

Build America, Buy America and Affordable Housing Implementation Proposal

The Build America, Buy America Act (BABA), enacted as part of the 2021 Infrastructure Investment and Jobs Act, requires manufactured products and construction materials used in federally funded infrastructure projects to be produced in the United States. BABA's goal of supporting domestic manufacturing is laudable, but its practical application is impeding — and in some cases preventing — the development of much-needed affordable housing.

BABA compliance requirements are resulting in significant cost increases, project delays, and administrative burdens that reduce production at a time when the nation desperately needs more housing supply. American manufacturers simply do not produce many of the materials needed for housing construction. The housing sector's unique characteristics, the urgency of the affordability crisis, and the minimal impact on manufacturing demand all justify treating residential construction differently from traditional infrastructure projects.

If Congress and the Administration allow the current BABA implementation process to continue, it will significantly reduce the amount of affordable housing we build and preserve with federal resources. The undersigned organizations believe affordable housing programs should not be subject to BABA consistent with OMB Memo M-24-02 stating that a “private home for personal use, for example, would not constitute an infrastructure project for purposes of BABA” and ask Congress and/or HUD to reconsider the applicability of BABA to affordable housing programs.

Should affordable housing programs continue to be subject to BABA requirements, we have a proposal to streamline BABA implementation that balances the need for affordable housing with the desire to support domestic manufacturing.

Why is BABA causing problems for affordable housing production?

- **BABA works for large-scale infrastructure projects but not individual affordable housing developments.** The supply chain and procurement practices for affordable housing are fundamentally different from those for highways, bridges, and water systems. Affordable housing represents a small fraction of overall manufacturing demand, so restricting these projects has minimal impact on domestic production while creating outsized harm to housing supply.
- **Affordable housing resources are finite and should be used to produce more housing.** When compliance costs consume funding that could create

additional housing units, we're wasting taxpayer resources without achieving manufacturing goals. Developers have found BABA compliance costs to comprise a significant amount or even exceed the value of the housing funds triggering BABA.

- **BABA is causing significant administrative and compliance burdens for affordable housing providers** related to documentation requirements, consultant costs, supply chain verification, and contract modifications. Developers must track and document the domestic origin of every covered material, creating extensive record-keeping obligations. Many developers have been forced to hire specialized consultants to navigate BABA compliance, adding substantial soft costs to projects.
- **HUD applied BABA to affordable housing programs without an assessment of domestic manufacturing capacity.** Many construction materials and manufactured products commonly used in affordable housing are not readily available from U.S. sources in sufficient quantities or quality at this time. Other key products currently are not manufactured in America at all. While the law provided federal agencies the ability to waive BABA requirements, the U.S. Department of Housing and Urban Development's phased implementation waiver for BABA ended August 23, 2024. Unfortunately, the end of the waiver was not tied in any way to sufficient domestic manufacturing of products necessary for housing construction.
- **BABA is making it harder or impossible to use federal affordable housing programs.** Numerous HUD grantees report developers choosing not to accept HUD funds to fill project financing gaps because they trigger BABA. State and local funding is limited, and filling gaps with conventional debt necessitates higher rents for debt service payments. Sometimes, it is simply not possible for a development to financially "pencil," and thus, the project cannot move forward at all.
- **The BABA waiver process is not working.** The BABA waiver process, which requires sign off from both HUD and OMB, has proven to be onerous, costly, and unworkably slow. The vast majority of developments are not eligible for de minimis or project-specific waivers under the excessively strict requirements put in place by OMB and HUD. Thus, developers largely have sought product-specific waivers. Unfortunately, the process for applying for product-specific waivers is not working.
 - Each non-compliant product requires its own individual waiver. Developers are forced to hire BABA consultants to undertake sourcing and complete a waiver for every non-compliant product. An individual project may need to file 50 to 100 individual product waivers, often adding hundreds of thousands of dollars to the cost of development.

- The waiver process forces developers to vet every product to be used in the project early in the design process, prior to applying for waivers. If the wrong product is specified during design or procurement, then later required to change for any of a myriad of reasons, it is too late to apply for a waiver to get the correct product.
- Few of the waivers submitted to HUD since it implemented BABA requirements have been approved. Developers report submitting waivers without any clear indication of when they will be considered.
- Recent HUD staffing reductions could further complicate the department's capacity to consider waivers in a timely manner.

Short of eliminating BABA's application to affordable housing, how can we support domestic manufacturing while not hamstringing affordable housing programs?

While the undersigned organizations believe affordable housing programs should be exempt from BABA requirements, Congress and/or the Administration could streamline and improve its implementation to balance the need for affordable housing with domestic manufacturing goals.

