



# BIPARTISAN INFRASTRUCTURE LAW DAVIS BACON ACT COMPLIANCE GUIDE FOR UTILITIES

August 2024



## Table of Contents

Guide Purpose.....	1
Overview .....	1
DBA Legal Authorities .....	1
LCPtracker Overview .....	2
LCPtracker Requirement .....	2
DBA’s Applicability to Utilities.....	2
Installation & Incidental Construction .....	3
Apprentices .....	3
Weekly Pay.....	4
Allowable Costs for DBA Compliance.....	6
Collective-Bargaining Agreements and Effects Bargaining due to Mandatory flow-down of DBA terms	6
DBA and Tribes.....	6
Utilities using LCPtracker and Semi-Annual Reporting.....	6
Getting Set Up in LCPtracker.....	6
Setting up Projects in LCPtracker .....	7
Setting up Users in LCPtracker .....	7
Weekly CPR Activities .....	10
Submit CPRs .....	10
Approve, Accept, or Reject CPRs.....	10
Resolve Concerns or Deficiencies Identified During CPR Reviews.....	10
Semi-Annual Reporting .....	13
Site Visits .....	13
Summary Level of Effort: Initial Set up Activities, Implementation.....	13



## Guide Purpose

The Biden-Harris Administration's flagship Bipartisan Infrastructure Law (BIL) and Inflation Reduction Act (IRA) have catalyzed the largest investment in the United States electric grid to date, thanks to transformative utility projects bolstered by U.S. Department of Energy (DOE) programs, including the Grid Resilience Innovation and Partnerships program (GRIP) and the Loan Programs Office (LPO). These investments are at the forefront of ensuring American communities have access to affordable, reliable, clean electricity anytime, anywhere.

All projects funded in whole or in part by BIL or financed in whole or in part with a loan guaranteed under Title 17 of the Energy Policy Act, that involve construction, alteration or repair, are required to follow Davis-Bacon Act (DBA) standards. DBA helps ensure federally funded/assisted projects prioritize workers and protect communities by upholding local prevailing wage and labor standards.

DOE has developed this guide to support utilities with DBA compliance. DOE is prepared to collaborate with utilities to help resolve issues in complying with DBA requirements. Utilities with questions or concerns are asked to work with their assigned DOE point of contact (Grants Officers, Portfolio Management Team Lead).

## Overview

### DBA Legal Authorities

BIL Title XI, Section 41101, applies wage rate requirements under DBA for construction, alteration, or repair work on BIL-funded or assisted projects. Construction work includes activities performed on the site of the work, such as preparation for construction (e.g., demolition of existing structures, equipment and material set-up), fabrication of materials, installation of materials, and post-construction clean-up. This means that laborers and mechanics performing construction, alteration, or repair on BIL projects must be paid wages at the rates not less than those prevailing and fringe benefits not less than those paid on similar projects in the locality as determined by the Secretary of Labor. In the case of a multi-phase project, DBA and associated compliance activities would not be triggered until the start of construction. For more information, see [DOE DBA Desk Guide](#).

BIL Section 40551 provides an exception for the Weatherization Assistance Program, wherein DBA only applies to multifamily buildings with 5 or more units. There are no exceptions in BIL for utilities.

Title 17 of the Energy Policy Act applies wage rate requirements to construction work financed in whole or in part under its scope of authority, including LPO's 1706 Energy Infrastructure Reinvestment (EIR) program. There are no statutory exceptions to the wage rate requirements under the Title 17.

After intaking users, projects, and applicable wage determinations into LCPTracker and adding any subcontractors, compliance begins with utilities identifying when DBA-covered work begins. Laborers, mechanics, and apprentices must be paid weekly at least the minimum rates as set in the applicable wage determinations. These payrolls must be uploaded into LCPTracker, and any errors corrected, to then allow for final validation and submission of the certified payroll.

Other compliance requirements include the mandatory flow-down of clauses to any subcontractor and overall performance in accordance with the DBA terms and conditions. Utilities must monitor any



## Davis Bacon Act (DBA) Guide for Utilities

subcontractors and accept or reject their certified payrolls. There is a registration process for [apprentices](#) and [Semi-Annual](#) Davis-Bacon Enforcement Reporting that are also due.

### LCPtracker Overview

DOE has secured DBA services, including a DBA electronic payroll compliance software system, LCPtracker, that will facilitate the submission and review of certified payroll reports (CPRs), including all information captured in the U.S. Department of Labor (DOL) Wage and Hour Division DBRA Certified Payroll Form, [WH-347](#), for DOE and recipients. LCPtracker received the Authority to Operate (ATO) by modifying the system to meet strict security requirements through the DOE's ATO process and is being sponsored by DOE for [FedRAMP](#). DOE is providing access to LCPtracker for BIL funding recipients at no cost.

