



The Build America, Buy America Act, BABAA

Lisa Pofelski-Rosa, Financial Specialist Principal



Build America, Buy America Act



- On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the [Build America, Buy America Act](#) (“the Act”). Pub. L. No. 117-58, §§ 70901-52.
- The Act strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs.

BABAA Purpose



Build America, Buy America Act (BABAA)

The Build America, Buy America Act (BABAA) focuses on:

- **Maximizing** the federal government's use of services, goods, products, and materials produced and offered in the United States
- **Creating** demand for domestically produced goods
- **Helping** to sustain and grow domestic manufacturing and the millions of jobs it supports throughout product supply chains



BABAA Requirements



BABAA Requirements

Buy America Sourcing Requirements for Federal financial assistance infrastructure projects:

- All iron and steel used in the project are produced in the United States;
- Manufactured products used in the project are produced in the United States; or
- Construction materials used in the project are produced in the United States



BABAA & Federal Funding



- The Act requires that no later than May 14, 2022—180 days after the enactment of the IJA—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless *all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.*”

BABAA Funding Timing



ED's BABAA Policy

- Applies to new, non-competing continuation, and supplemental grants awarded by ED on or after October 1, 2022 (not before)
- Applies to Formula and Discretionary Grants
- Applies to infrastructure related to construction, remodeling, and broadband infrastructure
- Only applies to those activities in each grant project related to infrastructure

Impact to Grantees/Sub Awardees



BABAA's Impact to Grantees

Things You Should Know

It's New!

- The grant condition does not appear in grant award notifications issued before 10/01/2022

It's Mandatory!

- Grantees engaged in infrastructure must comply with BABAA specific conditions included in their new, non-competing continuation, and supplement grant award notifications

Maximizing American Goods & Services



- The Act affirms, consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (“the Executive Order”), this Administration’s priority to “use terms and conditions of **Federal financial assistance awards** to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”

Programs & Grants Included



[BABAA Applicable Program List 12082022 \(ed.gov\)](#)



List of Build America, Buy America Act (BABAA) Applicable U.S. Department of Education Infrastructure Grant Programs

Last Updated December 5, 2022

The following list reflects the infrastructure grant programs identified by the U.S. Department of Education in which the BABAA domestic sourcing requirements are applicable. This list supersedes and replaces the list the Department published in the Federal Register on March 17, 2022 ([87 FR 15210](#)).

Office of Elementary and Secondary Education		
Program Title	Assistance Listing Number (ALN)	Award Type
Impact Aid Program, Discretionary Construction Program	84.041C	Discretionary

State Grants - B (611)	84.027A	Formula
State Vocational Rehabilitation Services	84.126A	Formula
State Grants - B Preschool (619)	84.173A	Formula
Infants & Toddlers/Families (Part C)	84.181A	Formula

What's Covered Under BABAA?



- In accordance with section 70914 of the [Build America, Buy America Act \(Pub. L. No. 117-58\)](#), Department grantees funded under programs that allow for infrastructure projects (e.g., construction, remodeling, and broadband infrastructure) may not use their grant funds for these infrastructure projects or activities unless they comply with the following Buy America Sourcing requirements:
 - All iron and steel used in the infrastructure project or activity are produced in the United States.
 - All manufactured products used in the infrastructure project or activity are produced in the United States; and
 - All construction materials are manufactured in the United States.

What is Considered Construction Material?



- **Construction materials:** Construction materials are articles, materials, or supplies that, for example, consist of any of the following: Non-ferrous metals, such as aluminum, copper, and lead used in a project; Plastic and polymer-based products, including polyvinylchloride, composite building materials, and polymers used in fiber optic cables; Prefabricated windows brought to a site for incorporation into a building; Glass, including optic glass; Lumber; Drywall.
- Construction materials do not include any item that is a “manufactured product”; is primarily iron or steel; or includes cement and cementitious materials, aggregates such as stone, sand or gravel, or aggregate binding agents or additives. See OMB Guidance M22-11.



What Qualifies as Manufactured Products?



Manufactured products are items that: for example, consist of two or more of materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.

All manufactured products used in an infrastructure project must be manufactured in the United States.

The cost of a product's components that were mined, produced, or manufactured in the United States must also be greater than 55% of the total cost of the product's components, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

- Build America, Buy America Q&A



**U.S. Department of Education Frequently Asked Questions about the
Build America Buy America Act¹**

Last Updated October 13, 2022

Q 1. What are the BABAA requirements?

A: Broadly, BABAA requires that Federal infrastructure programs must use materials produced 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. The purpose of the BABAA is to create demand for domestically produced goods, helping to sustain and grow domestic manufacturing and the millions of jobs it supports throughout product supply chains.