



U.S. Department of Education Frequently Asked Questions about the Build America Buy America Act¹

Last Updated October 13, 2022

The following addresses questions relating to the U.S. Department of Education's (the Department's) implementation of the [Build America, Buy America Act](#) (BABAA) (Pub. L. No. 117-58). The Department will update questions and answers as needed.

Q 1. What are the BABAA requirements?

A: Broadly, BABAA requires that Federal infrastructure programs must use materials produced in the United States.

Q 2. What is the purpose of BABAA?

A: BABAA was enacted as part of the overall Infrastructure Investment and Jobs Act in November 2021. The purpose of the BABAA is to create demand for domestically produced goods, helping to sustain and grow domestic manufacturing and the millions of jobs it supports throughout product supply chains.

Q 3. Which Department grant programs are subject to the BABAA sourcing requirements?

A: See the Department's [List of Infrastructure Programs Subject to BABAA](#) for a covered list of programs allowing for infrastructure projects that are subject to the BABAA domestic sourcing requirements. The Department will update this list as additional programs are identified in the future.

Q 4. Are all grant activities under the covered Department infrastructure programs subject to these requirements?

A: No. Only the following specific goods when acquired under an infrastructure program and being used for construction or broadband infrastructure are covered:

- Iron and steel used in an infrastructure project in the United States.
- All manufactured products used in an infrastructure project in the United States.
- All construction materials used in an infrastructure project that are manufactured in the United States.

¹ Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Goods that do not fit the definition of manufactured products or construction materials are not subject to the BABAA domestic sourcing requirements.

For example, if a grantee contracts with a cleaning crew to clear a site for better drainage on a construction site, the cleaning crew's activities would not be covered by the BABAA requirements because: (1) the work is not using any of the required materials, and (2) the cleaning crew is providing a service.

Q 5. Are cost sharing and matching contributions for infrastructure projects and activities subject to the BABAA domestic sourcing requirements?

Yes. Cost sharing and matching contributions ([2 CFR 200.306 -- Cost sharing or matching](#)) for infrastructure projects or activities are subject to the BABAA domestic sourcing requirements in accordance with [2 CFR 200.403 -- Factors affecting allowability of costs](#). Except where otherwise authorized by statute, cost sharing and matching contributions, including [voluntary committed cost sharing](#), for infrastructure projects and activities must conform to the BABAA limitations or exclusions set forth in your domestic sourcing BABAA requirement grant condition included in your Grant Award Notification (GAN). As with all grant project costs, BABAA requirements must be applied uniformly to both the Federal share and non-Federal share of the grant.

Q 6. If I have an existing award under covered Department infrastructure programs, what funding actions will trigger application of the BABAA requirements?

A: Any non-competing continuation (NCC) awards or supplemental awards made on or after October 1, 2022, to an existing grant funded under any of the covered Department programs (see [Q3](#)) will trigger the application of the BABAA domestic sourcing requirements. This will result in a condition being added to the grant which applies the BABAA domestic sourcing requirements to the grant funds awarded by the NCC or supplemental award.

Grantees receiving an NCC or supplemental award to which BABAA applies may request waivers to the Buy America sourcing requirements by submitting a [BABAA Waiver Request Form](#). If you have questions about this, please contact your Education Program contact listed in box 3 of your grant award notification.

Q 7. When do the BABAA requirements start for infrastructure programs?

A: BABAA requirements apply to all new, NCC, and supplemental grant awards made on or after October 1, 2022. If funds for your grant have been awarded (obligated) prior to October 1, 2022, those grant funds are not subject to the BABAA domestic sourcing requirements.

However, as described under [Q5](#), if you currently have an active Department grant that will receive a NCC or supplemental award on or after October 1, 2022, and it involves the purchase of goods, products and materials for construction or broadband infrastructure, then the BABAA requirements will apply to all future purchases under the NCC and supplemental awards.

Q 8. Do the BABAA requirements apply to equipment used for the purposes of construction?

