

# COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM



# APPLICABILITY FACTORS

## CDBG

Section 110 of the Housing and Community Development Act of 1974 determines the extent to which Davis-Bacon wage rates apply to construction activities.

It states in part: 

# APPLICABILITY FACTORS

## CDBG

...provided, that this section shall apply to the rehabilitation of residential property only if such property is designed for residential use for eight or more families.... 

# APPLICABILITY FACTORS

## CDBG

**HUD has a Dept of Justice ruling stating that the requirement for payment of prevailing wages only when federal funds are used to pay for “construction work.”**

# APPLICABILITY FACTORS

## CDBG

- Remember that Construction financing may not only be limited to the act of paying for the construction work directly.
- -using CDBG assistance to pay the interest charged or
  - using CDBG funds to provide permanent financing (take-out loan)

# APPLICABILITY FACTORS

## CDBG

However, because of the DOJ ruling, the following CDBG activities or “soft costs” **do not** trigger Davis-bacon requirements:

- Real property acquisition,
- Purchase of equipment, (13% ruling regarding installation expenses)
- Architectural and engineering fees
- Other services (legal, accounting, construction management), and

# APPLICABILITY FACTORS

## CDBG

- Other non-construction items (furniture, business licenses, real estate taxes, and/or tenant allowances for such items).

# APPLICABILITY FACTORS

## CDBG

Examples of “non residential” properties that may have less than 8 units, but trigger DBRA include:

- Conversion of a single family residence for transient use
- Conversion of a 2 unit townhouse for commercial use as a doctor’s offices

# APPLICABILITY FACTORS

## CDBG

## REVIEW

- ...Construction work financed “in whole or in part...”
- Construction work over \$2,000
- Unit thresholds may also apply (8+ units)
- Soft costs generally do not trigger DB
- Volunteers: excluded (defined later)

# HOME PROGRAM



# APPLICABILITY FACTORS

## HOME

- The standard for coverage is "*assisted*" not *financed* . . .
- "Any **contract** for the construction of affordable housing with 12 or more units assisted with [HOME] funds . . ."

# APPLICABILITY FACTORS

## HOME

- Once triggered, DB requirements apply to the entire project, and (Refer to HUD Labor Relations Letter No. LR-96-02)
- Sweat equity participation is exempt

# VOLUNTEERS

## National Affordable Housing Act '90

### [Section (b)'s]



- Performs services voluntarily
- Do not receive compensation for services
- May be paid expenses, reasonable benefits, nominal fee for services
- Not otherwise employed at any time on the construction work

# YOUTHBUILD PROGRAM

- Youthbuild trainees performing work under **CDBG-funded** construction activity –
- Minimum wages
- If working on Public housing units – requires HUD determined wages

# Public Housing

- Hope IV – Sec 12(a)
  - Davis-Bacon rates apply to PH construction
  - Preemption

# **PUBLIC HOUSING APPLICABILITY FACTORS**



# PUBLIC HOUSING

## Overview

For properties subject to an Annual Contributions Contract,

Construction, rehabilitation and maintenance work are covered by some type of prevailing wage requirement . . . .



# DEVELOPMENT

U.S. Housing Act of 1937, Sec. 12(a)

mandates the payment of Davis-Bacon prevailing wage rates to all laborers and mechanics engaged in the **development** of public housing

# DEVELOPMENT WORK IS

- Reconstruction;
- A substantial improvement in the quality or kind of original equipment and materials;
- Or remodeling that alters the nature or type of housing units falls within the purview of "development" (24 CFR 968.203).

# New construction



- A substantial improvement in the quality or kind of original equipment and materials



# MAINTENANCE

- U.S. Housing Act of 1937, Sec. 12(a)
- Payment of not less than prevailing wages, as determined or adopted by HUD, to all maintenance laborers and mechanics engaged in the **operation** of low-income housing/affordable housing projects

# MAINTENANCE

work that involves the regular upkeep and preservation of buildings, grounds, and facilities.



# NON-ROUTINE MAINTENANCE

- work items that ordinarily would be performed on a regular basis in the course of upkeep of a property
- but have become substantial in scope because they have been put off

# NON-ROUTINE MAINTENANCE

- and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses.
- replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind

# PUBLIC HOUSING SUMMARY

- Davis-Bacon  
Development & rehabilitation work
- HUD-Determined Non-Routine Maintenance  
Non-routine work, as defined in Labor Relations  
Letter LR 93-01
- HUD-Determined Maintenance  
Routine, day-to-day maintenance of units

# PUBLIC HOUSING

## Applicability & Source of Funds

The source of funding has **no bearing** on the applicability of prevailing wage requirements

- \$ Insurance proceeds

- \$ Grant or foundation funds

- \$ City or State funding

- \$ And more . . .

# PUBLIC HOUSING

## Exclusions from HUD-Determined requirements

- Periodic inspections or testing of equipment
- Testing for lead-based paint
- Installation, service or maintenance of leased equipment, fixtures or appliances
- Inspections, maintenance or service on equipment or fixtures owned by a utility