



Build America, Buy America: How BABA Impacts CAA Programs



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BABA Overview

Federal grant recipients such as Community Action Agencies (CAAs) working on public infrastructure projects will now need to ensure the supplies and materials they purchase are primarily manufactured in the United States. The Build America, Buy America Act (BABA, or Buy America) was enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA), [Pub. L. No. 117-58](#), which took effect on November 15, 2021. BABA applies a domestic content procurement requirement to federally funded public infrastructure projects, meaning that certain supplies purchased with federal funds are required to be manufactured primarily in the United States. Existing “Made in America” laws already required this for iron, steel, and certain manufactured goods, and BABA now extends the requirement to nonferrous metals, such as copper, plastic and polymer-based products, glass, optical fiber, and other construction materials such as lumber and drywall.

BABA requirements apply to all federal financial assistance, whether or not funded through IIJA, where funds are appropriated or otherwise made available and used for infrastructure. [OMB M-22-11](#). Federal financial assistance includes federal grants. Federal financial assistance does not include federal contracts, which are not subject to BABA requirements. [2 C.F.R. § 200.1](#).

New federal grant awards funding public infrastructure projects made on or after May 14, 2022, as well as renewal awards and amendments obligating additional funds to existing awards that are executed on or after May 14, 2022, must comply with BABA requirements. A Buy America requirement must therefore be included in awards issued on or after May 14, 2022, even if Notices of Funding Opportunities for those awards did not include a Buy America requirement. In these cases, federal agencies may consider whether public interest waivers are needed to avoid undue increases in the time and cost of a project or where budgets for purchase of covered materials have already been agreed upon. [OMB M-22-11](#).

BABA directed all federal agencies to submit to the Office of Management and Budget (OMB) and Congress a report that identifies each federal financial assistance program for infrastructure administered by the agency within 60 days of BABA's enactment (by January 14, 2022). [Pub. L. No. 117-58, Sec. 70913\(a\)](#). Each federal agency was therefore tasked with determining whether any of their grant-funded programs are engaged in infrastructure projects that would be subject to BABA. Based on the federal agency reports submitted to OMB and subject to certain factors identified by such agencies, BABA may apply to a variety of CAA programs as discussed below. Thus, CAAs operating these programs must be prepared to incorporate Buy America requirements into their project budgets and procurement processes.

Department of Health and Human Services

BABA does not directly apply to any program funded through the U.S. Department of Health and Human Services (HHS). [87 FR 8852](#). Head Start and Community Services Block Grant (CSBG) grants therefore do not have to comply with BABA requirements.



In certain states and territories, Low Income Home Energy Assistance Program (LIHEAP) grants may be subject to BABA requirements indirectly as a result of the coordination between LIHEAP and the Weatherization Assistance Program (WAP). LIHEAP and WAP work together to help low-income families combat the financial burden associated with high energy bills and these two programs are often administered by the same agencies. LIHEAP grant recipients are permitted to use up to 15 percent of LIHEAP funding, which is administered by HHS, for home weatherization purposes. However, WAP funding is administered by the Department of Energy (DOE) under a different set of program rules. [Braiding WAP and LIHEAP Funds](#).

Each LIHEAP state and territory plan must select one of the following options indicating which rules apply to LIHEAP weatherization funding: (1) entirely LIHEAP rules, (2) entirely DOE WAP rules, (3) mostly LIHEAP rules, or (4) mostly DOE WAP rules. If entirely LIHEAP rules apply, BABA will not apply to LIHEAP grants because LIHEAP rules are implemented by HHS, which has determined that none of its funding is subject to BABA. There is currently no program-specific guidance regarding whether BABA applies when LIHEAP rules apply. If entirely DOE WAP rules apply, LIHEAP funding used for home weatherization purposes must comply with BABA requirements, as described below under “Department of Energy – Weatherization Assistance Program”. The form LIHEAP Plan allows states and territories which select “mostly LIHEAP rules” to indicate exceptions where DOE WAP rules will apply and allows states and territories which select “mostly DOE WAP rules” to indicate exceptions where LIHEAP rules will apply. Thus, it is possible that when a state plan elects to follow mostly LIHEAP rules, the BABA requirements could also be incorporated if certain exceptions result in DOE WAP rules being applied. It is also possible that there will not be BABA requirements even when a state plan elects to follow mostly DOE WAP rules, if certain exceptions result in LIHEAP rules being applied. CAAs should consult their LIHEAP State and Territory Plans to determine whether DOE WAP rules or LIHEAP rules apply, and whether there are any exceptions involving BABA. [LIHEAP State and Territory Plans, Manuals and Delegation Letters](#).

