

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Amanda Christofferson, Grants Administrator

DATE: November 25, 2024

SUBJECT: **RATIFY SIGNATURE** re: USDA Form RD 1942-46, 'Letter of Intent to Meet Conditions' and Form 1940-1, 'Request for Obligation of Funds', for signature between United States Department of Agriculture - Rural Development (USDA-RD) and Jefferson County

STATEMENT OF ISSUE:

There is a need for funding to construct an early learning facility in Jefferson County to support the care of young children. A \$1,375,000.00 grant of federal funds from Congressionally Directed Spending via USDA RD to the county with no match requirement has been awarded to accomplish this. In order for these funds to be obligated Jefferson County and the co-applicant, the Olympic Peninsula YMCA, must sign Form RD 1942-46, 'Letter of Intent to Meet Conditions' and Form RD 1940-1, 'Request for Obligation of Funds'. Form RD 1942-46 refers to the 'Letter of Conditions for a Community Facilities Grant to Jefferson County Child Care'(LOC) signed by the USDA RD on November 21, 2024 and attached to this request.

ANALYSIS:

Staff have conferred with PAO and co-applicant that meeting all conditions included in the LOC is reasonable and achievable.

FISCAL IMPACT:

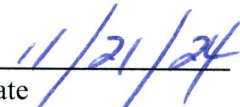
This is a \$1,375,000.00 grant of federal funds from Congressionally Directed Spending via USDA RD to the county with no match requirement.

RECOMMENDATION:

The PAO has reviewed the 'Letter of Conditions' and approved of it as to form, staff have confirmed with project partner and contractors that all conditions can be reasonably be met. The PAO has also opined that as the Form RD 1940-1 and Form RD 1942-46 are not contracts they do not require risk and legal review. Staff requests that the Board of County Commissioners make a motion to ratify the signing of these forms by the BOCC Chair.

REVIEWED BY:


Mark McCauley, County Administrator


Date

REQUEST FOR OBLIGATION OF FUNDS

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED ()			
Complete Items 1 through 29 and applicable Items 30 through 34. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 56-016-544320503		LOAN NUMBER	FISCAL YEAR 2025
2. BORROWER NAME Jefferson County		3. NUMBER NAME FIELDS 2 (1, 2, or 3 from Item 2)	
1820 Jefferson St, Port Townsend, WA 98368		4. STATE NAME Washington	
		5. COUNTY NAME Jefferson	
GENERAL BORROWER/LOAN INFORMATION			
6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 2 - BLACK 3 - AI/AN 4 - HISPANIC 5 - A/PI	7. TYPE OF APPLICANT 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC. OF FARMERS 6 - ORG. OF FARMERS 7 - NONPROFIT-SECULAR 8 - NONPROFIT-FAITH BASED 9 - INDIAN TRIBE 10 - PUBLIC COLLEGE/UNIVERSITY 11 - OTHER	8. COLLATERAL CODE 1 - REAL ESTATE SECURED 2 - REAL ESTATE AND CHATTEL 3 - NOTE ONLY OR CHATTEL ONLY 4 - MACHINERY ONLY 5 - LIVESTOCK ONLY 6 - CROPS ONLY 7 - SECURED BY BONDS 8 - RLF ACCT	9. EMPLOYEE RELATIONSHIP CODE 1 - EMPLOYEE 2 - MEMBER OF FAMILY 3 - CLOSE RELATIVE 4 - ASSOC.
10. SEX CODE 6 1 - MALE 2 - FEMALE 3 - FAMILY UNIT 4 - ORGAN, MALE OWNED 5 - ORGAN FEMALE OWNED 6 - PUBLIC BODY	11. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED/DIVORCED)	12. VETERAN CODE 2 1 - YES 2 - NO	13. CREDIT REPORT 2 1 - YES 2 - NO
14. DIRECT PAYMENT (See FMI)	15. TYPE OF PAYMENT 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY	16. FEE INSPECTION 2 1 - YES 2 - NO	
17. COMMUNITY SIZE 1 - 10 000 OR LESS (FOR SFH AND HPG ONLY) 2 - OVER 10,000		18. USE OF FUNDS CODE (See FMI)	
COMPLETE FOR OBLIGATION OF FUNDS			
19. TYPE OF ASSISTANCE 894 (See FMI)	20. PURPOSE CODE 1	21. SOURCE OF FUNDS	22. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
23. TYPE OF SUBMISSION 1 1 - INITIAL 2 - SUBSEQUENT	24. AMOUNT OF LOAN		25. AMOUNT OF GRANT 1,375,000
26. AMOUNT OF IMMEDIATE ADVANCE	27. DATE OF APPROVAL MO DAY YR	28. INTEREST RATE 0 %	29. REPAYMENT TERMS
COMPLETE FOR COMMUNITY PROGRAM AND CERTAIN MULTIPLE-FAMILY HOUSING LOANS			
30. PROFIT TYPE 3 1 - FULL PROFIT 2 - LIMITED PROFIT 3 - NONPROFIT			
COMPLETE FOR EM LOANS ONLY		COMPLETE FOR CREDIT SALE-ASSUMPTION	
31. DISASTER DESIGNATION NUMBER (See FMI)		32. TYPE OF SALE 1 - CREDIT SALE ONLY 2 - ASSUMPTION ONLY 3 - CREDIT SALE WITH SUBSEQUENT LOAN 4 - ASSUMPTION WITH SUBSEQUENT LOAN	
FINANCE OFFICE USE ONLY		COMPLETE FOR FP LOANS ONLY	
33. OBLIGATION DATE MO DA YR		34. BEGINNING FARMER/RANCHER (See FMI)	

