

From: Xochitl Torres Small, Under Secretary

Approved: August 4, 2022

Expires: February 3, 2023

Subject: USDA Rural Development Build America, Buy America Public Interest Waiver

Introduction

Congress passed the Build America, Buy America Act (BABA) that establishes strong and permanent domestic sourcing requirements across all federal financial assistance programs. The United States Department of Agriculture, Rural Development (RD) mission area is honored to play a leadership role in implementing these provisions and is proud of its history of successful implementation of American Iron and Steel provisions in its Water and Waste Disposal as well as Buy American provisions in its Telecommunications and Electric Programs. Through these efforts, RD will support efforts to catalyze domestic manufacturing, resilient supply chains, and good jobs – while successfully delivering a wide range of infrastructure projects. This is a transformational opportunity to build a resilient supply chain and manufacturing base for critical products here in the United States that will catalyze investment in good-paying American manufacturing jobs and businesses. USDA RD's efforts to implement BABA will help cultivate the domestic manufacturing base for a wide range of products commonly used across the water sector but not made domestically. Given the wide variety of projects that can be funded by the agency, full implementation will take time, and flexibility will be important to ensure that we can leverage critical rural infrastructure investments on time and on budget. As such, RD is requesting an adjustment to its implementation timeline pursuant to BABA.

Request

In June 2022 USDA Rural Development sought an adjustment to its BABA implementation timeline as follows:

Waiver Type: Adjustment Period in the Public Interest

Time Period: 6 months

Dates: This BABA waiver is effective August 4, 2022 and will remain in effect for all RD federal financial assistance infrastructure projects for a period of six months.

Program Coverage: All iron/steel, manufactured products, and construction materials used in infrastructure projects in all RD Programs **except those filed pursuant to the Funding Opportunity Announcement for Round 4 of the ReConnect Program** as cited in the Funding Opportunity Announcement published on August 4, 2022.

Pre-existing American Iron and Steel and Buy American provisions related to other RUS programs will continue to apply during the waiver period.

The period requested allows RD to implement the new requirements and shepherd its customers through a transition to BABA. The transition to BABA is significant and complex. Our goal is to ensure that customers understand BABA, the new requirements and how to continue to fully participate in RD programs in a way that continues to drive equitable economic development across rural America. RD will also be using the adjustment period to evaluate if additional time at the conclusion of the waiver to complete Tribal consultations is needed.

Section 70921(b)(2) of BABA requires assessment of whether a significant portion of the cost advantage of the product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods. This waiver only seeks additional time for implementation of BABA. The Agency's assessment, therefore, at this time is that Section 70921(b)(2) is not relevant to this waiver.

Background and Summary

The Rural Development (RD) mission-area of the U.S. Department of Agriculture (USDA) requests an adjustment period waiver of 6 months for the implementation of the Build America, Buy America Act (BABA) preferences as described in OMB Memorandum M-22-11: *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*. RD requests the adjusted implementation period to avoid unintended negative impacts of immediate implementation to rural communities, residents, businesses, and the economy, such as:

- Delayed deployment of critical broadband, water, and community infrastructure.
- Reduced access to capital for rural businesses and critical community investments such as schools, hospitals and first responder facilities;
- Decreased investment for rural clean energy projects and transition away from fossil fuels;
- Slowed participation in the new USDA food supply chain programs resulting in continued food supply chain gaps for the country;
- Underinvestment in the upkeep and upgrading of multi-family housing facilities that house rural America's most vulnerable residents; and
- Creation of significant barriers to the use of RD programs by socially vulnerable, distressed and high poverty rural communities, including communities of color and Tribal Nations.

RD, through its more than 49 programs approves and executes nearly 170,000 loans, grant and loan guarantees each year, 82% of which are loans or loan guarantees. The additional adjustment period will help RD achieve its three primary goals for BABA which are to:

- 1) implement BABA in a way that aids our customers in compliance with the Act,
- 2) achieve the intent of the Act in a sustainable manner that embeds it into RD's programs long-term, and
- 3) minimize the risks articulated above and in compliance with the Act.

It will also provide the necessary time to:

- create or revise internal guides, staff instructions and loan documentation, that make clear which agency programs BABA applies to and what types of project within those programs are subject to BABA requirements.
- inform and train agency staff,
- create customer experience-centered tools such as external customer guides
- inform and provide support to customers, particularly to socially vulnerable communities who may experience challenges in adhering to BABA requirements, and
- implement the Act in a sustainable manner that advances the Administration's BABA goals long-term.

Rural Development Overview: Distinct Programs Targeted to Rural America

The three agencies of the USDA Rural Development mission area, the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBCS), and the Rural Utilities Service (RUS) provide loans, grants and loan guarantees to help expand economic opportunities, create jobs and improve the quality of life for millions of Americans in rural areas. RD is the only federal agency whose program are exclusively authorized and focused on rural areas. In many cases RD programs are the only affordable path for rural communities to make much needed investments to support existing and future services to those who live and work in rural areas. RD's assistance supports infrastructure improvements; business development; housing; community facilities such as schools, public safety and health care; and high-speed internet access in rural, tribal and high- poverty areas.

