

Q&A from April 15 to April 29

Question: What are the prevailing wage (Davis Bacon) requirements for the HOME funds and the NSP funds?

Answer: For HOME funds, the following regulations apply:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/labor\\_standards\\_enforcement/olr\\_foa](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olr_foa)

***National Affordable Housing Act, Section 286(a) (HOME)***

1. ***...affordable housing with 12 or more units assisted with funds made available under this subtitle...***

Unlike CDBG, the standard for coverage is *assisted* not *financed* - which provides for much broader application. This means that Davis-Bacon requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services. In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide downpayment assistance to individual homebuyers. (See also HUD Regulations at 24 CFR 92.354(a)(2).)

This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. For unit threshold purposes, HUD uses the number of units identified as "HOME" units under the program definition whether determined on a pro-rata basis, specific designation or other means allowable by HUD's Office of Community Planning and Development (CPD).

Note also that once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project - including the portions of the project other than the assisted units.

2. ***Any contract for the construction of affordable housing with 12 or more units assisted with funds...***

Davis-Bacon requirements are applicable to *contracts for construction* covering 12 or more HOME-assisted units. Davis-Bacon does not follow "construction work" or "projects". This factor has implications in two ways:

- First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.)
- Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

3. ***Sweat Equity.***

HOME provides for a sweat equity program (see NAHA Section 255) which permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Such sweat equity participants are exempt from Davis-Bacon prevailing wage requirements.

For NSP funds, the following regulations apply:

[https://www.hudexchange.info/resources/documents/CrosscuttingRegs\\_DavisBacon.pdf](https://www.hudexchange.info/resources/documents/CrosscuttingRegs_DavisBacon.pdf)

Davis-Bacon requirements are applicable when construction work is financed in whole or in part with NSP funds. Residential property is covered only if the property contains at least 8 units (i.e., residential property that contains 7 or less units is exempt). Davis-Bacon requirements do not apply to bona fide volunteers.

\*\*\*Note: If NSP funds are used only to finance non-construction costs, Davis-Bacon requirements are not triggered. Non-construction costs may include real property acquisition; architectural/engineering fees; legal or accounting services; and real estate taxes.\*\*\*

The 8-unit threshold concerns the number of units contained in a residential property – not to the number of units in a building, and not to the number of units in a project or a contract. Therefore, projects or contracts for single-family homeowner units are typically not covered, no matter how many single-family homeowner units are in the project or contract.