

RIHousing Compliance and Implementation Plan for Build America, Buy America (“BABA”)

Effective March 20, 2025

This Compliance and Implementation Plan is intended to comply with the Federal requirements established by the Department of Housing and Urban Development.

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***Appendices attached.**

Overview

The Build America, Buy America Act (“BABA”) was signed into law by President Biden on November 15, 2021, as part of the Infrastructure Investment and Jobs Act as Sections 70901-52 of Pub. L. No. 117-58. The intent of BABA is to stimulate private sector investments in American manufacturing, bolster critical American supply chains, and support the creation of jobs so America’s workers and firms can compete and lead globally for years to come.

BABA requires that certain materials purchased in connection with infrastructure projects funded by Federal financial assistance programs be produced in the United States. This requirement is known as the Buy America Preference (“BAP”). An infrastructure project is defined as any project that includes construction, alteration, maintenance, or repair of: buildings and real property; utilities; water systems (drinking water and wastewater); electrical transmission facilities and systems; broadband infrastructure; and transportation infrastructure. Any federally funded infrastructure project that uses iron and steel, manufactured products, and/or construction materials must ensure the materials are produced in the United States.

The BAP applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds under one or more awards. In other words, if an infrastructure project receives a Federal award, the BAP applies to both the Federal funds and non-Federal funds used for the infrastructure project.

Definitions

- A. Build America, Buy America Act is defined in 2 CFR § 184.3 and means division G, title IX, subtitle A, parts I–II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58).
- B. Buy America Preference (“BAP”) is defined in 2 CFR § 184.3 and means the “domestic content procurement preference” set forth in section 70914 of BABA, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.
- C. Categorization of Articles. The term “categorization of articles” refers to the requirement that articles, materials, and supplies should only be classified into one of the following categories.
 - i. Iron or steel products;
 - ii. Manufactured products;
 - iii. Construction materials; or
 - iv. Section 70917(c) materials.

Each article, material, or supply should be classified in only one of the categories listed above. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to

the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

D. Component is defined in 2 CFR § 184.3 and means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

E. Construction Materials is defined in 2 CFR § 184.3 and means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- i. Non-ferrous metals;
- ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- iii. Glass (including optic glass);
- iv. Fiber optic cable (including drop cable);
- v. Optical fiber;
- vi. Lumber;
- vii. Engineered wood, and
- viii. Drywall.

(2) Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material.

F. Covered Materials includes the following when used in connection with an Infrastructure Project:

- i. all iron and steel;
- ii. all Manufactured Products; and
- iii. all Construction Materials.

G. Covered CPD Programs mean any Federal financial assistance administered by the U.S. Department of Housing and Urban Development Office of Community Planning and Development (“CPD”) that is used for public infrastructure projects, excepting expenditures related to pre and post disaster or emergency response.

H. Federal Financial Assistance (FFA) has the meaning given to the term in 2 CFR 200.1 (or successor regulations) and includes all expenditures by a Federal agency to a Non-Federal Entity for an Infrastructure Project, except that it does not include:

- i. expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191); or

- ii. pre and post disaster or emergency response expenditures.
- I. The U.S. Department of Housing and Urban Development (“HUD”) Programs. The term “HUD Programs” means any Federal financial assistance administered by HUD that is used for infrastructure purposes, excepting expenditures related to pre and post disaster or emergency response. HUD also refers to this as “Covered CPD Programs.”
- J. Infrastructure is described in 2 CFR 184.4(c) and encompasses public infrastructure projects in the United States, which includes, at a minimum: the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging. See also 2 CFR 184.4(d).
- K. Infrastructure Project is defined in 2 CFR 184.3 and means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. This includes housing projects developed with RIHousing and funded by Federal Financial Assistance programs, which includes the HUD Programs laid out below.
- L. Iron and Steel Products is defined in 2 CFR 184.3 and means an article, material, or supply that consists wholly or predominantly of iron or steel, or a combination of both.
- M. Predominantly of iron or steel or a combination of both is defined in 2 CFR 184.3 and means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.
- N. Made in America Office or “MIAO” means the office at the office of Management and Budget, established by section 70923 of BABA, that is charged with implementing the BAP and establishing the procedures to review waiver requests.
- O. Manufactured Products is defined in 2 CFR 184.3 and means:
- i. Articles, materials, or supplies that have been:
 - a. Processed into a specific form and shape; or
 - b. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
 - ii. If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

Manufacturer is defined in 2 CFR 184.3 and means the entity that performs the final manufacturing process that produces a manufactured product.

- P. Not Listed Construction Materials refers to the category of construction materials that are subject to the BAP, but not included in HUD’s specifically listed construction materials, as defined in the Phased Implementation Waiver. This includes:
- i. plastic and polymer-based products other than composite building materials or plastic and polymer-based pipe or tube;
 - ii. glass (including optic glass); and
 - iii. drywall.
- Q. Obligate means an action taken by HUD that creates a legal liability of the government for the payment of goods and services ordered or received or that administratively recognizes a legal duty on the part of the HUD that could mature into a legal liability by virtue of actions outside of HUD’s control. The milestone in the FFA award process that establishes an obligation date depends on each program but for many Covered CPD Programs, such as HOME and HTF, the obligation date occurs upon HUD’s execution of the grant agreement with RIHousing.
- R. OMB Guidance refers to 2 CFR Part 184, the “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure” (M-24-02), issued October 25, 2023, by the Office of Management and Budget, and any subsequent guidance to rescind or replace M-24-02. This guidance is applicable to the heads of all Federal agencies for the implementation of BABA’s Buy America Preference.
- S. Pre and Post Disaster or Emergency Response Expenditures means Federal funding authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively. The BAP does not apply to pre and post disaster or emergency response expenditures authorized by statutes other than the Stafford Act and made in anticipation of or in response to an event that qualifies as an emergency or major disaster within the meaning of the Stafford Act.
- T. Produced in the United States is defined in 2 CFR 184.3 and means:
- i. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - ii. In the case of manufactured products:
 - a. The product was manufactured in the United States; and
 - b. The cost of 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, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See 2 CFR 184.2(a). The costs of components of a manufactured product are determined according to 2 CFR 184.5.
 - iii. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.

- U. Project. The term “project” means the construction, alteration, maintenance, or repair of infrastructure, including housing, in the United States (Section 70912(7) of BABA).
- V. Section 70917(c) Materials. The term “section 70917(c) materials” is defined in 2 CFR 184.3 and means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

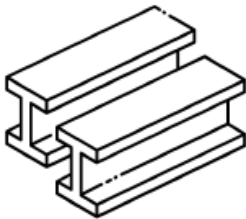
The Federal Register Notice implementing new BABA regulations at 2 CFR 184 (88 FR57787) clarifies that all categorizations of Covered Materials should be made based on the status of the material when it arrives at the work site. Section 70917(c) materials that are used at the work site, such as wet concrete or hot asphalt, are not subject to the BAP. However, Section 70917(c) materials may be components of manufactured products if, for example, they are used to produce precast concrete products before being transported to the work site.

- W. Specifically listed construction materials. The term “specifically listed construction materials” for HUD programs includes:
 - i. non-ferrous metals;
 - ii. lumber;
 - iii. composite building materials; and
 - iv. plastic and polymer-based pipe and tube.