In FY 21 RD obligated nearly \$40 billion in loans, grants and guarantees to support 166,432 projects in all 50 states and territories. RD investments directly support Administration priorities. In FY 21:

- Climate Change
 - a. 10,285 total obligations to IWG-Energy Communities across all of RD. The amount of dollars funded was \$2,338,147,147
 - b. 1,482 obligations that totaled \$5,085,978,340 in funding for climate related investments
- Broadband
 - a. \$429,294,759 in broadband deployment
- Equity
 - a. \$5.7 billion (15% of obligations) were in distressed communities.
 - b. 13% of obligations were made in persistent poverty counties (462 Persistent Poverty counties received at least one investment)
 - c. 1,467 tribal related projects (42 RUS, 1,352 RHS, 73 RBCS)

- d. \$9,027,757,240 invested in socially vulnerable communities (23% of funds obligated were invested in socially vulnerable communities)
- New Markets – COVID Recovery
 - a. RD made 23,770 investments across COVID High-Risk Counties worth 5.4 billion dollars, which is approximately 14% of our investment dollars. Out of 558 counties and county-equivalents we consider to be high risk for COVID-19, we reached 534 (96%) in FY21.
 - b. For commercial investments only (excludes SFH and MFH): RD made 1,100 investments across COVID High-Risk Counties worth 2.2 billion dollars, which is approximately 16% of our commercial investment dollars. Out of 558 counties and county-equivalents we consider to be high risk for COVID-19, we reached 337 (60%) in FY21.

RD implements 49 widely diverse programs (Attachment A) that support infrastructure and each program will need to be individually evaluated for its applicability under BABA. Additionally, RD implements several new programs related to the American Rescue Plan (ARP) which will also need to be evaluated for BABA applicability. These ARP programs include the Emergency Health Care Grants, Food Supply Chain Guarantees, Meat and Poultry Processing grants and loans and the forthcoming fertilizer program

RD's programs vary drastically, each with its own unique set of parameters based on program type, customer and beneficiary variation, project type, and filing timelines.

Program Types: The majority of RD programs and products are loans and loan guarantees. The majority of funding obligated each year is related to loans and loan guarantees. RD has approximately 12 grant-only programs that are subject to BABA. The number of loan-grant combination and guarantee programs is nearly double that number.

Customers: RD customers are diverse in type and sector. They include municipalities, utility districts, cooperatives, private broadband service providers, lenders who provide capital for energy projects, rural businesses, manufacturing, healthcare, non-profits and more. Implementation of the new ARP programs has expanded our customer base outside of RD's traditional customer base in the agriculture sector. In addition, because BABA is construction related, consulting engineers, contractors, manufacturers and suppliers must be fully educated on the updated requirements.

Project Types: Use of funds across RD programs is not standardized in the authorizing statutes. Many programs where various types of projects can be funded that may or may not be subject to BABA. For example, the Water and Waste and Community Facilities programs can both fund equipment purchases (fire trucks, solid waste transport vehicles, etc.) that are not subject to BABA as well as infrastructure projects that are covered such as roads, bridges, water towers, and water treatment facilities.

Rural Business Development Grant (RBDG) can fund projects that include construction that is subject to BABA. Development or expansion of a business incubator or workforce center would be subject to BABA. RBDG feasibility studies or other planning activities funded under RBDG are not. As such a detailed program by program analysis is needed for every RD loan, loan/grant combination and guarantee program.

Filing Timelines: RD programs vary in timing for submission of applications. Stand-alone grant programs typically have discreet filing windows that are triggered through a funding notice. Many of these announcements have already been issued and are pending selection of awardees. (See Attachment B) Awardees will only learn of this new requirement when they receive their offer letter. Most of our loan and guarantee programs accept applications on a rolling basis throughout the year. The requirements for these programs are covered in regulations and customers may be working on applications for projects that are in various phases of development without understanding the new requirements.

In addition to administering over 50 programs, RD staff also implement, service and manage a loan and grant portfolio of more than \$240 billion with limited staffing resources.

Rural Development's Progress in Implementation of the Act

Since the enactment of Infrastructure Investment and Jobs Act (IIJA), Rural Development has worked diligently to implement the Buy American preference pursuant to the initial draft OMB guidance.

Report: Consistent with the requirements of section 70913 of the Act, USDA has produced a report that identifies and evaluates all of USDA's Federal Financial Assistance programs with potentially eligible uses of funds that include infrastructure, as defined by the Act, to determine which programs would be in compliance with BABA and which would be considered inconsistent, and thus "deficient" as defined by section 70913(c) of the Act. That report was focused on **grant** programs that would be subject to BABA based on the language of the statute. It was not known at that time whether loans would be covered. The report also only considered programs in operation at the time. RD has since, and is expected to, stand up new Food Security related programs.

