

BUILD AMERICA, BUY AMERICA ACT (BABAA)

External Webinar Questions and Answers

ELIGIBILITY

- 1. Does the BABAA apply to any of the ARPA funds that have been awarded to agencies - where construction will begin after Feb 3?**

The determining factor of BABAA applicability for these funds, assuming they are infrastructure projects by non-federal entities as defined in [2 CFR 200.1](#), is the date of obligation. If the obligation was made on or before February 3, 2020, the Build America Buy America Act does not apply.

- 2. If I heard correctly, if you are a Federal entity then BABAA does not apply?**

BABAA applies to non-federal entities, as defined at [2 CFR 200.1](#). The converse of non-federal is not federal, but a for-profit entity or certain nonprofit that does not meet the definition under 2 CFR 200.1. As a result, if you are a for-profit entity, then BABAA does not apply.

- 3. Just to clarify - if the answer is "yes" to these questions that implies that these entities and infrastructure projects are subject to BABAA requirements?**

Yes, the determining factors of BABAA applicability centers on an affirmative response to these three questions: (1) Is the applicant is a non-federal entity, as defined under [2 CFR 200.1](#)? (2) Is the project to be funded an infrastructure project? (3) Does the project involve any construction, alteration, maintenance, or repair of infrastructure in the U.S.?

- 4. Does my entity have to be nonprofit only?**

BABAA applies to any non-federal entity, defined in [2 CFR 200.1](#) as a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient. [2 CFR 200.1](#) further defines nonprofit organization as any corporation, trust, association, cooperative, or other organization, not including IHEs, that: (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) Is not organized primarily for profit; and (3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

- 5. If the answer is "yes" to all 3 questions, but the project is NOT being federally funded, is the project still subject to BABAA requirements?**

If no federal funds are used, the project is not subject to BABAA.

- 6. I heard that small purchases of \$2500 or less is not affected by BABAA, is that correct?**

There is a *de minimis waiver* for projects that this purchase may apply and a small grants waiver, under which grants less than \$250,000 are covered. Please see the following link for USDA's *de minimis* and small grants waivers: [USDA Departmentwide Public Interest Waivers: De Minimis, Small Grants and Minor Components](#).

7. It appears as if this act has exempted the federal government from compliance with the BABAA. If so, why?

BABAA contains requirements for recipients of federal financial assistance, as well as for federal procurements contracts. See Section 70937 of BABAA [PUBL058.PS \(govinfo.gov\)](https://www.govinfo.gov/pubs/PL058/PUBL058.PS).

8. Does BABA only apply to Direct Loans and Grants?

No, it applies to all programs and investments in infrastructure including guaranteed loans and relending programs.

9. I do not see private companies listed in the Non-Federal Entity slide – are private companies subject to BABAA?

For-profit entities are excluded from BABAA.

10. What if we're talking about an infrastructure project that is done by a for-profit entity – so the answer to No. 1 is "No" Would that mean it's not subject to BABAA?

Yes, that is correct, for-profit entities are excluded under BABAA.

11. Construction Materials includes lumber? Sheetrock, light fixtures etc.? Example an RBDG for a building rehab.

The Office of Management and Budget's proposed regulations concerning BABAA implementation address the term "Construction Materials". See [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023).

12. In my earlier question with the daycare example, perhaps I should have asked "what items need to be certified?" Based on the presentation, it sounded like appliances are not subject to compliance since they are not permanent to the building. So compliance includes what? Lumber, electric wire and plumbing pipe? Does it include fixtures such as sinks & toilets?

Appliances such as refrigerators, stoves, etc. are not subject to BABAA as they are not permanent fixtures. Items such as lumber, electrical wire, and plumbing, including sinks and toilets, are subject to BABAA. However, further guidance can be found in Office of Management and Budget's proposed regulations. See [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023).

13. I thought BABA did apply to Guarantee loans for those entities that are subject to BABA???

That is correct, BABAA applies to guaranteed loans for end recipients of the guarantee that are subject to BABAA.

14. If we are looking at expansion of our manufacturing and we will be applying for some fed rural development funds and LEDA funds through our state. Would a new building be subject to this or upgrading an older building? price on the building would be \$1,000,000 to 2,000,000.

First, you must determine if you are an entity covered under BABAA. If you are a for-profit entity, then BABAA would not apply. If you are a non-federal entity, as defined in [2 CFR 200.1](#), then BABAA would apply. Second, BABAA applies to any construction, alteration, maintenance, or repair of infrastructure in the U.S. A hospital would qualify as infrastructure.

15. How about a rural electric cooperative proving a REDLG loan to a non-profit for a community building rehab project? Would this be subject to BABAA?

Yes, BABAA would apply *unless* the federal assistance is under \$250,000.