Through LCPtracker, certified payroll is uploaded and subject to a validation system that checks for DBA prevailing wage requirements by flagging mathematical errors or omission discrepancies for Administrator review on a report. Examples include base hourly rate, total hourly rate, overtime, double-time, apprentice approval, and fringe benefit contributions. Additionally, LCPtracker utilizes industry-standard eSignature technology, allowing Contractors to electronically sign payroll reports versus using a wet signature.

Advantages of DBA compliance software include:

- Minimized paperwork
- Reduced time spent reviewing CPRs
- Reduced risk of errors and audit failures
- DOE compliance services
- DOE and recipient cost reduction
- Real-time reporting by BIL provision
- Visibility into key workforce and demographic priority metrics (e.g., total jobs, union jobs, disadvantaged community jobs, apprentices/trainees, Justice 40 goals)

LCPtracker's data collection, analysis, and reporting functions allow users to monitor and report progress toward local hiring, diversity, and apprentice utilization objectives. The system's labor compliance enforcement component will allow DOE to track investigations and restitution processes.

### LCPtracker Requirement

Utility recipients of BIL-funded projects subject to DBA must ensure the timely electronic submission of weekly certified payrolls through LCPtracker as part of their compliance with DBA. All BIL-funded projects must be in DOE's LCPtracker database, unless they have an approved waiver because of limited ability to use or access due to no or limited Internet access. DOE can require contractors to submit certified payrolls through an electronic system according to 29 CFR § 5.5(a)(3)(ii)(A). Utilities already utilizing LCPtracker must use DOE's LCPtracker database for any BIL-funded project. A pre-existing profile of LCPtracker may not be configured to DOE's required specifications.

### DBA's Applicability to Utilities

Congress has attached DBA wage rate requirements to construction activities that are funded or financed in whole or in part under the BIL funds or by programs under Title 17 of the Energy Policy Act.



## Davis Bacon Act (DBA) Guide for Utilities

This includes construction work performed on utility projects. When a utility company agrees to undertake a portion of the construction of a DBA-covered infrastructure project, the work performed by individuals who qualify as “laborers or mechanics” are subject to DBLS requirements. Whether employees of a public utility are covered by DBA when performing construction-type work in connection with Federal and Federal-assisted projects depends on the nature of the contracts involved, the work to be performed, and the specific requirements of the applicable Davis-Bacon Related Acts (DBRA).

There are no broad DBA exemptions for utility companies; however, there are two minor exceptions that could potentially apply to a utility project. First, DBA does not apply to laborers and mechanics employed (or contracted) by a utility who are working on a DBA-covered site of work for the simple purpose of tying in the project to the grid. For example, if utility employees add new transformers or extends utility power lines on the site of work of a DBA/DBRA-covered project, and will own the new equipment/lines, such work is not subject to the DBA labor requirements. Such work is considered to be an extension of the utility’s services. See [DOL FOH 15d09](#).

Second, if a government owned and operated utility—such a municipal utility—utilizes its own government employees to self-perform construction on a project (engaging in “force account” construction), DBA does not apply. This is because government agencies do not meet the definition of “contractor” under the DBA. See DOL FOH 15b06. Please note that if such work is contracted or subcontracted out, then DBA *would* apply.

### Installation & Incidental Construction

DOL regulations state that construction activities include “installation (where appropriate) of equipment or components into a building or work.” (29 CFR 5.2.) However, installation work performed in conjunction with a supply or service contract is only subject to DBA when it involves more than an incidental amount of construction activity and such work is physically or functionally separate and can only be performed on a segregated basis from other non-construction work called for under the contract.

The question of whether a particular type of installation work is subject to DBA is fact specific. In other words, there are no fixed rules. Discerning DBA applicability for such work is a case-by-case analysis based on the nature of the prime contract work, the type of work performed by the employees installing the equipment, the extent to which structural modifications are needed to accommodate the equipment, and the cost of the installation work, either in terms of absolute amount or in relation to the cost of the equipment and the total project cost. The DOL leans heavily towards DBA applicability of installation work where the trades and tools associated with typical construction work can be/are utilized. Utilities are expected to perform the initial DBA applicability analysis for their project(s), then consult with DOE as necessary. Be advised that “installation” and “construction” activities are more often than not indistinguishable to DOL.

