

Build America, Buy America and Housing

Good intentions, unanticipated consequences, and a barrier to the American Dream



Report prepared by [Fahe](#), April 2026.

Authors: Kylie Milliken, Federal Advocacy Coordinator, Fahe; Joshua Stewart, Senior Director of Federal Policy and Advocacy, Fahe

Executive Summary

Build, America, Buy America (BABA) requires all materials used in federally assisted infrastructure projects to have been made in the United States. The US Department of Housing and Urban Development (HUD) mistakenly applied this regulation to its housing programs, with potentially devastating consequences for communities with housing needs, the nonprofit development industry, and the efficacy of HUD's programs. While BABA was intended to support domestic manufacturing, its application to housing fails to accomplish that goal, and has created an administrative and compliance nightmare that threatens an entire industry of nonprofit builders that provide housing, jobs, and tax revenue across the country. HUD can and should easily fix its mistake by bringing its internal guidance into accordance with BABA's authorizing statute. This requires neither congressional action nor public comment.

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Further Information

For further information, please contact Kylie Milliken at kmilliken@fahe.org.

BABA stands in the way of solving the housing crisis

Over the last several years, Congress and the Executive Branch have grown increasingly aware of the nationwide housing supply shortage pushing up prices for homes and apartments and causing cascading economic challenges for families, businesses, and communities across the country. Estimates of the shortage range from 2-7 million units, and there is widespread agreement across party lines that we need to build more. The House and Senate have each passed major housing legislation and the White House has released a raft of executive orders in an effort to tackle the crisis. While these policy instruments contain many provisions that would ease regulations and allow for more and faster housing development, none of them propose to fix the biggest challenge currently facing developers using federal construction programs: Build America, Buy America.

Build America, Buy America (BABA), passed as Title IX of the 2021 Infrastructure Investment and Jobs Act (IIJA), requires that all “iron and steel, manufactured products, and construction materials” used in “infrastructure projects” that receive “federal financial assistance” must be produced in the United States.¹ The Department of Housing and Urban Development (HUD), in a direct contravention of statutory intent, decided to apply BABA to its housing programs, with major consequences that are only just now coming to light. **While originally conceived as a way to support domestic manufacturing by creating demand for American-made products, BABA has morphed into a nearly insurmountable compliance and documentation problem that is threatening the viability of federal housing construction programs and the nonprofit development industry.**

Nonprofit developers use a variety of HUD programs to build and rehabilitate housing of all kinds for communities across the country. Their work is particularly important in regions like Appalachia, where private development is nonexistent because it is not profitable, often due to economic pain stemming from the domestic manufacturing collapse that BABA hopes to solve. The Fahe network, comprised of nearly 60 nonprofit housing organizations, has been building in underserved communities and market segments in Appalachia for decades. Fahe Members are some of the foremost experts in serving difficult development areas, weaving different public and private funding sources together to make projects work, even when conflicting regulations make it extremely difficult to do so. Nonprofit developers in the Fahe network understand the importance of a strong American industrial base better than most, but the application of BABA to HUD programs threatens both their business models and their communities, which stand to lose out on new housing units and the economic benefits those units would bring if this massively burdensome regulation is not rolled back.

¹ Infrastructure Investment and Jobs Act, [Pub. L. No. 117-58](#), 135 Stat. 1298 (2021).

Given the growing awareness of our housing supply shortage, and the bipartisan, government-wide desire to build more housing of all kinds, now is the time to fix BABA. Because HUD created the issue by mistake, BABA is the rare example of a major policy problem that could be fixed quickly and easily, without the need for an act of Congress or even Federal Register publication. Rolling back this burdensome regulation on housing would immediately make federal programs more efficient, allow for more housing construction, and enable nonprofit developers to continue serving their neighbors, to the benefit of all Americans.

HUD's mistake

When Congress passed BABA as part of the IIJA in November of 2021, they did not intend to apply it to housing. BABA applies to iron and steel, construction materials, and manufactured products in federally assisted "infrastructure programs", which are defined in the law as those which support "roads, highways, and bridges, public transportation, dams, ports, harbors, and other maritime facilities, intercity passenger and freight railroads, freight and intermodal facilities, airports, water systems, including drinking water and wastewater systems, electrical transmission facilities and systems, utilities, broadband infrastructure, and buildings and real property".² The original statutory text continually refers to "public works projects" and "public infrastructure", and private housing is not mentioned. Congress does include "buildings and real property", but, given the context of the bill, this refers to public buildings like fire stations, schools, and post offices, rather than private residences. If lawmakers had intended housing projects to be subject to the Buy America Preference, they would have included them in their definition of infrastructure.

