NCSHA
National Council of
State Housing Agencies

July 20, 2026

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Request for Information Regarding Products and Categories of Products Used in Housing Programs Pursuant to the Build America, Buy America Act [Docket No.: FR-6616-N-01]

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA)[1] appreciates the efforts of the U.S. Department of Housing and Urban Development (HUD) to seek public input on the availability of domestically manufactured items necessary for the production and rehabilitation of affordable housing for purposes of implementation of the Build America, Buy America Act (BABA) as it applies to homes financed with HUD federal financial assistance programs. NCSHA is a national nonprofit, nonpartisan organization that represents the nation's state housing finance agencies (HFAs).

State HFAs administer a wide range of affordable housing and community development programs subject to BABA, including the HOME Investment Partnerships Program, Housing Trust Fund, Section 8 rental assistance, Emergency Solutions Grant, Community Development Block Grant, and Housing Opportunities for Persons with AIDS. HFAs also administer down payment assistance, home-buyer education, loan servicing, state housing trust funds, and the Low-Income Housing Tax Credit (Housing Credit) and issue tax-exempt private activity Housing Bonds to finance affordable housing for renters and home buyers.

While we support HUD's Request for Information on specific products, we strongly urge the Department to take a wholistic approach to fully overhaul the BABA implementation process. This includes but goes far beyond the current effort to better understand domestic manufacturing capacity for and availability of commonly used products and materials in affordable housing.

When the previous Administration implemented BABA, it did so in a way that has proven haphazard, confusing, nontransparent, and extraordinarily burdensome for housing developers and HUD grantees alike. The existing system does not do justice to the goals of BABA or congressional intent. It does

[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

not support domestic manufacturers, and it is leading to significant delays, excessive cost increases, a greater reliance on consultants and other middlemen, and other barriers to affordable housing production.

President Trump has sought to reduce bureaucratic red tape and regulatory barriers. Specifically, Executive Order 14394 Removing Regulatory Barriers to Affordable Home Construction and Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs indicate the President's desire to streamline burdensome regulations. The way BABA has been implemented flies in the face of these goals.

The Trump Administration now has the opportunity to fix this broken system, but it must do so wholistically rather than through a band-aid approach. The remainder of this comment letter outlines the specific steps we believe the Administration must take to streamline and improve BABA implementation. Until a new system is put in place, NCSHA strongly recommends pausing BABA requirements and allowing developments to move forward.

Proposal for Implementing BABA in a Manner That Works for Housers and Manufacturers

<u>Analyze the existing domestic manufacturing capacity/availability for products and materials commonly used in affordable housing production.</u> The RFI takes an important first step by seeking to better understand which products and materials are not available from domestic sources. However, in addition to requesting public comment, we urge the Administration, potentially relying on expertise at the Federal Trade Commission (FTC), U.S. General Services Administration, National Institute of Standards and Technology, and/or Department of Commerce–International Trade Administration's Office of Building Materials Industries to fully research the availability of domestically sourced materials and products needed for affordable housing production.

This analysis would serve two purposes:

- To develop a federally recognized certification for BABA compliance and create and maintain a federal searchable BABA-compliant materials and products database. Frequently we hear from developers that domestic manufacturers are unwilling or unable to certify whether their products or materials comply with BABA. It would ease the burden on housing providers significantly if there were a certification standard for materials established by the federal government, similar to the "Made in the USA" brand certifications indicating compliance with the FTC's enforcement of the Made in the USA labeling rule. Unfortunately, the current Made in the USA standard does not necessarily meet BABA requirements and thus cannot be relied upon to ensure compliance with BABA.

  Moreover, the administration should create and maintain a database with all products that get the BABA certification so developers, contractors, and architects have a one-stop shop where they can find BABA-compliant materials and products. If a product is not included in the database, there should be a process in place by which a developer or manufacturer can self-certify compliance with third-party approval and take steps to gain the BABA certification. In addition, we urge the Administration to develop tools for manufacturers to use for the BABA cost calculation.

- To establish general waivers for products that are unavailable in sufficient quantities or significantly more costly from domestic sources. Based on the results of the RFI and further research, HUD should develop general waivers for all products that have proven to be unavailable from domestic sources, available in insufficient quantities, or significantly more costly than similar foreign-made products and materials.

  Under the current system, recipients of grant funding are forced to file individual waivers for each product they are unable to source domestically and file separately for every development. This means grantees may be filing the same waiver for the same product for multiple deals, creating needless, duplicative work for contractors, architects, developers, grantees, and the HUD and Office of Management and Budget (OMB) staff who must review those waiver requests. General waivers available for products that consistently cannot be sourced domestically would substantially reduce the number of individual waivers grantees must file.

