

April 15, 2024

RE: [Docket No. FR-6433-N-01] Request for Information Regarding Iron, Steel, Construction Materials, and Manufactured Products Used in Housing Programs Pursuant to the Build America, Buy America Act

Dear Acting Secretary Todman,

The Council of Large Public Housing Authorities (“CLPHA”) appreciates the opportunity to submit comments to the United States Department of Housing and Urban Development (“HUD”) in response to the notice titled [“Request for Information Regarding Iron, Steel, Construction Materials, and Manufactured Products Used in Housing Programs Pursuant to the Build America, Buy America Act.”](#)

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. Our membership of more than eighty large public housing authorities (“PHAs”) own and manage nearly half of the units in the nation’s public housing program, administer more than a quarter of the subsidies in the Housing Choice Voucher Program, and operate a wide array of other housing programs. CLPHA supports the nation’s largest and most innovative PHAs that own and manage housing and vouchers for nearly 3.3 million households by advocating for the resources they need to solve local housing challenges.

Background

CLPHA and our member PHAs strongly support the goals of the Build America, Buy America (“BABA”) Act to establish and support American industries, as outlined in our [April 13, 2023 Letter to President Biden](#). We remain very concerned, however, that BABA’s Buy American Provision (“BAP”) requirements will increase operating and development costs, slow the progress of affordable housing development at a time of severe shortage, disincentivize contractors from bidding on projects, and reduce the number of homes that can be developed or rehabilitated with limited available funding.

The BAP’s requirements will impose an unfunded mandate on PHAs. PHAs are already struggling to meet the need for affordable housing in communities given the insufficient federal funding and an inflationary environment. Costs for construction materials are increasing, and the Operating Cost Adjustment Factors (OCAF) used for adjusting or establishing Section 8 rents for projects assisted with Section 8 Housing Assistance Payments have not yet fully taken inflation into account. The BAP’s compliance requirements will add pressure to the already strained resources of PHAs. HUD and OMB must be mindful that lack of market readiness can hinder PHAs’ ability to fulfill their mission to deliver affordable housing by increasing project costs and completion time.

On January 3, 2024, HUD published [BABA implementation guidance](#) for the Public Housing Program. The guidance contains three categories of general waivers under which

the BAP does not apply: Exigent Circumstances, Small Grants of under \$250,000, and a De Minimis portion of a project. If the covered project does not fall under any of these three blanket waiver categories, PHAs can request a waiver when the BAP is inconsistent with the public interest, when adequate materials are unavailable, or when complying with BABA would result in a total cost increase of more than 25%.

While CLPHA appreciates that OMB heeded our recommendation and adopted the unreasonable cost waiver category, we are concerned this waiver in the form it is presently promulgated lacks practical value for redevelopment projects. We are also concerned that ‘American-made’ product labels do not necessarily indicate that the product meets the requirements of the BAP. Thus, as BABA is set to become effective in 2024 for most new funding obligated to PHAs, our aforementioned concerns largely persist. Suppliers and contractors are not prepared to meet the increasing demand resulting from BABA compliance, leaving our PHAs in a state of uncertainty.

Domestic Materials Sourcing and Manufacturing

Response to question 1a: specify whether products are available that meet BABA requirements.

Based on our member PHAs' experiences, their vendors and contractors need to greatly alter their procurement practices to comply with the BAP. Our members report that materials unlikely to be available in sufficient domestic quantities to meet the BABA requirements or that will incur unreasonable cost increases will include: (i) **mechanical systems** including HVAC and ventilation systems with motors, (ii) **plumbing fixtures** such as faucets, (iii) **plumbing supplies** such as pipes and fittings, (iv) **electrical components** such as switch gears, fixtures and fittings, transformers, wiring and cabling, (v) **lumber**, (vi) **appliances** such as water heaters, refrigerators, ranges, range hoods, and dishwashers, (vii) **windows and doors**, and (viii) **glass**, as it is a significant component used in the fabrication of windows and doors and is largely produced abroad.

