

ICDBG IMPLEMENTATION TRAINING FOR GRANTEES

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Build America Buy America (BABA)



BABA: WHAT IS IT?

- The Infrastructure Investment and Jobs Act, signed on November 15, 2021, included **Build America, Buy America Act (BABA)** which is a law applying to ***all*** Federal agencies and ***all*** sources of **Federal Funds**
- BABA established the “**Buy America**” Preference (**BAP**) requirements for certain **public infrastructure projects** funded with Federal awards
- BABA Guidance is found at: 2 CFR Part 184 ([eCFR :: 2 CFR Part 184 -- Buy America Preferences for Infrastructure Projects](#))



BABA: WHAT DOES BAP COVER?

- **Covered materials** used in the construction, alteration, maintenance, or repair of **infrastructure** that will serve a **public function** must be sourced from producers and workers in the U.S. (unless a waiver determination is made & documented)
- **Covered Materials:**
 - ❖ Iron/steel
 - ❖ Manufactured products (waived thru Sept. 30, 2026)
 - ❖ Construction materials
- **“Public Infrastructure” does NOT include single-family dwellings**, which are defined as any structures with 1-4 dwelling units



BABA: **NEW!** JOINT GENERAL WAIVER FOR TRIBES

- Eight Federal agencies, including HUD, issued a **Joint General Waiver for Tribes effective Jan. 2025**
- This new waiver applies to:
 - Awards and Subawards provided to Tribes, **less than \$2.5 million – they can be exempted from BAP requirements for the life of the award** (for all awards obligated up to Jan. 2030)
 - For projects that must comply with BAP, **purchases of non-compliant manufactured goods are allowable** for all awards obligated through Sept. 30, 2026
- There is **NO** application/approval process to use this waiver, but you **MUST** document the basis of your determination



BABA: **NEW!** JOINT GENERAL WAIVER FOR TRIBES (cont.)

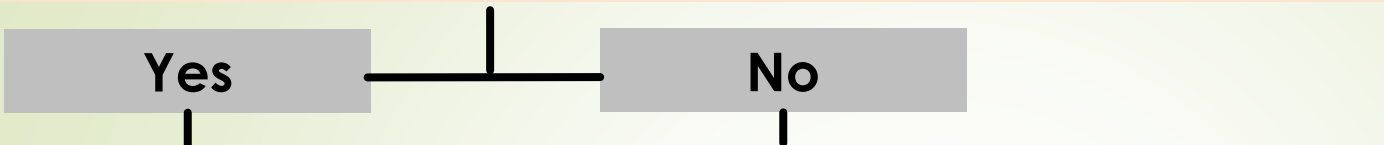
Federal depts./agencies included in this waiver:

- HUD
- Department of Agriculture
- Department of Commerce
- Department of Education
- Department of Energy
- Department of Interior
- Environmental Protection Agency
- Federal Emergency Management Agency

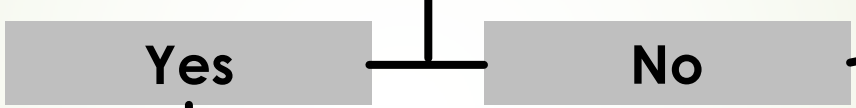


BABA: WHEN DOES BAP APPLY?

1) Does the project budget include an award from a Fed. department **NOT in the Joint Gen. Waiver for Tribes?**



2) Were any of the **individual Federal awards \$2.5 million or greater?**



3) Is the project a **"public infrastructure"** project?



BABA may apply, contact your Area ONAP to discuss other possible waiver options

NOTE: If BAP does apply & cannot be waived, non-manufactured goods are exempt up thru Sept. 30, 2026

STOP!
BAP Can Be Waived or BABA Can Be Found NOT to apply
(Grantee is responsible for final determination and documentation)



BABA: GENERAL vs. PROJECT-SPECIFIC WAIVERS

General Waivers	Project-Specific Waivers
<u>Process:</u> No waiver application/approval process	<u>Process:</u> Multi-step waiver application process with final approval by OMB's Made in America Office
<u>Grantee's Role:</u> Grantee is responsible for determining waiver applicability and maintaining supporting documentation in project file	<u>Grantee's Role:</u> Grantee is responsible for preparing and submitting waiver request
<u>Waiver types:</u> <ul style="list-style-type: none">- Joint General Waiver for Tribes- Exigent Circumstances (e.g., IT grants)- Small Purchases- DeMinimis	<u>Waiver types:</u> <ul style="list-style-type: none">- Public Interest- Nonavailability- Unreasonable Cost



