



CITY OF SLIDELL
BUILD AMERICA BUY AMERICA
FACTS

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Prepared for the U.S Department of HUD
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BUILD AMERICA, BUY AMERICA (BABA) FACTS

OVERVIEW

The Build America, Buy America (BABA) Act was enacted in the Infrastructure Investment and Jobs Act on November 15, 2021. The BABA Act requires that products purchased in connection with infrastructure projects funded by Federal Financial Assistance (FFA) programs must be produced in the United States (U.S.). This requirement is known as the “Buy America Preference (BAP)” (or “domestic procurement requirement”). The purpose of the BABA Act is to stimulate private sector investments in American manufacturing, bolster critical American supply chains, and support the creation of jobs.

Section 70914 of BABA requires that products purchased in connection with infrastructure projects funded with Federal Financial Assistance programs must be produced in the United States. Domestic preferences for procurements under BABA requirements only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. BABA applies to any of these products for infrastructure projects:

- Iron or steel products
- Manufactured products
- Construction material

INFRASTRUCTURE includes but is not limited to the structures, facilities, and equipment for the following:

- Roads, highways and bridges
- public transportation
- dams
- ports, harbors, and other maritime facilities
- intercity passenger and freight railroads
- airports
- water systems, including drinking water and wastewater systems
- electrical transmission facilities and systems
- utilities
- broadband infrastructure
- buildings and **real property**
- facilities that generate, transport, and distribute energy including electric vehicle (EV) charging stations

Any HUD program that provides Federal Financial Assistance (FFA) for the construction, maintenance, alteration, or repair of infrastructure as defined in BABA is subject to BABA requirements once fully implemented by HUD.

The domestic preference applies to an entire infrastructure project, even if it is funded by both federal and non-federal funds under one or more awards. BABA requirements apply to all awards by a Federal agency to a non-Federal entity (Tribes, TDHEs, public housing authorities, states, cities, counties) through Federal Financial Assistance programs. Federal Financial Assistance programs include:

- Federal Grants
- Cooperative agreements
- Direct appropriations
- Loan guarantees
- Other financial assistance

BABA
FREQUENTLY ASKED QUESTIONS

1. What does the Build America, Buy America Act (BABA or the Act) require?

- BABA requirements include a Buy America preference that all Federal agencies must apply to any Federal financial assistance program for infrastructure projects that are not already subject to existing Buy America requirements for the relevant categories
- See BABA Sections 70914(a) and 70917(a)

2. What is the application of BABA?

- BABA applies to Federal Financial Assistance for infrastructure projects, including grants, cooperative agreements, and other federal awards that federal agencies provide to recipients constructing such projects
- BABA requirements do not apply to certain disaster relief and emergency assistance awards or pre- and post- disaster or emergency response expenditures

3. What is the purpose of BABA?

- BABA is designed to bolster America's industrial base, protect national security, and support high-paying jobs
- See OMB Memorandum [M-24-02](#) to learn more

4. How long will BABA remain a requirement?

- BABA was enacted into law with no expiration date

5. Does BABA apply to small grants?

- BABA requirements apply to all infrastructure projects funded with Federal Financial Assistance (FFA) provided by HUD after November 14, 2022, unless a waiver applies
- HUD has issued a waiver for infrastructure grants and expenditures whose total cost is equal to or less than the current Simplified Acquisition Threshold of \$250,000

6. How does BABA define "Project"?

- BABA defines "project" as any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States. Specific guidance on how to define the project for purposes of BABA will be provided by the individual programs providing FFA

7. Do BABA Requirements apply to Contractors and Subcontractors if they are not a recipient of a federal contract?

- Contractors performing work under a federal award made directly to a state, local government, Indian tribe, institution of higher education, or non-profit organization need to comply with the requirements in order to satisfy the terms of the direct federal award

8. What Construction Materials are covered?

- Non-ferrous metals e.g. lead, stainless steel, tin, brass, aluminum
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- Glass (including optic glass)
- Fiber optic cable
- Optical fiber
- Lumber
- Drywall
- Under OMB proposed rule, also includes coating (paint), brick, engineered wood

9. What Construction Materials are Considered Produced in U.S.?

- ALL manufacturing processes for the construction materials must have occurred in the US.
- Some examples:
 - Lumber: All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States
 - Drywall

- All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States

10. How can I find products that are made in America?

- Currently there is no official label or certifying body for BABA compliant products
- When reviewing products to determine if they are made in America, please refer to the definitions for American made products stated in [2 CFR 184](#)
- You may find American made products by working with the [Hollings Manufacturing Extension Partnership \(MEP\)](#), trade associations, and local manufacturers/stores
- For additional information and the latest resources, please check the [Made in America Office website](#)

11. For iron and steel products, does a manufacturer need to demonstrate compliance from initial melting through the finished product?

