



Build America, Buy America (BABA)





Topics



The Basics



Where are we now?



Major Features: Notice 2026-05



Waivers



Questions



BABA

The Basics



Background



BABA Basics

- BABA was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act.
- BABA requires HUD to ensure Federal Financial Assistance obligated after May 14, 2022 for infrastructure projects apply a domestic content procurement preference for American:
 - Iron or steel products
 - Manufactured products
 - Construction products

This is called the Buy American Preference (BAP)



Goals of BABA

- Bolster America's domestic manufacturing and supply chain
- Protect national security
- Support high-paying jobs
- Increase community investment
- Create economic prosperity and spur innovation





Why does BABA Apply to Public Housing?

BABA requirements apply to Non-Federal Entities who have received Federal Financial Assistance (FFA). HUD's grant programs are FFA.

What is “Federal Financial Assistance”?

As defined in 2 CFR 200.1:

- Grants;
- Cooperative agreements;
- Non-cash contributions or donations of property (including donated surplus property);
- Direct appropriations;
- Food commodities;
- Loans;
- Loan Guarantees;
- Interest subsidies; and
- Insurance.

Which Non-Federal Entities?

As defined in 2 CFR 200.1:

- State;
- Local government;
- Indian Tribe;
- Institution of Higher Education (IHE); or
- Nonprofit organization that carries out a Federal award as a recipient or subrecipient.

What is an “Infrastructure Project” in the Context of Housing?

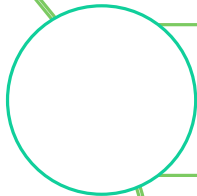
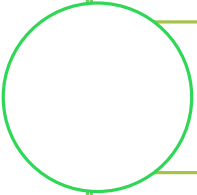

The construction, alteration, maintenance, or repair of buildings and real property using iron or steel products, manufactured products and construction materials.

- Products that are “affixed to” or “incorporated into” infrastructure
- Permanent/long duration

Note: BABA does not apply to projects where all buildings have less than 5 units



What is an “Infrastructure Project” for Public Housing?

-  **A procurement**
-  **A collection of procurements that are inter-related**
-  **Force Account Projects**



Determining if BABA Applies to a Project

Total Cost of a Project Determines:

- If and how the **Small Grants/De-minimis** waiver applies
- **Key factor** in requesting an increased cost type waiver

Award Date and Type of Funding:

- If **BABA** applies for **Iron and Steel** or all provision of the **BAP**
- **Mixed** with other funds **Federal** or not if some funds are subject to **BABA** then the entire “project” is subject to **BABA**





Defining a “Project” when mixing \$

If grant funds subject to BABA get mixed with other Federal grant funds that are not subject to BABA, they become part of the “project” and the whole “project” is subject to BABA.

If grant funds subject to BABA get mixed with other – non grant (e.g. state funds, private sector funds) that are not subject to BABA, they become part of the “project” and the whole “project” is subject to BABA





BABA

Where are we now?



Where are we now?

Choice
Neighborhoods
Implementation
grants obligated
Summer of 2023

- Iron/steel products

All other PH Funds
obligated by HUD on
or after February 22,
2024

- Iron/Steel
- Does not apply to
“maintenance projects”


Awards obligated by
HUD on or after
August 23, 2024 –
BABA fully applicable

- Iron/Steel
- Manufactured Products
- Construction Materials


Phased Implementation Timeline



Governmentwide Guidance



OMB 2 CFR Part 184

The icon consists of a large light blue square frame containing a smaller white square with three horizontal blue lines representing a list. To the right of the square is a vertical blue bar. The entire icon is set against a light blue background that has a subtle L-shaped shadow effect.

OMB Memorandum 24-02

The icon is identical to the one on the left, featuring a light blue square frame, a white square with three horizontal blue lines, and a vertical blue bar to the right, all on a light blue background with a subtle shadow.



BABA

Major Features

Slide 12

- 1 This section was major features of Notice 2025-06 in my version - the section that follows isn't really major features of BABA, but maybe isn't major features of the Notice either - I'm not sure what is the right way to introduce this section.

Dalzell, Robert D, 2026-05-28T22:13:37.196



Major Features: PIH Notice 2025-06

Procurement

- Must state that the procurement is subject to BABA
- Must provide directions regarding required record keeping

Recordkeeping

- Documentation that product purchases comply
- Documentation that product purchases that do not comply are waived or otherwise exempt

Safe Harbors

- A&E strategy
- Option Strategy

Due Diligence

- Graduated approach

Disasters

- Flexibility to not comply with BABA



Assessing whether BABA impacts your Project

Was the money awarded 8/22/24 or later?

Yes

No

Does the project include construction, alteration, maintenance or repair?

Yes

No

Are the products considered integral part of the structure or permanently affixed to the infrastructure project?

Yes

No

Is the total project cost more than \$350,000?

Yes

BABA Does NOT Apply

No

Do any the buildings in the project have more than 4 dwelling units per building?

BABA May Apply



More Questions to Consider



Is the total Project cost more than 20M?



Does the Project include any other funds that may be subject to BABA?



Are the activities in the Project in response to an Emergency or Disaster?