16. Are guaranteed loans subject to BABAA?

Yes, *unless* the end-recipient of the loan is not a non-federal entity, as defined in [2 CFR 200.1](#). See Question #13.

17. When does BABA apply to the guaranteed loan program?

When the end-recipient of the guaranteed loan is a non-federal entity, as defined in [2 CFR 200.1](#).

18. Does this include trail groomers, or this type of equipment?

Equipment that is not a part of the permanent building structure is not subject to BABAA.

19. Is Medical equipment for a hospital project excluded from BABAA

Yes, it is excluded. Equipment that is not a permanent part of the building being constructed is not subject to BABA.

20. Are pre-cast concrete manhole structures subject to BABA? Manufactured Product or Construction Material? Cement, Aggregate, Reinforcement, etc.

Materials that are integral and permanently affixed to the building must apply the BABAA requirements to the iron and steel, manufactured products and construction materials. See Question #12 and Office of Management and Budget's proposed regulations regarding construction materials covered under BABAA, published in the [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023).

21. If you have a small CF loan or grant for something like a city hall roof repair and the total cost is under \$250K simplified threshold, would that project be eligible for a waiver?

Rural Development has issued a general waiver for USDA funded infrastructure projects that are \$250,000 or less that is automatically applied to projects.

22. I work in affordable housing development. We are a for-profit that uses some federal and state funds to rehabilitation affordable housing. Our 515 debt is used exclusively for acquisition, and tax credits and other financing come from the state or are private. Would our projects be subject to BABAA?

For-profit entities are not covered under BABAA.

23. In regard to grants is the \$250,000 grant dollars only or total project costs?

The \$250,000 threshold applies to the amount of the federal financial assistance.

24. Are 515 and 514 Multifamily properties owned by for profit entities subject to BABA?

For-profit entities are not subject to BABA.

25. Does this have any implication for CF projects underway?

Projects that have obligations prior to 2/4/2023 are not subject to BABAA. However, costs overruns that are associated with those projects may be subject to BABAA. Contact the appropriate [USDA Rural Development state office](#) for guidance.

26. Does BABAA apply only to products? Curious if Architect/Engineering services need to be performed domestically? Could a portion of design for a BABAA project be performed off shore?

BABAA does not apply to services or labor.

27. Does BABAA apply to single family housing? I thought something was said but I missed it.

Private homes and residences not open to the public are exempt from BABAA.

28. If we have a development phase and land acquisition, is the rotation time with the grant assist in work starting in March 15th?

More information is needed to answer this inquiry. Please contact the appropriate [USDA Rural Development state office](#) for guidance regarding the application of BABAA.

29. Does this apply to MPR (Multifamily Preservation & Revitalization), Tax Exempt Bonds, LIHTC residential development projects for new & rehabilitation construction?

That depends. BABAA applies to federal financial assistance to non-federal entities, as defined in [2 CFR 200.1](#) for infrastructure construction of publicly owned, publicly accessed buildings and real estate.

30. Is equipment included in the construction of medical facilities exempt, including HVAC equipment, kitchen equipment, laboratory equipment, radiology equipment, etc.?

Assuming the project is subject to BABAA, equipment that is installed during construction and is integral and permanent to the infrastructure facility would be subject to BABAA. In general HVAC would be part of a permanent building structure, whereas kitchen appliances, laboratory and radiology equipment would not.

31. Would trail construction be considered infrastructure?

More information would be needed to answer that question.

32. For a construction project that has both Direct (Federal loan) and a USDA guaranteed Loan. Does BABAA apply to the guaranteed loan portion also or the entire project

Assuming the recipient is a non-federal entity, as defined in 2 CFR 200.1 and that the project is an infrastructure project as defined under BABAA, BABAA would apply to the *entire* project if any federal financial assistance is used.

33. The 502 Direct loans for new construction in a Self-Help Housing program, are those building materials subject to BABA?

Only individuals can apply for a Section 502 direct loan, and individuals are not subject to BABAA.

34. Is a construction project for an IHE, which includes a clean water system required to meet the terms?

There is not enough information to answer this question. Please provide more details to the agency or your Rural Development representative.

35. What about removal or abandonment of infrastructure, e.g. removal of an obsolete dam?

BABAA applies to the construction, alteration, maintenance, or repair of infrastructure in the U.S. Demolition or removal of structures, without new construction, is not covered under BABAA.

36. We are an Electric Cooperative and a RUS Electric Borrower. We received funding on our new 2021-2024 work plan in 2021. Does this mean all of our construction materials (poles, transformers, steel poles, wire, etc.) will now be required to be manufactured in America? Also, when would this need to go in effect if true?

BABAA does not apply to electric cooperatives nor to USDA funding that was obligated on or before February 3, 2023. That said, Rural Utilities Service (RUS) electric cooperative borrowers have been subject to RUS' statutory Buy American requirements for decades. See [7 CFR 1787](#).