The report was submitted to Congress and the Office of Management and Budget (OMB), and notification was published in the Federal Register within 60 days after the date of enactment of the Act on January 20, 2022, at 87 Fed. Reg. 3070. Specifically, USDA published notification of the report in a notice entitled "Report of Federal Financial Assistance Programs for Infrastructure Administered by USDA as required by the Infrastructure Investment and Jobs Act" in compliance with section 70913.

New Web Site: In addition, USDA has developed a webpage for providing information and where the report can be found at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.

Stakeholder Engagement: The Agency has been responsive to questions from program participants regarding BABA while preparing formal guidance and outreach plans. The additional time pursuant to this waiver will allow the agency to complete guidance and conduct appropriate outreach and education to participants.

Need for Adjustment Period

The adjusted BABA implementation deadline is necessary based on several factors, including:

1. **Program and Constituent Impacts:** The negative impacts of immediate implementation on program delivery, Administration priorities and rural constituents, including socially vulnerable communities and tribal communities; and
2. **Actions Required Due to Change in Policy:** The volume and complexity of actions still needing to be completed to effectively implement BABA, especially due to the change in policy.

1. Program and Constituent Impacts

Regardless of whether an adjustment is granted, RD must still complete its analysis and build out basic guidance and tools. If an adjusted implementation timeline is not granted, program activities are slowed and customer frustrations will increase. An adjusted timeline would allow the RD agencies to continue making critical investments in rural areas and transition customers to the new requirements, particularly as RD program application cycles for FY2022 are already underway. Changing mid-cycle would cause confusion and garner distrust that undermines Administration goals. Without an adjustment period there will be significant harm to RD program delivery, relationships with rural constituents, and deployment of critical infrastructure and service in rural areas. Below are several examples:

Extended Delay in Obligations and Increased Cost (Due to Interest Rates) to Rural Communities:

- Community Infrastructure
 - a. With a broad interpretation of BABA, nearly all Community Facility and Water and Waste loans would be impacted. Loan applications are developed after months or years of preparation. The added costs associated with BABA guidance will likely decrease demand for Community Facilities funding and mean that projects, including many that are years in process and close to obligation, will stall and not move forward.
 - b. There are 195 loan and 180 grant water and waste infrastructure requests totaling \$1.5 billion, being processed or awaiting obligation. These projects cannot move to obligation without appropriate guidance to staff and customers, which will delay construction of approval-ready projects.

- Tribes Loans and Grants
 - a. Additional time is needed for consultation with Tribal governments regarding implementation with BABA. In the interim there are existing pending applications from tribal entities for funding to support critical infrastructure projects.
 - b. 21 Native American or Native Alaskan Water projects, totaling \$60 million, under consideration for FY 22 funding will not be able to be obligated in RD covered programs. Applications will need to be revised and processing/underwriting will need to be repeated. As a result, funds for tribal projects will not be fully obligated this FY and critical tribal investments will either be delayed or cancelled.
 - c. For example, Congress doubled the available funding for Tribal College Initiative Grants to \$10 million. USDA Rural Development has been consulting with the 1994 Land Grant Institutions (Tribal Colleges) regarding their plans to utilize the funds to make capital improvements to their educational facilities. Many of these proposed projects have been under consideration for years, but they will likely have to be revisited if the additional cost associated with BABA are implemented now. Most of these entities do not have the financial flexibility to increase the applicant contribution.
 - d. Tribal entities are critical participants for the ongoing ReConnect Round 3 awards for broadband and delays will have a negative impact on the Tribal entities.

Reduced Program Participation Due to Lack of Understanding of Requirements

- RD serves the smallest and most vulnerable communities who often have limited resources and capacity to participate in RD programs without assistance and guidance from our network of field employees.
- For example, in RD's Community Facilities Program the typical applicant is a volunteer fire department, child-care center, homeless shelter or other rural non-profit, which lacks the level of sophistication needed to comply with the BABA requirements. These entities and many of the smaller public bodies will need hands on BABA technical assistance by our RD field staff. Without time to properly implement BABA, these applicants will not be able to participate in RD programs.

Supply Chain Issues for Rural Areas

- Rural areas face unique challenges in obtaining materials for construction projects due to increased transportation costs and diminished availability. This issue has already been exacerbated by the COVID-19 pandemic. Making the transition to BABA will require that applicants have additional time to re-source for projects.

2. Actions Required Due to Change in Policy

The adjustment period is necessary to allow RD sufficient time to analyze and effectively implement BABA pursuant to final guidance in which *loan* and *loan guarantee* programs as covered in addition to grant programs. The approximately 20 additional covered loan and guarantee programs serve customers of various types and capacities. RD has not had sufficient time to analyze which programs and uses of funds would be covered, nor to design and develop communications and training tools needed to educate and transition staff and customers to the new requirements.