Evaluating BABA Compliance

Covered Activities Include:

- Construction
- Alteration
- Maintenance
- Repair

Products are “Affixed” when:

- Permanent/long duration
 - Not temporary (e.g. not scaffolding)
 - More than just plugging in/connecting
-
- How to determine if a product is compliant?
 - Get a certification
 - Can rely on a “Made in America” label
 - Ask the manufacturer/reseller





Recordkeeping - Basics

PHAs must have an audit trail

Documentation that product purchases comply

Documentation that product purchases that do not comply are waived or otherwise exempt

Consider maintaining a BABA product purchase register

With a list of products purchased, indexed to either:

Compliance document

Document demonstrating product purchase was waived/exempt from BABA



Example: BABA Purchase Product Register

Product Identification/ Description	Date Purchased	Quantity	Price	Location of Documentation Related to BABA Compliance
XYZ Corp. Heat Pump (model 123456)	4/1/2026	30 mini-splits	\$700 per each	HUD waiver ABCD in network folder 2026_Heat_Pump_Main_Street_Homes_B ABA
Insulated Pipes	3/15/2026	30 sets	\$100 per set	BABA certification in network folder: 2026_Heat_Pump_Main_Street_Homes_B ABA
Wiring	Purchase date uncertain	300 feet	Estimated total cost \$150	Document showing falls under 5% De Minimis waiver calculation in network folder: 2026_Heat_Pump_Main_Street_Homes_B ABA
XYZ Thermostat (model 09876)	4/1/2026	30	\$50 per each	Made in America label picture in network folder: 2026_Heat_Pump_Main_Street_Homes_B ABA



Safe Harbor Procurement Strategies

A & E Strategy

- A&E researches what products are available for a procurement prior to advertising the procurement
- If a waiver is needed – it can be requested/finalized prior to advertising the procurement
- Procurement specifies up front what products the contractor is required to purchase because they are BABA compliant, and what products are waived from BABA

Advantage: contractors know up front what they are getting into

Option Strategy

- PHA advertises procurement soliciting two options:
 - BABA compliant option (or degree of BABA compliance option)
 - Non-BABA compliant option
- Contractors that produce BABA compliant (or more BABA compliant) proposals win out over contractors that do not produce BABA compliant proposals (or less BABA compliant proposal)
- If no contractors submit a BABA compliant bid PHA can submit a waiver request
Procurement can proceed once the waiver issue is finalized

Advantage: contractors compete somewhat on their ability to find BABA compliant products





Minimum Due Diligence Search



Graduated approach: The bigger the procurement, the more due diligence needs to be done before seeking a waiver



If unable to find BABA compliant products after complying with the search requirements: PHA submits a waiver

OMB has asked agencies to establish consistent approaches to waivers

Our approach was spelled out in our Notice



Pre/Post Disaster Purchases

The Notice is intended to give PHAs dealing with approaching disaster/disaster response flexibility to not comply with BABA

- Funding does not have to be specifically awarded for pre/post disaster (e.g. PHA can use formula Cap Funds to buy plywood to put on windows as hurricane approaches)
- Cap Fund disaster grants fall under this exception (will be communicated when awarding the funding)
- If reasonably believes – can proceed without complying with BABA for a reasonable amount of time until it can get confirmation from Field Office director or higher
- One month grace period to get confirmation after a disaster





BABA

Waivers



BABA Waiver Types and Criteria

Non-Availability

Cannot meet product specifications:

- Not available in reasonable amount of time
- Not available in the quantity

Increased Cost

Increase the cost of the “project” by more than 25 percent.

Public Interest Waiver Types

De Minimis/Small Grants

Exigent Circumstances





HUD-Wide General Waivers

De Minimis Waiver

- Grants equal to or under \$350,000 (i.e. CFR 200.1 Simplified acquisition threshold)
Note: around half of all Cap Fund grants are below \$350,000
- Projects equal to or under \$350,000 (i.e. CFR 200.1 Simplified acquisition threshold)
- 5% exempt – up to the 5% adding up to \$1 million (i.e. \$20 million)

Exigent Circumstances Waiver

- Covers Cap Fund Emergency/Disaster grants and other Capital Fund set-aside grants





Types of Product Waivers



Non-Availability

Reasonable time
Adequate quantity
Adequate quality



Increased cost – increases the cost of *the “project”* by 25% or more (not just the cost of the product purchases)





Where to Submit a Product Waiver

HUD Waiver System



Submitter Information 4% Complete

1. Submitter Contact Information

Legal Name (Grantee Name) Unique Entity Identifier(UEI)

CASA OF THE SEVENTH JUDICIAL DISTRICT, INC. YLSQW7R1NV39

Address 1

147 N TOWNSEND AVE

Address 2

City County / Parish State / Province

MONTROSE CO

Territory / Province Country Zip / Postal Code

81401

Zip Last 4

3759

2. Submitter Email

* Email

3. Submitter Phone Number

* Phone (accepted format: XXXXXXXXXXX, no dashes)

XXXXXXXXXXXX

[Next](#)



Product Waiver Considerations

- One Waiver per NAICS Code:
 - Can bundle multiple products in one waiver, but they all need to have the same NAICS code
 - Documentation is essential:
 - Must – Must – Must document what the PHA/Contractor did to search for a BABA compliant product – it will be a hard sell if the search did process did not comply with the minimum due diligence search requirements of PIH Notice 2025-06
- Waivers are reviewed by HUD *and then* OMB’s “Made in America” Office
 - Both before and after publication
- Once approved by OMB they are then published for comment for 15 business days (extensions require 30)
- Final Approved Waivers are published on HUD’s website





Please contact PHBABA@hud.gov for any additional questions

Thank you!





What Unit Configurations are Subject to BABA?

Four contiguous units or less and/or four units or less under one roof – not an Infrastructure Project that is subject to BABA, even if there are multiple rows of this configuration.



Five contiguous units or more and/or five or more units under one roof – is an Infrastructure Project that is subject to BABA, even if there is only one row of this configuration.

