



April 13, 2023

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC, 20500

Dear President Biden:

On behalf of NAHRO, PHADA, CLPHA, and the MTW Collaborative, who collectively represent the nation's 3,200 local public housing authorities, we write to you today to express our concerns with the likely impact of the current guidance and rulemaking for implementation of the Build America, Buy America Act (BABA) provisions of the Infrastructure Investment and Jobs Act on affordable housing development and operation, and the cost of housing in the country.

Our organizations, and our individual members, strongly support the goals of BABA to establish and support American industries. We are very concerned, however, that applying these requirements to housing assistance and affordable housing development will increase operating and development costs, slow the progress of affordable housing development at a time of severe shortage, and reduce the number of homes that can be developed or rehabilitated with limited available funding. Therefore, we are requesting that OMB modify its interpretation of the language of the law and exclude residential properties from the definition of infrastructure.

In passing the Infrastructure Investment and Jobs Act, Congress specifically excluded funding for affordable housing as it did not consider housing to be infrastructure. OMB recognizes this in stating that "Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project." In most of the country, rental homes and apartments are considered the private domain of the lease holder, so the affordable homes supported by housing and community development funding, whether for rental or for sale, are "private homes for personal use" and should fall within this exception.

Furthermore, as noted in a variety of formal comments submitted by our organizations<sup>1</sup> and others to the Office of Management and Budget, applying these requirements to affordable housing development will hinder the industry's ability to meet the housing goals of the administration. Staffing and supply chain challenges, material and product shortages, and higher costs for domestic supplies will all contribute to these challenges. Agency staff will also be diverted from their core mission of providing affordable housing to efforts to ensure compliance with BABA when guidance and sourcing information on essential materials is not available.

Our members are extremely concerned that the many challenges of BABA will result in stopped or delayed projects, and the loss of contractors able and willing to work with HA's on projects. For example, as the National Association of Home Builders has highlighted,<sup>2</sup> in recent years the amount of time it takes to complete a multifamily project has continued to rise, along with the rising costs of materials and labor. The Survey of Construction from the Census Bureau shows that the average length of time to complete construction of a multifamily building – after obtaining authorization – has now risen to 18.1 months for 2022. This authorization-to-completion time has been on an upward trend since 2013, when it was 11.9 months.<sup>3</sup>

Further, the Association of General Contractors' 2022 survey reinforces the challenges already facing housing development. When asked about modifying projects, 64 percent of respondent contractors in

construction fields had projects “cancelled, postponed, or scaled back” due to costs; 34 percent reported these negative changes due to timeframes; and 28 percent noted increases in number or size of potential projects.<sup>4</sup> The National Multifamily Housing Council’s Quarterly Survey of Apartment Construction & Development Activity of March 27, 2023, reported that 79 percent of respondents were still reporting construction delays.<sup>5</sup> Clearly, housing providers need partners to complete necessary projects, but costs often make meeting these needs infeasible. Contractors—like many industries—face a labor shortage, and these surveys show that both staff capacity and project parameters can derail necessary construction work.

Expanding the longstanding definition of infrastructure to include housing would further drive up these already rising costs. According to the Center for Strategic and International Studies: “Significant changes to the domestic content requirements and price preferences for domestic products could force products purchased by the government to contain more U.S. content, but that, in turn, would require U.S. companies to alter their supply chains to meet the higher standards. That would mean increased costs to businesses, both in terms of the cost of changing suppliers and the likelihood that domestically produced parts and components would be more expensive than the foreign ones... In addition, in some industries, the relatively small volume of government purchases – compared to the existing volume of non-government sales – may make companies reluctant to alter their supply chains because the net benefit would be limited.”<sup>6</sup>

This reinforces what we have heard from our members – that BABA would lead to a reduction in bid responses from contractors due to the additional administrative burden. Contractors may select not to participate in HA projects, further reducing the number of quality contractors in a specified area. This could be particularly cumbersome and problematic in smaller, more rural communities where materials and labor are already difficult to procure, and few contractors are available. For HAs with contractors willing to perform the research and reporting of material sourcing, the additional administrative time and costs will then be shifted back onto HAs, further increasing the cost of projects.

