



March 2, 2023

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

RE: Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance [Docket No. 6331-N-10]

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA),¹ on behalf of its state Housing Finance Agency (HFA) members, respectfully offers these comments on the Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions issued on February 15, 2023. NCSHA is a nonprofit, nonpartisan organization created to advance, through advocacy and education, the efforts of the nation's state HFAs and their partners to provide affordable housing to those who need it.

HFAs administer a wide range of affordable housing and community development programs, including the HOME Investment Partnerships (HOME) program, Housing Trust Fund (HTF), 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.

The Infrastructure Investment and Jobs Act (IIJA) established a "Buy America" Provision (BAP) requiring procurement of domestic goods and materials for certain infrastructure investments supported by federal financial assistance. To date, HUD has issued a series of waivers from the BAP requirements for critical affordable housing developments supported using the HOME, HTF, and other programs. NCSHA appreciates that the phased implementation timeline contained in this most recent waiver provides continued relief for these vital programs

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.

through at least August 23, 2024. We also thank HUD for making sure the current proposed waiver, once final, will have retroactive effect to the date of expiration of the previous waiver for all covered programs.

Supporting U.S.-sourced products and services is an important goal. However, we remain concerned that the eventual application of strict BAP requirements to HOME, HTF, and other programs will significantly increase the production costs for new units of affordable housing and make it much more difficult to achieve another important goal, articulated in the White House's Housing Supply Action Plan, to help close the nation's housing supply gap within five years.² As the Housing Supply Action Plan acknowledges, "the price of goods used in residential construction has increased, squeezing already-tight project budgets and delaying completions;" extending BAP requirements to HOME, HTF, and other affordable housing production tools will only exacerbate these challenges.

In addition to the strong possibility that BAP will lead to higher costs for construction-related materials, the costs of compliance are likely to be steep with added bureaucratic hurdles for developers and contractors. We are concerned this could cause a disincentive for participation in HUD programs by the private-sector entities on which production of affordable housing relies.

Many questions about final implementation of BAP requirements remain outstanding, including the final definitions of covered infrastructure as well as the categories of covered products and materials, costs of components, sourcing issues, and potential exemptions or waivers. While the Office of Management and Budget seeks to address these and other unresolved issues, we appreciate the department's attention to these issues and the thoughtfulness with which you have extended relief from these requirements until at least August 2024.

We thank you for the opportunity to offer these comments and welcome any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman", with a long horizontal flourish extending to the right.

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives

² <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/>