If the decision contained above in this form results in denial, reduction or cancellation of USDA assistance, you may appeal this decision and have a hearing or you may request a review in lieu of a hearing. Please use the form we have included for this purpose.

Position 2

ORIGINAL - Borrower's Case Folder

COPY 1 - Finance Office

COPY 2 - Applicant/Lender

COPY 3 - State Office

CERTIFICATION APPROVAL

For All Farmers Programs

EM, OL, FO, and SW Loans

This loan is approved subject to the availability of funds. If this loan does not close for any reason within 90 days from the date of approval on this document, the approval official will request updated eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds. If there have been significant changes that may affect eligibility, a decision as to eligibility and feasibility will be made within 30 days from the time the applicant provides the necessary information.

If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15-working-day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

35. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL

36. I HEREBY CERTIFY that I am unable to obtain sufficient credit elsewhere to finance my actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near my community for loans for similar purposes and periods of time. I agree to use the sum specified herein, subject to and in accordance with regulations applicable to the type of assistance indicated above, and request payment of such sum. I agree to report to USDA any material adverse changes, financial or otherwise, that occur prior to loan closing. I certify that no part of the sum specified herein has been received. I have reviewed the loan approval requirements and comments associated with this loan request and agree to comply with these provisions.

(For FP loans at eligible terms only) If this loan is approved, I elect the interest rate to be charged on my loan to be the lower of the interest rate in effect at the time of loan approval or loan closing. If I check "NO", the interest rate charged on my loan will be the rate specified in Item 28 of this form. ☐ YES ☐ NO

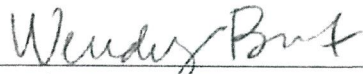
WARNING: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

Date November 21, 20 24


Kate Dean, County Commissioner

(Signature of Applicant)

Date November 21, 20 24


Wendy Bart, YMCA

(Signature of Co-Applicant)

37. I HEREBY CERTIFY that all of the committee and administrative determinations and certifications required by regulations prerequisite to providing assistance of the type indicated above have been made and that evidence thereof is in the docket, and that all requirements of pertinent regulations have been complied with. I hereby approve the above-described assistance in the amount set forth above, and by this document, subject to the availability of funds, the Government agrees to advance such amount to the applicant for the purpose of and subject to the availability prescribed by regulations applicable to this type of assistance.

