



OFFICE OF FIELD POLICY  
AND MANAGEMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0050

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**Special Attention of:**  
Regional and Field Davis-Bacon and Labor  
Standards Staff;  
Public Housing Regional and Office  
Directors;  
Public Housing Agencies;  
Office of Native American Programs  
Administrators;  
Tribes; Tribally Designated Housing Entities;  
Indian Housing Authorities

**Notice: LR-04-02**

**Issued:** September 8, 2004

**Expires:** This Notice is effective until it is amended, superseded, or rescinded.

**Cross References:** U.S. Housing Act of 1937, as amended; Native American Housing Assistance and Self-Determination Act of 1996, as amended; Davis-Bacon Act, Copeland Act; Contract Work Hours and Safety Standards Act, 29 CFR Part 5, ONAP Program Guidance No. 2003-04

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**SUBJECT:** Inapplicability of certain Federal labor standards provisions to Public Housing Agencies, Indian Tribes, Tribally Designated Housing Entities, Indian Housing Authorities and the Department of Hawaiian Homelands

- I. Statutory and regulatory provisions
- II. Contract Work Hours and Safety Standards Act overtime provisions
- III. Davis-Bacon Act weekly payments
- IV. Copeland Act (Davis-Bacon) certified payroll reports

The Department of Housing and Urban Development (HUD) has determined that certain Federal labor standards requirements are *not* applicable to public housing agencies (PHAs), Indian tribes, tribally designated housing entities (TDHEs), Indian housing authorities (IHAs) and the Department of Hawaiian Homelands (DHHL) when these agencies undertake construction or maintenance work with their own employees on projects assisted under the U.S. Housing Act of 1937 or the Native American Housing Assistance and Self-Determination Act of 1996. These exclusions pertain to:

- Overtime (premium) pay for force account laborers and mechanics;
- Weekly Davis-Bacon wage payments; and
- Weekly certified payroll reports.

Note that the exclusions discussed in this Letter pertain **only** to these tribal, state and local government agencies. The exclusions do *not* pertain to contractors or subcontractors that are engaged by these agencies to perform work subject to Federal prevailing wage and reporting requirements.

This guidance is provided with the cooperation and advice of the HUD Offices of Public and Indian Housing, Native American Programs and General Counsel, and the Department of Labor (DOL).

## **I. STATUTORY AND REGULATORY PROVISIONS**

HUD provides assistance to PHAs, TDHEs, IHAs, and the DHHL through programs authorized under the U.S. Housing Act of 1937 (USHA) and the Native American Housing Assistance and Self-determination Act of 1996 (NAHASDA), as amended. These programs are subject to labor standards provisions requiring the payment of Federal prevailing wage rates as determined by the Department of Labor (DOL) pursuant to the Davis-Bacon Act (for work defined as development), and as determined or adopted by HUD (for work defined as operations).<sup>1</sup> Additionally, the provisions of the Contract Work Hours and Safety Standards Act (CWHSSA) may be applicable to development or operations work, and the provisions of the Copeland Act may be applicable to development work undertaken pursuant to these programs.

The USHA and NAHASDA identify the covered classes of workers for prevailing wage purposes as “all laborers and mechanics”. However, CWHSSA overtime provisions and Copeland Act reporting requirements concern wages paid to laborers and mechanics employed by *contractors or subcontractors*.

DOL regulations implementing the Davis-Bacon and Related Acts, CWHSSA and Copeland Act requirements maintain that a state or local government is not regarded as a contractor where covered work is performed by its own employees (*aka* force account).<sup>2</sup> In consultation with DOL, HUD has concluded that PHAs, tribes, TDHEs/IHAs and the DHHL are agencies that are considered among the excluded units of a state or local government (including a tribal government). This exclusion means that certain labor standards provisions that are specifically applicable to laborers and mechanics employed by contractors and subcontractors are *not* applicable to laborers and mechanics employed by PHAs, tribes, TDHEs/IHAs and the DHHL when these agencies perform work that is subject to labor standards under the USHA or NAHASDA.<sup>3</sup> The specific exclusions are discussed in the following paragraphs.