37. For broadband infrastructure projects, are hardware-as-a-service offers covered? That's essentially an arrangement where the vendor provides hardware for a renewal subscription period, and continuously updates / repairs, etc.

Probably not. First and foremost, most borrowers of the Rural Utilities Service (RUS) Telecommunications Program are organized on a for-profit basis, and outside the scope of BABAA. Only non-federal entities, as defined in [2 CFR 200.1](#) are covered. Second, if the hardware-as-a-service is telecommunications equipment such as routers, modems, hubs or bridges, such equipment is neither a permanent fixture to a public building, and normally placed within the subscriber's home, both of which are outside the scope of BABAA. However, these items would still be covered under RUS' statutory Buy American requirements. See [7 CFR 1787](#).

38. Also for broadband infrastructure projects, are network security services covered? These aren't hardware, but are instead software or cloud-based security capabilities to protect against breach, ransom attacks, network malfunctions, etc.

Services are not covered under BABAA.

39. Are ILEC's subject to BABAA?

That we are aware, ILEC's, *i.e.*, telephone companies providing local service when the Telecommunications Act of 1996 was enacted, do not comprise entities covered within the definition of non-federal entities under [2 CFR 200.1](#), which are the only entities subject to BABAA.

40. So if Electric coop has a broadband project with USDA financing it doesn't have to comply with BABAA?

Electric cooperatives are not covered within [2 CFR 200.1](#)'s definition of non-federal entity, and therefore not covered by BABAA. However, existing Rural Utilities Service Buy American requirements are still applicable under [7 CFR 1787](#).

41. Is an electric co-op that has a ReConnect award, subject to BABAA?

See Question #40.

42. Is drainage a possible project for infrastructure?

Yes, drainage and other stormwater projects are covered infrastructure projects, which would be subject to BABAA for non-federal entities, as defined in [2 CFR 200.1](#).

43. Does this pertain to our day-to-day maintenance & supplies?

No, BABAA does not apply to day-to-day maintenance and supplies.

44. In the water industry we use mined materials for media that filters the water. Would mined product fall under BABA?

Depending on the specific situation, filter media will be either a manufactured product or a component of a manufactured product, both of which are subject to BABAA.

45. Where will RD cover crop clean water pre-harvest systems, which may also produce drinking water.

46. We are unfamiliar with this system and are not sure that we fully understand the question. However, please be advised that federal agencies must interpret the term “infrastructure” broadly and should consider if the project will serve a public function, whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation as opposed to a project that is privately owned and not open to the public.

47. Would manufactured items installed during a construction project be subject to BABAA? For example, pumps in a newly constructed water treatment plant.

Yes.

48. Will stainless steel bolts for water main fittings be considered a minor component?

For guidance on answering this question, please see USDA’s minor component waiver at [USDA Departmentwide Public Interest Waivers: De Minimis, Small Grants and Minor Components](#).

49. Is there a difference as to whether equipment is exempt or not if the equipment is affixed to the building when installed (becomes a fixture) or is not affixed when installed (personal property)?

BABAA requirements apply to Equipment (as defined in [2 CFR 200.1](#)) affixed to infrastructure or integral to the infrastructure system. General Purpose Equipment (also defined by [2 CFR 200.1](#)), such as office equipment, furnishings, and computers, does not need to comply with BABAA.

50. What if project was designed and approved by USDA prior to BABA but funded after February 3?

BABAA applies to USDA obligations made after February 3, 2023. *See also* Question #1.

51. Water Program Question – Equipment (i.e. pumps, motors, clarifier mechanisms, etc.) were excluded from AIS. To confirm, BABAA is essentially the expansion of AIS so equipment and basically all construction materials are no longer excluded, correct?

Not necessarily. Only equipment that is affixed to infrastructure or integral to the infrastructure system is covered under BABAA. *See also* Questions #30 and #48.

52. Are components made from Plastic required to comply?

Yes. The Office of Management and Budget recently published construction material standards in its proposed BABAA regulations covering Plastic and polymer-based products. *See* [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023). *See also* Question #19 Compliance Challenges.

53. Does the price include shipping?

Yes. The Office of Management and Budget's (OMB) proposed regulations covering BABAA applicability indicate that OMB intends to include the costs of transportation within the calculation of the cost of components, in order to be consistent with the definition within the Federal Acquisition Regulation (FAR). *See* [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023).

54. Are stormwater systems eligible?

BABAA may be applicable. *See* Question #42

55. What is the date of the project's funding cycle (Letter of Conditions, Commitment of Funds Letter, Bidding, etc.) is used to determine applicability of BABAA to funds from USDA RD that were committed prior to the November 15, 2021?