### Apprentices

Utility projects performed by laborers and mechanics may include workers who are registered in DOL or State approved apprenticeship programs. Approved programs are those which have been registered with DOL’s Employment and Training Administration, Office of Apprenticeship, or registered with a DOL-recognized State Apprenticeship Council. Workers who participate in approved apprenticeship programs



## Davis Bacon Act (DBA) Guide for Utilities

---

may be paid under the prevailing wage, so long as the wage and fringe benefit amounts are in accordance with the provisions listed in the approved program.

The wage rates listed in an apprenticeship and training program are generally expressed as a percentage of the journeyman wage rate for a specific period of time, increasing as the worker progresses through the program. Apprenticeship programs also restrict the ratio of apprentices to journeymen working on a job site in a specific classification. For example, an approved program permits no more than three apprentice plumbers for each journeyman plumber working on the job site. If a contractor or subcontractor employs apprentices in excess of the ratio, all apprentices employed in excess of the ratio are not considered apprentices and are subject to the full journeyman wage requirements.

### Weekly Pay

DBA requires that workers are paid weekly on DBA-covered projects; there is no compliance alternative to weekly payments, nor can workers waive their rights to be paid weekly. See more on the weekly pay requirement below.

For Utilities whose employees are not on a weekly payroll schedule, DOE has outlined several possible options for meeting the DBA requirement. Methods to comply with weekly pay may change as the project progresses. For example, utilities may begin with checks then move to a third-party system. Utilities do not need to have a perfect system from the very beginning, and final awards can be signed without complete realization of these systems. Note that prospective compliance is only required once construction work has begun. DOE clearance of compliance strategy is not required; utility must be comfortable certifying they have paid weekly. Like other DBA compliance requirements, repetitive failure to pay weekly will result in a letter from DOE requiring a recovery plan. Continued non-compliance could result in ending the project and debarment up to three years.

DOE will consider requests for additional funding to comply with DBA, including weekly payroll. Any requests for modifications to the approved budget shall be raised to your DOE point of contact (Grants Officer, Portfolio Management Team Lead, etc.).

The following **requirements** must be met to comply with the statutory DBA obligations:

- **Weekly pay:** Each laborer and mechanic performing DBA-covered work must receive each week no less than the minimum hourly wage and fringe benefits to which they are entitled under the applicable DBA wage determination(s) for each hour of covered work.
- **Free and clear:** The wages must be paid to the workers without discount or interest and in such a manner as to give the worker complete freedom of disposition of the advanced funds (i.e., the worker must receive the wages “free and clear,” with any additional costs incurred as a result of a third-party providing payroll services to be borne by the company and not passed on to the workers, either directly or indirectly). Note that pacing an equivalent amount of funds in an escrow or other account that the workers cannot access does not constitute unconditional payment to workers.
- **No deductions:** The recipient or third-party pay provider must not make any deductions from pay other than those that are expressly permissible (e.g., taxes) without application to or approval of the Secretary of Labor.



- **No reversion:** Any monies deposited into a worker's individual account pursuant to these requirements will not revert back to the recipient or the third-party pay provider under any circumstance (e.g., the monies will not revert if they are not accessed by the worker or the worker's employment is terminated).
- **No opt-in or opt-out:** Workers cannot be required to either opt-in or opt-out of the weekly payment of prevailing wages, nor can they waive their rights to receive weekly payment.
- **Sufficient to cover second week and no-offset:** The recipient must ensure that the remaining wages paid to the workers on the non-weekly payrolls are sufficient to also cover the prevailing wage rate due to workers for any DBA hours worked during the second week of payroll (to the extent that the company chooses to pay prevailing wages due for the second week of payroll on the workers' regular non-weekly payroll, rather than using the third-party pay provider to make prevailing wage payments in all work weeks), as well as the workers' usual rate for their non-DBA work. The company also must not change a worker's usual rate of pay in an attempt to "offset" the required DBA rate.
- **Provide guidance:** The recipient will provide workers with clear guidance regarding the manner in which they are being paid DBA prevailing wages and with clear instructions regarding the use and access to any individual account established by the company or its third-party for purpose of paying wages on DBA covered projects on a weekly basis. The recipient or third-party also will establish alternative procedures for any worker that is unable, due to disability or otherwise, to access the individual account.
- **Recordkeeping:** The recipient will comply with all recordkeeping requirements set forth in the DBA's implementing regulations, including creating and maintaining accurate records demonstrating the hours worked in each classification, in each work week, and demonstrating that the payment, including cash advances or other payments in alternate work weeks, is for the purpose of paying those wages and is not for some other purpose. Note that, users of LCPtracker have access to certified payrolls.

