



# BUILD AMERICA, BUY AMERICA

## Compliance Plan



Community Housing and Grants Management Division

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Summary of Changes: 2025 Revision

Date	Section	Description of Changes

Minor formatting, wording, or grammatical changes are not identified in this list. In addition to the items below, all website links referenced in the manual have been validated and updated where appropriate.

TABLE OF CONTENTS

SECTION 1: INTRODUCTION ..... 1

    DEFINITIONS..... 1

SECTION 2: BABA GENERAL PROVISIONS..... 1

    2.01 Which Projects are required to comply with BABA? ..... 3

    2.02 Who must ensure compliance with BABA? ..... 3

    2.03 What does BABA require? ..... 3

    2.04 What are the Agency’s responsibilities? ..... 3

    2.05 What are a Subrecipient’s responsibilities? ..... 3

    2.06 What are a Contractor’s and Subcontractor’s responsibilities? ..... 4

    2.07 Are there any waivers to BABA? ..... 4

    2.08 What is the waiver process for BABA? ..... 5

SECTION 3: ADDITIONAL RESOURCES ..... 5

## SECTION 1: INTRODUCTION

North Dakota Housing Finance Agency (“Agency”) and the entities to which it provides certain U.S. Department of Housing and Urban Development (“HUD”) funding must comply with the Build America, Buy America Act (“BABA”) enacted under division G, title IX, subtitle A, part I, sections 70911 - 70917 of the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117- 58).

The purpose of BABA is to increase the use of American-made goods, services, products, and materials in federally funded infrastructure projects by requiring all Iron and Steel, Construction Materials, and Manufactured Products used in federally funded infrastructure projects be produced in the United States. The subsequent requirements, known as the Buy America Preference (“BAP”), as detailed in 2 CFR 184, are applicable.

A Recipient, Subrecipient, Subgrantee, Contractor and/or Subcontractor must comply with BABA and the BAP.

This Compliance Plan summarizes the requirements of 2 CFR 184 as they pertain to the HUD programs administered by the Agency. The Plan outlines what the Agency and its housing partners must do to comply with BABA and the BAP and identifies the record-keeping and reporting requirements which must be met.

For purposes of BABA and the BAP, multi-unit rental housing greater than four units is considered infrastructure.

## DEFINITIONS

**Contractor:** an entity which has entered into a contract directly with a Subgrantee.

**Project:** the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

**Subcontractor:** an entity which has a contract with a Contractor, or other Subcontractor, to undertake a portion of the Contractor’s, or Subcontractor’s, obligation to perform work in connection with a Project.

**Subgrantee:** the entity which receives an award of HUD funds from the Agency.

**Subrecipient:** any non-federal entity which receives a subaward of HUD funds from the Agency to fund a program they have established.

## SECTION 2: BABA GENERAL PROVISIONS

BABA established the need to document country of origin of articles, materials, and supplies consumed in, incorporated into, or permanently affixed to the Project’s real property, or improvements to the real property. An article, material, or supply shall fall into only one of the following available categories, each further defined below; Iron and Steel, Manufactured Product, Construction Material, Section 70917(c) Material or Uncategorized.

Each category has manufacturing process requirements which must be met to qualify that item as “produced in the United States”.

All federal financial assistance to the Project is subject to the BAP and shall not be provided to the Project unless all Iron and Steel, Manufactured Product(s), and Construction Material(s) consumed in, incorporated into, or permanently affixed to the Project’s real property, or improvements to the real property of the Project are produced in the United States.

Categorization must be made based on the item’s status at the time it is brought to the work site for incorporation into the project.

Minor additions of articles, materials, supplies, or binding agents to a Construction Material do not change the categorization of the Construction Material.

If an item can be classified as Section 70917(c) Material, Iron or Steel, or Construction Material, it cannot be categorized as a Manufactured Product. However, a Manufactured Product may consist of Section 70917(c) Materials, Iron or Steel, or Construction Materials.