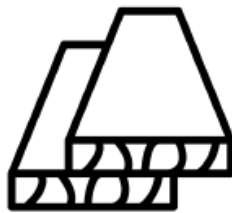
Product Classification

Under BABA, the head of each Federal agency must ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States. Products should be classified based on their status when they arrive at a project site. Products should be classified into one of the three following categories, but not more than one category:

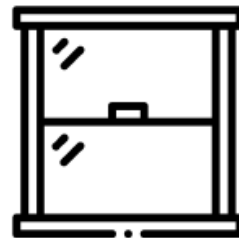
Iron and Steel



Construction Materials



Manufactured Products



Iron and Steel

Definition: means the product consists wholly or predominantly of iron or steel, or a combination of both, meaning the cost of the iron or steel content exceeds 50% of the total cost of the product components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

Production Requirements: All manufacturing, from initial melting through application of coatings, must occur in the United States.

Examples: Rebar, Steel playground slide

Construction Materials

Definition: Construction materials are divided into two categories:

1. **Specifically Listed Construction Materials:** Non-ferrous metals, lumber, plastic- and polymer-based composite building materials, pipe, and tube.
2. **Not Listed Construction Materials:** All other plastic- and polymer-based materials, glass, fiber-optic cables, optical fiber, engineered wood, and drywall.

Production Requirements: All manufacturing processes must occur in the United States. Minor additions of materials or binding agents to a construction material do not change the categorization of the material.

Manufactured Products

Definition: **articles, materials, or supplies** that have been processed into a specific form or shape OR materials combined with other items to create a product with different properties than the individual articles, materials, supplies.

Production Requirements: The final product must be manufactured in the United States AND at least 55% of the cost of the product must come from components that were mined, produced, or manufactured in the United States.

Examples: Pre-fabricated window (combines glass and fiberglass), precast concrete (processed into a specific form before arriving at a job site).

Excluded Materials

The BAP is not applicable to the following types of materials:

Section 70917(c) Materials

Definition: means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Requirements: Not considered construction materials and generally exempt unless they are used to produce a manufactured product.

Equipment, Supplies and Furnishings

Definition: means tools, equipment, supplies, such as temporary scaffolding brought to a construction site and removed at or before completion of the infrastructure project. Also includes equipment and furnishings, such as chairs, desks and computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Requirements: Exempt from the BABA requirements.

Other Excluded Costs

- Technical Assistance and Management Costs
- Design and Planning Costs
- Labor

BAP Applicability to RIHousing Programs

In order to determine if the BAP applies to a project, all RIHousing and non-RIHousing funding source(s) must be identified and analyzed to determine if the project must comply with BABA.

There is Federal Government-wide Guidance on BABA, including final rules for 2 CFR Parts 184 and 200; however, each Federal agency is tasked with implementing the BAP by identifying which programs or FFA are subject to BABA, by providing agency-specific guidance, and by issuing waivers.

RIHousing administers a number of sources of FFA, including certain HUD programs and certain U.S. Department of Treasury programs such as Low-Income Housing Tax Credits (“LIHTC”), State and Local Fiscal Recovery Funds (“SLFRF”), and Capital Magnet Fund (“CMF”). **As of the effective date of this Plan, Infrastructure Projects funded solely with these U.S. Treasury sources are not subject to BABA.** Therefore, this Compliance and Implementation Plan will focus generally on Federal Government-wide and HUD compliance requirements unless and until RIHousing determines that additional agency compliance requirements are applicable to RIHousing-funded projects.

HUD Programs/Covered CPD Programs Covered by the BAP

The BAP currently applies to the following HUD Programs, which RIHousing administers, subject to change:

- Continuum of Care (CoC)
- FY23 Permanent Supportive Housing (PSH) Funds
- HOME Investment Partnerships Program (HOME)
- Housing Trust Fund (HTF)
- Lead-Based Paint Hazard Reduction in High Impact Neighborhoods and Healthy Homes Supplemental Funding

The BAP also applies to additional HUD Programs which are not currently administered by RIHousing:

- Community Development Block Grant Formula Programs (CDBG)
- Section 108 Loan Guarantee
- Recovery Housing Program (RHP)
- Emergency Solutions Grants (ESG)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Self-Help Homeownership Opportunity Program (SHOP)
- Special NOFA for unsheltered and rural homeless
- Veterans Housing Rehabilitation and Modification Program (VHRMP)
- Community Project Funding (CPF)/Economic Development Initiatives (EDI)
- Section 4 Capacity Building
- Rural Capacity Building
- Pathways to Removing Obstacles to Housing (PRO Housing)
- Preservation and Reinvestment Initiative for Community Enhancement (PRICE)

BABA applies to any project that involves the construction, alteration, maintenance, or repair of public infrastructure, regardless of whether infrastructure is the primary purpose of the project. Since the term “infrastructure” includes the structures, facilities, and equipment for “buildings and real property”, the BAP generally applies to Covered CPD Program funds provided for housing projects. OMB acknowledged at 2 CFR 184.4(d) that some projects may be “private” in nature and are not considered public infrastructure subject to BABA. An example OMB provided in M-24-02 is a project consisting solely of the purchase, construction, or improvement of a private single-family home for personal use.

In Notice CPD-25-01, HUD further clarified that:

1. Housing projects with one to four units are considered “private,” consistent with HUD’s definition of single-family housing. Housing projects with one to four units, including onsite utilities and related activities are therefore not considered public infrastructure and are not subject to the BAP.
2. Housing projects with five or more units are considered public infrastructure. Housing projects with five or more units are therefore subject to the BAP unless another BABA waiver or exemption applies.

Covered Materials incorporated into the public infrastructure project are subject to the BAP, regardless of the specific project costs for which Covered CPD Program funds are expended. To determine the scope of an individual public infrastructure project for BABA purposes, RIHousing will use the definition of a project as determined by the Covered CPD Program in question. For example, 24 CFR 92.2 defines a HOME project as “a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building.”

Where no program-specific definition of a project exists, RIHousing will use the definition of a “project” at 24 CFR 58 to assist with determining project scope: “an activity or group of integrally related activities designed by the recipient to accomplish, in whole or in part, a specific objective.” Infrastructure Projects cannot be split to avoid application of the BAP to the project, such as by dividing procurements, subgrants, cooperative agreements, etc., into separate and smaller awards or contracts, particularly where the procurements, subgrants, cooperative agreements, etc., are integrally and proximately related to the whole.

The list of Covered HUD Programs is subject to change if there are any changes to the eligible uses of funds or the establishment of new programs that fund infrastructure and are covered by BABA.

NOTE: While each of the HUD programs listed above is subject to BABA, HUD issued a Phased Implementation Waiver that may have delayed the applicability of the BAP to certain grants obligated to RIHousing prior to a certain date. As discussed in further detail below, RIHousing will determine whether the applicability of the BAP has been delayed by such waiver and will inform the Developer.

HUD Programs and Funding Not Covered by the BAP

The BAP does not apply to Federal funds for “pre and post disaster or emergency response.” The following list of CPD funds are administered for disaster or emergency-related purposes and therefore the BAP does not apply to them.

