

PART 968-PUBLIC HOUSING
MODERNIZATION

Subpart A-General

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COPIES OF THE ABOVE SECTIONS OF THE 1996 SECTION OF THE 24 CFR WERE INCLUDED HERE STARTING ON PAGE 376.

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APPENDIX 1-2 CIVIL RIGHTS REQUIREMENTS

1. For Public Housing, refer to 24 CFR Part 5 and '968.110(a).
2. For Indian Housing, refer to '950.115(a) for the Indian Civil Rights Act, '950.115(b) for the applicability of certain civil rights acts, '950.115(d) for disability requirements, and '950.115(e) for minority and women's business enterprise opportunity.

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APPENDIX 1-3 LEAD-BASED PAINT (LBP) POISONING PREVENTION

The HA shall comply with the LBP Poisoning Prevention Act (42 U.S.C. 4821-4826) and HUD implementing regulations (24 CFR Part 35). The HA was required to conduct LBP testing of all family developments built before 1978 by December 6, 1994, and then to abate where the level of lead in paint exceeds the standard provided in the LBP Poisoning Prevention Act or established by the Secretary. Further, the Department strongly recommends that the HA use the Guidelines for the Evaluation and Control of LBP Hazards in Housing, published in July 1995, to assist with the identification of its LBP needs. Refer to '968.110(k) or 24 CFR Part 950, Subpart H.

APPENDIX 1-4 DISPLACEMENT, RELOCATION AND ACQUISITION

1. Minimizing Displacement and Temporary Relocation.*

- a. Displacement. Consistent with the other goals and objectives of the CGP, the HA shall assure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of CGP-funded acquisition, rehabilitation, or demolition.
- b. Temporary Relocation. The HA shall assure that it has taken all reasonable steps to accomplish the modernization work with residents-in-place. The Department is very concerned about the length of time that it takes HAs to modernize units. This time may be shortened to the extent that relocation is minimized and HAs are able to complete rehabilitation work in a time period comparable to the private sector. Where temporary relocation is necessary due to the type or scope of the modernization (e.g., LBP abatement), the HA shall minimize the time between moving persons out of the units to be modernized and the start of the modernization work, as well as the time between the completion of the modernization work and moving persons back into the completed units. Such approach reduces the risk of vandalism to the units.

*Note: HAs are encouraged to explore ways in which residents may be employed in any relocation activities that become necessary, such as contracting with resident-owned businesses to move residents.

2. Assistance for Persons Who Must Move, But are Not Displaced (Temporary Relocation and Moves Within the Development). Persons who are not displaced, but must move temporarily (e.g., to permit rehabilitation) or move permanently within the same development/site, are entitled to reimbursement for all reasonable out-of-pocket expenses incurred. The HA shall provide temporary housing which is suitable, decent, safe and sanitary at the same cost on a nondiscriminatory basis for a person who is moved temporarily from the development/site and is offered the opportunity to return to the same development/site, although not necessarily the same building/unit.

- a. Provision of Notice. The HA shall provide appropriate advisory services, including reasonable advance written notice to affected persons of. (1) the date and approximate duration of the temporary relocation; (2) the suitable, decent, safe, and sanitary unit to be made available for the temporary, period; (3) the terms and conditions under which the person may lease and

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- occupy a suitable, decent, safe, and sanitary unit in the development following completion of the CGP-funded activity; and (4) whether the cost of the move will be paid for by direct payment or reimbursement under subparagraph b, including any eligible incidental costs under subparagraph c.
- b. Direct Payment or Reimbursement. The HA shall either: (1) undertake the move itself, using force account labor, a resident-owned business, or a moving company, and therefore be directly responsible for all actual reasonable moving and related expenses; or (2) reimburse persons for all reasonable out-of-pocket expenses incurred in connection with the temporary move. In the latter case, the HA shall not make fixed payments for moving expenses since such payments are not representative of actual reasonable costs.
 - c. Incidental Costs. Incidental costs shall include utility deposits if required at the temporary housing, and telephone installation and cable TV hook-up at the temporary housing and the newly rehabilitated development if the person previously had a telephone and cable TV. If the newly rehabilitated development now has tenant-purchased rather than HA-furnished utilities, which require utility deposits, the HA shall not pay for the new utility deposits since they are required to be paid by any person currently living in a development which is being converted to tenant-purchased utilities or by any new person moving into such development. The HA should work with the utility company to ensure that residents who are unable to pay the entire utility deposit up-front receive a payment plan from the utility company.
 - d. Cost of Temporary Housing. When it is necessary to temporarily house persons in units other than public housing, rents paid by the HA shall not exceed Section 8 Fair-Market Rents, except as may be approved by the FO. When a decent, safe, and sanitary public housing unit of suitable size and location becomes available, the person must agree to move into the unit or assistance shall terminate.
3. Assistance in Place. Where persons are not required to move, but are unable to use their kitchens for a short period of time or be in their units during the day due to modernization activities, the HA may use CGP funds for meal vouchers where the HA can document, and maintain such documentation on file, that the cost of the meal vouchers is less than the cost of temporary moves.
 4. Assistance for Displaced Persons. A displaced person, defined in paragraph 7 of this Appendix, shall be provided relocation assistance at the levels set forth in Chapters 1 through 6 of Handbook 1378,

Tenant Assistance, Relocation and Real Property Acquisition; also, Real Property Acquisition; also, see Section 9 of Chapter 8 of that Handbook which implements the Uniform Relocation Act (URA) and other relocation policies.

