

July 18, 2024

The Honorable Adrienne Todman
Acting Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Re: Request for Extension of Build America, Buy America Act Public Interest Phased Implementation Waiver for HOME Investment Partnerships Program

Dear Acting Secretary Todman,

We the undersigned stakeholders involved in the HOME Investment Partnerships Program (HOME), applaud the U.S. Department of Housing and Urban Development (HUD) for issuing and extending the comment deadline for the *Request for Information Regarding Iron, Steel, Construction Materials, and Manufactured Products Used in Housing Programs Pursuant to the Build America, Buy America Act* (RFI). This RFI was an important step to determine whether American made iron, steel, construction materials, and manufactured products can meet the demands of affordable housing providers under the Build America, Buy America (BABA) domestic procurement requirement.

As HUD continues to evaluate domestic suppliers' capacity to meet the demand for building materials, we are writing to express our concerns that affordable housing providers may not be ready to comply with BABA mandates when the phased implementation waiver for HOME expires. Therefore, we strongly encourage HUD to extend the phased implementation waiver for the HOME program, which expires August 23, 2024, for a minimum of 12 months.

At this time when the shortage of affordable housing has reached a crisis level, we fear that placing BABA requirements into effect for HOME funds will impede the Biden-Harris Administration's efforts to close the housing supply gap. According to the Joint Center for Housing Studies of Harvard University's report, *America's Rental Housing 2024*, over half of American renter households were cost-burdened in 2022, which is a record-high. Simultaneously, there has been a steep decline of 2.1 million low-rent units since 2012. Faced with high interest rates, rising operating costs, and substantial insurance costs, housing providers are limited in their ability to respond to the supply shortage, and new multifamily construction activity has slowed. As housing providers contend with these challenges, they may be unable to absorb additional compliance costs to pay for staffing to manage documentation and verification from suppliers and subcontractors that materials meet BABA requirements.

We believe applying BABA to HOME funds in the context of these housing market conditions would harm low-income renters and significantly exacerbate the housing affordability crisis. These scenarios demonstrate the unintended consequences that already happened with the implementation of BABA for CDBG or, based on conversations we have had with practitioners involved with HOME-funded projects, are highly likely to happen if BABA takes effect this August 23:

- Developers may back out of projects based on BABA requirements or seek alternative funding that does not require BABA;

- LIHTC projects may stall. Many participating jurisdictions (PJs) use HOME as gap financing, which developers may hesitate to utilize as they lack clarity on how to comply with BABA requirements. This would reduce the financial leverage provided by LIHTC and have a negative multiplier effect across affordable housing finance.
- PJs in adjacent or overlapping jurisdictions may adopt different BABA compliance requirements for subrecipients, creating duplicative documentation requirements for small businesses and organizations.

BABA will also require major adjustments to the planning, sourcing, purchasing and record keeping processes of public and private sector entities involved in HOME-assisted construction of single-family houses and apartments. To date, the undersigned parties, representing Participating Jurisdictions (PJs) and key private sector for-profit and nonprofit partners working on HOME-funded projects across the country, have received insufficient direction from HUD on how to comply with the domestic procurement preference laid out in BABA. We believe the current HUD and Office of Management and Budget (OMB) compliance resources, including memorandums and FAQs, leave many questions unanswered. These include:

- Besides using the Hollings Manufacturing Extension Partnership (MEP), how are PJs, housing providers, general contractors, and subcontractors to confirm with suppliers that iron, steel, construction materials and manufactured products meet the BABA definitions of “produced in the United States?”
- What specific recordkeeping and documentation requirements must HOME grantees/subgrantees/ recipients/subrecipients satisfy? and
- What are the consequences and potential liabilities for non-compliance?

In closing, the impact of BABA will be broad, and there are unaddressed concerns from diverse stakeholder groups that support the mission of HOME. We believe extending the HOME phased implementation waiver until at least August 23, 2025, is necessary to allow HUD to continue evaluating the impacts of BABA on housing production and develop additional user-friendly BABA compliance materials. In the meantime, we urge HUD to work with the OMB Made in America Office (MIAO) to publish training materials and work with a wide range of partners in state and local governments, the home building industry, and skilled trades to understand knowledge gaps and work to provide substantial information to ensure compliance is not overly burdensome-- particularly for small businesses and small PJs. One valuable step would be laying out a clear list of informational resources within the MIAO, MadeInAmerica.gov, and partnerships, such as the MEP, that PJs and subrecipients could utilize to complete projects within their current timelines and budgets.

Thank you for your consideration of this request. Please contact Marc Daniels with the National Association of Home Builders at mdaniels@nahb.org if you have any questions or would like additional information.

Sincerely,

Fahe
Habitat for Humanity International
Housing Assistance Council

Housing Partnership Network
National Association of Home Builders
National Association of Local Housing Finance Agencies
National Council of State Housing Agencies
National Leased Housing Association
National Multifamily Housing Council