



No. 2003-03  
February 4, 2003

# PROGRAM GUIDANCE

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**PROGRAM:** Indian Housing Block Grant (IHBG)

**FOR:** All Tribal Government Leaders and Tribally Designated Housing Entities (TDHE)

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**FROM:** Rodger Boyd, Deputy Assistant Secretary for Native American Programs, PN

**TOPIC:** Applicability of Davis-Bacon Wage Rates to Sweat Equity Used to Construct and Rehabilitate Homes Under Programs Receiving Assistance Under NAHASDA

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**Purpose:** The purpose of this Guidance is to provide clarification on the applicability of Davis-Bacon wage rates to Indian Housing Block Grant (IHBG) funded programs incorporating homebuyer's sweat equity in the construction or rehabilitation of homes.

**References:** U. S. Housing Act of 1937 (USHA), Section 12 and former Section 202; the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (P.L. 104-330), Section 104 (b); the American Homeownership and Economic Opportunity Act of 2000 (Homeownership Act) (P.L. 106-569); 24 CFR 70.2 and 24 CFR 1000.16.

**Background:** The contribution of labor by families assisted under the Mutual Help Homeownership Program was specifically authorized in former Title II of the USHA by Section 202 (e)(1)(a), which provided that the assisted family must enter into a Mutual Help and Occupancy Agreement requiring that the family agree to "contribute toward the development cost of a project in the form of land, labor, cash, or materials and equipment." Under the general labor standards provisions in Section 12 of the USHA, Davis-Bacon provisions and wage rates would otherwise have applied, and under U. S. Department of Labor (DOL) regulations, would have required payment for laborers and mechanics to be made weekly without deduction except as permitted under DOL regulations.

Moreover, HUD recognized that families making Mutual Help labor contributions would not meet the qualifications for volunteers under Section 12 (b) of the USHA since they would be obtaining a benefit from their labor, in the form of housing, that goes beyond the expenses, reasonable benefits or nominal fee permitted under Section 12 (b). For this reason, HUD's volunteer rule did not apply to Mutual Help labor contributions. (See 24 CFR 70.2.) However, the Department recognized that the specific provision in Section 202 (e)(1) applicable to Mutual Help housing superseded the general labor standards provisions in Section 12 and allowed families to contribute labor under the Mutual Help

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Program. The Mutual Help Homeownership Program became the major Federal homeownership program for Native Americans and a standard model that many IHBG recipients continue to use.

NAHASDA superseded several programs, including Title II of the USHA, which had previously provided separate forms of assistance to Native Americans. In superseding these forms of assistance, NAHASDA replaced varying provisions regarding labor standards coverage with one standard in Section 104 (b) that would apply to all affordable housing assisted under NAHASDA. While NAHASDA has no specific statutory provision like Section 202 (e) (1) of the USHA that would explicitly allow the contribution of labor in the development of housing by assisted families, the issue of whether Davis-Bacon wage provisions should apply to sweat equity housing programs funded under NAHASDA has arisen. The Department concludes that a family's labor is not subject to Davis-Bacon wage rates when they are participating in a Mutual Help-style homebuyer sweat equity program that receives IHBG funds.

**Inquiries:** If you have any questions, please contact your local Area Office of Native American Programs or your HUD Labor Relations Specialist.