

## Federal Labor Standards Coverage in Major HUD Programs

### A. HOUSING.

#### 1. FHA non-single family mortgage insurance under the National Housing Act: Secs. 207; 213; 220; 221(d)(3), (d)(4), and (h)(1); 231; 232; 233; 234(d); 241 (supplemental loans only); and 242.

- a. **Statute:** Sec. 212 of the National Housing Act (for all programs except Sec. 241); Sec. 241(b)(5) (for Sec. 241 supplemental loans).
- b. **Regulation:** §200.33; §241.645 for supplemental energy loans in non-insured projects.
- c. **Contract Form:** HUD-92554M (*formerly HUD-2554*). See also references to the HUD-92554M in the MAP Guide, Secs. 12.2.B, and 12.16.C (August 2011).
- d. **Notes:**
  - (1) **Threshold:** DB applicability threshold for Sec. 220 and Sec. 233 is dwellings designed for 12 or more families. Threshold for Sec. 235(h)(1) is dwelling designed for 8 or more families. No threshold for Sec. 221(d)(3) and (d)(4).

Section 241 supplemental loans: are subject to DB only if the original mortgage was covered by DB – see §200.33(a)(2). [HUD regulations (§241.645) also require DB on supplemental loans for energy related loans in non-insured projects; however, this program has not been implemented].

- (2) **Overtime:** CWHSSA overtime provisions do not apply where no assistance other than mortgage insurance is given; however, under Sec. 212 of the National Housing Act, Sec. 242 workers must receive time-and-a-half overtime after 8 hours per day or 40 hours per week.
- (3) **Volunteers:** The Secretary may waive DB for volunteers in certain cases under Secs. 221(d)(3) and (d)(4), 221(h)(1), 231, 232, 236 and 242.
- (4) **Section 242:** The HUD Office of Insured Healthcare Facilities is responsible for labor standards administration and enforcement relating to projects insured under Section 242.

#### 2. Section 202 Supportive Housing for the Elderly

- a. **Statute:** Sec. 202(j)(5) of the Housing Act of 1959
- b. **Regulation:** §891.155(d); see also §891.540(c) (loan disbursement procedures).

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- c. **Contract Form:** HUD-92554M
  - d. **Notes:**
    - (1) Threshold: DB applies to construction of housing with 12 or more assisted units.
    - (2) Volunteers: Exempt.
3. **Assisted Living Conversion Program (ALCP) for Sec. 202 Projects**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively through language in Notices of Funding Availability (NOFAs).
  - b. **Regulation:** See relevant NOFA.
  - c. **Notes:** NOFAs apply DB and CWHSSA overtime requirements where the total cost of physical conversion to an Assisted Living Facility (ALF) (and including any additional renovation work undertaken at the same time) is \$500,000 or more (including ALCP grant funds, owner funds, or third party funds ...) and in which the ALF portion of the project is 12 units or more.
4. **Sec. 811 Supportive Housing for Persons with Disabilities**
- a. **Statute:** Sec. 811(j)(6) of the Cranston-Gonzalez National Affordable Housing Act.
  - b. **Regulation:** §891.155(d); see also §891.540(c) (loan disbursement procedures).
  - c. **Contract Form:** HUD-92554M
  - d. **Notes:**
    - (1) Threshold: DB applies to construction of housing with 12 or more assisted units. A group home for persons with disabilities is not covered by DB (see §891.155(d)(1)).
    - (2) Volunteers: Exempt.
5. **Housing Finance Agency Risk-Sharing Program for insured affordable multifamily project loans (Sec. 542(c) of the HCD Act of 1992)**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively.
  - b. **Regulation:** §266.225; see also §§266.210(e) and 266.215(b).
  - c. **Notes:**
    - (1) Threshold: Under §266.225, DB applies if:
      - (i) advances are insured;
      - (ii) the project involves new construction or substantial rehabilitation; and,
      - (iii) the project will contain 12 or more units.
    - (2) Volunteers: Regulatory exemption for volunteers.
    - (3) Delegation: HUD may delegate to the HFA routine DB administration and enforcement functions.
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6. **Assisted Housing Drug Elimination Program**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively.
  - b. **Regulation:** §761.40(a)
  - c. **Notes:**
    - (1) **HUD wage rates:** The regulation also mentions HUD-determined prevailing wage rates for non-routine maintenance. This provision applies to the public housing component only, not to non-public assisted or insured housing.
    - (2) **Volunteers:** Exempt.
7. **Property Disposition: Up-Front Grants**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed in Grant Agreement.
  - b. **Regulation:** No Davis-Bacon requirement in regulation; see Article XIII of Sample Up-Front Grant Agreement.
8. **Property Disposition – Section 8 Project-based Assistance**
- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
  - b. **Regulation:** §886.313(c)(2)
  - c. **Notes:**
    - (1) **Threshold:** DB is applicable to projects with 9 or more Section 8-assisted units.
    - (2) **Volunteers:** Except.
9. **Repairs on HUD-Owned and HUD-MIP Property**
- a. **Statute:** The Davis-Bacon Act (applies to direct Federal contracts in excess of \$2000 for construction, alteration, and/or repair).
10. **Housing Programs Not Covered**
- a. Single family FHA mortgage insurance programs.
  - b. Sec. 223(f) mortgage insurance for refinancing (in general).
  - c. Sec. 8 contract renewals under Mark-to-Market program without new FHA mortgage insurance.