The following are **options for weekly pay** that Utilities may choose to comply with the Weekly Payroll requirement:

- **Modify payroll frequency in an existing system:** Utilities may elect to modify the payroll frequency within their existing payroll systems to comply with weekly payment requirements for employees performing DBA-covered work. Most payroll systems allow for different pay frequencies for different workers. [See requirements above.](#)
- **Utilize a supplemental system:** Utilities may elect to seek the service of a third-party weekly payroll service providers such as Primepay, OnPay, Miter, Payroll4Construction, eBacon, eMars, ADP, or Paychex. (*Note: DOE does not endorse any specific payroll services provider or product.*) Third party providers frequently handle direct deposit, the issuing of paper checks, or other wage payment methods for companies. For example, funds equivalent to the wages due could be placed in an account that workers can access through a payroll application. The workers must be able to obtain the full wage compensation due to them from the payroll app, payroll debit card, or similar method free and clear at a rate not less than the required prevailing wage on the required weekly pay date. [See requirements above.](#)
- **Do not change payroll frequency of existing system but issue cash advances:** Utilities maintain their pre-existing non-weekly payroll systems, but issue a cash advance in the alternate, non-



traditional payment weeks in an amount equal to or exceeding the prevailing wages due to workers for their hours worked on DBA projects in the preceding week. The cash advance is then deducted from the non-weekly payroll amount. The remaining wages paid to the workers on the non-weekly payrolls must be sufficient to also cover the prevailing wage rate due to workers for any DBA hours worked during the second week of payroll, as well as the workers' usual rate for their non-DBA work. [See requirements above.](#)

- **Do not change payroll frequency of existing system but issue checks:** Utilities maintain their non-weekly payroll system and for workers that perform DBA work, they issue a "draw" check for a set amount in alternate weeks, which is subsequently deducted from/draws against the regular non-weekly payroll. The remaining wages paid to the workers on the non-weekly payrolls must be sufficient to also cover the prevailing wage rate due to workers for any DBA hours worked during the second week of payroll, as well as the workers' usual rate for their non-DBA work. [See requirements above.](#)

### Allowable Costs for DBA Compliance

DOE will consider requests for additional funding to comply with DBA, including weekly payroll. Payroll-related costs incurred due to Davis-Bacon Act compliance should qualify as an allowable cost, so long as they are necessary, reasonable, allocable, and not otherwise unallowable in the context of the specific award. Any requests for modifications to the approved budget shall be raised to your DOE point of contact (Grants Officer, Portfolio Management Team Lead, etc.) It is within the discretion of the contracting or grants officer to consider and determine with respect to allowable costs within the context of each individual award.

### Collective-Bargaining Agreements and Effects Bargaining due to Mandatory flow-down of DBA terms

The DBA requirement clause is required to be flowed down to subcontractors. For subcontractors that are party to collective-bargaining agreements (CBAs) with labor unions, this might result in a need to change pay cadence for workers to comply with the DBA weekly pay requirements. If a CBA currently specifies pay on a bi-weekly basis, it might be necessary to engage in effects bargaining with the labor union about the pay cadence change. Affected employers are encouraged to promptly notify and bargain (as needed) with the applicable labor unions about options and proposed solutions to comply with this federal law.

### DBA and Tribes

DBA does not apply when Self-Governance Tribes performing work with their own employees, but applies to all Tribal contractors and subcontractors. Include the DBA clauses and applicable wage determination(s) and use LCPtracker.

## Utilities using LCPtracker and Semi-Annual Reporting

### Getting Set Up in LCPtracker

It is a best practice to complete the steps below as early as possible and no later than 1 month prior to the beginning of construction activities. This may be an iterative process as all locations, contractors, and wage determinations (WD) may not be known at the same time. For a process map of the following steps, see [Figure 1: Process Map for Getting Set up in LCPtracker.](#)





## Setting up Projects in LCPtracker

- a. **Utilities:** For all WDs not submitted at negotiation, the utilities must submit proposed set-up information for all known WD(s) or collective-bargaining agreements (CBA) no later than 1 month prior to construction activities to the DOE Technical Project Officer (TPO) and, if not provided at negotiation, provides the names of all utilities staff who will perform administrative roles in LCPtracker. Please note, for projects with a CBA, it can take up to 60 days to receive a conformed WD so this process should be started at least 90 days prior to construction.
  - i. Updates budget and budget justification, if needed, based on the WD.
- b. **TPO:** Upon receipt of the WD, the TPO will confirm the wage determination is appropriate based upon the location where the work will be performed and the nature of the construction project. The TPO will complete the [LCPtracker Wage Intake Form](#) and [LCPtracker Project Intake Form](#) to notify the DBA Compliance Support Team of the need to set up a new project.
- c. **DBA Compliance Support Team:** Creates the project in LCPtracker using the following naming convention developed by DOE program offices: **DOE-S3-"DOE Program Office Name"- "State Abbreviation"- "Short Project Descriptor"**.
  - i. Ensure to communicate with your DOE TPO on the correct naming convention that they would want you to use for their specific program office, as each program office has slight differences from the overall standard project naming convention.

