
Chapter 8 ADMINISTRATION AND BASIC ENFORCEMENT OF PREVAILING MAINTENANCE WAGE RATES DETERMINED OR ADOPTED BY HUD

8-1 **Introduction.** This chapter concerns the administration and enforcement of prevailing maintenance wage rates determined or adopted by HUD for the operation of Public and Indian housing covered by such rates. For ease of reference, the acronym “MWD” is used to mean maintenance wage decisions and, generally, prevailing maintenance wage rates determined or adopted by HUD. In addition, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *PHA* shall mean the appropriate staff of the Public housing agency involved, and *TDHE* (tribally-designated housing entity) shall mean the Indian tribe, Indian housing agency or other tribally-designated housing agency administering the program.

Note: This chapter is *not* applicable to programs other than the operation of low-income housing projects (USHA) or affordable housing (NHASDA) and the agencies administering such programs.

MWDs are statutorily mandated and, for the most part, are administered and enforced in the same manner as Davis-Bacon and Related Acts (DBRA) labor standards in HUD programs.

8-2 **Applicability of MWDs.** HUD-determined (or adopted) prevailing wage rate decisions (MWDs) are applicable to the operation of certain Public and Indian housing projects.

A. Low-income housing projects operated by Public housing authorities.

MWDs are applicable to the operation by PHA of low-income housing projects as such projects are defined by the U.S. Housing Act of 1937, amended, (USHA), pursuant to Section 12 of the Act.

B. Affordable housing operated by Indian tribes and/or tribally-designated housing entities.

MWDs are applicable to the operation of affordable housing by a TDHE as such housing is defined by the Native American Housing and Self-Determination Act of 1996, as amended (NAHASDA), pursuant to Section 104 of the Act.

C. Exceptions to MWD wage rates.

1. **Volunteers.** Bona fide volunteers are excepted from MWD coverage for both PHA and TDHE operations. (See also HUD regulations 24 *CFR Part 70*, and paragraphs 2-8 *Volunteers*, and 11-31, *Volunteers*.)

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2. **Tribally-determined wage rates.** Prevailing wage rates determined under the auspices of a tribal law or regulation that are applicable to the work or contract involved supersede and render MWDs ineffective. (See also *ONAP Program Guidance 2003-04.*)
- 8-3 **Issuance of maintenance wage determinations.** MWDs are issued by the LRS to each PHA and TDHE operating covered housing within that LRS's jurisdiction. MWDs are issued on form HUD-52158, *Maintenance Wage Determination*. The LRS shall make every effort to ensure that the MWD is issued at least 30 days in advance of the beginning of the respective PHA's/TDHE's fiscal year.
- 8-4 **Use and effectiveness of maintenance wage decisions.** Unless otherwise specified by HUD, the determination shall be effective for a one-year period beginning the first day of the PHA's/TDHE's fiscal year. During the effective period, PHAs/TDHEs may utilize the determination for all routine maintenance work activities without further review or approval from HUD. An expired determination is void.
- 8-5 **Additional classifications.** The PHA/TDHE may request an additional classification and wage rate, as necessary, for any class of maintenance laborer or mechanic which is not listed on the MWD and which is to be employed in the operation of the covered housing by either the PHA/TDHE or 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 **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/TDHE) are *not* covered by CWHSSA overtime provisions. (See 2-2(B), *Contract Work Hours and Safety Standards Act.*)
- 8-7 **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/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 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, TDHEs, contractors and subcontractors) engaged on work subject to MWDs must make, and maintain for no less than three years following the completion of the work, records containing information demonstrating compliance with the MWDs applicable to the work. These records must at a minimum contain 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 must be made available for inspection or transcription by authorized representatives of the PHA, TDHE and/or HUD.

8-8 **Contracts for maintenance work or services.** This paragraph and the following paragraphs assume that a proper determination of MWD labor standards applicability has been made for the contracts(s) involved and that the correct MWD wage decision has been assigned.

Note: HUD observes for maintenance contracts the \$2,000 threshold instituted for contracts subject to the Davis-Bacon and Related Acts. (See also On the Mark! #11, *What's new about maintenance contract thresholds?*)

A. PHA/TDHE responsibilities. For each maintenance contract the PHA/TDHE shall:

1. Ensure that the current MWD and contract standards, are incorporated into the contract (e.g., contract specifications).
2. Ensure that no contract is awarded to any contractor that is debarred or otherwise ineligible to participate in Federal programs.
3. Provide technical support to the prime 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.
6. Perform periodic "spot-check" reviews of contractor and subcontractor records, including comparison of on-site interview data against such records. (See 8-7(B), *Recordkeeping.*)

7. Notify the contractor, and any subcontractor involved, of any labor standards deficiencies and required corrective actions.
8. Receive and screen employee and other complaints or allegations of prevailing wage violations.
9. Ensure full correction of labor standards deficiencies or violations.
10. Dispose of deposit/escrow accounts established for labor standards purposes.
11. Establish and maintain full documentation of all labor standards administration and enforcement activities.

