

## **The U.S. Department of Education Adjustment Period Waiver**

**Title:** Build America, Buy America Act Implementation: Agency Adjustment Period Waiver

**Summary:** In accordance with this general applicability agency adjustment period waiver, the U.S. Department of Education (the Department) will implement the requirements of the Build America, Buy America Act (BABAA) effective October 1, 2022. BABAA establishes that Federal financial assistance may only be used for infrastructure projects and activities when the iron, steel, manufactured products, and construction materials to be used are produced in the United States. By October 1, 2022, the Department will have established policies, systems, resources, and trainings necessary to fully implement the BABAA requirements for our applicants and grantees in our BABAA-applicable grant programs. The waiver serves as a tool that provides the limited time necessary for the Department to implement these new requirements that will promote investment in America's domestic manufacturing base, strengthen critical supply chains, and position American workers and businesses to compete and lead globally.

**Effective Date:** This agency adjustment period waiver is effective for grant awards made on or after May 14, 2022 until October 1, 2022.

**Public Comments:** On June 9, 2022, the Department published its proposed general applicability agency adjustment period waiver for a 15-day public comment period on its Build America Buy America Waivers website. The public comment period closed at 5:00 p.m. on June 23, 2022. Among the comments submitted, four commenters explicitly support the Department's adjustment period waiver, one commenter opposes the waiver, and one suggested that the Department might remove the waiver. The Department did not make substantive changes to the proposed waiver in response to the comments received.

**For Further Information Contact:** Pedro Romero, U.S. Department of Education (Department), 400 Maryland Avenue SW, Room LBJ 5A220, Washington, D.C. 20202. Phone: (202) 453-7886. Email: [Pedro.Romero@ed.gov](mailto:Pedro.Romero@ed.gov).

**Background:** The Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58), signed into law by President Biden, makes a historic investment in American infrastructure and strengthens Made in America standards by, among other things, expanding the application of Buy America requirements to Federal financial assistance programs. This bipartisan law presents an opportunity to repair America's crumbling infrastructure by creating domestic manufacturing jobs, strengthening supply chains, and lowering infrastructure-related costs. In accordance with the IIJA, the Office of Management and Budget's (OMB) Made in America Office has issued guidance to assist in implementing and applying the law's requirements. The implementing guidance notes that a "waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by the Act." The guidance also identifies instances in which Federal agencies may consider issuing a public interest waiver and encourages agencies to consider an adjustment period where time-limited waivers would allow recipients and agencies to transition to new Buy America requirements and processes.

A component of the IIJA requires Federal agencies to identify their existing financial assistance programs that are infrastructure programs. On March 17, 2022, the Department published its list in the *Federal Register* ([87 FR 15210](#)) that identified 38 Department-administered grant programs as infrastructure programs subject to the BABAA domestic sourcing requirements. Additionally, beginning 180 days after the passage of the IIJA, or May 14, 2022, BABAA requires that all recipients under these identified programs ensure, generally, that all the iron, steel, manufactured products, and construction materials funded by these programs are made in the United States.

**Progress in Implementing BABAA Requirements:** The Department has worked diligently towards the implementation of BABAA requirements by also establishing a Department Infrastructure workgroup; developing draft policy, procedures, and guidance addressing implementation and compliance; developing draft applicant and grantee waiver submission, review, and approval processes; and developing draft staff training and educational materials.

**Agency Adjustment Period Waiver:** The Department establishes a limited public interest general applicability agency adjustment period waiver under IIJA section 70914(b)(1) that allows the Department to implement the BABAA domestic sourcing requirements for all its identified programs beginning October 1, 2022. In doing so, the Department balances its interest in ensuring the timely implementation of the BABAA requirements with its interest in ensuring the Department and its applicants and grantees are adequately prepared for a faithful and effective implementation, and that implementation does not unduly disrupt the Fiscal Year (FY) 2022 awards already underway.