(Signature of Approving Official)

Typed or Printed Name: _____

Date Approved: _____

Title: _____

38. TO THE APPLICANT: As of this date _____, this is notice that your application for financial assistance from the USDA has been approved, as indicated above, subject to the availability of funds and other conditions required by the USDA. If you have any questions contact the appropriate USDA Servicing Office.

Form RD 1942-46
(Rev. 6-10)

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

FORM APPROVED
OMB NO. 0575-0015
OMB NO. 0570-0062

LETTER OF INTENT TO MEET CONDITIONS

Date 11-21-2024

TO: United States Department of Agriculture

Rural Development

(Name of USDA Agency)

215 Melody Lane, Wenatchee WA 98801

(USDA Agency Office Address)

We have reviewed and understand the conditions set forth in your letter dated 11-21-2024. It is our intent to meet all of them not later than 12-31-2026.

Jefferson County

(Name of Association)

BY KD

Kate Dean, BOCC Chair

(Title)

Olympic Peninsula YMCA

(Name of Association)

BY Wendy Bart

Wendy Bart, CEO Olympic Peninsula YMCA

(Title)

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0015 and 0570-0062. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.



United States Department of Agriculture

November 21, 2024

Ms. Kate Dean
Jefferson County Commissioner
Jefferson County Washington
P.O. Box 563
Port Townsend, WA 98368

Ms. Wendy Bart
Chief Executive Officer
Olympic Peninsula YMCA
601 N. 5th Ave
Sequim, WA 98382

Subject: Letter of Conditions for a Community Facilities Grant to
Jefferson County Child Care

Dear Ms. Dean and Ms. Bart:

This letter, with attachments, establishes conditions that must be understood and agreed to by the applicant before further consideration may be given to the application for assistance under the Community Facilities (CF) Program. Any changes in project cost, source of funds, scope of services, or any other significant changes (this includes significant changes in the applicant's financial condition, operation, organizational structure or executive leadership) in the project or applicant must be reported to and approved by USDA Rural Development by written amendment to this letter. Any change not approved by USDA Rural Development will be cause for discontinuing processing of the application.

This letter is not to be considered as grant approval or as representation to the availability of funds. The application can be processed on the basis of a USDA Rural Development grant not to exceed \$1,375,000. Funds for this project are provided by the Rural Housing Service (RHS) for the amount, recipient, purpose, and location specified in the applicable Appropriations Act.

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," within the next ten (10) days, if you desire that we give further consideration to your application. The execution of these and all other documents required by USDA Rural Development must be authorized by appropriate resolutions of the applicant's governing body.

The grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is mailed by USDA Rural Development.

Rural Development • Wenatchee Office
215 Melody Ln • Wenatchee, WA 98801
Voice 509-415-3817 • Fax 855-847-5488 •

USDA is an equal opportunity provider, employer and lender.

Project Budget—Based on Standard Form 424, “Application for Federal Assistance,” the project cost and funding will be as follows:

a.	<u>Project Cost</u>	<u>Total</u>	<u>USDA Grant</u>	<u>Other Funding Source</u>
	Design Architectural Fees	\$200,000		
	Additional Engineering and Architectural	\$15,000		
	Construction	\$3,593,400		
	Legal	\$50,000		
	Equipment	\$200,000		
	Land	\$1.00		
	Contingencies	\$656,599		
	TOTAL:	\$4,715,000	\$1,375,000	\$3,340,000
b.	<u>Source of Funds</u>			
	Applicant Injection (cost share)	\$0.00		
	USDA Grant	\$1,375,000		
	CDBG	\$2,000,000		
	DOC Community Capital Funds	\$1,000,000		
	CARES	\$50,000		
	ARPA	\$290,000		
	TOTAL:	\$4,715,000		

The applicant understands and agrees that no project funds will be expended, or contracts issued for construction activities until all funds necessary for the successful construction and development of the project have been secured. The Agency will not disburse funds for construction or renovation activities until the applicant has secured all remaining project funds. Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the borrower may be necessary.