Most federal agencies drew the correct conclusions from Congress's statutory text. The US Department of Agriculture (USDA), which funds rural housing construction and repair projects under its Rural Housing Service, does not view housing as "infrastructure", writing in a since archived FAQ document that, "Private homes and residences not open to the public are exempt from BABAA." Meanwhile, Federal Housing Administration (FHA) mortgages, the Low-Income Housing Tax Credit (LIHTC), and FHA Multifamily Mortgage Insurance are not considered by their respective agencies to be "federal financial assistance", so housing activities funded exclusively via those vehicles do not need to comply with BABA either.³

General government-wide regulations also indicate that housing projects should be exempt. 2 CFR Part 184, Buy America Preferences for Infrastructure Projects, states, "When determining if a particular project of a type not listed in the description in paragraph (c) constitutes "infrastructure," the Federal agency should consider whether

² Infrastructure Investment and Jobs Act, [Pub. L. No. 117-58](#), 135 Stat. 1295-1297 (2021).

³ "Build America, Buy America Act (BABA)," National Association of Homebuilders, n.d., <https://www.nahb.org/advocacy/industry-issues/build-america-buy-america-act>

the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public” (2 CFR 184.4(d)).⁴ This matches OMB’s implementation guidance⁵ and clearly indicates that private residences should not be subject to BABA.

However, HUD both drew the wrong conclusion from the text of the IIJA and ignored OMB implementation guidance. HUD began considering how BABA applied to its programs in the winter of 2021-2022, and over the following three years, published a series of significant documents (among other less significant actions) that eventually led to the current challenges:

- HUD posted a Notice in the Federal Register in January 2022⁶ saying they had conducted an initial review, but had not fully completed their assessment of which programs would have BABA requirements. The initial review included nearly every HUD program, citing initial OMB guidance that agencies should err on the side of inclusion at this initial stage of review.
 - o The agency then began considering and implementing waivers via the Federal Register over the next few months and published several Requests for Information from the public throughout the summer of 2022.
- HUD Noticed their phased implementation waiver in November 2022,⁷ which delayed BABA implementation for various products and programs. HUD invited comments on the waiver.
 - o The waiver mentioned programs like HOME and the Housing Trust Fund, which was an early indication that HUD’s review was complete and the agency would mistakenly apply BABA to housing programs in some capacity, rather than limiting compliance to things like CDBG-supported infrastructure projects.
 - o The phased implementation waiver prevented BABA from taking full effect until mid-2024, with different compliance dates for different programs and materials. The phased implementation was designed to give HUD and its partners time to adjust to the new standards, and HUD could have changed its interpretation in the meantime in response to comments.

⁴ 2 CFR 184.4(d) [https://www.ecfr.gov/current/title-2/part-184/section-184.4#p-184.4\(d\)](https://www.ecfr.gov/current/title-2/part-184/section-184.4#p-184.4(d))

⁵ Shalanda Young, “[M-24-02: Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#)”, Office of Management and Budget, October 25, 2023.

⁶ “Identification of Federal Financial Assistance Infrastructure Programs Subject to the BuildAmerica, Buy America Provisions of the Infrastructure Investment and Jobs Act”, [Docket No. FR-6310-N-01](#) (2022).

⁷ “Public Interest Phased Implementation Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance”, [Docket No. FR-6331-N-06](#) (2022).