- Community Development Block Grant – Disaster Recovery Funds (CDBG-DR)
- Community Development Block Grant – Mitigation (CDBG-MIT)
- Community Development Block Grant – National Disaster Resilience Competition (CDBGNDR)
- Community Development Block Grant CARES Act (CDBG-CV)
- HOME Investment Partnerships American Rescue Plan Program (HOME-ARP)
- Housing Opportunities for Persons With AIDS CARES Act (HOPWA-CV)
- Emergency Solutions Grants CARES Act (ESG-CV)
- Rapid Unsheltered Survivor Housing (RUSH)

In addition to the funding sources listed above, the BAP does not apply to projects funded solely with program income generated through any Covered CPD Program. Program income is not considered FFA.

BABA does not apply to projects that do not include any construction, alteration, maintenance, or repair of public infrastructure. Equipment, tools, and supplies that are brought to a construction site and removed upon completion of the project or furnishings used within the finished project that are not permanently affixed to the public infrastructure project are not covered by the BAP.

Process for Documenting BABA Compliance

For all projects receiving FFA, RIHousing must document the BABA process to analyze if the BAP applies to a project. RIHousing will use the approach as outlined in the CPD-25-01 Notice, issued January 13, 2025.

Prior to preliminary approval, RIHousing will use the RIHousing HUD BABA Checklist, attached hereto as **Appendix A**, to document BABA Compliance for each project. This Checklist will be completed for every project to determine if BABA applies and RIHousing will retain the Checklist with the project file.

Developers will be required to have all bidders for a project complete a Bidder Certification Form, attached hereto as Appendix B, acknowledging that the project is subject to BABA. RIHousing must receive these forms prior to firm approval of financing.

Developers must include the following language on the project's plans and specifications to inform all parties of the BABA requirements:

Pursuant to the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58, 41 U.S.C. § 8301 note, the Federal Financial Assistance used to fund this infrastructure project is required to apply a domestic content procurement preference (the "Buy America Preference" or "BAP") for all construction, alteration, maintenance, or repair of infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD. Additional details on fulfilling the BABA requirements can be found at <https://www.hud.gov/baba>.

BABA requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. Developer is responsible for documenting compliance and ensuring that all contractors and subcontractors provide the required information to document compliance. Please see RIHousing's Compliance and Implementation Plan for Build America, Buy America and CPD-25-01 Notice, issued January 13, 2025, for more information.

In addition, developers must include, and ensure the inclusion of, the foregoing language in all contracts, including subcontracts, requests for proposals, purchase orders, and procurement and bid

documents for work or products for the project to notify all parties that the requirements of BABA flow down to all tiers.

Developers will be responsible for documenting compliance with BABA and ensuring that all contractors and subcontractors comply with BABA. All Contractors and Subcontractors will be required to complete the AIA G702 Certification Addendum when requesting payment. The AIA G702 Certification Addendum is attached hereto as Appendix C. Payment will not be made until this certification is provided.

Developers must ensure that Contractors identify the materials that will be used in the project and properly classify the products as either iron or steel, construction materials, or manufactured products. Contractors will submit a HUD Build America, Buy America Construction Submittal Log, a form of which is attached hereto as Appendix D, prior to the start of construction that will be updated monthly on either the 1st or the 15th of the month depending on what the Developer selects for a requisition schedule. The HUD Build America, Buy America Construction Submittal Log should classify products as they arrive on site.

The Developer and/or Contractor must include as part of the payment requisition package certifications for each product certifying that such products are made in America. Acceptable forms of certification include documentation evidencing products are “Made in America”, such as certifications from manufacturers and suppliers. Sample Made In America certifications can be found at Appendix E. Any such certification must have the BABA language, must be on the company’s letterhead, and must list the products with enough specificity to determine compliance. Once a product has been certified, Developer will not be required to recertify the product every time it is used. Developer may refer back to the original certification for compliance.

Payment of a specific requisition will be conditioned on providing the HUD Build America, Buy America Construction Submittal Log, the AIA G702 Certification Form, and required Made In America certifications. RIHousing will withhold payment if the Developer is not in compliance with BABA requirements. If the Developer is not submitting a requisition for a specific month, the Developer is still expected to submit the HUD Build America, Buy America Construction Submittal Log and Made In America certifications for that month.

Failure to comply with the BABA requirements and this Compliance and Implementation Plan may result in a default, a loss of project funding, and may result in a loss of funding for future projects. Failure to comply may also require repayment of the financial assistance on the development.

Upon completion of construction, prior to final payment, the Developer will execute a HUD Build America, Buy America Self-Certification, attached hereto as Appendix F, certifying and affirming the requirements of BABA have been met. RIHousing will withhold the final payment until it receives the executed Self-Certification as well as any required back-up documentation.

Records will be retained in accordance with existing records retention requirements for the applicable HUD Program. If there are no HUD program-specific records requirements, RIHousing will follow 2 C.F.R. § 200.334.

Waivers

The BAP applies to all Federal financial assistance where funds are appropriated or otherwise made available and used for a project for infrastructure. The BAP can be waived in very limited circumstances.

Under Section 70914(b), HUD is able to issue, after consultation with OMB's Made In America Office, general waivers and project-specific waivers to the BAP.

HUD General Waivers

If RIHousing determines, in its sole discretion, that any of the HUD general waivers apply, RIHousing may waive the BAP for a project or a portion of a project. No formal request to HUD is needed to use these waivers. RIHousing is responsible for maintaining documentation that demonstrates the applicability of the waiver to a project, consistent with the BABA requirements.

As of 2025, HUD has established two general waivers that may be applicable to RIHousing-funded projects:

1. Exigent Circumstances Waiver
2. *De Minimis* and Small Grants Waiver (described separately below)

Exigent Circumstances Waiver (Effective until November 23, 2027)

Requirements: The BAP may be waived if projects must be completed immediately to protect life, ensure safety, or prevent the destruction of property.

Example: Following a tornado, CDBG funds are used to repair public facilities made structurally unsound during the disaster. Stabilizing these buildings is critical to prevent further destruction of property.

For Exigent Circumstances Waivers, RIHousing will approve a request for a waiver if RIHousing determines, in its sole discretion, that there is an urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community.

De Minimis Waiver (Effective until November 23, 2027)

Requirements: The BAP can be waived for a portion of the materials used in a project if the cost of those materials comprises no more than 5% of the total cost of the iron, steel, construction materials and manufactured products used in the project (not to exceed \$1 million) and there is a justification for the waiver, such as the materials are not domestically produced. "Total cost" does not include labor or other materials that are exempt from the BAP.

Example: construction of a new playground, where almost all the materials can be found domestically except for a \$20,000 slide. The total cost of the materials used in the project is \$500,000. Since the cost of the slide is less than 5% ($\$500,000 \times .05 = \$25,000$) of the total

cost of the materials, the *de minimis* waiver can be used on the slide. **Note the BAP would still apply to the other materials used in the project.**

For *De Minimis* Waivers, RIHousing will approve a request for a waiver if the cost of the materials for which the waiver is sought comprises no more than 5% of the total cost of the iron, steel, construction materials and manufactured products used in the project (not to exceed \$1 million) and RIHousing determines, in its sole discretion, that the justification is reasonable and defensible under HUD guidance.

