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Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10275
Washington, DC 20410-0500

RE: Docket No. FR-6433-N-01

To Whom It May Concern:

On behalf of Stewards of Affordable Housing for the Future (SAHF), we appreciate the opportunity to respond to HUD's *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)*. While supporting American products and manufacturing is a laudable goal, SAHF is extremely concerned with the impact a Buy America Procurement (BAP) requirement will have on the production and preservation of affordable housing, through increased and variable costs; longer lead times; the inability to source specific goods or use subcontractors that comply with other federal requirements and policy objectives; navigating an additional compliance structure that has not even been established; and delays and costs associated with complying or seeking waivers when needed.

SAHF is a national collaborative of twelve nonprofit affordable housing developers. Our mission-driven alliance advances resident-centered policy changes and sustainable solutions that accelerate the production and operation of quality, environmentally sustainable affordable homes within healthy, equitable communities. Together, our members own, operate, and manage more than 2,000 apartment communities comprised of 149,000 affordable rental homes across the country. SAHF members have active pipelines and deep expertise navigating complex financing structures that often layer several federal, state, and local funding sources and subsidy programs. This work is difficult, made even more so with increased construction and insurance costs, staffing challenges, higher interest rates, and the impact of mounting unpaid rent. Many are also trying to leverage the historic investments in climate resiliency and sustainability through the Inflation Reduction Act to build and preserve affordable rental homes in healthier communities.

It is with this expertise in financing, developing, and preserving affordable housing in healthier communities; and considering these challenges, that we offer comment on HUD's implementation of BAP posed in the RFI. We also want to reiterate previous comments¹ made to the agency, OMB and the White House, to urge HUD to utilize its discretionary authority to explicitly exempt affordable housing programs from BAP. This is needed since these requirements would add substantial cost and

¹ [SAHF letter, July 2022](#); [SAHF letter, January 2023](#): While the Infrastructure and Jobs Act (IIJA) defines infrastructure to include "buildings and real property", the OMB Guidance explicitly exempt "projects consisting solely of the purchase, construction, or improvement of a private home for personal use." The use of HUD resources, such as the HOME Investment Partnerships Program, Housing Trust Fund, Green Resilient and Retrofit Program, Section 202 Capital Advances, in affordable housing development projects should not trigger BAP requirements since they are used to construct, rehabilitate, or preserve private homes which are not "open to the public." While most affordable rental housing has a general public use requirement, the actual homes themselves are privately leased and not open to the public unlike other more traditional infrastructure projects.

Stewards of Affordable Housing for the Future

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administrative burden to the production and preservation of affordable housing, directly contravening the goals of the Administration’s Housing Supply Action Plan, as we will illustrate further below. SAHF is also extremely concerned with equity implications of BAP requirements to HUD programs. Specifically, the costs of complying with BAP disproportionately impact:

- Affordable housing developments, compared to market rate projects, since they require the use of multiple federal subsidies that have been deemed federal financial assistance (FFA).
- Affordable housing developers, even larger ones like SAHF members and especially smaller emerging developers, that do not have the economies of scale that more traditional infrastructure projects have and don’t have the bargaining power to require the BAP requirement in potential contracts.
- Nonprofit owners and developers. IJJA limits BAP requirements to non-federal entities defined as “ States, local governments, territories, Indian tribes, Institutions of Higher Education, and nonprofit organizations”. For-profit organizations are not considered non-Federal entities, thus not subject to BAP. If affordable housing continues to be subject to BAP, this means that nonprofit owners and developers must comply with added costs and restrictions, whilst for-profit developers will not, even when participating in the same HUD programs.
- Contractors have also expressed concern to SAHF members that BAP requirements could further narrow the field of subcontractors, especially Minority/ Women-Owned Business Enterprises (MWBE), given the increased compliance requirements.

Responses to RFI

HUD’s RFI acknowledges that the agency lacks understanding of the current state of the domestic market for products required in housing infrastructure projects. And yet, the agency continues to move forward with a phased implementation of BAP in HUD programs.² We urge HUD to pause such requirements, issuing a general waiver for the phased implementation, at least until such time as it can adequately review and address responses to this RFI and conduct its own market studies.

(1) Domestic Materials Sourcing and Manufacturing

Proceeding with implementation without a more comprehensive understanding of market readiness all but guarantees that developers will bear the brunt of navigating alternative sourcing options and evolving compliance requirements, while spending significant resources applying for and waiting on waiver requests that will impact timelines and substantially increase costs. We would also urge HUD to conduct specific outreach to manufacturers as several of the questions in the RFI relate to how long they would need to become BAP compliant and what volume could be produced, that simply cannot be adequately responded to here.

