

the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the IHP to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" or for any assistance provided under this section as a result of the project.

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The recipient determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A recipient may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

§ 1000.16 What labor standards are applicable?

(a) *Davis-Bacon wage rates.* (1) As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale, or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141-44, 3146, and 3147) to be paid to laborers and mechanics employed in the development of affordable housing.

(2) When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.

(b) *HUD-determined wage rates.* Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) *Contract Work Hours and Safety Standards Act.* Contracts in excess of \$100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

(d) *Volunteers.* The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) Paragraphs (a) through (d) of this section shall not apply to any contract or agreement for assistance, sale, or lease pursuant to NAHASDA, or to any contract for construction, development, operations, or maintenance thereunder, if such contract or agreement for assistance, sale, or lease is otherwise covered by one or more laws or regulations adopted by an Indian

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tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe. Paragraphs (a) through (d) of this section shall also not apply to work performed directly by tribal or TDHE employees under a contract or agreement for assistance, sale, or lease, that is covered by one or more such laws or regulations adopted by an Indian tribe.

(f) *Other laws and issuances.* Recipients, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, other applicable Federal laws and regulations pertaining to labor standards, and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

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§ 1000.18 What environmental review requirements apply?

The environmental effects of each activity carried out with assistance under this part must be evaluated in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. An environmental review does not have to be completed prior to HUD approval of an IHP.

§ 1000.20 Is an Indian tribe required to assume environmental review responsibilities?

(a) No. It is an option an Indian tribe may choose. If an Indian tribe declines to assume the environmental review responsibilities, HUD will perform the environmental review in accordance with 24 CFR part 50. The timing of HUD undertaking the environmental review will be subject to the availability of resources. A HUD environmental review must be completed for any NAHASDA assisted activities not excluded from review under 24 CFR 50.19(b) before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds used in conjunction with such NAHASDA assisted activities with respect to the property.

(b) If an Indian tribe assumes environmental review responsibilities:

(1) Its certifying officer must certify that he/she is authorized and consents on behalf of the Indian tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA; and

(2) The Indian tribe must follow the requirements of 24 CFR part 58.

(3) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA, except as authorized by 24 CFR part 58 such as for the costs of environmental reviews and other planning and administrative expenses.

(c) Where an environmental assessment (EA) is appropriate under 24 CFR part 50, instead of an Indian tribe assuming environmental review responsibilities under paragraph (b) of this section or HUD preparing the EA itself under paragraph (a) of this section, an Indian tribe or TDHE may prepare an EA for HUD review. In addition to complying with the requirements of 40 CFR 1506.5(a), HUD shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

§ 1000.21 Under what circumstances are waivers of the environmental review procedures available to tribes?

A tribe or recipient may request that the Secretary waive the requirements under section 105 of NAHASDA. The Secretary may grant the waiver if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section:

(a) Will not frustrate the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) or any other provision of law that furthers the goals of that Act;

(b) Does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;