The great majority of Rural Development's programs have not been previously subject to the Buy American preference. In fact, only RUS programs have had existing Buy American or American Iron and Steel requirements. This represents approximately 20% of the RD programs. Other RD programs have not had Buy American requirements with the exception of projects obligated under the American Reinvestment and Recovery Act of 2009.

RD does not yet have a full understanding of BABA's impact to the larger group of covered programs and many RD customers have no experience with Buy American preferences or BABA. Our goal is to implement BABA in a way that drives compliance and achieves the intent of the Act in a sustainable way that embeds it into RD's programs long-term. Below is a list of key analysis, tools and actions that RD must complete to achieve this goal.

- **Alignment of BABA with Buy American preference and American Iron and Steel (AIS) Requirements** - RD has programs with existing Buy American preferences and AIS requirements. Existing regulatory provisions, processes, procedures, guidance documents and financial document provisions will need to be aligned with or replaced by BABA documents across several large programs. This will require significant effort. In addition, clear and effective guidance will be needed to avoid confusion and ensure compliance.
- **Reporting Requirements and Burden Assessments** - RD anticipates that it will need to identify new reporting requirements concerning the types of information necessary to demonstrate compliance with the Buy American preference or to seek product- or project-specific waivers under the Act to readily provide the public with an opportunity to evaluate the burdens associated with the information to be collected.
- **Financial Assistance Instruments** - All Federal award instruments for identified programs will need to be modified to ensure they are legally sufficient to implement BABA requirements. Given the large number of covered programs, the number of instruments needing modification will be in the hundreds. In addition, all *participating commercial lenders* in covered programs will need to update their lender agreements with the Agency, and then in turn these lenders will need to update their lending instruments for use with their borrowers, as applicable. RD anticipates that hundreds of commercial lenders will need to modify their existing lending instruments, which will take considerable time.
- **Evidence Standards** – RD needs to develop standards for documentation of BABA compliance by our recipients. To maximize customer experience and compliance the

guidance must be clear, easy to understand and centrally available. Because of the diversity of our programs this task may require multiple types of specialized guidance.

- **Communications and Training Materials** – RD needs to design and develop guidance and training for staff and customers across a wide variety of programs. To implement the requirement for some programs, RD may need to host listening sessions or issue requests for information to gain customer input.
- **Tribal Consultation** – The U.S. government needs to perform due diligence for consultation to fulfill its trust responsibilities with tribal entities. The adjustment period is needed to maintain carefully nurtured relationships with tribal nations who were not consulted prior to the publication of the guidance document. Sufficient time to coordinate and conduct tribal consultations is essential to faithfully implementing the President's commitment to a respectful government-to-government relationship with America's tribes. Implementation of BABA will have a significant impact on Native American tribes and other RD recipients who serve them. RD needs to solicit information from the public, including tribal entities, about RD's potential information collection needs and the associated burdens that would be placed on recipients arising from compliance and monitoring. Lastly, RD must ensure that any procedures put into place do not conflict with the new final Buy Indian Act regulations that became effective on March 14, 2022, and which expand application of the Buy Indian Act to all construction including the planning, design and construction of health care facilities, personnel quarters, and water supply and waste disposal facilities.
- **Other Considerations** – The agency will also need to analyze the impact that rural workforce shortages and supply chain issues will impact recipients in covered programs and achievement of program goals for rural areas.

Comments Received

On July 5, 2022, USDA Rural Development (RD) posted its proposed BABA public interest Adjustment waiver for public comment. In it, USDA RD determined that a 6-month adjustment period for implementation is in the public interest and that issuing the waiver is critical to advancing the long-term success of BABA. The required 15-day comment period closed on July 18, 2022.

The Agency received one comment, submitted by Corning Incorporated (Corning) on July 18, 2022, raising concerns with the adjustment period as it pertains to fiber optic cable and optical fiber.

In consideration of Corning's request for a change to the Adjustment Waiver to limit its application to optical fiber or fiber optic cable, RD will incorporate Build America, Buy America Act (BABA) requirements into the ReConnect Round 4 Funding Opportunity Announcement (FOA). BABA will therefore apply to covered Round 4 applicants regardless of whether the filing window opens during the adjustment period. The agency will address any issues of shortages and time delays as needed through project specific waiver pursuant to BABA and OMB 22-11.

Waiver Decision

Congress passed the Build America, Buy America Act to establish strong and permanent domestic sourcing requirements across Federal programs to benefit all Americans. The statute is clear that Congress intended implementation of BABA on May 14, 2022. USDA Rural Development understands the importance of BABA and prompt implementation. However, the Agency must weigh the timing of implementation against other critical public interests.

The absence of a reasonable adjustment period will slow projects; result in customer confusion; delay the processing of funding obligations for much needed infrastructure investments; disrupt established supply chains; increase the need for cost overrun awards due to project delays; and represent an unanticipated change in the rules for program applicants who submitted applications to open funding opportunities without the benefit of knowing the breadth or effect of the BABA guidance.

