

Build America, Buy America (BABA) Act

Enacted November 15, 2021 as part of the Infrastructure Investment and Jobs Act.

Requires certain materials purchased in connection with infrastructure projects funded by Federal financial assistance programs must be produced in the United States.

Purposes are to:

- Stimulate private sector investment in American manufacturing,
- Bolster critical American supply chains, and
- Support the creation of jobs.

Applies to programs such as the HOME Investment Partnerships Program, the National Housing Trust Fund, Community Development Block Grant (CDBG) Program, Emergency Solution Grant, Continuum of Care, etc.

Treasury programs, such as LIHTC, are exempt.

Pre or Post-disaster assistance or emergency response are exempt.

CDBG-CV and HOME-ARP are exempt because we received those allocations from HUD prior to BABA.

Housing is considered infrastructure in the BABA Act.

Applies to construction, alteration, maintenance or repair of:

- Buildings and real property
- Utilities
- Water systems
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation infrastructure

Applies to some materials financed with CDBG funds now.

Will apply to the HOME and HTF allocations from HUD that are received after August 23, 2024.

Therefore, it may apply to some of the HOME and HTF-funded projects awarded last fall and may apply to those awarded this fall.

HUD has not provided specific guidance on documenting compliance and recordkeeping requirements for recipients. Commerce will need to document our process for determining the applicability of the Act and “collect records to demonstrate compliance with BABA requirements.” We will also need to include language regarding the applicability of the Act in contracts, and developers will need to in their agreements with contractors.

There is a process to get a waiver, however, HUD has signaled that regular construction projects will not be granted project- or product-specific waivers.

We would initiate requests for waivers with our field staff in Denver. The requests would then go to HUD in DC and it is ultimately the Office of Management and Budget that grants waivers.

Key Takeaways:

- All infrastructure projects (which includes affordable housing projects) funded through covered programs must comply with BABA.
- Iron and steel, construction materials, and manufactured products used in infrastructure projects (including housing) must be produced in the United States.
- CPD programs are subject to the Buy America Preference based on HUD’s Phased Implementation Schedule.
- HUD has issued general waivers that may apply to certain projects, i.e. project with costs under \$250,000, homebuyer assistance, etc.
- Grantees may request project-/product-specific waivers through HUD and OMB’s waiver process.
- Implementation and Compliance Should be documented, as described in Notice CPD-23-12.

HUD has issued a Request for Information (RFI) soliciting feedback regarding the implementation of BABA. Submit feedback to HUD [online](#) in response to the BABA Request for Information. HUD seeks public feedback to:

- enhance BABA implementation,
- understand market readiness, and
- foster domestic supply chains in housing infrastructure development.

Deadline is **April 15, 2024**.

The RFI says that:

HUD welcomes comments and information from the public on what products are most utilized in HUD-assisted housing projects, and their availability from domestic sources that meet requirements for iron, steel, construction materials or manufactured products as specified in the Act.

HUD specifically requests information from the public on all categories of products included in HUD infrastructure grant programs. The following is an example list but not exhaustive:

- Lighting fixtures
- Electrical equipment and components
- Electrical wiring
- Ceramic plumbing fixtures
- Windows
- Home and garage doors
- Elevators
- Plumbing
- Other products for energy efficiency upgrades and climate resilience: geothermal, solar panels, radiant heat, heat pumps, insulation (roof, ceiling, wall, floor)

The survey has the following five sections on which you may provide input:

1. Domestic Materials Sourcing and Manufacturing
2. Market Readiness
3. Timing
4. Other Practical Considerations
5. BAP Compliance and Impact