

PROGRAM GUIDANCE

PROGRAM: All Programs

FOR: Tribal Government Leaders and Tribally Designated Housing Entities

T.D.B.A.

FROM: Rodger J. Boyd, Deputy Assistant Secretary, PN

TOPIC: Transmittal of Labor Relations Letters LR 2004-01 and LR 2004-02

Purpose: The purpose of this Guidance is to transmit the two attached Labor Relations Letters (LR 2004-01 and LR 2004-02) issued by the Department's Office of Labor Relations. Both of these letters can be found on HUD's Office of Labor Relations website at http://www.hud.gov/offices/olr/olr_lrl.cfm.

Reference Documents:

- Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996, Section 104 (b);
- 24 CFR 1000.16, Implementation of NAHASDA, Final Rule;
- Program Guidance 2003-03, IHBG: Applicability of Davis-Bacon Wage Rates to Sweat Equity Used to Construct and Rehabilitate Homes Under Programs Receiving Assistance Under NAHASDA;
- Program Guidance 2003-04, IHBG: Application of Tribal Laws Pertaining to the Use of Tribally Determined Wages (TDW)

Applicability:

LR 2004-01, Administration and enforcement of prevailing wage rates determined or adopted by HUD, discusses the streamlining of six of OLR's policies that pertain to HUD-determined wage rates applicable to maintenance and non-routine maintenance.

(1) HUD has established a prevailing wage administration and enforcement framework for HUD-determined wage rates that is less burdensome to client organizations than those of the Department of Labor.

(2) HUD is eliminating the requirements for payroll certifications and submission, and weekly wage payments.

- (3) OLR requires that employers maintain records for a three-year period demonstrating compliance with the prevailing wage rate requirements.
- (4) The LR provides for the payment of wages on a semi-monthly basis.
- (5) Grantees are allowed to amend HUD-5370 and contracts to be consistent with the provisions of LR 2004-01.
- (6) The LR provides guidance on compliance monitoring of contractors and employee interviews.

LR 2004-02, RE: Inapplicability of certain Federal labor standards' provisions to Public Housing Agencies, Indian Tribes, Tribally Designated Housing Entities (TDHEs), Indian Housing Authorities (IHAs) and the Department of Hawaiian Homelands, outlines certain exclusions from Federal Labor Standards requirements for tribes, TDHEs, IHAs and the Department of Hawaiian Homelands when they are engaged in construction or maintenance work using their own employees on projects assisted with funds from the U.S. Housing Act of 1937 or NAHASDA. These exclusions pertain to:

- (1) overtime pay for force account laborers and mechanics;
- (2) weekly Davis-Bacon wage payments; and
- (3) weekly certified payroll reports.

The attached LR Letters provide a detailed explanation of the points summarized above. Note that the exclusions discussed in these LR Letters only pertain to tribes, TDHEs, IHAs and the Department of Hawaiian Homelands. The exclusions do not apply to contractors or subcontractors that are engaged by these agencies.

These Labor Relations Letters also do not apply to those tribes or their TDHEs that have enacted tribal laws providing for tribally determined wage (TDW) rates (see Program Guidance 2003-04). However, tribes and TDHEs with TDWs in place may want to reference these LR letters and apply the guidance, as they deem appropriate and applicable under the labor laws enacted by their tribe.

If you have questions regarding these Labor Relations Letters or their applicability to your organization, please contact your Area ONAP or the field or Regional HUD Labor Relations staff for your jurisdiction. Visit the Office of Labor Relations web site to learn more about labor standards in HUD programs and to obtain contact information for Labor Relations staff and a list of staff jurisdictions: www.hud.gov/offices/olr.

Attachments