Small Grants Waiver (Effective until November 23, 2027)

Requirements: The BAP can be waived for a project if the **total project cost** (including all sources of funding, both Federal, State and other) is \$250,000 or less. “Total project cost” means the total cost of development (all the work that goes into the project).

Example: A grantee is using \$200,000 in ESG funding to rehabilitate the bathroom facilities in an emergency shelter. The grantee is also contributing \$25,000 in local funds. Because the total cost of the project is less than the \$250,000 threshold, the Small Grants waiver applies.

For projects whose total project cost (including all sources of funding, materials and labor) is less than \$250,000, RIHousing will approve a Small Grants Waiver. RIHousing reserves the right to deny such a waiver if RIHousing determines, in its sole discretion, that the project has been artificially divided or phased so as to reduce the total project cost.

HUD previously issued a Phased Implementation Waiver which established a schedule for when the BAP will apply to HUD Programs. The Phased Implementation Waiver applies to projects based on the funding a project receives. RIHousing will not require a request for a Phased Implementation Waiver and will inform Developers whether or not BABA applies to their project based on what grant funds are allocated to the project.

HUD Project-/Product-Specific Waivers

In addition to the HUD General Waivers, project-/product-specific waivers may be available for projects where the BAP would otherwise apply.

HUD will review project-/product-specific waivers on a case-by-case basis. In order for HUD to consider a project-/product-specific waiver request and be able to review it with OMB and the Made In America Office, the waiver must include a detailed written explanation and allow for the public to comment for at least 15 days, as required under Section 70914(c).

There are currently three project-/product-specific waivers available:

1. Public Interest
2. Nonavailability
3. Unreasonable Cost

If a project has multiple sources of federal funding and HUD is not the largest portion of that funding, waivers should be submitted to the federal agency with the largest source of funds.

Public Interest Waiver

Requirements: A Public Interest Waiver may be available when applying the BAP would be inconsistent with the public interest.

Applying for a Waiver: When applying for this waiver, the developer should explain how waiving the BAP for the project or product serves the public interest and should demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project.

Example: The Environmental Protection Agency (“EPA”) is working to upgrade the nation’s water infrastructure, to increase the resilience of communities and ecosystems, and to effectively implement infrastructure appropriations in a timely and cost-effective manner. Applying the BAP to this project would increase project and construction costs, delay compliance with the Clean Water Act and Safe Drinking Water Act Requirements, delay achieving water quality and other public health goals, require re-evaluation of design decisions, and result in a decline of the use of EPA funds. Applying the BAP would be inconsistent with the public interest and therefore a waiver would be justified.

Nonavailability Waiver

Requirements: A Nonavailability Waiver may be available when a particular iron or steel product, construction material, or manufactured product is not produced in the United States in sufficient quantities or of a satisfactory quality.

Applying for a Waiver: When applying for this waiver, the developer should demonstrate that they have conducted market research and adequately considered qualified alternative items and describe the due diligence performed, including information, quotes, and/or responses from manufacturers, distributors, or suppliers.

Example 1: A Developer, through market research, which included contacting ten potential manufacturers, discovered that none of the manufacturers were able to produce a BABA-compliant window that met the technical specifications for the project. The Developer proposes procuring the window from a manufacturer in Canada as no domestic alternative products were identified through the market research.

Example 2: A Developer, through market research, which included contacting ten potential manufacturers, discovered that only one manufacturer was able to produce BABA-compliant windows, however the lead time to obtain the windows was eighteen (18) months and the cost of the windows would increase the overall project cost by 25%. The Developer proposes procuring the windows from a manufacturer in Canada as the lead time is excessive and the cost pushes the project above the 25% threshold.

Unreasonable Cost Waiver

Requirements: An Unreasonable Cost waiver may be available when applying the BAP will increase the total project cost by more than 25%. “Total project cost” means the total cost of development (all the work that goes into the project).

Applying for a Waiver: When applying for this waiver, the developer should demonstrate that applying the BAP increases the total project cost by more than 25%. The developer must calculate the additional cost of BAP-compliant products, determine the dollar amount to be waived, and demonstrate that no domestic alternatives are available within the project budget.

Example:

Product Name	Estimated cost for BABA compliant product(s)	Estimated cost for non-BABA compliant product(s)
Heat pump – COP 3.5	\$60,000	\$36,000
Corrosion resistant Vents	\$40,000	\$24,000
All other project costs (installation, permitting, overhead, profit)	\$12,000	\$12,000
Total Project cost	\$112,000	\$72,000
Percentage difference	156%	

Prior to submitting a project-/product-specific waiver, the developer must conduct market research to demonstrate its efforts to procure domestic products. Evidence of acceptable market research strategies may include one or more of the following:

(a) Documentation of the report showing results of supplier scouting services provided by the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP) or similar supplier scouting service. For more information about the supplier scouting process, contact the local NIST MEP center.

(b) Documentation that the purchaser has made a good faith effort to contact a minimum of three (3) manufacturers or suppliers to determine if a BABA-compliant material is available in sufficient quantity and satisfactory quality. Documentation may include PDF files or screenshots of Internet searches or email communications, or documentation of phone conversations that notes the date and time of the call, the contact person with whom the purchaser spoke, and a summary of the information received.

Project-/product-specific waivers cannot be approved retroactively for items that have already been purchased or incorporated into a project, so developers should determine if a project-/product-specific waiver is needed as early as possible in the planning process.

RIHousing Waiver Review Process

If the Developer believes a General Waiver should apply to the project, the Developer must complete the General Waiver Form, attached hereto as Appendix G, and provide the required information, as outlined in the form. The Developer must submit the General Waiver Form as early in the development process as practicable to allow RIHousing sufficient time to review the provided information. If RIHousing determines, in its sole discretion, that any of the general waivers apply, RIHousing may waive the BAP for a project or a portion of a project. No formal request to HUD is needed to use these waivers. RIHousing is responsible for maintaining documentation that demonstrates the applicability of the waiver to a project, consistent with the BABA requirements. RIHousing reserves the right to require any additional information or documentation RIHousing determines necessary to demonstrate the applicability of the waiver.

If the Developer believes a Project-/Product-Specific Waiver should apply to the project, the Developer will need to submit to RIHousing a Project-/Product-Specific Waiver Form, attached hereto as Appendix H that corresponds with the type of waiver being requested. The Developer must provide the required information, as outlined in the Form, in order for RIHousing to consider the request. Incomplete forms will not be considered and will be returned to the Developer. RIHousing reserves the right to require any additional information or documentation RIHousing determines necessary to demonstrate the applicability of the waiver.

Upon receipt of the Project-/Product-Specific Waiver form, RIHousing will review it for completeness and reasonableness. RIHousing will then complete a BABA Waiver Form, attached hereto as Appendix I, submit the waiver request to HUD, and go through HUD's project-/product-specific waiver process, which includes MIAO review and a public comment period. The Developer will cooperate with RIHousing through the HUD waiver process to provide any additional information that may be required in a timely manner. RIHousing will inform the developer if the waiver is approved.

NOTE: all work on a project must stop while a waiver is being considered.