**Iron and Steel:** Articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

- 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 must exceed 50 percent of the total cost of all its components.
- All manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

**Manufactured Product:** Articles, materials, or supplies that have been processed into a specific form or shape, or combined with other articles, materials, or supplies to create a product with different properties than those individual articles, materials, or supplies.

- The 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.

**Construction Material:** Articles, materials, or supplies that consist of one of the following items:

- (1) *Non-ferrous metals.* All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (2) *Plastic and polymer-based products.* All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- (3) *Glass.* All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- (4) *Fiber optic cable (including drop cable).* All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- (5) *Optical fiber.* All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- (6) *Lumber.* All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
- (7) *Drywall.* All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- (8) *Engineered wood.* All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

**Section 70917(c) Material:** Cement and cementitious materials; aggregates such as stone, sand or gravel; or aggregate binding agents or additives.

- **BABA provisions do not apply to Section 70917(c) Materials.**
- Section 70917(c) Materials in and of themselves need not follow BABA and the BAP, however, a Manufactured Product made with a 70917(c) material does follow BABA and the BAP. For example, concrete is a 70917(c) Material, but a precast concrete item is a Manufactured Product.

**Uncategorized:** Articles, materials, or supplies which do not fit within the definition of another categorization.

## **2.01 Which Projects are required to comply with BABA?**

Any Project involving construction, alteration, maintenance, or repair of infrastructure in the United States, regardless of whether infrastructure is the primary purpose, which receives HUD assistance from any combination of the following HUD-funded programs:

- CDBG (Community Development Block Grant)
- ESG (Emergency Solutions Grant)
- HOME (HOME Investment Partnerships Program)
- HOPWA (Housing Opportunities for Persons with AIDS)
- HTF (National Housing Trust Fund)

## **2.02 Who must ensure compliance with BABA?**

Agency, any Subrecipient which awards HUD funding on behalf of Agency, Recipients of assistance directly from HUD, Contractors and any Subcontractor.

## **2.03 What does BABA require?**

Disclosure of BABA's applicability and a copy of this BABA Compliance Plan during a project's bidding process and/or contractor or subcontractor selection process.

Any purchase agreement or contract by a Contractor, Subcontractor, Subrecipient or Subgrantee must disclose BABA's applicability and include, at least by reference, the Agency's BABA Compliance Plan.

For each financial draw, for each entity to be paid and regardless of source to fund the draw, the Completion of a BABA Contractor Certification for all Iron and Steel, Manufactured Products, and/or Construction Materials the entity has caused to be consumed in, incorporated into, or permanently affixed to the Project which have not been previously reported.

Each item/product, its category, total cost, manufacturer/vendor and documentation of its country of origin must be provided.

## **2.04 What are the Agency's responsibilities?**

Agency shall:

- Educate and assist Contractor, Subcontractor, Subrecipient or Subgrantee sufficiently to be able to comply with BABA requirements
- Monitor BABA reporting to meet the objectives and requirements of BABA
- Report required BABA related data to HUD

If a Project is awarded multiple HUD funding sources, not all of which were awarded by the Agency, each awarder shall separately administer any applicable BABA compliance and reporting for its HUD program. One awarder shall not administer BABA for all HUD funding sources unless all HUD sources are administered by the same awarder.

## **2.05 What are a Subrecipient's responsibilities?**

Provide the Agency with a fully complete and executed Entity Profile Package.

Include the required BABA language in the Project's bid specifications and provide the Agency with a copy of the specifications.

Ensure all requests for bids and all contracts related to the Project clearly indicate the contract and work is subject to BABA requirements.



Ensure each contract associated with the Project which includes a Contractor, Subcontractor, or Subgrantee discloses BABA's applicability and includes, at least by reference, the Agency's BABA Compliance Plan. The Agency must receive a copy of all contracts.

