

July 18, 2018

The Honorable Dr. Ben Carson
Secretary
U.S. Department of Housing and Urban Development
Suite 10000
451 7th St. SW
Washington, DC 20410

Dear Dr. Carson:

Over the last month or so, the National Multifamily Housing Council (NMHC) and the National Leased Housing Association (NLHA) has discussed in meetings with you and in conversations with Deputy Secretary Patenaude, the interpretation of Davis Bacon applicability to the preservation of existing federally assisted housing stock. This issue is of great importance to the undersigned organizations and all stakeholders who support the preservation of the existing assisted housing stock.

In 2014 HUD reversed longstanding policy that Davis Bacon did not apply when an existing housing project- based Section 8 voucher contract was executed and repair and rehabilitation was subsequently or simultaneously performed. This policy change was referenced in a June 25, 2014 final rule on project-based vouchers. At the time we strenuously objected to HUD's revised interpretation which as predicted, greatly increases transaction costs and limits the amount of rehabilitation that can be performed impacting the scope and number of properties that are preserved for the long term.

Explaining its legal interpretation, HUD said the June 25, 2014 final rule updated a reference to labor standards in existing law. The U.S. Housing Act of 1937 provides that prevailing wage rates determined under the Davis-Bacon Act apply to the development of Section 8 projects with nine or more assisted units, where the PHA or HUD and the builder or sponsor enter into an agreement for Section 8 use before construction or rehabilitation starts.

The final rule removed the reference to labor standards "applicable to an Agreement" covering nine or more assisted units and substituted a reference to labor standards "applicable to development (including rehabilitation) of a project comprising" nine or more assisted units. In other words, HUD used its administrative discretion to place the rehab of existing projects into the development category to which Davis-Bacon applies.

We respectfully request that HUD reconsider this "reinterpretation" and clarify and confirm that Davis Bacon applies to HUD programs that are used to support new construction of affordable housing and excludes applicability to any programs (including RAD) that are used to preserve existing affordable housing properties.

Thank you for your consideration. Please contact Denise Muha (dmuha@hudnlha.com) or Cindy Chetti at cchetti@nmhc.org with any questions or concerns.

Sincerely,

Council for Affordable and Rural Housing (CARH)
Institute for Real Estate Management (IREM)
Institute for Responsible Housing Preservation (IRHP)
National Association of Affordable Housing Lenders (NAAHL)
National Apartment Association (NAA)
National Affordable Housing Management Association (NAHMA)
National Leased Housing Association (NLHA)
National Multifamily Housing Council (NMHC)

CC: Deputy Secretary Pamela Patenaude
General Counsel Paul Compton