- a. Relocation Notices to Families or Individuals. The HA shall provide written notices (general information notice and notice of eligibility for relocation assistance), as set forth in paragraph 2-3 of Handbook 1378. Each notice shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the HA's files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice (e.g., illiterate, foreign language, or impaired vision) must be provided with appropriate translation/communication and counseling. Each notice shall indicate the name and telephone number (including the TTY number or a TTY Relay Service) of a person who may be contacted for answers to questions or other needed help.
- b. Relocation Advisory Services. The HA shall provide relocation assistance advisory services, as set forth in paragraphs 2-4, 2-5 and 2-6 of Handbook 1378, and properly coordinate relocation activities, as set forth in paragraph 2-5 of Handbook 1378. The HA shall not require any person to move unless it has provided at least one referral (where possible, three or more) to a comparable replacement dwelling (CRD), as set forth in paragraph 1-6 of Handbook 1378.
- c. Payments for Moving and Related Expenses.
 - (1) Person (Family or Individual). The payment options are set forth in paragraph 3-2 of Handbook 1378. In summary:
 - (a) The HA may, at its discretion, elect to perform the move itself, using force account labor or a moving company (possibly resident-owned), at no cost to the person being displaced. In such case, the HA also shall pay for the incidental moving costs, as described in paragraph 2c of this Appendix, and provide the person with an allowance of \$50.
 - (b) If the HA does not elect to perform the move itself, the person shall have the option to elect either a payment for actual reasonable moving and related expenses (see paragraph 3-2a of Handbook 1378) or the applicable fixed moving expense and dislocation allowance (see paragraph 3-2b of

Handbook 1378) indicated in a schedule, which is published

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periodically in the Federal Register by the Department of Transportation and available from the FO.

- (2) Business or Nonprofit Organization. A business or nonprofit organization may have payment options. Such entity is eligible for a payment for actual reasonable moving and related expenses (see paragraph 4-2 of Handbook 1378). If it chooses this option, it also may be eligible for payment for reestablishment expenses (see paragraph 4-3 of Handbook 1378). Paragraph 4-5 of Handbook 1378 describes those businesses/nonprofit organizations which may qualify to choose a fixed payment in lieu of the payments under paragraphs 4-2 and 4-3 of Handbook 1378.
- d. Replacement Housing Assistance. It is expected that most persons displaced from a dwelling will be provided the opportunity to relocate to another public housing unit that qualifies as a CRD. This will satisfy the basic replacement housing requirements of the URA and, ordinarily, no additional cash replacement housing assistance would be necessary. If the HA does not provide referrals to comparable subsidized housing, the person will be entitled to cash assistance sufficient to rent a CRD on the private market for up to a 42-month period. The person may use the cash payment to rent or buy a replacement dwelling. If the person rents a replacement dwelling, the payment shall not exceed the amount needed to rent the decent, safe and sanitary dwelling to which the person relocates. At its discretion, the HA may provide a rental assistance payment in monthly installments. If the person elects to buy a decent, safe and sanitary replacement dwelling, the HA shall provide the payment in a lump sum amount. The requirements governing replacement housing assistance are set forth in paragraph 3-4 of Handbook 1378.
5. Real Property Acquisition Requirements. The acquisition of real property with CGP funds is subject to the URA and the requirements set forth in Chapter 5 of Handbook 1378.
6. Appeals. A person who disagrees with the HA's determination concerning whether the person qualifies as a "displaced person," or the amount of the relocation assistance for the which the person is eligible, may file a written appeal of that determination with the HA. A low-income person who is dissatisfied with the RA's determination on his/her appeal may submit a written request for review of that determination to the

FO. The procedures for filing and reviewing appeals are set forth in paragraph 1-33 of Handbook 1378.

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7. Definition of Displaced Person. Each "displaced person" is eligible for relocation assistance as set forth in paragraph 4 of this Appendix. The term "displaced person" is generally described in paragraph 1-8 of Handbook 1378; '968.108 or '950.117 provides the following guidance.

a. The term "displaced person" includes, but may not be limited to:

- (1) The person who moves permanently from the development/site after the initiation of negotiations, if the move occurs before the person is provided written notice offering the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same development/site, under reasonable terms and conditions, upon completion of the activity. Reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the total tenant payment, as determined under '913.107; or
- (2) The person is required to relocate temporarily from the development/site, but does not return to the development/site, if either: (a) the person is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit and any increased housing cost; or (b) other conditions of the temporary relocation are not reasonable; or
- (3) The person is required to move to another unit in the same development/site, if either: (a) the person is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or (b) other conditions of the move are not reasonable; or
- (4) The person, including a person who moves before the initiation of negotiations for the CGP-funded activity that the HA or HUD determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the CGP-funded activity.

b. Notwithstanding the provisions of subparagraph a, a person does not qualify as a "displaced person" and is not entitled to relocation assistance at URA levels, if:

- (1) The person is excluded under paragraph 1-8c of Handbook 1378; or

- (2) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy

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agreement, violation of applicable Federal, State or local/tribal law, or other good cause, and the HA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or

- (3) The person moves into the property after the HA's submission of the Annual Statement and, before signing a lease and commencing occupancy, was provided written notice of the CGP-funded activity, its possible impact on the person (e.g., that the person may be displaced or temporarily relocated) and the fact that the person would not qualify as a "displaced person as a result of the CGP-funded activity; or
- (4) The relocation is determined to be a "general transfer" in accordance with applicable Public and Indian Housing Program policies. The HA shall not use CGP funds to pay for reasonable out-of-pocket expenses for general transfers. To minimize disputes regarding eligibility, HA records shall state the cause of general transfers.

c. The HA may ask HUD at any time to determine whether a person qualifies as a displaced person or would be covered by this paragraph.