BABA: BAP APPLICABILITY ANALYSIS EXAMPLE

Example: A Tribal grantee was awarded a **\$2 million FY24 ICDBG single-purpose grant** for the construction of a community center. **The total project cost is \$10 million.** The Tribe was awarded the following funding from Federal and non-Federal sources. **Does BAP apply?**

Example Funding Source	Does BAP Apply?	Explanation
\$2 Mil. FY24 ICDBG Single-Purpose Grant	NO	<\$2.5 million, under Joint General Waiver for Tribes BAP can be waived
\$3 Mil. FY20-FY23 IHBG Formula Grant	NO	Award obligated prior to 10/1/24
\$500k LIHTC	NO	Not a Federal Award
\$500k ICDBG-ARP Grant	NO	BABA does not apply to pandemic programs
\$1.5 Mil. Loan	NO	Not a Federal Award
\$2.5 Mil. FY24 Federal Grant	MAYBE	Consult w/Federal Funding Agency



BABA: WAIVER RECORD RETENTION REQUIREMENT

- In the project file, document compliance with the BAP waiver/BABA applicability decision process
- Depending on the Waiver/Grounds, the Project File Should Contain Records Such As:
 - All of the Federal grant award amounts & sources
 - The type of project involved (e.g., whether it is for the construction, etc. of structures with 1-4 dwelling units)
- **BEST PRACTICE - Types of Records to Retain:**
 1. A statement that details the grounds for the BAP waiver/BABA applicability determination
 2. Supporting documentation, such as:
 - a. Federal Award Document
 - b. Project Description
 - c. Project Budget



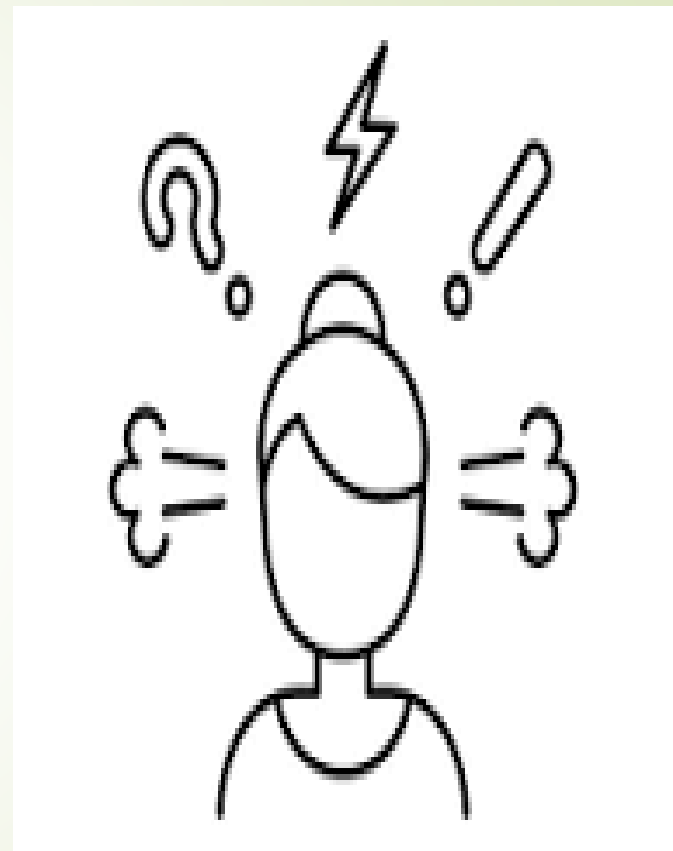
BABA: RESOURCES

- ❖ [HUD Notice 2024-35](#)
- ❖ [BABA Waiver System Grantee User Manual - HUD Exchange](#)
- ❖ [OMB Final Rule](#)
- ❖ [eCFR :: 2 CFR Part 184 -- Buy America Preferences for Infrastructure Projects](#)



OVERWHELMED?!? NEED HELP???

- **Contact your Area ONAP**
- Your GMS is here to help guide you towards solutions & understanding
- Additional Training & Technical Assistance may also be available



https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/training

HUD CONTACTS: AREA ONAP POCs

All Area ONAP Offices and Contact Information is listed on the ONAP Codetalk website:

[ONAP and Tribe Contacts.pdf](#)

Bookmark this link on your computer so you have a quick and easy way to reach-out for help or guidance going forward



QUESTIONS?

thank you