## Setting up Users in LCPtracker

- a. **DBA Compliance Support Team:**
  - i. Sends the [LCPtracker Admin Intake form](#) to all applicable parties to collect the information needed to create their account.
  - ii. Creates Administrator roles for the utilities and COs/GOs and TPOs. A comprehensive guide to LCPtracker Administrator roles is available [here](#).
- b. **Utilities:**
  - i. Sends the [LCPtracker Admin Intake form](#) or [LCPtracker Contractor Intake form](#) as needed for other users within their organization as well as subrecipients and contractors, as applicable.
  - ii. Creates Administrator roles as needed for users in their organization and subrecipients.
  - iii. Creates Contractor roles as needed for subrecipients and contractors.
- c. **Contractors/Subrecipients:**
  - i. Creates roles as needed for any lower tier subcontractors using the Contractor Role Intake Form. Only the main user ID to the account at the Utilities level will have the ability to add or edit additional users.
- d. **In all instances:**
  - i. Users requiring system access will appear in person or virtually (on camera) and provide identification as specified in the [LCPtracker Admin Intake form](#) or [LCPtracker Contractor Intake form](#).



## Davis Bacon Act (DBA) Guide for Utilities

---

- ii. Users will receive an email from LCPtracker notifying them that they have been added to the DOE database and have been assigned to a project.
- iii. Users can access LCPtracker via [www.lcptracker.com](http://www.lcptracker.com) by clicking on “LOG IN” in the upper right corner.

The [Administrator User Manual](#), [Prime Approver Guide](#), and [Contractor User Manual](#) provide step-by-step instructions for Administrator, Prime Approver, and Contractor roles.