Collect and review for completeness and accuracy, required BABA documentation from all Contractors and Subcontractors throughout the Project's development:

- Any contract's execution
  - Fully completed & executed Entity Profile Package
  - Contract includes disclosure of BABA's applicability
- Each draw request, regardless of the source of funds used to fund the draw
  - BABA Contractor Certification from each entity to be paid brought up to date

## **2.06 What are a Contractor's and Subcontractor's responsibilities?**

Ensure all requests for bids and all contracts related to the Project clearly indicate the contract and work is subject to BABA requirements.

Ensure each contract associated with the Project that includes a Contractor or Subcontractor discloses BABA's applicability and includes, at least by reference, this BABA Compliance Plan. The Agency must receive a copy of all contracts.

Collect and review, for completeness and accuracy, required BABA documentation from all Subcontractors throughout the Project's development:

- Any contract's execution
  - Fully completed & executed Entity Profile Package
  - Contract includes disclosure of BABA's applicability
- Each pay application / request for payment
  - BABA Certification brought up to date

## **2.07 Are there any waivers to BABA?**

The following waivers can be approved by the Agency and are general waivers for commitments executed prior to November 23, 2027:

- *Small Grant Waiver:* The total cost of the Project from all sources is less than the Simplified Acquisition Threshold defined in 2 CFR 200.1, currently \$250,000.
- *De Minimis Waiver:* Covered Materials for a portion of the project comprise no more than 5 percent of the total cost of Covered Materials used in a project (not to exceed \$1 million).
- *Exigent Circumstances Waiver:* There is an urgent need to immediately complete the project because of a threat to life, safety, or property.

The following are project-specific waivers which must be approved by HUD and the Made in America Office at the Office of Management and Budget ("MAO"). Be advised, the Agency has been made aware that the approval of these waivers is extremely rare, are labor and time intensive, and must include a minimum 15-day public comment period by the MAO and is likely exceed 6-weeks from start to finish, if approved. No Contractor, Subcontractor, Subrecipient or Subgrantee is allowed to initiate the waiver request. The Agency must initiate any project-specific waiver.

- *Public Interest Waiver:* Applying the BAP would be inconsistent with the public interest.
- *Nonavailability Waiver:* Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.
- *Unreasonable Cost Waiver:* The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall infrastructure project by more than 25 percent.



## 2.08 What is the waiver process for BABA?

The Agency shall work with the Contractor, Subcontractor, Subrecipient or Subgrantee to apply the De Minimums Waiver to specific Covered Materials on a case-by-case process during the draw approval process.

The process for all other waiver requests shall begin with written communication from the Subrecipient or Subgrantee to the Project's Agency loan officer. The written communication must explain and document thorough rationale for the waiver request.

The Agency shall provide the Subgrantee or Subrecipient with written communication with the approval or denial of a general waiver request.

The process to request a project-specific waiver follows:

- For a Nonavailability or Unreasonable Cost Waiver the Subgrantee or Subrecipient must first contact the local National Institute of Standards and Technology ("NIST") to utilize the available Manufacturing Extension Partnership ("MEP"). MEP is supposed to assist in finding an American supplier for product. Be advised, the Agency has been made aware that this process is likely to exceed 45 days per product. If no American product or supplier can be sourced, the process to request a project-specific waiver may continue.
  - Subgrantee or Subrecipient must submit a complete a Build America Buy America Waiver Request (OMB No: 2511-0002) to the Agency.
    - All applicable documentation must accompany the Waiver Request.
  - Agency shall electronically complete the BABA Waiver via <https://babawaiver.hud.gov/s/>.
  - Be advised, the Subgrantee or Subrecipient shall likely need to timely provide additional information as requested by HUD and/or OMB during the review process to proceed with public comment in the Federal Register and final approval by MAO.

## SECTION 3: ADDITIONAL RESOURCES

- [BABA on HUD Exchange](#)
- [2 CFR 184](#)
- [2 CFR 200.322](#)
- [National Institute of Standards and Technology – Manufacturing Extension Partnership](#)