



## **U.S. Department of Education Frequently Asked Questions about the Build America Buy America Act<sup>1</sup>**

Updated 02/21/24

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. BABAA establishes a domestic content procurement preference requiring that Federal infrastructure programs must use materials produced in the United States. Specifically, it requires that:
- All iron and steel items used in covered projects must be produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - All manufactured products used in covered projects must be produced in the United States. This means the manufactured product was 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 is greater than 55 percent of the total cost of all components of the manufactured product. See [Q 21](#) for guidance on determining the cost of components for manufactured products.
  - All construction materials used in covered projects must be manufactured in the United States. This means that all manufacturing processes for the construction material occurred 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. Its purpose is to help stimulate private sector investments in domestic manufacturing, bolster critical supply chains, and support the creation of good-paying union jobs so that America's workers and firms can compete and lead globally for years to come.

### **Q 3. When do BABAA requirements expire?**

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<sup>1</sup> 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.

A. BABAA requirements do not expire.

**Q 4. Aside from the law, is there BABAA guidance available to assist grantees with their BABAA implementation?**

A. The Office of Management and Budget's Made in America Office (MIAO) has issued the guidance that follows. For guidance issued by the Department, see the links provided in [Q 28](#).

- [2 CFR Part 184 -- Buy America Preferences for Infrastructure Projects](#), which provides guidance to Federal agencies and grantees on the implementation of the BABAA domestic content procurement preference. See § 184.3 for key definitions, including definitions for iron or steel products, manufactured products, construction materials, and 70917(c) of BABAA for limitations with respect to construction material aggregates.
- [M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#), which provides guidance to Federal agencies and grantees, and is applicable to new, non-competing continuation (NCC), and supplemental grants awarded on or after October 1, 2022 through October 22, 2023.
- For new, NCC, and supplemental grants awarded on or after October 23, 2023, MIAO's [M-24-02 Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#) applies. M-24-02 rescinds and replaces M-22-11 for new, NCC, and supplemental grants awarded on or after October 23, 2023, and it provides Federal agencies and grantees with supplemental guidance on implementing BABAA and [2 CFR Part 184 -- Buy America Preferences for Infrastructure Projects](#).

**Q 5. Which Department grant programs are subject to the BABAA domestic content procurement preference requirements?**

A. See the Department's [List of Infrastructure Programs Subject to BABAA](#) for a list of covered 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 6. 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 in the United States.

Goods that do not fit the BABAA definitions of iron or steel, manufactured products and construction materials are not subject to the BABAA domestic sourcing requirements. See BABAA definitions in MIAO's BABAA implementation guidance available here: [2 CFR Part 184 -- Buy America Preferences for Infrastructure Projects](#). Also, see [Qs 10, 11, 12, 13, and 14](#) below.

At the Department, infrastructure under affected grants is generally limited to construction and broadband infrastructure.

**Q 7. Are cost sharing and matching contributions for infrastructure projects and activities subject to the BABAA domestic content procurement preference requirements?**

- A. 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 content procurement preference 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 BABAA domestic content procurement preference requirement grant condition included in your Grant Award Notification (GAN). As with all grant project costs, BABAA domestic content procurement preference requirements must be applied uniformly to both the Federal share and non-Federal share of the grant.

**Q 8. If I have an existing award under covered Department infrastructure programs, what funding actions will trigger application of the BABAA domestic content procurement preference 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 [Q 5](#)) will trigger the application of the BABAA domestic content procurement preference requirement. This will result in a condition being added to the grant, which applies the BABAA domestic content procurement preference requirements to 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](#). Additionally, if applicable, these grantees may instead apply any of the four BABAA agency-level waivers established by the Department. These waivers are time limited, and grantees must notify their Education Program contact listed in box 3 of their GAN of the agency level waiver to be implemented. See the Department's [Build America Buy America Waivers \(ed.gov\)](#) website for information about waivers and waiver requests.

**Q 9. When do the BABAA domestic content procurement preference requirements start for infrastructure programs?**

A. At the Department, 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 [Q 8](#), 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 10. Do the BABAA domestic content procurement preference requirements apply to equipment and services used for the purposes of construction or broadband infrastructure?**

A. The BABAA domestic content procurement 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 or broadband infrastructure site and removed at or before the completion of the infrastructure project. Nor does the BABAA domestic content procurement 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. Additionally, the BABAA domestic content procurement preference does not apply to services used to carryout infrastructure, e.g., 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 domestic content procurement preference requirements because: (1) the work is not using any of the required materials, and (2) the cleaning crew is providing a service.

**Q 11. What constitutes an iron or steel product?**

A. An iron or steel product means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

**Q 12. What materials constitute “construction materials”?**

“Construction Materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- (i) Non-ferrous metals;
  - (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
  - (iii) Glass (including optic glass);
  - (iv) Fiber optic cable (including drop cable);
  - (v) Optical fiber;
  - (vi) Lumber;
  - (vii) Engineered wood; and
  - (viii) Drywall.
- (2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

**Q 13. What is a “manufactured product”?**

A. “Manufactured product” means:

- (1) Articles, materials, or supplies that have been:
  - (i) Processed into a specific form and shape; or
  - (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

If an item is classified as an iron or steel product, a construction material, or a BABAA Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

**Q 14. How do BABAA domestic content procurement preference 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 15. Are there exceptions to the BABAA domestic content procurement preference requirements for which a waiver request may be submitted by a grantee to the Department for approval?**

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 for one or more

iron or steel items, manufactured products, or construction materials would be inconsistent with the public interest.

