



West Virginia Housing
Development Fund

Build America, Buy America

Policy

February 2025

Build America, Buy America Policy

I. Overview

Pursuant to the Build America, Buy America Act (“BABA”) enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) as Sections 70901-52 of Pub. L. No. 117-58, all construction and rehabilitation projects with five (5) or more units receiving funding from the HOME Investment Partnerships Program (“HOME”) and/or the national Housing Trust Fund (“HTF”) Program in excess of \$250,000, on or after August 23, 2024, must comply with the “Buy America Preference” (“BAP”). The following policies and procedures have been adopted by the West Virginia Housing Development Fund (the “Fund”) to ensure compliance with BABA and BAP.

II. Classification of Materials Subject to BAP:

The BAP requires that all (A) iron and steel, (B) manufactured products, and (C) construction materials used in projects be produced in the United States, subject to HUD’s general exceptions and waiver process detailed below. “Iron and steel,” “manufactured products,” and “construction materials” are all defined terms in 2 CFR 184.3 and are found on **Exhibit A** attached hereto and incorporated herein. Generally, BAP requires:

- A. Iron and Steel Products. All manufacturing processes of iron and steel products, from the initial melting stage through the application of coatings, must occur in the United States.
- B. Manufactured Products. All manufactured products must be manufactured in the United States, and that 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.
- C. Construction Materials. All manufacturing processes for construction material must occur in the United States.

III. BABA Procedure and Form Requirements:

In all projects that BABA applies to, the project owner is responsible to evidence as more specifically indicated below:

- All iron, steel, manufactured products, and construction materials used in the project **were produced in the United States**; and/or
- A relevant exception or waiver applies pursuant to the process described in Item IV and proof of exception/waiver.

1. During the application process, the project owner must:

- Provide a project budget/schedule of values, which includes confirmation from the project owner and general contractor that compliance with BABA requirements were noted when costing the project.
2. During the pre-construction phase, the project owner must:
- Provide a material spreadsheet, in the form of **Exhibit B** (Construction Materials), signed by the owner and contractor prior to the pre-construction conference breaking down the materials to be used and what category (the category must be determined based on the status of the material upon arrival at the construction site) they fall under (as defined in Section II). Exhibit B must be completed prior to requesting any waivers outlined in Section IV.
 - Provide construction contracts (general contractor, subcontractors, and lower-tier subcontractors) with the following language included to inform all parties of 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.hudexchange.info/programs/baba/>. “
 - Provide a signed copy of **Exhibit C** (Self-Certification) prior to the project’s pre-construction meeting.
3. During the construction/rehabilitation phase, the project owner must:
- Complete and submit **Exhibit D** (Pay Application) with each pay application, certifying compliance with BABA.
 - Perform inspections to spot check materials and specifically check line items to confirm compliance with BABA.
 - Submit records of all invoices, labels, and receipts for eligible materials to baba@wvhdf.com for the Fund’s review to ensure compliance with BABA for any item not subject to a waiver.
 - Include **Exhibit E** (Change Order Materials Certification) when requesting a change order, which is executed by the Project Owner, Architect, and General Contractor.
 - When submitting a change order for a product that is subject to BABA and a waiver or general exception is not already in place, notify the Fund to request a product-specific waiver using the process detailed in Item IV.
4. When the project construction/rehabilitation is completed, the project owner must:
- Submit an updated **Exhibit C** (Self Certification) with the HOME and/or HTF final pay application.
 - Keep BABA records for five (5) years from receipt of the final HOME or HTF funds (see Item IV, Section D).
 - Continued maintenance and upkeep on the project occurring post-construction, which does not use HOME or HTF money, is not subject to BABA requirements. If additional HOME or HTF funding is received for rehabilitation, it will be subject to BABA requirements.

IV. Waivers:

Project Owners must complete Exhibit B prior to being considered for a waiver. Once Exhibit B has been completed, the Project's *De Minimis* Limit will be calculated as follows:

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 <i>De Minimis</i> Limit):	

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. Project Owners must provide **a list of Covered Materials and their associated costs to which the *De Minimis* limit will be applied.**

After the *De Minimis* limit has been applied, if there are remaining Covered Materials that can only be sourced from foreign or unknown sources, then Project Owners may apply for a project/product-specific waiver.