CHECKLIST

Build America, Buy America Act:

Optional Buy America Preference (BAP) Applicability Checklist



For more information on BABA and the BAP, [visit the BABA page](#) on the HUD exchange.

Overview

This checklist is an optional tool that may be used or adapted to assist with determining if the Buy America Preference (BAP) applies to an infrastructure project funded by a covered CPD program. This checklist follows the analysis steps as described in [Notice CPD 2023-12](#) and may be retained for recordkeeping purposes.

Project Information

Grantee	
Grant Number	
Activity Name	
Activity Number (IDIS/DRGR)	

Step 1:

Is the project an infrastructure project, as defined by the BABA statute?

<input type="checkbox"/> Yes	Continue to Step 2.
<input type="checkbox"/> No	The BAP does not apply. The BAP only applies to infrastructure projects. Stop here.

This material is based upon work supported, in whole or in part, by Federal award number C 21 TA MD 0009 awarded to Enterprise Community Partners, Inc. by the US Dept of HUD. The substance and findings of the work are dedicated to the public. Neither the United States Government, nor any of its employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any individuals, agencies, companies, products, process, services, service by trade name, trademark, manufacturer, or otherwise does not constitute or imply an endorsement, recommendation, or favoring by the author(s), contributor(s), the U.S. Government or any agency thereof. Opinions contained herein are those of the author(s) and do not necessarily reflect the official position of, or a position that is endorsed by, HUD or any Federal agency.



Group A: Covered CPD Programs

<input type="checkbox"/>	CDBG	<input type="checkbox"/>	SHOP
<input type="checkbox"/>	Section 108	<input type="checkbox"/>	VHRMP
<input type="checkbox"/>	HOME	<input type="checkbox"/>	CPF/EDI
<input type="checkbox"/>	HTF	<input type="checkbox"/>	Section 4
<input type="checkbox"/>	RHP	<input type="checkbox"/>	Rural Capacity Building
<input type="checkbox"/>	ESG	<input type="checkbox"/>	PRO Housing
<input type="checkbox"/>	CoC	<input type="checkbox"/>	PRICE
<input type="checkbox"/>	HOPWA	<input type="checkbox"/>	FY23 PSH Funds

Group B: CPD Programs Not Covered by the BAP

<input type="checkbox"/>	CDBG-DR	<input type="checkbox"/>	CDBG-CV
<input type="checkbox"/>	CDBG-MIT	<input type="checkbox"/>	HOPWA-CV
<input type="checkbox"/>	CDBG-NDR	<input type="checkbox"/>	ESG-CV
<input type="checkbox"/>	HOME-ARP		

If you selected **any** Group A programs (even if Group B programs are also selected), answer yes. If you selected **only** Group B programs, answer no.

<input type="checkbox"/> Yes	Continue to Step 3.
<input type="checkbox"/> No	The BAP does not apply to this project because it is not funded by a covered CPD program. Stop here.

Will the project use covered materials?

Each material should be classified into only one category: iron and steel, specifically listed construction materials, not listed construction materials, or manufactured products. This classification is necessary to apply HUD’s Phased Implementation waiver.

Check the box below for each type of covered material incorporated into this infrastructure project.

<input type="checkbox"/>	Iron or steel
<input type="checkbox"/>	Specifically Listed Construction materials
<input type="checkbox"/>	Not Listed Construction materials
<input type="checkbox"/>	Manufactured products

If you checked any boxes above, answer yes.

<input type="checkbox"/> Yes	Continue to Step 4.
<input type="checkbox"/> No	The BAP does not apply to this project because it will not incorporate any covered materials. Stop here.





Based on the obligation date of the covered CPD program funds, does the BAP apply to the funding source and covered materials that will be used in the project?

Use the phased implementation table to determine whether the BAP applies based on the obligation date for the covered CPD program funds and classification of materials. The BAP may only apply to some covered materials used in the project.

The obligation date is generally the date that HUD executed the grant agreement for covered CPD program funds to the grantee. This date may be found in the grant agreement. The obligation date is not the date when the grantee commits funds to a project under a subrecipient agreement.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	Not Listed Construction Materials	Manufactured Products
CDBG	CDBG funds obligated on or after 11/15/22	Projects using FY24 CDBG funds	Projects using FY25 CDBG funds	Projects using FY25 CDBG funds
RHP	RHP funds obligated on or after 8/23/23	Projects using FY24 RHP funds	Projects using FY25 RHP funds	Projects using FY25 RHP funds
All other CPD programs except HOME and HTF	Funds obligated on or after 2/22/24	Funds obligated on or after 8/23/24	Funds obligated on or after 8/23/24	Funds obligated on or after 8/23/24
HOME and HTF	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24

<input type="checkbox"/> Yes	Indicate here which covered materials the BAP applies to and continue to Step 5: <input type="checkbox"/> Iron and steel <input type="checkbox"/> Specifically listed construction materials <input type="checkbox"/> Not listed construction materials <input type="checkbox"/> Manufactured products
<input type="checkbox"/> No	The BAP does not apply to this project because the funds were obligated before the effective date for the program/materials used in the project. Stop here.



Infrastructure projects that meet the conditions of a general waiver may be exempt in whole or in part from the BAP.

<input type="checkbox"/>	The total cost of the project from all sources (Federal and non-Federal) is an amount equal to or less than the 2 CFR 200.1 simplified acquisition threshold, which is currently \$250,000. If checked, the Small Grants Waiver applies, and the project is exempt from the BAP. (Waiver effective until November 23, 2027.)
<input type="checkbox"/>	There is an urgent need to immediately complete the project because of a threat to life, safety, or property. If checked, the Exigent Circumstances Waiver applies, and the project is exempt from the BAP. (Waiver effective until November 23, 2027.)
<input type="checkbox"/>	The project is in Guam, American Samoa, or the Northern Mariana Islands. If checked, the Pacific Island Territories Waiver applies, and the project is exempt from the BAP. (Waiver effective until February 15, 2025.)
<input type="checkbox"/>	The project is being funded by a Tribal recipient. If checked, the Tribal Recipients Waiver may apply, and the project is exempt from the BAP. (Waiver effective until September 30, 2024.)

If you checked any of the boxes above, answer yes below.

<input type="checkbox"/> Yes	The HUD general waiver selected above is being applied to this project, so the BAP does not apply to the entire project. Documentation of the conditions of the waiver should be attached.
<input type="checkbox"/> No	Proceed to Step 5a.

Step 5a:

Calculate the *De Minimis* limit for the project:

The total cost of all covered materials includes all iron and steel, construction materials, and manufactured products used in the project, regardless of whether the BAP currently applies under the Phased Implementation waiver.

Enter the total cost of all covered materials:	
Multiply that amount by 0.05 (5%):	
Enter the lower of the number calculated in the row above or \$1,000,000:	

The amount in the third row above is the *De Minimis* limit for this project. The BAP can be waived for covered materials from foreign or unknown sources at a cost not to exceed the *De Minimis* limit of 5% of the total cost of materials or \$1,000,000 (whichever is less). The BAP will still apply to other covered materials used in the project. **Attach a list of covered materials and their associated costs to which the *De Minimis* limit has been applied.**



Step 6:

If the BAP applies to a project and all general waiver flexibilities have been utilized, but there are remaining covered materials that can only be sourced from foreign or unknown sources, then a grantee may apply for a project-/product-specific waiver.

