

This Request for Information will be published in the Federal Register. The Comment Due Date will be provided in the published document. HUD will not accept comments prior to the published Comments Due Date.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6433-N-01]

Request for Information Regarding Iron, Steel, Construction Materials, and Manufactured Products used in Housing Programs Pursuant to the Build America, Buy America Act

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Request for Information.

SUMMARY: This Request for Information (RFI) seeks public input on the implementation of the Build America, Buy America Act (BABA or the Act) as it applies to HUD's Federal Financial Assistance (FFA) provided in support of the construction, alteration, maintenance, and repair of housing infrastructure projects in the United States. The purpose of this RFI is to improve HUD's understanding of the current state of the domestic market for products required in housing infrastructure projects. HUD is especially interested in comments detailing domestic materials sourcing, market readiness, other product supply considerations, and whether specific housing products or their components are manufactured in the United States.

DATES: Comment Due Date: **[INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons are invited to submit comments on this RFI. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

To receive consideration as public comments, comments must be submitted through one of the two methods specified below. All submissions must refer to the above docket number and title.

Commenters are encouraged to identify the number of the specific question or questions to which they are responding. Responses should include the name(s) of the person(s) or organization(s) filing the

comment; however, because any responses received by HUD will be publicly available, responses should not include any personally identifiable information or confidential commercial information.

Business confidential information can be submitted to BuildAmericaBuyAmerica@hud.gov.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

No Facsimile Comments. Facsimile (FAX) comments will not be accepted.

Public Inspection of Comments. All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit:

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Faith Rogers, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10126, Washington, DC 20410-5000, at (202) 402-7082 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. HUD encourages submission of questions about this document be sent to BuildAmericaBuyAmerica@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Responding to this Request for Information

HUD encourages supplier and other stakeholders to identify products and categories of products that currently have sufficient domestic availability to support HUD-assisted infrastructure projects, to assist contractors and project sponsors in incorporating compliant products in their projects, and to help HUD focus its activities to benefit domestic manufacturers. To assist in gathering this information, HUD seeks input from the public, including HUD's project sponsors, their contractors and offerors, manufacturers, labor unions, transportation and trade associations, and other interested parties. HUD seeks information in several categories related to the domestic availability of products commonly used in housing infrastructure projects that are compliant with the Buy America Preference (BAP) requirements.

Please indicate in your written comments the area of interest (product or category of product) and the topic number(s) below you are commenting on and provide specific examples or information

to illustrate your comments where possible. You do not need to address every topic and should focus on those where you have relevant expertise or experience. In all cases, to the extent possible, please cite any public data related to or that support your responses. If data is available, but non-public, describe such data to the extent permissible.

II. Build America, Buy America

The Build America, Buy America Act (“BABA” or “the Act”) was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (“IIJA”) (Pub. L. 117-58). The Act establishes a domestic content procurement preference, the BAP, for Federal infrastructure programs. Section 70914(a) of the Act establishes that no later than 180 days after the date of enactment, HUD must ensure that none of the funds made available for infrastructure projects may be obligated by the Department unless it has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. In section 70912, the Act further defines a project to include “the construction, alteration, maintenance, or repair of infrastructure in the United States” and includes within the definition of infrastructure those items traditionally included, along with buildings and real property.

III. HUD’s Implementation of BABA

The IIJA and the Inflation Reduction Act (Public Law 117-169, Aug. 16, 2022) provided historic investments for federal infrastructure, including \$1 billion in funding for green retrofits. These developments in addition to HUD’s base funding, provide an opportunity for significant expansion of domestic manufacturing capacity for products. Since the enactment of BABA, HUD has worked diligently to develop a plan to fully implement the BAP across its FFA programs. HUD understands that advancing Made in America objectives is a continuous effort and believes setting forth transparent implementation guidance for FFA programs provides

recipients, stakeholders, and industry partners with the ability to implement the BAP efficiently and effectively to infrastructure projects involving dwelling units for eligible residents of public and assisted housing funded by HUD FFA. As part of those efforts, HUD announced plans for a phased implementation of the BAP requirements in connection with its award of FFA to all HUD programs and corresponding waiver of the applicability of the BAP consistent with the published implementation schedule.¹ HUD also published two general applicability, public interest waivers covering Exigent Circumstances² and De Minimis and Small Grants³. HUD subsequently published an extension of its Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance⁴ to provide additional time for consultation concerning its efforts to implement the Act and its Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Pacific Island/Territory Recipients of HUD Federal Financial Assistance is under review.⁵ All waivers can be found at https://www.hud.gov/program_offices/general_counsel/build_america_buy_america/waiver.