A: No. The requirements do not apply to tools, equipment and supplies (see the equipment and supplies definitions in [2 CFR § 200.1](#)) brought to a construction site and removed at or before the completion of the project, as they are temporary in nature. The requirements also do not apply to portable equipment and furnishings used at or within the finished infrastructure project, but which are not an integral part of the structure or otherwise affixed to the project, such as movable chairs, desks, and portable computer equipment.

For example, a crane used to lift items, or the hammers and scaffolding used on a construction site would not be covered by the BABAA requirements because they are not incorporated into the building or public work.

Q 9. What materials constitute “construction materials”?

A: Construction materials are articles, materials, or supplies that, for example, consist of any of the following:

- Non-ferrous metals, such as aluminum, copper, and lead used in a project.
- Plastic and polymer-based products, including polyvinylchloride, composite building materials, and polymers used in fiber optic cables.
- Prefabricated windows brought to a site for incorporation into a building
- Glass, including optic glass.
- Lumber.
- Drywall.

Construction materials do not include any item that is a “manufactured product”; is primarily iron or steel; or includes cement and cementitious materials, aggregates such as stone, sand or gravel, or aggregate binding agents or additives.

Q 10. What is a “manufactured product”?

A: Manufactured products are items that, for example, consist of two or more of materials listed in [Q8](#) that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.

All manufactured products used in an infrastructure project must be manufactured in the United States. The cost of a product’s components that were mined, produced, or manufactured in the United States must also be greater than 55% of the total cost of the product’s components, unless another standard for determining the minimum amount of domestic content of the manufactured

product has been established under applicable law or regulation.

For example, the concrete on a construction site would be considered a manufactured product covered by the BABAA requirements because it is incorporated into the building or public work. Similarly, a “smart” thermostat that is brought to the site for incorporation into a building would be covered by the BABAA requirements.

By contrast, an energy-efficient desktop computer monitor does not become a permanent fixture of the building, and therefore is not “incorporated into” the building. As a result, the monitor is not a “manufactured product” covered by the BABAA domestic sourcing requirements.

Q 11. How do Buy America Sourcing requirements apply to software packages or broadband infrastructure for facilities?

A: Software is not considered a manufactured product. However, components of a broadband infrastructure backbone, such as hardware, fiberoptics and cabling, would fall under the BABAA requirements.

Q 12. Are there exceptions to the BABAA requirements for which a waiver can be granted by the Department?

A: Yes. Generally, there are three categories of exceptions under which a grantee or applicant may submit a waiver request to the Department:

- Public interest: Applying the domestic content procurement preference would be inconsistent with the public interest.
- Nonavailability: The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.
- Unreasonable cost: The inclusion of iron, steel, manufactured products, or construction materials produced in the United States would increase the cost of the overall project by more than 25%.

All waivers must be submitted to the Department through the grantee, regardless if the entity seeking the waiver is a subrecipient (subgrantee). Pass-through entities, such as State Educational Agencies, may not approve waivers of the BABAA domestic sourcing requirements.

For more information regarding the BABAA domestic sourcing waiver requirements and waiver request process, please see the [U.S. Department of Education Domestic Sourcing Requirements and Grant Waiver Request Procedure](#) guidance document.

Q 13. I need to procure a manufactured good for a Department-funded project, but I cannot find a domestic manufacturer. What should I do?

A: You may apply for a waiver based on domestic nonavailability. Follow the instructions on the Department's [Build America Buy America Waivers](#) website. You may also refer questions to the individual listed as your "Education Program Contact" in box 3 of your grant award notification.

Q 14. I need to procure a manufactured good for a Department-funded project, but the cost is above what was originally budgeted. What should I do?

A: You may apply for a waiver if the cost increase for the **overall project** is greater than 25%. This increase is not the same as the cost of the manufactured good increasing over 25%, as this cost increase may be a very small part of the total project cost. You should consult with your "Education Program Contact" on the appropriate mechanism for addressing any cost increases. Beginning October 1, 2022, recipients of new grants should begin estimating future budgets with BABAA requirements in mind.

Q 15. What is the process for applying for and obtaining a waiver based on domestic nonavailability or unreasonable cost?

