

# Housing Trust Fund (HTF) Grant Program Guide

## BABA EXCERPTS ONLY

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### 10. BUILD AMERICA, BUY AMERICA (BABA) REQUIREMENTS

The Build America, Buy America (BABA) Act, 41 USC § 8301 note was enacted in the Infrastructure Investment and Jobs Act on November 15, 2021. The Buy America, Build America (BABA) 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 is to stimulate private sector investments in American manufacturing, bolster critical American supply chains, and support the creation of jobs so that America’s workers and firms can compete and lead globally.

The Grantee, prime contractors, and subcontractors (all tiers) must comply with the BAP and all applicable rules and notices, as may be amended, for any infrastructure project receiving grant funding and/or any other FFA unless a waiver or exemption of BABA applies to the project. Pursuant to the HUD’s guidance, any funds obligated by HUD on or after the applicable listed effective dates, are subject to the BAP, unless excepted by a waiver.

Guidance resources include:

- *HUD BABA website* at: <https://www.hudexchange.info/programs/baba/>
- *Public Interest Phased Implementation Waiver for FY2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance” (88 FR 17001)*, and
- *CPD-25-01 notice, CPD Implementation Guidance for the Build America, Buy America Act’s Buy America Preferences*,

The BAP requirement is in effect and applicable for grant funded projects awarded in or after 8-23-2024 that contain iron and/or steel materials, construction materials specifically listed or not listed and manufactured products . *[Note: Refer to 88 FR 17001 for BABA requirements for additional construction materials.]* All materials purchased for a grant infrastructure project must be produced in the U.S. unless the project or purchase qualifies for a waiver or exemption. Grantees and construction contractors subject to the BABA Act must maintain records that verify compliance with the BAP requirement for iron and steel materials and provide them to DEHCR, HUD, and/or other regulating entities upon request.

#### Applicability

The BABA Act – BAP requirement applies to infrastructure projects that:

- were awarded grant funds from DEHCR in or after August 23, 2024, except those qualifying for exemption or waiver; ***and***
- contain listed or not listed materials; ***and***
- have a total cost of greater than \$250,000 (including federal and non-federal funds)

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- and contain more than five housing units.

## BABA Definitions

Definitions of terms that have relevance to the interpretation and implementation of the BAP for the grant program are defined in the BABA statute and may be found in HUD Notice [CPD-2023-12](#), [2 CFR 184](#), [OMB M-24-02](#), and [CPD-2025-01](#) for guidance. Key term definitions are also provided below.

- **Infrastructure project:** any project that includes any of the following activities, regardless of whether infrastructure is the primary purpose of the project ([2 CFR 184.3](#)):
  - construction,
  - alteration (including demolition, rehabilitation, renovation, redevelopment, etc.),
  - maintenance, or
  - repair.
- **Infrastructure:**
  - buildings and real property (including housing with 5 or more units),
  - utilities,
  - water systems (drinking water and wastewater),
  - electrical transmission facilities and systems,
  - broadband infrastructure, and
  - transportation infrastructure.
- **Component:** an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.
- **Construction materials:** articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of the definition shown below, except as provided in paragraph (2) of the definition shown below:

(1) The listed items are:

  - non-ferrous metals (i.e., metals other than iron and steel)
  - plastic and polymer-based products (including polyvinylchloride (PVC or vinyl), composite building materials, and polymers used in fiber optic cables);
  - glass (including optic glass);
  - fiber optic cable (including drop cable);
  - optical fiber;
  - lumber;

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- engineered wood; and
- drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

- **Iron or steel products:** articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.
- **Manufactured products:** articles, materials, or supplies used for an infrastructure project that:
  - are not iron or steel products; or
  - have been processed into a specific form and shape; or
  - are combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies (i.e., when two or more materials are combined, they should be treated as a manufactured product).

### General Waivers and Exemptions

In accordance with the provisions of the HUD-issued general waivers, BABA ***does not*** apply to projects that:

- are infrastructure projects with a total cost of \$250,000 or less (including all federal and non-federal funds);
- contain 1-4 housing units
- qualify for waiver under the “emergency and safety assistance” clause of BABA, including Capital Projects Fund - Flexible Facilities Program (CPF - FFP), CDBG-DR, CDBG-CV, ESG-CV, CDBG-MIT, (*contingent upon the project not being funded with other federal funds that are subject to BABA*) [NOTE: ARPA funded projects ***are*** subject to BABA unless they qualify under another exemption or waiver.];
- have DEHCR awarded grant funding and/or other federal funding covered under BABA that in total is deemed to be *de minimus*, representing no more than 5% of the total cost of the project; and/or

### Project-Specific Waivers

Waivers are explained in HUD Notice [CPD-2023-12](#), [OMB M-24-02](#), and [CPD-2025-01](#) are required by the Infrastructure, Investments and Jobs Act (IIJA) sections 70901 through 70952 for exceptions not otherwise exempt to the BAP.

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In addition to the general waivers, project-specific waivers may be granted for projects for which the BAP would otherwise apply. There are three (3) categories of project-specific waivers, including the following:

1. **Public Interest:** The BAP would be inconsistent with the public interest.
2. **Nonavailability:** Covered materials are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality.
3. **Unreasonable cost:** Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25%.

A contractor, subrecipient, or grantee seeking a project-specific waiver must demonstrate the criteria for one or more of the project-specific waiver categories are met. Contractors and subrecipients are to consult with and submit waiver requests to the Grantee Attachment 3-K: *HTF BABA Project-Specific Waiver Request Form* (linked on the DEHCR Housing Trust Fund web page must be completed and submitted with the required supporting documentation, following the instructions on the form, for project-specific waiver consideration.

The contractor or subrecipient must submit waiver request documentation to the Grantee, and the Grantee must verify that it is complete and submit it to DEHCR. DEHCR will review the documentation and if it is confirmed to be complete and in compliance, will submit the required waiver request information and additional documentation to the appropriate HUD representative for further review and processing. A waiver must be approved by DEHCR, HUD, and the federal [Made in America Office](#) (MIAO) prior to an entity proceeding with using any construction items subject to the BAP for the grant funded project that are not produced in the U.S. [Note: The waiver request review process includes a public notice requirement and the issuance of a decision by HUD and the MIAO may require six (6) weeks or more.]

If the project is funded with multiple Federal funding sources, to avoid duplicative waiver requests, the Grantee and DEHCR are to coordinate with the “Cognizant Agency” (i.e., the entity contributing the greatest amount of Federal funds to the project) to process the waiver request. The Cognizant Agency is responsible for consulting with the other Federal agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to the MIAO.

### **BABA Contracting Requirements**

For projects subject to the BABA Act and BAP requirement, the Grantee must include Attachment 3-J: *HTF Build America, Buy America (BABA) Requirements (Contract Insertion)*, linked on the Housing Trust Fund web page.

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### 16.0 CONTRACT LANGUAGE AND FORMS

Contracts are to include the language and forms as indicated in the table provided in Attachment 3-I: *Contract Language/Insertions Summary*.

### 17.0 CONTRACT LANGUAGE AND FORMS

Attachments for Chapter 3 of the *HTF Program Guide* are listed below. The forms and templates are available in editable or ‘fillable’ format on the HTF web page.

ATTACHMENT 3-J:	HTF BUILD AMERICA, BUY AMERICA ACT (BABA) REQUIREMENTS (CONTRACT INSERTION)
ATTACHMENT 3-K:	WISCONSIN HTF BABA PROJECT-SPECIFIC WAIVER REQUEST