



We help build homes and communities across rural America.

July 29, 2022

Submitted via email to ffac@usda.gov

Federal Financial Assistance Policy
Office of the Chief Financial Officer
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

Re: USDA Public Interest Waivers: De Minimis, Small Grants and Minor Components

Gentlepersons:

The Housing Assistance Council (HAC) appreciates this opportunity to comment on the [proposal](#) by the U.S. Department of Agriculture (USDA) for departmentwide public interest waivers from the Buy America preference in the Build America, Buy America (BABA) Act for de minimis, small grants, and minor components.

HAC is a national nonprofit organization that helps build homes and communities across rural America. Since 1971, HAC has provided below-market financing for affordable housing and community development, technical assistance and training, research and information, and policy formulation to enable solutions for rural communities across the country. In our work, HAC places a special focus on high-needs rural regions – including the Mississippi Delta and the Black Belt, rural Appalachia, Indian Country, the border colonias, and farmworker communities.

With over 50 years of experience supporting and developing affordable housing and community facilities using USDA financial assistance across rural America, HAC is uniquely positioned to comment on BABA's potential impacts for affordable rural housing.

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HAC is an equal opportunity provider, employer, and lender.

Housing and community facilities should not be subject to BABA.

Because USDA's current waiver proposal would apply departmentwide, it does not specifically address BABA's applicability to specific programs or specific types of federal assistance. After excluding housing and community facilities from its [January 2022 list](#) of programs subject to the Buy America preference, however, the Department now seems to indicate it may be considering them to be subject to BABA. For example, USDA's waiver proposal refers to increases in costs and time if multifamily housing development and preservation are subject to Buy America preferences. An earlier waiver [proposal](#) from USDA Rural Development included housing and community facilities programs on a list of programs that "will need to be individually evaluated" to determine BABA's applicability.

HAC agreed with USDA's January approach and is concerned by the possible change. Housing assistance, in particular, is not covered by either the statutory language or [guidance](#) from the Office of Management and Budget (OMB). Furthermore, while Buy America preferences are based on laudable goals, the public interest weighs heavily in favor of excluding housing and community facilities assistance from their coverage.

Housing is not public infrastructure.

In BABA's definition of infrastructure (§70912), "buildings and real property" appears at the end of a list of items that are all, without exception, for the benefit of the general public: roads, freight facilities, utilities, broadband infrastructure, and the like. OMB's April 18, 2022 [guidance](#) for federal agencies also makes clear that BABA applies only to "public" infrastructure.

Homes, on the other hand, are quintessentially private spaces. OMB notes that federally assisted owner-occupied housing is not covered by BABA: a project "consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project." While OMB's guidance does not specifically address rental housing, federally assisted rental housing is also for personal, not public, use. Recorded titles, mortgages, and leases reserve use of the property to those living in the property.

Housing and community facilities should receive a public interest waiver from BABA requirements.

Even if rental housing and/or community facilities were for some reason determined to be public infrastructure, waiving the Buy America preference for federal assistance to housing and community facilities would be in the public interest. As the current waiver proposal makes clear, applying the preference would impose "significant cost and time increases for essential affordable housing development, . . . community facility projects, . . . as well as preservation recapitalizations of existing affordable multifamily housing properties."



In 2022, providers and clients of affordable housing and community facilities are facing crises in the availability and costs of housing, building materials, and labor. Addressing these crises must be USDA's top priority. That will require stretching all available funds and human resources as far as possible by obtaining the lowest-priced quality goods available and using staff time for the most pressing tasks first.

HAC supports USDA's proposal for a departmentwide small grants waiver.

As USDA notes, waiving the BABA preference for awards with total federal funding below the Simplified Acquisition Threshold (currently \$250,000), would "reduce burden to ensure they make efficient use of limited resources."

HAC recommends that if USDA determines BABA applies to some housing projects, it should also provide a small grants waiver for funding awards involving properties with fewer than eight housing units. The Department of Housing and Urban Development's [Office of Community Planning and Development](#) adopted such an exception from the buy American preference in the 2009 [American Recovery and Reinvestment Act](#), explaining that the time and funds needed to apply the preference to small projects would be disproportionately large compared to the potential benefit.

The logic applied in 2009 is only more compelling in the current economic climate, when every corner of the U.S. is experiencing shortages of materials and sharply escalating prices. With severely limited staff and resources, rural providers of affordable housing and community facilities face significant challenges in accessing varied sources of construction materials at a reasonable cost.

HAC supports USDA's proposals for departmentwide de minimis and minor deviations waivers.

Waiving the Buy America preference for 5 percent of project costs up to a maximum of \$1,000,000 would, as USDA suggests, allow fund recipients "to focus their compliance efforts on the major goods in their projects." This de minimis waiver would avoid the possibly prohibitive administrative burden of determining the origin of and alternatives for the many small items such as nails that are involved in every housing or community facilities project.

A minor deviations waiver is a sound concept for the same reasons, although it is not clear how USDA determined the appropriate percentage for its proposal to allow "non-domestically produced miscellaneous minor component comprising no more than 5% of the total material cost of an otherwise domestically produced iron and steel product to be used."



USDA's waiver proposal acknowledges the need to reduce administrative burden on funding recipients, but conversely states, "The recipient would be expected to provide analysis" to support application of the minor deviations waiver. HAC strongly encourages USDA to take responsibility for that analysis – and overall BABA compliance – by conducting ongoing research and providing up-to-date information about sources of construction materials that meet BABA requirements or conditions of USDA waivers.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you need additional information.

Sincerely,

A handwritten signature in black ink that reads "David Lipsetz". The signature is written in a cursive style with a large, sweeping "D" and a long, trailing "z".

David Lipsetz
President & CEO

