



November 16, 2022

Joseph Carlile
Senior Advisor to the Secretary
Office of the Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street SW
Room 10226
Washington, DC 20410

RE: [Docket No. FR-6331-N-06] Public Interest Phased Implementation Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance

Dear Mr. Carlile,

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 “Public Interest Phased Implementation Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance”.

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 seventy 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.

The ongoing impact of the COVID-19 pandemic continues to represent a serious threat to the short- and long-term well-being of many vulnerable families in HUD-assisted housing and to the PHAs that own and manage housing and vouchers for nearly 3.3 million households. CLPHA supports the nation's largest and most innovative PHAs by advocating for the resources they need to solve local housing challenges.

Background

On May 5, 2022, HUD previously issued a separate waiver covering all federal funding obligated by HUD on or before November 14, 2022. CLPHA [submitted comments on that waiver](#) requesting that the implementation of the Act's Buy American Provision ("BAP") be waived for one year. CLPHA is pleased that HUD made the determination to further extend the Build America, Buy America Act ("BABA") phased implementation waiver by an additional 90 days. **CLPHA members strongly believe an adjustment period of at least one (1) year beyond the expiration of the Public Interest Phased Implementation Waiver is necessary to adequately prepare for and comply with BAP requirements.**

CLPHA is concerned that the requirements of the Act's BAP will impede PHAs' ability to serve vulnerable residents. Public housing developments provide affordable homes to 1.8 million low-income Americans. In 2020, 56 percent of public housing households were headed by older adults or people with disabilities. More than one-third of all residents are children under the age of 18.

Certain requirements of the BAP could also impose undue burdens on PHAs. At a time when inflation is making construction materials costlier and the Operating Cost Adjustment Factors (OCAF) used for adjusting or establishing Section 8 rents for projects assisted with Section 8 Housing Assistance Payments haven't yet taken inflation into account, the Buy American requirements – if implemented hastily – could put added pressure on the already strained resources of PHAs. HUD must be mindful that extra regulations can hinder the ability of PHAs to fulfill their mission to deliver affordable housing by increasing both project costs and completion time.

Extend BABA Phased Implementation Waiver

Implementation of the Act's BAP will be a large programmatic and administrative burden for PHAs, both internally with document and process adjustment, and externally with contractor outreach and education. Premature implementation of the BAP would ultimately undermine PHAs' ability to provide safe, decent, affordable quality housing to serve these most vulnerable populations by increasing construction costs and delaying timelines to construct affordable housing units, disrupting day-to-day PHA operations like property maintenance, and impeding PHAs' ability to provide reasonable accommodations and accessible units.

As stated in prior comments, PHAs generally have not been subjected to Buy American requirements previously. They do not have standard procedures for determining the sourcing of materials from contractors. Many smaller PHAs also lack the purchasing power to require vendors to provide details on the sourcing of materials and supplies. Moreover, PHAs have experienced staffing shortages due to the COVID-19 pandemic. Many PHAs lack the staff capacity, time, and resources to investigate whether a product meets the vague description of a domestically procured material as defined in 2 CFR 200.322. **Therefore, CLPHA strongly recommends that HUD extend the phased implementation of the BAP by one (1) full year.**

A previous notice (87 FR 26221) extended the implementation date for the BAP for HUD funding provided to Tribal recipients and Tribally Designated Housing Entities (TDHEs) for a period of one year. If this year-long extension has been provided to Tribal recipients, then PHAs should be afforded the same relief.

Grandfather Ongoing Projects into Compliance

This notice states that no funds obligated by HUD *before* November 14, 2022 are subject to the BAP. However, it does not detail whether funds obligated by HUD during the 90-day period that this waiver covers *after* November 14, 2022 will eventually be subject to the BAP upon its implementation. Failing to grandfather ongoing projects into compliance would force PHAs to pause construction and adjust procurement sources, which could take months. **CLPHA recommends that HUD grandfather into BAP compliance all projects with funding obligated between November 14, 2022 and the date of implementation of the BAP.** No projects that predated the implementation of the BAP should be subject to its requirements.

Help PHAs Prepare for Implementation

HUD has yet to release any guidance, press releases, or alerts detailing the BAP and its requirements. CLPHA recommends HUD begin a concerted outreach effort to educate and inform PHAs on the requirements of the BAP. These efforts could include creating one-page BABA overview documents, hosting webinars, providing technical assistance and training, drafting guidance and Frequently Asked Questions documents, and improving the BABA webpage. HUD should also begin sending email alerts to inform PHAs of the upcoming changes. The dissemination of this information should begin as soon as possible so that PHAs and their contractors are given ample time to adjust procurement and prepare for implementation of the BAP. Otherwise, ongoing projects may be delayed.

Thank you for the opportunity to comment on these most important regulations and their impact on the residents we serve. In addition to feedback on this Public Interest Phased Implementation Waiver, CLPHA has submitted separate comments on the proposed BABA De Minimis, Small Grants, and Minor Components Waiver, as well as the BABA Exigent Circumstances Waiver.

Sincerely,



Sunia Zaterman
Executive Director
Council of Large Public Housing Authorities