Section I of the attached conditions (Items 1—9) must be satisfied prior to grant closing or before construction begins, whichever occurs first, in either case not later than twelve (12) months from the date of this letter. **In the event the project has not advanced to the point of construction within twelve (12) months, USDA Rural Development reserves the right to discontinue the processing of the application.**

In addition to the conditions in Sections I-III, the applicant must fully comply with all requirements on Form RD 3570-3, Community Facilities Grant Agreement. The Agency reserves the right to cancel funds if the applicant does not fully comply with all requirements as presented or subsequently modified, as needed.

If you have any questions, feel free to contact this office.

Sincerely,

A handwritten signature in black ink that reads "Koni Reynolds". The signature is written in a cursive, flowing style.

Koni Reynolds
Community Program Director

ATTACHMENT TO LETTER OF CONDITIONS

SECTION I. CONDITIONS TO BE SATISFIED PRIOR TO GRANT CLOSING

1. Disbursement of Funds

- a. The applicant will provide evidence that funds from other sources will be made available for the project cost in the amount of \$3,083,401. This evidence should include a copy of the loan/grant award that addresses how funds will be disbursed.
- b. Agency funds will not be used to pre-finance funds committed to the project from other sources.

2. Security Requirements

- a. The applicant will be required to complete and execute Form RD 3570-03, "Community Facilities Grant Agreement" before grant funds are disbursed. The Agency will not disburse funds until all project funding sources have been secured. The applicant may request an exception if this requirement impedes the applicant's ability to carryout the project specified in the applicable appropriations bill.
- b. Prior to any disbursement of funds, a Notice of Federal Interest must be recorded in the official real property records for the jurisdiction where the facility is or will be located. The applicant must provide evidence of the recording. Federal interest cannot be defeated by a grantee's failure to file a Notice of Federal Interest.
- c. The grantee understands that any property improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.
- a. The grantee understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.
- b. In accordance with 2 CFR 200.330, the grantee understands that it must submit regular reports on the status of real property in which the Federal Government retains an interest. Reports shall be submitted annually for the first three years of the award and every five years thereafter on SF-429 Real Property Status Report, or similar format.

3. **Insurance and Bonding Requirements**—The applicant must provide evidence of adequate fidelity bond insurance by grant closing or start of construction, whichever occurs first. Adequate coverage, in accordance with USDA Rural Development's regulations, must then be maintained for the life of the grant. It is the responsibility of the applicant and not that of USDA Rural Development to assure that adequate insurance and fidelity bond coverage is maintained. Applicants are encouraged to review coverage amounts and deductible provisions with their attorney, consulting architect, and/or insurance provider(s).
 - a. **Property Insurance**—Fire and extended coverage will be required on all above-ground structures, including applicant-owned equipment and machinery housed therein. Provide USDA Rural Development with proof of coverage.
 - b. **Workers' Compensation Insurance**—The applicant will be required to carry workers' compensation insurance for all employees in accordance with state law. Provide USDA Rural Development with proof of coverage.
 - c. **General liability and vehicular coverage must be maintained**—Provide USDA Rural Development with proof of coverage.
4. **Civil Rights & Equal Opportunity**— The grantee has received an award of Federal funding and is required to comply with U.S. statutory and public policy requirements, including but not limited to:
 - a. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
 - b. **Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.** The recipient must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor the recipient's compliance with these requirements during regular compliance reviews.
 - c. **The applicant is subject to a post-grant closing civil rights compliance review by USDA Rural Development utilizing Form RD 400-8, "Compliance Review."**
 - d. **As a recipient of Rural Development funding, you are required to post a copy of the Non-Discrimination Statement listed below in your office and include in full, on all materials produced for public information, public education, and public distribution both print and non-print.**

Non-Discrimination Statement

“This institution is an equal opportunity provider and employer.”