<input type="checkbox"/> Yes	Refer to guidance in Section VII Step 6 of Notice CPD 2023-12.
<input type="checkbox"/> No	Stop here and retain this analysis in project records.

Completed by	Date Completed



CHECKLIST

Build America, Buy America Act:
Optional Buy America Preference
(BAP) Applicability Checklist

Appendix B

EACH FIELD MUST BE COMPLETED

BIDDER CERTIFICATION

Attach this form to all Bids for qualifying RIHousing-Funded Projects

PURPOSE: This “*Bidder Certification Form*” is used to certify that, as required by federal law, materials listed in the bid(s) attached meet the requirements of the Build America, Buy America Act (“BABA”)

BABA REQUIREMENTS: BABA requirements for qualifying RIHousing-funded projects are as follows:

1. **All iron and steel** used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. **All construction materials** used in the project are produced in the United States. This means that all manufacturing processes for the construction material occurred in the United States.
3. **All manufactured products** used in the project are produced in the United States. This means the manufactured product was manufactured in the United States. A manufactured product is considered manufactured in the United States if 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

CERTIFICATION:

I hereby certify the materials in the attached Bid meet the requirements of the Build America, Buy America Act and accompanying guidance. Responsible Contractors, subcontractors, manufacturers, suppliers, and any other person or entity signing this certification agree to provide documentation verifying the material meets all requirements upon demand of RIHousing, the developer, or the Federal Government. Signing this document does not alleviate the signee of providing such evidence or documentation.

I understand that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

Bid Number/Identifier (Bid to be attached): _____

Type of materials to be supplied: _____

Contract Name & Number: _____

Company Name: _____

Representing (Contractor, supplier, manufacturer, etc.): _____

Phone Number: _____ Email: _____

Authorized Representative Name (Print): _____

Signature: _____

Appendix C

EACH FIELD MUST BE COMPLETED

AIA G702 CERTIFICATION

Attach this form to all AIA G702s for qualifying RIHousing-Funded Projects

PURPOSE: This “*AIA G702 Certification Form*” is used to certify that, as required by federal law, project components listed in the AIA G702 Form(s) attached meet the requirements of the Build America, Buy America Act (“BABA”)

BABA REQUIREMENTS: BABA requirements for qualifying RIHousing-funded projects are as follows:

1. **All iron and steel** used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. **All construction materials** used in the project are produced in the United States. This means that all manufacturing processes for the construction material occurred in the United States.
3. **All manufactured products** used in the project are produced in the United States. This means the manufactured product was manufactured in the United States. A manufactured product is considered manufactured in the United States if 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

CERTIFICATION:

I hereby certify that the materials installed/to be installed pursuant to the attached Certification for Payment Document AIA G702 and Appendix D - Submittal Log meet the requirements of the Build America, Buy America Act and accompanying guidance. Responsible Contractors, subcontractors, manufacturers, suppliers, and any other person or entity signing this certification agree to provide documentation verifying the material meets all requirements upon demand of RIHousing, the developer, or the Federal Government. Signing this document does not alleviate the signee of providing such evidence or documentation.

I understand that making false statements or claims in connection with an award of federal funds is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

Date of G702: _____

Type of materials to be supplied (Appendix D - submittal log attached):

Contract Name & Number: _____

Company Name: _____

Representing (Contractor, supplier, manufacturer, etc.): _____

Phone Number: _____ Email: _____

Authorized Representative Name (Print): _____

Signature: _____

Appendix E

SAMPLE MADE IN AMERICA CERTIFICATION:

Company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project (XXXXXXXXXX)

I, (**company representative**), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the Build America, Buy America Act (BABA) requirements as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes occurred in the United States, from the initial melting stage through the application of coatings.
2. All construction materials used in the project are produced in the United States. This means that all manufacturing processes for the construction material occurred in the United States.
3. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States. A manufactured product is considered manufactured in the United States if 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: .

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative



EACH FIELD MUST BE COMPLETED

MADE IN AMERICA CERTIFICATION

Attach this form to all Payment Requisitions for qualifying RIHousing-Funded Projects

PURPOSE: This “*Made In America Certification Form*” is used to certify that, as required by federal law, materials listed in the payment requisition(s) attached meet the requirements of the Build America, Buy America Act (“BABA”)

BABA REQUIREMENTS: BABA requirements for qualifying RIHousing-funded projects are as follows:

1. **All iron and steel** used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. **All construction materials** used in the project are produced in the United States. This means that all manufacturing processes for the construction material occurred in the United States.
3. **All manufactured products** used in the project are produced in the United States. This means the manufactured product was manufactured in the United States. A manufactured product is considered manufactured in the United States if 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

MATERIALS/MANUFACTURED GOODS SUBJECT TO THIS CERTIFICATION:

TYPE OF MATERIAL/GOOD	PRICE PER UNIT	MAKE & MODEL	MANUFACTURING LOCATION

CERTIFICATION:

I hereby certify the materials in the above list meet the requirements of the Build America, Buy America Act and accompanying guidance. Responsible Contractors, subcontractors, manufacturers, suppliers, and any other person or entity signing this certification agree to provide documentation verifying the material meets all requirements upon demand of RIHousing, the developer, or the Federal Government. Signing this document does not alleviate the signee of providing such evidence or documentation.

I understand that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

Contract Name & Number: _____

Company Name: _____

Representing (Contractor, supplier, manufacturer, etc.): _____

Phone Number: _____ Email: _____

Authorized Representative Name (Print): _____

Signature: _____



Appendix F

CERTIFICATION

Build America, Buy America Act: Optional Buy America Preference (BAP) Certification



Project Information

Grantee	
Grant Number	
Activity Name	
Activity Number (IDIS/DRGR)	

This “*Optional Buy America Preference Certification*” is used to certify that, as required by the Build America, Buy America (BABA) Act, all of the iron, steel, manufactured products, and construction materials incorporated into an infrastructure project are produced in the United States, unless exempted by a HUD general waiver or a project-/product-specific waiver approved by the Made in America Office (MIAO) at the Office of Management and Budget (OMB).

For covered materials not otherwise exempted from the Buy America Preference (BAP), the undersigned certifies the following:

- All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured 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, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product;
- All construction materials used in the project are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Attach a list of all covered materials procured by the signatory and used in the project.

I hereby certify this information is complete and accurate and agree to provide documentation collected on the country of origin for all covered materials I caused to be incorporated into or affixed to an infrastructure project to the CPD grantee and HUD upon request. I understand and agree that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature	Title/Organization	Date

Appendix G

EACH FIELD MUST BE COMPLETED

GENERAL WAIVER FORM

PURPOSE: This “*General Waiver Form*” should be used by a developer to provide the information necessary for RIHousing to determine whether a general waiver applies to the project.

