

Davis-Bacon Wages and FHA-Insured Loans

Some FHA-insured loan programs require that Davis-Bacon (DB) wages are paid to construction workers. Here's an overview of what you need to know about DB wages and FHA's requirements.

What are Davis-Bacon Wages?

The Davis-Bacon Act requires contractors and their subs working on federally funded jobs to pay a minimum of area "prevailing" wages. The Act is administered through the Wage and Hours Division (WHD) of the Department of Labor (DOL).

Are they union wages?

DB wages are based on WHD surveys, so they may or may not be consistent with union wages.

Which FHA loans are exempt from DB wage requirements?

- Acquisitions or Refinances under Section 223(f),
- Refinances under Section 223(a)(7), and
- Section 241(a) Supplemental loans for projects with existing Section 223(f) or 223(a)(7) first mortgages.

Which FHA loans require DB wages?

- All New Construction and Substantial Rehabilitation loans under Sections 220, 221(d), & 231, and
- Section 241(a) Supplemental loans on projects with first mortgages under those programs.

What is the threshold between a Section 223(f) with some repairs and a Substantial Rehabilitation?

FHA uses a formula which varies by location. In many areas, when the work exceeds roughly \$40,000/unit the project is a substantial rehab. Contact AGM to check on a specific location. *Note: the "two-systems" test has been eliminated.*



What are the Davis-Bacon Construction Categories?

There are four broad categories: **Residential, Building, Highway, and Heavy**. The first two can be applied to multifamily projects. **Incidental** components of the project are those which would be classified differently if not included in the multifamily development.

- **Residential (aka "low-rise")**

Applied to apartments up to four stories in height, including incidental items.

- **Building (aka "high-rise")**

Applied to apartments exceeding four stories as well as commercial uses (retail, office, etc.); includes incidental items.

- **Highway**

Includes construction of roads, streets, highways and parking areas that are not incidental to construction in the other categories.

- **Heavy**

Non-incidental construction projects that do not fit the other categories, such as antennas, canals, drainage and irrigation projects, sanitary and storm sewers, water mains and supply lines, and storage tanks.

Incidental

Items that support the primary purpose of residential apartments: site work, parking areas, utilities, streets, sidewalks, swimming pools, mail kiosks, carpools, landscaping, retaining walls, signage, storm water and sanitary sewers, open spaces, playgrounds, and any others.

How can I build or rehab a project without DB wages and still use an FHA loan?

Use conventional construction financing and then apply for a Section 223(f) refinance to get the benefits of an FHA-insured permanent loan. The “3-year rule” which prevented an immediate take-out no longer applies.

Is any work excluded from the DB wage requirement?

Panelized, modular, or other pre-fabrication work done off site are excluded from the DB wage requirements. Off-site improvements, site demolition, or improvements which were completed before the creation of a federal nexus are excluded as well.

Do other programs require DB wages?

Yes, projects using funds from other federal sources for development or rehabilitation activities may require DB wages on their own merit. Examples include the use of HOME and CBDG funds and RAD projects.

How much do DB wages add to the cost of a project?

This varies widely by location. In high cost areas, there may be no real increase in cost. Since **Building** wages are typically higher than **Residential**, developers target the **Residential** classification when possible (see sidebar).

What are multiple or “split wage” decisions?

Sometimes certain components of larger or more complex projects are assigned a classification which is different from its primary classification. For example, most of a multifamily project may be subject to **Residential** wages but its first floor retail space could be subject to **Building** wages due to the commercial use.

How can I check the DB wages for my project?

Look up the current DB wage rates through DOL’s website using this link: beta.SAM.gov | [Search](#)

When are the DB wages for my project finalized?

New wage decisions for a given area may be published at any time. The contractor must pay the rates in effect when the FHA-insured loan closes, so it is wise to check as that date approaches.

Who documents DB wage compliance?

The contractor must document payment of the appropriate wages for each worker depending on the type of work done. If there are multiple wage rates they must track the rates paid for work done under each classification.

How are DB Construction Categories assigned?

HUD staff is primarily responsible for selection of the appropriate classification and they consult with DOL.

Structures of four stories and less are classified as **Residential** and those of five stories and more are **Building**. Story height is not relevant, but if the fifth level is less than half the size of the floor below, it is classified as a “partial floor” and the project remains **Residential**. In addition, there are some exceptions for below-grade and partially below-grade levels. Contact AGM for details. When a community contains a mix of structure types that fall into different wage classifications, a multiple decision would be applied.

HUD will review the **incidental** components to determine if they are large enough to require a separate wage rate. New guidance from the DOL and HUD has updated and clarified their policy. Moving forward, a single wage determination should apply to the entire project as long as each separate incidental construction category is less than \$2.5M and 20% of total construction costs, or if local practice dictates. The \$2.5M threshold will be re-evaluated annually to account for inflation and current trends. This should reduce the burdensome use of multiple wage decisions.

To see how AGM can help get your deal done, contact Steve Rudow at 443.573.2061 or srudow@agmfinancial.com



PH: 410.727.2111
www.agmfinancial.com

20 South Charles Street, Suite 1000
Baltimore, MD 21201