Systems with integrated technology (IT equipment like modems and wi-fi access points, sub-systems, interconnected systems, movement control, switching, etc.) and “smart” appliances are often manufactured primarily outside of the United States and are unlikely to meet the 55% “domestically procured” requirements due to preponderance of internal electronic components originating from foreign sources. Systems with integrated technology often rely on semiconductors and ‘chips’ that originate from Taiwan, Japan, and South Korea. In the uncommon cases where these products are domestically assembled, they almost always include components from foreign sources.

Many companies that supply **non-ferrous metals** to the U.S. operate on both sides of the border between the U.S. and Canada. Manufacturers may have a hard time accounting for where the production has occurred. Since manufacturers often commingle inventory, it will be difficult to trace the origin of specific products. Canada and the U.S. share a highly integrated **aluminum** market. Domestic aluminum producers rely on a mix of domestic, Canadian, and globally sourced primary aluminum, of which 75% represents U.S. imports; the U.S. accounted for less than 2% of global primary aluminum production.¹ Most **lumber** sold in the United States is imported from Canada where it is sourced,

¹ [U.S. Aluminum Manufacturing: Industry Trends and Sustainability | Congressional Research Service](#)

debarked, and milled. For this reason, statutory language in the 1950 U.S. Defense Production Act considers both the U.S. and Canada to be a “domestic source.”²

Additional examples of products largely produced outside the U.S. that our members regularly procure include **roof insulation** materials, **sidewalk shedding** materials, **heating plant materials** and products, **steam lines**, **playground equipment**, **elevator cab components**, **water tanks**, and **safety surfaces**.

Factors hindering the certainty of whether a product is compliant

Response to question 1d6: What are the limiting factors for a product’s ability to meet BABA compliance?

PHAs and their procurement contractors will face difficulties determining the *percentage of domestic production* for any given material to ensure it meets the BAP’s 55% “domestically procured” threshold under 2 CFR 200.322. Consider the difficulty of determining whether at least 55% of any given building material containing metal, copper, wood, or glass is domestically procured. **Mechanical systems** including HVAC and ventilation systems, plumbing fixtures such as faucets, plumbing supplies such as pipes and fittings, electrical components such as switch gears, wiring and cabling, all include foreign-sourced components and often do not satisfy the 55% “domestically produced” requirements. Foreign produced metal, copper, and glass are contained in a preponderance of these items. Requiring contractors to determine the exact percentage of aluminum sourced domestically would be onerous and burdensome. **Appliances** necessary to complete projects such as water heaters, refrigerators, ranges, range hoods, and dishwashers are generally manufactured in other countries, and even when assembled in the U.S., are comprised of significant amounts of foreign components that will usually fail to satisfy 2 CFR 200.322. PHAs and contractors do not have the staff capacity to determine if all of the components being purchased meet the 55% requirement.

This underscores the need for certainty that a product with an ‘American-made’ label meets the 55% “domestically procured” requirement of the BAP. Absent this, time spent on sourcing compliant materials will increase, which will lead to higher construction costs and likely project delays. HUD should expect numerous waiver requests for many types of construction materials, appliances, mechanical systems, and fixtures unless it provides certainty that any product with an ‘American-made’ label meets the BAP’s requirements.

Timing Considerations

Many CLPHA members are currently engaged in efforts to revitalize public housing properties, including units converted to project-based Section 8 programs through the Rental Assistance Demonstration (RAD) and through other HUD asset repositioning tools. These projects are typically a multi-year effort spread over several phases. Materials are generally sourced and purchased based on expected delivery schedules that may range from a week to a few months. Not all BABA-compliant construction materials can be sourced or purchased (much less stored) in advance of project commencement; generally, this occurs at much later dates following contract execution and construction scheduling. Expecting developers, contractors, and subcontractors to source all BABA-compliant

² [50 U.S.C. §4552 \(8\)](#)

materials in sufficient quality and quantities at one time, and in some cases before contract execution, is an unreasonable expectation and does not guarantee materials' availability when needed. The BAP's requirements will introduce uncertainty in PHAs' development timelines which will also increase costs and negatively impact PHAs' ability to build and make needed repairs to affordable housing, contrary to the public interest.

Expected Delivery Timeframes, Anticipated Supply Chain Shortages

Response to question 3a: specify the current range of expected product delivery timeframes.

