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Part II

**Department of
Housing and Urban
Development**

Office of the Secretary

24 CFR Parts 70, et al.

**Use of Volunteers on Projects Subject to
Davis-Bacon and HUD-Determined Wage
Rates; Interim Rule**

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands, Student aid.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

21 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income

housing, Rent subsidies, Reporting and recordkeeping requirements.

21 CFR Part 890

Civil rights, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

21 CFR Part 905

Grant programs—Indians, Low and moderate income housing, Aged, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Public housing, Reporting and recordkeeping requirements.

21 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

21 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

21 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

The Catalog of Federal Domestic Assistance Numbers are: 14.120, 14.128, 14.122, 14.129, 14.138, 14.218, 14.219, 14.228, 14.156, 14.182.

Accordingly title 24 of the Code of Federal Regulations is amended to read as follows:

1. A new part 70, consisting of §§ 70.1 through 70.5, is added to 24 CFR to read as follows:

PART 70—USE OF VOLUNTEERS ON PROJECTS SUBJECT TO DAVIS-BACON AND HUD-DETERMINED WAGE RATES

Sec.

70.1 Purpose and authority.

70.2 Applicability.

70.3 Definitions.

70.4 Procedures for implementing prevailing wage exemptions for volunteers.

70.5 Procedures for obtaining HUD waiver of prevailing wage rates for volunteers.

Authority: Sec. 855, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437(j), 5310 and 12 U.S.C. 1701(c)(3); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 70.1 Purpose and authority.

(a) This part implements section 955 of the National Affordable Housing Act (NAHA), which provides an exemption from the requirement to pay prevailing wage rates determined under the Davis Bacon Act or (in the case of laborers and mechanics employed in the operation of public housing projects, an architects, technical engineers, draftsmen and technicians employed in the development of public housing projects) determined or adopted by HUD, for volunteers employed on projects that are subject to prevailing wage rates under Title I of the Housing and Community Development Act of 1974 (including Community Development Block Grants, section 108 loan guarantees, and Urban Development Action Grants), under section 12 of the United States Housing Act of 1937 (public housing development and operation and section 8 projects), and under section 202 of the Housing Act of 1959 for elderly and handicapped housing projects prior to the effective date of the amendment of section 202 by section 801 of NAHA. This part also implements other provisions that provide an exemption for volunteers, including section 286 of NAHA (the HOME program), section 202 of the House Act of 1959, as amended by NAHA (supportive housing for the elderly), and any later-enacted exemptions.

(b) This part is also applicable to all HUD programs for which there is a statutory provision allowing HUD to waive Davis-Bacon wage rates for volunteers that are not otherwise employed at any time on the work for which the individual volunteers. These programs include section 811 of NAHA (supportive housing for persons with disabilities), FHA mortgage insurance programs under sections 221(d)(3) and (d)(4) (each with respect to cooperative housing projects only), 221(h)(1) (but only where a nonprofit organization undertakes the construction), 235(j)(1) (but only where a nonprofit organization undertakes the construction), 231, 232, 236 and 242 of the National Housing Act rehabilitation under section 312 of the Housing Act of 1964 and college housing under section 402 of the Housing Act of 1950.

(c) This part provides definitions and procedures for determining allowable payments to volunteers, determining who is a bona fide volunteer, and otherwise implementing exemptions from and waivers of prevailing wage requirements where volunteers are employed.

§ 70.2 Applicability.

This part applies to all HUD programs for which there is a statutory exemption from Davis-Bacon or HUD-determined prevailing wage rates for volunteers or a statutory provision allowing HUD waiver of Davis-Bacon prevailing wage rates for volunteers. The programs to which this part applies include the programs listed in section 70.1(a) and (b) and any other program for which a statutory exemption or HUD waiver provision for volunteers is enacted. This part does not, however, apply to HUD waivers of prevailing wage requirements under section 20 of the United States Housing Act of 1937 for public housing residents who volunteer a portion of their labor (see 24 CFR 964.41). This part also does not apply to the contribution of labor by an eligible family under the Mutual Help Homeownership Opportunity Program for Indian families under section 202 of the United States Housing Act of 1937.

