



Build America, Buy America Act

NORTHWEST INDIAN HOUSING ASSOCIATION
SEPTEMBER 12, 2023

What is BABA?

The [Infrastructure Investment and Jobs Act \(IIJA\)](#), signed on November 15, 2021, included the Build America, Buy America Act (BABA) which is a law applying to **all** Federal agencies and **all** sources of Federal funds.

See the [OMB M-22-11](#) and [OMB BABA Fact Sheet and FAQ](#) for Award Recipients.

What does it mean?

Section 70914 of BABA requires that:

Products purchased in connection with **infrastructure projects** funded with **Federal financial assistance** programs **must** be produced in the United States.

BABA applies to any of these products for infrastructure projects:

- **Iron or steel** products
- **Manufactured** products
- **Construction** materials.

What do these requirements apply to?

BABA requirements apply to **all** awards by a Federal agency to a **non-Federal entity** (Tribes, TDHEs, public housing authorities, states, cities, counties) through Federal Financial Assistance programs.

Federal Financial Assistance programs include:

- Federal Grants
- Cooperative agreements
- Direct appropriations
- Loan guarantees
- Other financial assistance.

Note: BABA is **not** limited only to IJA funding and includes annual appropriation acts.

What ONAP Grants do these requirements apply to?

BABA likely applies to infrastructure projects funded under the following Grants:

- IHBG Formula
- IHBG Competitive
- Indian Community Development Block Grant

What ONAP Grants are excluded from these requirements?

BABA Sec. 70192(4)(B) *excludes* “pre and post disaster or emergency response expenditures”.

- IHBG-CARES
- ICDBG-CARES
- IHBG-ARP
- ICDBG-ARP
- ICDBG-Imminent Threat

What Infrastructure is covered?

Infrastructure Projects include the Construction, Alteration, Maintenance, or Repair of:

- Buildings and real property
- Utilities
- Water systems (both drinking water and wastewater)
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation related-infrastructure (roads, highways, bridges), and more

Infrastructure to be construed "broadly".

What materials are covered?

- Iron or steel products
- Manufactured products
- Construction materials

Note: Sec. 70917(c) excludes aggregates (cement, stone, sand, gravel) from the definition of construction materials.

What Iron or Steel is Considered Produced in U.S.?

- OMB Proposes to define as follows: Iron or Steel that "consist wholly or **predominantly** of iron, or steel, or both"
- All manufacturing processes, from initial melting stage through application of coating, must occur in the U.S.

What Construction Materials are covered?

- Non-ferrous metals (e.g. lead, stainless steel, tin, brass, aluminum)
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- Glass (including optic glass)
- Fiber optic cable
- Optical fiber
- Lumber
- Drywall
- Under OMB proposed rule, also includes coating (paint), brick, engineered wood

What Construction Materials are considered Produced in U.S.?

- ALL manufacturing processes for the construction materials must have occurred in the U.S.
- Some examples:
 - Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
 - Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

What Manufactured Products are considered Produced in U.S.?

- Manufactured products are materials, articles or supplies incorporated in an infrastructure project that are not iron/steel and not one of the listed construction materials.
- OMB is proposing that the manufactured product must have been 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

Can we apply for waivers?

- **Section 70914** of BABA establishes the scope, criteria, and process for issuing waivers.
- Executive Order 14005 and OMB management memorandum M-21-26 require that OMB's Made in America Office review all proposed waivers.

All proposed waivers must appear in the Federal Register and allow for 15 days of public comment.

What Types of Waivers are Available?

- General applicability (broad scope), or
- Project specific

What is the basis for the waiver?

- Public interest
- Non-availability of materials, or
 - (not available in the quantity)
 - (not available at the quality)
- Results in an increase in the cost of the “project” by more than 25 percent.

All proposed waivers must appear in the Federal Register and allow for 15 days of public comment.