If a BAP-compliant product is not available or is inconsistent with a project's construction sequencing, it will throw off the development schedule; the uncertainty of waiver approval and the unclear timeline for waiver approval further complicate project timing. The 2021 Survey of Construction from the U.S. Census Bureau found that the average length of time to complete construction of a multifamily building after obtaining authorization has now risen to **1.5 years**. The authorization-to-completion time has been on an upward trend since 2013. To make matters worse, a recent survey of construction contractor firms found that **86% of firms experienced delays due to longer lead times/shortage of materials** and **68% of firms experienced delivery delays**, including BABA-compliant materials.³ For example, more than one-third of housing providers experienced serious shortages of windows, home doors, and garage doors, while more than a fifth reported serious shortages of HVAC equipment and appliances. Such delays drive up financing costs and risk the availability of labor to complete a project, which will be exacerbated by the scarcity of domestic products.

Suppliers who can furnish BABA-compliant materials will likely charge a premium for them in response to heightened demand but at no greater value to the project or the public. Federal Reserve data confirm that this is already happening for manufactured products: the Producer Price Index for Total Manufacturing Industries reached a near-record high of 248 in February 2024, up from 195 in February 2020.⁴ Shortages of various items including construction materials, household items, and computer chips during the pandemic led to steep increases in the cost of construction, vehicle prices, and household goods. With demand for domestically manufactured products set to markedly increase, equilibrium prices will increase too, leading to supply shortages and construction delays.

Additionally, where professional contractors are purchasing products from is currently undergoing a major structural shift. Market analysis from Zonda estimates \$8 billion in product substitution directly due to professional contractors switching where they purchase. Professional contractors are increasingly shifting toward procuring materials purely online and purchasing directly from manufacturers, rather than physical stores like Home Depot, Lowe's, or other physical hardware supply stores. Zonda forecasts significantly higher demand for building products in the near- to medium-term compared to prior decades.⁵ This churn in product sourcing introduces more uncertainty for housing construction and rehabilitation projects' delivery timelines.

³ [2022 Workforce Survey Results | Associated General Contractors of America](#)

⁴ [Producer Price Index by Industry: Total Manufacturing Industries | FRED | St. Louis Fed](#)

⁵ [Building Products Forecast Webinar Replay - Zonda April 2024](#)

Contractors' capacity constraints on project delivery time

Response to question 3b: expected delivery timeframe outlooks through the near-term future.

Contractors' capacity constraints will likely increase near-term construction and project delivery timeframes. Contractor firms are already having difficulty hiring and retaining workers, and the new BABA obligations will further burden these providers who are struggling to keep up with industry demands. Bureau of Labor Statistics data indicates there were nearly half a million construction job openings at the end of 2022. The 2024 Construction Hiring Outlook published by the Associated General Contractors of America (AGC) reported that **nearly 77% of firms are having a hard time filling some or all salaried or hourly craft positions**, with the majority of firms (55%) expecting that hiring will continue to be hard (35%) or will become harder (20%).⁶ The U.S. is expected to be short 550,000 plumbers by 2027, nearly 30% of union electricians are near retirement age, more than 1 in 5 construction workers are 55 or older, and construction job openings have surged more than 50% from 287,000 in February 2019 to 441,000 in February 2024.⁷ These staffing difficulties among skilled trades will inevitably lead to longer expected construction timeframes for housing projects. A survey conducted by AGC in 2022 of general contractor firms found:

- 64% of firms reported projects were canceled, postponed, or scaled back due to increasing costs.
- 34% of firms reported projects were canceled, postponed, or scaled back due to lengthening or uncertain completion times.
- 21% of firms reported projects were canceled, postponed, or scaled back due to changes in demand/need.

Project completion times expected to increase

Response to question 3c: current and expected near-term average customer delivery time.