On June 1, 2022, HUD published “Request for Information Relating to the Implementation of the Build America, Buy America Act”⁶ to, among other things, gather additional information necessary to fully implement the BAP for HUD programs. HUD thoroughly reviewed public comments received in response to its 2022 Request for Information and proposed general applicability waivers, in addition to housing stakeholders’ self-initiated comments submitted since the initial effective date of BABA. Though helpful in informing prior actions, these comments did

¹ 88 FR 17001, March 21, 2023.

² 87 FR 76505, December 14, 2022.

³ 87 FR 76502, December 14, 2022.

⁴ 88 FR 34514, May 30, 2023.

⁵ See 88 FR 52197, September 1, 2023.

⁶ See 87 FR 33193, June 1, 2022.

not provide the level of detail necessary for HUD to know what resources and guidance would be most helpful to help recipients transition to compliance with the Buy America preference requirements, to include identifying specific products purchased with FFA dollars and whether those items are being procured from domestic sources.

HUD seeks greater clarity and data to analyze and respond to the stakeholder comments, particularly in light of the “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure” (M-24-02) and the final Guidance for Grants and Agreements set forth in parts 184 and 200 of title 2 of the Code of Federal Regulations.⁷ HUD is seeking more detailed product-specific information on the domestic availability of iron, steel, construction materials and manufactured products commonly used in HUD-assisted housing programs and infrastructure projects. Responses to this RFI will improve HUD’s understanding of the current domestic market for these products to effectively implement BABA for projects funded by its housing programs and to evaluate the potential need for short-term product waivers from BABA requirements if products are unavailable. It will also assist HUD in determining how best to engage with industry to identify potential options to encourage the expansion of domestic production in areas that are not currently available and the timing for when items currently waived may become available from domestic sources.

IV. OMB Implementation Guidance

On April 18, 2022, OMB issued the M-22-11 to heads of Executive Departments and Agencies.⁸ OMB provided initial guidance to assist agencies in developing interpretations of

⁷ See 88 FR 57750, August 23, 2023’.

⁸ See Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, M-22-11, available at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.

BABA and key terminology, how to apply the BAP to FFA used for infrastructure, and how agencies should structure a transparent waiver process.

On February 9, 2023, OMB issued a Notification of Proposed Guidance in the Federal Register proposing a new Part 184 in 2 CFR chapter 1 to support implementation of BABA and to clarify existing provisions in 2 CFR 200.322.⁹

On August 23, 2023, OMB published its final Guidance for Grants and Agreements in the Federal Register with revisions to provide additional guidance on implementing the BAP statutory requirements and improve FFA management and transparency. The new part 184.3 includes definitions for key terms, including iron or steel products, manufactured products, construction materials, and materials identified in section 70917(c) of the Act.¹⁰ The guidance became effective October 23, 2023.

On October 25, 2023, OMB issued M-24-02 to provide supplemental and updated guidance such as modifying Section VII of M-22-11 on “Issuing Buy America Waivers” and summarizing 2 CFR part 184 with definitions of key terms.¹¹ With final guidance, HUD is publishing this RFI in an effort to understand the impact of compliance and applying the BAP to construction materials and manufactured products as defined in Part 184.3 of the final guidance and pursuant to M-24-02.

BABA requires each covered Federal agency to ensure that “none of the funds made available for a Federal financial assistance program for infrastructure. . . [are] obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States” except if a waiver is granted. (Pub. L. 117–58, sec.

⁹ See 2 CFR parts 184 and 200.

¹⁰ See Pub. L. 117-58 at section 70917(c).

¹¹ See 2 CFR 184.3.

70914). These requirements apply to an entire infrastructure project funded by Federal financial assistance, including those funded by HUD housing programs, even if it is also funded by non-Federal funds. HUD is committed to ensuring strong and effective BABA implementation and compliance.

For all predominantly iron or steel products used in infrastructure projects that involve the obligation of Federal financial assistance, all manufacturing processes of the iron and/or steel components, beginning with initial melting and including application of a coating, must occur in the United States. (Pub. L. 117–58, sec. 70912(6)(A)).

