

§ 70.4

context of the economic realities of the situation.

(4) The phrase *economic realities* means that in determining whether the fee described in paragraph (b)(3) of this section may be deemed “nominal”, the amount of the fee must be judged in the context of what paid workers doing the same work would earn in the particular locality involved. For example, a “payment” made to a “homeless” volunteer in an amount which covers basic necessities but nonetheless represents an insignificant amount when compared with local cost of living and real wages may be determined to be nominal for purposes of qualifying as a volunteer, provided the payment is not in fact a substitute for compensation and is not tied in any way to productivity.

(c) *Prevailing wage rates*, for purposes of this part, means:

(1) Wage rates required to be paid to laborers and mechanics employed in the construction (including rehabilitation) of a project (or in the case of public housing, the development of the project), as determined by the Secretary of Labor under the Davis-Bacon Act;

(2) Wage rates required to be paid to laborers and mechanics employed in the operation of a public housing project, as determined or adopted by the Secretary of HUD; and

(3) Wage rates required to be paid to architects, technical engineers, draftsmen and technicians employed in the development of a public housing project, as determined or adopted by the Secretary of HUD.

§ 70.4 Procedure for implementing prevailing wage exemptions for volunteers.

(a) This section applies to those HUD programs for which there is a statutory *exemption* for volunteers, as referenced in § 70.1(a).

(b) Local or State agencies or private parties whose employees are otherwise subject to Davis-Bacon or HUD-determined prevailing wage rates which propose to use volunteers and wish to pay the volunteers’ expenses, reasonable benefits, or nominal fees shall request a determination from HUD that these payments meet the criteria in § 70.3(b).

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A written determination shall be provided to the requester by the Department within ten days of receipt by the Department of sufficient information to allow for the determination.

(c) A determination under paragraph (b) shall not be construed in any way as limiting the use of bona fide volunteers on HUD-assisted construction, but rather is required to ensure that the Department performs its appropriate responsibilities under Reorganization Plan No. 14 of 1950 and related Department of Labor Regulations in title 29 CFR part 5, regarding the administration and enforcement of the Davis-Bacon and Related Acts, and its responsibility for the administration and enforcement of HUD-determined or adopted wage rates in the operation of public housing assisted under the United States Housing Act of 1937.

(d) For a project covered by prevailing wage rate requirements in which all the work is to be done by volunteers and there are no paid construction employees, the local or State funding agency (or, if none, the entity that employs the volunteers) shall record in the pertinent project file the name and address of the agency sponsoring the project, a description of the project (location, cost, nature of the work), and the number of volunteers and the hours of work they performed. The entity responsible for recording this information shall also provide a copy of this information to HUD.

(e) For a project covered by prevailing wage rate requirements in which there is to be a mix of paid workers and volunteers, the local or State funding agency (or, if none, the entity responsible for generating certified payrolls) shall provide HUD the information in paragraph (d) of this section, along with the names of the volunteers.

(f) Volunteers who receive no expenses, benefits or fees described in (c) and are otherwise bona fide shall be recorded as in (d) or (e).

§ 70.5 Procedure for obtaining HUD waiver of prevailing wage rates for volunteers.

(a) This section applies to those HUD programs under which HUD is statutorily authorized to *waive* prevailing

wage requirements for volunteers, as referenced in § 70.1(b).

(b) Local or State agencies or private parties whose employees are otherwise subject to prevailing wage rates and which wish to use volunteers shall request a waiver of prevailing wage requirements from HUD for the volunteers. A request for waiver shall indicate that the proposed volunteers are volunteering their services for the purposes of lowering the costs of construction. The request shall include information sufficient for HUD to make a determination, as required by statute, that any amounts saved through the use of volunteers are fully credited to the corporation, cooperative, or public body or agency undertaking the construction and a determination that any payments to volunteers meet the criteria in section 70.3(b). Information regarding the crediting of amounts saved is required in order to insure that the statutorily prescribed purpose of lowering the costs of construction is fulfilled by passing savings from the use of volunteers on to the sponsor or other body or agency undertaking the construction, rather than permitting the retention of any savings as a windfall by a contractor or subcontractor. A written waiver shall be provided to the requestor by the Department within ten days of receipt by the Department of sufficient information to meet the requirements for a waiver.

(c) For a project covered by prevailing wage rate requirements in which all the work is to be done by volunteers and there are no paid construction employees, the local or State funding agency (or, if none, the entity that employs the volunteers) shall record in the pertinent project file the name and address of the agency sponsoring the project, the name, location, and HUD project number (if any) of the project, the number of volunteers, and type of work and hours of work they performed. The entity responsible for recording this information shall provide a copy of the information to HUD.

(d) For a project covered by prevailing wage rate requirements in which there is to be a mix of paid workers and volunteers, the local or State funding agency (or, if none, the entity responsible for generating cer-

tified payrolls) shall provide HUD the information in (c) of this section, along with the names of the proposed volunteers.

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