§ 70.3 Definitions.

(a) A *volunteer*, for purposes of this part, is an individual who performs service for a public or private entity for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, on a HUD-assisted or insured project which is subject to a requirement to pay prevailing wage rates.

(1) Individuals shall be considered volunteers only where their services are offered freely and without pressure and coercion, direct or implied, from an employer.

(2) An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the individual volunteers.

(b) *Expenses, reasonable benefits, or nominal fees* may be provided to volunteers without the status of the volunteer being lost but only after a determination is made by HUD on a case-by-case basis by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation. Subject to this determination:

(1) A payment for an *expense* may be received by a volunteer for items such as uniform allowances or reimbursement for reasonable cleaning expenses or wear and tear on personal clothing worn while performing the volunteer work. Additionally, reimbursement for approximate out-of-pocket expenses for the cost of meals and transportation expenses may be made.

(2) *Reasonable benefits* may constitute inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers' compensation) or pension plan or length of service awards.

(3) A *nominal fee* is not a substitute for compensation and must not be tied to productivity. The decision as to what constitutes "nominal" must be made on a case-by-case basis and in the context of the economic realities of the situation.

(4) The phrase *economic realities* means that in determining whether the fee described in paragraph (b)(3) of this section may be deemed "nominal", the amount of the fee must be judged in the context of what paid workers doing the same work would earn in the particular locality involved. For example, a "payment" made to a "homeless" volunteer in an amount which covers basic necessities but nonetheless represents an insignificant amount when compared with local cost of living and real wages may be determined to be nominal for purposes of qualifying as a volunteer, provided the payment is not in fact a substitute for compensation and is not tied in any way to productivity.

(c) *Prevailing wage rates*, for purposes of this part, means:

(1) Wage rates required to be paid to laborers and mechanics employed in the construction (including rehabilitation) of a project (or in the case of public housing, the development of the project), as determined by the Secretary of Labor under the Davis-Bacon Act;

(2) Wage rates required to be paid to laborers and mechanics employed in the operation of a public housing project, as determined or adopted by the Secretary of HUD; and

(3) Wage rates required to be paid to architects, technical engineers, draftsmen and technicians employed in the development of a public housing project, as determined or adopted by the Secretary of HUD.

§ 70.4 Procedure for implementing prevailing wage exemptions for volunteers.

(a) This section applies to those HUD programs for which there is a statutory exemption for volunteers, as referenced in § 70.1(a).

(b) Local or State agencies or private parties whose employees are otherwise subject to Davis-Bacon or HUD-determined prevailing wage rates which propose to use volunteers and wish to pay the volunteers' expenses, reasonable benefits, or nominal fees shall request a determination from HUD that these payments meet the criteria in § 70.3(b). A written determination shall be provided to the requester by the

Department within ten days of receipt by the Department of sufficient information to allow for the determination.

(c) A determination under paragraph (b) shall not be construed in any way as limiting the use of bona fide volunteers on HUD-assisted construction, but rather is required to ensure that the Department performs its appropriate responsibilities under Reorganization Plan No. 14 of 1950 and related Department of Labor Regulations in title 29 CFR part 5, regarding the administration and enforcement of the Davis-Bacon and Related Acts, and its responsibility for the administration and enforcement of HUD-determined or adopted wage rates in the operation of public housing assisted under the United States Housing Act of 1937.

(d) For a project covered by prevailing wage rate requirements in which all the work is to be done by volunteers and there are no paid construction employees, the local or State funding agency (or, if none, the entity that employs the volunteers) shall record in the pertinent project file the name and address of the agency sponsoring the project, a description of the project (location, cost, nature of the work), and the number of volunteers and the hours of work they performed. The entity responsible for recording this information shall also provide a copy of this information to HUD.

(e) For a project covered by prevailing wage rate requirements in which there is to be a mix of paid workers and volunteers, the local or State funding agency (or, if none, the entity responsible for generating certified payrolls) shall provide HUD the information in paragraph (d) of this section, along with the names of the volunteers.