8. Definition of Initiation of Negotiations. For purposes of determining the formula for computing the replacement housing assistance to be provided to a person who is displaced by rehabilitation or demolition, the term "initiation of negotiations" means 45 calendar days before either the issuance of the invitation for bids or the start of force account work for the CGP-funded activity.
9. Recordkeeping Requirements. The HA shall maintain records in sufficient detail to demonstrate compliance with applicable policies, as set forth in Chapter 6 of Handbook 1378.
10. Costs of Assistance. Costs of required relocation assistance under this Appendix are eligible CGP costs in the same manner and to the same extent as other CGP costs. Such costs also may be paid for with funds available from other sources.
11. Technical Assistance. The HA shall direct all questions on relocation to the FO Public or Indian Housing (PIH) staff for appropriate coordination with Community Planning and Development (CPD). PIH will refer questions regarding relocation under the URA to the Relocation/Realty Specialist in CPD and regarding

equal opportunity and fair housing to the Equal Opportunity Specialist in Fair Housing and Equal Opportunity.

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APPENDIX 1-5 ENVIRONMENTAL COMPLIANCE

1. General Compliance. Before approving CGP funds, HUD will comply with all applicable requirements of 24 CFR Part 50, implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), and related requirements of 24 CFR 50.4, pertaining to related environmental laws, Executive Orders and HUD standards. Refer to paragraph 7-4A of this Guidebook. ['968.110(c) or '950.120(a)]
2. Coastal Barriers. In accordance with the Coastal Barriers Resources Act (16 U.S.C. 3501), no financial assistance under the CGP shall be made available within the Coastal Barrier Resources System. ['968.110(m) or '950.120(h)]
3. Expediting Review. Each development included on the Annual Statement and the Five-Year Action Plan must have a current environmental review completed and on file. To expedite the review process, the FO is encouraged to use existing environmental reviews where developments have been funded in prior years and update them as necessary. The following guidance is provided to assist the FO in completing the environmental reviews in a timely fashion for areas where it has shown to be time-consuming:
 - a. Historic Preservation. Before taking any action with the State Historic Preservation Office (SHFO), the FO shall make a determination of applicability for each development:
 - (1) If the work being funded is limited to internal repairs or in-kind repairs and the building is not listed on the National Register of Historic Places, historic preservation under the 106 process is not generally required. In some cases, interior work may be applicable (e.g., antebellum staircases). The 106 process is required where external repairs or improvements are contemplated.
 - (2) Where exterior improvements are contemplated and the 106 process has been completed within the past five years and a determination was made previously that the building is not an historic structure and that there are no historic structures in the area, the FO shall simply notify the SHPO of the location of the development, the nature of the rehabilitation proposed, and that there has been no significant change in the area and, therefore, of HUD's finding that there is nothing historic and that HUD will proceed if there is no written objection within 10 working days.

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- (3) If a previous review revealed historic properties in the area, or if the development itself is historic, the FO shall determine if the proposed activities will have an effect on the historic property. Where the FO has determined that there is no effect, the FO shall notify the SHPO in writing of the determination. After the SHPO indicates no objection, the FO may proceed to grant approval.
 - (4) If the FO determines that there is an effect, and or an adverse effect, additional requirements and time may be necessary to determine compliance with 24 CFR Part 50. In such case, the FO shall proceed with further processing, including fund reservation, subject to the following restriction: the HA may not obligate funds for the activity or activities in question until the FO has complied with all requirements of 24 CFR Part 50. At that time, the FO shall notify the HA in writing that HUD has complied.
 - (5) If no previous 106 review has been conducted on the development and the activities proposed are subject to the 106 process, the FO shall proceed to follow the 106 process.
- b. Floodplain/Wetlands Management. Compliance with Executive Orders 11988 and 11990 and 24 CFR Part 55, which is applicable to new construction, substantial improvements, and landscaping and grading activities, requires the completion of the "eight-step process" outlined in 24 CFR Part 55. However, if a previous review has been conducted, the FO may reference the previous review and the consistency of the activity with the previous review. The FO shall amend this review as necessary (e.g., changes made in the last year to the floodplain or wetlands maps for this development area). If no previous review exists for floodplains, the eight-step process must be completed, unless a letter of map amendment or a letter of map revision excluding the site is obtained from the Federal Emergency Management Administration.

APPENDIX 1-6 ADMINISTRATIVE REQUIREMENTS

- 1. The HA shall comply with the Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, as set forth in 24 CFR Part 85, except as specified

in: '968.135 and '990.201 for PHAS; and '950.120(f) for IHAs.

2. The CGP is excluded from the requirements of Executive Order 12372 on Intergovernmental Review of Federal Programs and HUD implementing regulations (24 CFR Part 52) because the program involves financial transfers for which HUD has no funding discretion or direct authority to approve specific sites of projects.