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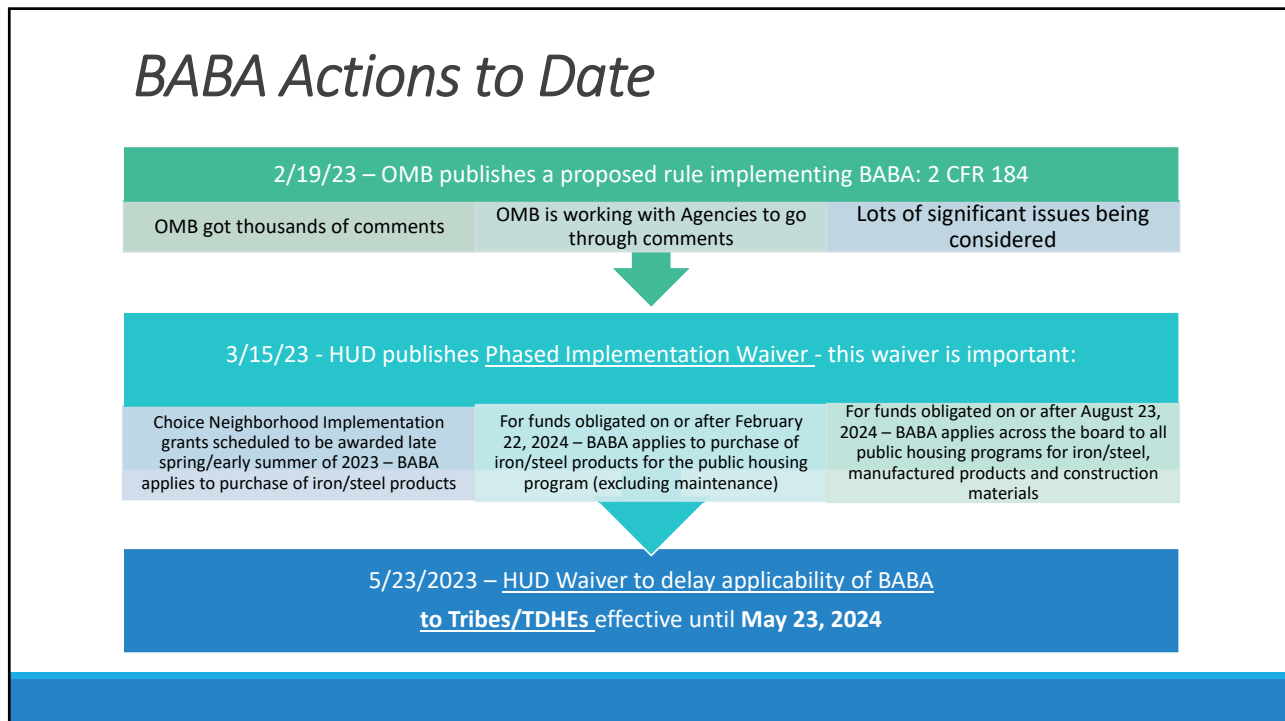
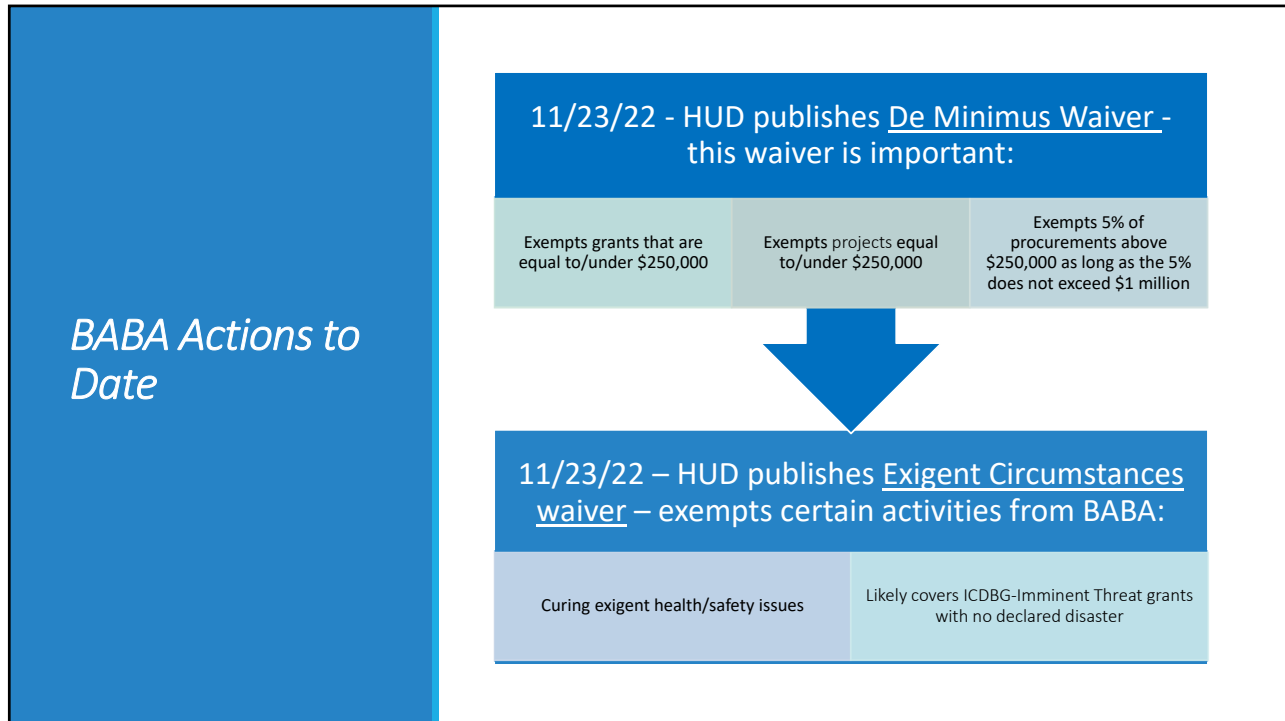
BABA Actions to Date

