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NATIONAL
MULTIFAMILY
HOUSING
COUNCIL



The Real Estate Roundtable

September 3, 2025

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

Dear Secretary Turner:

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 Housing and Urban Development ("HUD") seek a waiver from the U.S. Department of Labor ("DOL") to permit the use of Project Labor Agreements ("PLAs") to determine prevailing wages for HUD projects when prevailing wages are required by the Davis-Bacon Act. This letter offers a solution to wage determination, one of the issues identified in an industry coalition letter sent to you and DOL Secretary on May 20, 2025, signed by 15 real estate organizations, requesting that DOL repeal and issue revisions to the 2023 Davis Bacon rule.

DOL has discretion in how it determines the prevailing wage. PLAs are project-specific bargaining agreements with one or more labor unions. Using PLAs to determine prevailing wages would benefit laborers, developers, HUD, and DOL and could provide more accurate determinations of prevailing wages than DOL's current, standard determination method. The great need for housing, the additional federal interest present in HUD projects, the oversight provided by HUD, and the complicated nature of HUD transactions all provide just cause and weigh in favor of granting this requested waiver. HUD projects can also serve as a test-case for DOL in considering future revisions to its regulations.

Background: applicability of Davis-Bacon and DOL methodology for determining prevailing wages

The Davis-Bacon Act applies to certain federal and federally funded or federally assisted construction contracts. For reference, construction contracts cover both ground-up new development or substantial rehab of existing buildings. 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 Davis-Bacon wages to the programs authorized by those statutes. These include section 12 of the United States Housing Act of 1937 (applying Davis-Bacon to public housing development and repositioning transactions and Project-Based Voucher developments), section 212 and 221 (d) (4) of the National Housing Act (applying Davis-Bacon to FHA-insured transactions), and section 286 of the HOME Investments Partnership Act (applying Davis-Bacon

to HOME program projects). These statutes require DOL to determine the prevailing wages, but neither the Davis-Bacon Act nor these related statutory provisions mandate that DOL determine prevailing wages in any particular manner.

The DOL published a final rule updating the “Davis-Bacon and Related Acts Regulations” on August 23, 2023, at 88 Federal Register 57526, with the rule effective on October 23, 2023 (“2023 Final Rule”). It should be noted that as of June 24, 2024, a federal court issued a nationwide preliminary injunction affecting three specific provisions of this final rule, though the remainder of the rule remains in effect. The regulations delegate the determination to the Administrator of the Wage and Hour Division (“WHD”) within DOL and require WHD to perform voluntary surveys and statistical analyses. The regulations permit DOL to make a project-specific wage determination if wage data is unavailable and allow WHD to adopt prevailing wage rates set by state or local officials, even if the state or locality’s methods or criteria for determining the prevailing wage are not precisely the same as WHD’s, provided that specified criteria are met.

It is noteworthy that, in the preamble to the final rule, DOL’s discussion of the comments it received to the proposed rule reflects a debate between DOL and industry participants over the definition and determination of “prevailing wage.” The comments reflect the industry’s broad dissatisfaction with DOL’s determination method, the method’s lack of accuracy, and the increased costs imposed on construction projects subject to prevailing wages. DOL uses voluntary surveys to gather wage information, but the comments indicate that these surveys yield limited responses, resulting in data sets that struggle to accurately reflect current, locally representative prevailing wages and are often provided as regional or even statewide wage levels.

Current Legal and Policy Context

Since our initial correspondence on this matter in September 2024, significant legal and policy developments have occurred that strengthen the case for voluntary use of PLAs as an alternative to DOL’s standard wage determination methodology. Most notably, on January 19, 2025, the U.S. Court of Federal Claims ruled in *MVL USA, Inc. v. United States* that Biden-era requirements set forth in Executive Order 14063 that mandate PLAs for federal construction projects in excess of \$35 million violated the Competition in Contracting Act’s “full and open competition” requirement because PLA requirements excluded responsible offerors capable of performing contracts and did not meet the Act’s statutory authority requirement.

