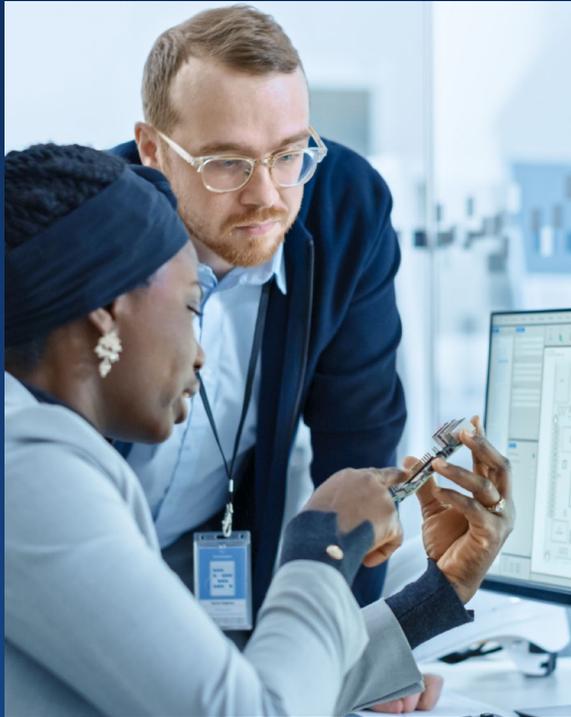


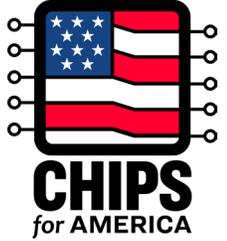
# Davis-Bacon & Related Acts: Q&A Session



January 9, 2024

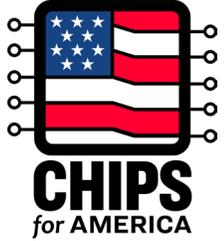


# WELCOME



- We look forward to your questions. Click the Q&A button, type your question, and click “Post Question” to submit.
- We will answer as many questions as possible today.
- Visit [CHIPS.gov](https://www.chips.gov)
  - Get the Notice of Funding Opportunity
  - Access additional resources for applicants and stakeholders
  - Sign up for email updates
  - Register for future webinars

# Today's Speakers



**Marina**  
**Zhavoronkova**

Senior Advisor,  
Workforce Strategy  
*CHIPS Program Office,*  
*Department of*  
*Commerce*

**Natalie**  
**Collins**

Senior Advisor  
*DOL Wage and Hour*  
*Division, Division of*  
*Government Contracts*  
*Enforcement*

**Meghan**  
**MacLeod**

Senior Advisor  
*DOL Wage and Hour*  
*Division, Division of*  
*Wage Determinations*

# CHIPS for America Vision



## Economic Security

The CHIPS Act will strengthen supply chain security and increase economic resilience in critical sectors.



## National Security

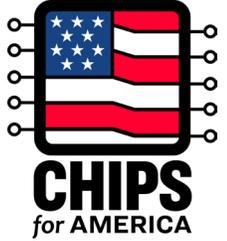
The CHIPS Act will ensure that the U.S. can manufacture advanced technologies, including secure chips for the U.S. military.



## Future Innovation

The CHIPS Act will spur innovation, increase competitiveness, and ensure long-term U.S. leadership in the sector.

# CHIPS for America Programs



## \$39 billion for manufacturing

Components:

1. Attract large-scale investments in advanced technologies such as leading-edge logic and memory
2. Incentivize expansion of manufacturing capacity for mature and other types of semiconductors

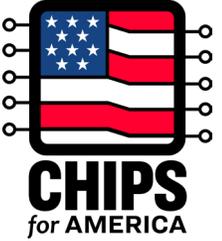
## \$11 billion for R&D

- National Semiconductor Technology Center
- National Advanced Packaging Manufacturing Program
- Manufacturing USA institute(s)
- National Institute of Standards and Technology measurement science

Together with  
CHIPS  
initiatives from  
other agencies,  
including DOD,  
State, NSF,  
and Treasury



# CHIPS for America – Construction Workforce

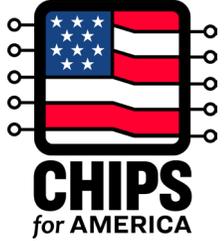


A skilled construction workforce is critical to the construction, expansion and modernization of semiconductor fabrication, supplier, and R&D facilities

1. All published NOFOs require applicants to submit a construction workforce plan that addresses recruitment, training, and retention activities
2. This includes activities that will expand the workforce by reaching economically disadvantaged individuals and women

Today's webinar will cover Davis-Bacon requirements tied to construction activities funded by the incentives program

# Today's Webinar



Today's webinar addresses the following questions:

**What are the Davis-Bacon requirements in the CHIPS Act?**

**Davis Bacon 101: wage determinations, fringe benefits, certified payroll, protected activities, contracting agency responsibilities**

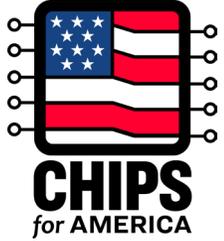
**Does prevailing wage application differ if grant funds will cover only the purchase of equipment?**

**What type of construction will CHIPS projects be characterized as?**

**How will the new prevailing wage rule update Davis-Bacon obligations?**

**How does one ensure the project owners, GCs and subs are in compliance with DBRA?**

Please enter any clarifying questions in the chat, and we will do our best to respond. Questions we are not able to respond to today will be addressed in future Q&A documents that will be released after this webinar and updated on an ongoing basis.



### What are the Davis-Bacon requirements in the CHIPS Act?

Under the CHIPS and Science Act of 2022, all entities that receive CHIPS funding from the Department of Commerce must comply with the prevailing wage requirements of Davis-Bacon and Related Acts (DBRA). All laborers and mechanics employed by contractors or subcontractors on CHIPS projects must be paid wages at rates not less than those prevailing on similar construction in the locality.

# Davis-Bacon and Related Acts

- Davis-Bacon prevailing wages are key to ensuring that construction jobs are good jobs and that workers on federally funded construction projects are paid fair wages and benefits.
- The Davis-Bacon and Related Acts benefit construction workers, their families, their communities, and taxpayers by helping employers compete on equal footing.

# Wage Determinations (WDs)

- Davis-Bacon WDs specify the prevailing wages, including fringe benefits, which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character in the localities specified therein.
- The most current WD for the location and type of project must be incorporated into the contract.

# Selecting the Correct WDs – Type

- Selecting and incorporating the appropriate general wage determination for the project type. Guidance provided in AAM 130.
  - Building
  - Residential
  - Heavy
  - Highway
- Multiple wage determinations may apply where there are separate construction types and the different type of construction is at least 20 percent of the project cost or exceeds \$2.5 million – guidance provided in AAM 131 and 236

# Selecting the Correct WDs – Date

Incorporate most current WD:

- Negotiated contracts (“RFPs”) – Time of award.
- Sealed bid contracts: In effect 10 days or more before opening of bids.
  - If the contract is not awarded within 90 days of bid opening, any modification to the WD must be incorporated unless the federal agency requests and obtains an extension of the 90 day period.

# Updating Wage Determinations

- After contract award, the contracting agency must include the most recent applicable wage determination modification(s) when:
  - a contract or order is changed to include additional and substantial work not within the scope of work of the original contract, or to require the contractor to perform work for an additional time period.
  - an option to extend the term of a contract is exercised.
  - where contracts require a general commitment to perform necessary construction as the need arises, over a period of time that is not tied to the completion of any particular project, annually on the anniversary date of the contract's award.