- **Temporarily suspend BABA implementation for affordable housing programs.** Continue the existing public notice and comment for all waiver requests but allow projects to go forward without BABA waivers until a new BABA implementation structure — described below — can be implemented.
- **Analyze the existing domestic manufacturing capacity/availability for products and materials commonly used in affordable housing production.** During the BABA suspension period, the federal government, potentially through the U.S. General Services Administration, the National Institute of Standards and Technology, and the Department of Commerce—International Trade Administration's Office of Building Materials Industries, should research the availability of domestically sourced materials and products needed for affordable housing production. This analysis would serve two purposes:
 1. **To help HUD establish a general waiver for products that are unavailable in sufficient quantities or significantly more costly from domestic sources.** Recipients of grant funding should not need to file individual waivers for products for which there is already a general waiver under this process.
 2. **To create and maintain a database of BABA-compliant materials and products** along with tools for manufacturers to use for the BABA cost calculation and certification for manufactured products. If a product is not included in the database, there should be a process in place by which a

developer can self-certify compliance with third-party approval.

This research would need to be revised periodically to allow for updates to the HUD general waiver and BABA-compliant materials/products database.

- **Streamline purchasing requirements.** During the waiver suspension period, the Government Accountability Office should review conflicting or confusing BABA and other domestic content and American purchasing requirements across federal agencies (e.g., for tax credit projects and for federal direct purchases) to find opportunities for overall alignment and process improvements.
- **Increase the de minimis waiver percentage.** Currently, HUD has a BABA de minimis waiver in place allowing for the use of non-compliant projects provided their total cost is no more than 5 percent of the total applicable cost of the project. This should be increased to at least 10 percent to reduce the risk to investors.
- **Review waivers in a timely fashion.** There must still be a waiver process in place so products that cannot be found domestically and not included in the HUD general waiver may be used if needed. Should HUD not act on a waiver within 30 days of receipt, the waiver should be deemed automatically approved. This will allow deals to close in a timely manner rather than having to hold off on closing until a waiver can be approved.

Supporting Organizations (as of 5/12/26)

National and Multi-Regional Organizations and Businesses

Affordable Housing Tax Credit Coalition

American Institute of Architects

CohnReznick

Corporation for Supportive Housing

Council for Affordable and Rural Housing

Council of Large Public Housing Authorities

Council of State Community Development Agencies

CREA, LLC

Gorman & Company

Grow America

Eisner Amper

Enterprise Community Partners

Habitat for Humanity International

Housing Advisory Group

Housing Assistance Council (HAC)

Housing Partnership Network

LeadingAge

Local Initiatives Support Corporation (LISC)

Merchants Capital
Mercy Housing
Mortgage Bankers Association
National Affordable Housing Management Association
National Apartment Association
National Association of Affordable Housing Lenders
National Association of Home Builders
National Association of Housing and Redevelopment Officials
National Association of Local Housing Finance Agencies
National Association of State and Local Equity Funds
National Association of State Energy Officials
National Church Residences
National Community Development Association
National CORE
National Council of State Housing Agencies
National Housing & Rehabilitation Association
National Housing Conference
National Housing Trust
National Leased Housing Association
National Low Income Housing Coalition
National Multifamily Housing Council
National NeighborWorks Association
Novogradac
Preservation of Affordable Housing
Public Housing Authorities Directors Association
R4 Capital, LLC
Red Stone Equity Partners
Stewards of Affordable Housing for the Future
The Community Builders
Up for Growth Action
Volunteers of America
WNC & Associates

Regional, State, and Local Organizations and Businesses

Alabama Affordable Housing Association (AAHA)
Affordable Homes & Communities (AHC)
Barton Communities
Beacon Communities
CAHEC
California Housing Consortium
Cambridge Housing Authority
CHN Housing Partners
Cinnaire
Citizens' Housing and Planning Association (CHAPA)
Coalition of Attainable Housing Providers of Florida, Inc.

Community Partners for Affordable Housing
Connecticut Housing Production Council
Cook Inlet Housing Authority
Eden Housing
Evernorth
Fahe
Georgia Affordable Housing Coalition
Great Lakes Capital
Harborlight Homes
Homes for America
Housing Alliance of Pennsylvania
Housing Colorado
Housing Oregon
Housing Works RI at Roger Williams University
Illinois Housing Council
Indiana Affordable Housing Council
Kentucky Affordable Housing Coalition
Maine Affordable Housing Coalition
Maryland Affordable Housing Coalition
Midwest Housing Equity Group
Neighborhood Renaissance, Inc.
New York State Association for Affordable Housing (NYSFAFH)
OCCH
Overland Property Group
People's Self-Help Housing
Pivotal Housing Partners
Shopworks Architecture
Tennessee Developers Council
Texas Affiliation of Affordable Housing Providers (TAAHP)
The Annex Group
The NRP Group
The Pacific Companies
The Summit Group
Ulysses Development Group
USA Properties Fund
VCDC
Wallick
Wendover Group
Woda Cooper Companies