(f) Volunteers who receive no expenses, benefits or fees described in (c) and are otherwise bona fide shall be recorded as in (d) or (e).

§ 70.5 Procedure for obtaining HUD waiver of prevailing wage rates for volunteers.

(a) This section applies to those HUD programs under which HUD is statutorily authorized to waive prevailing wage requirements for volunteers, as referenced in § 70.1(b).

(b) Local or State agencies or private parties whose employees are otherwise subject to prevailing wage rates and which wish to use volunteers shall request a waiver of prevailing wage requirements from HUD for the volunteers. A request for waiver shall indicate that the proposed volunteers are volunteering their services for the

purposes of lowering the costs of construction. The request shall include information sufficient for HUD to make a determination, as required by statute, that any amounts saved through the use of volunteers are fully credited to the corporation, cooperative, or public body or agency undertaking the construction and a determination that any payments to volunteers meet the criteria in section 70.3(b). Information regarding the crediting of amounts saved is required in order to insure that the statutorily prescribed purpose of lowering the costs of construction is fulfilled by passing savings from the use of volunteers on to the sponsor or other body or agency undertaking the construction, rather than permitting the retention of any savings as a windfall by a contractor or subcontractor. A written waiver shall be provided to the requestor by the Department within ten days of receipt by the Department of sufficient information to meet the requirements for a waiver.

(c) For a project covered by prevailing wage rate requirements in which all the work is to be done by volunteers and there are no paid construction employees, the local or State funding agency (or, if none, the entity that employs the volunteers) shall record in the pertinent project file the name and address of the agency sponsoring the project, the name, location, and HUD project number (if any) of the project, the number of volunteers, and type of work and hours of work they performed. The entity responsible for recording this information shall provide a copy of the information to HUD.

(d) For a project covered by prevailing wage rate requirements in which there is to be a mix of paid workers and volunteers, the local or State funding agency (or, if none, the entity responsible for generating certified payrolls) shall provide HUD the information in (c) of this section, along with the names of the proposed volunteers.

2. Appendix A to subtitle A of title 24 of the CFR is amended by revising section 535 to read as follows:

Appendix A to Subtitle A—Hope for Public and Indian Housing Homeownership Program

Section 535. Labor Standards.

Pursuant to section 12 of the 1937 Act, Davis-Bacon or HUD-determined prevailing wage rates (or both) shall apply to activities under the HOPE 1 program, except that these wage rate requirements do not apply to volunteers

under the conditions set out in 24 CFR part 70. In addition, if other Federal programs are used in connection with the HOPE 1 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if the Public and Indian Housing Modernization or CDBG program is used in connection with the program, the labor standards requirements of those programs would apply to the extent required by them.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. The authority citation for part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715f), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 221.544(a)(3) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

4. In § 221.538, paragraph (b)(2) is revised to read as follows:

§ 221.538 Applicability of prevailing wage requirements.

(b) * * *

(2) Where, in connection with the construction of a project involving a cooperative, investor-sponsor, or rehabilitation sales mortgagor, the requirements have been waived for voluntarily donated labor under 24 CFR part 70.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

5. The authority citation for part 231 continues to read as follows:

Authority: Secs. 211, 231, National Housing Act (12 U.S.C. 1715b, 1715v); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 231.8, paragraph (b)(2) is revised to read as follows:

§ 231.8 Supervision of Mortgagors.

(b) *Private Mortgagor-Nonprofit.* All of the provisions of § 207.19 of this chapter apply to mortgages executed by a Private Mortgagor-Nonprofit except that:

(2) In connection with a Private Mortgagor-Nonprofit the provisions of § 207.19(d) of this chapter (Labor standards and prevailing wage requirements) apply except when waived for voluntarily donated labor

under 24 CFR part 70. No charge shall be made by a Private Mortgagor-Nonprofit for accommodations, facilities or services offered by the project except those charges approved by the Commissioner.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

7. The authority citation for part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Sections 232.70 and 232.73 are revised to read as follows:

§ 232.70 Labor Standards.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable standards and provisions of the regulations under 29 CFR part 5, except to the extent that such standards and provisions are waived for voluntarily donated labor under 24 CFR part 70.