# Conformance Requests

Unlisted classifications may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

# Conformance Requirements

- The work to be performed by the proposed classification is not performed by a classification already in the wage determination (WD);
- The proposed wage rate must bear a reasonable relationship to WD rates; and
- The proposed classification is used in the area by the construction industry.

# Wages and Fringe Benefits

Laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed on the site of the work, without regard to skill.

# Wages and Fringe Benefits – Pay Frequency

- The laborers and mechanics working on the site of the work must be paid weekly, with the exception of fringe benefit contributions paid into a bona fide FB plan, which must be paid no less often than quarterly.
- Cash wages paid in excess of the basic hourly rate may count to offset or satisfy the fringe benefit obligation.

# Fringe Benefit Plans

- Contractors may take credit (without prior approval from DOL) for bona fide FB fund contributions made to third-party trustees or insurers that are irrevocably paid and made not less often than quarterly.
- With prior approval from DOL, contractors may also take credit for their reasonably anticipated costs of providing fringe benefits to workers, if all the requirements in 29 CFR 5.28 are met.

# Apprentice Requirements

- Apprentices may be paid less than the applicable prevailing wage rate when they are:
  - Individually registered in an approved program;
  - Employed within the allowable ratio specified in the program for the number of apprentices to journeyworkers.

# Certified Payrolls

- Two separate contract clause requirements apply to “certified payrolls” for a project:
  - The contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls.
  - Each weekly payroll submitted must be accompanied by a “Statement of Compliance.”

# Protected Activities

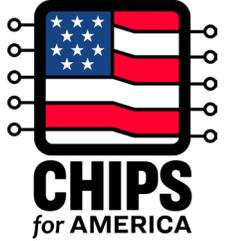
- Workers or job applicants are protected from retaliation for the following activities:
  - Making a contractor aware of any conduct the worker reasonably believes is a violation
  - Asserting DBRA rights on behalf of themselves or others, such as filing a complaint
  - Cooperating in an investigation or other compliance action
  - Informing another person of their rights under the DBRA

# Contracting Agency Responsibilities

- Ensure labor standards clauses and the proper wage determination(s) (WD) are identified and incorporated into the contract;
- Advise contractors which schedule of rates applies to various construction items; and
- After consulting with WHD, advise contractors regarding the duties performed by various crafts in the WD.

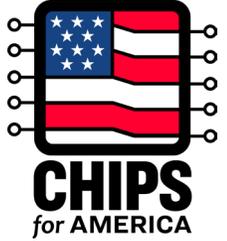
# Contracting Agency Oversight

- Contracting agencies have day-to-day enforcement responsibility for:
  - Ensuring that the applicable wage determinations and WH-1321 Poster are posted onsite
  - Reviewing certified payrolls
  - Conducting worker interviews and investigations
  - Forwarding refusal-to-pay and/or debarment consideration cases to WHD for appropriate action; and
  - Providing data for enforcement reports



**?** Does prevailing wage application differ if grant funds will cover only the purchase of equipment?

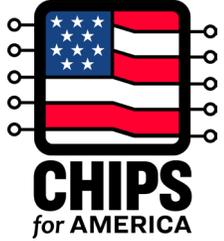
If construction work is involved in the installation of purchased equipment, the requirement for DBRA compliance applies to the entirety of the project. The requirements of the Davis-Bacon Act apply to construction, alteration, and/or repair (including painting or decorating) of public buildings or public works.



**Continued: Does prevailing wage apply in these equipment purchase scenarios?**

**Example 1:** Company A is awarded funding to construct a new fabrication facility on a greenfield site. Company A will hire Contractor 1 serve as the prime contractor to substantially oversee all or substantially all of the construction. Contractor 1 will engage with Subcontractor 1 to perform excavation and site clearing, Subcontractor 2 for constructing the building, and Subcontractor 3 to install new equipment. Do prevailing wage laws regulations apply?