REQUIRED INFORMATION:

1. **Infrastructure Project Name:** _____

2. **Infrastructure Project Description and Location:**

3. **Is the Infrastructure Project co-funded by other Federal agencies besides HUD or other State agencies besides RIHousing?**

Yes No

4. **If you answered yes to Question 5 above, does HUD provide the largest amount of funding to the Infrastructure Project?**

Yes No

5. **If you answered yes to Question 5 above, please list the other federal agencies involved, including the program name, the office, and the contact information for each agency:**

Federal/State Agency	Office	Program	Contact Information

6. **Estimated Total Project Funding, including federal and non-federal sources:**

7. **Total Requested Funding from RIHousing:** _____

8. Total Estimated Infrastructure Costs, including all federal and non-federal shares:

9. Listing of Materials, Technical Specifications, and Quantity:

RIHousing requires the name of the iron or steel item, manufactured product, or construction material proposed to be excepted from BABA requirements, including name, cost, countries of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code. Please note if you have multiple products you would like RIHousing to review, please submit a waiver application for each product. Links to manuals that provide the PSC and

NIACS codes:

- **PSC Codes:** <https://www.acquisition.gov/psc-manual>
- **NAICS Codes:** <https://www.census.gov/naics/>

Technical specification description of the item to be waived, if applicable:

Quantity required: _____

10. Waiver Type:

Choose one of the three waiver types listed in this section and only answer the questions and provide the information/documentation applicable to that chosen waiver type.

a. Exigent Circumstances Waiver:

- Provide an explanation regarding how or why there is an urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community. Attach documentation for additional support if needed.

b. *De Minimis Waiver:*

- i. Describe the materials for which this waiver is sought and demonstrate how those materials comprise no more than 5% of the total cost of the iron, steel, construction materials, and manufactured products used in the project. Such “total cost” may not include labor or other materials that are exempt from the BAP. Please provide a reasonable justification for this waiver, such as an explanation regarding how the materials are not domestically produced. Attach documentation for material prices as well as documentation to demonstrate “total cost.” Attach documentation for additional support if needed.

c. **Small Grants Waiver:**

- i. Please demonstrate that the “total project cost” (including all sources of funding, both Federal, State and other) is \$250,000 or less. “Total project cost” means the total cost of development (all the work that goes into the project). Attach documentation for additional support if needed.

11. Additional Waiver Information

Provide any additional information for RIHousing’s consideration of the requested waiver:

12. Anticipated Impacts

Identify any anticipated impacts if no waiver is issued. Attach documentation for additional support if needed.

13. Submission of Proprietary Information

RIHousing is a quasi-governmental agency of the State of Rhode Island that is subject to the Rhode Island Access to Public Records Act, R.I. Gen. Laws §38-2-1, et seq. (the “Act”). To the extent any information submitted in this form is subject to the Act, it will be withheld or released to the public only in accordance with the Act’s provisions, in the sole and absolute discretion of RIHousing.

CERTIFICATION:

I, the undersigned, hereby certify that I made, and will continue to make, a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor for the project. I hereby certify that RIHousing can rely on this certification and the information provided herein when submitting a Waiver Request for the project.

I, the undersigned, certify under penalty of perjury that the information provided above is true and correct.

WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §3729, 3802).

DEVELOPER/APPLICANT NAME: _____

DEVELOPER/APPLICANT SIGNATURE: _____

DATE OF CERTIFICATION: _____

Appendix H

EACH FIELD MUST BE COMPLETED

PROJECT-/PRODUCT-SPECIFIC WAIVER FORM

PURPOSE: This “*Project-/Product-Specific Waiver Form*” should be used by a developer to provide the information necessary for RIHousing to submit a project-/product-specific HUD Waiver Request Form.

REQUIRED INFORMATION:

1. HUD Program Name: _____
2. Program Award Amount: _____
3. Infrastructure Project Name: _____
4. Infrastructure Project Description and Location:

5. Is the Infrastructure Project co-funded by other Federal agencies besides HUD?
 Yes No
6. If you answered yes to Question 5 above, does HUD provide the largest amount of funding to the Infrastructure Project?
 Yes No
7. If you answered yes to Question 5 above, please list the other federal agencies involved, including the program name, the office, and the contact information for each agency:

Federal Agency	Office	Program	Contact Information

8. If you answered no to Question 6 above, please explain why you are submitting a waiver application to HUD. You must apply for a waiver through the Federal Agency that provided the largest amount of funding to the project. Your application will not be reviewed by HUD unless an explanation is provided.

9. Total Funding, including federal and non-federal sources:

10. Total Estimated Infrastructure Costs, including all federal and non-federal shares:

11. Listing of Materials, Technical Specifications, and Quantity:

HUD requires the name of the iron or steel item, manufactured product, or construction material proposed to be excepted from BABA requirements, including name, cost, countries of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code. Please note if you have multiple products you would like HUD to review, please submit a waiver application for each product. Links to manuals that provide the PSC and NAICS codes:

- **PSC Codes:** <https://www.acquisition.gov/psc-manual>
- **NAICS Codes:** <https://www.census.gov/naics/>

Technical specification description of the item to be waived, if applicable:

Quantity required: _____

12. Waiver Type:

Choose one of the three waiver types listed in this section and only answer the questions and provide the information/documentation applicable to that chosen waiver type.

a. **Nonavailability Waiver:**

- i. A description of the due diligence performed by the applicant, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided. Attach documentation for additional support if needed.

- ii. In the instance that the lead time to obtain a BABA compliant item is excessive, please attach documentation which indicates: the sum of the project cost and product that was identified, the cost differential between the BABA compliant product and the Non-BABA compliant product that increases the overall project cost to be above the threshold of 25%, and any quality or quantity issues that were interfaced in the BABA compliant process. Attach documentation for additional support if needed.

b. **Unreasonable Cost Waiver:**

- i. What is the additional cost of the BABA compliant item, compared to using iron and steel, manufactured products, and construction materials of non-domestic or unknown origin? Please demonstrate how the BABA compliant item increases the total project cost by more than 25 percent. Attach documentation of prices for BABA compliant and non-compliant items for the cost comparison. Attach documentation for additional support if needed.

c. Public Interest Waiver:

- i. Explain how waiving the BABA requirement for this project or product serves the public interest. Attach documentation for additional support if needed.

13. Additional Waiver Information

Provide any additional information for HUD’s consideration of the requested waiver:

14. Anticipated Impacts

Identify any anticipated impacts if no waiver is issued. Attach documentation for additional support if needed.

15. Public Posting of Waiver Request Information

If RIHousing submits a Waiver Request to HUD utilizing the information provided herein, such information will be posted for a period of public comment and review. HUD will not publicly post information considered to be personally identifiable information (PII), including signatures and specific contact information such as an email address and phone number. However, all other information contained in this form, along with any supporting documentation, may be publicly posted so that the public has adequate information to comment on your requested waiver of the BABA domestic sourcing requirements. If you feel that some of the information contained in this waiver request is “proprietary information” and do not want this information disclosed, please follow the instructions in “Submission of Proprietary Information” below. Please note that your designations of exempt material are not binding on HUD.

16. Submission of Proprietary Information

FOIA exempts from mandatory disclosure any “trade secrets or commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4) (Exemption 4). In accordance with Exemption 4, HUD will maintain as confidential any documents submitted by RIIHousing, or prepared by the applicant or developer, that are both customarily and actually treated as private by the applicant or developer, or closely held and not publicly disseminated. If you feel that some or all of this submission falls within the scope of Exemption 4 and is entitled to confidential treatment, you must indicate the specific information you consider proprietary in a cover attachment to this form. Please note that your designations of exempt material are not binding on HUD.