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at <https://www.ocio.usda.gov/document/ad-3027>, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

If the material is too small to permit the full statement to be included, the material at a minimum includes the statement in print size no smaller than the text that “This institution is an equal opportunity provider and employer.”

5. **Written Agreements for Professional Services (if applicable)**

- a. A Legal Services Agreement with your Attorney will have to be approved by USDA Rural Development.
- b. An Agreement for Architectural Services with Present Future Architects will have to be approved by USDA Rural Development.

6. **Land and Rights-of-Way** —The applicant must present satisfactory evidence that they have obtained, or can obtain, any and all lands, rights-of-way, easements, permits and franchises which are required by the architectural plan. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act. The following forms may be used for these purposes:

- a. Form RD 442-20, “Right-of-Way Easement”
- b. Form RD 442-21, “Right-of-Way Certificate” (with map attached)
- c. Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”

7. **Permits** —For Design/Build Projects - All permits involving Federal, State, and local agencies must be obtained and evidence thereof provided to USDA Rural Development prior to the start of the construction phase of the project.

8. **Environmental Reviews**— The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. During any stage of project development, including construction, should environmental issues develop which require mitigation measures, USDA Rural Development applicants are required to notify USDA Rural Development and comply with such mitigation measures. Failure by an applicant to implement mitigation measures may disqualify the project from Agency funding. Mitigation measures identified or prepared as part of the NEPA environmental process must be implemented. If the project or any project element deviates from or is modified from the originally-approved project, additional environmental review may be required.

At the conclusion of the proposal's environmental review process, specific action(s) were determined necessary to avoid or minimize adverse environmental impacts. As outlined in the Environmental Report dated October 13, 2023, the following actions are required for successful completion of the project and must be adhered to during project design and construction:

1. Client to obtain all necessary permits for the project.
2. Client to use Construction Best Management Practices (BMP) for temporary erosion, sedimentation, and dust controls during construction of project.
3. The following Inadvertent Discovery Plan (IDP) must be in place before Notice to Proceed is issued.
4. Mitigation requirements include all clean-up actions required by applicable federal, state, tribal, or local law.

INADVERTENT DISCOVERY PLAN

The Inadvertent Discovery Plan (IDP) outlines procedures to perform in the event of discovering archaeological materials or human remains, in accordance with state and federal laws.

RECOGNIZING CULTURAL RESOURCES

A cultural resource discovery could be prehistoric or historic including:

1. An accumulation of shell, burned rocks, bricks, etc.
2. Bones or small pieces of bone
3. An area of charcoal or very dark stained soil with artifacts
4. Stone tools (flakes, projectile points, pestle, mortar, new weights, flaked cobbles)
5. Clusters of tin cans, bottles, or other historic artifacts that appear to be older than 50 years
6. Logging, agricultural, or railroad materials

ON-SITE RESPONSIBILITIES

1. Stop Work. If any employee, contractor, or subcontractor believes that he or she has discovered or uncovered a cultural resource at any point in the project, all work must stop in the immediate area of the discovery. Leave the surrounding area untouched and protect the discovery location. Notify the appropriate party(s).
2. Notify Appropriate Party(s). Notify a professional archaeologist of any possible cultural resources. A professional archaeologist may be needed to assess the discovery and they will consult with State Historic Preservation Officer (SHPO) and appropriate tribes to determine an appropriate course of action. Archaeological excavations may be required. This is handled on a case-by-case basis by the professional archaeologist and project manager, in consultation with the SHPO and appropriate Tribes.

SPECIAL PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL MATERIAL

If earth disturbing activities on any area of the project uncover human remains, all work shall cease immediately in accordance with Washington State Statute RCW 37.44. The remains must not be disturbed in any way and no photographs are to be taken. Without delay the project manager will notify law enforcement agency at the contacts listed below. The area must be secured with work not continuing until all consulting parties (DAHP and appropriate Tribes) involved have an agreed upon course of action.