Consider the need to locate BABA-compliant construction materials, longer delivery lead times, and the fact that building a structure with 20 or more housing units takes nearly 1.5 years on average. In instances when BABA-compliant products are unavailable or not available in a reasonable time, PHAs must also complete sourcing and due diligence activities, prepare documentation of non-availability or excessive costs as required by HUD, prepare and submit BABA waiver requests, await the minimum 15-day public comment period on the waiver request, respond to questions raised, and await a waiver request decision that is not guaranteed. One request alone could reasonably require 45-60 days and shutter construction progress, cause subcontractor demobilization due to an inability to work, and result in the loss of employment for many (including HUD Section 3 workers). Equipment rental times and interest-carrying cost periods would be extended. Compound that by the likelihood of multiple requests on each project, and the delay costs will be significant. As a simple example, on a project with an outstanding \$30 million construction loan and a borrowing rate of 7%, just a one-month delay would cost that project \$175,000 in additional interest charges. Because the actual time required to

⁶ [2024 Construction Hiring and Business Outlook Report | Associated General Contractors of America](#)

⁷ [Trade jobs: Why is there a plumber and electrician shortage? | The Hill](#)

receive a waiver will likely grow as more waivers are submitted, plus the likelihood that multiple waivers will be necessary, this amount will grow significantly and could put project completion at risk.

Project Cost Impacts of BAP Compliance

PHAs are already struggling to compete for federal, state, and local funding resources including tax-exempt bond financing, funding with private developers due to compliance with the Davis-Bacon Act, Section 3, and other requirements unique to them. For example, in California, the urgency to rein in total development cost (TDC) in affordable housing projects has caused state funding agencies to impose cost containment scoring criteria that awards points and tiebreaker scores to projects that have lower TDC/eligible basis. It is well recognized that public projects TDCs significantly exceed those of private developments; further increases due to additional development requirements and hiring objectives will cause a loss of competitiveness when applying for such awards, making the development of affordable housing more arduous and less timely. The higher TDCs are attributable to many factors detailed throughout this letter and will result in less affordable housing being developed.

Costs of housing projects and examples

Response to question 5f: What is the current cost associated with the development, maintenance, and operation of affordable housing compliant with applicable HUD requirements? What is the estimate of the impact of the implementation of the BAP in connection with HUD-funded projects?

During the planning and predevelopment phase of all projects, a feasibility analysis is conducted that considers the historical costs of developing similar projects, with adjustments made for rising costs of labor, materials, and more. At this stage, actual prime and subcontractor contracts have not yet been awarded, all construction materials cannot and have not been identified, sourced or purchased, so estimates of future pricing and availability cannot realistically be made. During this phase projected project development cost and TDC will need to account for BABA compliance and are **expected to add 30%-40% to project cost estimates**. The reasons for this range include the uncertainty over materials delivery times, the labor costs associated with finding BABA-compliant materials, the cost for BABA-compliant materials at the time of need, the time required to secure BABA waivers when needed, the administrative time and expense associated with these activities, and extra construction financing interest carrying costs associated with waiver request delays.

Costs of construction

Response to question 5e: estimated impact of compliance with the BAP on HUD-assisted programs?

Several economic indicators show recent cost increases in construction materials. The Producer Price Index (PPI) list of inputs to multifamily residential construction is published monthly by the U.S. Bureau of Labor Statistics (BLS). BLS' Construction-related Producer Price Indices (PPI), the **costs of inputs to residential construction reached an all-time high in January 2023**,⁸ with copper and brass mill products

⁸ [Producer Price Index by Commodity: Inputs to Industries: Net Inputs to Multifamily Residential Construction, Goods | FRED | St. Louis Fed](#)

among the costliest of materials.⁹ Data from the U.S. Census Bureau show **construction costs were up by over 18% from 2020 to 2021**, the largest yearly increase since 1970.¹⁰ Additionally, the prices received by domestic producers for output of final demand goods advanced 1.2% in February 2024, the largest increase since moving up 1.7% in August 2023.¹¹ The National Association of Home Builders (NAHB) reported that in 2021, the price of lumber was 17% higher than its 25-year average.¹² NAHB’s weekly snapshot of lumber prices confirms lumber prices are only continuing to increase; the framing lumber composite price had increased 1.2% over the week ending on March 15, 2024, which marked the fifth consecutive week of increases.¹³ As demand for domestic materials rises, the corresponding scarcity will cause these already-high prices to increase further.

BABA will exacerbate these costs since it will take contractors time and budget to document and certify their compliance with the BAP’s requirements. Those cost increases will be passed along to PHAs and will reduce funding available for needed housing development and rehabilitation projects. According to a survey of 661 construction contractor firms conducted by the Associated General Contractors of America, an alarming **73% of firms have “passed on some or all of our additional costs”**, while 39% of firms “have tried to pass on costs but have not succeeded so far.” Contractors are already passing on cost increases to PHAs, and we expect this will only continue once BABA applies to all HUD funding.

