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HUD Delays Effective Date on BABA's "Buy America" Requirements



Under HUD's latest guidance, affordable housing projects utilizing more than \$250,000 in HUD financial assistance may become subject to the Build America, Buy America Act's ("BABA") "Buy America Preference" for assistance obligated by HUD after February 16, 2023.

The Buy America Preference ("**BAP**") requires that all infrastructure projects receiving federal financial assistance use domestically produced iron, steel, manufactured products, and construction materials, unless granted a waiver by the granting agency. In its initial guidance, HUD provided a list of programs to which the BAP may apply, including Choice Neighborhoods Implementation grants, the Public Housing Capital Fund, HOME, CDBG, and the Housing Trust Fund. Although the list did not include other multifamily affordable housing programs—such as Sections 202/811, Section 8 project-based assistance, and FHA loan insurance—the list is intended as a preliminary analysis and, thus far, HUD has not offered any clarification regarding whether such programs could be added to the list moving forward.

While a proposed waiver notice posted last week would delay HUD's implementation of the Buy America Preference for non-CDBG programs^[1] for a 90-day period from the waiver's effective date (likely expiring on or about February 16, 2023), HUD has not responded to industry pleas to exclude affordable housing projects from the type of infrastructure projects subject to the BAP. Thus, in the absence of further guidance, there remains a threat that multifamily housing developers using financial assistance obligated by HUD after February 16 may be required to source all steel, iron, manufactured products, and construction materials domestically.

In addition to the proposed 90-day waiver, HUD also recently proposed an "exigent circumstances" waiver, which appears to target sudden, time-sensitive rehabilitation and repair needs, rather than general affordability concerns. In response to HUD's latest guidance, affordable housing industry organizations including the Local Initiatives Support Corporation, Stewards of Affordable Housing for the Future, and others will continue to advocate that HUD exclude affordable housing developments from the infrastructure projects to which the Buy America Preference applies.

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[1] HUD will fully implement the BAP for CDBG formula grants obligated by HUD on or after November 15, 2022.

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