(2) Market Readiness and (3) Timing

² This table (a trimmed version of one in this [HUD notice](#)) shows implementation deadlines for key HUD programs and the type of materials that would qualify for BAP:

	Iron and Steel	Construction Materials	Manufactured Products
Choice Neighborhood, Lead Hazard, & Healthy Homes	Feb. 22, 2023	Aug. 23, 2024	Aug. 23, 2024
HOME, Housing Trust Fund, and Public Housing FFA	Aug. 23, 2024	Aug. 23, 2024	Aug. 23, 2024
All other HUD FFA	Feb. 22, 2024	Aug. 23, 2024	Aug. 23, 2024
Green and Resilient Retrofit Program (GRRP)	Feb. 22, 2024	Aug. 23, 2024	Aug. 23, 2024

In discussing the impact of BAP on affordable housing production and preservation with SAHF members and industry partners, it has become increasingly clear that these requirements do not align with the historic investments in climate resiliency, and could negatively impact our ability to achieve those outcomes. The following are responses to HUD's request for details on specific products/ product types:

- **Lighting:** The U.S. Department of Energy (DOE) published a report that characterizes the global manufacturing supply chain for light-emitting diodes (LEDs) and LED lighting products. The analysis reveals that manufacturing of LED die and packages is concentrated in Asia, while manufacturing of LED lamps is dominated by China. This [waiver request](#) demonstrates not only the lack of availability of these products in the United States, the lengthy and time consuming process that such a waiver requires of the grantee, and finally the impact that requiring BAP on a this product type would have on the energy efficiency project (from unrealized incentives and financing already secured, and the projected annual energy savings).
- **Plumbing:** A supplier told a SAHF member that to be BAP compliant, material costs for plumbing materials will be 4-5 times higher and leads times will be 2-3 times longer than what they experience currently. Current hot water equipment is manufactured in Japan and already takes 30 weeks in lead time.
- **Heat Pumps:** The only manufacturer of heat pumps that meet building codes and Department of Energy regulations, and that physically fit in affordable manufactured housing projects is manufactured in Mexico.
- **Windows:** Several SAHF members and industry partners have voiced concern about the impact of BAP on the ability to source windows that meet Passive House (or most green building certification programs referenced by the Leading Edge pathway for the HUD GRRP), as there are virtually no manufacturers that operate in the US, with a significant portion of these windows sourced in central Europe.
- **HVAC:** Daikin and Mitsubishi, two main suppliers of HVAC systems, are reportedly scaling up production in the US, but it is unclear from non-manufacturers where the various components come from. This points to another concern that we have heard about BAP compliance: how do you determine BAP compliance on more complicated systems, often used in climate resiliency and energy efficiency projects (like smart detectors) when they have multiple components that could be sourced from different countries. At this point, there has been limited explanation of how BAP would apply to manufactured products like this, adding to ongoing confusion and frustration.

(3) Other Practical Considerations

BAP is likely to impact timing and cost of projects already in the pipeline. Affordable housing production and preservation takes years, and there are currently deals in developers' pipelines that could be subject to BABA when the financing is secured but are still in early stages and likely won't close until 2025. This could require developers getting "add alternatives" for US-only sourced materials to comply or getting revised (higher pricing). Developers will then need additional financing sources to cover cost differentials and if they cannot be secured, development will be further delayed or even precluded if delays become too long.

(4) BAP Compliance and Impact

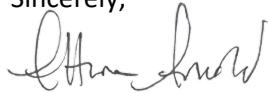
In discussions with SAHF members and other industry stakeholders, there has also been significant confusion around how to comply with BAP, even as HUD is approaching guidance on such differently by program. We know thus far for example that HUD's Office of Public Housing (PIH) has taken a step in issuing guidance allowing for "safe harbor procurement strategies" so

PHAs request both BAP compliant and non-BAP compliant bids, which could be used as a way to justify an unreasonable cost waiver for specific projects. CPD has not proposed such guidance, even though it is unclear why a PHA's documentation and other compliance requirements would differ from those of other "non-Federal entities" subject to BAP.

The RFI asks for specific details on contract language and lead time that contractors would need for BAP delays. While we are not equipped to provide such details here, the phrasing of the request indicates a general understanding that there will be delays in BAP compliance, and waiver requests. We also know that contract language modifications will likely arise, until pricing and lead times are truly accounted for, which will add time and financial costs to projects. It is also possible that contract modifications will lead to scenarios where contractors won't bid, especially if there is no end date specified.

While we appreciate this opportunity to respond to HUD's Request for Information, it is clear that the responses (both those directly in response to the RFI and the overall applicability of BAP on affordable housing) point to serious concerns about the impact implementation of these requirements could have on affordable housing production and preservation. Specifically, the lack of domestic sourcing and market readiness are only likely to lead to higher costs, longer timeframes, and overall less success in advancing policy objectives such as greening HUD's affordable housing stock. This is antithetical to the Biden Administration's Housing Supply Action Plan, and would force the burden of such impacts on affordable housing developments and the residents that rely on this housing. We therefore strongly urge HUD to use its authority to exempt affordable housing from such requirements.

Sincerely,



Althea Arnold

Senior Vice President, Policy