

August 5, 2014

The Honorable Julian Castro  
Secretary  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW, 10<sup>th</sup> floor  
Washington, DC 20410

Dear Mr. Secretary:

We are writing to express our serious concerns about the possible interpretation of a final rule implementing certain changes Congress enacted in 2008 to the Project-Based Voucher program which was published in the Federal Register on June 25, 2014. The statutory changes were intended to make it easier to use Project-Based Vouchers (PBVs) for among other purposes the development and preservation of affordable housing. Language in the preamble to the final rule is having an adverse impact on Component 2 of the Rental Assistance Demonstration Program ("RAD-2") implemented by HUD in March 2012.

Specifically, the issue is whether Davis Bacon wage rates apply to RAD-2 preservation transactions where existing project-based subsidies – Rental Assistance Payments Contracts and Rent Supplement Contracts – are converted to new Project-Based Vouchers. HUD's policy prior to the issuance of the final rule has been that if a Section 8 Project-Based Voucher contract is executed on an "existing housing" project, then any subsequent repairs or rehabilitation work performed at the property did not require the owner to execute an agreement that would impose Davis Bacon wage rates on the repairs. The RAD notice adopted this policy. Unfortunately, the final rule indicates that HUD may be about to reverse this longstanding HUD policy.

In reliance on HUD's policy that Davis Bacon did not apply when an existing housing project based voucher Section 8 contract was executed, public finance agencies, owners, lenders, and investors have underwritten dozens of RAD-2 transactions without incorporating Davis Bacon wage rates. Over the past two years, several dozen RAD-2 transactions have been closed without an agreement requiring Davis Bacon wage rates. More RAD-2 preservation transactions are scheduled to close prior to the calendar year end. In one state, more than \$250 million of tax exempt bond cap with the as-of-right 4% low income housing tax credit may go wasted unless the Davis Bacon issue is resolved immediately. Transactions contemplated for 2015 are now on hold.

The undersigned groups respectfully request that HUD clarify immediately that nothing in the final rule changes the HUD policy that RAD-2 preservation transactions that qualify as existing housing can execute a Section 8 Project-Based Voucher contract and can do subsequent repairs without an agreement requiring the imposition of Davis Bacon requirements. It is our understanding that there is no need for an amendment or change to the final rule, but rather a clarification from HUD that nothing in the PBV final rule changes the policy that Davis Bacon wage rates do not apply to RAD-2 transactions involving existing housing. Such clarification would allow the preservation efforts under RAD-2 to proceed as scheduled.

Sincerely,

Council for Affordable and Rural Housing  
Institute of Real Estate Management  
Institute for Responsible Housing Preservation  
National Affordable Housing Management Association  
National Apartment Association  
National Association of Affordable Housing Lenders  
National Association of Home Builders  
National Council of State Housing Agencies  
National Housing and Rehabilitation Association  
National Leased Housing Association  
National Multifamily Housing Council  
New York State Association for Affordable Housing