Manufactured products must be produced in the United States, meaning the final point of manufacturing must occur in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. (Pub. L. 117–58, sec. 70912(6)(B)).

For construction materials, all manufacturing processes must occur in the United States. (Pub. L. 117–58, sec. 70912(6)(c)). Construction materials include incorporated products primarily made of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride), fiber optic cable (including drop cable), optical fiber, glass, lumber, engineered wood, and drywall. (Pub. L. 117–58, sec. 70911(5), and 2 CFR 184.6).

V. Request for Information

This RFI will assist HUD in implementing and ensuring compliance with BABA based on the guidance provided by M-24-02 and the final guidance on Grants and Agreements as set forth in 2 CFR parts 184 and 200.322. Responses to this RFI will assist HUD in furthering the goals and objectives of BABA and provide information necessary to understand the best methods to implement the BAP for HUD FFA used in housing infrastructure projects to maximize the use

of iron, steel, construction materials, and manufactured products produced in the United States. Through this RFI, HUD seeks information in Questions 1-4 regarding the domestic availability of specific housing infrastructure products identified in this notice. HUD is interested in promptly obtaining more information on this and other issues discussed in this notice to assess if enough products/systems are currently available to comply with BABA requirements or whether sufficient products would be available in the future, and if so, when. This information will also be supplied to all applicable federal agencies that also manage housing infrastructure programs. In Question 5, HUD also seeks input and recommendations on how to ensure efficient and cost-effective compliance with BAP.

HUD analysis of material and manufactured product sourcing for the construction of housing finds that many materials and manufactured products used in the construction of housing are largely available from domestic producers, such as: cement and concrete products; architectural and structural metals (e.g., metal windows and doors, sheet metal ductwork, and rails and fencing); petroleum and coal products (e.g., asphalt roofing and paving materials, any petroleum-based fuels and lubricating products); plastic products (e.g., plastic piping, plumbing fixtures and polystyrene foam insulation); household and institutional furniture and kitchen cabinets; wood products (sawn lumber and treated wood products, plywood and engineered wood products, and other wood products); and heating, ventilation, and air conditioning equipment.

However, HUD identified items which may not be manufactured in the United States with standards compliant with the Act, as well as items which may be manufactured in the United States, but not with the requisite share of cost of components to be considered compliant. Through this notice, HUD is requesting information to assist HUD in implementing and ensuring

compliance with OMB standards. HUD welcomes comments and information from the public on what products are most utilized in HUD-assisted housing projects, and their availability from domestic sources that meet requirements for iron, steel, construction materials or manufactured products as specified in the Act. See Section “I. Responding to this Request for Information” for more information about who is invited to comment on this notice.

HUD specifically requests information from the public on all categories of products included in HUD infrastructure grant programs. The following is an example list but not exhaustive:

- Lighting fixtures
- Electrical equipment and components
- Electrical wiring
- Ceramic plumbing fixtures
- Windows
- Home and garage doors
- Elevators
- Plumbing
- Other products for energy efficiency upgrades and climate resilience: geothermal, solar panels, radiant heat, heat pumps, insulation (roof, ceiling, wall, floor)

Questions 1, 2, 3, 4: For each of these products or categories of products used in HUD infrastructure grant programs and based on your current understanding of BABA requirements, HUD is requesting the following information about the following four general topics: domestic materials sourcing and manufacturing, market readiness, delivery lead times and other. You may also respond to these prompts for products not included in this list that are essential to

completing the construction, alteration, maintenance, or repair of HUD-assisted housing projects. At the beginning of your response, please specify the products for which you are providing an answer:

1. Domestic Materials Sourcing and Manufacturing:

a. For each of the products or categories of products you identified, please specify whether products are available that meet BABA requirements (described above) or are currently manufactured in the United States to meet a domestic final assembly condition. (Yes or no). To the best of your ability, please identify the countries of origin for the products not sourced domestically.

b. Please identify whether the products in your response fall within the iron and steel, manufactured products, or construction materials categories of BABA.

c. If you answered “Yes” to Topic 1(a), to the best of your knowledge.

i. Please identify all manufacturers that can either meet BABA requirements or can currently manufacture products or categories of products you specified in the United States. For products that meet the condition of manufactured in the United States, please identify the manufacturing location and percentage of components manufactured in the United States as calculated by cost of components (if known).

ii. What is the current production capacity of the products that can meet BABA requirements?

