



July 1, 2022

Joseph Carlile
Senior Advisor
Office of the Secretary, U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-5000

RE: Docket No. FR-6331-N-03, Request for Information Relating to the Implementation of the Build America, Buy America Act

Dear Mr. Carlile:

Thank you for soliciting information in your request for information at 87 Federal Register 33193 on implementation of the Infrastructure Investment and Jobs Act's requirements for the application of domestic preference requirements, known as "Buy America" requirements, to projects funded by the U.S. Department of Housing and Urban Development's programs and Federal Financial Assistance. Associated Builders and Contractors submits the following information to assist HUD in implementing these requirements.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 member companies. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for government and private sector customers, which includes multifamily apartment and residential units receiving HUD assistance.¹

The vast majority of ABC's contractor members are small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)² and industry workforce employment (more than 82% of the construction industry is

¹ For example, see ABC's 32nd Excellence in Construction Awards program from 2022: <https://www.abc.org/Portals/1/2022%20Files/32ND%20EIC%20program--Final.pdf?ver=2022-03-25-115404-167>.

² U.S. Census Bureau 2019 County Business Patterns: [https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePr](https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=true)
[view=true](https://www.census.gov/programs-surveys/cbp/data/tables.2019.html) and <https://www.census.gov/programs-surveys/cbp/data/tables.2019.html>.

employed by small businesses).³ In fact, construction companies that employ fewer than 100 construction professionals compose 99% of construction firms in the United States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.⁴

In addition to small business member contractors who build private and public works projects, ABC also has large member general contractors and subcontractors who perform construction services for private sector customers and federal, state and local governments. For example, ABC members won 57% of the \$128.73 billion in direct prime construction contracts exceeding \$25 million awarded by federal agencies during fiscal years 2009-2021. These federal contractors provide subcontracting opportunities to large and small contractors in the specialty trades and deliver taxpayer-funded construction projects on time and on budget for their federal government customers.

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Response to the Request for Information

I. The Construction Industry Already Faces Significant Supply Chain Challenges

The U.S. construction industry currently faces significant headwinds in the form of supply chain disruptions, unprecedented materials cost inflation and declining investment. Our concern is that immediate implementation of Buy America requirements could exacerbate these disruptions and further increase costs for contractors and taxpayers and contribute to the affordable housing shortage for America's most vulnerable populations.

Despite access to vaccines and decreasing case numbers, the ongoing COVID-19 pandemic continues to cause significant supply chain disruptions. Countries around the world continue to impose COVID-19 shutdowns, impacting the global supply chain. In addition to manufacturing issues, a number of transportation issues, including delays at West Coast ports, rail bottlenecks and a lack of trucks to transport materials have contributed to the disruptions.⁵

These supply chain disruptions, among other factors, have contributed to massive increases in material prices. In May 2022, construction input prices were up 21.4% from

³ 2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), at pg. 3, <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf>.

⁴ U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, Available at <https://thetruthaboutplas.com/wp-content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx>.

⁵ Sam Barnes, "[Missing Links](#)," Construction Executive, April 2022.

May 2021 prices, and up 44% since the onset of the COVID-19 pandemic in February 2020. The increase was felt across nearly all materials, with input prices up in 10 of 11 subcategories. Currently, economists predict that this inflation is not expected to decline significantly in the near term given the impacts of the Russia-Ukraine War, the COVID-19 pandemic, increased transportation costs and increasing demand for construction materials.⁶

Finally, the challenges that the industry is facing have led to a decline in overall investment in the construction industry. In the first quarter of 2022, investment in nonresidential structures declined at a rate of 0.9%, following contractions in nine of the past 10 quarters.⁷

II. Buy America Implementation Should Be Delayed

HUD should consider the supply chain challenges currently facing the construction industry, as outlined above, in its implementation of these requirements. Given the unprecedented nature of the issues facing the industry, HUD should delay implementation of domestic preference requirements for construction materials on federally assisted projects. Instead, HUD should conduct extensive studies and seek additional public comment to ensure effective implementation of Buy America requirements.