§ 232.73 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner, certifying that (except to the extent waived for voluntarily donated labor under 24 CFR part 70) the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

9. The authority citation for part 242 continues to read as follows:

Authority: Secs. 211, 233(f), 242, National Housing Act, (12 U.S.C. 1715b, 1715a(f), 1715z-7); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

10. In § 242.67, paragraph (b) is revised to read as follows:

§ 242.67 Labor standards.

USE OF VOLUNTEERS ON PROJECTS SUBJECT TO DAVIS-BACON AND HUD-DETERMINED WAGE RATES 24 CFR Parts 70, et al

Most of the work that volunteers perform will be in support of projects that are subject to Davis Bacon Wage Rates. Therefore, it is very important that volunteers be clearly identified and separated from construction workers employed on the project.

Failure to ensure that volunteers are formally identified and their donated hours documented could result in a determination by the Department of Labor or the HUD Office of Labor Relations that these workers are due wage restitutions.

Following are procedures to follow that will assist your agency in complying with the Regulations pertaining to volunteer workers.

Davis Bacon Wage Decision

Even if the entire project is to be performed with volunteer labor, a wage determination must be obtained. This is because the project itself is not exempt from Davis Bacon Wage Rates. In describing your project on the Request for Determination (Form 308), be sure and include the information that all or part of the work will be performed by volunteers.

Volunteers Paid Expenses, Reasonable Benefits or Nominal Fees

If the volunteers will be paid or reimbursed in some nominal fashion for their services, the agency must request a determination from HUD that these payments meet the criteria set forth in the Regulations at 24 CFR Part 70.3(b). The HUD Office of Labor Relations will provide your agency with a written determination within ten days of receipt of your request. Please contact your Labor Relations Specialist at (303) 844-5674 for guidance in preparing your request.

Once the project is underway, the agency must record in the project file the names of the volunteers, the hours of work they performed and the benefit each received. When the project is completed, a copy of this information must be provided to the HUD Office of Labor Relations.

Volunteers Receiving No Expenses, Benefits or Nominal Fees
Prior approval from HUD is not required. When documenting the use of these volunteers in the project files, it is not required that they be identified by name unless they are working on a project along with paid construction workers.

Volunteers Working on a Project in Conjunction With Paid Construction Workers

The agency must record in the project file the names of each volunteer and the hours of work each performed. Names must be recorded to facilitate complaint investigation should that become necessary. When the project is completed, a copy of this information must be provided to the HUD Office of Labor Relations.

Volunteers Performing All the Work on a Project

At a minimum, the agency must record in the project file the number of volunteers and the hours of work they performed. When the project is completed, a copy of this information must be provided to the HUD Office of Labor Relations.

Volunteer Affidavit

Our office has developed a form for documenting volunteer construction workers. This form is not mandatory and is intended to assist your agency in keeping to a minimum the documentation of volunteers. There is no reason why the volunteer's hours could not be recorded at the bottom of the form so that one piece of paper provides all the documentation for each volunteer. The form is attached for your information.

Please do not hesitate to contact our office with questions, problems and ideas concerning volunteers on your projects.

VOLUNTEER CONSTRUCTION WORKERS

I, _____, do hereby attest and certify
(print name)
the following regarding the _____
(name of project)
located at _____, in _____
(address) (city) (state)

- 1. I am not now receiving nor will I receive wages to perform any type of construction work on the above-named project.
- 2. I agree to report the dates, number of hours and type of work I performed on the above-named project.
- 3. I understand I am volunteering my services on this project. However, I may be paid expenses, reasonable benefits or a nominal fee for such services without incurring any rights or obligations for such remuneration.

(Signature) (Date)

Note: This language is recommended by the HUD Denver Regional Office for compliance with the volunteer provisions of 42 U.S.C. 1437j(b), 5310(b) and 12 U.S.C. 1701q(c)(3) and 42 U.S.C. 3535(d). Neither the form nor the language contained is mandatory.