## Davis Bacon Act (DBA) Guide for Utilities

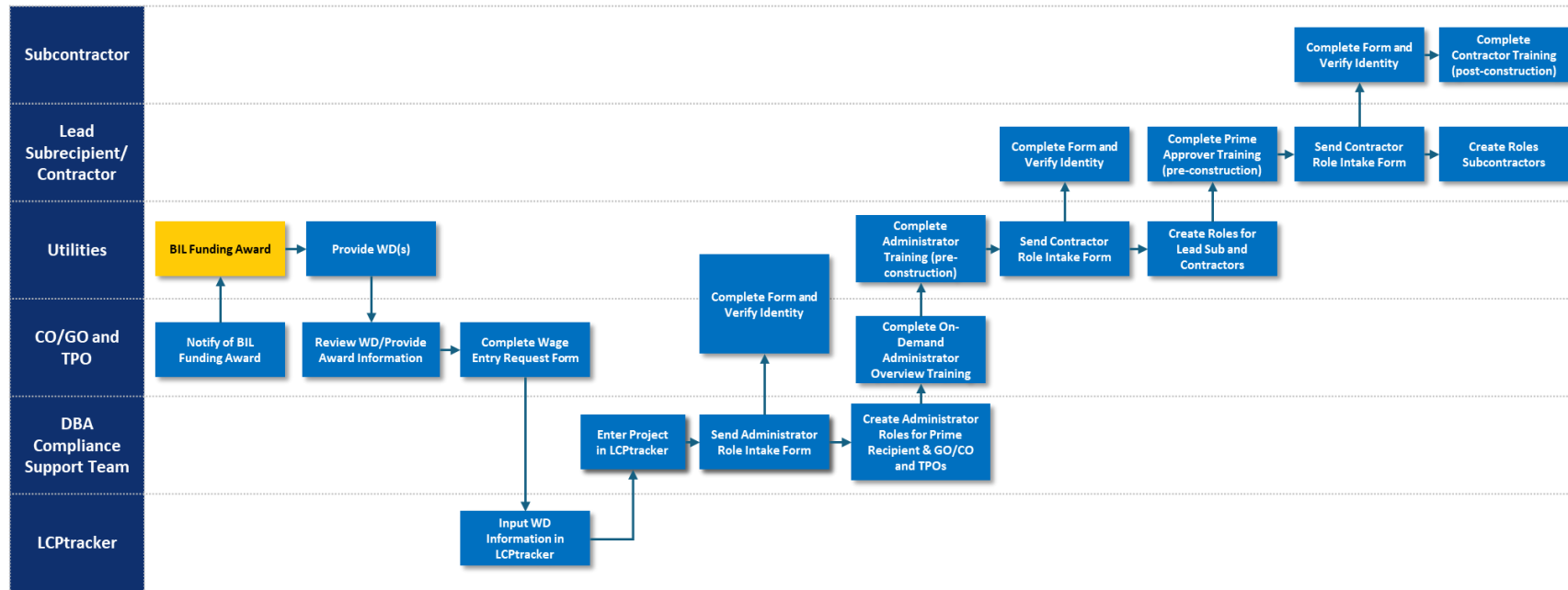


Figure 1: LCPtracker Process Flow: Setup Through Training



## Weekly CPR Activities

The following are weekly activities that Utilities will conduct during the Construction Phase:

### Submit CPRs

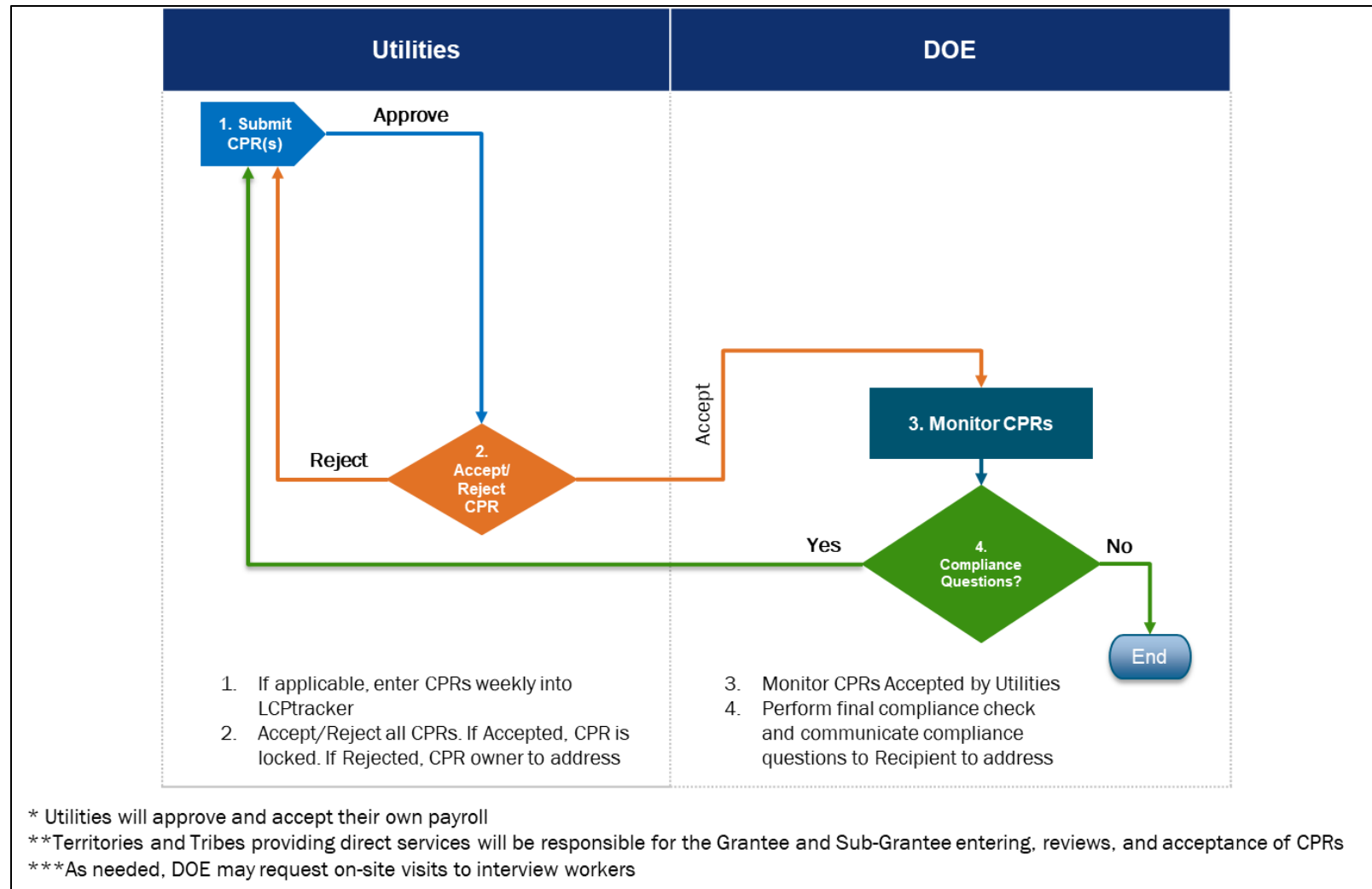
- **Utilities, Subrecipients, and Contractors** conducting construction activities are required to submit CPRs weekly to LCPtracker. The [Contractor Quick-Start Guide](#) provides detailed steps for submitting CPRs.
- **LCPtracker** performs 70+ validations on each CPR. Potential errors in wage rates or work classification entries are flagged preemptively, allowing users to submit CPRs with corrections implemented.
- The **LCPtracker Help Desk** provides technical support for CPR submissions:
  - Phone: 714-669-0052 x 4
  - Email: [Support@lcptracker.com](mailto:Support@lcptracker.com).