- In October 2023, the Office of Management and Budget (OMB) issued Notice M-24-02, which explicitly stated that “a project that is privately owned and not open to the public” should not be held to BABA. Even more explicitly, OMB stated, “projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute a public infrastructure project for purposes of BABA.”⁸
- HUD published Notice CPD-23-12 on November 2, 2023.⁹ This guidance document, published on the agency’s website and not in the Federal Register, stated explicitly that HUD would apply BABA to all housing construction and rehabilitation projects.
 - Because of the delayed implementation schedule, the challenges associated with this mistake were not immediately clear.
- HUD issued Notice CPD-25-01 on January 13, 2025.¹⁰ This document exempted 1–4-unit housing projects. Just like Notice CPD-23-12, **this guidance document was issued without any Federal Register publication, indicating that HUD itself believes it can change its interpretation at any time via internal decision-making.**
 - This notice did not clearly define the scope of a “project”. Some state and local HUD offices have interpreted this guidance to exempt all single-family homes, while others are requiring BABA compliance for developments of five or more single-family units at once (scattered site and/or in a neighborhood). This is creating an uneven patchwork of requirements that can differ by state, locality, and program, contributing to additional confusion around BABA.
 - Notice CPD-25-01 also created new challenges by applying BABA to anything “permanently affixed” to a structure.
 - HUD published this document a week before the new administration began, leaving no time for questions or feedback, and leaving the new administration with a challenge it may not have seen coming.

HUD’s unilateral decision to apply BABA to housing is inconsistent with the federal statute, other agency interpretations, and current regulations. While Notice CPD-25-01 exempted some single-family projects, it did not go far enough to fix the problem. Apartments and condos in multifamily buildings are “private and not open to the public” just like single-family homes, and BABA compliance will be just as impossible for multifamily housing projects as for single-family developments. The distinction between

⁸ Shalanda Young, “[M-24-02: Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#)”, Office of Management and Budget, October 25, 2023.

⁹ “CPD Implementation Guidance for the Build America, Buy America Act’s domestic content procurement preference as part of the Infrastructure Investment and Jobs Act.”, [Notice CPD-2023-12](#) (2023).

¹⁰ “CPD Implementation Guidance for the Build America, Buy America Act’s Buy America Preference.”, [Notice CPD-25-01](#) (2025).

“public works infrastructure”, which Congress describes in the IJA, and “a private home for personal use”, which OMB highlighted in M-24-02, makes clear that BABA should not apply to private residences at all, regardless of the housing type.

HUD's actions indicate that the decision to apply BABA to housing was made internally, and that the agency believes it can change its interpretation internally, without an act of Congress or Federal Register publication. HUD should exempt residential construction and repair projects from BABA immediately, as failing to do so will choke off new housing supply. Reports of developers canceling new multifamily projects, or scrambling – most often, unsuccessfully – to find replacements for HUD investments, have begun flooding in from across the country in the first months of 2026. The chilling effect is already taking place.

The problems with applying BABA to housing projects

HUD has a variety of programs that can be used to build or repair housing of all types, from single-family owner-occupied homes to large multifamily rental complexes. Although some funds are awarded to nonprofit developers via a competitive application, most of HUD's programs are block-granted to states and localities, which decide which projects ultimately receive funding. All federal housing programs are ultimately implemented by nonprofit developers, who use the funds to build and repair modest housing for working families in their communities, work which has become even more important in recent years as the costs of housing have risen to record levels.

Among the list of federal programs that can fund housing development and repair are Community Development Block Grants (CDBG), the Housing Trust Fund, the Self-Help Opportunity Program (SHOP), and the HOME Investment Partnerships Program, which is the most widely used HUD program for housing development. In FY26, Congress appropriated \$1.25 billion for HOME and simultaneously began a bipartisan, bicameral effort to reform and reauthorize the program to make it even stronger and more effective. One of the major strengths of HOME is that its funds are highly flexible, and therefore almost always used in concert with other programs.