IDP CONTACTS

1. Department of Archaeology & Historic Preservation Officer (360) 586-3065
2. Jefferson County Sheriff (360) 385-3831
3. USDA RD Environmental Coordinator, Ian Sims (509) 415-3815

9. Architectural and Construction

- a. USDA Rural Development must approve any agreements or modifications to agreements for professional planning and design services. AIA Document "Standard Form of Agreement Between owner and Architect," may be used when appropriate or other Agency approved forms of agreement
- b. All construction will be completed under contract. The planning, bidding, contracting, and construction must comply with 7 CFR 1942.9, 1942.18, and any additional requirements of state law and the requirements of other County, State, or Federal agencies.
- c. The following must be reviewed and approved by USDA Rural Development in the sequence indicated:

- i. Agreement for Architectural Services
 - ii. Final Plans and Specifications for the project
 - iii. Draft/Construction Bid Documents, prior to Going Out to Bid
 - iv. Bid Award Information
 - v. Executed Contract Documents
- d. Affirmative steps should be taken to assure that small, minority and/or women-owned businesses are utilized as source of supplies, equipment, construction, and services.
- e. The Plans & Specifications must be reviewed and approved, when applicable, by any regulatory or other agencies that are required to review these documents.
- f. A representative of USDA Rural Development will attend all pre-construction conferences in connection with this project. These conferences must be held prior to the issuance of the Notice to Proceed to the contractors. The applicant's architect will conduct the conference and document the discussions and agreements.

10. BUILD AMERICA, BUY AMERICA ACT (BABAA)

The Recipient must comply with the provisions of the Build America, Buy America Act (the "Act"). Pub. L. No. 117-58, §§ 70901-52, which was enacted on November 15, 2021. The Act requires that "none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- a. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States. This means the manufactured 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

10.1. Materials and Equipment

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

10.2. Waiver Process

When necessary, recipients may apply for, and the Agency may grant, a waiver from these requirements. The Agency will notify the recipient for information on the process for requesting a waiver from these requirements. When the Federal agency has determined that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the Agency determines that:

- a. Applying the domestic content procurement preference would be inconsistent with the public interest;
- b. The 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; or
- c. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The Agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver, as determined by the Agency.

10.3. Definitions (as applied in this condition only)

“Construction Materials” include an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic Content Procurement Preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, 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. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

10.4. Compliance

The Recipient must comply with the provisions of the Build America, Buy America Act (BABAA). Pub. L. No. 117-58, §§ 70901-52, which was enacted on November 15, 2021. By accepting these conditions, the Recipient attests that they or their designee(s) will maintain documentation for BABAA provisions to indicate compliance. Documentation may include, but is not limited to, authoritative statements, certifications, affirmations, sworn statements, daily logs, photographic material and other evidence indicating compliance. Documentation must be available and reviewable upon request.

Domestic Products

If the product(s) utilized in the project are determined to be domestic, the following is required:

- Evidence from the manufacturer that demonstrates compliance with BABAA, such as an authoritative statement or certification specific to the purchase,
- Sworn Statements by supervising contractors or licensed architects and professional engineers, as applicable.

Manufacturers

- For each item to which BABAA applies (every item permanently installed on the project, except for aggregate and aggregate binding materials),
 - a manufacturer's certification letter or other document demonstrating compliance is required. It must, at a minimum, identify the item being certified (short written description as well as part number, if applicable) and affirm that the item complies with BABAA.
 - This document must be signed by an authorized company representative.
 - The manufacturer may submit a letter on letterhead or provide other evidence acceptable to the Agency.