### Approve, Accept, or Reject CPRs

- **Subrecipients/Contractors** with Prime Approver rights review lower tier subcontractor CPRs and approve or reject. Once approved, the CPRs are sent to the utilities to accept/reject. Subrecipients/contractors without Administrator rights can review lower tier subcontractor CPRs and provide feedback but cannot approve or reject them.
- **Utilities** accept or reject CPRs in the LCPtracker system following the steps in the [Prime Approver Guide](#) (*Reviewing and Approving Payrolls* section). If accepted, the CPR is locked and is available in LCPtracker for the reviewer(s). If the CPR is rejected, then the party associated with the rejected CPR will be notified to take action. Some common reasons for rejecting a CPR are:
  - No deductions/non-permissible deductions
  - Time tracking inconsistent with industry standards
  - Missing signed authorization form for other deductions
  - WD type does not match work being performed
  - Apprentice ratios
  - Always only reporting 40 hours
- In some cases, such as DOE formula funding, the utilities may delegate approval of CPRs to subrecipients.

### Resolve Concerns or Deficiencies Identified During CPR Reviews

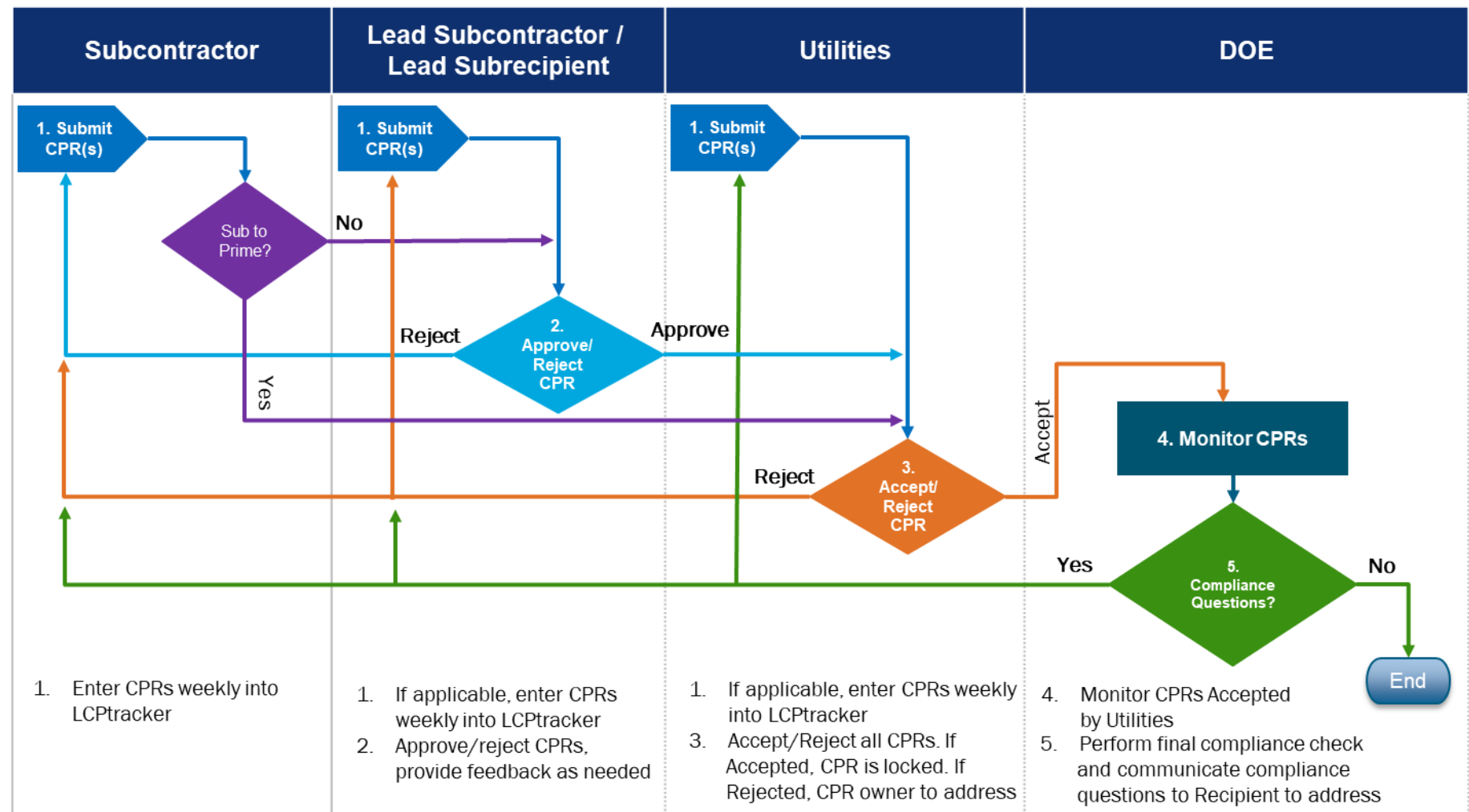
- **TPO** will monitor CPRs once approved and may conduct site visits, interviews, or other activities if errors, inconsistencies, omissions, or deficiencies are identified in the CPR. Recipients, contractors, and subcontractors are expected to comply with all DOE-directed compliance activities.