B. **PUBLIC HOUSING**

1. **Public Housing, including HOPE VI beginning in FY 2000**
- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
  - b. **Regulation:**
    - (1) Modernization -- §968.110(e) and (f)
    - (2) Mixed finance -- §941.610(a)(8)(vi)
    - (3) Preemption of higher State or local prevailing wage rates on development, maintenance and modernization (PHA projects) -  
- §965.101
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- c. **Contract Forms:** HUD-5370 (Construction contracts >\$100,000, see Clauses 46 and 47); HUD-5370-EZ (Construction contracts \$2,000 - \$100,000, see Clause 14); HUD-5370-C (Non-construction contracts, see Section II).
- d. **Notes:**
  - (1) Davis-Bacon - DB rates apply to public housing “development”.
  - (2) HUD Wage Rates - HUD-determined prevailing wages apply to public housing maintenance work (including “non-routine” maintenance, as defined in Modernization regulations in §968.105).
  - (3) Force Account - DB and HUD wage rates apply to PHA employees (“force account” workers) as well as to contractor employees.
  - (4) Threshold: No unit threshold for DB or HUD wage rate applicability to public housing. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
  - (5) Preemption: Prevailing rates determined under State law that are higher than applicable DB or HUD-determined rates are inapplicable and may not be enforced. But PHA may choose to pay higher rates or bargain with unions to pay higher rates. See §965.101.
  - (6) Volunteers: Exempt.

## 2. **Section 8 Housing**

- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
- b. **Regulation:** For tenant-based assistance that is project-based by a PHA: §983.11(c)(7); see also §983.104(b)(2)(v) (evidence of completion). See also Sec. 8 SRO regulations below, §882.804(b), applicable to McKinney Act SRO programs administered by CPD.
- c. **Contract Form:** HUD-52531-B (Part II of the Agreement to Enter Into Housing Assistance Payments Contract) -- see Sections 2.4 and 2.8.
- d. **Notes:**
  - (1) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
  - (2) Volunteers: Exempt.

## 3. **Public Housing Drug Elimination Program**

- a. **Statute:** No Davis-Bacon provisions under the Public and Assisted Housing Drug Elimination Act of 1990; however, Davis-Bacon or HUD-determined wage rates apply to public housing under Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
- b. **Regulation:** §761.40(a)

- c. **Notes:** DB applies to physical improvements *except* that HUD-determined wage rates apply to non-routine maintenance on public housing.

## C. COMMUNITY PLANNING AND DEVELOPMENT

### 1. CDBG/NSP/Sec. 108/EDI/BEDI

- a. **Statute:** Sec. 110 of Housing and Community Development Act of 1974.
- b. **Regulation:** §570.603; see also §570.200(c)(3) (public improvements not initially assisted with CDBG)
- c. **Contract Form:** Form HUD-4010, Federal Labor Standards Provisions
- d. **Notes:** DB applies only when construction work is financed in whole or in part with Title I assistance (i.e., CDBG/Sec. 108 loan guarantee/EDI/BEDI). Examples: Financing includes use of Title I assistance in permanent take-out loan, where Title I loan is known or contemplated when construction financing is arranged. Financing includes use of Title I assistance to pay principal or pay or subsidize interest on construction loan. Use of Title I assistance solely for non-construction expenses -- e.g., purchase of land, architect and engineering fees -- does not trigger DB.
  - (1) **Threshold:** DB is applicable to residential property containing 8 or more units. Mixed-use property containing less than 8 units is covered unless entire rehab is clearly limited to residential portion.
  - (2) **Volunteers:** Exempt.

### 2. HOME

- a. **Statute:** Sec. 286 of the HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez National Affordable Housing Act).
- b. **Regulation:** §92.354
- c. **Contract Form:** Form HUD-4010, Federal Labor Standards Provisions
- d. **Notes:** Unlike CDBG, DB is triggered regardless of whether HOME assistance finances construction or non-construction expenses (e.g., purchase of land).
  - (1) **Threshold:** DB is applicable to contracts for the construction of affordable housing with 12 or more HOME-assisted units. Applicability depends on how many HOME-assisted units are under the contract; not how many units are in the HOME project.
  - (2) **Sweat Equity:** DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.