Lack of existing mechanisms to determine contractors and sourcing

Response to question 5b: Are there existing mechanisms to determine qualified contractors that use American made products and materials? How do recipients currently track contractor sourcing?

The process of certification of US-sourcing is a new and unfunded mandate that PHAs are required to take on. PHAs have not generally been subject to Buy American requirements for all projects, and procurement teams have not required suppliers to disclose the sourcing of manufactured products. Major suppliers such as HD Supply and Grainger have “custom catalogs” that allow users to filter US-made products, but smaller suppliers such as Ganahl Lumber don’t always have this option. PHAs and contractors lack existing mechanisms to filter domestic products. Furthermore, it is currently unclear whether major suppliers’ and manufacturers’ ‘American-made’ product labels indicate that the product meets the specific standards of the BAP. These BAP compliance requirements should be borne by the federal government through the creation of a ‘US-made’ standardized label. HUD should work directly with the National Institute of Standards and Technology (NIST), manufacturers, and suppliers to ensure that ‘American-made’ product labels are only applied to products that meet the requirements of the BAP.

The closest comparable construction standards that had an impact on the sourcing of materials are environmentally friendly construction standards such as LEED certification. LEED certification is generally optional and not a mandate, whereas BABA’s

⁹ [Construction PPI Charts Data | NMHC](#)

¹⁰ [Monthly Construction Spending, January 2024 | U.S. Census Bureau](#)

¹¹ [Producer Price Index News Release summary – February 2024 Results | U.S. Bureau of Labor Statistics](#)

¹² [Lumber Prices in 2020 and 2021 Set Record Highs Even When Adjusted for Inflation | NAHB](#)

¹³ [Framing Lumber Prices | NAHB](#)

requirements will be mandated. Our members often hire a third-party consultant to help ensure compliance with LEED-certified building projects.

Need for standardized contractual provisions

Response to question 5c: standard contractual provisions to deal with potential delays arising from BABA

There is a need for standard contractual provisions for PHAs to use in RFPs for construction. It will require extra (unfunded) administrative time for PHA staff to build BABA-compliant language into RFPs and contractual provisions. Our members report that more staff time will be needed to ensure “US-made” verification processes comply with BABA’s requirements. Contractors want clear rules on how BABA will impact their bids on PHAs’ projects; HUD must inform contractors of the mechanism for making waiver requests to a PHA. Without these rules, we fear that **contractors may not bid on projects due to the cost and time increases associated with BABA and risk noncompliance from the lack of guidance provided by standard contractual provisions**. HUD must provide standardized language for PHAs to use in RFPs and contract documents to provide clarity to contractors.

Other federal funding sources for housing

Response to question 5d: what other Federal funding is used to complete a HUD funded housing project?

The Public Housing Operating Fund and Capital Fund are the two core federal place-based programs used by PHAs, and both have been drastically underfunded for decades. Housing authorities are required to comply with BABA without receiving the extra administrative and financial resources needed to do so, which constitutes an unfunded mandate. BABA compliance will be required for all funds received through HUD’s Green & Resilient Retrofit Program (GRRP), Choice Neighborhoods implementation grants, CDBG, the Department of Energy’s Weatherization program, and any project that uses federal financial assistance for “infrastructure” as defined by BABA.

Recommended support & incentives

Responses to question 1d2: What additional support or incentives (e.g., financial, rulemaking certainty, etc.) are needed to ensure a sufficient supply of products that meet BABA requirements?

PHA staff will need to coordinate more closely with their construction contractors regarding the specific materials they purchase to build or renovate properties. HUD should draft guidance and standardized contractual language for PHAs and their contractors, and conduct outreach to suppliers to ensure they are aware of the BAP and the need to inform buyers whether the materials they sell meet the Buy American requirements. HUD can make amendments to the 25% unreasonable costs waiver to make this waiver category more feasible for redevelopment projects. Finally, HUD should grandfather into compliance projects that were initiated before obligated funding was subject to BABA to avoid delaying projects that are already in progress.