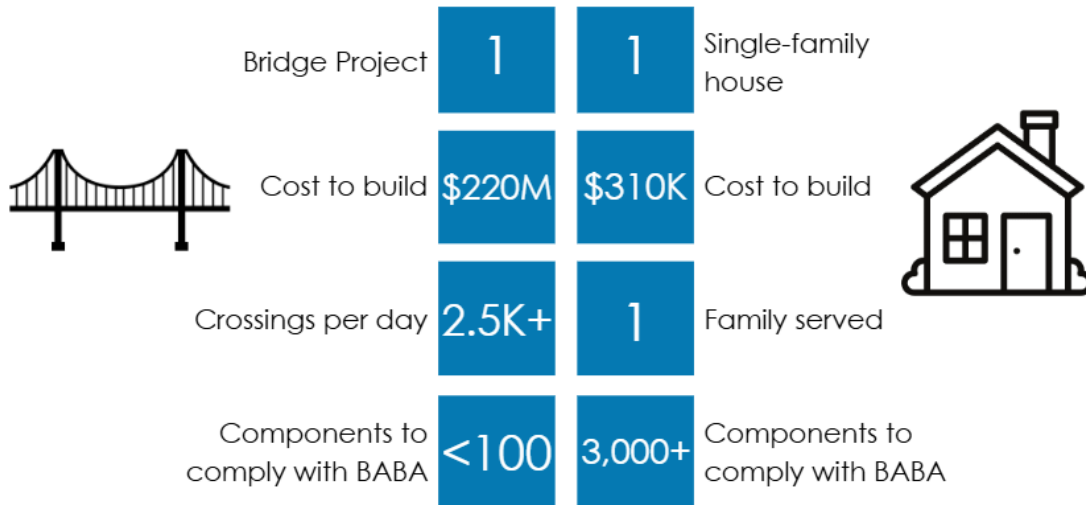
In rural areas, HOME is often paired with USDA 502 Direct mortgages to finance new for-sale single-family construction, and in fast-growing metropolitan areas, it is frequently used to fill financing gaps in multifamily projects primarily funded via the Low-Income Housing Tax Credit (LIHTC). Because of HUD's error, HOME (along with all other HUD housing programs), is subject to BABA, potentially imperiling hundreds of housing projects and thousands of new units across the country, annually. If any HUD funding is combined with other funding sources to finance a project, the whole project must comply with BABA, even if the other funding doesn't carry BABA compliance requirements. This threatens the viability of all HUD housing programs, and will have negative repercussions for nonprofit developers, the families they serve, and the communities across America that will lose out on new housing units.

There are currently three main challenges with BABA implementation that threaten to make HUD-assisted housing projects unworkable:

1. Documenting compliance

By far the biggest and most difficult challenge for nonprofit housing developers will be documenting their compliance with BABA. HUD guidance indicates that items which are “incorporated into, or affixed to infrastructure” must comply with BABA and be documented as such.¹¹ For something like a bridge, which may incorporate one- to two hundred components at a maximum, this may present a challenge. However, for a house or apartment building, which can incorporate thousands of individual components, documenting BABA compliance will be nearly impossible. The “permanently affixed” language indicates that compliant versions of everything from framing lumber and drywall to nails, screws, faucets, hinges, cabinetry, certain appliances, windows and window frames, door thresholds, bathroom mirrors, thermostats, heating and ventilation system components, and a dizzying variety of other items will have to be found *and documented* by nonprofit developers. This volume of paperwork can represent a nearly insurmountable administrative burden for any developer using any HUD funds.

BABA compliance is more difficult for houses than large infrastructure projects, despite differences in size, cost, and impact



Note: This graphic demonstrates the difference between applying BABA to a public infrastructure project and a private home. While HUD partially fixed this problem with Notice CPD-25-01, all multifamily developers (and likely some single-family developers) still face major challenges on projects that are far smaller in scope than the bridge on which this graphic was based.

¹¹ “CPD Implementation Guidance for the Build America, Buy America Act’s Buy America Preference.” [Notice CPD-25-01](#), 23 (2025).

Worse, HUD has published vanishingly little useful guidance on how to go about verifying and documenting compliance, instead generally directing questions to the supplier scouting service provided by the National Institute of Standards and Technology's Manufacturing Extension Partnership (NIST MEP), which the administration has proposed to terminate because it is "underperforming and unnecessary".¹² Developers can submit a request to their state branch of the NIST MEP to find a compliant supplier of a given product, but this process can take over a month and is not guaranteed to yield any results – as of May 2024, a NIST MEP spokesperson said their supplier scouting service yielded "no match" for 85% of responses.¹³ Instead, most nonprofit developers will have to do their own market research for each item they need, and HUD has provided few helpful resources to help undertake and document this task.

HUD's initial guidance for their Office of Lead Hazard Control and Healthy Homes (OLHCHH) programs¹⁴ stated that developers needing to find a compliant version of an item 'must search for the required product using at least three search attempts at least three business days apart using one of the top five most used Internet search engines [Google, Bing, Yahoo!, DuckDuckGo, or Ecosia] and the website of one of the top five home improvement retailers [The Home Depot, Lowe's Companies, Floor & Decor Holdings, Leslie's, or Haverty Furniture Companies] while using one of the following search terms: "made in America" or "made in the USA".' The agency then recommended that the developer comb through the top 30 results of both searches on each of the searching days, contact manufacturers directly to verify that resulting items are compliant, and then wait five business days for a response. Conducting this process for thousands of individual items would be a nearly impossible undertaking.