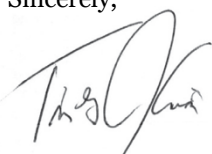
If, as seems likely, development costs increase and timelines stretch, HAs face the prospect of fewer units being developed, limiting the ability of HAs to participate in development and redevelopment opportunities to provide additional affordable housing for lower income households.

Recipients of HUD federal financial assistance should not be required to be in compliance with BABA related to specific standards for construction materials and manufacturing processes for residential development until such time that sourcing marketplaces for American products exist, and when those products are produced in reasonably available quantities and of satisfactory quality.

As noted above, our organization and members support the objectives of BABA. However, given the ongoing housing supply shortage and underfunding of housing assistance programs, particularly public housing, we are requesting that you direct OMB to reconsider its inclusion of housing program funding as covered infrastructure.

Please contact Timothy G. Kaiser at: [tkaiser@phada.org](mailto:tkaiser@phada.org) for any follow up regarding this letter.

Sincerely,



Timothy G. Kaiser  
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PHADA



Mark Thiele  
CEO  
NAHRO



Sunia Zatterman  
Executive Director  
CLPHA



Tracey Scott  
President  
MTW Collaborative

<sup>1</sup> PHADA Comments:

[https://www.phada.org/Portals/21/pdf/commentLtrs/PHADAComments\\_OMBProposedBABARule.pdf](https://www.phada.org/Portals/21/pdf/commentLtrs/PHADAComments_OMBProposedBABARule.pdf);

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[https://www.phada.org/Portals/21/pdf/commentLtrs/PHADAComments\\_2ndBABAProposedWaiver.pdf](https://www.phada.org/Portals/21/pdf/commentLtrs/PHADAComments_2ndBABAProposedWaiver.pdf). CLPHA Comments: <https://www.regulations.gov/comment/HUD-2022-0033-0119>; <https://www.regulations.gov/comment/HUD-2022-0033-0032>.

NAHRO Comments: [https://www.nahro.org/wp-content/uploads/2023/04/NAHRO\\_BABA\\_Phased-Implementation-Waiver\\_FR6331N10.pdf](https://www.nahro.org/wp-content/uploads/2023/04/NAHRO_BABA_Phased-Implementation-Waiver_FR6331N10.pdf); [https://www.nahro.org/wp-content/uploads/2023/03/NAHRO\\_Comments\\_2023-02617.pdf](https://www.nahro.org/wp-content/uploads/2023/03/NAHRO_Comments_2023-02617.pdf).

<sup>2</sup> NAHB Blog, 'Completion time of Multifamily Projects Keeps Getting Longer,' July 7, 2022.

<https://www.nahb.org/blog/2022/07/completion-time-of-multifamily-projects#:~:text=According%20to%20the%202021%20Survey%20of%20Construction%20from,has%20been%20on%20an%20upward%20trend%20since%202013.>

<sup>3</sup> U.S. Census, Average Length of Time from Start to Completion of New Privately Owned Resident Buildings.

[https://www.census.gov/construction/nrc/pdf/avg\\_starttocomp.pdf](https://www.census.gov/construction/nrc/pdf/avg_starttocomp.pdf).

<sup>4</sup> "2022 Workforce Survey Results: Building Construction Results", *The Associated General Contractors of America*, Aug. 31, 2022, p.7. [https://www.agc.org/sites/default/files/users/user21902/2022\\_Workforce\\_Survey\\_Building\\_M.pdf](https://www.agc.org/sites/default/files/users/user21902/2022_Workforce_Survey_Building_M.pdf).

Note: contractors were permitted to "mark all that apply" rather than selecting one answer.

<sup>5</sup> National Multifamily Housing Council Quarterly Survey of Apartment construction and Development Activity (March 2023) under Permitting and Starts, <https://www.nmhc.org/research-insight/nmhc-construction-survey/2023/quarterly-survey-of-apartment-construction-development-activity-march-2023/>.

<sup>6</sup> Lim, O'Neil, Arrieta-Kenna, and Caporal, "Buy America Again," January 28, 2021. Center for Strategic and International Studies. <https://www.csis.org/analysis/buy-american-again-o>.

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