



May 20, 2025

The Honorable Scott Turner  
Secretary  
U.S. Department of Housing and Urban  
Development  
451 7th Street SW  
Washington, DC 20410

The Honorable Lori Chavez-DeRemer  
Secretary  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Secretary Turner and Secretary Chavez-DeRemer,

The undersigned national real estate associations represent a broad coalition of housing providers that are committed to working together with policymakers and the Administration to address America's housing affordability crisis. Today, we write to request that the U.S. Department of Labor ("DOL") repeal and revise the August 23, 2023 [final rule](#), "Updating the Davis-Bacon and Related Acts Regulations" ("Davis-Bacon rule").

We were encouraged by President Trump's swift action on his first day in office to address the need to increase housing supply and affordability. To support the implementation of his [memorandum](#), "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis," and to support the administration's broader efforts to improve efficiency and reduce government waste, DOL should rescind the 2023 final rule and implement reforms to support the development of more affordable housing. Addressing harm caused by the prior Administration's Davis-Bacon Act of 1931 ("Davis-Bacon Act") related regulatory efforts will help to increase the nation's housing supply, eliminate overly complex and unnecessary federal regulations, and maximize taxpayer funding by lowering per-unit delivery costs for federally funded projects.

### **Suspending and Revising the 2023 Davis-Bacon Final Rule**

There is ongoing litigation against the 2023 final rule, and a 2024 nationwide [preliminary injunction](#) blocking three of the final rule's provisions remains in effect. Since the Trump Administration took over, DOL was granted a 90-day pause in litigation challenging the 2023 rule beginning Feb. 19, 2025, and must clarify its course of action by May 20, 2025. As you consider next steps on this matter, we urge DOL to end its defense of the Biden-era rule, instead notify the court of the Trump Administration's plan to revisit the rule,

and to propose a revised Davis-Bacon rule through the notice and comment process. DOL should immediately provide notice that it will not pursue enforcement actions related to the existing Biden-era rule while it is being re-considered.

Given the time necessary to update the rule via the formal rulemaking process, we also urge the administration to consider suspending Davis-Bacon rule requirements for housing projects while revisions are made. The Davis-Bacon Act allows the president to suspend the statute at his discretion during a “national emergency.” A suspension would help achieve President Trump’s stated goal of delivering “emergency price relief,” including through lowering the cost of housing and expanding housing supply. As outlined below, the application of the Davis-Bacon rule and statutory requirements to housing projects routinely leads to costly confusion and disruption.

Davis-Bacon Act requirements were [previously suspended](#) nationwide in 1934 and 1971, as well as regionally in 1992 and 2005. Additionally, DOL suspended Davis-Bacon regulations in 1996 while the regulation was repropose; the indefinite suspension was [upheld](#) by the US District Court for the District of Columbia in July 1997.

## **Recommendations for Reform of Davis-Bacon and Related Acts Regulations**

Recommendations for improving the Davis-Bacon rule and requirements were made in a [comment letter](#) from May 17, 2022 by a coalition of organizations that represent firms engaged in the financing and development of construction and substantial rehabilitation of multifamily and healthcare housing under federal housing acts, including the National Housing Act, through which Davis-Bacon Act prevailing wage rate requirements apply. The coalition made the following recommendations to the DOL Wage and Hour Division (WHD) in the 2022 [comment letter](#) and continues to support their adoption:

1. We recommend that WHD, by rulemaking, create a policy and practice favoring a single residential wage decision for FHA-insured projects, including incidental items, based on the overall residential character of the project.
2. For FHA-insured projects, we urge WHD to increase the threshold for when items of work are sufficiently “substantial” to warrant consideration of separate wage rates from \$2.5 million to \$15 million (or at a minimum to \$5 million or a level that accurately reflects the combined impacts of inflation and rising construction costs).
3. For FHA-insured projects, we urge WHD to revise the proposed regulation to effectively fix the wage rates as those in effect on the date an application for a firm commitment is submitted.
4. We recommend that WHD modify Davis-Bacon construction classifications to also permit FHA-insured structures of more than four stories to be considered Residential construction, consistent with advances in the construction of multifamily structures that have occurred since 1985, as reflected in the International Building Code.

5. We urge the WHD to engage directly in a deeper examination of the process of determining prevailing wages with the objective of either broadening participation, utilizing other data sources such as other BLS data, or even looking to private payroll processing providers.

We were disappointed that WHD missed an important opportunity to modernize, clarify, and streamline the requirements in the DBRA, especially for those projects involving the residential construction industry. We also encourage tailoring these recommendations as appropriate to HUD-assisted properties subject to DBRA.

### **The Applicability of Davis-Bacon Act to Housing Projects**

The Davis-Bacon Act applies to certain federal and federally funded or federally insured construction contracts. It requires that covered workers on such projects be paid not less than the “prevailing wage” in the area. Numerous statutes include provisions that apply to wages. Collectively these are known as the Davis-Bacon and Related Acts (DBRA or Davis-Bacon rule). These include but are not limited to:

- Section 12 of the United States Housing Act of 1937, which applies the Davis-Bacon Act to public housing development and repositioning transactions and Project-Based Voucher developments.
- Section 212 of the National Housing Act, which applies the Davis-Bacon Act to FHA-insured transactions.
- Section 286 of the HOME Investments Partnership Act, which applies the Davis-Bacon Act to HOME program projects.
- [TIFIA/RRIF](#) loans from the U.S. Transportation Department’s Build America Bureau, to help finance transit-oriented development projects including commercial to residential property conversions.

Davis-Bacon Act requirements also apply to certain Rental Assistance Demonstration Second Component (RAD 2) contracts. Specifically, long-term Section 8 project-based vouchers (PBV) or project-based rental assistance (PBRA) contracts that involve the construction or rehabilitation of nine units or more that are newly assisted, including through transfer of assistance, are subject to the requirements.

Affordable housing projects often rely on federal financing to support construction, particularly as Biden-era inflationary pressures have driven up the cost of construction generally in recent years. As indicated above, many federal financing options trigger DBRA requirements that ultimately make the affordable housing development both more expensive and more complicated. Any overly burdensome requirements on projects completed through these programs directly hinder efforts to increase the supply of housing, particularly affordable housing, in the United States.

### **Challenges Created by DOL’s Methodology for Determining a “Prevailing Wage”**

Implementing the DBRA first requires DOL to determine the prevailing wages, but neither the statute itself nor these related provisions mandate that DOL determine prevailing wages in any particular manner. This often leads to inconsistency, confusion and higher costs for affordable housing developers.

In practice, the Davis-Bacon rule and other requirements can add anywhere from 10-20% to the total cost of a project. These wage rates have historically been applied to HUD's housing projects under the direction and oversight of DOL's Wage and Hour Division (WHD). Unfortunately, WHD's current practice relies on "bucketing" subcomponents of residential construction and combining them into different types of construction, like building, heavy, and/or highway. Any buckets with a total cost of \$2.5 million or more are assigned separate wage rates, which results in frequent multiple wage rate or "split-wage" decisions.

This is further complicated by the current four-story limitation for the residential wage rate. This was established more than 40 years ago and was a result of the current limitations of "stick-built" construction of the time. In the intervening years residential building technology has progressed significantly, as reflected in revisions and updates to the International Building Code. For example, it is now possible with mass-timber construction techniques to build up to 20 stories using wood frame construction; however, the four-story limitations on residential wage rates remain. Notably, the four-story limitation is not set by statute, nor was it established via a formal rulemaking effort. Thus, it can be easily rescinded. DOL should provide clarity that reflects the current state of building technology and support efforts to increase housing supply.

The difference in wage rates between "residential" and "heavy" construction is substantial and dramatically affects the financial viability of residential construction projects. When WHD applies split-wage decisions to housing developments subject to the DBRA, it requires developers to pay the *same* worker at different rates to do the same work on the same day, in different parts of the development. A laborer's work installing drywall in an accessory clubhouse, fitness center, or maintenance building must be accounted for separately from the same work the same laborer performs in the main apartment building, perhaps on the same day, based on the premise that the character of a development is fundamentally different in one part of the project vs. another. This introduces substantial operational complexity and needless compliance risk that could easily be avoided.

As a direct result, it can be hard for project developers to find contractors willing to work on housing projects subject to the DBRA and accompanying regulations, and to take on the additional operational burden and potential liability for incorrectly applying wage rates. Administrative and compliance costs are a major contributor to the rising cost of a covered project, and the workforce available to support the projects is often smaller than what is available to non-DBRA covered projects as many contractors ultimately elect not to bid on them. Overall, the burdens result in a less competitive environment for these developments than what the market would otherwise produce.

## **Conclusion**

We applaud your ongoing efforts to streamline operations at HUD and DOL and hope to be a partner to your agencies and in the Trump Administration's pursuit of increased housing supply, housing affordability, and overall government efficiency. The removal of the DBRA requirements from HUD-financed single-family rental and multifamily housing developments would be an important step in furthering those goals, and we appreciate your consideration of this opportunity. Your efforts present an important opportunity to address the onerous DOL rule and accompanying regulatory directives outlined above, and we stand ready to assist as you move forward with your review.

Sincerely,

American Seniors Housing Association  
Council for Affordable and Rural  
Housing  
Housing Advisory Group  
Institute for Real Estate Management  
Leading Builders of America  
Manufactured Housing Institute  
Mortgage Bankers Association  
Multifamily Lenders Council

National Affordable Housing  
Management Association  
National Apartment Association  
National Association of Home Builders  
National Leased Housing Association  
National Multifamily Housing Council  
The Real Estate Roundtable  
Real Estate Technology and  
Transformation Center