Considering all factors, USDA Rural Development determines that a 6-month adjustment period for implementation is in the public interest and that issuing this waiver is critical to advancing the long-term success of BABA. During the adjustment period, and unless otherwise announced by the Agency, BABA requirements will not apply to RD applications, with the exception of **those filed pursuant to the Funding Opportunity Announcement for Round 4 of the ReConnect Program**, as cited in the Funding Opportunity Announcement published on August 4, 2022.

Pre-existing Buy American and American Iron and Steel (AIS) statutes and regulations will be in effect for all other RUS Infrastructure programs throughout the adjustment period.

Approved By:



Xochitl Torres Small
Under Secretary
USDA, Rural Development

Attachment A

Rural Development Program Areas

SAM Code	Rural Utilities Service
10.751	Rural Energy Savings Program (RESP)
10.752	Rural eConnectivity Pilot Program (ReConnect)
10.759	Part 1774 Special Evaluation Assistance for Rural Communities and Households (SEARCH)
10.760	Water and Waste Disposal Systems for Rural Communities (Includes Guarantees, and Rural Alaskan Village Grant (306D) programs)
10.761	Technical Assistance and Training Grants
10.762	Solid Waste Management Grants
10.763	Emergency Community Water Assistance Grants
10.770	Water and Waste Disposal Loans and Grants (Section 306C)
10.850	Rural Electrification Loans and Loan Guarantees
10.851	Rural Telephone Loans and Loan Guarantees
10.855	Distance Learning and Telemedicine Loans and Grants
10.858	Denali Commission Grants and Loans
10.859	Assistance to High Energy Cost Rural Communities
10.862	Rural Decentralized Water Systems Grant Program
10.863	Community Connect Grant Program
10.864	Grant Program to Establish a Fund for Financing Water and Wastewater Projects (aka Revolving Loan Fund program)
10.886	Rural Broadband Access Loans and Loan Guarantees
SAM Code	Rural Business-Cooperative Service
10.350	Technical Assistance to Cooperatives
10.351	Rural Business Development Grant
10.352	Value-Added Producer Grants
10.377	Agriculture Innovation Center Demonstration Program
10.379	Rural Energy Pilot Program Grant
10.379	Rural Energy Pilot Program Grant
10.380	Food and Supply Chain Guarantee Loan Program
10.381	Meat and Poultry Processing Expansion Program
10.754	Higher Blends Infrastructure Incentive Program
10.755	Rural Innovation Stronger Economy
10.767	Intermediary Relending Program
10.768	Business and Industry Loans
10.771	Rural Cooperative Development Grants
10.782	Appropriate Technology Transfer for Rural Areas
10.854	Rural Economic Development Loans and Grants
10.865	Biorefinery Assistance
10.867	Bioenergy Program for Advanced Biofuels
10.868	Rural Energy for America Program
10.870	Rural Microentrepreneur Assistance Program
10.871	Socially-Disadvantaged Groups Grant

SAM Code	Rural Housing Service
10.405	Farm Labor Housing Loans and Grants
10.410	Very Low to Moderate Income Housing Loans
10.411	Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415	Rural Rental Housing Loans
10.417	Very Low-Income Housing Repair Loans and Grants
10.420	Rural Self-Help Housing Technical Assistance
10.427	Rural Rental Assistance Payments
10.433	Rural Housing Preservation Grants
10.438	Section 538 Rural Rental Housing Guaranteed Loans
10.446	Rural Community Development Initiative
10.447	The RD Multi-Family Housing Revitalization Demonstration Program (MPR)
10.448	Rural Development Multi-Family Housing Rural Housing Voucher Demonstration Program
10.494	Multi-Family Housing Non-Profit Transfer Technical Assistance Grants
10.495	Farm Labor Housing Technical Assistance Grants
10.766	Community Facilities Loans and Grants (Includes Guarantees, Emergency Rural Health Care Grants and Tribal College Initiatives Grants)

Attachment B

RD Filing Windows

Rolling/Continuous Filing

- Community Facilities Direct Loans and Grants
- Water and Waste Disposal Direct Loans and Grants
- Emergency Community Water Assistance Grants
- 306C Native American and Colonia Water and Waste Grants
- 306D Rural Alaskan Village Grants (Water)
- Telecom Infrastructure Program
- Electric Loans
- MFH Section 538 Guarantees
- Food Supply Chain Guarantees
- OneRD Guarantee
 - Business and Industry Loan Guarantee
 - Community Facilities Loan Guarantees
 - Rural Energy for America Program
 - Water and Waste Disposal Loan Guarantees

FY 22 Filing Windows

The chart below provides information on programs with specific filing windows for FY 22.

