



September 17, 2018

RIN 3142-AA13

Roxanne Rothschild
Associate Executive Secretary
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570-0001

Dear Ms. Rothschild:

We are writing on behalf of the members of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) who represent the \$1.3 trillion apartment industry and its nearly 39 million residents. We would like to take this opportunity to thank the National Labor Relations Board (NLRB) for issuing a proposed rule to restore an appropriate definition of joint employment. We strongly support the NLRB's proposed rule and hope it is made final as swiftly as possible following the close of the comment period.

For more than 20 years, NMHC and NAA have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of 160 state and local affiliates, NAA encompasses over 75,000 members representing 9.25 million rental housing units globally.

In 2015, the NLRB in its *Browning-Ferris Industries of California, Inc.* decision significantly expanded the definition of joint employer. Specifically, the NLRB ruled that it could impose joint employer liability when an entity has "indirect" control and "unexercised potential" of control over another entity's employees. This holding represented a significant change from the status quo of the prior 30 years when entities were designated joint employers when both had "direct and immediate" control over "essential terms and conditions of employment."

The apartment industry remains extremely concerned about allowing the *Browning-Ferris* ruling to stand. First, the decision could force multifamily firms to negotiate employment terms with employees of subcontractors, suppliers, vendors and temporary staff it does not itself employ. Moreover, the holding is difficult to administer given that it can be challenging to both ascertain when joint employment is triggered and subsequently negotiate with multiple employers. Second, the decision could potentially and inappropriately make apartment firms liable for the actions of their subcontractors, suppliers, vendors and temporary staff. Apartment firms should not, for example, be left liable for fines for employees of suppliers who violate Federal labor laws. For these reasons, the apartment industry opposes the *Browning-Ferris* decision.

We are extremely pleased that the NLRB is now proposing to reverse its holding in *Browning-Ferris* and to clarify that "to be deemed a joint employer under the proposed regulation, an employer must possess and actually exercise substantial direct and immediate control over the essential terms and conditions of employment of another employer's employees in a manner that is not limited and routine." In so doing, the proposed rule would restore an appropriate, commonsense, and workable definition of an employer and provide certainty to the nation's job-creating owners, operators and developers of multifamily housing.

NMHC/NAA thank you for considering our views. We again congratulate you on issuing this proposed rule and hope to work with you to make it a final rule as possible. Please do not hesitate to contact Cindy Chetti, NMHC's Senior Vice President of Government Relations, at 202-974-2300 should any questions arise.

Sincerely,



Cindy V. Chetti
Senior Vice President of Government Affairs
National Multifamily Housing Council



Gregory S. Brown
Senior Vice President of Government Affairs
National Apartment Association