

V. LABOR STANDARDS

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INTRODUCTION:

Federal (Davis-Bacon) wage requirements are made applicable to the NSP program by Section 110 of the Housing and Community Development Act of 1974, as amended. HUD regulations paraphrase the statutory provision and clarify that contracts for construction must contain federal wage provisions if NSP funds are used for any construction costs for housing with 8 or more units or projects costing more than \$2,000.

APPLICABILITY:

- ◆ Every contract for construction/rehabilitation of a housing structure that contains 8 or more units that is assisted with NSP funds must contain federal prevailing wage rates as established pursuant to the Davis-Bacon and Related Acts [40 U.S.C. 276(A)-7].

This act ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. The act also provides for the withholding of funds to ensure compliance, and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.

- ◆ Every contract must also be subject to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
This act provides that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
- ◆ Every contract is also subject to the Copeland (Anti-Kickback) Act (40 USC 276c).
This act governs the deductions from paychecks that are allowable. It makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which s/he is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.
- ◆ The basic minimum wage for all work is established by the Fair Labor standards Act of 1938, As Amended (29 USC 201, et.seq.).
This act also requires the payment of overtime at the rate of at least time and one-half, requires the payment of wages for the entire time that an employee is required or permitted to work, and establishes child labor standards.
- ◆ The wage provisions apply to the construction of the entire activity – NSP-assisted and non-assisted portions, alike.

SCOPE OF COVERAGE

- ◆ If the 8-unit threshold is met then the labor standards provision is triggered. There are activities other than “construction work” which do not trigger Davis-Bacon requirements; e.g., real property acquisition, purchase of equipment, architectural and engineering fees, other services (legal, accounting, construction management), and other non-construction items (business licenses, real estate taxes).
- ◆ Construction work for single-family homeownership activities in which NSP funds are used only to assist homebuyers to acquire single family housing are not covered. **The exception** is when there is an agreement with the owner/developer of the housing in advance of the construction work that NSP funds will be used to assist homebuyers to buy the housing and the construction contract covers 8 or more NSP-assisted units.
- ◆ Contracts that are part of a project of less than \$2,000 value are not covered.
- ◆ Construction activities assisted solely by means of loans guaranteed with interest-bearing collateral accounts, where:
 - 1) the interest rate is the usual and customary rate on demand accounts;
 - 2) the account is subject only to the usual and customary terms and conditions for collateral accounts; and
 - 3) there is no “substantial likelihood” that the guarantee will be used
 are excepted from coverage.

CONTRACTING AND PROCUREMENT PRACTICES

The NSP program is subject to certain federal procurement rules. In addition, grantees must take measures to avoid hiring debarred or suspended contractors and conflict-of-interest situations.

If you have questions about the applicability of labor standards and federal wage requirements to your activity, please contact:

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ATTACHMENT 1

DAVIS-BACON COVERAGE CHART CDBG-FINANCED ACTIVITIES

<u>Financed Activity</u>	<u>Activity Covered?</u>	<u>Related Private Construction Covered?</u>
Land Acquisition	N/A	No
Demolition (no construction on-site contemplated)	No	N/A
Demolition (to be followed by on-site construction)	Yes	<u>No</u> , if the demolition was done by grantee or its contractor before transfer of land to developer.
Off-site Improvements (street work, storm sewers, utility construction, etc.)	Yes	<u>No</u> , if done by a separate contractor.
On-site Improvements (excavation/grading, storm drainage, utility or sewer work, paving/walks/stripping, site lighting, landscaping, etc.)	Yes <u>No</u> , if residential project with less than 8 units.	<u>No</u> , if done by grantee or its contractor before transfer of land to developer. <u>Yes</u> , if improvements are designed and intended to serve building on the site; will be contracted for by same entity having building constructed; will be carried out while contracting entity controls the site.
Cleaning During Construction	Yes	Yes
Cleaning After Construction to Prepare for Occupancy (separate from construction contract)	No	No
Materials Purchase (manufacturing)	N/A	<u>No</u> . No construction involved.
Materials Purchase (building)	N/A	<u>Yes</u> . Purchase of materials is assistance to the construction work.
Equipment, Machinery and Fixtures Purchase (as opposed to installation)	N/A	No
Equipment, Machinery, and Fixtures Installation (as opposed to, or in addition to, purchase)	<u>Yes</u> , if more than incidental amount of construction work involved.*	<u>Yes</u> , if more than an incidental amount of construction work involved in the installation.*
Legal Fees/Accounting Fees	N/A	No
Architectural and Engineering Fees	N/A	No
Construction Management	N/A	No
Tenant Allowances for Nonconstruction Expenses (furniture, business licenses, etc.)	N/A	No
* Construction work involved in installation is incidental if the cost is 13 percent or less of the total cost of the CDBG-financed equipment; if it is more, a four-part test applies.		