1. HUD should extend its current Buy America Waiver.

The actions of multiple federal agencies tasked with federal assistance of infrastructure clearly demonstrates the need for deliberate implementation of these updated requirements. On April 28, 2022, the U.S. Department of Transportation announced a six-month waiver of Buy America requirements,⁸ and HUD issued a similar waiver on May 3, 2022.⁹ Both agencies cited the lack of available information to immediately implement these requirements, with HUD stating:

Because the potential application of BAP mandated by the Act is new to the majority of HUD's programs and Federal Financial Assistance, HUD does not have a full understanding of the impact on HUD's programs and Federal Financial Assistance that will be subject to the Act's provisions, nor does it have adequate information concerning the types of information necessary to demonstrate compliance with the BAP or to seek product- or project-specific waivers under the Act to readily provide the public with an opportunity to evaluate the burdens associated with the information to be collected. As a result, the

⁶ "[Construction Input Prices Are Up 21% From a Year Ago, Says ABC](#)," ABC, June 2022.

⁷ "[GDP: U.S. Economy Contracts, Investment in Structures Down Again, Says ABC](#)," ABC, April 2022.

⁸ See "Notice of Proposed Temporary Waiver of Buy America Requirements for Construction Materials," published on regulations.gov on April 28, 2022: <https://www.regulations.gov/document/DOT-OST-2022-0047-0001>.

⁹ See 87 Federal Register 26219: <https://www.federalregister.gov/documents/2022/05/03/2022-09513/general-applicability-waiver-of-build-america-buy-america-provisions-as-applied-to-recipients-of-hud>.

Department is not yet equipped to provide recipients of Federal Financial Assistance from HUD with the opportunity to fully evaluate and comment on the proposed information to be collected as would be required under the PRA.¹⁰

Given the supply chain challenges outlined above and HUD's own acknowledgement of difficulties associated with implementation, the agency should consider extending its six-month waiver to ensure Buy America standards can be fully studied and developed prior to implementation.

2. HUD should consider agency staffing needs for an expected high volume of waiver requests.

As noted in the Office of Management and Budget's initial guidance on implementing the new Buy America requirements, the IIJA allows for several categories of waivers that recipients can apply for when the requirements may be unfeasible.¹¹

Given the supply chain challenges outlined above, it is highly likely that HUD will face an extremely high volume of waiver applications, especially considering the OMB's guidance that "to the greatest extent practicable, waivers should be targeted to specific products and projects."¹² Many products and projects may qualify for the nonavailability or unreasonable cost waivers given the difficulty contractors already face in obtaining affordable construction materials.

HUD should consider the impact a flood of waiver applications will have on the agency, which along with other federal agencies is already working to hire enough employees to effectively distribute IIJA funding and procure additional direct federal construction contracts above baseline spending.¹³ HUD may not have sufficient staff to process these applications in a timely manner, which would lead to additional delays and increased costs and make HUD contracting opportunities less attractive to construction industry stakeholders. HUD should consider how future waivers may be granted more broadly to alleviate this concern.

Conclusion

While ABC supports strategies to expand domestic jobs and manufacturing to avoid global supply chain disruptions and capture economic benefits within America, Buy America policies need to be balanced with safeguards against increased costs and/or delays of affordable housing projects funded by the federal government and ultimately taxpayers. HUD should carefully consider our recommendations to ensure these

¹⁰See 87 Federal Register 26219: <https://www.federalregister.gov/d/2022-09513/p-17>.

¹¹ See OMB Memo M-22-11, pg. 6: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.

¹² Ibid.

¹³ See "OPM's Ahuja says agencies need to balance speed with 'doing it right' for Bipartisan Infrastructure Law hiring," Federal News Network, May 3, 2022: <https://federalnewsnetwork.com/hiring-retention/2022/05/opms-ahuja-says-agencies-need-to-balance-speed-with-doing-it-right-for-bipartisan-infrastructure-law-hiring/>.

requirements can be implemented with minimal disruptions to these critical infrastructure projects.

Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Brubeck". The signature is fluid and cursive, with the first name "Ben" being more prominent than the last name "Brubeck".

Ben Brubeck
Vice President of Regulatory, Labor and State Affairs
Associated Builders and Contractors
brubeck@abc.org