Mortgage Bankers Association
National Multifamily Housing Council
National Association of Home Builders
Council for Affordable and Rural Housing
National Affordable Housing Management Association
National Apartment Association
National Association of Affordable Housing Lenders
National Association of Housing Cooperatives
National Leased Housing Association

April 13, 2018

Honorable R. Alexander Acosta
Secretary of the United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Davis-Bacon multiple/"split-wage" decisions and rental housing development

Dear Mr. Secretary:

The undersigned organizations join in this letter to highlight important and urgent Davis-Bacon Act issues that lenders and developers who work with the U.S. Department of Housing and Urban Development (HUD), specifically the Federal Housing Administration (FHA), are experiencing. The Department of Labor (DOL) is in the best position to address these issues because it plays a key role in how the requirements of the Davis-Bacon Act apply to projects under the FHA multifamily programs. We therefore urge DOL to address expeditiously our concerns regarding unwarranted Davis-Bacon split-wage decisions and disruptive effective dates.

HUD's FHA programs support new construction and substantial rehabilitation of workforce and affordable rental housing and thus are enormously important to the U.S. housing market. The number of U.S. renter households has reached 37 percent – a 50-year peak. Consistent with that increase in demand, rental markets are extremely tight. For example, as of 2016, rental vacancy rates had fallen for seven straight years, to 6.9 percent, the lowest level in more than 30 years.[1]

In this context of increasing demand for rental housing, the following two Davis-Bacon issues are having a direct and negative impact on the ability of this FHA program to add new multifamily rental units:

- **Unwarranted split-wage decisions**. HUD changed its wage determination practices at DOL's direction, which has resulted in unwarranted and disruptive multiple or "split wage" rate determinations; and

[1] See Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing Report*, 2, 28-29 (2017).

- **Disruptive update effective dates**. Existing DOL rules allow late-in-the-process effective dates for updates to Davis-Bacon wage decisions, which cause 11th hour disruptions and unnecessarily require repetition of key, previously completed processes.

As we indicated above, we are writing to you now because DOL is well positioned to address these key Davis-Bacon issues–to avert the negative impacts on America's renters.

Unwarranted Davis-Bacon split-wage decisions

Under the Davis-Bacon Act, construction projects are categorized as Building, Heavy, Highway or Residential. Historically, DOL and HUD have favored a policy of generally applying of a single wage rate to Residential projects, including all incidental construction. Where a multiple-wage-rate decision might be appropriate for a Residential project, they generally have looked to 20 percent or more of the total project cost as a rough guide to whether it might warrant a separate wage decision.

In a reversal of that prior policy, under DOL direction, HUD Headquarters, Office of Davis-Bacon and Labor Standards (ODBLS), now advocates the application of split-wage decisions to multifamily projects that are four stories in height or less, which typically have been categorized as Residential. We also understand that ODBLS instructed field staff to assess projects for character of work and wage determination purposes using a threshold of 20 percent of total project cost and/or a $1 million absolute cost – and to apply the 20 percent/$1 million thresholds to the aggregate of any project elements not intrinsically Residential rather than to individual items of work.

This reversal is significant because the burden of administering multiple wage rate schedules across a single project can be paralyzing to a multifamily construction or rehabilitation project. In some cases, the resulting administrative burden can make a project become infeasible – after a developer has expended significant amounts of time, effort and funds.

We urge you therefore to address these concerns and impacts by issuing DOL guidance specifying a single wage rate decision for Residential projects that involve incidental construction of less than 20 percent of total project costs.

Disruptive effective dates for Davis-Bacon wage determination updates

Davis-Bacon wage determinations are modified from time to time to keep them current and, at times, wage rate increases can be significant (e.g., up 100 to 400 percent). Under current DOL regulations, Davis-Bacon wage decisions for FHA-insured projects "lock-in" on the date the mortgage is initially endorsed (provided that construction commences within 90 days). As a result, unfortunately, an effective date that occurs that late in the

process means developers, lenders and HUD must rework the deal on, or close to, the closing date of the insured loan.

To prevent this unwarranted disruption, we urge you to: (1) revise DOL regulations to effectively lock in applicable wage rates no later than the date of the firm commitment application, and (2) as an interim measure, implement a streamlined hardship-based waiver process.

We would be pleased to meet to provide any other information or assistance that would help you and your staff address these important issues. We very much look forward to continuing to work with DOL to resolve these urgent issues.

If you have any questions, please contact Sharon Walker at swalker@mba.org or 202-557-2747.

Sincerely,

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cc: Keith Sonderling