iii. What is the anticipated growth in BABA-compliant capacity over the next five years? Does this anticipated growth consider the increased funding provided across federal agencies to invest in clean energy products? Please explain.

iv. For products able to meet BABA requirements, what is the estimated lead time from purchase order to delivery to the project site? Has this lead time increased or decreased in recent years?

d. If you answered “No” to Topic 1a:

i. What actions are manufacturers taking/could take to increase the manufacturing of products that will meet BABA requirements?

ii. What additional support or incentives (e.g., financial, rulemaking certainty, etc.) are needed to ensure a sufficient supply of products that meet BABA requirements?

iii. How long might it take to implement the steps needed to increase or begin production of BABA compliant products?

iv. If a plan is in place to manufacture BABA compliant products, what is the volume of specific products that will follow BABA requirements and in what time frame?

v. Will the volume of BABA compliant products be ramped up over time, and, if so, at what annual growth rate?

vi. What are the limiting factors for the product’s ability to meet criteria for BABA compliance? For example, are there components of these products for which it is hard to meet BABA requirements? Please describe each component separately and indicate approximately what percent of component value it represents.

2. Market Readiness:

a. For all products specified in Topic 1(a), provide your observations on the current and near-term demand expected for these products or categories of products, using specific numbers where possible. Does this estimate of future demand consider the increased funding described above? Please explain.

b. Provide information regarding whether the current and/or near-term manufacturing capacity would be adequate to meet the expected market demand, citing specific numbers where possible. Please specify any factors helping or preventing the industry from meeting the expected demand today and in the near-term and provide information on the current and expected availability or unavailability of key components or sub-components of the product or category of products you specified. If applicable, please identify products where there is only one known domestic manufacturer prepared to meet Buy America requirements.

c. Are there factors that make it difficult to credibly respond to questions a and b of this section? If so, please describe the limitations in your analysis as specifically as possible.

d. Are there opportunities for innovation (e.g., products that are currently or potentially being developed in the U.S. that could offer improved performance or reduced costs to HUD stakeholders?). If so, what challenges and opportunities do you see to advancing this innovation? (For example, some products, such as heat pumps, offer lower life-cycle costs but higher initial costs; this change in cost structure may lead to purchasing challenges.

3. Timing:

a. Where known, for each product/category of products specified in Topic 1, specify the current range of expected product delivery timeframes. Are any existing supply chain delays applicable or anticipated for the product(s) or critical components of the product(s)?

b. Provide information, if available, on expected delivery timeframe outlooks through the near-term future. Provide information, if known, on whether current timing delivery concerns are related to a temporary disruption.

c. Provide information on the current and expected near-term average customer delivery time.

d. Provide information regarding global supply chain constraints, local permitting, safety requirements and needs that may affect delivery timeframes or extend installation time. Provide any known information of products that are in the process of “onshoring” as a result of recent statutory, regulatory, or market changes.

4. Other Practical Considerations: Please specify any other considerations for HUD regarding production, products, systems, equipment, or components of products used in housing infrastructure.

5. BAP Compliance and Impact:

HUD seeks input and recommendations on how to ensure compliance with BABA in the most efficient and cost-effective way. HUD is interested in answers to the following questions that will help inform Agency technical assistance and implementation:

a. What type of contractual language has been utilized to ensure compliance with the BAP? If contractual language has been utilized to ensure compliance with a Buy America requirement, when was it first added?

b. Are there existing mechanisms to determine qualified contractors that use American made iron, steel, manufactured products, or construction materials? Furthermore, how do recipients currently track contractor sourcing? What resources have been identified with respect to contractor sourcing with the adoption of a domestic content procurement preference or the BAP?

c. Is there a need for standard contractual provisions to deal with potential delays arising from BABA compliance? If there is a need for a product specific waiver, when would contractors know about the need?

d. What other Federal agency funding do you use to complete a HUD funded housing project?

e. What is the estimated impact of compliance with BAP on HUD assisted programs?

f. What is the current cost associated with the development, maintenance, and operation of affordable housing compliant with applicable HUD requirements? What is the estimate of the impact of the implementation of the BAP in connection with HUD-funded projects? Examples of specific products would be especially helpful here.

All information submitted will assist HUD in determining the extent to which additional guidance or other actions are necessary to facilitate the robust implementation of the BAP requirements across HUD's programs. Commenters should provide data and evidence to support their responses to the questions in this RFI.

Dated: _____

_____/s/
Marcia L. Fudge
Secretary

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