Architects and Engineers (A/E)

- The need to comply with BABAA will be spelled out in agreements for A/E services, construction contracts, and procurement contracts. Generally, the A/E contract will include, as a basic service,
 -
 - and maintaining all BABAA documentation (particularly manufacturers' certifications) during construction, which shall be transferred to the recipient upon substantial completion of the project.
 - The architect or engineer will need to certify to this action at the project's end.

Resident project representative (RPR) / Resident inspector (RI)

- As part of their duties, RPR/RI will be instructed to verify items delivered to the site and installed are accompanied by documentation of compliance with BABAA.
 - They will photograph items as appropriate.
 - RPR/RI daily logs and photographs will become part of the construction record and can be used as supporting information during audits, providing evidence for items that are buried or otherwise inaccessible.

Contractors

- The construction contract(s) will include a requirement to procure and install only items that comply with BABAA or are subject to a waiver approved by the Secretary of Agriculture or designee.
- The contractors are to provide manufacturers' certifications for all BABAA compliant items to the architect/engineer no later than with applications for payment.
- At substantial completion, the contractor will be required to certify that all items used on the contract complied with BABAA and that all manufacturers' certifications were provided to the architect/engineer.

12. **Electronic Funds Transfer**—All grant funds will be transferred to grantees via Electronic Funds Transfer/Automated Clearinghouse Systems (EFT/ACH). Normal transfers will be ACH, with money being placed in the grantees account two business days after the USDA processing office approves the pay request. The applicant must submit the Electronic Funds Transfer Form containing the banking (ACH) information to the USDA Servicing Office at least 45 days prior to the date of grant closing. Failure to do so could delay grant closing.

SECTION II. GRANT CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

1. **Disbursement of Grant Funds**—USDA Rural Development funds will be disbursed as they are needed in the amount(s) necessary to cover the Rural Development proportionate share of obligation due and payable to the Grantee.
2. **Inspections**— A full-time resident inspector/project manager is required during construction unless a written exception is made by the Agency upon your written request. This service is to be provided by the consulting architect or other arrangements as approved by the Agency. Prior to the pre-construction conference, a resume of qualifications of the resident inspector(s) will be submitted to the owner and Agency for review and approval. The owner will provide a letter of acceptance for all proposed observers to the architect and Agency. The inspection reports must be available to USDA Rural Development for review at any time. These reports must be kept at the project site or borrower's office, if nearby.
3. **Monthly Reporting**— The applicant must monitor and provide a monthly reports to USDA Rural Development on actual performance for each project financed, or to be financed, in whole or in part with USDA Rural Development funds. For construction projects, include Forms RD 1924-18, "Partial Payment Estimate" or similar format.
4. **Final Inspection**—A final inspection will be made by USDA Rural Development on the component USDA is financing before final payment is made.
5. **Excess Funds**—Any remaining funds must be utilized for approved purposes within 120 days following the final inspection or the funds will be canceled without further notification from USDA Rural Development.

SECTION III. GRANT CONDITIONS TO BE SATISFIED AFTER PROJECT COMPLETION

1. **Financial Statements**—To be submitted on an annual basis in accordance with the following:
 - a. An annual audit under the Single Audit Act is required if the recipient expends \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, Subpart F, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of the recipients fiscal year end.
 - b. For local governments and Indian tribes, an audit in accordance with State or local law or regulation or regulatory agency requirements must be submitted when you expend less than \$750,000 in Federal financial assistance per fiscal year. These audits shall be submitted to USDA no later than 150 days after the end of the borrower's fiscal year.
 - c. All borrowers exempt from USDA audit requirements and who do not otherwise have annual audits, will within 60 days following the end of the borrower's fiscal year furnish USDA with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expenses. The recipient may use Form RD 442-2, "Statement of Budget, Income and Equity," and 442-3, "Balance Sheet," or similar format to provide the financial information.
2. **Audit agreement**—If you are required to obtain the services of a licensed Certified Public Accountant (CPA), you must enter into a written audit agreement with the auditor. The audit agreement may include terms and conditions that you and auditor deem appropriate.