- (3) Volunteers: Exempt.

3. **McKinney Act SRO Provisions**

- a. Section 8 assistance for SRO dwellings under Title IV, Subtitle E of the McKinney-Vento Homeless Assistance Act (formerly Stewart B. McKinney Homeless Assistance Act)
- (1) **Statute:** no statutory reference to labor standards – governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act.
  - (2) **Regulation:** §882.804(b)
  - (3) **Contract Form:** HUD-52538-B, Part II of Agreement to Enter Into Housing Assistance Payments Contract (Sec. 8 Moderate Rehab Program), see Clause 2.3.
  - (4) **Notes:**
    - (i) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
    - (ii) Volunteers: Exempt.
- b. Shelter Plus Care component for moderate rehabilitation for SROs under Title IV, Subtitle F, Part 5 of the McKinney-Vento Homeless Assistance Act.
- (1) **Statute:** No statutory reference to labor standards – governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act.
  - (2) **Regulation:** §882.804(b), which is made applicable by Shelter Plus Care regulations in §582.100(d)(5)
  - (3) **Contract Form:** Contact SNAPS; there is a contract form but it does not have a form number.
  - (4) **Notes:**
    - (i) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
    - (ii) Volunteers: Exempt.

4. **Loan Guarantee Recovery Fund (Church Arson)**

- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon imposed administratively.
- b. **Regulation:** §573.9(d)
- c. **Notes:**
  - (1) Threshold: DB is applicable to the rehabilitation of residential property only if the property contains 8 or more units.
  - (2) Volunteers: Exempt.

5. **CPD Programs Not Covered**

- a. Housing Opportunities for Persons with AIDS (HOPWA)

- b. McKinney Act programs other than SRO moderate rehab, i.e., Emergency Shelter Grants, Supportive Housing, Shelter Plus Care other than SRO
- c. Rural Housing and Economic Development Assistance
- d. Self-Help Homeownership Opportunity Program (SHOP)
- e. Social Service Block Grants distributed in connection with Empowerment Zones
- f. Economic Development Initiative/Special Purpose (EDISP) Grants funded in appropriations acts

#### D. NATIVE AMERICAN PROGRAMS

##### 1. Indian Housing Block Grants (IHBG) under NAHASDA

- a. **Statute:** Sec. 104(b) of NAHASDA, as amended.
- b. **Regulation:** §1000.16
- c. **Contract Forms:** HUD-5370 (Construction contracts >\$100,000, see Clauses 46 and 47); HUD-5370 (Construction contracts \$2,000 - \$100,000, see Clause 14); HUD-5370-C (Non-construction contracts, see Section II). Note: Clauses for inapplicability of higher State or tribal wage rates should be deleted; it does not apply to NAHASDA programs).
- d. **Notes:**
  - (1) Davis-Bacon - DB rates apply to affordable housing “development”.
  - (2) HUD Wage Rates - HUD-determined prevailing wages apply to affordable housing “operations”, which includes maintenance.
  - (3) Force Account - DB and HUD wage rates apply to TDHE employees (“force account” workers) as well as to contractor employees.
  - (4) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.
  - (5) Tribally-determined Prevailing Wage Rates: Exclusion from DB and HUD rates for contracts or agreements covered by laws or regulations adopted by an Indian tribe that require payment of not less than prevailing wages as determined by the Indian tribe.
  - (6) Threshold: No unit threshold for DB applicability to IHBG assisted housing. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
  - (7) Volunteers: Exempt.
  - (8) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.

2. **Housing Assistance for Native Hawaiians under Title VIII of NAHASDA**
- a. **Statute:** Sec. 805(b) of NAHASDA
  - b. **Regulations:** §1006.345
  - c. **Notes:**
    - (1) Davis-Bacon - DB rates apply to affordable housing “development”.
    - (2) HUD Wage Rates - HUD-determined prevailing wages apply to affordable housing “operations”, which includes maintenance.
    - (3) Force Account - DB and HUD wage rates apply to Department of Hawaiian Home Lands employees (“force account” workers) as well as to contractor employees.
    - (4) Tribally-determined Prevailing Wage Rates: Exclusion from DB and HUD rates for contracts or agreements covered by laws or regulations adopted by an Indian tribe that require payment of not less than prevailing wages as determined by the Indian tribe.
    - (5) Threshold: No unit threshold for DB applicability to Native Hawaiian housing assistance. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
    - (6) Volunteers: Exempt.
3. **ONAP Programs Not Covered**
- a. Indian CDBG (Davis-Bacon waived under statutory authority to waive; see 24 CFR 1003.603)
  - b. Sec. 184 Indian housing loan guarantees