



March 13, 2023

Office of Management and Budget  
725 17th Street NW  
Washington, DC 20503

RE: Proposed Rule; Notification of Proposed Guidance on Grants and Agreements [FR Doc. 2023-02617]

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA),<sup>1</sup> on behalf of its state Housing Finance Agency (HFA) members, respectfully offers these comments on the proposed rule and notification of proposed guidance on grants and agreements issued on February 8, 2023. For reasons we explain below, we believe that affordable housing developments supported by the HOME Investment Partnerships (HOME) program and Housing Trust Fund (HTF) should be categorically exempt from “Buy America” Provision (BAP) requirements.

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 HOME, HTF, Section 8 rental assistance, the Emergency Solutions Grant, the 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 BAP requiring procurement of domestic goods and materials for certain infrastructure investments supported by federal financial assistance (FFA). To date, the U.S. Department of Housing and Urban Development (HUD) has issued a series of waivers from the BAP requirements for critical affordable housing developments supported by the HOME, HTF, and other programs. NCSHA appreciates the cautious approach reflected in the phased implementation timeline in HUD’s

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<sup>1</sup> 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.

most recently issued waiver, which will provide continued relief for these vital programs through at least August 23, 2024.

However, we remain concerned that the eventual application of strict BAP requirements to HOME, HTF, and other programs will significantly increase production costs for new units of affordable housing and make it much more difficult to achieve the goal articulated in the White House's Housing Supply Action Plan: to help close the nation's housing supply gap within five years.<sup>2</sup> 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.

These challenges cannot be overstated. While there has been recent volatility in pricing of residential construction materials, input costs to build new units of affordable housing remain extremely elevated relative to pre-Covid levels, rising by 8.3 percent in 2022 according to the Bureau of Labor Statistics.<sup>3</sup> Imposing additional restrictions on the sourcing of these materials for new affordable housing construction supported with FFA through HOME, HTF, and other programs will significantly constrain the ability of public-sector entities, like state HFAs, that channel these resources to meet demand for housing in their communities.

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. Ascertaining the provenance of materials, particularly materials such as those used in residential construction, is not always a simple matter, and the documentation, recordkeeping, and reporting that would be required to assure compliance with federal grant and agreement requirements would pose a major disincentive for participation in HUD programs by the private-sector entities on which production of affordable housing relies.

For these reasons, while we appreciate HUD's generous waiver timeline, we ultimately urge OMB to issue a categorical exemption from BAP requirements for affordable housing supported by FFA through programs like HOME and HTF. OMB contemplates this possibility, in the subject proposed rule, which reads, in relevant part:

(d) The Federal awarding agency should interpret the term "infrastructure" broadly and consider the description provided in paragraph (c) of this section as illustrative and not exhaustive. When determining if a particular project of a type not listed in the description in paragraph (c) constitutes "infrastructure," the Federal awarding agency should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, ***as opposed to a project that is privately owned and not open to the public.*** (Emphasis added).

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

<sup>3</sup> <https://www.bls.gov/news.release/ppi.nr0.htm>

Housing, by definition, is privately owned and not open to the public, whether it is owned or rented, as a single-family dwelling or a unit in a multifamily property. Housing is therefore clearly distinguishable from the types of infrastructure Congress intended to be covered by BAP requirements included in the IIJA. OMB has previously acknowledged this, in its initial implementation guidance issued to agencies on April 18, 2022, which explicitly stated that “[p]rojects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project.”<sup>4</sup>

According to HUD, HOME is “the largest federal block grant to state and local governments designed exclusively to create affordable housing for low-income households.”<sup>5</sup> (Emphasis added). Similarly, the HTF “provides grants to states to produce and preserve affordable housing for extremely low- and very low-income households.”<sup>6</sup> (Emphasis added). Unlike other HUD programs, such as the Community Development Block Grant program, HOME and HTF funds are not eligible to be used for anything other than housing. Because OMB has recognized that housing is excluded from the definition of “infrastructure project” as contemplated by the IIJA and subsequent guidance, we therefore believe that affordable housing developments supported by these programs (HOME and HTF) should be categorically exempt from BAP requirements.

We respect the laudable goal of supporting U.S. industry through the targeted use, where appropriate, of domestic sourcing requirements. In the case of affordable housing, however, imposing BAP requirements would contradict other important policy goals, such as addressing the housing crisis, particularly for extremely low- and low-income households.

We also believe that the intent of the IIJA, as reflected by OMB’s own guidance to agencies and proposed rule, demonstrates that BAP should not apply to privately occupied housing units, including those supported by HOME and HTF. Accordingly, we respectfully urge OMB to explicitly exempt projects funded through these critical programs from BAP requirements, and to communicate this determination as soon as possible to HUD and HUD grantees so they may plan accordingly for the continued delivery of vital affordable housing.

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

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<sup>4</sup> <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

<sup>5</sup> [https://www.hud.gov/program\\_offices/comm\\_planning/home](https://www.hud.gov/program_offices/comm_planning/home)

<sup>6</sup> <https://www.hudexchange.info/programs/htf/>