A: Please refer to the [U.S. Department of Education Domestic Sourcing Requirements and Grant Waiver Request Procedure](#) guidance document available on the Department's [Build America Buy America Waivers](#) website for step-by-step instructions on how to apply for and obtain a waiver.

Q 16. Where will the Department post approved waivers?

A: All approved waivers are posted on the Department's [Build America Buy America Waivers](#) website.

Q 17. I am not sure if a product was made in America. What should I do to verify the manufacturing origins?

A: You should contact the product's manufacturer, distributors, and suppliers to determine the country of origin. Trade associations may also be a good source of information.

For further assistance, refer to the Office of Management and Budget's [M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#).

Q 18. A foreign company opens a manufacturing plant in the United States. The components and subcomponents of the manufactured good come from all over the world. Would these be BABAA compliant?

A: Possibly. For a manufactured product to be compliant, it must be manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product.

Q 19. A company imports a manufactured product from abroad, repackages it at their facility in the United States, and sells it under a United States brand name. Is this product compliant with the BABAA requirements?

A: No. The iron, steel or manufactured products must be produced or manufactured in the United States. A simple repackaging or a basic assembly of an imported manufactured product does not comply with the requirement that more than 55% of the total cost of the product's components apply to components that were mined, produced, or manufactured in the United States.

Q 20. If domestically available manufactured products are substantially less energy efficient than foreign products (such as glass), may a grantee obtain a nonavailability waiver based on the substandard quality of the product made in the United States?

A: A waiver request may be submitted for a manufactured product that is not available in sufficient and reasonably available commercial quantities of a **satisfactory quality**. If the decreased energy efficiency meant that the product was not of satisfactory quality, a nonavailability waiver request may be approved by the Department.

Q 21. Who is responsible for determining whether a product is subject to the BABAA requirements?

A: The grantee. For assistance in making these determinations, refer to the Office of Management and Budget's [M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#).

Note that the Department will monitor grantees to ensure compliance with requirements including, in accordance with [2 CFR § 200.334](#), compliance with maintaining financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to their infrastructure project for a period of three years from the date of submission of the final expenditure report.

Q 22. How do recipients ensure that their subrecipients, contractors, and vendors comply with the BABAA requirements?

A: The BABAA sourcing requirements flow down from the Department's grant recipients to their subrecipients, contractors, and vendors. The Department's grant recipients must ensure that their subrecipients, contractors, and vendors meet these requirements by incorporating them into subawards, contract agreements, and vendor agreements and by monitoring compliance with the requirements. Grantees may also include the requirements in construction, remodeling, or broadband infrastructure project bid solicitations.

Grantees may also require certifications from their contractors and subrecipients that iron, steel, manufactured products, and construction materials used in the infrastructure project or activity are produced in the United States and that they comply with the Buy America sourcing requirements.

Grantees may also use a step certification process for iron and steel, a method under which each supplier, fabricator, manufacturer, processor, etc., of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be as simple as including the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite may provide a certification that all manufacturing processes occurred in the United States. While this type of certification may be acceptable, it may not provide the same degree of assurance that step certifications provide.

Q 23. What is the consequence of not complying with the BABAA requirements?

A: Noncompliance with the BABAA domestic sourcing requirements constitutes a violation of the terms and conditions of your grant agreement. Corrective action for a violation may include, but is not limited to, reducing the amount of the award, withholding future funds, and/or terminating the award. In cases of fraud, it can lead to criminal investigation and prosecution.

Q 24. Who can I contact if I have questions about the BABAA requirements?

A: Grantees may address questions to the Education Program Contact listed in box 3 of your Grant Award Notification (GAN). Applicants who have not been awarded a grant may address questions to the Education Program Contact listed in the FOR FURTHER INFORMATION CONTACT section of the Notice Inviting Applications, or in other public notices addressing State Plan and formula grant application submission requirements.

Q 24. Where Can I go to get more information about BABAA?

A: Please check the following resources for regular BABAA-related updates:

- [Build America Buy America Waivers Website \(ed.gov\)](#)
- [List of Infrastructure Programs Subject to BABAA](#)
- [Made In America Office Resources](#)