements apply to my project?

Answer: Yes, DBRA requirements apply to all revolving fund loan projects. In your case, a construction management or engineering consulting firm is acting as your general contractor and is responsible for Davis-Bacon compliance for all of its subcontractors.

Question 9: Do Davis-Bacon Act requirements apply to my Strategic Water Quality Initiatives Funding (SWQIF) loan?

Answer: No, DBRA requirements apply only to revolving fund loan projects which were fully or partially funded by federal dollars. The SWQIF program is completely state funded.

Question 10: What do loan recipients have to do in order to comply with the Buy American provisions of ARRA?

Answer: The loan recipient must confirm and maintain records that items procured for their revolving fund loan project are in compliance with the Buy American requirements. If a component was not entirely assembled in the United States using U.S.-made subcomponents and raw materials, a substantial transformation checklist must be completed. For this checklist and additional information helpful in determining whether a manufactured good is American-made, go to: http://www.epa.gov/ow/eparecovery/docs/2009_09_25_BA_Q&As_Part1_Reviewed.pdf.

Question 11: Do I have to insure and maintain documentation that every nut and bolt incidental to project construction is American-made?

Answer: Yes unless these low cost project components are exempted under a De Minimis Waiver. This is a national waiver granted by EPA that exempts miscellaneous and low cost items (e.g., nuts, bolts, fasteners, tubing, gaskets) that comprise up to 5% of the total cost of materials used in a project from Buy American requirements. However, loan recipients must keep accurate records and inventories of the types and categories of items to which the waiver is to apply, as well as the calculation used to determine the value of components that can qualify under the waiver.

Question 12: Are there reporting requirements related to the Buy American provisions of ARRA that apply during the construction of our revolving fund loan project?

Answer: There are no reporting requirements; however, the loan recipient must maintain records for inspection by DNRE and U.S. Environmental Protection Agency (EPA) staff.

Question 13: Are there any other ARRA or Davis-Bacon requirements that apply during the construction of our revolving fund loan project?

Answer: Yes. All ARRA projects must display a project sign with the federal and state ARRA logos and have an ARRA whistleblower poster posted at the construction site. All revolving fund loan projects must have the applicable Davis-Bacon wage determinations and Davis-Bacon wage posters (WH-1321) in all relevant languages posted at the construction site in a conspicuous place and protected from the weather.

Question 14: Are there other resources available for loan recipients to use in understanding ARRA requirements?

Answer: Yes. The handbook “A Practical Approach for Assistance Recipients” is available at <http://cwsrftraining.net/recovery/Handbook/index.html>.

If you have further questions, please contact your DNRE project manager.