Department of Energy – Weatherization Assistance Program

Within the DOE, certain WAP-funded projects are subject to BABA requirements. Public infrastructure projects, including construction, alteration, maintenance, or repair of public infrastructure, will be required to comply with BABA requirements. Most WAP projects performed by CAAs are conducted on privately-owned buildings, which are generally considered non-public infrastructure, and will not be subject to BABA requirements. [WAP Memorandum 104](#); [DOE’s Implementation of the Buy America Requirement for Infrastructure Projects](#).

Public vs. Non-Public Infrastructure Projects

The primary test for determining if an infrastructure project is public is whether ownership of the infrastructure is public or private. If the infrastructure or building is publicly owned, the WAP project will automatically be considered public, and BABA requirements will apply to any WAP-funded work performed on the publicly-owned building. BABA does not apply to non-public infrastructure. [WAP Memorandum 104](#); [DOE’s Implementation of the Buy America Requirement for Infrastructure Projects](#).



When determining whether a privately-owned building is public infrastructure, the focus is on ownership, rather than who lives in the dwelling. With regards to public housing, for example, public housing owned by a city, municipality, or other local government entity will automatically be considered a public infrastructure project because of the building's public ownership.

If the infrastructure or building is privately owned, the project will only be considered public if the infrastructure is utilized primarily for a public purpose. Infrastructure should be considered "utilized primarily for a public purpose" if it is privately operated on behalf of the public or is a place of public accommodation. The ultimate determination about whether a project includes public infrastructure remains with the DOE. Mere receipt of public benefits likely does not make a dwelling considered publicly owned, and therefore, BABA will not apply to WAP projects on Section 8 housing or other types of housing and rental vouchers only because certain people living in dwellings receive government subsidies. [WAP Memorandum 104](#); [DOE's Implementation of the Buy America Requirement for Infrastructure Projects](#).

Procurement

Before going through the procurement process the CAA should determine whether a particular site is considered public infrastructure and must comply with BABA, especially if procurement is to be conducted through site-specific bids for each project.

If many WAP-funded weatherization projects are required to comply with BABA, the CAA may consider seeking a "materials" bid so that bids are not received for each job individually, but rather one bid is received for the materials that will be used for each project. In this case it will be imperative to ensure that the CAA is aware of which materials comply with BABA requirements.

Department of Housing and Urban Development

BABA does not apply to any programs funded through the U.S. Department of Housing and Urban Development (HUD). Community Development Block Grants (CDBG), Emergency Solutions Grants (ESG), and other affordable housing programs such as Section 8 therefore do not have to comply with BABA requirements. [87 FR 2894](#).

Department of Labor – YouthBuild

Some CAAs may work with YouthBuild as part of their youth workforce development and apprenticeship programs. YouthBuild is a program that provides training and educational services to youth using construction and other techniques. A small percentage of the funds are used by recipients to purchase building supplies for building and refurbishing houses.

The Department of Labor (DOL) identified YouthBuild as a federal assistance program related to infrastructure to which BABA may apply, however BABA does not add any additional requirements given that grant agreements for this program have contained a domestic content procurement preference since at least 2014. [87 FR 3354](#).



Resources

[The White House, Build America, Buy America Act – Federal Financial Assistance](#). This resource links to individual federal agency pages where waivers are posted for public comment.

[HHS Build America, Buy America](#)

[Office of Management \(Department of Energy\) Build America, Buy America](#)

[U.S. Department of Housing and Urban Development Build America, Buy America Act \(BABA\)](#)

[U.S. Department of Labor Made in America: Buy America Waivers for Federal Financial Assistance Awards](#)

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