

## BABA Information Session Questions & Answers

July 29, 2025

### Questions & Comments

- Can we have contact information for where we should send questions concerning BABA?
  - For IHDA: [MFDesignConstruct@ihda.org](mailto:MFDesignConstruct@ihda.org)
  - For HUD: [CPDBABA@hud.gov](mailto:CPDBABA@hud.gov)
- Are there items that IHDA is already aware of that will be challenging for developers or GCs? Speaker has found that appliances will be difficult to source in the US, or whether they're considered FF&E. Elevators are very challenging, and will be limited to using world-sourcing companies. Windows and façade will be difficult, and door hardware.
  - *IHDA has found similar issues with the noted items. Additionally, HVAC systems and a lot of electronics/electrical equipment.*
- Will BABA's material requirements be stricter than BAA or less? Can we assume that BAA compliance will translate to BABA compliance?
  - *The Build America, Buy America Act (BABA) and the Buy American Act (BAA) are two separate statutes that should not be confused with one another. BABA applies to recipients of Federal financial assistance. Recipients should follow the BABA regulations at 2 CFR 184 and refer to the HUD-CPD notice for specific considerations for CPD grantees: <https://www.ihda.org/wp-content/uploads/2025/03/cpd-25-01.pdf>*
- Do raw materials need to meet BABA requirements?
  - *Depending on the Covered Materials category the raw materials fall under, there are different thresholds of compliance with BABA.*
    - *Produced in the United States is defined in 2 CFR 184.3 and means:*
      - *i. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.*
      - *ii. In the case of manufactured products: 1. The product was manufactured in the United States; and 2. The cost of 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, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See 2 CFR 184.2(a). The costs of components of a manufactured product are determined according to 2 CFR 184.5.*

- *iii. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.*
- Will IHDA be sharing a list of the 11 projects that must be BABA compliant?
  - *Specific project stakeholders are notified immediately upon award that their project will have to be BABA compliant.*
- What are the specific exceptions to BABA?
  - *HUD has issued several general applicability waivers. See HUD-CPD Notice for more details: <https://www.ihda.org/wp-content/uploads/2025/03/cpd-25-01.pdf>. Approved general waivers are posted to HUD’s website at <https://www.hud.gov/hud-partners/baba>.*
- HOME funds are gap funding and can represent 5% of a project, but the requirements apply to 100% of the project. Speaker is likely turning down HOME funds for their next project in Michigan because the cost analysis showed a doubling in terms of cost premiums - \$8m HOME award adds \$17m to total costs. Can that be considered as part of the waiver process? If the award is a small part of the overall process?
  - *Any time funding subject to BABA is added to a project, the entire project becomes subject to BABA. Currently, the only cost-related project-specific waiver type is an “unreasonable cost waiver,” which can be requested when BABA compliance increases the cost of a project by 25% or more. Public interest waivers for cost increases below that threshold are unlikely to be approved by the Made in America Office but will be assessed on a case-by-case basis.*
- Twinning project with no HOME or CPD program funds from IHDA, but are receiving TIF and HOME from City of Chicago – is there communication between the agencies concerning how that compliance is going to be monitored and demonstrated? Will DOH’s monitoring be a separate program? Or will that be managed through IHDA? Will projects have to demonstrate compliance to IHDA if there are no HOME or HUD funds through IHDA?
  - *No. The agency providing HOME funds will be required to monitor for BABA compliance.*
- Materials that require 100% are specifically steel and iron, but all other categories must be 55% manufactured in the US?
  - *The various intricacies to meet the requirements are further explained in the CPD Notice: <https://www.ihda.org/wp-content/uploads/2025/03/cpd-25-01.pdf>. Additionally, definitions for the various “construction materials” are provided in 2 CFR 184.6. The specific requirement regarding 55% is regarding the cost of*

*components of the manufactured product that are mined, produced, or manufactured in the United States, which must be greater than 55 percent of the total cost of all components of the manufactured product.*

