

HUD Davis-Bacon Related Acts

As discussed in Chapter 2 of this Handbook, the labor standards provisions contained in the HUD Davis-Bacon Related Acts contain language effecting whether and to what extent prevailing wage requirements are applicable. The language of these Acts differs meaning that HUD Davis-Bacon and Labor Standards (DBLS) staff must be familiar with the statutory provision, HUD interpretations of the language and HUD policy concerning applicability developed from those interpretations. The following are excerpts from HUD Related Act labor standards provisions for major programs. A comprehensive listing of covered programs under these Acts, *Davis-Bacon Coverage of Major HUD Programs*, is found in Appendix II-2 to this Handbook. Appendix II-2 provides a list of programs under each major program office, the statutory and regulatory references, contract forms, and notes concerning exceptions and/or exclusions to coverage. More detailed explanations of factors of applicability for CDBG, HOME, and Public and Indian/Hawaiian housing are found in Appendix II-5.

A. National Housing Act, (FHA Multifamily Housing Insurance)

Statutory Provision: Section 212:

(a) The Secretary shall not insure under section 207 or section 210 of this title, or under section 608 of title VI, pursuant to any application for insurance filed subsequent to the effective date of this section, or under section 213 of this title, or under title VII pursuant to any application filed subsequent to sixty days after the date of the enactment of the Housing Act of 1950, or under section 803 or 810 of title VIII, or under section 908 of title IX, a mortgage or investment which covers property on which there is or is to be located a dwelling or dwellings, or a housing project, the construction of which was or is to be commenced subsequent to such date, unless the principal contractor files a certificate or certificates (at such times, in course of construction or otherwise, as the Secretary may prescribe) certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or the housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), prior to the beginning of construction and after the date of the filing of the application for insurance. The provisions of this section shall also apply to the insurance of any loan or mortgage under section 220 or section 233 which covers property on which there is located a dwelling or dwellings designed principally for residential use for twelve or more families. The provisions of this section shall apply to the insurance under section 221 of any mortgage described in subsection (d)(3) or (d)(4) and (deeming the term “construction” as used in the first sentence of this section to mean rehabilitation) of any mortgage described in subsection (h)(1) or section 235(j)(1) which covers property on which there is located a dwelling or dwellings designed principally for residential use for more than eight families; except that compliance with such provisions may be waived by the Secretary—

- (1) with respect to mortgages described in such subsection (d)(3) or (d)(4) in cases or classes or cases where laborers or mechanics (not otherwise employed at anytime in the construction of the project) voluntarily donate their services without compensation for the purpose of lowering their housing costs in a cooperative undertaking the construction, and
- (2) with respect to mortgages described in such subsection (h)(1) or section 235(j)(1), in cases or classes of cases where prospective owners of such dwellings voluntarily donate their services without compensation, or other persons (not otherwise employed at any time in the rehabilitation of the property) voluntarily donate their services without compensation, and the Secretary determines that any amounts saved thereby are fully credited to the nonprofit organization undertaking the rehabilitation.

The provisions of this section shall also apply to the insurance of any mortgage under section 231, 232, or 236 except that compliance with such provisions may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time of the project, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the nonprofit corporation, association or other organization undertaking the construction. The provisions of this section shall also apply to the insurance of any mortgage under section 234(d). The provisions of this section shall also apply to the insurance of any mortgage under section 242, except that compliance with such provisions may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the nonprofit corporation, association, or other organization undertaking the construction; and each laborer or mechanic employed on any facility covered by a mortgage insured under section 242 shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be. The provisions of this section all also apply to the insurance of any mortgage under title XI; and each laborer or mechanic employed on any facility covered by a mortgage insured under such title shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be.

(b) The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(c) There is hereby authorized to be appropriated for the remainder of the fiscal year ending June 30, 1939, and for each fiscal year thereafter, a sum sufficient to meet all necessary expenses of the Department of Labor in making the determines provided for in subsection (a).

Note: There are unit thresholds, overtime requirements (separate from what may be required under FLSA or CWHSSA), and volunteer exemptions contained within this language.

B. Housing Act of 1959, (Section 202 Supportive Housing for the Elderly)

Statutory Provision: Section 202(j)(5):

(A) IN GENERAL.—The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than the rates prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act).