## **II. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME PROVISIONS**

The provisions of the CWHSSA are applicable to operations and development work performed under the USHA and NAHASDA. CWHSSA contains a provision requiring premium (time and

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<sup>1</sup> See USHA Section 12(a); and NAHASDA Sections 104(b) and 805(b). However, under the NAHASDA Indian Housing Block Grant Program, the requirements for payment of Davis-Bacon and HUD-determined prevailing rates do not apply to any contract or agreement for assistance, sale, or lease that is covered by a tribal law or regulation requiring payment of not less than prevailing wages, as determined by the Indian tribe. See NAHASDA Section 104(b)(3) and ONAP Program Guidance No. 2003-04. This Letter applies where there is no such tribal law or regulation.

<sup>2</sup> See 29 CFR Part 5, Section 5.2(h).

<sup>3</sup> Note that the USHA and NAHASDA make no distinction between laborers and mechanics employed by contractors and subcontractors and force account employees in relation to the workers entitled to prevailing wages. Therefore, force account employees are likewise entitled to receive no less than the wages determined.

one-half) pay for overtime hours worked by laborers and mechanics employed by contractors and subcontractors. Since PHAs, tribes, TDHEs/IHAs and the DHHL are not regarded as contractors, CWHSSA overtime provisions are not applicable to these agencies and their force account employees.

Accordingly, PHAs, tribes, TDHEs/IHAs and the DHHL may offer force account employees compensatory time in lieu of premium pay for overtime hours that may be performed on operations or development work. Note that force account employees may be otherwise subject to the overtime provisions of the Fair Labor Standards Act (FLSA). Compensatory time may be offered to FLSA-covered force account employees to the extent permitted under the FLSA. Such agencies should consult with the DOL concerning the extent to which force account employees may be covered by FLSA overtime provisions.

Note that CWHSSA overtime wage payment requirements remain applicable to contractors and subcontractors engaged in operations or development work (where the amount of the prime contract is in excess of \$100,000).

### **III. DAVIS-BACON ACT WEEKLY WAGE PAYMENTS**

DOL regulations implementing Davis-Bacon and Related Act (DBRA) prevailing wage requirements mandate that contractors and subcontractors pay all laborers and mechanics (employed on the DBRA-covered work) not less often than once a week.<sup>4</sup> The USHA and NAHASDA require the payment of Davis-Bacon wage rates to all laborers and mechanics engaged in development work. However, neither the USHA nor NAHASDA requires *weekly* payment of DBRA wages. Since PHAs, tribes, TDHEs/IHAs and the DHHL are not regarded as contractors for the purposes of these regulations, HUD, in consultation with DOL, has concluded that the requirement to make wage payments not less often than weekly is **not** applicable to PHAs, tribes, TDHEs/IHAs and the DHHL. These agencies may make prevailing wage payments to force account laborers and mechanics with such frequency (e.g., bi-weekly, semi-monthly, etc.) as may be permitted under other governing Federal, tribal, state or local requirements.

Note, again, that the DBRA weekly wage payment requirement remains applicable to contractors and subcontractors engaged in development work.

### **IV. COPELAND ACT (DAVIS-BACON CERTIFIED PAYROLL REPORTS)**

The Copeland Act and corresponding DOL regulations require that contractors and subcontractors engaged in construction work covered by the DBRA certify and submit weekly payroll reports regarding the payment of DBRA prevailing wages.<sup>5</sup> HUD, in consultation with DOL, has concluded that in relation to force account employees, PHAs, tribes, TDHEs/IHAs and the DHHL are not covered by the payroll certification and submission requirements imposed on contractors and subcontractors. However, such agencies are required to maintain, for not less than three (3) years following completion of the covered work, records demonstrating

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<sup>4</sup> See 29 CFR Part 5, Section 5.5(a)(1)(i).

<sup>5</sup> See 29 CFR Part 3, Section 3.3(b).

compliance with DBRA prevailing wage requirements (as well as HUD-determined wage rate requirements).

Finally, the Copeland Act and corresponding DOL regulations remain applicable to all contractors and subcontractors engaged in DBRA-covered work.

If you have questions about this Notice, contact the DBLS staff with jurisdiction in your area.

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Edward L. Johnson  
Director  
Office of Labor Relations