
**Chapter 8 MAINTENANCE WAGE RATE, CONTRACT ADMINISTRATION,
AND ENFORCEMENT FOR PHAs, TDHEs, and DHHL**

8-1 **Introduction.** Maintenance wage rate decisions (MWD) are statutorily mandated and are administered and enforced similar to Davis-Bacon and Related Acts (DBRA) labor standards in HUD programs. Generally, the term MWD means prevailing maintenance wage rates determined or adopted by HUD.

Many of the requirements associated with maintenance wage rates are similarly in effect for DBRA contracts/projects. For example, both MWDs and DBRA require the payment of not less than the applicable prevailing wage rate for various classifications of work, both have certain recordkeeping requirements, and both require the payment of wage restitution where underpayments have occurred. To the extent applicable, Housing Entities should follow the guidance in Chapter 5, paragraphs 5-9 through 5-14 of this Handbook to correct discrepancies related to MWDs and other labor standards requirements.

This chapter *only* applies to:

1. The operation of low-income housing projects subject to the U.S. Housing Act of 1937, Section 12(a) as amended;
2. The operation of affordable housing under the Native American Housing Assistance and Self-Determination Act of 1996 as amended; and
3. The agencies administering such programs.

This chapter is divided into three sections:

- Section I concerns the administration and enforcement of prevailing maintenance wage rates determined or adopted by HUD for the operation of Public, Indian, and Hawaiian Home Lands housing covered by such rates.
- Section II covers contract administration.
- Section III covers basic enforcement procedures.

Section I: Maintenance Wage Rate Determinations

- 8-2 **Applicability of Maintenance Wage Rate Decisions (MWD).** HUD-determined or adopted prevailing maintenance wage rate decisions apply to the operation of certain Public, Indian, and Hawaiian Home Lands housing projects, as follows:
- A. **Low-income housing operated by Public Housing Agencies (PHA).** MWDs apply to PHA-operated low-income housing projects as defined by the U.S. Housing Act of 1937 as amended, pursuant to Section 12(a).
 - B. **Affordable housing operated by Indian tribes and/or Tribally Designated Housing Entities (TDHE).** MWDs apply to TDHE-operated affordable housing as defined by the Native American Housing and Self-Determination Act of 1996 as amended, pursuant to Section 104(b).
 - C. **Affordable housing operated by the Department of Hawaiian Home Lands (DHHL).** MWDs apply to DHHL-operated affordable housing as defined by the Native American Housing and Self-Determination Act of 1996 as amended, pursuant to Section 805(b).
- Note: For ease of reference, throughout the remainder of this chapter the term PHA is used to represent Public Housing Agencies, Indian Tribes/Tribally Designated Housing Entities, and the Department of Hawaiian Home Lands.*
- D. **Exceptions to MWD wage rates.**
 1. **Volunteers.** Bona fide volunteers are excluded from MWD coverage for PHA operations. (See Chapter 2, paragraph 2-8 *Volunteers* and Chapter 11, paragraph 11-31 *Volunteers* and HUD regulations at 24 CFR Part 70.)
 2. **Tribally determined wage rates.** Prevailing wage rates determined under tribal law or regulation that are applicable to the work or covered contract supersede HUD-determined or adopted MWDs. (See Appendix II-4 and ONAP Program Guidance 2003-04.)
- 8-3 **Issuance of maintenance wage decisions.** The HUD Labor Standards Specialist (LSS) shall issue MWDs every two years to each PHA operating covered housing within that LSS's jurisdiction. The MWD effective dates are based on the PHA's fiscal year. (See [DBLS Notice 2018-02](#))
- The LSS shall issue MWDs on form HUD-52158 and make every effort to ensure that the MWD is issued at least 30 days in advance of the beginning of the respective PHA's fiscal year.
- 8-4 **Use and effectiveness of maintenance wage decisions.** Unless otherwise specified by HUD, the determination shall be effective for a two-year period beginning the first day of the PHA's fiscal year, or for the duration of a collective bargaining agreement if shorter (see 8-6.C). For example, if a PHA's fiscal year starts on January 1, 2019, the MWD

issued by HUD will be effective starting January 1, 2019, and expire on December 31, 2020. During the effective period, PHAs may utilize the determination for all routine maintenance work activities without further review or approval from HUD. If the MWD is expired, it is void.