Title	Agency	Application Open Date	Application Closed Date	Obligations Complete?
RMAP Notice FY 2022	RBCS	7/30/2021	Q1: 09/30/21 Q2: 12/31/21 Q3: 03/31/22 Q4 06/30/22	Q1-3 complete, Q4 will be complete by 9/30/2022
REDLG Notice FY 22	RBCS	9/7/2021	Q1: 09/30/21 Q2: 12/31/21 Q3: 03/31/22 Q4: 06/30/22	Q1-3 complete, Q4 will be complete by 9/30/2022
RBDG-Transportation Notice FY 22	RBCS	1/14/2022	4/14/2022	No, will be complete in by 9/30/2022
IRP Notice FY 22	RBCS	12/23/2021	Q2: 12/31/21 Q3: 03/31/22 Q4 06/30/22	Q2-3 complete, Q4 will be complete 9/30/2022

RBDG Notice FY 22	RBCS	9/27/2021	2/28/2022	No. will be complete by 9/30/2022
RISE Notice FY 22	RBCS	12/20/2021	5/19/2022	No, will be complete by 9/30/2022
REAP FY 2022 Notice	RBCS	EA/REDA 02/02/21 EA/REDA up to 50% setaside 04/01/21 RES/EEI remaining setaside 11/01/21 RES/EEI regardless of grant request 04/01/21	EA/REDA 01/31/22 EA/REDA up to 50% setaside 10/31/21 RES/EEI remaining setaside 03/31/22 RES/EEI regardless of grant request 03/31/22	Yes No. - June 30 deadline No. - June 30 deadline No. Obligations anticipated by 9/30/2022
Biorefinery, Renewable Chemical and Biobased Product Manufacturing Assistance Program (Sec. 9003) Notice FY 22	RBCS	April 2, 2021 October 2, 2021	October 1, 2021 April 1, 2022	Ongoing
Delta Health Care Services (DHCS) NOSA FY 22	RBCS	5/13/2022	7/12/2022	No, will be complete by 9/30/2022
Rural Energy Pilot Program	RBCS	Open Date 01/19/22	LOI due 4/19/2022 - LOI is prerequisite to application Application: 7/18/2022	No, will be complete by 9/30/2022
Meat and Poultry IRP	RBCS	5/27/2022	7/25/2022	No, will be complete by 9/30/2022
Meat and Poultry Processing Expansion Program (MPPEP)	RBCS	2/25/2022	5/11/2022	No, will be complete by 9/30/2022
MFH Preservation and Revitalization Demonstration Loans and Grants	RHS	3/15/2022	5/16/2022	No, will be complete in Q4
CF Emergency Pilot - American Rescue Plan Act	RHS	8/12/2021	10/12/2021	No. Obligations are ongoing and will continue throughout FY 2022 and into FY 2023.

MFH - Sec. 514 & 516 Off-Farm Labor Housing Grants - Short Notice	RHS	R1 02/05/21 R2 08/2/21 R3 5/16/22 04/21/22	R1 08/02/21 R2 05/02/22 R3 07/15/22 07/15/22	R1 – 100% obligated R2- by 7/15/22 R3 – by 12/15/22
MFH - Off-FLH 514 Loans/516 Grants Repair/Rehab	RHS	3/9/2022	4/25/2022	No, complete by 10/15/22
SFH- Housing Preservation Grants	RHS	5/26/2022	7/11/2022	No
ReConnect FOA	RUS	11/24/2021	2/22/2022	No
Guaranteed Underwriter Program (313A) NOSA FY 22	RUS	3/14/2022	5/13/2022	No, will be made in Q4

The Honorable Lynn Moaney
July 18, 2022
Page 1

July 18, 2022

VIA ELECTRONIC MAIL
sm.OCFO.ffac@usda.gov

The Honorable Lynn Moaney
Acting Chief Financial Officer
United States Department of Agriculture
1400 Independence Ave. SW
Washington, D.C. 20250

Re: USDA Rural Development Build America, Buy America Public Interest Waiver

Dear Ms. Moaney:

Corning Incorporated (Corning) respectfully submits the following comments in response to the request by the United States Department of Agriculture, Rural Development (RD) for a six-month adjustment to the timeline for its implementation of the Build America, Buy America Act (BABA) preferences as described in OMB Memorandum M-22-11: *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*.¹

Corning is a 174-year-old American manufacturing company, headquartered in Corning, New York. For decades, our research and development (R&D) investments have fueled Corning's growth and enabled us to deliver innovative glass products to customers around the world. Corning operates 52 facilities in the United States, including two large optical fiber manufacturing facilities and four large optical fiber cabling facilities in North Carolina, and a best-in-class R&D facility located in Corning, NY.

