

Oklahoma Housing Finance Agency

Build America, Buy America Act
(BABA) Overview & Impact on
Awardees of HOME & NHTF Funds



Monday October 21, 2024 10:00 AM

What is BABA?

- The Build America, Buy America Act (BABA) requires all federally funded infrastructure developments use materials that are sourced and produced within the United States.
 - This includes all construction, alteration, maintenance, and repair work done with federal funds.
 - HUD further dictates that all housing Developments undertaken with federal funds are considered infrastructure.
- Applicable materials include iron, steel, construction materials, and all other manufactured products.

Examples of BABA Activities

- Rehabilitation of a building and real property
- New construction of Single and Multi-family housing units
- Construction of public facilities, streets, sidewalks, neighborhood centers, and building conversion
- Utilities installation and water systems
- Broadband and transportation infrastructure

Non – BABA Activities

- Land Acquisition
- Relocation and demolition
- Down Payment Assistance
- Shelter or public facility operations
- Supportive services
- Short-term rent payments to prevent homelessness
- Administrative activities
- Disaster and emergency response

Build America, Buy America – HOME and NHTF Awardees

- BABA applies to all funds obligated by HUD on or after August 23, 2024
- All awards in the HOME and NHTF programs made on or after the September 2024 board meeting will be subject to BABA requirements.
 - Prior years of obligated funds not subject to BABA
 - If a development receives funds from multiple years' allocations, the whole Development should be treated as BABA compliant.

Federally Funded Infrastructure Programs

- Which programs are not affected by BABA?
 - HOME-ARP
 - Housing Stability Program
 - Affordable Housing Tax Credits
- If a development has multiple funding sources, such as National Housing Trust Funds and Low-Income Tax Credits, the whole Development must be compliant.

Product Classification

- Items can only be classified as Iron, Steel, Construction Materials, or Manufactured Products.
- Classification should be made based upon how item arrives at the job site.
 - A window can have a steel frame, but the product that arrives is still a window. A window is considered a manufactured product

Iron & Steel

- Iron and steel products must be “predominately iron or steel”.
 - This means that at least 50% of the total cost of the item can be directly contributed to iron or steel
- All manufacturing processes, starting from the initial melting stage and continuing through the application of coatings, must occur in the United States

Iron & Steel Product Examples:

- Nails and Screw
- Steel Beams
- Rebar
- Tension cables
- Stainless steel plating or fixtures
- Wrought Iron fixtures or fencing
- Mild, alloy, or carbon steels



Construction Materials

- Construction Materials are materials or supplies that are used in the construction process. Only the following items are considered construction materials:
 - Non-ferrous metal (aluminum, copper, lead, nickel, tin, titanium, zinc and copper alloys such as brass or bronze)
 - Lumber
 - All plastic and polymer-based materials
 - Plate Glass
 - Fiber optic cables
 - Drywall
 - Engineered wood
- All manufacturing processes for construction materials must occur in the United States.

Manufactured Products

- Manufactured Products are materials processed into a specific form or shape OR materials combined with other items to create a product with different properties.
- Examples:
 - Composite building materials
 - Windows
 - Concrete
 - Bricks, Siding and Roofing Materials
- For manufactured products to be BABA compliant, the final product must be manufactured within United States, and at least 55% of the cost of the product must cover components mined, produced, or manufactured in United States.

Non-BABA Products

- Temporary items that will be removed before development completion such as scaffolding ladders, tools, etc.
- Minor additions of materials such as bonding agents.
- Equipment and furnishings



BABA Waivers

- OHFA can approve:
 - Exigent Circumstances
 - Small Grants
 - De Minimis
- HUD must approve:
 - Development Specific Waivers

Exigent Circumstances Waiver

- This waiver is applicable for properties that need rapid action to sustain human life or the safety of property residents / community members.
- Examples:
 - Using HOME funds to repair a property that experienced a hot water pipe bursting in the middle of winter.
 - CBDG funds that are used to repair public facilities made structurally unsound by a tornado
- This waiver will not available after November 23, 2027.

Small Grant Waiver

- This waiver is available if the Total Development Cost does not exceed \$250,000.
- If this waiver is given, but the total expenses later exceeds the waiver maximum, the development would not longer be eligible for this waiver and therefore the development would be non-compliant.
 - Non-compliant developments are subject to recapture by HUD. Developments close to the threshold are not recommended for this waiver.**
- Not available after November 23, 2027

De Minimis Waiver

- BABA requirements do not apply for a De Minimis portion of an infrastructure development, meaning a cumulative total of no more than 5 percent of the total costs can be contributed to iron, steel, manufactured products, and construction materials. Total Development costs under this waiver cannot exceed \$1 million.
- If this waiver is given, but the total expenses later exceeds the waiver maximum or the cost of eligible items later exceeds 5%, the development would no longer be eligible for this waiver and therefore be non-compliant.
- Not available after November 23, 2027

Small Grant and De Minimis cont.

