

## Wage and Hour Division, Labor

## § 505.3

whom is assigned the performance of functions of the Secretary pertaining to wages under the National Foundation on the Arts and the Humanities Act of 1965, as amended.

(d) The term *Assistant Secretary* means the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, or authorized representative, to whom is assigned the performance of functions of the Secretary pertaining to safety and health under the National Foundation on the Arts and the Humanities Act of 1965, as amended.

(e) *Professional* in the phrase *professional performer and related or supporting professional personnel* shall include all those who work for compensation on a project or production which is assisted by a grant from the National Endowment for the Arts or the National Endowment for the Humanities regardless of whether paid out of grant funds. It shall not include those whose status is *amateur* because their engagement for performance or supporting work contemplates no compensation. Compensation does not include reimbursement of expenses (i.e., meals, costumes, makeup etc.). The words *related or supporting . . . personnel* in the same phrase shall include all those whose work is related to the particular project or production such as musicians, stage hands, scenery designers, technicians, electricians and moving picture machine operators, as distinguished from those who operate a place for receiving an audience without reference to the particular project or production being exhibited, such as ushers, janitors, and those who sell and collect tickets. The phrase does not include laborers and mechanics employed by contractors or subcontractors on construction projects, whose compensation is regulated under section 5(j) and section 7(j) of the Act. The phrase *professional performers and related or supporting professional personnel* shall not include persons employed as regular faculty or staff of an educational institution primarily performing duties commonly associated with the teaching profession. It shall include persons employed by educational institutions primarily to engage in activities customarily performed by performing artists or by

those who assist in the presentation of performances assisted by grants from the National Endowment for the Arts or the National Endowment for the Humanities.

### § 505.3 Prevailing minimum compensation.

(a)(1) In the absence of an alternative determination made by the Administrator under paragraph (b) of this section, and except as provided in paragraph (a)(2) of this section, the prevailing minimum compensation required to be paid under the Act to the various professional performers and related or supporting professional personnel employed on projects or productions assisted by grants from the National Endowment for the Arts and the National Endowment for the Humanities shall be the compensation (including fringe benefits) contained in collective bargaining agreements negotiated by the following national or international labor organizations or their local affiliates:

Actors' Equity Association.  
Screen Actors Guild, Inc.  
Screen Extras Guild, Inc.  
American Guild of Musical Artists, Inc.  
International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators.  
American Federation of Musicians.  
National Association of Broadcast Employees and Technicians.  
American Federation of Television and Radio Artists.  
International Brotherhood of Electrical Workers.  
American Guild of Variety Artists.  
Writers Guild.

(2) Professional performers and related or supporting professional personnel who are to perform activities which do not come within the jurisdiction of any collective bargaining agreement negotiated by the labor organizations named in paragraph (a)(1) of this section shall be paid minimum compensation as determined by agreement of the grant applicant or grantee and the personnel who will perform such activities or their representatives. Evidence of the agreement reached by the parties shall be submitted by the grant applicant to the grant agency, together

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with evidence of the prevailing minimum compensation for similar activities. If the parties do not agree on the minimum compensation to be paid to such personnel, the matter shall be referred to the Administrator of the Wage and Hour Division for final determination.

(b)(1) Interested parties, including grant applicants, grantees, professional performers or related or supporting professional personnel and their representatives, may at any time submit to the Administrator a request for a determination of prevailing minimum compensation. The Administrator will make a determination concerning each such request in accordance with paragraph (b)(4) of this section.

(2) Any request for a determination of prevailing minimum compensation shall include or be accompanied by information as to the locality or localities, the class or classes of professional performers or related or supporting professional personnel for the project or production in question, the names and addresses (to the extent known) of interested parties, and all available information relating to prevailing minimum compensation currently being paid to such persons or to persons employed in similar activities. No particular form is prescribed for submission of information under this section.

(3) If the information specified in paragraph (b)(2) of this section is not submitted with a request for an alternative determination of prevailing minimum compensation or is insufficient to permit a determination, the Administrator may deny the request or request additional information, at the Administrator's discretion. Pertinent information from any source may be considered by the Administrator in connection with any request.

(4) The Administrator will respond to a request for determination under this section within 30 days of receipt, by issuing a determination of alternative prevailing minimum compensation or denying the request or advising that additional time is necessary for a decision. If the Administrator determines from a preponderance of all relevant evidence obtained in connection with the request that the compensation pro-

vided for in the agreements negotiated by the labor organizations set forth in paragraph (a) of this section does not prevail for any professional performer or related or supporting professional personnel employed on similar activities in the locality, the Administrator will issue a determination of the prevailing minimum compensation required to be paid under the Act to such persons. If the Administrator finds that the compensation provided for in the agreements negotiated by the labor organizations set forth in paragraph (a) of this section does prevail for the professional performers or related or supporting professional personnel in question, the requesting party will be so notified.

(c) All professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in section 5(j) and 7(j) of the Act) employed on projects or productions which are financed in whole or in part under section 5 or section 7 of the Act will be paid, without subsequent deduction or rebate on any account, not less than the prevailing minimum compensation determined in accordance with paragraph (a) of this section, unless an alternative determination is made under paragraph (b) of this section. Pending the decision of the Administrator on a request for determination under paragraph (b) of this section, the grantee may be required to set aside in a separate escrow account sufficient funds to satisfy the difference between the compensation (including fringe benefits) actually paid to the employee(s) in question, and the compensation (including fringe benefits) required under the applicable collective bargaining agreement negotiated by the labor organization named in paragraph (a) of this section, or furnish a bond with a surety or sureties satisfactory to the Administrator for the protection of the compensation of the affected employees.

#### § 505.4 Receipt of grant funds.

(a) The grantee shall not receive funds authorized by section 5 or section 7 of the Act until adequate initial assurances have been filed with the