Corning has more than 16,000 U.S. employees, including United Steelworkers (USW) members at our Wilmington, NC optical fiber facility. We continue to grow and invest in the United States. Over the past five years, Corning has invested more than \$1 billion to create new and expand existing domestic manufacturing operations. This expansion has created over 1,800 new U.S. manufacturing jobs, hundreds of which support increased U.S. production of optical fiber and cable necessary for the expansion and deployment of new wireline and 5G wireless communications networks. In North Carolina, our Optical Communications division is a \$4.3 billion business, employing approximately 6,300 people across six facilities throughout the state,

¹ USDA Rural Development Build America, Buy America Public Interest Waiver, ("RD Waiver Request") *available at* <https://www.ocfo.usda.gov/docs/USDA-RDAdjustmentPeriodPublicInterestWaiverUpdated.pdf>.

including two of the world's largest optical fiber and preform manufacturing facilities in Midland and Wilmington, and four of the world's largest optical fiber cabling facilities in Winston-Salem Hickory and Newton. Corning recently announced an additional \$150 million investment in optical cable manufacturing.

Corning recognizes the challenges associated with aligning the RD's existing domestic sourcing programs with the requirements of the BABA and appreciates the RD's efforts to "shepherd its customers through a transition to BABA."² However, while it takes no position on RD's Waiver Request as relates to iron and steel, Corning believes a waiver is unnecessary for optical fiber and fiber optic cable, which constitute "construction material" and "manufactured product," respectively.³

As explained in greater detail below, there are ample domestic sources of optical fiber and fiber optic cable that are available to meet the projected fiber demand resulting from the IJJA and other federal broadband programs. Under the circumstances, granting a waiver would only delay realization of Congress's objective to promote domestic manufacturing and ensure that American workers have access to high quality jobs. Furthermore, the purported justifications offered by RD in support of its waiver – adverse impacts on program implementation and constituents and the volume and complexity of actions required to implement BABA – are not applicable to optical fiber or fiber optic cable. Thus, RD's waiver request should be denied as related to optical fiber and fiber optic cable.

I. Domestic Production of Optical Fiber and Fiber Optic Cable Will be Able to Meet Projected Fiber Demand

RD correctly acknowledges that BABA reflects Congress's intent "to build a resilient supply chain and manufacturing base for critical products here in the United States that will catalyze investment in good-paying American manufacturing jobs and businesses."⁴ Optical fiber and fiber optic cable present the perfect opportunity to realize these important economic objectives. And it is critically important that those objectives be realized sooner not later, particularly given the difficult financial conditions currently confronting the United States.

As envisioned by Congress, domestic optical fiber and cable suppliers are investing in and expanding their manufacturing capabilities in the United States to meet the increased demand for optical fiber and fiber optic cable resulting from the IJJA and other federal broadband programs.

² RD Waiver Request, p. 2.

³ "Optical fiber" describes the glass strands that are the light transmission medium used for data transfer and the thickness of a hair. "Fiber optic cable" is a finished product that can be configured in different formats and consists of a collection of optical fiber strands which are encased in a color-coded sleeve or ribbon, buffering and/or strengthening materials, and a plastic jacket. Corning manufactures both optical fiber and optical fiber cable. A portion of Corning's optical fiber is converted to cable internally and sold as either bulk cable or as part of an integrated optical solution, supporting various indoor and indoor/outdoor uses including 5G and data center networks.

⁴ RD waiver request, p.1.

Corning recently announced plans to expand its cabled fiber operations in Catawba County, North Carolina.⁵ The expansion will include adding 146,282 square feet to Corning's current facility, which will increase the size of the facility to approximately 450,000 square feet. In addition, Corning will lease a second building that it will expand by an additional 156,000 square feet, increasing the facility's total size to approximately 350,000 square feet. Once the expansion is complete, Corning's total operational footprint in Catawba County, North Carolina will be over 2 million square feet and will add 200 high-paying jobs.⁶

Corning is certainly not alone, as other domestic optical fiber and cable suppliers are also investing and increasing their manufacturing capabilities in the United States.⁷ As a result, the industry is well-positioned to meet projected demand, including the increased demand for optical fiber and cable. RVA LLC, a marketing research and consulting firm, recently analyzed domestic fiber supply and demand. Separating the analysis into glass fiber and fiber optic cable, RVA concluded that domestic manufacturing has sufficient capacity to provide the estimated incremental 27 million miles of glass fiber annually that will be required to meet expected demand.⁸ Indeed, according to RVA, U.S. optical fiber supply exceeds U.S. expected demand by approximately 30 to 35 percent. As to fiber optic cable, RVA found a short-term supply issue, which is being addressed by industry investment in cabling facilities.

Given the ample domestic sources of optical fiber and fiber optic cable, no need exists to grant the requested six-month adjustment to RD's implementation of the requirements of the BABA. Indeed, granting a waiver would only delay realizing Congress's objective to ensure that American workers have access to high quality jobs.

II. Neither of the Two Reasons Offered by RD In Support of Its Waiver Request Applies to Optical Fiber or Fiber Optic Cable

⁵ Press Release, NC Governor Ray Cooper, "Governor Cooper Announces Corning Optical Communications Will Create 200 Jobs through Catawba County Expansion" (Sept. 28, 2021) ("Governor Cooper Press Release"), <https://governor.nc.gov/news/press-releases/2021/09/28/governor-cooper-announces-corning-optical-communications-will-create-200-jobs-through-catawba-county>.