RIIHousing is a quasi-governmental agency of the State of Rhode Island that is subject to the Rhode Island Access to Public Records Act, R.I. Gen. Laws §38-2-1, et seq. (the “Act”). To the extent any information submitted in this form is subject to the Act, it will be withheld or released to the public only in accordance with the Act’s provisions, in the sole and absolute discretion of RIIHousing.

CERTIFICATION:

I, the undersigned, hereby certify that I made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor for the project. I hereby certify that RIIHousing can rely on this certification and the information provided herein when submitting a Waiver Request for the project.

I, the undersigned, certify under penalty of perjury that the information provided above is true and correct.

WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §3729, 3802).

DEVELOPER/APPLICANT NAME: _____

DEVELOPER/APPLICANT SIGNATURE: _____

DATE OF CERTIFICATION: _____

BUILD AMERICA BUY AMERICA WAIVER REQUEST

This data collection is for submitting a waiver request to the Build America, Buy America requirements. According to the Build America Buy America Act (BABAA), “none of the funds made available for a Federal Financial Assistance program for infrastructure, including each deficient program, may be 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.”

Waivers are explained in the [Office of Management and Budget Memorandum 22-11](#) and required by the [Infrastructure, Investments and Jobs Act](#) (IIJA) sections 70901 through 70952. Each waiver request must provide responses to the form questions, as applicable. Instructions are provided in the next paragraph. Contact your Department of Housing and Urban Development representative for your award or for additional assistance with completing this data collection.

Instructions: The applicant needs to complete questions 1 through 17, sign and certify the form, and email the waiver request to BuildAmericaBuyAmerica@hud.gov.

Required fields are marked with an asterisk (*)

Questions to be Answered by the Grantee

1. Submitter Contact Information

Legal Name *		Unique Entity Identifier (UEI) *
Address 1 *		
Address 2		
City *	County/Parish	State
Territory/Province	Country *	Zip/Postal Code *

2. Submitter Email *

3. Submitter Phone Number *

4. Federal Financial Assistance Identification Number (FAIN/Award Number) and Name *

4.1 Provide the SAM.gov Assistance Listing number. *

4.2 Provide the SAM.gov Assistance Listing name. *

5. Housing and Urban Development (HUD) Program Name *

6. Federal Financial Assistance Funding Amount *

7. Infrastructure Project *

7.1 State the Infrastructure Project description and location, to the extent known.

7.2 Is your project co-funded by other Federal Agencies beside HUD? * Yes No

- If yes: Complete section 7.2.1
 - If no: Proceed to question 8
-

7.2.1 If you answered yes to question 7.2, does HUD provide the largest amount of funding to the project? Please note, if HUD is not the largest funder, you must apply for a waiver through the Federal Agency that provided the largest amount of funding to the project. Yes No

7.2.1a If you answered yes to question 7.2.1, please list the other Federal Agencies involved, including the Program, Office, and contact information for each Agency.

Federal Agency	Office	Program	Contact Information

7.2.1b If you answered no to question 7.2.1, please explain why you are submitting a waiver application to HUD. You must apply for a waiver through the Federal Agency that provided the largest amount of funding to the project. Your application will not be reviewed by HUD unless an explanation is provided.

8. Total funding, including federal and non-federal shares: *

9. Total estimated infrastructure costs, including all federal and non-federal shares (to the extent known): *

10. Listing of Materials, Technical Specifications, and Quantity: *

HUD requires the name of the iron or steel item, manufactured product, or construction material proposed to be excepted from BABAA requirements, including name, cost, countries of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code. Please note if you have multiple products you would like HUD to review, please submit a waiver application for each product. Links to manuals that provide the PSC and NAICS codes:

- **PSC Codes:** <https://www.acquisition.gov/psc-manual>
- **NAICS Codes:** <https://www.census.gov/naics/>

10.1 Technical specification description of the item to be waived, if applicable.

10.2 Quantity required:

11. Waiver Type *

Choose **ONE** of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type.

- **Nonavailability waivers:** Complete section 11.1
 - **Unreasonable Cost waivers:** Complete section 11.2
 - **Public Interest waivers:** Complete section 11.3
-

11.1 Nonavailability Waiver

Applicable responses to the following are required:

11.1.1 A description of the due diligence performed by the applicant, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided. *Attach documentation for additional support if needed.*

11.1.2 In the instance that the lead time to obtain a BABA compliant item is excessive, please attach documentation which indicates: the sum of the project cost and product that was identified, the cost differential between the BABA compliant product and the Non-BABA compliant product that increases the overall project cost to be above the threshold of 25%, and any quality or quantity issues that were interfaced in the BABA compliant process. Attach documentation for additional support if needed.

11.2 Unreasonable Cost Waiver (BABA compliance increases total project cost by more than 25 percent)

Applicable responses to the following are required:

11.2.1 What is the additional cost of the BABA compliant item, compared to using iron and steel, manufactured products, and construction materials of non-domestic or unknown origin? Please demonstrate how the BABA compliant item increases the total project cost by more than 25 percent. Attach documentation of prices for BABA compliant and non-compliant items for the cost comparison. *Attach documentation for additional support if needed.*

11.3 Public Interest Waiver

11.3.1 Explain how waiving the BABA requirement for this project or product serves the public interest. Attach documentation for additional support if needed.

12. Additional Waiver Information

Provide any additional information for HUD's consideration of the requested waiver.

13. Anticipated Impacts *

Identify any anticipated impacts if no waiver is issued. *Attach documentation for additional support if needed.*

14. Certification *

Certification that the Federal assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct.

WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §3729, 3802)."

15. Certifying Official Name: *

16. Certifying Official Signature: *

17. Date of Certification: *

Public Posting of Waiver Request Information

The BABAA domestic sourcing requirements waiver authority generally requires the Federal awarding agency to post this waiver information for a period of public comment and review. The Department will not publicly post information considered to be personally identifiable information (PII), including signatures and specific contact information such as an email address and phone number. However, all other information contained in this form, along with any supporting documentation, may be publicly posted so that the public has adequate information to comment on your requested waiver of the BABAA domestic sourcing requirements. If you feel that some of the information contained in this waiver request is “proprietary information” and do not want this information disclosed, please follow the instructions in “Submission of Proprietary Information”, below. Please note that your designations of exempt material are not binding on the Department.

Submission of Proprietary Information

FOIA exempts from mandatory disclosure any “trade secrets or commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4) (Exemption 4). In accordance with Exemption 4, the Department will maintain as confidential any documents submitted by you, or prepared by the applicant or grantee, that are both customarily and actually treated as private by the applicant or grantee, or closely held and not publicly disseminated. If you feel that some or all of this submission falls within the scope of Exemption 4 and is entitled to confidential treatment, you must indicate the specific information the applicant or grantee considers proprietary in a cover attachment to this form. Please note that your designations of exempt material are not binding on the Department.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 2511-0002. Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is *required to obtain or retain benefit* (with section 70914 of the [Build America Buy America Act \(Pub. L. No. 117-58 §§ 70901-70952\)](#)). If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact your assigned program officer directly.

-- END OF FORM