Section I – Contract Administration

- 8-9 **Contract wage decision and standards.** The bid solicitation, if any, and the resulting contract for covered maintenance work must contain the applicable MWD and the HUD-5370-C, *General Conditions for Non-construction Contracts – Sections 1 and/or 2*, as appropriate. These are often inserted in the bid/contract specifications.
- A. **Maintenance wage determination.** 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 of the corresponding classifications. A multi-year contract for maintenance work or services must incorporate any subsequent MWD which may be issued to the PHA/TDHE during the life of the contract.
- B. **Contract standards.** The contract clauses prescribe the responsibilities of the contractor and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages and liquidated damages which may be found due. These contract clauses enable HUD or the PHA/TDHE to enforce the Federal labor standards applicable to the project/contract. The HUD-5370-C is available 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 3-12(C) for additional guidance on acceptable incorporation methods.
- 8-10 **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/TDHE shall verify the eligibility of all prime contractors prior to contract award by reviewing the Excluded Parties List available on-line at: www.epls.gov The PHA/TDHE 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.
- 8-11 **Additional classifications and wage rates.** If the MWD does not include a work classification(s) required for the execution of the contract work, the employer (contractor or subcontractor) may request an additional classification(s) and wage
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rate(s) through the PHA/TDHE. Generally, additional classification and wage rates requests are not approved for apprentices, trainees, helpers or welders.

- 8-12 **Labor standards administration and enforcement files.** The PHA/TDHE is responsible for the creation, maintenance and preservation of labor standards files for each prevailing wage project administered by them. HUD does not prescribe for PHAs/TDHEs any particular file system or components. *Except* that the file system demonstrates that the LCA has successfully carried out its labor standards responsibilities.
- 8-13 **Final review.** Prior to the final payment on the contract, the PHA/TDHE shall conduct final close-out review for each contract. Final review considers whether there are any outstanding labor standards issues. HUD imposes no particular protocols concerning a final review, however, PHAs/TDHEs must ensure that all labor standards issues have been fully resolved or that appropriate provisions (e.g., escrow account) have been or will be put in place to ensure full compliance.

Section II – 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 spot-check reviews of contractor and subcontractor records and on-site interviews with laborers and mechanics employed under the contract.
- A. **Spot-check reviews.** The PHA/TDHE shall monitor the labor standards performance of each prime contractor and subcontractors (employers). Spot-check reviews shall consist of random examinations of the employers records to detect labor standards violations such as underpayments, unapproved work classifications, and failure to pay premium pay for overtime hours. The first spot-check review for any employer may provide a pattern of satisfactory labor standards performance, in which case subsequent reviews may be less frequent and/or less intensive.
- B. **On-site interviews (MWD).** The PHA/TDHE is responsible for conducting on-site interviews with maintenance laborers and mechanics and recording the information gathered. (PHAs/TDHEs may find form HUD-11, *Record of Employee Interview*, helpful in this regard.) PHAs/TDHEs are encouraged to utilize judgment in assessing whether 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 5-8(C), *On-site interviews.*)
1. **Comparison to employer records.** Information collected during on-site interviews shall be compared to the respective employer's corresponding records. The result of the comparison, including any discrepancies, shall be noted. Any discrepancies disclosed during the comparison must be brought to the employer's attention and must 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 a certain employer(s).
- C. **Questionnaires.** Questionnaires may be mailed to employees when the PHA/TDHE has reason to doubt the accuracy of the employer's records and underpayments are suspected. These questionnaires are used to test the accuracy of the records and/or to obtain the employees' versions of their
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working conditions. The information gathered through the use of questionnaires may be used to develop complaints of underpayment. (See *Federal Labor Standards Questionnaire*, form HUD-4730.)

- 8-15 **Compliance principles, common discrepancies and corrections.** Many of the labor standards requirements associated with maintenance wage rates are similarly in effect for DBRA contracts/projects. For example, both involve the payment of not less than the applicable prevailing wage rate for various classifications of work; both involve certain recordkeeping requirements; both involve the payment of wage restitution where underpayments have occurred. To the extent applicable, PHAs/TDHEs should follow the guidance at 5-9 through 5-13 to correct discrepancies related to maintenance prevailing wage and other labor standards requirements.