HUD eventually issued compliance guidance for Community Planning and Development (CPD) programs, including HOME, CDBG, and SHOP, as part of Notice CPD-25-01. HUD does not mandate a specific documentation method but suggests that grantees and subgrantees maintain proof of compliance for every item used in a project in the form of manufacturer certifications, results of a supplier scouting service like NIST MEP, or copies of labels indicating that a product was made in the US. This guidance will certainly benefit manufacturers of "Made in the USA" labels, but is not helpful for nonprofit developers, who will have to spend vast amounts of staff time and resources conducting market research, talking to manufacturers, and compiling and maintaining binders full of stickers and paperwork to document compliance for every single component that is "permanently affixed" to a house or apartment building.

¹² "[Budget of the U.S. Government, Fiscal Year 2027](#)", Office of Management and Budget, 9 (2026).

¹³ "[Beyond the Basics: Implementing the BAP](#)", HUD Exchange (2024).

¹⁴ "OLHCHH Build America, Buy America Act (BABA) Guidance", [PGI 2024-01](#), Attachment 1 (2023).

2. Finding compliant “manufactured products”

BABA applies to iron and steel, construction materials, and manufactured products, all of which are defined in the text of the IJJA. Talking to producers of these components to verify compliance with BABA should be a simple, if time-consuming, task, but the statutory definition of “manufactured products” means that some manufacturers may not even be sure if their own products are compliant. The text of the IJJA states that a compliant “manufactured product” is one which 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” [emphasis added].¹⁵ In other words, 55% of the cost of all components of the manufactured product must have been produced domestically for the item to be BABA compliant.

In practice, it may be difficult for manufacturers (let alone their customers) to determine whether a manufactured product is BABA compliant. For example, a small hot water heater¹⁶ may have at least 15 components, some of which, like the thermostat, are manufactured products themselves. From a consumer perspective, it is not at all clear whether 55% of the cost of those 15 components originated in the US, and there is no way to research the exact components to find out. If a developer were to use this hot water heater in a HUD-assisted housing project, they would need to contact the manufacturer to determine whether it is BABA compliant, but that isn't necessarily an easy answer for the manufacturer to find.

Manufacturers could self-certify that their products are compliant, but doing so would require a significant amount of time and effort to determine what proportion of the costs of each of their products is of domestic origin, not to mention updating those calculations as prices fluctuate or taking into account potentially different prices from different sub-manufacturers. The incentives for spending this time and effort to self-certify are low, particularly for manufacturers with a large customer base outside of nonprofit developers hamstrung by BABA. Instead, the onus is generally on developers to reach out to manufacturers and hope for a favorable response.

3. The waiver process

If developers do not get a favorable response from manufacturers or cannot find a compliant version of an item they need, they must apply for a product-specific or project-specific waiver. Waiver applications are subject to a 15-day public comment period and review by HUD and OMB. Because of the phased implementation, there are so far only a few HUD-funded housing projects that have completed the entire waiver process. It is therefore still unclear to many developers how long the waiver application

¹⁵ Infrastructure Investment and Jobs Act, [Pub. L. No. 117-58](#), 135 Stat. 1297 (2021).

¹⁶ “GE® 18 Gallon Electric Point of Use Water Heater”, GE Appliances, n.d., <https://www.geappliances.com/appliance/GE-18-Gallon-Electric-Point-of-Use-Water-Heater-GE20P08BAR>

and review process takes, but available examples indicate that the undertaking adds at least a few months.

One example of a project with a public waiver application is an affordable housing development in Saxman, Alaska, funded by CDBG, Housing Trust Fund, and other dollars. After conducting market research for 11 months between the summers of 2024 and 2025 and reaching out to nine manufacturers, the developers could not find domestically produced versions of three items: mini-split heat pumps, line set control systems, and insulated copper tubing. They applied for a waiver to purchase non-compliant versions of those items for their project, and their waiver was posted on the Made in America Office (MIAO) website on December 2, 2025. This waiver was not approved by OMB until March 31, 2026, after nearly four months had elapsed.¹⁷ It appears that HUD may have approved the waiver earlier, as they listed approval documentation on their website before the OMB determination was made, but developers could not begin their project until both agencies concurred that the waiver was merited. While they waited, Saxman, Alaska, missed out on 20 new housing units, the developer spent untold staff time and resources conducting ill-fated market research, and the federal funds awarded to the project sat unused for two years.