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APPENDIX 1-7 INSURANCE

1. Flood Insurance. The HA shall comply with all applicable requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) and HUD implementing regulations (24 CFR Part 50). The HA shall certify that the development to be modernized is not located in an identified special flood hazard area, or if the development is located in such an area, the HA shall maintain on file a copy of the flood insurance policy obtained by the HA, or the HA shall certify that the special flood hazard area has been identified for less than one year and the community in which the development is located is not participating in the National Flood Insurance Program. A development located in a special flood hazard area of a community that has been formally notified of the area for more than one year, but is not participating in the National Flood Insurance Program, is not eligible for CGP funding until the community participates in the program. ['968.110(d) or '950.120(b)]
 - a. If a development is located in an identified special flood hazard area and the community is participating in the National Flood Insurance Program, the HA shall obtain flood insurance coverage for each affected building in an amount equal to its replacement cost after the proposed modernization (less estimated land cost) or to the maximum limit of coverage made available with respect to that particular type of property under the National Flood Insurance Act of 1968, whichever is less. For each affected building in Lanham or Public Works Administration developments, the HA shall obtain flood insurance coverage in an amount equal to its full insurable value after the proposed modernization (less estimated land cost) or to the maximum limit of coverage made available with respect to that particular type of property under the National Flood Insurance Act of 1968, whichever is less. The HA shall continue to carry the required flood insurance after completion of the modernization. Flood insurance premiums are not eligible CGP costs because they are ongoing operating costs, except under Account 1406, Operations.
 - b. If the proposed modernization program involves new construction or substantial improvements of an existing structure, as defined in 44 CFR Part 60, the HA shall comply

with the requirements on elevation and flood proofing.

2. Lead-Based Paint (LBP) Liability Insurance. Refer to '965.215 and '950.195, regarding the minimum insurance requirements that must be in place before beginning any work for the testing, abatement, clean-up and disposal of LBP. LBP insurance costs are eligible CGP costs.

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3. Other Insurance.

a. Review of Existing Coverages.

- (1) The HA is required to have in effect: (1) workers' compensation insurance; (2) property insurance; (3) commercial general liability insurance; (4) automobile liability insurance for both HA-owned and non-owned automobiles; and (5) a fidelity bond. In many instances, the additional exposures created by the modernization activities can be insured by either an endorsement to the existing policy or a letter from the insurance broker/company, acknowledging that the existing policy as written is broad enough to include the additional exposure.
- (2) Following HUD approval of the Annual Statement, the HA shall notify the insurance broker/company in writing of the modernization activities and request written advice concerning what steps, if any, need to be taken to ensure proper coverage. The HA's letter shall describe the modernization activities in sufficient detail to allow the insurance/broker company to decide what coverage would be adequate. This description shall include the type and cost of work to be performed, the nature of any structural alterations, and the involvement of HA employees in the work.

b. Property Insurance. In addition to the general requirements set forth in subparagraph a1, the following special requirements apply to property insurance:

- (1) Where the modernization work is to be performed by contract and is insured under the HA's existing policy, the HA shall include notice to prospective bidders of this coverage in the bid documents so that this cost-savings may be reflected in the bid amounts.
- (2) If the existing policy cannot be endorsed to include the modernization activities because of substantial structural alterations, the HA shall obtain a builder's risk policy on a "100% Completed Value" basis either directly or through the contractor. This policy shall remain in effect through substantial completion of the

modernization work, at which time the coverage shall be transferred to the HA's existing policy.

- c. Commercial General Liability. Under no circumstances shall the HA assume the liability of the contractor under a "Hold Harmless" or contractual liability agreement.

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- d. Contractor Insurance.

(1) Required Insurance. Before beginning work, the contractor and each subcontractor shall furnish the HA with certificates of insurance showing that the following insurance is in force and will insure all operations under the contract. All insurance shall be carried with companies which are financially responsible and rated B+VI or higher by the A.M. Best Co. or equivalent and authorized to do business in the State in which the development is located. Contractor insurance shall include:

- (a) Workers' Compensation, in accordance with State or Territorial Workers' Compensation laws, for all employees engaged under the modernization contract.
- (b) Commercial General Liability which is comprehensive general liability insurance with bodily injury and property damage. The minimum amount of required coverage is \$500,000 per occurrence.
- (c) Automobile Liability on owned, non-owned and hired motor vehicles used on or in connection with the site(s) for a combined single limit for bodily injury and property damage of not less than \$500,000 per occurrence.
- (d) Builder's Risk.
- (i) This insurance is needed only for construction of a new building or a major addition to an existing building. If the contract involves installing equipment or materials in an existing building, the contractor should have in effect an "installation floater." Before beginning work, the contractor shall furnish the HA with a certificate of insurance evidencing that a builder's risk (property) is in force. The builder's risk insurance shall be for the benefit of the contractor and the HA as their interests may appear and each shall be named, in the policy or policies as an insured.

- (ii) The contractor is not required to carry builder's risk insurance on: excavations, piers, footings or foundations until such time as work on the superstructure is started; or work which does not

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involve structural alterations or additions and where the HA's existing policy will provide coverage.

- (iii) Policies shall furnish coverage at all times for the full replacement cost of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the HA. The contractor may terminate this insurance on buildings taken over for occupancy by the HA as of the date the buildings are taken over.

- (2) Expiration or Cancellation. If any insurance is due to expire during the construction period, the contractor (including any subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the HA and its contracting officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 calendar days prior written notice has been given to the HA or its contracting officer.

- c. Noncompliance. The HA shall monitor the insurance policies obtained by all contractors and subcontractors to ensure that the coverage required by the modernization work is kept in force until the contractor's work is accepted by the HA. The HA shall notify the contractor to stop work if the required insurance coverage is not in force at the time the work begins or if the coverage expires before the work is accepted. The HA also shall notify the contractor that any such work stoppage is an infraction of the contract and that the contractor is liable for any losses or delays.