(B) EXEMPTION.—Subparagraph (A) shall not apply to any individual who—

- (i) performs services for which the individual volunteered;
- (ii)
 - (I) does not receive compensation for such services; or
 - (II) is paid expenses, reasonable benefits, or a nominal fee for such services; and
- (iii) is not otherwise employed at any time in the construction work.

C. Cranston-Gonzalez National Affordable Housing Act (NAHA), (Section 811 Supportive Housing for Persons with Disabilities)

Statutory Provision, Section 811(j)(5):

LABOR STANDARDS.—

(A) IN GENERAL.—The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act).

(B) EXEMPTION.—Subparagraph (A) shall not apply to any individual who—

- (i) performs services for which the individual volunteered;
- (ii) (I) does not receive compensation for such services; or
(II) is paid expenses, reasonable benefits, or a nominal fee for such services; and
- (iii) is not otherwise employed at any time in the construction work.

Note: HUD regulations at 24 CFR §891.155(d) exclude group homes for persons with disabilities from labor standards coverage. Group homes are defined in the statute at Sec. 811(k)(1) as follows:

The term “group home” means a single family residential structure designed or adapted for occupancy by not more than 8 persons with disabilities. The Secretary may waive the project size limitation contained in the previous sentence if the applicant demonstrates that local market conditions dictate the development of a larger project. Not more than 1 home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

D. U.S. Housing Act of 1937 (USHA), (Public Housing, Section 8 Housing)

Statutory Provision, Section 12:

(a) Any contract for loans, contributions, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the low-income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, and predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 8 of this Act, where the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Subsection (a) and the provisions relating to wages (pursuant to subsection (a)) in any contract for loan, annual contributions, sale, or lease pursuant to this Act, shall not apply to any individual that—

- (1) performs services for which the individual volunteered;
- (2) (A) does not receive compensation for such services; or
(B) is paid expenses, reasonable benefits, or a nominal fee for such services;
and
- (3) is not otherwise employed at any time in the construction work.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation, of low-income housing projects. In addition, note that the Davis-Bacon unit threshold in this provision is relevant only to Section 8 projects, and that there is no requirement that HUD funding is involved in the rehabilitation or construction work.

**E. Housing and Community Development Act of 1974 (HCDA),
(CDBG, Section 108 Loan Guarantee, EDI/BEDI)**

Statutory Provision, Section 110:

(a) All laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); *Provided*, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

- (b) Subsection (a) shall not apply to any individual that—
- (1) performs services for which the individual volunteered;
 - (2)(A) does not receive compensation for such services; or
(B) is paid expenses, reasonable benefits, or a nominal fee for such services;
and
 - (3) is not otherwise employed at any time in the construction work.

Note: See CDBG Factors of Labor Standards Applicability in Appendix II-5.

**F. HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez
National Affordable Housing Act), (HOME)**

Statutory Provision, Section 286:

Labor

(a) IN GENERAL.—Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a-5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and participating jurisdictions shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Waiver.—Subsection (a) shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

Note: See HOME Factors of Labor Standards Applicability in Appendix II-5.

G. Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), (IHBG)

Statutory Provision, Section 104(b):

(1) **In general.** Any contract or agreement for assistance, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act of March 3, 1931 (commonly known as the Davis-Bacon Act;...); shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) **Exceptions.** Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this Act, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(3) **Application of Tribal Laws.** Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian Tribe that requires the payment of not less than prevailing wages, as determined by the Indian Tribe.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation of affordable housing projects.

H. Housing Assistance for Native Hawaiians (Title VIII of the NAHASDA)

Statutory Provision, Section 805(b):

(1) IN GENERAL. Any contract or agreement for assistance, sale, or lease pursuant to this title shall contain –

- (A) a provision requiring that an amount not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, technicians employed in the development and

- all maintenance, and laborers and mechanics employed in the operation, of the affordable housing project involved (sic);¹ and
- (B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act commonly known as the “Davis-Bacon Act” (46 Stat. 1494; chapter 411; 40 U.S.C. 276a et seq.) shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.

(2) EXCEPTIONS. Paragraph (1) and provisions relating to wages require under paragraph (1) in any contract or agreement for assistance, sale, or lease under this title, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation of low-income housing projects.

¹ Paragraph (A) is quoted directly from the language of the statute, as enacted. However, HUD interprets this language to carry the same meaning as that found at Section 104(b)(1).