This or a similar outcome likely awaits nearly all future HUD-assisted housing projects that need to apply for waivers, and there will be more – HUD and OMB only approved non-compliant mini splits for the Saxman, Alaska, project, meaning that any other project that plans to use mini splits will need a waiver as well.

All three challenges with applying BABA to housing stem not from buying American-made products, but from the administrative work required to document compliance with the regulation. Although it may be more expensive to buy American, that added cost may be worth it to support domestic manufacturing. **However, the cost of recording and demonstrating compliance for every single article in a home or apartment building is exorbitant and does nothing to support American businesses.** Rather, the cost of compliance is so high that it will meaningfully shrink the number of housing units that federal programs can produce, which will ultimately harm American workers and businesses.

BABA is a politically difficult problem to solve

BABA constitutes a major threat to HUD programs, nonprofit developers, and our nation's ability to confront the housing supply crisis. Although full BABA implementation for housing projects has only recently been fully phased in, the extent of the upcoming challenges could have been foreseen years ago. Why has no one stepped in to solve this problem?

¹⁷ “Saxman, Alaska Affordable Housing Project”, Made in America Office, December 2, 2025, <https://www.madeinamerica.gov/waivers/federal-financial-assistance/692f467e4c15d8b83e3f404c>

BABA is very politically tricky to solve, largely because it was so well intentioned and named for such a positive objective. As is stated in the original statute, Congress intended to support domestic manufacturers and American businesses by creating stronger demand for their products. This is a laudable goal, and one that would benefit workers, families, and communities if it were achieved. Some labor unions have argued that BABA helps their members by creating demand for their work, and the administration has argued that an America First economic strategy is one that strengthens domestic industries. This support for BABA has made Congress reluctant to change anything about the regulation, including fixing HUD's mistake. This hesitation is understandable – supporting domestic businesses would benefit everyone, and if BABA can help do so, it will be a net positive for the US.

However, applying BABA to housing programs does not actually do much to support domestic manufacturing. Among the Fahe Network, a typical 56-unit LIHTC project uses 38-40 tons of steel; however, nationwide and over the lifespan of the program, the average LIHTC development has had about 70 units, which we assume would use 50 tons of steel on average. In 2023, there were 95 LIHTC projects with HOME, CDBG, and/or Housing Trust Fund (HTF) funding that were placed in service.¹⁸ Assuming each used 50 tons of steel on average, **the HUD-assisted LIHTC output for 2023 used 4,750 tons of steel, which represents 0.005295% of the 89.7 million tons of domestic steel produced that year.**¹⁹ Even assuming that HUD as a whole, beyond just LIHTC projects, produced five times the number of apartment buildings,²⁰ those projects would still only require 0.02648% of the domestic steel output.

Requiring housing developments to comply with BABA will not meaningfully affect demand for domestic steel, but will cause communities to lose out on new housing that is desperately needed. The US is missing millions of units as a result of population growth and nearly two decades of underbuilding after the 2008 financial crisis. **Our country needs to build more housing, and HUD's mistake has created a costly regulation that will prevent experienced developers like Fahe's Members from doing so.**

BABA compliance is far more difficult and expensive for housing projects than for other projects with fewer components, and its application to private residences will stop or significantly delay new housing development and housing repair projects. Despite its

¹⁸ “Low-Income Housing Tax Credit (LIHTC): Property Level Data”, Department of Housing and Urban Development, Policy Development and Research, May 8, 2025, <https://www.huduser.gov/portal/datasets/lihtc/property.html>.

¹⁹ “AISI Releases Annual Statistical Report for 2023”, American Iron and Steel Institute, June 5, 2024, <https://www.steel.org/2024/06/aisi-releases-annual-statistical-report-for-2023/>.

