

APPENDIX F

Who is a laborer and mechanic?

NO – The following groups of individuals are NOT considered laborers or mechanics, and do not need to be paid Davis Bacon wages

Persons employed in a bona fide executive, administrative or professional capacity as defined in 29 CFR § 541—i.e., individuals who are properly classified as exempt under the executive, administrative or professional overtime exemptions to the federal Fair Labor Standards Act (FLSA). See http://www.dol.gov/DOL/allcfr/ESA/Title_29/Part_541/toc.htm

An equity owner with at least a 20% interest in an enterprise, and who is actively involved in the enterprise's management falls within the FLSA executive exemption even when and if s/he performs non-exempt/laborer and mechanic duties at the same time as other exempt duties (i.e., concurrent duties). To determine if the owner is actively involved in the enterprise's management, see 29 CFR 541.102 at http://www.dol.gov/DOL/allcfr/ESA/Title_29/Part_541/29CFR541.102.htm

Working foremen who are not exempt from the FLSA but who devote less than 20% of their time to laborer or mechanic duties

Technicians conducting energy audits

Federal service programs such as AmeriCorps and Vista that establish in the authorizing federal statute specific compensation to be given participants

Apprentices and trainees employed and working on the project pursuant to a bona fide apprenticeship or training program certified by a qualified state labor agency or the federal DOL

YES –The following groups of individuals are considered laborers or mechanics, and **MUST** be paid Davis Bacon wages

Working foremen who are not exempt from the FLSA and devote more than 20% of their time to laborer or mechanic duties

Auditors and inspectors performing laborers or mechanics duties separate and apart from the audit or inspection, even if they perform that work for less than 20% of the time, unless they fit within FLSA exemptions discussed in the second red box.

Federal youth programs that do **NOT** establish specific compensation to be given participants in the authorizing federal statute

Apprentices and trainees **NOT** employed and working on the project pursuant to a bona fide apprenticeship or training program certified by the federal DOL

Volunteers

Relatives

Clerical employees performing laborers and mechanics work

Persons classified as 1099 workers (“independent contractors”) under IRS rules