- Yes. According to [2 CFR 184](#), all iron and steel used in the project must have been produced in the United States
- This means that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States
- For additional information and the latest resources see [Made in America Office website](#)
- For more guidance on definitions, refer to the [2 CFR 184](#) or [2 CFR 200](#)

12. What if a construction material is combined with a steel/iron item, a manufactured product, or another construction material?

- In OMB Memorandum M-22-11, OMB notes that items that consist of two or more of the listed construction materials that have been combined together through a manufacturing process
- Items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials
- For example, plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material
- If any of the listed construction materials is combined together with a second listed material or with a non-listed item, then the product should be considered either a manufactured product or a steel/iron item, as appropriate

13. Do construction materials include cement or asphalt?

- No. Under BABA Section 70917(c), construction materials do not include cement and aggregates such as stone, sand, or gravel or aggregate binding agents or additives
- Asphalt concrete pavement mixes are typically composed of asphalt cement (a binding agent) and aggregates such as stone, sand, and gravel so asphalt is also excluded from the definition of construction materials
- Applying the preliminary guidance that is applicable to construction materials in OMB Memorandum M-22-11, combining any of these excluded materials with listed construction materials would result in the product being considered a manufactured product

14. Do the BABA requirements for construction materials apply to construction materials used on a temporary basis for construction of a Federal-aid project?

- According to OMB Memorandum M-22-11, the Buy America preference for construction materials only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project
- 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
- It does not apply to equipment and furnishings that are used at or within the finished infrastructure project, but are not an integral part of or permanently affixed to the structure

15. What is a Manufactured Product?

- A manufactured product is defined as follows:

- Articles, materials, or supplies that have been:
 - processed into a specific form and shape
 - combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies
- A Manufactured Product includes components that are Construction Materials, Iron or Steel Products, or Section 70917(c) materials

16. What Manufactured Products are Considered Produced in U.S.?

- Manufactured products are materials, articles or supplies incorporated in:
 - An infrastructure project that are not iron/steel and not one of the listed
 - Construction materials
- 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 (2 CFR 184.5)
 - For components **purchased** by the manufacturer, the following costs should be included in the 55% calculation: the acquisition cost, including transportation costs to the place of incorporation into the manufactured product, regardless of whether or not such costs are paid to a domestic firm, and any applicable duty, regardless of whether or not a duty-free entry certificate is issued
 - For components **manufactured** by the manufacturer, the following costs should be included in the 55% calculation: all costs associated with the manufacture of the component, including transportation costs, plus allocable overhead costs. Importantly, all costs related to profit must be excluded along with any costs associated with the manufacture of the manufactured product

17. Can a particular item or component fall into more than one category among iron and steel, manufactured products and construction materials?

- The guidance suggests that all items incorporated into an infrastructure project fall into one of the three categories
- An item combining a construction material, like glass, with another material or a manufactured product (such as a window unit) will be considered a manufactured product

18. Whom should I contact if I have additional questions about BABA?

- Contact: BuildAmericaBuyAmerica@hud.gov

19. What would cause a HUD program to change BABA applicability status?

- BABA applicability may be affected by a waiver granted by HUD or if eligible uses of funding under the given HUD program change
- If changes are made to the relevant definitions in 2 CFR 200, the applicability of BABA may change

20. Is Force Account Labor subject to BABA?

- No. The use of Force Account Labor does not affect BABA applicability
- Force Account Labor is the use of directly hired staff to carry out eligible activities under a program instead of procuring services through contract
- The applicability of BABA is not determined by how eligible activities are performed
- Work performed using Force Account Labor may require the application of the BAP to the purchase of the materials used in the project

21. Are products and materials that purposefully decay or decompose (such as biodegradable coir material used for erosion control) considered permanently affixed items that are subject to the BABA requirements?

- No. According to 2 CFR 184, BABA requirements do not apply to non-permanent fixtures. See Section 3 Question 2 of this FAQs list for more detail
- For additional information and the latest resources, please check the [Made in America Office website](#)
- For more guidance on definitions, please refer to the 2 CFR 184 or 2 CFR 200

22. What if I am unable to find American made products?

- If you are unable to find American made products, then you may seek a waiver. Before requesting a new waiver from HUD, first check that none of the existing waivers are sufficient to cover your situation. HUD may waive your requirement to use American made product(s) if it finds that:
 - Requiring the use of the American made product would be inconsistent with the public interest
 - The product you need is not produced in the United States in sufficient quantities or of a satisfactory quality
 - The inclusion of the product produced in the United States will increase the cost of the overall project by more than 25 percent
 - HUD reviews waivers before they are posted to the Federal Register for public comment and sent to MIAO for approval

23. Are waivers available for BABA requirements under the IIJA?

- A waiver may be available if it’s found that the mandate is contrary to the public interest or if the materials are unavailable or unreasonably priced