12/20/21 – OMB Memorandum [M-22-08](#) Notifying Federal Agencies of Reports due to OMB by 1/14/22.



1/19/22 – [HUD Notice](#): Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act

Family Self Sufficiency (probably not)	Resident Self Sufficiency Service Coordinators (probably not)	Juvenile Re-entry Assistance Program (probably not)	Choice Neighborhood Planning (probably not)	Choice Neighborhoods Implementation	Public Housing Capital Fund	Indian Housing Block Grants	Community Development Block Grant & Indian Tribes and Alaska Native Villages
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What does the current Tribal waiver do?

- Provides HUD with an additional year, until May 23, 2024, to Consult with Tribes on the applicability of BABA and the impact it will have on projects.
Your input is extremely important as we move forward.
- Until May 23, 2024, ONAP grants funded with Indian Housing Block Grant and the Indian Community Development Block Grant are exempted from the requirements of BABA.
- This waiver only applies to HUD funding sources. If your project combines funds with other federal sources, you will need to determine if BABA is in effect for that agency's funds.

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Actions

CONSULTATION

- National Congress of American Indians – June 2023
- Southern Plains Indian Housing Association – July 2023

INFORMATION SESSION

- Southwest Intertribal Housing Association – July 2023

PRE-DECISIONAL

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Questions for Consideration

- What are the expected impacts of BABA on construction and infrastructure development?
- Do you know whether the iron, steel, construction materials, and manufactured goods you currently buy are made in the US?
- Do you have access to viable American suppliers of iron, steel, construction materials, and manufactured goods?

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Questions for Consideration

- Do you anticipate that BABA will increase the cost of construction of infrastructure projects?
- Should HUD consider a different de minimis threshold requirement when BABA applies to Tribal infrastructure projects?
- When should HUD begin to require Tribes and TDHEs to comply with BABA requirements?

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Questions for Consideration

- How will BABA impact your Tribe differently than neighboring communities?
- What additional steps are required to comply with BABA?
- Are there other comments you'd like to share, or other issues HUD should consider?

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Resources

- [Office of Management and Budget Guidance and Other Resources](#)
- [HUD BABA Webpage](#)

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Thank you for your input

Please ensure that your Project Managers, Contractors, and Housing Staff are aware of BABA and provide input on how BABA will impact future projects, costs, and timelines

Submit comments to: Consultation@hud.gov