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APPENDIX 1-8 PREVAILING WAGE RATES

- 1. Legislative Provisions. Section 12(a) of the Act contains prevailing wage requirements and Section 12(b) contains volunteer

labor provisions. These requirements and provisions may not be waived. ['968.110(e) and (f) or '950.120(c) and (d)]

- a. Cross-References. Refer to HUD Handbook 1344.1 REV-1, CHG-1, Federal Labor Standards Compliance in HUD Programs; Labor Relations Desk Guide LR-II, Labor Standards Administration and Enforcement Guidelines for HUD Program Participants; Labor Relations Letters LR-93-019, LR-95-01, LR-96-01. In addition, Labor Relations Letters, Desk Guides and other helpful tools are available on the World Wide Web HUD Home Page at <http://www.hud.gov/>.
- b. Application of Prevailing Wage Rates. Construction work under the CGP is subject to either Department of Labor (DOL)-determined (Davis-Bacon and Related Acts) prevailing wage rates or HUD-determined prevailing wage rates, depending on the nature of work that is performed. Therefore, the nature of the work must be determined before a further determination can be made as to whether the contract is covered by a DOL- or HUD-determined prevailing wage requirement and a wage schedule can be issued.

Note: For ease in reference, this Appendix will frequently use the terms "CGP projects" or "CGP work". Unless otherwise specified, these terms shall mean all CGP-eligible activities, all Comprehensive Improvement Assistance Program (CIAP) activities, and any work paid for with operating funds which is not routine maintenance.

- c. HA Request. At least 45 calendar days in advance of bid solicitations or, where the HA intends to use force account labor, 30 calendar days before commencement of CGP work, the HA shall request in writing a wage rate determination from the appropriate HUD Labor Relations Staff. The request shall include a description of work which is sufficiently detailed to allow for a correct determination by HUD as to the nature and scope of the work to be performed. At a minimum, the request shall include:

- (1) the number of buildings and the number of stories in each building;
- (2) the number of units involved;

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- (3) the total estimated cost of the work;
- (4) the specific work that is to be performed, including whether repair, replacement or new installation; what building or unit equipment, fixtures, finishes, or materials will be involved; what activities will involve which building(s) or unit(s); and

- (5) the construction trade classifications for which wage rates are needed.

2. Determination of Nature and Scope of Work. After any necessary consultation, with Office of Public Housing (OPH)/Office of Native American Programs (ONAP) Staff, the Labor Relations Staff shall evaluate the proposed work and determine whether such work is nonroutine maintenance (subject to HUD-determined wage rates) or a betterment or improvement or reconstruction or remodeling (subject to Davis-Bacon rates determined by the DOL). In order to perform the evaluations necessary to reach this determination, i.e., the extent, scope and context of the proposed work, it may be necessary to review the CGP program budget(s) and/or contract specifications.

a. Characterization of Work. As defined in paragraph 1-6, nonroutine maintenance includes work items that ordinarily would be performed on a regular basis and that have become substantial because they have been put off. Nonroutine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Although nonroutine maintenance is a form of construction work, it does not include work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or the initial installation of equipment or fixtures, or remodeling that alters the nature or type of housing units. Additionally, the abatement of asbestos or lead-based paint or suspected lead-based paint, and repainting or encapsulation does not constitute nonroutine maintenance.

b. Substantiality. Often HUD decisions regarding the nature of work must distinguish between nonroutine maintenance and other, seemingly similar work that, because of substantiality, constitutes "reconstruction, remodeling or repair of existing buildings," terms which are used in the Act specifically to characterize work that is subject to Davis-Bacon wage rates. The Labor Relations Staff shall carefully consider the proposed work against criteria involving not only "normal wear and tear" and "replacement with substantially the same kind," but also the extent or magnitude of the work in terms of whether the work

amounts to remodeling or reconstruction. The tests that are applied measure the extent of the project (e.g., what portion of the unit(s), building(s), or equipment), the nature and scope of construction work that is involved, and whether the finished work represents a significant change, betterment, improvement, or addition.

c. Replacement with Items of Substantially the Same Kind.

Replacement of materials or equipment that is outdated or otherwise unsatisfactory may include the replacement of nearly any component of a unit or building. Such items may include windows, doors, cabinets, carpeting, floor or wall tile, shower doors, appliances, electrical or other fixtures, water heaters, air conditioners, or interior or exterior finishes. For example:

- (1) Replacing a single kitchen cabinet or all of the cabinet doors or, in isolation, even replacing all of the cabinets in an entire project, can be considered nonroutine maintenance. However, where such replacement is performed as a part of, or in conjunction with, overall remodeling of the kitchen(s) or unit(s), taken in context, it involves substantial construction work and is viewed as reconstruction.
- (2) Patching or repairing a roof, or patching or repairing drywall. This type of work, because of its character, is viewed as nonroutine maintenance, even where there are several roofs or walls to be repaired. However, replacing a roof in its entirety or nearly so, or replacing or encapsulating entire interior wall systems, because of the scope of the work, are appropriately characterized as reconstruction.
- (3) Other issues that are considered include whether the replacement (or other work) involves a change in the type or nature of what is being replaced (e.g., a change from standard electrical receptacles to ground fault interrupter receptacles) or whether structural or other modifications are necessary to accommodate the replacement (e.g., wiring modifications, gas or electric conversions, widening or moving doors or passages, or walls or other partitions). These characteristics are indicative of reconstruction or remodeling, not nonroutine maintenance.

Note: The very act of replacing outdated materials or equipment should always result in an improved unit(s) or building(s), if only because the replacement materials or equipment will be newer and in better condition. This improved condition should not be

confused with "improvement" or "betterment" that is associated with "reconstruction and remodeling."

- d. Betterments and Additions. Betterments and additions refer to replacements or alterations which materially enhance the character or type of the premises. Examples include the conversion of units to accommodate physically disabled residents or combining smaller units to create larger units

with more bedrooms. The nature of these activities is such that, in most cases, significant construction will be involved and the work will result in a substantial improvement. Consequently, the work is viewed as reconstruction or remodeling.