⁶ Collin Huguley, "Corning Bolstering Presence in Charlotte Region With \$150M, 200-job Expansion," *Charlotte Business Journal* (Sept. 28, 2021), <https://www.bizjournals.com/charlotte/news/2021/09/28/corning-expansion-hickory-trivium-corporate-center.html>.

⁷ Prysmian ~\$50million: https://www.catawbaedc.org/news/Prysmian_September_2021; CommScope ~\$50 million: https://hickoryrecord.com/news/local/article_8d7c8be0-cec8-11eb-8f3c-d7c82de4f8d4.html; Sterlite ~\$25 million: <https://governor.sc.gov/news/2021-06/stl-establishing-operations-kershaw-county>.

⁸ Michael C. Render, RVA, *Maximizing the Impact of U.S. Public Investment in Broadband* (July 9, 2021) ("RVA 2021 Report"), https://static1.squarespace.com/static/5fa4320b0831b81a797d23a6/t/60e9c7d76e267257944087e7/1625933789259/Whitepaper_Maximizing+the+Impact+of+U.S.+Public+Investment+in+Rural+Broadband+-+7-9-2021+FINAL.pdf.

RD offers two reasons in support of its request to adjust its BABA implementation deadline until October 2023: (1) immediate implementation would negatively impact RD program delivery, Administration priorities and rural constituents; and (2) RD must complete voluminous and complicated actions “to effectively implement BABA, especially due to the change in policy.”⁹ Neither of these reasons is applicable to optical fiber or fiber optic cable.

First, most of the programs RD claims would be adversely impacted in the absence of a waiver – Community Facility and Water and Waste loans, Tribal College Initiative Grants, and Native American/Native Alaskan Water Projects – do not involve fiber deployment. Thus, the timely implementation of the BABA requirements for optical fiber and fiber optic cable would not affect a majority of the funding programs about which RD is primarily concerned.

Second, even as to the only broadband program specifically mentioned by RD in its waiver request – ReConnect Round 3 – a waiver is unnecessary because no conflict exists between the criteria identified by RD in selecting funding recipients and the requirements of BABA. Indeed, prior to enactment of BABA, “construction materials” such as optical fiber and “manufactured products” such as fiber optic cable were not subject to domestic sourcing requirements under RD-administered programs.

RD acknowledges as much, noting that “[p]re-existing American Iron and Steel and Buy American provisions related to RUS programs will continue to apply during the waiver period.”¹⁰ Because no comparable provisions currently exist for construction materials and manufactured products, there are no preexisting domestic sourcing requirements that would apply to optical fiber and fiber optic cable if the waiver were granted. As a result, timely implementation of BABA requirements related to optical fiber and fiber optic cable would not negatively impact USDA’s ability to fulfill its mission or achieve Administration priorities.

Third, timely implementation of BABA requirements related to optical fiber and fiber optic cable does not require “voluminous” or “complex” actions and does not involve any “change in policy,” which is the second justification offered by RD in support of its waiver request. As noted above, and in contrast to iron and steel, there are no existing Buy American requirements applicable to fiber that involve a “change in policy” or that would require “alignment.”

RD also oversees only a limited number of broadband programs for which funds have yet to be expended. For example, the application window is currently open for RD’s Telecommunications Infrastructure Loans and Loan Guaranty program, and, while the third filing window for the ReConnect program closed on March 9, 2022, RD has not yet issued any funding announcements. And RD has yet to announce plans for the additional \$2 billion in rural broadband funding

⁹ RD Waiver Request, p. 8.

¹⁰ *Id.* at 1.

The Honorable Lynn Moaney
July 18, 2022
Page 5

appropriated by the IIJA. Under the circumstances, revising guides, training agency staff, and informing customers about the need to use broadband funds to procure only domestic sources for optical fiber and fiber optic cable as required by BABA should be straightforward.

Furthermore, given the ample domestic supply of optical fiber and fiber optic cable, requests by an applicant for a waiver of the BABA requirements related to optical fiber cable should be few and far between and would be project-specific in any event. Any such waiver request could be processed in a timely manner in accordance with the procedures established by USDA.¹¹

III. Conclusion

RD's request for a six-month adjustment to the timeline for its implementation of BABA preferences relating to optical fiber and fiber optic cable should be denied. Given the ample domestic sources of optical fiber and fiber optic cable, delaying those preferences, even for six months, would frustrate Congressional intent to promote American manufacturing and ensure good-paying American jobs. Furthermore, RD has not provided any justification that would warrant a waiver of BABA as applied to optical fiber and fiber optic cable.

Please do not hesitate to let me know if you have questions or need additional information.

Sincerely yours,



Michelle O'Neill
Vice President
Global Government Affairs
Corning Incorporated

¹¹ Waiver Request Process for Recipients and Subrecipients, *available at* <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.