This research would need to be revised periodically to allow for updates to the HUD general waiver and BABA-compliant materials/products database so that, if American manufacturers begin to produce new products and materials they previously did not make, the general waivers for such products could be terminated and the database updated to include them.

<u>Consider increasing the de minimis waiver percentage</u>. Currently, HUD has a BABA de minimis waiver in place allowing for the use of non-compliant products provided their total cost is no more than five percent of the total applicable cost of the project. We hear from developers that it is very difficult to ensure BABA non-compliant materials and products remain below this threshold, necessitating more waivers. If HUD provides general waivers for materials and products that consistently cannot be found in the U.S. and establishes the BABA-compliant product database suggested above, it would impact the extent to which the de minimis waiver should be adjusted. Thus, HUD should assess this need based on the results of the RFI and other research and the full implementation of the proposed database and general waivers. Until it is able to undertake such an analysis, we urge HUD to increase the de minimis waiver to no less than 10 percent.

<u>Review waivers in a transparent and timely fashion.</u> If HUD's implementation of our suggestions is successful, we believe most products and materials needed for affordable housing would either be included in the BABA-compliant materials and products database or would be covered by a general waiver. However, there will always be some products for which there is no general waiver and for which a similar product is unavailable domestically. As such, HUD will need a functional process in place to review waivers.

The first step in developing such a process should be clear guidance from HUD about what information must be included in requests for waivers, the standard by which grantees must show due diligence in seeking domestically made options, and answers to common questions about how to comply with the requirements.

HUD and OMB should establish a searchable database of all waiver requests they receive and where those requests are in the review process so developers and others involved in project development understand the status of their requests.

Lastly, there needs to be a time limit established for HUD's and OMB's review of waiver requests. According to anecdotal accounts, it takes as many as six months to prepare waiver requests and approximately eight to nine months for HUD and OMB to approve waiver requests after receipt. That means BABA is stalling projects for well over a year. These delays are causing closings to be moved back and projects financed with the Housing Credit to miss statutorily required placed-in-service deadlines.

HUD and OMB would be in a better position to review waivers in a timely fashion if the Administration were to implement NCSHA's proposal to establish a BABA-compliant materials and products database and for HUD to develop general waivers for common products unavailable domestically, because far fewer individual product waivers would be submitted. Still, there must be some sort of time limit applied to the waiver review process. We suggest a requirement that HUD and OMB act on a waiver request within 30 days of receipt to minimize disruptions to project timelines.

<u>Streamline purchasing requirements</u>. Federal law imposes differing requirements on federal agencies and their grantees related to purchasing or otherwise using products manufactured or produced in the United States. For example, the Buy American Act of 1933 has a different statutory and regulatory framework than BABA, which was established under the Infrastructure Investment and Jobs Act of 2021. Moreover, the Made in the USA marketing certification enforced by the FTC for compliance with the Made in the USA labeling rule enforces Section 5 of the Federal Trade Commission Act. Products that qualify as Made in the USA do not necessarily meet the requirements of either the Buy American Act or BABA.

Given the many overlapping but still distinct statutory and regulatory efforts to encourage domestic manufacturing, NCSHA believes it is necessary to have an entity such as the Government Accountability Office review conflicting or confusing domestic content and American purchasing requirements across federal agencies to find opportunities for overall alignment, which may require statutory or regulatory changes.

Temporarily Suspend BABA Implementation for Affordable Housing Programs

It will take time for the Administration to undertake the recommendations above and put in place a system that facilitates compliance with BABA. Unfortunately, given the current housing supply crisis, we cannot afford to hold up development while we wait. Therefore, NCSHA recommends the Administration pause BABA implementation at least until it finishes analyzing and acting on comments from the RFI and other research. During the pause, the Administration should continue the existing public notice and comment for all waiver requests but allow projects to go forward without BABA waivers in place. At a minimum, HUD should temporarily suspend BABA implementation as it applies to manufactured products, which have proven to be the biggest challenge for housing providers, as opposed to iron and steel or other construction materials.

Thank you for the opportunity to submit comments on this important process. We strongly encourage a broad overhaul of BABA implementation rather than simply making small modifications to the existing practice in line with comments received in response to the RFI. Please do not hesitate to reach out to me if you have further questions about the approach detailed herein.

Sincerely,

Jennifer Schwartz
Director of Tax and Housing Advocacy