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January 15, 2015

CLARIFICATION ABOUT EXECUTIVE ORDER 13658 DAVIS-BACON WAGE REQUIREMENTS

On February 12, 2014, President Obama signed Executive Order 13658, “Establishing a Minimum Wage for Contractors,” to raise the minimum wage to \$10.10 for all workers on Federal construction and service contracts. Current Davis-Bacon wage decisions include a note about the EO and many of our partners have expressed concern about whether or not it applies to HUD funded, assisted, or financed construction projects for which they are responsible. The short answer is, no, the Executive Order **does not** apply to our grantees, public and Indian housing authorities, or HUD’s new construction / substantial rehabilitation projects under FHA/202/811 programs in the Office of Multifamily Housing.

The Davis-Bacon Act concerns construction contracts to which the federal government is a party. Thus, the Executive Order pertains only to contracts and procurements where the Federal Government is contracting directly with a contractor. Davis-Bacon prevailing wage requirements apply to HUD programs because of provisions included in “Related Acts” such as the U.S. Housing Act of 1937 or The Housing and Community Development Act of 1974, as amended. Under the CDBG program, for example, we may use the term “Davis-Bacon” as a shorthand way of referring to prevailing wage requirements, but to be precise, construction work performed by CDBG recipients is **not** subject to the Davis-Bacon Act proper, but to the “Related Act” (The Housing and Community Development Act of 1974, as amended).

(See Handbook 1344.1, Rev 2, pg. 2-2; <http://portal.hud.gov/hudportal/documents/huddoc?id=13441c2SECH.pdf>).

Similarly, HUD-determined maintenance wage decisions come not from the Davis-Bacon Act but are mandated by provisions of the Housing Act of 1937. Maintenance wage decisions (MWDs) are, for the most part, administered and enforced in a similar manner as Davis-Bacon and Related Acts (DBRA) labor standards in HUD programs. However, MWD requirements and their enforcement must not be confused with the Davis-Bacon Act.

(See Handbook 1344.1, Rev 2, pg 8-1; <http://portal.hud.gov/hudportal/documents/huddoc?id=13441c8SECH.pdf>)

The Department of Labor’s Fact Sheet on the final rule implementing the Executive Order states that, “...any contract covered by the Davis-Bacon Act and its implementing regulations is subject to the Executive Order minimum wage requirement. The Executive Order does not apply, however, to contracts that are subject only to the Davis-Bacon *Related Acts*.”

(<http://www.dol.gov/whd/flsa/eo13658/fr-factsheet.htm>).

Questions? Please contact your Labor Specialist:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/laborrelstf

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