3. Davis-Bacon Wage Rate Determination Decisions. Where it has been determined that the proposed work constitutes a major repair, improvement or reconstruction, or is construction work that otherwise does not meet the definition of nonroutine maintenance, the Labor Relations Staff shall issue the current, applicable Davis-Bacon wage rate determination decision.

4. Wage Determinations for Nonroutine Maintenance. Where it has been determined that the proposed work is nonroutine maintenance, the Labor Relations Staff shall issue a Nonroutine Maintenance wage rate determination to the HA either on an annual basis or on a project (case-by-case) basis. Nonroutine Maintenance wage determinations for CGP or other nonroutine maintenance should not be confused with the HUD-determined maintenance wage rates (Form HUD-52158) issued annually to the HA.

a. Annual Nonroutine Maintenance Wage Rate Determinations. The HA that anticipates a significant amount of nonroutine maintenance work may request from HUD an annual Nonroutine Maintenance wage rate determination. To request an annual determination, the HA shall forward to HUD a list of the trade or construction work classifications that will be needed, accompanied by a recommended schedule of wage rates and appropriate supporting documentation.

(1) Timing of Request. Requests for annual Nonroutine Maintenance wage rate determinations shall be submitted concurrently with the HA's recommendation for its annual Routine Maintenance wage determination. The Labor Relations Staff shall review the submission and, if acceptable, issue an annual Nonroutine Maintenance wage rate determination with the HA's annual Routine Maintenance wage rate determination.

(2) Advance Consultation. Because of the range of data sources and considerations that are involved in wage rate determinations for nonroutine maintenance (see paragraph

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5), the HA is encouraged to consult with the Labor Relations Staff before submitting this request.

(3) Application to Specific Contracts or Work Orders. The HA that has an annual Nonroutine Maintenance wage rate determination is not permitted to apply or otherwise use such determinations without the prior approval of HUD. The HA shall request a wage rate determination

from the Labor Relations Staff for each contract or work order. Where the work is found to be nonroutine maintenance, HUD will advise the HA in writing to use the annual Nonroutine Maintenance wage rate determination.

- b. Project Nonroutine Maintenance Wage Rate Determinations. Where the HA has not requested or received an annual Nonroutine Maintenance wage rate determination, HUD will determine prevailing nonroutine maintenance wage rates on a case-by-case basis and will issue a project Nonroutine Maintenance wage rate determination for the proposed work.
5. HUD-Determination of Prevailing Nonroutine Maintenance Wage Rates. The Labor Relations Staff may draw upon existing wage rate schedules, i.e., the current HA maintenance wage rate determination (HUD-51258), the Davis-Bacon residential wage determination, and/or survey data or other pertinent information, in order to determine the appropriate wage rates for nonroutine maintenance work. Since nonroutine maintenance is construction work, the HUD-52158 maintenance classifications and wage rates are not applicable by virtue of definition. However, in certain cases, the HUD-52158 classifications and/or wage rates may be used. The following paragraphs describe how certain HUD-52158 classifications and/or wage rates may be used, and the steps that should be taken where such use is not possible. The Labor Relations Staff may use any one of the following methods or a combination of methods, provided that the wage rates, including fringe benefits, bear a reasonable relationship to each other with respect to the skills and requirements of the various classifications which are needed for the work in question.
- a. Wage Rates Based on HA Maintenance Wage Rate Determinations.
 - (1) Construction Trade Classifications. Where the HA's current Maintenance wage rate determination (HUD-52158) contains the construction trade classifications (i.e., Maintenance Carpenter, Maintenance Painter, Maintenance Plumber, etc.) which generally correspond to the trade classifications required for the proposed work, the applicable trade classifications and corresponding hourly rates, plus the

monetized value for any prevailing fringe benefits, may be issued by HUD for the nonroutine maintenance work. Where the HA's current HUD-52158 does not contain the specific construction trade classification(s) required for the proposed work, the Labor Relations Staff may conform the work to another trade classification on the HUD-52158, provided that the classifications involve comparable work and/or levels of skill. For example, if the CGP work requires a Drywall Hanger, and the

HUD-52158 does not have a Drywall Hanger, but does have a Carpenter classification with an hourly wage rate of \$10 (basic) plus \$4 (fringe benefits), because the work and skills are comparable, the CGP Drywall Hanger can be conformed to the Carpenter's wage rate. The Nonroutine Maintenance wage rate determination will reflect a Drywall Hanger work classification and a wage rate of \$10, plus \$4 fringe benefits.

(2) Other HA Maintenance Classifications. Where the HA's current HUD-52158 does not contain the specific trade classification(s) required for the CGP work, and where conformance to another trade classification is not possible, the Labor Relations Staff may consider the wage rates established for other maintenance positions (e.g., Maintenance Mechanic). Such consideration is possible only where the maintenance position involves significant construction skills and responsibilities. The Labor Relations Staff shall compare the position description for the maintenance position to the construction trade classification required for the proposed nonroutine maintenance work. Where it can be readily demonstrated that the skills and duties of the maintenance position involve a significant portion of construction activities which are comparable to the needed trade classification, the Labor Relations Staff may use the maintenance position wage rate (including any fringe benefits) for the CGP construction trade classification. Using the above Drywall Hanger example, the Nonroutine Maintenance wage rate determination will, likewise, reflect the Drywall Hanger work classification and whatever wage rates that correspond to the comparable maintenance position.

b. Data or Survey-Based Classifications. Where the HA's current HUD-52158 does not contain the specific construction trade classifications required for the CGP work, and where conformance or comparability to a maintenance classification is not possible, the Labor Relations Staff will request wage payment data and recommended rates from the HA. In developing a recommendation for the CGP wage rates, the HA may use any relevant data or

information, including data collected or used during the annual maintenance wage process. If additional data collection is necessary, the HA may conduct a limited survey of construction contractors or other employers who perform similar work in the locality. Where a limited survey is used, the wage rate for each classification must be based on wage payment data collected from at least three employers. For example, if the CGP work will require a Plumber and a Electrician, the HA shall collect data from at least three

employers who perform plumbing work and data from at least three employers who perform electrical work. If an employer performs both plumbing and electrical work, that employer can be a data source for both classifications.

