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# Policy Alert - Applicability of Davis-bacon Wage Rates for Hope VI Homeownership and Rental Development

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## **Applicability of Davis-Bacon Wage Rates for HOPE VI Homeownership and Rental Development**

*September 24, 2001*

HUD is issuing this policy alert to clarify the applicability of Davis-Bacon wage rates to homeownership and rental units constructed with HOPE VI monies, particularly in light of the enactment of the 1998 Quality Housing and Work Responsibility Act (QHWRA). This alert does not reflect a change in an existing policy or the implementation of a new one; rather, its intent is to clarify existing policies for all HOPE VI grantees.

### **Davis-Bacon Wage Rates**

Davis-Bacon wage rates are "prevailing" minimum wage rates that contractors must pay to their employees on any construction project over \$2,000 to which the United States is a party. These rates are set and enforced by the U.S. Secretary of Labor. In addition, many other statutes require the use of Davis-Bacon wage rates where the U.S. is not a party but where certain federal funds are being used. Among these statutes is Section 12 of the 1937 Housing Act (42 U.S.C. 1437 et seq.), which states that "any contract for loans, contributions, sale or lease pursuant to this Act shall contain" Davis-Bacon wage provisions. Davis-Bacon wage rates also apply, under certain conditions, to the construction of housing units funded through the CDBG and HOME programs, among others.

### **Applicability for HOPE VI Grantees Awarded Funds in 1993-1999**

Prior to passage of the QHWRA, HOPE VI was funded through a separate Congressional appropriation and was not authorized as part of the 1937 Act. HOPE VI funds were therefore not considered housing funds under the 1937 Act, and their use did not inherently trigger the requirement that Davis-Bacon wage rates be paid. However, HUD determined that, where public housing authorities are developing public housing units under their Annual Contributions Contract (ACC), all statutory requirements related to public housing would apply, regardless of the funding source. In this case, it was not the funding source but the intended use of the units—as public housing units subject to the provisions of 24 CFR part 941—that triggered the Davis-Bacon wage rate requirement.

Accordingly, HUD has and will continue to require that public housing units funded through HOPE VI be constructed using Davis-Bacon wage rates<sup>1</sup>. The requirement for Davis-Bacon wage rates applies to: (1) all units in a mixed-finance development containing "floating" public housing units; (2) units that receive only operating subsidy; and (3) designated units in a mixed-finance or public housing development<sup>2</sup>. It also applies to 5(h) homeownership units, as these units must be under ACC prior to being sold to a public-housing eligible family.

The only dwelling units eligible for HOPE VI funds that were not intended for use as public housing, and were not subject to 24 CFR part 941, are "Nehemiah-like" and other homeownership units. Both the annual HOPE VI Notice of Funding Availability and the HOPE VI Grant Agreements state that an eligible use of HOPE VI funds is construction of Nehemiah-like homeownership replacement units. As discussed in Chapter Seven of the Mixed-Finance Guidebook, PHAs may use HOPE VI funds to construct homeownership replacement units for sale to families that meet "essentially the same eligibility requirements" as the original Nehemiah program. A full discussion of these eligibility requirements is included in more detail on pp. 7-2 to 7-4 of the Mixed-Finance Guidebook.

Therefore, as neither the funding source nor the use of the units triggers Davis-Bacon wage rates, HUD has determined that Nehemiah-like homeownership units

constructed using HOPE VI funds granted between 1993 and 1999 do not trigger the Davis-Bacon wage requirements. This determination does not preclude another funding source used for the construction of the units, such as HOME funds, from necessitating Davis-Bacon wage rates.

Further, PHAs with pre-2000 HOPE VI grants where a homeownership program has not yet been approved may choose to have their homeownership program meet the requirements of Section 24 of the 1937 Act. Davis-Bacon wage rates do not apply to these units.

### **Applicability for HOPE VI Grantees Awarded Funds in 2000 and Later**

With the passage of the QHWRA, a number of material changes occurred that affect later HOPE VI grantees (2000 and beyond):

- The HOPE VI program, formerly authorized separately by appropriation acts, is now authorized under Section 24 of the 1937 Act. This means that HOPE VI funds, regardless of the use, are now considered 1937 Act funds and accordingly trigger Davis-Bacon wage rate requirements.
- HOPE VI's authorization under Section 24 of the 1937 Act makes HOPE VI funds subject to Section 3 of that Act, which requires funds be used to assist low-income families (i.e., households at or below 80% AMI). Therefore, the Nehemiah-like program, which enabled families at up to 100% AMI to purchase homes, is not an eligible use of HOPE VI funds for FY 2000 or later. However, Section 24 (d)(I)(J) does allow for "appropriate replacement homeownership activities." Clarification on the types of programs considered "appropriate homeownership activities" will be included in separate policy guidance and/or future HOPE VI NOFAs.
- The QHWRA also changed the types of homeownership activities eligible under the 1937 Act by replacing section 5(h) with Section 32. Section 32, which has not yet been implemented, will allow for the following:
  - The sale of public housing units;
  - The sale of non-public housing units owned, operated, assisted, or acquired for

homeownership sale, using 1937 Act funds; and

- Financing assistance using 1937 Act funds to enable public housing residents to purchase a home.

These activities must also be targeted to low-income families. Further, any rehabilitation, repairs, or modifications to a public housing unit or a nonpublic housing unit intended for sale under Section 32, using 1937 Act funds, will require the use of Davis-Bacon wage rates, per section 12 of the 1937 Act.

Section 5(h) remains in effect until HUD issues implementing regulations for Section 32. Once the implementing regulations are issued, no new 5(h) plans will be approved. A proposed regulation (24 CFR 906) was issued for public comment on September 14, 1999; the final implementing regulations are expected to be published in 2002.

More information on homeownership activities permissible under the QHWRA using Sections 32 and/or 24 will be included in a separate policy alert.

### Summary

The following chart summarizes the applicability of Davis-Bacon wage rate requirements for the various types of housing units.

Type of Unit	Funding Source	Davis-Bacon Wages Apply?	Triggered by
Public Housing Units, including 5(h) Homeownership Units	HOPE VI funds 1993-1999	Yes	Use as public housing developed under 24 CFR part 941
Public Housing Rental Units	HOPE VI funds 2000 or later	Yes	Funding source under the 1937 Act and use as public housing developed under 24 CFR part 941
Nehemiah-like Homeownership Units	HOPE VI funds 1993-1999	No	N/A
Replacement homeownership units per Section 24 of the 1937 Act	HOPE VI funds 1993-1999	No	N/A
Replacement homeownership units per Section 24 of the 1937 Act	HOPE VI funds 2000 or later	Yes	Funding source under 1937 Act
All homeownership activities undertaken via Section 32 of the 1937 Act	Any HOPE VI funds	Yes	Use under proposed regulation 24 CFR part 906 (to be finalized during 2002)

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<sup>1</sup> Davis-Bacon wage rates apply whether the housing authority is the developer or a developer is procured.

<sup>2</sup> A floating unit is a unit within a mixed-finance development that is not specifically designated for, but can be made available to, a public housing-eligible household, in order to maintain the contractually agreed-upon percentage of public housing units in the overall development. A designated unit is one set aside specifically for public housing eligible families.