**Figure 2: LCPtracker Process Flow: CPR Submission to Compliance Review for Utilities (without Subcontractors)**



# Davis Bacon Act (DBA) Guide for Utilities



\* Crew-based Sub-Grantees will approve and accept their own payroll

\*\*Territories and Tribes providing direct services will be responsible for the Grantee and Sub-Grantee entering, reviews, and acceptance of CPRs

\*\*\*As needed, DOE may request on-site visits to interview workers

**Figure 3: LCPtracker Process Flow: CPR Submission to Compliance Review for Utilities with Subcontractor**



## Semi-Annual Reporting

In addition to weekly CPR submissions and reviews, Semi-Annual Reporting are DBA compliance activities conducted during construction.

Utilities are required to submit the *Semi-Annual DBA Enforcement Report* found at [www.energy.gov/infrastructure/davis-bacon-act](http://www.energy.gov/infrastructure/davis-bacon-act) on April 21 and October 21 of each year.

- a. Most recipients will submit the report to [DBAenforcementreports@hq.doe.gov](mailto:DBAenforcementreports@hq.doe.gov) and the reporting location indicated on the Federal Assistance Reporting Checklist included with the award documents.
- b. Select recipients who already have access to iBenefits will submit the report through the iBenefits system (<https://doeibenefits2.energy.gov>).
- c. Some recipients may have other submittal requirements, such as PAGE. Check with your TPO to determine how this must be submitted.

## Site Visits

Site Visits are additional DBA compliance activities that can be conducted during construction, along with the weekly CPR submissions and reviews.

Utilities, and any of their subcontractors, are expected to comply with all DOE-directed site visit activities.

- a. **TPO** may determine that a DBA site visit is warranted based on compliance concerns outlined in [Resolve Concerns or Deficiencies Identified During CPR Reviews](#).
- b. **TPO** may elect to include a DBA site visit as part of a programmatic site visit.
- c. **TPO** may interview workers concerning their wages, hours, benefits, classifications, payroll deductions, and other related subjects.
- d. For more information, see the DBA Site Visit section of the [DOE DBA Desk Guide](#).

## Summary Level of Effort: Initial Set up Activities, Implementation

The level of effort required from Utility companies will vary on the type of award (i.e., straight pass-through, pass-through with some DBA self-performance, and/or direct performance). On an ad-hoc basis, the DOE's DBA Compliance Support team owns setting up new users and projects into LCPtracker for the Utilities. Once the Utilities has obtained Admin rights in the system, they have the ownership of adding in additional staff from their team, along with their contractors and subcontractors. Along with the project setup, Utility companies are to identify the wage determinations for their specific projects to communicate to the LCPtracker team for wage determination setup in the LCPtracker system. To be compliant with DBA requirements, on a weekly basis, Utility companies must submit, approve, and accept payrolls for the work that is being performed.