²⁰ Due to HUD's data limitations, it is difficult to ascertain the number of units that the entire agency's programs produce in a year. However, one of the most common funding mechanisms for new multifamily construction is pairing LIHTC funding with HOME or other HUD funds. Multiplying this output by five for the whole agency likely overrepresents the capacity of HUD programs due to high construction costs and years of flat funding for most housing production programs.

noble intent, this regulation goes against our national interest by making federal programs less efficient and likely contributing to job losses as nonprofit developers struggle to adapt.

Suggested compliance workarounds are well-intentioned, but unworkable

The nonprofit housing development industry has put forward many suggestions for how HUD can make BABA compliance more manageable. The most common recommendation is that HUD create and manage a database of compliant products so that developers don't need to conduct market research or hire an outside firm to do so. In theory, this would prevent BABA from delaying or halting projects by removing the most time-consuming aspect of the compliance process. However, it would likely be quite difficult for HUD to implement this recommendation. First, it is unlikely that the agency has the staff capacity or desire to do so. Since HUD implemented BABA, it has steered most market research questions to the NIST MEP, which also likely does not have the capacity to maintain a list of compliant products. There are just too many domestic manufacturers and too many products that would need to be in a database, which is why HUD outsourced the work to nonprofit developers in the first place. Second, conflicts may arise from a government agency creating an approved list of private vendors. Is the government endorsing the products on the list? Do American companies even want to be on such a list? Would this undertaking run into conflicts with procurement regulations? There are too many logistical hurdles and legal questions for this recommendation to be implemented.

Another common suggestion from nonprofit developers is to have HUD create or endorse a BABA self-certification process for domestic manufacturers, which would also remove some of the market research and documentation burdens. In fact, there are some third-party certification processes that already exist, but they are not widely used by manufacturers of homebuilding products. This is likely because participating in self-certification can be difficult due to the 55% domestic origin requirement for manufactured products described above, and because there are no incentives for manufacturers to overcome this difficulty, since the demand for their products from nonprofit homebuilders is likely too small to have a meaningful impact on their bottom line.²¹

²¹ The National Electrical Manufacturer's Association (NEMA) has a [Make It American™ Certification](#), which allows manufacturers to verify that their products are BABA compliant. This resource has been recognized by the Federal Highway Administration and several state-level departments of transportation and is highly valuable for electrical manufacturers and the state and local governments they work with. However, their [registry of certified manufacturers](#) is so far limited to those in the electrical industry, and therefore has limited utility for housing organizations.

HUD can easily fix the problem it created by correcting its interpretation

While challenging to implement, these recommendations demonstrate that the nonprofit housing industry would comply with BABA if it were possible to do so. Unfortunately, the compliance burden is simply too high for most organizations to bear. Luckily, BABA is the rare example of a policy problem with major potential negative consequences but a simple solution: HUD created the problem, and HUD can fix the problem. Notice CPD-23-12 and Notice CPD-25-01, both of which established HUD's interpretation and implemented BABA, were published on the agency's website without public notice and comment. **HUD believes that it can change its interpretation internally and communicate that change with the public, and it should do so immediately.** This would immediately and completely solve all of the problems associated with documentation and compliance and prevent BABA from stopping new development.

If this administration does not want to solve the previous administration's mistake in this way, **HUD should issue a broad public interest waiver excluding housing construction and repair projects from BABA.** Public interest waivers require public notice and comment and are issued if "requiring the use of the American made product would be inconsistent with the public interest".²² Given the well-documented housing shortage, applying BABA to housing programs is clearly inconsistent with the public interest and would justify a general waiver. There is precedent for doing so – HUD's phased implementation, which exempted many projects from BABA over several years, was executed via a public interest waiver, to give the agency, manufacturers, and grantees more time to adjust to the new rules.

Congress does not need to pass a new law to fix this problem. Instead, they should encourage HUD to remove BABA requirements from its housing construction and repair programs. Doing so would bring the agency back into compliance with statutory intent, OMB guidelines, and government-wide regulations at 2 CFR 184. It would also allow HUD dollars, and the nonprofit developers who use them, to operate more quickly and efficiently, rather than becoming bogged down in time-consuming and unnecessary administrative work. Finally, fixing BABA for housing would put the US in a much better position to solve the housing supply crisis, which will benefit communities, employers, and families looking to achieve the American Dream.

²² "Build America, Buy America", Department of Housing and Urban Development, n.d. <https://www.hud.gov/hud-partners/baba#wavers>