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Affordable Housing Alert

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BABA compliance challenges for HUD affordable housing

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HUD's Build America, Buy America (BABA) request for information and housing bills could reshape Buy America compliance, waivers, and costs for affordable housing projects.



What's the impact?

- The U.S. Department of Housing and Urban Development (HUD) BABA RFI seeks input about whether key housing products are available from compliant domestic sources.
- Pending federal legislation could require HUD to review BABA's impact on affordable housing and clarify HOME Program guidance.
- New HUD and congressional actions may reduce BABA-related costs, delays, and waiver burdens for affordable housing projects.

Basics of BABA

In November 2021, the BABA Act was passed as part of the Infrastructure Investment and Jobs Act. At its core, BABA requires that none of the funds made available for a federal financial assistance (FFA) infrastructure project may be obligated by an agency unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. In the past several years, the Office of Management and Budget (OMB) and agencies, including HUD has grappled with how to define and apply the BABA requirements to a myriad of projects. OMB guidance makes it clear that BABA is intentionally broad, specifying in the implementing regulations and guidance that agencies should interpret the term “infrastructure” broadly.

Under the Act, waivers from the requirements are available where the agency finds that (1) applying the Buy America preference would be inconsistent with the public interest (a “public interest waiver”); (2) BABA-compliant products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); (3) the inclusion of BABA-compliant products would increase the overall cost of the project by more than 25 percent (an “unreasonable cost” waiver).

BABA and HUD

For purposes of determining what types of projects are subject to BABA, “infrastructure” is defined broadly, encompassing not only traditional infrastructure-type projects such as roads and bridges, but also buildings and real property. As a result, certain HUD FFA programs for housing fall in the definition of “infrastructure.” HUD has accordingly applied the BABA requirements to many of its FFA programs for affordable housing projects, the HOME program and public housing funding among them. However, BABA compliance has proven to be a daunting challenge in the context of such projects, and stakeholders have repeatedly identified several categories of products that are difficult, if not impossible, to obtain from BABA-compliant suppliers.

HUD’s existing general applicability public interest waivers have proven insufficient to address the BABA compliance challenges on certain projects. As a result, stakeholders have been left with no choice but to pursue project- or product-specific waivers, a time-consuming and complicated process that, at best, can delay critically needed affordable housing development projects, and at worst, can lead to the abandonment of certain projects due to the compliance burden. Recognizing this, and in response to feedback from stakeholders, the administration and Congress have taken several actions that indicate a willingness to consider how best to reconcile the goals of expanding domestic manufacturing capacity for certain products while still encouraging and facilitating affordable housing projects.

HUD Request for Information

On June 18, 2026, HUD published a [Request for Information Regarding Products and Categories of Products Used in Housing Programs Pursuant to the Build America, Buy America Act](#) (RFI) in the Federal Register. The RFI seeks input about the availability of specific domestically manufactured items that are “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).” HUD asserts in the RFI that its analysis of material and manufactured product sourcing for the construction of housing has found that “most materials and manufactured products used in the construction of housing are largely available from domestic producers,” but seeks comments about “items [HUD] identified that may not be manufactured in the United States with standards compliant with [BABA], 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.”

HUD specifically requests information about the availability of several categories of products:

- / Heating, ventilation, and air conditioning (HVAC) systems;
- / Plumbing fixtures;
- / Door hardware, including electronic access control systems and digital locksets;
- / Elevators;
- / Fire alarm systems and fire suppression systems;
- / Solar panels;
- / Electrical components; and
- / Wood trusses.

Respondents may also identify other products that are not included on the list but are essential to HUD-assisted projects. For each product or category of product, HUD is seeking information about three general topics: domestic production, BABA compliance of domestically produced products, and domestic capability to produce BABA-compliant products.

Notably, many of the products listed in the RFI have already been the subject of HUD nonavailability waivers that have been granted on a case-by-case basis. This has resulted in repeated requests for waivers for the same products on projects across the country. The RFI presents an opportunity for HUD to take a more global approach to these nonavailability waivers, resulting in efficiencies for HUD, recipients, and developers of affordable housing projects. As such, recipients and developers, as well as suppliers, distributors, and product manufacturers, should review the RFI and provide input before the deadline of July 20, 2026, to allow HUD to determine the appropriate next steps to facilitate BABA compliance across HUD’s programs.

ROAD to Housing in the 21st Century Act

The bipartisan ROAD to Housing in the 21st Century Act, recently passed by both houses of Congress and awaiting either presidential signature or enactment, includes the HOME Investment Partnerships Reauthorization and Reform Act that specifically requires HUD to review the implementation of BABA with respect to the HOME Investment Partnership Program (“HOME Program”) within 180 days after the date of the enactment of the Act. Within 90 days after that review, HUD is instructed to “issue updated guidance to clarify the application of the Build America, Buy America Act” with respect to the HOME Program. From there, HUD is instructed to provide a report to Congress within 270 days detailing the results of the review, and the guidance issued as a result. This requirement indicates that Congress has heard the affordable housing community’s concerns regarding how BABA raises impediments to affordable housing and is focused on understanding the impact of those impediments and how they might be addressed.

Build Housing Affordably Act

Another piece of legislation recently introduced in Congress, the Build Housing Affordably Act, could, if passed, be the culmination of affordable housing stakeholders’ efforts to address the impacts and challenges posed by application of BABA requirements to affordable housing projects. As currently drafted, the bill would require HUD to conduct a study of (1) the impacts of BABA and its implementation on stakeholders using covered programs to build affordable housing; and (2) the BABA waiver process with respect to covered programs.

In reviewing the impacts, the study would require an examination of the direct costs of procuring materials for federally assisted housing projects, indirect costs associated with compliance (including increased administrative costs, costs incurred to pursue a waiver, and costs of consultants or other labor to deal with increased administrative costs), costs of delays associated with compliance, and costs associated with any housing projects left incomplete as a result of compliance (and the number of units not built as a result of compliance).

HUD would also be required to examine its waiver process with respect to covered programs, including waiver policies and processes, time to process waivers, number of waivers granted, use of general public interest waivers (and whether issuing more such waivers could reduce costs), effectiveness of existing public interest waivers, and materials and products most often subject to requests for waivers. HUD will be required to submit a report to Congress no later than 90 days after the study is completed.

The bill also proposes that BABA requirements be paused for covered affordable housing projects until 60 days after HUD delivers the report on the study. In addition, the bill would require HUD to decide on any request for a waiver under BABA within 90 days after receiving the

request. If HUD does not respond to the request in this time period, the waiver will be deemed to have been granted.

Final Considerations

Taken together, the RFI, the ROAD to Housing in the 21st Century Act, and the Build Housing Affordably Act could provide welcome certainty to stakeholders in affordable housing projects by reducing the costs and delays caused by BABA compliance challenges and lengthy waiver review periods. Recipients and subrecipients of FFA from other federal agencies should also note HUD's analysis of these issues, because it may prove persuasive to other agencies implementing BABA requirements. Stakeholders should carefully review the RFI and the recent and proposed legislation to identify where there may be opportunities to educate HUD and lawmakers about the challenges of complying with BABA in affordable housing projects and take those opportunities to provide input about how the implementation and waiver process can be improved.

Nixon Peabody's Affordable Housing and Government Contracts teams are closely monitoring these developments and can help clients assess BABA's impact on HUD-funded projects, navigate waiver strategies, and respond to emerging agency guidance. We also work with developers, housing agencies, and community development organizations to identify compliance risks and advocate for practical solutions.

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