- If a material is donated, does that material need to be BABA compliant?
  - *HUD is investigating this question, and an answer will be provided at a later date.*
- Are only fixed parts of the building needing to be compliant? Or are appliances and furniture also included?
  - *According to OMB [M-24-02](#), "A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, 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. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project."*
  - *As described in the above examples, furniture is not subject to BABA. Further investigation into BABA applicability to appliances is being carried out.*
- If something is certified as "made in America," does that meet BABA requirements?
  - *Not necessarily. To be compliant with BABA, a product must meet the "produced in the United States" definitions at 2 CFR 184.3.*
- Clarification on the chart of dates on pg. 27, HOME funds from 2020 that aren't committed yet - How are pre-2024 funds classified?
  - *The table reflects the applicability of BABA based on the obligation date of funds by HUD to a grantee (IHDA) and has no bearing on when the funds are committed to a specific project from IHDA. Since IHDA's 2024 HOME and NHTF grant agreements with HUD were executed after 8/23/24, those funds are subject to BABA. Prior grant agreements are not subject to BABA.*
- In a twinning deal, you have two separate funding stacks – if HOME funds are in the 9% stack, would BABA apply to the parts of the deal funded by 4% credits?
  - *Grantees cannot split an infrastructure project to avoid application of BABA to the project, such as by dividing procurements, subgrants, cooperative agreements, etc., into separate and smaller awards or contracts, particularly where the procurements, subgrants, cooperative agreements, etc., are integrally and proximately related to the whole.*

- Are there product-specific waivers that have already been approved?
  - HUD will post project-specific waivers for public comment on its website at <https://www.hud.gov/hud-partners/baba>.
  - No project-specific waivers have been approved by HUD at this time, though several are under review. Please reference the Made In America Office's website to see which project/product-specific waivers have been approved through other federal agencies: <https://www.madeinamerica.gov/waivers/>
- If one project receives a waiver, do other projects still have to meet the compliance covered by that waiver?
  - Yes. *Project/product-specific waivers are exactly that: project specific. Individual projects must submit their own waivers for review/approval unless the covered materials fall under an approved General Waiver.*
- Are compliance requirements calculated by hard costs alone or soft costs as well?
  - Only covered materials used in infrastructure projects are subject to BABA requirements. However, the inclusion of Federal financial assistance in a project will trigger BABA compliance for the entire project regardless of whether Federal funds are used to support hard costs or soft costs. See the HUD-CPD notice for further definition of covered materials: <https://www.ihda.org/wp-content/uploads/2025/03/cpd-25-01.pdf>
- Are projects able to submit partial waivers?
  - Grantees may submit waivers for a partial waiver of BABA requirements. For example, a grantee may submit a waiver to allow the use of a manufactured product that is assembled in the United States but that does not meet the 55% component value test at 2 CFR 184.3.
- Waiver review process – What information is disclosed for public scrutiny/public comment? Will GC, Architect, etc. be listed?
  - GCs and Architects are not listed in the waivers for public comment. Generally, only the grantee, project name/location and proposed products to be waived are disclosed. Please reference the Made In America Office's website to review previously approved/submitted waivers: <https://www.madeinamerica.gov/waivers/>
- If one waiver is rejected, are all waivers rejected or are they examined on a case-by-case basis?
  - All individual waivers are reviewed on a case-by-case basis. Grantees may submit multiple waivers for a single project. For example, one waiver for HVAC components and one for plumbing materials. Waivers should be separated into products with unique NAICS and PSC codes.

