



A bold voice for transportation workers

March 13, 2023

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

**RE: Proposing to revise OMB Guidance for Grants and Agreements under the Build America, Buy America Act provisions of the Infrastructure Investment and Jobs Act; Notification of proposed guidance
Docket No. OMB-2023-0007**

Dear Director Young:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Office of Management and Budget (OMB) Request for Information regarding Buy America Requirements for Grants and Agreements under the Build America, Buy America Act provisions of the Infrastructure Investment and Jobs Act. TTD consists of 37 affiliate unions representing workers in construction and manufacturing who are directly impacted by Buy America policies.

TTD appreciates OMB's continued engagement and commitment to implement the Buy America provisions included in the Bipartisan Infrastructure Law (BIL), which represents a historic step toward making necessary and long-overdue investments across all sectors of our nation's infrastructure. In addition to making once-in-a-generation investments that will reach every corner of this country and benefit every American, the BIL will create hundreds of thousands of good jobs for American workers and contains a number of long-sought priorities that benefit and protect workers across every mode of our transportation network, including strengthened Buy America preferences to include construction materials and manufactured products. These preferences require that all of the iron, steel, manufactured products, and construction materials used in federally-assisted infrastructure projects are produced in the United States.

Buy America Policies Create American Jobs

TTD [has long supported](#) strong Buy America provisions. As we [stated last August](#), it is crucial to begin disbursing funds appropriated in the BIL subject to domestic content preferences that will

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create high-quality American jobs with the option of joining a union. DOT should move quickly to begin a transparent, narrow waiver process, which includes specific product waivers and posting those waivers publicly through the mandated central clearinghouse website. Domestic manufacturers need strong evidence, such as time-limited non-availability waivers, to make commercial and workforce investments that would grow our nation’s manufacturing capabilities using American labor. Posting individual, narrowly tailored waivers provides valuable information on the frequency, value, and nature of purchases that are not being supplied by domestic producers, which would enable domestic manufacturers to make informed investment decisions that will fill gaps in our production capabilities. Many manufacturers have unused factory capacity that could be reallocated quickly to meet domestic production needs, but these steps will only be taken if business-owners see demonstrated need for their products. For compliance, a good-faith certification process would not need to be completely re-invented. Existing procedures such as step-certification could be used to ensure that federally-assisted projects are meeting Buy America requirements.

Cost of Components

TTD supports OMB’s proposal to interpret “cost of components” consistent with the definition for that term in the Federal Acquisition Regulation (FAR). This standard ensures that components’ costs are evaluated on a fair and consistent basis. The definition also ensures that end product assembly is not treated as a component input for purposes of the domestic component content requirement. Such an interpretation would diminish or eviscerate the value of the preference regime to U.S. upstream component manufacturers.

Iron and Steel

TTD urges OMB to ensure that any threshold standard used to determine a product’s categorization as “iron or steel” is aligned with similar standards and established precedent used to define iron and steel products in domestic procurement preference requirements applied to federal aid infrastructure spending. Such examples include the Environmental Protection Agency’s (EPA) interpretation of the term “primarily iron or steel” in its American Iron and Steel laws, which is defined as “made greater than 50% iron or steel measured by cost. The cost [is] based upon the material costs.”

In the notice, OMB asked whether it “should adopt a definition of the term ‘predominantly’ similar to the definition for the term ‘predominantly iron or steel or a combination of both’ in the FAR...” While that definition, added to the FAR in 2021, is somewhat similar to various agencies’ definitions for “primarily iron or steel,” it is not wholly consistent and permits foreign ferrous content. It also lacks the established interpretative precedent of other definitions found in the FAR. For these reasons, we encourage OMB to adopt a standard for predominantly iron or steel that is consistent with the definitions for “primarily iron or steel” in various existing federal aid infrastructure program’s domestic procurement preference laws.

The opportunity provided by the BIL to improve infrastructure and create hundreds of thousands of high-quality American jobs depends upon successful and responsible implementation –

including regulatory definitions and requirements published by OMB. We are encouraged to see OMB's continued commitment to implementing President Biden's historic vision to rebuild America's infrastructure, and we urge OMB to continue to work with labor organizations to ensure that workers can lend critical expertise to these conversations.

TTD appreciates the opportunity to comment on OMB's request for information and looks forward to working with OMB on this and other issues in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Regan", written over a circular stamp or mark.

Greg Regan
President