24. How are Waivers Obtained?

- Waivers must be requested in writing and publicly available for not less than 15 days for public comment by the federal awarding agency
- If the waiver is one of general applicability applying to multiple awards, the comment period must be 30 days
- Visit the [HUD BABA Website](#)
- For a summary of BABA waivers and information needed to apply for these waivers, refer to the below table and contact your [local HUD Field Office](#) to apply

25. What are the three types of waivers?

- The three types of waivers, as follows:
 - Application of the BABA requirements would be inconsistent with the public interest (a “public interest waiver”)
 - Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “non-availability waiver”)
 - The inclusion of iron, steel, manufactured products, or construction materials produced in the United States would increase the cost of the overall project by more than 25% (an “unreasonable cost waiver”)

11/23/22 – HUD publishes De Minimis Waiver		
Exempts grants that are equal to/under \$250,000	Exempts most public housing contracts equal to/under \$250,000	Exempts 5% of procurements above \$250,000 as long as the 5% does not exceed \$1million

26. Does funding from multiple Federal sources and need a waiver. Do I have to apply for a waiver from every agency contributing funding?

- Possibly. In order for a project to be excluded from BABA requirements, each agency contributing funding must have issued a waiver that is applicable for its funding
- Agencies may have standing waivers that are applicable, or the funding recipient may need to seek a waiver from each funding source
- Federal agencies are working to develop a process to streamline this for recipient.
 - Note that each agency will issue a separate waiver for your project

27. What should I do if I am covered by a program-wide waiver? Do I need to maintain documentation?

- Yes. You should maintain appropriate documentation, consistent with the program guidance for your specific award

28. Can I submit one waiver submission that encompasses multiple projects?

- If you are seeking a product-specific waiver for an item you will use in multiple projects, you may be able to submit one product waiver depending on your circumstances
- If you are seeking a project-specific waiver, you must submit one waiver per project
- If you are seeking a public interest waiver, the circumstances will dictate the number of waivers, but you generally would not be required to submit multiple requests for the same waiver

29. How will I know if my waiver is accepted or denied?

- HUD will inform you once the Department has approved or denied your waiver
- If approved, your waiver will also be posted in the Federal Register and on Made in America Office (MIAO) websites
- You may track the final decision on these websites

30. How can I check the status of my waiver application?

- Contact your local HUD Field Office at www.hud.gov/local

GENERAL WAIVERS			
Small Grants	De Minimis	Exigent Circumstances	Tribal Consultation
BABA requirements do not apply to infrastructure projects whose total cost is equal to or less than the current Simplified Acquisition Threshold of \$250,000. This waiver is currently in effect as of November 23, 2022.	BABA requirements do not apply for a De Minimis portion of an infrastructure project, meaning a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials, up to a maximum of \$1 million. This waiver is currently in effect as of November 23, 2022.	This waiver applies when there is an urgent need by a recipient to immediately complete an infrastructure project because of a “exigent circumstances,” or a threat to life, safety, or property of residents and the community. This waiver is currently in effect as of November 23, 2022.	This waiver is effective for Tribal recipients through May 22, 2024. HUD issued a public interest waiver for the BAP as it applies to Tribal recipients to allow time for HUD to consult with Tribally Designated Housing Entities, and other Tribal Entities on how to apply the BAP.

PROJECT/PRODUCT-SPECIFIC WAIVERS		
Non-Availability	Unreasonable Cost	Public Interest
<p>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements because HUD and agrees that the product needed is not produced in the United States in sufficient quantities or of a satisfactory quality.</p> <p>In their waiver request, recipients should:</p> <ul style="list-style-type: none"> • Demonstrate that they have conducted market research and adequately considered qualified alternate items. • Describe the due diligence performed, including information, quotes, and/or responses from manufacturers, distributors, or suppliers. 	<p>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements because the adherence to BABA requirements will increase the cost of the overall project by more than 25 percent.</p> <p>In their waiver request, recipients should:</p> <ul style="list-style-type: none"> • Demonstrate that BABA compliance increases total project cost by more than 25%. • Determine the additional cost of BABA compliant products. • Determine the dollar amount to be waived. • Demonstrate that no domestic alternatives are available within the project budget. 	<p>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements requiring compliance with such requirements is inconsistent with the public interest.</p> <p>In their waiver request, recipients should:</p> <ul style="list-style-type: none"> • Explain how waiving the BABA requirement for this project or product serves the public interest. • Demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project.

BABA APPLICATION

BAP WILL APPLY TO	IRON AND STEEL	SPECIFICALLY LISTED CONSTRUCTION MATERIALS	ALL OTHER CONSTRUCTION MATERIALS	MANUFACTURED PRODUCUTS
CDBG Formula Grants	All Funds Obligated On Or After November 14, 2022	As Of The Date HUD Obligates New FFA From FY24 Appropriations	As Of The Date HUD Obligates New FFA From FY 25 Appropriations	As Of The Date HUD Obligates New FFA From FY 25 Appropriations