- c. Davis-Bacon Residential Wage Decisions. In evaluating the available data, the HA or HUD may take into consideration or use the current DOL Davis-Bacon residential wage determination decisions. While nonroutine maintenance clearly is not covered by Davis-Bacon wage requirements as a matter of statute, in some cases, the wage rates contained in the Davis-Bacon wage decision may reasonably reflect the rates which are prevailing for nonroutine maintenance work. In using Davis-Bacon wage rates, generally only residential classifications and wage rates would be appropriate for nonroutine maintenance in residential units, regardless of the number of stories in the buildings where the work will be performed. However, if the nonroutine maintenance work will be performed in other than residential space (i.e, HA offices or maintenance buildings), the residential Davis-Bacon wage rates shall not be used for that work.
 - d. Issuance of the Nonroutine Maintenance Wage Determination. The Labor Relations Staff shall review the data and/or recommendations provided by the HA and issue the Nonroutine Maintenance wage rate determination reflecting the required construction trade work classifications and prevailing wage rates. HUD Nonroutine Maintenance wage determination decisions shall be issued on Form HUD-52160 and shall bear the signature of the Director of Labor Relations.
6. Use and Effectiveness of Prevailing Wage Determinations.
- a. Davis-Bacon wage rate determinations may be modified or superseded, and, in the case of project decisions, may expire. Such determinations are effective as described in the DOL Regulations at 29 CFR 1.6 and Handbook 1344.1 REV-1, CHG-1.
 - b. Annual Nonroutine Maintenance wage rate determinations shall be

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after such effective period the determination will expire. Such determinations may not be used for specific contracts or work orders without prior HUD approval (see paragraphs 1 and 4).

- C. Project Nonroutine Maintenance wage rate determinations shall be project-specific; i.e., applicable only to the nonroutine maintenance work for which it was requested. Unless otherwise specified, the wage determination shall be effective for 180 days after the date it is issued.

- d. A wage determination shall be "locked-in" and shall remain in effect for the duration of the project on the date that bids are opened (for contracts entered into pursuant to competitive bidding), provided that the contract is awarded within 90 days after bid opening or on the date construction starts, whichever occurs first.
7. Additional Classifications and Wage Rates. The HA may request an additional classification and wage rate for any class of laborer or mechanic that is not listed on the HUD Annual or Project Nonroutine Maintenance wage determination and that is to be employed on nonroutine maintenance work. The request shall identify the needed classification and a recommended wage rate (including fringe benefits, if appropriate) and must be accompanied by supporting documentation. HUD will review the request and documentation and will issue appropriate additional classification(s) and wage rate(s) as an addendum to the Nonroutine Maintenance wage determination. Unless otherwise specified, the additional classification(s) and wage rate(s) shall be effective, retroactively, to the date of the original wage determination and shall expire with the original wage determination, accordingly.
8. Force Account. HA employees engaged in the performance of modernization-funded (or modernization-eligible) construction work are entitled to receive not less than the HUD-determined or Davis-Bacon wage rate, as applicable, for the type of work they actually perform.
9. Contracts for Construction. The HA shall ensure that the specifications for each contract for construction contains a copy of the wage rate determination (HUD-determined or Davis-Bacon) as issued to the HA by HUD. Such specifications must also contain the appropriate Federal labor standards provisions set forth in Form HUD-5370. Unless otherwise approved in advance by the Labor Relations Staff, each contract for construction shall contain only one wage rate determination.
10. Enforcement. Prevailing wage rate requirements (Davis-Bacon wage rates and HUD-determined wage rates) applicable to CGP projects shall

- be enforced in accordance with appropriate DOL and HUD regulations, HUD Handbook 1344.1 REV-1, CHG-1, Federal Labor Standards Compliance in HUD Programs, and Labor Relations Desk Guide LR-II, Labor Standards Administration and Enforcement Guidelines for HUD Program Participants.
11. Special Employment Classifications and Wage Rates. The HA may establish wage rates for approved and bona fide job training programs, including Step-Up programs, to significantly enhance

efforts to provide residents with long-term employment opportunities. Additionally, the administrative flexibility available in these programs may prove valuable to the HA and its contractors in meeting area employment and contracting obligations under Section 3 of the Housing and Urban Development Act of 1968, as amended (see HUD implementing regulations at 24 CFR Part 135), and significantly enhance the Department's overall economic empowerment objectives for public housing residents. Also refer to paragraph 2-9 on funding and eligible costs relating to the development and implementation of job training programs.