This decision underscores the critical distinction between mandatory PLA requirements and voluntary PLA usage. Our proposal directly addresses the court’s concerns by advocating for PLAs only as a voluntary alternative to current DOL wage determination methods, not as a universal requirement. The court’s emphasis on maintaining competitive opportunities aligns perfectly with our approach, which would allow market participants to choose PLAs when they provide accurate, timely wage determinations that benefit all stakeholders.

It is important to note that while Executive Order 14063 requiring PLAs on federal construction projects over \$35 million remain technically in effect, the court’s ruling creates a legal framework that supports voluntary, project-specific agreements over mandatory requirements. This legal environment strengthens the case for the voluntary PLA approach we propose for HUD projects.

Furthermore, the current Administration has taken a measured approach to PLAs, as evidenced by recent Office of Management and Budget guidance emphasizing that agencies should use PLAs when they are practicable and cost effective. This policy framework supports our proposal to allow voluntary PLAs to serve as prevailing wage determinations when negotiated by willing parties.

Good cause justification and benefits of PLAs: need, accuracy, timeliness and reduced burden

Housing providers who operate in high-cost metropolitan areas can testify from their real-world experiences that the current prevailing wage determination protocols by WHD significantly increase the costs of providing housing and put housing developers using a HUD program at a disadvantage compared to market-rate developers. The regulations also require significant data reporting of all contractors used for a project, which can be a time, skill and administrative burden, as well as a potential liability, and can create a barrier to entry for smaller firms to participate in HUD programs.

One especially problematic aspect of the current method of applying wage determinations to HUD programs is the timing of the determinations. Most often, the final DOL wage determinations are not set until immediately before closing. Parties can estimate wage determinations, but it is not unusual for the final DOL determinations to be different than anticipated. When this happens, it is absolutely disabling for the transaction and causes everyone to scramble to update the development financials and could result in the proposed development becoming economically unfeasible.

Our organizations and our members understand the importance of prevailing wages and that there are competing policy considerations in the development of housing. We are not seeking to challenge the applicability of Davis-Bacon or prevailing wages. Quite the contrary, given the strong federal interests in both the application of prevailing wages and the implementation of HUD programs designed to create and preserve housing opportunities for those most in need of stable, affordable housing, we seek to provide a solution that reduces unnecessary barriers that delay and challenge the development of housing and complicate the application of prevailing wages.

PLAs offer an alternative method of determining prevailing wages, supported by unions and project developers alike. PLAs are negotiated between a developer and a local union, in real time, in the specific context of a proposed development. PLAs are voluntary. A labor union is under no obligation to accept a PLA and would have no incentive to accept a PLA if it did not offer a true reflection of prevailing wages. In this way, PLAs reflect a more current, local, and accurate determination of prevailing wage for a specific project, rather than DOL's general, statistical analysis based on sporadic responses. At the same time, PLAs provide certainty and timeliness to developers who would otherwise need to wait on a determination from DOL and worry about when those determinations will be made, whether those determinations are accurate in their locality, and whether such determinations will change before they can close on their projects. Use of PLAs can provide assurance to HUD that prevailing wage requirements are being followed and can reduce some of the costs and challenges associated with implementing HUD programs. Finally, PLAs can also alleviate administrative burden at DOL, which wants to provide accurate

prevailing wage determinations, but has sometimes struggled with split wage decisions and other complicating factors in analyzing housing developments.

We are not asking for PLAs to replace Davis-Bacon requirements or for PLAs to be made mandatory. If a project owner and a union choose not to enter a PLA or cannot agree on its terms, the existing DOL protocols for determining prevailing wages would apply. But where a project owner and union do agree on a PLA and negotiate its terms voluntarily in the context of a HUD program, the wages set in the PLA should satisfy the Davis-Bacon requirements for wage determinations and should be applied in lieu of the wages determined by DOL.

