



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Public Housing and Indian Housing
Office of Housing
Office of Field Policy and Management

Special Attention of:

Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Multifamily Hub Directors
Multifamily Program Center Directors
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Notice

Issued: December 23, 2014

Expires: This Notice remains in effect until amended, superseded, or rescinded

SUBJECT: Enforcement of Davis-Bacon Act wage requirements for projects participating in the second component of the Rental Assistance Demonstration program

Purpose

To further the purposes of the second component of the Rental Assistance Demonstration program (RAD II), HUD is clarifying its enforcement policy with respect to application of Davis-Bacon Act wage requirements to certain RAD II projects.

Background

On June 25, 2014, at 79 FR 36146, the U.S. Department of Housing and Urban Development (HUD) published a final rule that amended the regulations governing the Section 8 Project-Based Voucher (PBV) program, largely due to changes made to the PBV program by the Housing and Economic Recovery Act of 2008 (Public Law 110-289, approved July 30, 2008) (HERA). HERA made comprehensive and significant reforms to several HUD programs, including HUD's Public Housing, Section 8 Tenant-Based Voucher (TPV) and PBV programs.

One of the changes made by the June 25, 2014 final rule pertained to labor standards. Section 12(a) of the United States Housing Act of 1937, 42 U.S.C. 1437j(a), provides that prevailing wage rates determined under the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) are applicable to the development of Section 8 projects with nine or more assisted units, where the public housing agency (PHA) or the Secretary and the builder or sponsor enter into an agreement for Section 8 use before construction or rehabilitation is commenced. In the final rule, HUD updated the reference to labor standards to remove the reference to labor standards "applicable to an Agreement" covering nine or more assisted units and substitute a reference to labor standards "applicable to development (including rehabilitation) of a project comprising" nine or more assisted units. HUD advised that this language clarifies that Davis-Bacon requirements may apply to existing housing (which is not subject to an Agreement to Enter into Housing Assistance Payments (HAP) Contract) when the nature of any work planned to be performed prior to

execution of a HAP Contract, or after HAP Contract execution (within such post-execution period as may be specified by HUD), constitutes development of the project. The final rule also amended the owner certification provision of the regulation to state that repair work on a project selected as an existing housing project that is performed within such post-execution period as specified by HUD may constitute development activity, and the owner, by execution of the HAP Contract, certifies that at execution and at all times during the term of the HAP Contract, if the repair work is determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements. HUD soon will issue a notice that supplements the June 25, 2014 final rule by providing further guidance on the applicability of Davis-Bacon requirements to existing housing.

The Rental Assistance Demonstration (RAD), which allows the use of certain financing tools for the preservation of at-risk public and assisted housing, has two components. The first component, RAD I, allows Public Housing and Moderate Rehabilitation (Mod Rehab) properties to convert to long-term Section 8 rental assistance contracts. HUD's Notice announcing the program, issued July 2, 2013, specifically provided that conversion of public housing projects would be subject to Davis-Bacon wage requirements. The second component, RAD II, allows Rent Supplement (Rent Supp), Rental Assistance Payment (RAP) and Mod Rehab properties to convert tenant-based vouchers issued upon contract expiration or termination to project-based assistance (either PBV or Project-Based Rental Assistance). HUD's Notice announcing the program did not address the applicability of Davis-Bacon wage requirements to RAD II directly. However, language on Davis-Bacon requirements elsewhere in the RAD Notice may have led to uncertainty regarding the applicability of Davis-Bacon requirements for RAD II projects that met the PBV definition of existing housing. As a result, enforcing Davis-Bacon wage requirements for these projects may place disproportionate demands on HUD's limited agency resources.

Explanation of Agency Action

RAD II is a central part of the Department's rental housing preservation strategy, which works to preserve the nation's stock of affordable rental housing. For many RAD II projects, budgets have been established on the assumption that Davis-Bacon wage requirements will not be imposed. In addition, for a number of RAD II projects, the eligibility of those projects for Low-Income Housing Tax Credits that are necessary for the financial viability of the conversion of the tenant-based assistance to project-based assistance expires on December 31, 2014. Those conversions are necessary to preserve a significant amount of affordable housing inventory. In HUD's view, it would not be practicable at this point to compel private parties to enter into a new contract with the PHA in such situations or to amend their contracts or proposals on the basis of a new cost structure.

Based on the foregoing considerations, HUD will exercise its enforcement discretion in the following manner: (a) unless the applicant expressly has stated its intention to be bound by Davis-Bacon requirements, HUD will not enforce such requirements with respect to applications for RAD II projects that qualify as existing housing under 24 CFR 983.3(b) that (i) were submitted to HUD and approved to proceed by HUD pursuant to Section 3.4 of the RAD Notice before June 25, 2014, or (ii) were submitted to HUD and approved to proceed by HUD pursuant to Section 3.4 of the RAD Notice prior to December 31, 2014 and that involve the receipt of

Low-Income Housing Tax Credits due to expire on or before December 31, 2014; and (b) HUD will enforce Davis-Bacon requirements with respect to applications for RAD II projects that qualify as existing housing that are submitted to HUD and approved to proceed by HUD pursuant to Section 3.4 of the RAD Notice after December 31, 2014. Notwithstanding the terms of this Notice, Davis-Bacon wage requirements will continue to be enforced with respect to RAD I projects for which Davis-Bacon wage requirements specifically were imposed by Section 1.6.D.3 of Notice PIH-2012-32 (HA), REV-1.

HUD notes that its exercise of enforcement discretion in the manner described above is exclusive to HUD and is not binding on other parties, including the U.S. Department of Labor.

Questions

If you have questions regarding this Notice, you may contact Robert B. Morton, HUD Director of Labor Standards and Enforcement at Robert.B.Morton@hud.gov or by calling (202) 402-7079.

Jemine Bryon, Acting Assistant Secretary for
Public and Indian Housing

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Housing—Federal Housing Commissioner

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