8-5 **Additional classifications.** The PHA may request an additional classification and wage rate, as necessary, for any class of maintenance laborer or mechanic that is not listed on the MWD and which is to be employed in the operation of the covered housing by the PHA, a contractor, or subcontractor. HUD will issue the appropriate additional classification(s) and wage rate(s) as an addendum to the original MWD. Unless otherwise specified, the additional classification(s) and wage rate(s) shall be effective, retroactively, to the date of the original MWD and shall expire with the original MWD, accordingly.

8-6 **Recommending a Wage Rate to HUD.** Each PHA should provide maintenance wage rate recommendations to HUD *at least* 60 days before the beginning of the PHA fiscal year in which the MWD will expire.

The PHA must base its maintenance wage rate recommendation on accurate, current, properly documented, and relevant wage payment data and/or other appropriate information, including collective bargaining agreements (CBAs) and memoranda of understanding (MOUs). The wage rate data may come from a single source or a combination of sources, including state database(s) of prevailing wages which include maintenance wages, prevailing wage surveys or other collection methods, and a state or locally determined prevailing maintenance wage schedule.

- A. **State or Local Wage Databases.** PHAs may reach out to state-level departments of labor or equivalent and universities for wage rate data. Wage rate data is often readily available online through the state or local website governing labor statistics.
- B. **Survey Method.** When a PHA determines that a survey is necessary, it should solicit data from both public and private sector employers that employ maintenance workers who substantially complete the same work as the PHA maintenance workers. The number of employers surveyed must be sufficiently representative to provide enough wage data for all maintenance positions to allow for an accurate analysis as to the wage rate for each position. *Note:* It is important to weigh the amount of effort required to complete the survey method against the number of positions and/or workers employed by the PHA. For example, in smaller PHAs with a limited workforce, an elaborate survey is neither required nor appropriate.

Where wage data is not available for certain classifications that are needed, judgment should be used to conform the work to the wage rates found to be prevailing for other classifications in the PHA's operating area.

HUD Forms for administering the survey method include:

- 4750 Maintenance Wage Rate Recommendation,
- 4751 Maintenance Wage Rate Survey, and
- 4752 Maintenance Wage Rate Survey - Summary Sheet

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- C. **Collective Bargaining Agreements (CBA) and Memoranda of Understanding (MOU).** For PHAs operating under a CBA or MOU, MWDs will need to be coordinated with the effective dates of the CBA or MOU. MWDs will be effective for the duration of the CBA or for two years, whichever is shorter, and can be updated in accordance with the CBA negotiation scheduled.
- D. **PHA Submission.** After the PHA develops its recommended wage rates for each maintenance classification, it then submits the recommendation to the LSS for review. This includes new or updated position descriptions and duties of each classification, a survey data summary, and other supporting documentation.
- E. **HUD Review of PHA Recommendation.** HUD will review the supporting documentation and recommended rates to ensure that they are supportable and consistent with the wage rate data provided by the PHA. When HUD completes its review, HUD will issue a form HUD-52158. If HUD determines an adjustment or correction is necessary, the LSS will discuss it first with the PHA.
- 8-7 **Appealing the MWD.** The PHA, or other interested party affected by the MWD, may challenge or dispute the MWD by submitting a request for reconsideration in writing to the Deputy Director within 30 calendar days of notice of the MWD. The request for reconsideration should include relevant evidence supporting the request. The Deputy Director will consider all applicable evidence in making its decision. If the interested party is not satisfied with the Deputy Director's decision, the PHA or other interested party affected by the MWD has a right to appeal to the National Director of DBLS. See Chapter 7, *Disputes, Appeals, and Sanctions* for more detail regarding appeals to the National Director of DBLS.
- 8-8 **Contract Work Hours and Safety Standards Act (CWHSSA).** Contracts for covered maintenance work in excess of \$100,000 are subject to the overtime provisions of the CWHSSA. Force account labor (i.e., maintenance workers employed directly by the PHA) are *not* covered by CWHSSA overtime provisions. (See Chapter 2, paragraph 2-2(B) for more information).
- 8-9 **Inapplicability of certain labor provisions associated with DBRA.** While the administration and enforcement of MWDs generally mirrors the same standards and expectations associated with DBRA requirements, there are certain DBRA provisions that are not applicable to MWD work and/or contracts. These differences are described below.
- A. **MWD wage payments/frequency of payments.** MWD wage payments must be made at the full amount of wages earned due free and clear and without subsequent deduction except as otherwise provided by law or regulation. MWD payments may be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A period may not be of any duration longer than semi-monthly.
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B. **Recordkeeping.** Employers (PHAs, contractors, and subcontractors) engaged in work subject to MWDs must make and maintain records containing information demonstrating compliance with the MWDs applicable to the work for no less than three years following the completion of the work. These records must contain at a minimum the following information for each laborer or mechanic employed:

1. Employee name, address and Social Security Number;
2. Correct work classification(s);
3. Hourly rate(s) of monetary wages paid;
4. Rate(s) of any bona fide fringe benefits provided;
5. Number of daily and weekly hours worked;
6. Gross wages earned;
7. All deductions taken; and
8. Actual net wages paid.

Such records (or copies thereof) must be made available for inspection by the authorized representatives of the PHA and/or HUD.

8-10 **Contracts for maintenance work or services.** This paragraph and the following paragraphs assume that MWD labor standards applicability has been determined for the covered contract(s) and that the correct MWD wage decision has been assigned.

Note: For maintenance contracts, HUD observes the \$2,000 threshold instituted for contracts subject to the Davis-Bacon and Related Acts.

A. **PHA responsibilities.** For each maintenance contract, the PHA shall:

1. Ensure that the current MWD and contract standards are incorporated into the contract provisions;
2. Ensure that no contract is awarded to any contractor or subcontractor, regardless of tier, that is debarred or otherwise ineligible to participate in federal program(s);
3. Provide technical support to the contractor and subcontractors concerning prevailing wage requirements;
4. Identify and process requests for additional classifications and wage rates, as needed;
5. Conduct on-site interviews with the maintenance laborers and mechanics employed by contractors and subcontractors and record on form HUD-11 or similar form;
6. Perform periodic “spot-check” reviews of contractor and subcontractor records, including comparison of on-site interview data against such records (refer to paragraph 8-11(B));
7. Notify the contractor, and any subcontractor involved, of any labor standards deficiencies and required corrective actions;
8. Receive and screen complaints or allegations of prevailing wage violations;
9. Ensure correction of labor standards deficiencies and/or violations;

10. Maintain records that document actions taken to correct labor standards deficiencies and/or violations (including any waivers granted);
11. Dispose of deposit/escrow accounts established for labor standards purposes; and
12. Establish and maintain full documentation of all labor standards administration and enforcement activities.

Section II – Contract Administration

- 8-11 **Contract wage decision and standards.** The bid solicitation, if any, and the resulting contract for covered maintenance work must contain the applicable MWD and form HUD-5370-C, as appropriate. These are often inserted in the bid/contract specifications.
- A. **Maintenance wage decision.** The wage decision lists the work classifications approved for the project and the minimum wage rates that must be paid to maintenance laborers and mechanics performing the work. A multi-year contract for maintenance work or services must incorporate any subsequent MWD which may be issued to the PHA during the life of the contract.
- B. **Labor standards contract clauses, required.** The labor standards contract clauses are required to be included in all contracts and subcontracts. These contract provisions define the responsibilities of the contractor and obligate the contractor to comply with the applicable labor requirements. Remedies for violations of the labor standards contract clauses include withholding payments due to the contractor to ensure the payment of wages and liquidated damages which may be found due. These contract clauses enable HUD and/or the PHA to enforce the federal labor standards applicable to the project/contract. The HUD-5370-C is available online at the Davis-Bacon and Labor Standards (DBLS) website at https://www.hud.gov/program_offices/bacon_and_labor_standards/olrform and at [HUDClips](#).
- C. **Acceptable methods of incorporation.** The applicable MWD and HUD-5730-C may be incorporated into bid solicitations (if any) and contracts by “hard-copy,” incorporation into other documents, or by reference. See 3-12I for additional guidance on acceptable incorporation methods.
- 8-12 **Verification of contractor eligibility and termination of ineligible contractors.** No contract may be awarded to any contractor that is debarred, suspended or otherwise ineligible to participate in federal or federally assisted contracts or programs. The labor standards clauses (i.e., HUD-5370-C) insert into the contract a certification of eligibility such that the holder of the contract, the prime contractor, and all subcontractors, certify that they are eligible for award. The PHA shall verify the eligibility of all prime contractors prior to contract award by reviewing the Exclusion Records available online at: www.sam.gov. The PHA shall make a record of the verification in the project files. Any contract awarded to a prime contractor or subcontractor that is found to be ineligible for award must be terminated immediately.
- 8-13 **Additional classifications and wage rates.** If the MWD does not include work classification(s) required for the execution of the contract work, the employer (contractor or subcontractor) may request an additional classification(s) and wage rate(s) through the PHA. Generally, additional classifications and wage rate requests are not approved for apprentices, trainees, helpers, or welders.
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Section III – Basic Enforcement