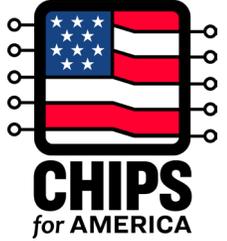
**Example 2:** Company C is awarded funding to purchase equipment to modernize the production process of a fabrication facility. The installation of equipment does not involve construction work but, instead required IT support. Do prevailing wage laws regulations apply?



**Continued: Does prevailing wage apply in these equipment purchase scenarios?**

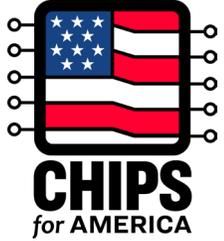
***Example 3:*** Company B is awarded funding to purchase equipment to modernize the production process of a fabrication facility. Do prevailing wage laws and regulations apply to the purchase and delivery of equipment to the site of work?

The new equipment arrives at the fabrication facility, and there is construction work to install the new equipment. Do prevailing wage laws regulations apply?



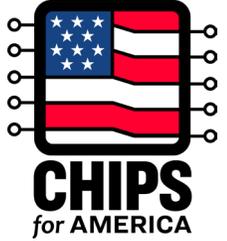
### ? What construction type are CHIPS projects characterized as?

While each characterization will depend on the specific scope of any proposed project, many CHIPS projects are likely to be characterized as Building Construction, and some work may be characterized as Heavy Construction or Highway Construction. More than one characterization may be applicable to a single project. For assistance in determining the type of characterization applicable to your project, please email [dgceinquiries@dol.gov](mailto:dgceinquiries@dol.gov) or [collins.natalie@dol.gov](mailto:collins.natalie@dol.gov) of the United States Department of Labor's Wage and Hour Division's Government Contracts Enforcement Team.



### How will the new prevailing wage rule update Davis-Bacon obligations for a project owner or construction contractor?

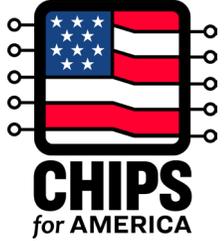
The recent DBRA final rule updates and modernizes the DBRA implementing regulations. Several of these changes help the Department publish more current and accurate wage determinations, while other changes provide clarification as to the scope of coverage and the application of the prevailing wage requirements. The final rule also includes new requirements for contractors, including new anti-retaliation provisions and updated recordkeeping requirements. More information about the final rule changes can be found in AAM 244, the Final Rule FAQs, and the comparison charts between the prior regulations and the current regulations.



### ? How do I ensure the project owners, GCs and subs are in compliance with DBRA?

Make sure that project owners are aware of and performing their obligations during the contract award process, including:

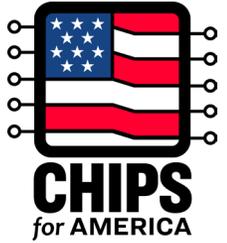
- Including the contract clauses from 29 CFR 5.5 and the applicable wage determinations in all construction projects for the funded projects.
- Ensuring that the contract clauses and applicable wage determinations are flowed down into all subcontracts.
- Advising contractors regarding the application of wage determinations and the scope of worker classifications contained in the wage determination(s).



### Continued: How do I ensure the project owners, GCs and subs are in compliance with DBRA?

Perform, or ensure that project owners perform, day-to-day oversight, including:

- Ensuring that the contractor(s) have posted the Davis-Bacon Employee Rights poster (WH-1321), the applicable wage determination(s), and any approved conformances on the site of work.
- Reviewing certified payroll and related records.
- Interviewing workers to confirm compliance in accordance with any enforcement procedures established by the federal funding agency.



# Points of contact at CPO

- [askchips@chips.gov](mailto:askchips@chips.gov) – general inquiries
- [apply@chips.gov](mailto:apply@chips.gov) – application-related inquiries
- Active applicants may reach out to Relationship Directors for further inquiries

# Points of contact at WHD

- Points of contact at WHD, including regional points of contact regarding either wage determinations or enforcement, will be sent in follow-up to this webinar.