- Nonavailability: One or more iron or steel items, 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 one or more iron or steel items, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

All waivers must be submitted to the Department through the grantee for review and approval and are subject to posting for public comment and concurrence from MIAO, regardless of 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 content procurement preference requirements. Additionally, if applicable, grantees may instead apply any of the four BABAA agency-level waivers established by the Department. These waivers are time limited, and grantees must notify their Education Program contact listed in box 3 of their GAN of the agency level waiver to be implemented.

For more information regarding the BABAA domestic content procurement preference waiver requirements, the Department's agency-level waivers, and its waiver request process, please see the Department's [Build America Buy America Waivers \(ed.gov\)](#) website and the guidance document available here: [Build America, Buy America Act Domestic Content Procurement Preference Requirements Agency Level Waivers and Grantee Waiver Request Procedures](#).

**Q 16. 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 and in the guidance document available here: [Build America, Buy America Act Domestic Content Procurement Preference Requirements Agency Level Waivers and Grantee Waiver Request Procedures](#). You may also refer questions to the individual listed as your "Education Program Contact" in box 3 of your GAN.

**Q 17. 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 your GAN to address any cost increases. Beginning October 1, 2022, recipients of new grants should begin estimating future budgets with BABAA requirements in mind.

**Q 18. What is the process for applying for and obtaining a waiver based on domestic nonavailability or unreasonable cost?**

A. Please refer to the [Build America, Buy America Act Domestic Content Procurement Preference Requirements Agency Level Waivers and Grantee Waiver Request Procedures](#) 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 19. Where will the Department post approved waivers?**

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

**Q 20. 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. See [Q 25](#) for guidance related to ensuring compliance with the BABAA domestic content procurement preference.

**Q 21. 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (1) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued);  
or
- (2) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of

components does not include any costs associated with the manufacture of the manufactured product.

**Q 22. 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 manufactured product 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 23. 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 or for a manufactured product that is not of a **satisfactory quality**. If the decreased energy efficiency meant that the product was not of a satisfactory quality, a nonavailability waiver request may be approved by the Department.

**Q 24. Who is responsible for determining whether a product is subject to the BABAA domestic content procurement preference requirements?**

A. The grantee. See [Q 25](#) for guidance related to ensuring compliance with the BABAA domestic content procurement preference.

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 25. How do recipients ensure that their subrecipients, contractors, and vendors comply with the BABAA domestic content procurement preference requirements?**

A. The BABAA domestic content procurement preference 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 and 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 BABAA domestic content procurement preference 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.

Step and final certification language samples are available as [enclosure 1](#) to this document.

**Q 26. What is the consequence of not complying with the BABAA domestic content procurement preference 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 27. Who can I contact if I have questions about the BABAA domestic content procurement preference requirements?**

- A. Grantees may address questions to the Education Program Contact listed in box 3 of their 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 formula State Plan and formula grant application submission requirements.

**Q 28. Where Can I go to get more information about BABAA?**

- A. For BABAA related information and other pertinent non BABAA information, please

review the following resources:

- [List of the Department of Education Infrastructure Programs](#)
- [Build America Buy America Waivers Website \(ed.gov\)](#)
- [Build America, Buy America Act Domestic Content Procurement Preference Requirements Agency Level Waivers and Grantee Waiver Request Procedures](#)
- [BABAA Waiver Request Form](#)
- [Made In America Office Resources](#)
- [Build America, Buy America Act](#)
- [Build America, Buy America Act – Federal Financial Assistance | OMB | The White House](#)
- [M-22-11](#) *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*
- [M-24-02](#) *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*
- [2 CFR Part 184 -- Buy America Preferences for Infrastructure Projects](#) for BABAA.
- [2 CFR § 200.334 Retention Requirements for Records](#)
- [2 CFR 200.306 -- Cost sharing or matching](#)
- [2 CFR 200.403 -- Factors affecting allowability of costs](#)

**BUILD AMERICA BUY AMERICA COMPLIANCE - SAMPLE STEP AND FINAL CERTIFICATION LANGUAGE**

**1. Step Certification**

A step certification is a type of certification process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the subject products and materials 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. Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of subject products and materials. Sample step certification language is included below.

**SAMPLE STEP CERTIFICATION LETTER**

Company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Step Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify the (e.g., melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the Build America, Buy America Act (BABAA) requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative.

**2. Final Certification**

Although obtaining step certifications is a best practice, if not possible, affected Department of Education grantees and their subrecipients may consider requesting a final manufacturer certification letter. For a final certification letter, the final manufacturer that delivers the product to the worksite, vendor, or contractor provides a certification asserting that all manufacturing processes occurred in the United States. While this type of certification may be acceptable, it

**BUILD AMERICA BUY AMERICA COMPLIANCE - SAMPLE STEP AND FINAL  
CERTIFICATION LANGUAGE**

may not provide the same degree of assurance, and therefore additional documentation may be needed if the certification is lacking important information. Sample final certification language is included below.

**SAMPLE FINAL CERTIFICATION LETTER**

Company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the Build America, Buy America Act (BABAA) requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative.