



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6616-N-01]

### **Request for Information Regarding Products and Categories of Products Used in Housing Programs Pursuant to the Build America, Buy America Act**

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, U.S.

Department of Housing and Urban Development (HUD).

**ACTION:** Request for Information.

**SUMMARY:** This Request for Information (RFI) seeks public input, in support of HUD's implementation of the Build America, Buy America Act (BABA or the Act), on the availability of domestically manufactured items necessary for the construction, alteration, maintenance and repair of housing and certain other infrastructure projects in the United States funded through HUD's Federal Financial Assistance (FFA). The purpose of this RFI is to ensure HUD has comprehensive and up to date information on the domestic market, including the availability of BABA-compliant products and product categories used in HUD-assisted housing programs and other infrastructure projects involving buildings and real property. HUD is especially interested in comments from product manufacturers, suppliers, distributors, and other stakeholders regarding the availability of the products used in the construction, alteration, maintenance and repair of housing and certain other infrastructure projects.

**DATES:** Comments to this RFI are due on or before [INSERT DATE 30 DAYS AFTER 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 responsive to this RFI. Copies of comments submitted are available for inspection and downloading at [www.regulations.gov](http://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 responses received by HUD will be publicly available, responses should not include any other personally identifiable information nor any confidential commercial information.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://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](http://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.

**FOR FURTHER INFORMATION CONTACT:** Maria Chelo De Venecia, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410 at (202) 402-3821 (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](mailto:BuildAmericaBuyAmerica@hud.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Responding to this Request for Information**

HUD encourages product manufacturers, suppliers, distributors, and other stakeholders to identify products and categories of products that currently are domestically produced, compliant with

BABA requirements, and 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 domestic 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 BABA's Buy America Preference (BAP) requirements.

Please indicate in your written comments the product or category of product you are commenting on and provide specific examples or information to illustrate your comments where possible. You do not need to address all products or categories of products 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 was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act ("IIJA").<sup>1</sup> 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.

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<sup>1</sup>See Pub. L. 117-58.

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), unless a waiver is granted (sec. 70914(b)).

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)), unless a waiver is granted.

For construction materials, all manufacturing processes must occur in the United States. (Pub. L. 117–58, sec. 70912(6)(C)), unless a waiver is granted. 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).

### **III. HUD’s Implementation of BABA**

The Act provides an opportunity to drive 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. HUD believes that setting forth transparent implementation guidance for FFA programs enhances the ability of recipients, stakeholders, and industry partners to comply with and benefit from the BAP. HUD’s FFA-funded work on infrastructure includes certain projects on housing for eligible residents of public and assisted housing, and on other buildings and real property that serve a public purpose. 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 phased implementation waivers of the applicability of the BAP consistent with the published

implementation schedule.<sup>2</sup> HUD also published two general applicability, public interest waivers covering Exigent Circumstances<sup>3</sup> and De Minimis and Small Grants.<sup>4</sup> 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 Assistance<sup>5</sup> as well as its Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Pacific Island/Territory Recipients of HUD Federal Financial Assistance.<sup>6</sup> All waivers can be found at <https://www.hud.gov/hud-partners/baba#wavers>.

HUD seeks greater clarity and data to analyze and respond to the stakeholder comments, particularly in light of the Office of Management and Budget's (OMB's) "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (M-24-02)<sup>7</sup> and final Guidance for Grants and Agreements set forth in parts 184 and 200 of Title 2 of the Code of Federal Regulations.<sup>8</sup> HUD is seeking the most comprehensive and current information on the availability of BABA-covered products used in HUD-assisted infrastructure projects and identified by HUD grantees, builders, and other stakeholders. Responses to this RFI will improve HUD's understanding of the current domestic market for these products to effectively implement BABA for its projects and to evaluate the potential need for short-term product specific waivers from BABA requirements if products are unavailable. They 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. Request for Information**

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<sup>2</sup> 88 FR 17001, March 21, 2023.

<sup>3</sup> 87 FR 76505, December 14, 2022.

<sup>4</sup> 87 FR 76502, December 14, 2022.

<sup>5</sup> 88 FR 34514, May 30, 2023.

<sup>6</sup> See FR-6407-N-01.

