

Build America, Buy America (BABA) Frequently Asked Questions (FAQ)

The purpose of this FAQ is to provide clarity on frequently asked questions relating to the BABA act. If you have questions that are not answered in this FAQ section please contact the Federal Construction Compliance Specialist, Johnathan.Warren@hcd.ca.gov

General Questions

Q: Is BABA applicable to my program/project?

A: BABA is currently applicable to CDBG, HOME, NHTF, ESG, Section 108 Loan Guarantee, RHP, CoC, HOPWA, SHOP, VHRMP, CPF/EDI, PRICE, PRO Housing, CoCBUILDS NOFO, Rural Capacity Building and Section 4 Capacity Building Programs, where the project involves the construction, alteration, maintenance, or repair of **public** infrastructure, regardless of whether infrastructure is the primary purpose of the project.

[cpd-25-01.pdf](#)

Q: What constitutes “Public Infrastructure” as it relates to Housing?

A: When determining if a particular project of a type not listed in the description in paragraph (c) constitutes “infrastructure,” the Federal agency should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.

2 CFR 184.4(d)

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

Q: When is BABA applicable to my project?

A: **CDBG; Iron and Steel** 11/15/22, **Construction materials specifically listed** date when HUD obligates new FFA for FY 2024, **Construction materials not listed** date when HUD

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obligates new FFA for FY 2025, **Manufactured products** date when HUD obligates new FFA for FY 2025.

A: **HOME, Housing Trust Fund, and Public Housing FFA used for Maintenance Projects ; Iron and Steel** new FFA obligated 08/23/24, **Construction materials specifically listed** new FFA obligated 08/23/24, **Construction materials not listed** new FFA obligated 08/23/24, **Manufactured products** new FFA obligated 08/23/24

[Federal Register :: Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance](#)

Q: My project has funds obligated both before and after the BABA implementation date, is BABA still applicable to the whole project?

A: Yes. The Build America, Buy America Act (BABA) would apply to the entire project due to the inclusion of supplemental CPD funds that were obligated on or after the effective date identified in HUD's Phased Implementation Waiver. Depending on the CPD program and materials used, some projects may be covered by a HUD General Waiver.

[I have a project funded with funds obligated by HUD before November 15, 202 - HUD Exchange](#)

Q: What does “obligation” mean for the purpose of applying BABA?

A: The term “obligate,” for purposes of HUD’s phased implementation of BABA, means the date that HUD executed the legal instrument creating the relationship between HUD and the grantee for an award of Federal financial assistance. The milestone that establishes an obligation date depends on each program but for many CPD programs, such as CDBG, the obligation date occurs upon HUD’s execution of the grant agreement.

[2023-12cpdn.pdf](#)

Q: How do recipients ensure that their subrecipients, subcontracts and vendors comply with BABA’s provisions?

A: The “Buy America Preference (BAP)” conditions applicable to HUD-funded projects require that the HUD grantee includes the BAP conditions in any subaward or subcontract. The grantee is responsible for ensuring that all subrecipients comply with BAP’s requirements. This may include:

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- Records of the materials used to complete the project with manufacturer information or material certifications that reference the product/material content requirements under the Build America, Buy America Act (BABA), with statements verifying that the products meet the BABA requirements
- Communication of requirements through written policies and procedures that include BABA terms and conditions in financial assistance agreements, project solicitations, and contracts is key in ensuring all parties involved are informed of the requirements for the project before construction is underway
- Grantees may require contract bid solicitation documents to include BABA statements to consultants and contactors

[2023-12cpdn.pdf](#)

Q: What is a BABA “waiver” and how can I determine what waivers are applicable to my project?

A: Waiver Questions/Concerns should be coordinated with the Federal Construction Compliance Specialist, however general waiver information is below.

- **Small Grants**, 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.
- **De Minimis**, 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.
- **Exigent Circumstances**, This waiver applies when there is an urgent need by a grantee 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.

Project specific waivers are:

- **Public Interest Waiver**, This waiver is granted if requiring the use of the American made product would be inconsistent with the public interest..
- **Non-Availability Waiver**, This waiver is granted if the product needed is not produced in the United States in sufficient quantities or of a satisfactory quality.

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- **Unreasonable Cost Waiver**, This waiver is granted if the inclusion of the product produced in the United States will increase the cost of the overall project by more than 25 percent.

[Build America, Buy America | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)

Q: I need to apply for a BABA waiver, what do I do?

A: Download the BABA waiver form from the BABA website and contact the Federal Construction Compliance Specialist to coordinate.

Q: I would like to learn more about BABA, what resources are available?

A: HCD is working on additional training resources, currently HUD Exchange has existing training videos and tools. [Build America, Buy America Act - HUD Exchange](#)

Resources

[BABA-Quick-Guide-CPD-Overview.pdf](#) Quick overview guide

[Optional-Buy-America-Preference-Checklist.pdf](#) Helpful checklist for Subgrantees

[IndustryNet® and SBA - Find U.S. Manufacturers & Suppliers of Machinery, Parts, Supplies, Services](#) website to help source potentially BABA compliant materials

[Thomas: Find and Connect with 500K+ verified U.S. Manufacturers and Suppliers on Thomasnet. Streamline sourcing, minimize supply chain risks, and grow your business with trusted American partners.](#) website to help source potentially BABA compliant materials

[Discover Leading American Manufacturers on IQS](#) website to help source potentially BABA compliant materials

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