The adjustment period will provide the Department with sufficient time to build its capacity to evaluate the markets for American-made iron, steel, and manufactured and construction products; develop comprehensive training and education courses for its program staff and, in turn, its grantee communities; develop a meaningful and streamlined project and grantee-specific waiver process; and provide sufficient notice of these new requirements to its grant program applicants. We believe striking this balance is consistent with [Executive Order 14005](#), which seeks to maximize the use of goods, products, and materials produced, and services offered, in the United States, while giving the Department additional time to implement the BABAA requirements.

The Department and its programs have not historically focused on infrastructure development and construction as they are not commonly authorized activities under its grant programs. The 38 identified programs total over \$148 billion in FY 2022 and COVID relief appropriations and have approximately 1,889 grantees, which include State educational and other agencies, public school districts, public and private nonprofit colleges, federally recognized Indian Tribes, nonprofit community organizations, and many other types of organizations throughout the United States.

While these programs allow grantees to propose projects to develop infrastructure, most of what the Department has funded and currently funds in our approximately 260 grant programs are not infrastructure, but supports and services to States, school districts, colleges, nonprofit organizations, students, and other beneficiaries. The types of infrastructure projects or activities that the Department may fund under any of its 38 infrastructure programs are generally limited to construction and broadband infrastructure. For example, the Department's Impact Aid Discretionary Construction Program provides limited discretionary grants for health and

safety, school facilities renovations and modernization; the State Vocational Rehabilitation Services Grants program allows for construction activities when necessary to further the program's purpose of providing comprehensive programs of vocational rehabilitation; and the Historically Black Colleges and University program allows for construction activities when needed to further the program's purpose of carrying out activities to improve and expand such institutions' capacity to serve low-income and minority students.

To effectively implement the BABAA requirements, we believe we must develop comprehensive training and education courses on these domestic sourcing requirements for our program staff and, in turn, our grantee communities, develop a meaningful and streamlined project and grantee-specific waiver process, build our agency's capacity to evaluate the markets for American-made iron, steel, and manufactured and construction products, while also providing sufficient notice of these new requirements to our grant program applicants. By the end of the proposed waiver period, the Department expects that its training and education courses will result in grantees complying with the domestic sourcing requirements consistent with BABAA.

The Department believes this initial waiver will limit the need for future public interest general applicability waivers because the Department and grantees will better understand the BABAA domestic sourcing requirements for their infrastructure projects. To the extent grantees may seek future grant or project-specific waivers beyond the Department's implementation date of October 1, 2022, the Department expects grantees to understand how to identify domestic suppliers and conduct research. In the limited cases that waivers are needed, grantees are also expected to understand how to submit a waiver with rigorous justification addressing the lack of domestic availability or large project cost increase.

Additionally, the Department is presently mid-stream in our FY 2022 grant competition process for six of these programs (Historically Black Colleges and Universities Program (FUTURE Act), Alaska Native Education, State Vocational Rehabilitation Services (VR), Education of Native Hawaiians, Howard University (Academic), Howard University (Hospital)) and is currently preparing to make additional funding available under many other of the identified grant programs this summer.

Therefore, to allow for an effective implementation of the BABAA requirements and avoid a mid-fiscal year disruption to our grantee communities and stakeholders, the Department establishes, pursuant to our authority under IJA section 70914(b)(1), a narrow timebound general applicability agency adjustment period waiver of the BABAA sourcing requirements (iron, steel, manufactured products, and construction materials) until October 1, 2022, the beginning of the 2023 Fiscal Year.

Under [OMB Memorandum M-22-11](#), "Memorandum for Heads of Executive Departments and Agencies," published on April 18, 2022, agencies are expected to assess "whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products" before granting a public interest waiver. The Department's analysis has concluded that this assessment is not applicable to this waiver, as this waiver is not based in the cost of foreign-sourced products.

The Department welcomes the opportunity to engage with stakeholders to identify compliant products and manufacturers and regarding concerns about implementing BABAA requirements for infrastructure projects and activities (e.g., construction and broadband infrastructure). Stakeholders may contact the individual listed in the **For Further Information Contact** section of this waiver.

**Authority:** Infrastructure Investment and Jobs Act, section 70914.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) upon request to the contact person listed under **For Further Information Contact**.



---

Roberto J. Rodriguez,  
Assistant Secretary for Planning, Evaluation and  
Policy Development.