8-14 **Labor standards compliance monitoring.** Periodic monitoring is conducted to ensure all contractors and subcontractors are performing the contract work in accordance with the applicable labor standards provisions. The two key aspects of periodic monitoring include: (1) spot-check reviews of contractor and subcontractor records, and (2) on-site interviews with laborers and mechanics employed under the contract.

- A. **Spot-check reviews.** The PHA shall monitor the labor standards performance of each prime contractor and subcontractor, regardless of tier (collectively referred to as “employers”) by performing periodic spot-check reviews. Spot-check reviews shall consist of random examinations of the employers’ records to detect labor standards violations such as underpayments, non-approved work classifications, and failure to pay premium pay for overtime hours. The first spot-check review of employers may provide a pattern of satisfactory labor standards performance for which case the PHA may use as evidence to conduct subsequent reviews less frequently and/or less intensively.

The PHA must keep accurate records of all spot-check reviews which includes evidence of satisfactory labor standards performance (e.g., payroll records, HUD-11 interviews) in an organized format readily accessible for review by HUD. For spot-check reviews that are deemed unsatisfactory based on violation(s) of labor standards, the PHA must document the remedial action taken to clear the violations and the keep corresponding proof of correction (e.g., restitution payment records) in an organized format readily accessible by HUD.

- B. **On-site interviews (MWD).** The PHA is responsible for conducting on-site interviews with maintenance laborers and mechanics and recording the information gathered. PHAs should use HUD-11 to record interviews. PHAs are encouraged to use judgment in assessing when and with whom on-site interviews should be conducted during any site visit. Such interviews shall be conducted in a manner consistent with on-site interviews conducted on contracts/projects subject to DBRA requirements. See 5-9(C).
1. **Comparison to employer records.** Information collected during on-site interviews should be compared to the respective employer’s corresponding records. The result of the comparison, including any discrepancies, shall be noted. Any discrepancies revealed during the comparison must be brought to the employer’s attention and shall be resolved.
 2. **Targeted interviews.** Where spot-check reviews and/or the comparison of interview statements to employer records indicate that underpayments may exist, it is appropriate to target interviews to particular crafts or to the employees of certain employer(s).

3. **Questionnaires.** Questionnaires should be mailed to employees when the PHA has reason to doubt the accuracy of the employers' records and/or underpayments are suspected. These questionnaires are used to test the accuracy of the records and/or to obtain the employees' versions of their working conditions. The information gathered from questionnaires may be used to develop complaints and computations of underpayment. (See form HUD-4730).

8-15 **Compliance principles, common discrepancies, and corrections.** To the extent applicable, PHAs should follow the guidance in 5-9 through 5-14 to correct discrepancies related to maintenance prevailing wage and other labor standards requirements.

HUD forms cited in this section:

HUD-11 Record of Employee Interview

HUD-4730 Federal Labor Standards Questionnaire in English

HUD-4730 SP Federal Labor Standards Questionnaire in Spanish

HUD-4750 Maintenance Wage Rate Recommendation

HUD-4751 Maintenance Wage Rate Survey

HUD-4752 Maintenance Wage Rate Survey - Summary Sheet

HUD-52158 Maintenance Wage Rate Determination

HUD-5370-C General Conditions for Non-construction Contracts – Sections I and II