Standardized American-Made Labels

We recommend that HUD / OMB create a standardized ‘American-made’ label that guarantees that the product meets the BAP’s 55% domestically sourced requirement. This could also include a ‘filter’ for American-made products or a disclaimer stating whether materials marked with an American-made label fall within the guidelines of

the BAP. This would eliminate confusion and give procurement specialists certainty that purchasing a product with an ‘American-made’ label will comply with the BAP and won’t require any additional research or due diligence beyond standard documentation of the purchase and help manage costs by reducing staff time needed. PHAs and their contractors should be able to rely on an official certification that a product is made in the US to the standards of BABA without having to conduct an arduous investigation of each purchase.

Amend Unreasonable Cost Waivers for Redevelopment Projects

While CLPHA appreciates that OMB granted a waiver allowing HUD to provide BAP exemption when the inclusion of domestically produced materials and products would increase the overall project cost by more than 25%, **this waiver is of no practical value for redevelopment projects as it is presently construed.** This is because the 25% cost increase will not become apparent and documentable until the project is well underway or completed. Instead, the project may simply be deemed infeasible at inception. The lack of cost containment that BABA will impose will eliminate these projects’ competitiveness for financing awards. This waiver category also includes labor costs, which vary widely across regions.

We ask that the unreasonable cost waiver be amended to lessen the verification requirements. It is onerous to require PHAs to “Determine the additional cost of BABA compliant products” and “Determine the dollar amount to be waived.” These figures would be more easily calculated by the procurement teams instead of PHA staff who will likely be applying for the waiver, and would not be easily verifiable prior to project commencement. The 25% waiver category should also exclude labor costs in recognition they are unrelated to BABA.

Categorical Waiver for Technology Systems

We encourage OMB to create a temporary categorical waiver for systems with integrated technology. While the passage of the CHIPS and Science Act of 2022 ([Pub. L. 117–167](#)) will increase domestic production of these critical electronic components, it will take several years for domestic production to ramp up to adequate levels to meet the nationwide demand for affordable housing. Requiring these products be U.S.-made will be a hindrance in the short term. There is precedent: The National Telecommunications Information Administration and other agencies previously granted similar waivers for information technology products (less than 55% U.S.-made) that was included in the 2009 American Recovery and Reinvestment Act.

Grandfather pre-existing, ongoing projects into compliance

Pre-existing construction projects that initially received funds obligated by HUD before November 15, 2022, should be grandfathered into compliance with newly obligated funding being exempt from BABA. These contracts were procured before the implementation of BABA and may not be compliant with the BAP. Without grandfathering, PHAs may be required to “terminate for convenience” these contracts and pay fees to terminate them. These termination fees may be substantial and include reimbursements for payment and performance bonds, equipment rentals/leasing, and building supplies and materials already purchased, among other items. Further, the rebidding of such contracts and delays in project completions does not serve the public

interest, undermines the timely completion of projects, leads to complications in project warranties, harms contractors, subcontractors and their employees, adds to overall project costs, and in some instances will postpone occupancy of critically needed affordable housing. These circumstances can be completely avoided through adding a grandfathering exemption. CLPHA previously [advocated for grandfathering](#) existing projects into compliance.

Clarity on bid bonds

HUD's "safe harbor" strategy does not recognize how construction contracts are bid. Under the safe harbor strategy, it is unclear whether a contractor would be required to submit two bid bonds, one for each of its bids. Construction projects require each bidder to post a bid bond equal to 5% of the bid price under 2 CFR 300.326. Moreover, in many jurisdictions, bids are only valid for 60 days and must be accepted (generally by a PHA's board) within that time to be honored. If a waiver is sought using this approach but not granted by HUD within 60 days, both the bid and bid bond(s) would no longer be valid. Clarity on bonding requirements and a commitment by HUD to quickly review waiver requests are needed. This additional imposition upon contractors will lead to fewer bids and higher contracting costs that cannot be demonstrated.

Conclusion

Thank you for the opportunity to comment on these regulations and their impact on the residents our PHA members serve. We look forward to a continuing dialogue with HUD and OMB on the Build America, Buy America Act.

Sincerely,



Sunia Zatterman
Executive Director
Council of Large Public Housing Authorities