- Examples:
- A developer is rehabilitating an owner-occupied home. The Development is receiving \$50,000 in HOME funds to repair the roof and update the home heating system. Because the total Development cost does not exceed \$250,000, a Small Grant Waiver could apply.
- A developer buys a newly constructed Home with intention to sell it at a discount to a qualified Homebuyer. The total development costs will be \$300,000. 5% of the total development costs is \$15,000. The applicant agrees to install a storm shelter and LED light fixtures. The storm shelter costs \$5,000 and the lighting fixtures costs \$1,000. The total cost of applicable materials is \$6,000, below the 5% threshold. The De Minimis waiver could apply.

Documentation for Small Grant and De Minimis Waivers

Small Grant

- A request has to be submitted in writing for this waiver.
- Staff must respond and approve the waiver in writing for it to be in effect.
- The OHFA Board Resolution and Written Agreement are sufficient documentation.

De Minimis

- A request has to be submitted in writing for this waiver.
- Staff must respond and approve the waiver in writing for it to be in effect.
- De Minimis documentation includes an accurate budget for the development with exact costs for all BABA applicable items.

Development Specific Waivers

- Public Interest: Abiding by BABA would be inconsistent with public interest
- Nonavailability: BABA covered products are not produced in the United States in sufficient quantities or satisfactory quality
- Unreasonable Cost: Domestically produced covered products would increase total development cost by more than 25%

Development Specific Waivers

- All project specific waivers must be submitted to OHFA and HUD for review. HUD requires all development specific waiver requests come directly from OHFA.
- Waivers will be subject to a public comment period and approval by the Office of Management and Budgets.
- All work on a Development must stop while a waiver is being considered.

Development Specific Waivers

- Waivers are development and material specific.
 - If a builder has two developments underway and both run into the same “unreasonable cost” issue, two waivers with documentation must be submitted.
 - If two builders in the same region run into the same “unavailability” issue, two waivers with documentation must be submitted.
 - If developer notices a lack of available windows and nails. Two waivers must be submitted, one for each item.

Development Specific Waivers

- Waivers must be submitted for each type of federal funding received.
- If a development is built with HOME and NHTF funds, two waivers will need to be submitted.
- If you have a development with HOME and LIHTC funds, and you only use the HOME funds for land acquisition, but the development does not have sufficient access to BABA acceptable windows, a waiver must still be submitted.
- At the time of this webinar, HUD has not approved any waivers submitted by housing authorities in other states.

Development Specific Waiver Documentation

- Documentation Requirements
 - For Public Interest Waivers, provide signed letters, petitions or polls stating that there is a genuine conflict with public interest in complying with BABA.
 - For Non-Availability Waivers, submit letters or out of stock notices from supplies advising that a product is not available.
 - For Unreasonable Costs Waivers, submit quotes from local producers showing that the cost of incorporating a domestically made product would increase total development cost by more than 25%. This should also include mock budgets which reflect cost increases.
- All documentation should reflect a genuine effort to meet BABA requirements and clearly identify why compliance is not feasible.

How Will OHFA Comply With BABA?

- Written agreements starting with the September 2024 awards will be amended to include language that requires applicants to comply with BABA.
 - Build America, Buy America (BABA) Act. The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure development.
- Grantee's must include BABA language in all their contracts for construction and purchase orders stating that they can only use and acquire products manufactured and sourced from within the United States.

How Will OHFA Comply With BABA?

- An affidavit will be incorporated into the HOME and NHTF applications. This affidavit will include:
 - A certification of understanding that BABA applies to a development
 - A certification that an applicant will save, digitally or physically, all purchase orders and contracts that contain or should contain BABA language
 - A location where the applicant can elect if a Small Grant or De Minimis Waiver may apply to their development

Finance Compliance & Draws

- Documentation that products are appropriately sourced must be included with construction reimbursement requests. This documentation can include the following:
 - BABA complaint contracts and purchase orders
 - “Made in America” stickers
 - Country of Origin info placed on a websites where products are ordered
 - Country of Origin information listed on packaging
 - Signed and dated letters provided by suppliers confirming the origin of products provided by a producer

Finance, Compliance, & Draws

- OHFA will be working with our inspector to verify that materials incorporated into the Development are appropriately sourced from within the United States.
- This will include inspectors looking for “Made in America” or Country of Origin stamps, packaging, or information on products that have been delivered to the construction site.



Questions?