In summary:

- PLAs provide a real, current, on-the-ground determination of prevailing wages. They are voluntary agreements through which developers and unions negotiate current rates for a specific project. These are the true and authentic prevailing wages for the projects for which they are negotiated.
- With PLAs, there is no delay in data collection, aggregation, or analysis. There is no question as to the timeliness or accuracy of the wage levels.
- PLAs represent the highest level of worker protection and wages, as they are exclusively agreements with labor unions.
- PLAs reduce administrative burden for developers, contractors, HUD, and DOL. Developers and contractors negotiate the PLAs directly, and all contractors and subcontractors on a project would be subject to the PLA, which by definition establishes the prevailing wage.

Regulatory Waivers Requested: 29 CFR 1.5(b), project wage determinations

DOL has invested significant time and effort in its current Davis-Bacon methodology as updated by the 2023 final rule. However, the acute need for housing in the country, the federal interest inherent in implementing federal housing programs, the myriad regulatory requirements and complicating factors that housing transactions must navigate, the competition that HUD-supported transactions face from market-rate developers in acquiring land and other project resources, and the potential reduction in administrative burden for all involved all justify application of a waiver of this regulatory methodology for HUD programs.

While we defer to HUD and DOL as to the specific mechanics of such a waiver, we believe waiver of 29 CFR 1.5(b) would allow the use of PLAs as project-specific wage determinations. 29 CFR 1.5(b) provides the requirements and method for requesting a “project wage determination” for a specific project. Waiving this regulation would allow DOL to accept PLAs as project wage determinations.

Alternatively, or in connection with the waiver of 29 CFR 1.5(b), DOL may want to consider waiving the definition of “Prevailing Wage” at 29 CFR 1.2, which would allow DOL to accept a PLA as evidence that prevailing wages have been determined for the project in question, and/or the method for obtaining wage rate information at 29 CFR 1.3, which would allow DOL to obtain wage rate information by accepting a PLA. We note that these regulatory provisions remain in effect, though we recommend coordination with DOL’s Office of the Solicitor to ensure any waiver

properly addresses current regulatory requirements. DOL may also seek to provide additional sub-regulatory guidance.

Alignment with Current Administration Priorities

This Administration has demonstrated a strong commitment to reducing regulatory barriers that impede housing production while maintaining appropriate worker protections. Allowing the voluntary use of PLAs to determine prevailing wages for HUD projects directly advances both objectives. President Trump's January 20, 2025, memorandum "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis" specifically calls for increasing housing supply and affordability. Our proposal supports this directive by removing unnecessary administrative burdens while ensuring workers receive wages negotiated directly with their representatives.

The voluntary nature of our proposal also aligns with recent legal developments. Unlike mandatory PLA requirements that courts have found problematic, voluntary PLAs preserve competitive opportunities while providing a market-based alternative to DOL's current methodology.

Conclusion

This Administration has been dedicated to removing barriers to housing while promoting efficient government operations. Successful pursuit of cooperation from DOL in allowing PLAs to determine prevailing wages in HUD projects would remove a significant barrier and competitive disadvantage. Use of PLAs to determine prevailing wages also recognizes the significant policy interest in ensuring prevailing wages for federally financed and federally assisted projects, promotes accuracy and timeliness in prevailing wage determinations, and reduces unnecessary burdens in applying prevailing wages to much-needed HUD projects. Allowing the use of PLAs is only one of the changes we suggest it should be in addition to working with the DOL to repeal and reissue the existing 2023 Davis Bacon rule that constrains much-needed HUD financed housing projects.

Thank you for your consideration of this matter. We look forward to discussing these issues with you further.

Sincerely,

Council for Affordable and Rural Housing Association

Housing Advisory Group

National Affordable Housing Management Association

National Apartment Association

National Leased Housing Association

National Multifamily Housing Council

Real Estate Roundtable

CC: The Honorable Lori Chavez-DeRemer, Secretary, United States Department of Labor