### Pre-Session Questions:

- What are the specific instructions for completing a BABA waiver request for a product such as an elevator?
  - *Refer to pages 6-8 of the IHDA Compliance Guide for BABA. Link to document: [https://www.ihda.org/wp-content/uploads/2025/07/BABA\\_IHDA-Compliance-Guide\\_website.pdf](https://www.ihda.org/wp-content/uploads/2025/07/BABA_IHDA-Compliance-Guide_website.pdf)*
- Will IHDA be modifying its construction rider to include BABA language in the Owner/Contractor Agreements?
  - Yes
- For construction materials, I believe BABA notes that all manufacturing processes must occur in the U.S. Does that mean that the material needs to be sourced in the U.S. too? So, for example, can the raw material for glass or drywall be sourced outside of the US but only combined into the product in the US? Drywall.
  - *To be considered produced in the United States, all manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, must occur in the United States. Refer to 2CFR 184.6.*
- If something is BAA compliant, is it also BABA compliant? If not, what is the difference between the two? Many products and materials already note that they are BAA compliant, but BABA compliance requirements are so new that even sales representatives do not know.
  - *The Buy American Act (BAA) and the Build America, Buy America Act (BABA) are both domestic preference laws, but they apply to different situations. BAA primarily governs direct purchases by the U.S. federal government for its own use, requiring products to be manufactured in the U.S. with a certain percentage of domestic components. BABA, on the other hand, extends these requirements to infrastructure projects funded by federal financial assistance, such as grants and loans, even if those projects are not directly managed by a federal agency.*
- There are products that are not made in America at all - such as VRF mechanical systems. For manufactured products like VRF's, is this something that is likely to get a waiver? changing a mechanical system very late in design is problematic and may not be in the best interest for the building.
  - *To date, HUD has not approved a project specific waiver request, leaving us with no precedent. However, other federal agencies such as DOE and FAA have approved a waiver for the unavailability of VRF mechanical systems*

*manufactured in the United States. IHDA has recently submitted a waiver for a VRF mechanical system on an IHDA funded project.*

- Do products or materials that are BAA, Made In America, or some other self-certification, have a better chance of getting a waiver than a product or material that has none of those certifications? Is this even a consideration on HUD's part?
  - *Project specific waivers are typically submitted because a product on a project cannot be procured that is produced in the United States.*
- What happens if during construction, a product is unavailable and would need to get a waiver? Is there an expedited process with HUD? A 3 month to 6 month process could incur extreme delays in the project, could incur severe cost increases, and could actually freeze a project until resolved.
  - *There is no expedited process for project waiver requests. IHDA will be actively monitoring all project waiver requests submitted to HUD. IHDA's intent is to allow construction to proceed as we wait for approval of the waiver request.*
- Are projects that receive a section 8 project based rental assistance contract with HUD required to comply with BABA?
  - *The "Buy America Preference (BAP)", imposed by BABA, applies to most Community Planning and Development (CPD) programs, as identified in Notice CPD-2023-12. Link to document:*  
<https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-12cpdn.pdf#page=8>
- Does the term "America" include all of North America or just the U.S.?
  - *BABA refers to the United States only.*
- Is there any updated insight on BABA waiver review times? Specifically non-availability waivers?
  - *To date, HUD has not approved a project specific waiver request, leaving us with no precedent. Anecdotally, we have heard that project specific waivers can take 6 months to be reviewed and approved.*
- It seems that major elevator manufacturers don't meet BABA. How does this get addressed on BABA projects?
  - *Through a project specific waiver request.*

- What are the penalties for BABA noncompliance? Current HUD guidance is not clear on this point.
  - *Penalties, including financial, contract termination, suspension and debarment, and criminal liability, may be invoked if the grantee knowingly submits false documentation showing BABA compliance.*
- What plumbing fixtures are going to be baba?
  - *All*
- When a material (such as electrical supplies) aren't available from a US source are there any options for waivers?
  - *Yes, depending on the value of the electrical supplies, they could be considered under the general waiver type of "De Minimis" which allows 5%, up to a maximum of \$1M, of the total cost of Covered Materials to avoid compliance with BABA. General waivers do not need to be submitted to HUD for review. Alternatively, a project specific waiver can be submitted.*