



April 15, 2024

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

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

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 in response to the Request for Information Regarding Iron, Steel, Construction Materials, and Manufactured Products Used in Housing Programs Pursuant to the Build America, Buy America Act issued on February 13, 2024. 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 and a phased implementation timeline for critical affordable housing developments supported using the HOME, HTF, and other programs. We greatly appreciate this forbearance and patience.

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.

However, as that phased implementation timeline draws to a close and BAP requirements are scheduled to go into effect for HOME and HTF for funds obligated after August 23, 2024, we hear increasingly concern from our HFA members and other stakeholders about the potential impact these new requirements may have on the cost, time to develop, and ultimately feasibility of many future affordable housing developments around the country.

NCSHA does not collect or maintain data on the cost or availability of specific iron, steel, manufactured products, or construction materials, whether sourced domestically or from abroad. Anecdotally, however, our conversations with our members support HUD's initial assessment that a number of materials, such as asphalt, concrete, and gravel, are generally available from domestic producers, as importation of these products is very costly by comparison.

Instead, many of the supply concerns we hear from HFAs relate to manufactured products, particularly more complex manufactured products that may contain circuitry and/or microprocessors. Determining whether the composition of these types of items satisfies domestic sourcing thresholds may prove very difficult for developers of affordable housing. Of the product categories specifically mentioned in the RFI, we would speculate that certain lighting fixtures (especially higher efficiency lighting), electrical equipment and components, garage doors, and elevators might prove more difficult to source domestically in adequate quantities and at such cost so as not to severely curtail production or preservation of affordable housing.

In addition, as mentioned in the RFI, we hear concerns from our members about domestic availability of a variety of products required for energy efficiency upgrades and climate resilience, particularly as HFAs and other affordable housing stakeholders prepare to deploy billions of dollars in new funding to retrofit and build new affordable multi- and single-family housing units using technologies intended to help cut energy costs and reduce emissions. It would be unfortunate and misguided if these new sourcing requirements were to hinder our ability to take advantage of a historical opportunity to rehabilitate our nation's housing stock for the future, and we would encourage HUD to be generous in its consideration of waiver applications for these types of products as domestic manufacturing of them ramps up.

Another concern we have heard relates to areas with older housing stock, which may include older mechanical, electrical, or other systems that may require replacement parts to repair or perform routine maintenance. If those systems were not originally manufactured domestically and adequate domestic supply of replacement parts for them does not exist, BABA compliance could potentially require costly and unnecessary replacement of systems where maintenance or repair would otherwise suffice. In these circumstances, HUD should consider allowing a repair versus replacement calculation to bear on its evaluation of waiver requests that rely on cost comparison, such as the unreasonable cost waiver.

To assuage these and other concerns, we also encourage the Department to develop clear guidance regarding what information may be relied upon, potentially to include official labeling or lists of pre-approved manufacturers or distributors, so that developers of affordable housing and those who fund them have confidence in their compliance with these new requirements when acquiring complex

manufactured products. Good faith reliance on such labels or lists, or other approved information, should offer safe harbor from future enforcement action by HUD or rescission or reallocation of funding.

Additionally, when the Department makes a determination in issuing a product-level waiver that a particular item is not available in sufficient supply from domestic producers, we would strongly suggest that waiver be made to apply to that product across the board, with a public process to notify others that the waiver is in effect, rather than requiring multiple entities to apply separately for waivers related to the same product. This would help ease the administrative burden of the waiver process on HUD and grantees alike.

Finally, to the extent permitted by law, we would encourage HUD to consider extending the implementation date for BAP requirements for the HOME and HTF programs, ideally by at least one year. This would allow additional time for funding recipients and subrecipients to understand their obligations and develop policies and procedures to meet them; for manufacturers and distributors to implement systems to track and document compliance with the new requirements; and for HUD to build adequate capacity to handle the high volume of exemption and waiver applications it is likely to receive once the BAP requirements go into effect.

Supporting U.S.-sourced products and services is an important goal. However, the price of goods used in residential construction, while moderating, remains elevated and rising,² and the cost of shelter continues month after month to reflect a large, if not the largest, share of the overall increase in costs faced by consumers.³ We therefore remain concerned that application of BAP requirements to HOME, HTF, and other affordable housing programs will further exacerbate these trends and make it much more difficult to achieve another important goal, articulated in the White House's Housing Supply Action Plan, to close the nation's housing supply gap within five years.⁴ Clearer compliance guidance, broad application of waiver authority, a measured approach to enforcement, and more time to prepare would all help alleviate this inherent tension.

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

Sincerely,



Garth Rieman
Director of Housing Advocacy and Strategic Initiatives

² <https://eyeonhousing.org/2024/02/residential-building-material-price-increase-to-start-2024/>

³ <https://www.bls.gov/news.release/cpi.htm>

⁴ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/>