<sup>7</sup> See <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>

<sup>8</sup> See <https://www.govinfo.gov/content/pkg/FR-2023-08-23/pdf/2023-17724.pdf>

This RFI will assist HUD in implementing and ensuring compliance with BABA based on the guidance provided by the Office of Management and Budget in Memorandum 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 improve HUD's understanding of the current domestic market for these products to effectively implement BABA for infrastructure projects funded by its housing programs and other building and real property programs, and to evaluate the potential need for short-term general applicability waivers from BABA requirements for certain products that HUD determines 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. Through this RFI, HUD seeks information in Questions 1-3 regarding the domestic availability, BABA compliance, and domestic capacity to produce specific housing and other building and real property programs' infrastructure products identified in this notice. HUD is interested in promptly obtaining more information on these 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/systems 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 and other building and real property programs' infrastructure programs.

HUD analysis of material and manufactured product sourcing for the construction of housing finds that most 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; and wood products (sawn lumber and treated wood products, plywood and engineered wood products, and other wood products).

However, through this notice, HUD is requesting comment on items it identified that may not be manufactured in the United States with standards compliant with the Act, as well as items that 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 product manufacturers, suppliers, distributors, and other stakeholders detailing availability of the products and categories of products needed in the construction, alteration, maintenance and repair of housing infrastructure projects and other building and real property infrastructure projects that are manufactured in the United States.

HUD specifically requests information from product manufacturers, suppliers, distributors, and other stakeholders on the availability of domestically manufactured options of the following products and categories of products identified by HUD grantees, builders, and other stakeholders:

- Heating, ventilation, and air conditioning (HVAC) systems, including:
  - Variable refrigerant flow (VRF) systems
  - Heat pumps, including cold climate air-source, ducted split, ductless mini-split, geothermal/ground source, and water source systems
  - Exhaust fans
  - Packaged terminal air conditioner (PTAC) units/vertical terminal air conditioner (VTAC) units
  - Gas furnaces
  - Portable and room air conditioners
- Plumbing fixtures, including:
  - Toilets

- Lavatory sinks
- Kitchen sinks
- Faucets
- Bathtubs and shower systems and accessories
- Door hardware, including electronic access control systems and digital locksets
- Elevators
- Fire alarm systems and fire suppression systems
- Solar panels
- Electrical components, including:
  - Interior and exterior LED lighting fixtures
  - Surge protection devices
  - Security cameras
  - Unit load centers, panelboards, and distribution panels
  - Ground fault circuit interrupter (GFCI) receptacles, cover plates, and wiring devices
- Wood trusses

Questions 1-3: For each of these products or categories of products listed above and based on your current understanding of BABA requirements, HUD is requesting the following information about the following three general topics: domestic production, BABA compliance of domestically produced products, and domestic capacity to produce BABA compliant products. 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 and other building and real property programs' projects. At the beginning of your response, please specify the products for which you are providing an answer:

1. Domestic Production:

a. For each of the products or categories of products you identified, please specify if you currently manufacture these products or categories of products in the United States.

b. For each of the products or categories of products you identified, please identify the U.S. manufacturing location and quantity (measured by units, weight or other as appropriate) manufactured at each location.

2. BABA Compliance:

a. For each of the products or categories of products you identified in Topic 1(a), please specify if it meets the requirements for BABA compliance, meaning it meets the definition of “produced in the United States”<sup>9</sup>.

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 2(a), to the best of your knowledge:

i. For products able to meet BABA requirements, what are the technical specifications of the products?

ii. For products able to meet BABA requirements, what is the current production capacity of the products that meet BABA requirements?

iii. 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. What is the anticipated growth in BABA-compliant capacity over the next 5 years? Is this anticipated growth contingent on Federal contracts or assistance? Please explain.

f. If you answered “No” to Topic 2(a): To the extent this information is available, please provide:

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<sup>9</sup> See 2 CFR 184.3.

- i. What actions are you taking/could you take to begin the manufacturing of products that will meet BABA requirements?
- ii. How long might it take you to implement the steps needed to begin production of BABA compliant products? Provide information regarding global supply chain constraints, local permitting, safety requirements and needs that may affect your plan of producing BABA compliant products. Provide any known information of products that are in the process of “onshoring” as a result of recent statutory, regulatory, or market changes.
- iii. What additional support or incentives (e.g., financial, rulemaking certainty, etc.) are needed to begin production of products that meet BABA requirements?
- 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?

### 3. Additional Considerations for BABA Compliant Products:

- a. For any or all products specified in Topic 1(a), provide your observations on 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.
- b. 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).

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.

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