

**§ 60.124 Conditions.**

With respect to any research project or any class of research projects the department or agency head of either the conducting or the supporting Federal department or agency may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

**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 Procedure for implementing prevailing wage exemptions for volunteers.

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

**AUTHORITY:** Sec. 955, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437(j), 5310 and 12 U.S.C. 1701q(c)(3); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**SOURCE:** 57 FR 14756, Apr. 22, 1992, unless otherwise noted.

**§ 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, and 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

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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

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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 *wave* 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

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entity responsible for generating certified payrolls) shall provide HUD the information in (c) of this section, along with the names of the proposed volunteers.

**PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)**

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AUTHORITY: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601–3619.