12. Step-Up Apprenticeship Partnerships. The HA is encouraged to consider Step-Up apprenticeship as a means of promoting both resident self-sufficiency and Section 3 job training and employment and contracting objectives. Step-Up is based upon local needs, resources and partnerships to provide access for residents and other low-income persons to apprenticeship and career opportunities in a variety of occupations and job sites, including maintenance, nonroutine maintenance and construction work subject to Federal prevailing wage rates. Local Step-Up program design is tailored specifically to the locality and is highly flexible. HAs interested in developing a Step-Up program should contact the HUD Headquarters Labor Relations Staff at (202)708-0370.
 - a. Apprentices and Trainees. Apprentices and trainees may be employed by the HA or its contractors in positions that are subject to Federal prevailing wage rates (i.e., maintenance, nonroutine maintenance, development) and may be compensated at less than the prevailing wage rate for their craft or work classification, provided that they are registered in a job training program which has received the prior approval of the Director of Labor Relations having jurisdiction for the HA.
 - (1) Pre-Approved Programs. Some apprentice or trainee programs may have already been registered or received certification by the DOL, Bureau of Apprenticeship and Training (BAT), or by a State apprenticeship agency. In such cases, the HA need only provide a copy of the program to HUD with evidence of registration or certification. Such programs will be

approved by HUD for maintenance wage purposes with no further review required. All apprenticeship and trainee programs for construction work subject to Davis-Bacon wage rates shall be approved in advance by the BAT or State agency.

- (2) HUD-Approved Programs. The HA wishing to establish maintenance or nonroutine maintenance apprentice or

trainee classifications and wage rates shall submit a description of the proposed program to the Labor Relations Staff for review and approval of wage rates. The description shall include:

- (a) Target positions and job titles;
- (b) The training curriculum, including on-the-job training and any classroom instruction to be provided, including the number of hours dedicated to each;
- (c) The proposed wage rates over the course of the training period;
- (d) The organizations or institutions that will provide the training;
- (e) The supervision to be provided and the ratio of journeyworkers to apprentices/trainees during on-the-job training;
- (f) Where HA workers are represented under a collective bargaining agreement or memorandum of understanding, evidence of consultation with authorized employee representatives;
- (g) A specific plan for final job placement of participants, either for positions within the HA or with outside agencies or firms or resident management corporations (RMCs); and
- (h) A statement as to how HA residents will participate in the training program.

Note: HUD shall evaluate the program against the objectives and standards of the "National Apprenticeship and Training Standards for the Building Maintenance Repairer," which is sponsored by the National Association of Housing and Redevelopment Officials (NAHRO) and certified by the U.S. Bureau of Apprenticeship and Training. Programs that are

found to be substantially similar to these national standards may be approved for routine and/or nonroutine maintenance activities.

- (3) Approval of Program and Apprentice/Trainee Classifications, Wage Rates, and Ratios. Where a maintenance or nonroutine maintenance apprenticeship or trainee program is found acceptable for HUD-determined wage purposes, the Director, Labor Relations Staff,

shall issue a written approval of the program to the HA. The apprentice/trainee classifications, wage rates and ratios of apprentices/trainees to journeyworkers shall be specified within the approved program standards.

13. Volunteers and Other Donated Labor.

- a. Volunteers. Section 955 of the National Affordable Housing Act of 1990 created Section 12(b) of the Act, which exempts bona fide volunteers from the wage provisions at Section 12(a). This exemption applies to volunteers who would otherwise be covered by the DOL (Davis-Bacon) wage rates, or technical, maintenance or nonroutine maintenance wage rates applicable to laborers and mechanics, architects, technical engineers, draftsmen, and technicians (planners, surveyors, etc.) and who may perform services for a HA or RMC or other contractor without compensation, provided that such individuals are not otherwise employed in the development or operation of the project. Such individuals shall be considered volunteers only when their services are offered freely and without pressure or coercion, directly or implied, from an employer. Volunteers may receive paid expenses, reasonable benefits, or a nominal fee to perform the services for which they volunteered, but in no case shall such benefits be construed in any way as paid compensation. Any such payments shall be approved in advance by HUD. The HA is encouraged to consult with the Labor Relations Staff before using volunteers on projects covered by Federal prevailing wage requirements. Refer to 24 CFR Part 70 for further guidance.
- b. Waiver to Permit Donated Labor by HA Residents. HA residents who are employed by an RMC in the operation of a project or development may donate a portion of their labor to the RMC, provided that a written waiver is obtained in advance from HUD (see 24 CFR 70.5). The HA shall submit a waiver request in writing to the Labor Relations Staff and shall be specific as to the name of each participating resident and the number of hours each will donate. The donation of any labor is subject to the terms and conditions of any applicable collective bargaining agreement.

- c. Recordkeeping. The HA and the RMC shall maintain careful records of all volunteers and donated labor for administrative and monitoring purposes. Such records should include the name of each volunteer or donator, the type of work or services performed, the dates and number of hours of volunteer or donated work or services, and an accounting of any expenses, benefits or fees provided. These records should be preserved by the HA or RMC for a period of at least three years following completion of the

volunteer/donated work.

14. Preemption of State Prevailing Wage Requirements. Prevailing wage rates determined under State or tribal law are inapplicable under the circumstances set forth in '965.101 or '950.172(b).

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APPENDIX 1-9 AUDITS

Under the Single Audit Act of 1984 (31 U.S.C. 7501-7507), the HA which receives CGP assistance shall comply with the audit requirements of 24 CFR Part 44 and any other expanded audit requirements as HUD may require. The Secretary of HUD, the Inspector General of the Department of HUD, and the Controller General of the United States shall have access to all books, documents, papers, or other records that are pertinent to the activities carried out under this Handbook in order to make audit examinations, excerpts, and transcripts. Due to the flexible nature of the CGP, HAs, residents and community members are advised that a comprehensive, well-conducted audit may serve as a primary tool in assuring that all modernization funds are used effectively. [Sec. 14(e)(4)(C)]; ['968.145(b) or '950.622(b)]

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