Project/Product-Specific Waivers

Prior to submitting a project-/product-specific waiver, the Project Owner must conduct market research to demonstrate its efforts to procure domestic products. One optional resource for conducting market research is the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP) center in the state. Project Owners are encouraged to collaborate with relevant members of the project team to identify Covered Materials that cannot be obtained from domestic sources as early as possible in the project life cycle. NIST MEP's free supplier scouting resources can attempt to identify a domestic manufacturer that can supply the necessary materials or conduct the necessary market research to support the need for a project-/product-specific waiver.

The three types of project-/product-specific waivers for which a Project Owner may apply are described below.

- **Public Interest Waivers** may be available when applying the BAP would be inconsistent with the public interest. When applying for a waiver, the waiver should explain how waiving the BAP for the project or product serves the public interest; and it should demonstrate definite impacts on the community if specific items, products, or materials are not utilized in a HOME- or HTF-funded project.
- **Nonavailability Waivers** 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. When applying for a waiver, the waiver should demonstrate that the Project Owner has 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.

- 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). When applying for a waiver, the waiver should demonstrate that applying the BAP increases the total project cost by more than 25%, even after the *De Minimis* waiver is applied, determine 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.

The process for all waiver requests shall begin with the Project Owner completing an **Exhibit F** (Waiver Form) for each waiver requested and submitting the form to baba@wvhdf.com. All applicable documentation must accompany the **Exhibit F** (Waiver Form).

General Waivers

Projects with an urgent need to immediately complete the project because of a threat to life, safety or property may be eligible for a general waiver. Please contact the Fund if this applies to your project. The Fund will submit all waiver requests to HUD. Be advised, the Project Owner shall likely need to timely provide additional information as requested by HUD and/or the Office of Management and Budget during the review process to proceed with public comment in the Federal Register and final approval by the Made In America Office. Before issuing a waiver, under Section 70914(c), the head of a Federal agency, including HUD, must make publicly available a detailed written explanation for the proposed determination to issue the waiver and provide a period of not less than 15 days for public comment on the proposed waiver.

The Fund will notify the Project Owner of the approval or denial of the waiver as appropriate. *Waiver denial does not preclude Project Owner from complying with BABA requirements.*

Pursuant to 24 CFR 92.508, the Project Owner must keep all HOME or HTF project related documents, including all BABA documentation, for five (5) years post project completion as defined in the project’s Written Agreement.

Additional Information

For additional policy guidance, training, and resources, please see:

<https://www.hudexchange.info/programs/baba/>

<https://www.madeinamerica.gov/>

THIS POLICY IS SUBJECT TO CHANGE FROM TIME TO TIME AS FURTHER GUIDANCE IS RELEASED BY THE CONTROLLING AGENCIES.

Exhibit A
Defined Terms in 2 CFR § 184.3

2 CFR § 184.3 Definitions

Acronyms used in this part have the same meaning as provided in [2 CFR 200.0](#). Terms not defined in this part have the same meaning as provided in [2 CFR 200.1](#), except for the terms “equipment,” “expenditures,” and “supplies,” which are not specifically defined for this part. As used in this part:

Build America, Buy America Act means division G, title IX, subtitle A, parts I-II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act ([Pub. L. 117-58](#)).

Buy America Preference means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, 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.

Component means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

Construction materials 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.

Infrastructure project 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. See also [paragraphs \(c\) and \(d\) of § 184.4](#).

Iron or steel products means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

Manufactured products means:

1. Articles, materials, or supplies that have been:
 - i. Processed into a specific form and shape; or
 - ii. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
2. If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under [§ 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 [§ 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 means the entity that performs the final manufacturing process that produces a manufactured product.

Predominantly of iron or steel or a combination of both 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.

Produced in the United States means:

1. 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.
2. In the case of manufactured products:
 - i. The product was manufactured in the United States; and
 - ii. (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. See [§ 184.2\(a\)](#). The costs of components of a manufactured product are determined according to [§ 184.5](#).
3. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See [§ 184.6](#) for more information on the meaning of “all manufacturing processes” for specific construction materials.

Section 70917(c) materials means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See section 70917(c) of the Build America, Buy America Act.

[[88 FR 57787](#), Aug. 23, 2023, as amended at [89 FR 79732](#), Oct. 1, 2024]