

Build America, Buy America

The Build America, Buy America Act is a requirement for HOME and NHTF funds and requires all iron and steel products, manufactured products, and construction materials used for federally funded “infrastructure projects”, inclusive of buildings and real property, that are constructed, altered, maintained, or repaired are produced in the United States. This requirement, known as the "Buy America Preference" (BAP), is detailed in the [Infrastructure Investment and Jobs Act, Pub. L. 117-58 and 2 CFR 184](#).

- **Iron and steel:** All manufacturing processes, from melting to coating, must occur in the United States and must consist of wholly or predominantly of iron or steel or a combination of both meaning the cost of iron and steel content in a product exceeds 50% of the total cost of all its components. Nails, steel beams, rebar and tension cables are examples of the products defined as iron and steel.
- **Manufactured products:** The final product must be made in the United States, and more than 55% of the components must be manufactured in the United States such as windows, kitchen appliances, insulation and HVAC units.
- **Construction materials:** All manufacturing processes must occur in the United States. Pursuant to the definition in 2 CFR 184.3, construction materials are articles, materials, or supplies that consist of only one of the following items (minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of a material as a construction material):
 - Non-ferrous metals;
 - Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - Glass (including optic glass);
 - Fiber optic cable (including drop cable);
 - Lumber;
 - Engineered wood; or
 - Drywall

HUD has issued several waivers listed below and can be found on [HUD.gov](#). FHFC can review and approve the waivers for De Minimis, Small Grants and Exigent Circumstances. If a grantee requires a project-specific waiver after analyzing the available HUD general waivers, the grantee representative should complete a waiver request form provided by FHFC.

FHFC Waivers – Developer submits waiver to FHFC for review and approval. These waivers are effective through November 23, 2027.

- De Minimis (Partial Exemption): waives BABA for a *de minimis* portion of an infrastructure project, meaning a cumulative total of no more than 5% (up to a maximum of \$1,000,000) of the total cost of the Covered Materials used in and incorporated into the project.
- Small Grants (Full Exemption): waives BABA for all infrastructure projects receiving less than \$250k.
- Exigent Circumstances (Full Exemption): waives BABA when there is an urgent need by a grantee to immediately complete an infrastructure project because of a threat to life, safety, or property of residents and the community.

Project-Specific Waivers – Developer submits waiver to FHFC and after review and approval it is sent to HUD. Upon HUD approval the waiver is sent to the Office of Management and Budget's Made in America Office (MIAO) for final approval. The waiver process can take up to eight weeks. The country of origin for the products being used in the project is required along with detailed market research information, including dates, time of call, contact person and a summary of the information. One spreadsheet can be used for all the products across the three waivers.

- Public interest: Requiring the use of the American made product would be inconsistent with the public interest.
- Nonavailability: The product is not produced in the United States in sufficient quantities or of a satisfactory quality.
- Unreasonable Cost: The inclusion of the product produced in the United States will increase the cost of the overall project by more than 25%.

BABA Resources

- **HUD**
<https://www.hudexchange.info/programs/baba>
- **NIST**
<https://www.nist.gov/mep/supply-chain/supplier-scouting>
- **FloridaMakes**
<https://www.floridamakes.com>