The determining factor of BABAA applicability for these funds, assuming they are infrastructure projects by non-federal entities as defined in [2 CFR 200.1](#), is the date of obligation. Please contact your Rural Development representative to determine the exact "obligation date" of your project and they can guide you accordingly. *See also* Question #1.

56. Are reconstruction projects due to a fire/weather insurance claim subject to BABAA?

Assuming you are using insurance funds, pursuant to [2 CFR 200.1](#), federal financial assistance does not include insurance, and the project is not subject to BABAA.

57. Does this apply to State Tax Credits & State Tax Exempt Bond programs whether or not For Profit/Nonprofit development?

BABAA applies to federal financial assistance. Funding derived from a State's taxing authority is not included within the definition of federal financial assistance.

58. If USDA RD Loan Program funding was allotted prior to 2021, is the project subject to BABAA requirements?

If the date of obligation is prior to February 4, 2023, then the project is not subject to BABAA. If the program in question is a relending program, please contact your Rural Development representative to ascertain the exact obligation date.

59. With regards to the question "Do entities need to use the Build America Buy America Act when using the American Rescue Plan Act funds?" Is the obligation period identified as any obligations after May 14, 2022?

Yes, it is the obligation date that determines BABAA requirements. However, USDA received an extension of BABAA implementation to February 3, 2023, such that all obligations after that date are subject to BABAA.

60. Is building demolition, as part of a larger project covered under BABAA?

No, demolition is not construction; however, subsequent construction could be subject to BABAA.

COMPLIANCE CHALLENGES

1. Within that, for clarification, is the value of labor input a "component"? I would assume not.

Your understanding is correct it is not part of this portion of the calculation. Please refer to the Office of Management and Budget's [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023) out for public comment.

2. Will a waiver cover all federal programs that may be part of a project or just specific to USDA?

The Office of Management and Budget guidance suggests that, in order to reduce duplicative waiver requests and the burden on recipients, the agency contributing the most amount of federal funds for the project should be the "Cognizant Agency for the Made in America Office, responsible for coordinating with all other awarding agencies.

3. Can the Small projects / Grant waiver be posted?

[USDA Departmentwide Public Interest Waivers: De Minimis, Small Grants and Minor Components](#)

4. Do you know if the same waivers are available through other agencies? For example Dept. of Energy, Commerce, Interior?

No, you would have to search the website of other Federal agencies to see what waivers they have.

5. How long does the wavier process take?

That depends. The recipient must submit the waiver request to the funding agency, which must then review for sufficiency. If the agency approves the waiver to go forward, it must be publicly posted at least 15 days for notice and comment by the public.

6. What is the anticipated timeline for the waiver process? Weeks? Months?

See Question #5.

- 7. Do you expect that trade agreements like USMCA may be considered for manufactured electronic products not currently produced at high volumes in the USA. Especially in light of President Biden's Americas Partnership for Economic Prosperity announced today.**

Rural Development (RD) does not have enough information to answer this inquiry. Please bring specific parts/products to the attention of your RD representative early. You might also include details of the announcement-reference you make here for additional consideration.

- 8. I agree with the concept of BABAA. I'm just trying to think about it from a practical matter—especially related to smaller, community based projects in a rural setting. For example A local non-profit day is remodeling their facility and receives REDL&G funding to assist. The funds are used for general building materials and a few appliances. Building supplies will come from the local lumber yard and a big box retailer. Who certifies compliance? What documentation is required to verify that compliance? What happens when the verification information is not readily available?**

We would need to assess whether the project fell within the definition of infrastructure, as required by Office of Management and Budget guidance to determine BABAA applicability.

The entire project is not the standard. Even if parts are covered, the project is covered.

And compliance doesn't fall on the lender. They are just a pass through for the federal government.

If the project is under \$250,000 this USDA waiver applies: [USDA Departmentwide Public Interest Waivers: De Minimis, Small Grants and Minor Components](#)

- 9. Are certifications for architects and suppliers in place and can we review them since architects have never dealt with the certifications so they and us will need guidance?**

Rural Development can provide guidance regarding certifications. Contact the applicable [USDA Rural Development state office](#) or [Build America, Buy America Act | Rural Development \(usda.gov\)](#).

- 10. We are Subject to BABB Affordable Housings, Electric Battery Manufacturing. Please send information process our Waiver.**

BABAA applies to infrastructure construction, including the installation of electric batteries or EV charging stations. Consult your [USDA Rural Development state office](#) for guidance on the application of BABAA for your federally funded project.

- 11. So will RD need to get a certification from the manufacturers AND from the architect/engineer?**

First and foremost, certifications from manufacturers are required. Recipients of federal assistance may also obtain certifications from architects, engineers, and contractors to be sure that all materials used on a project comply with BABAA.

- 12. Question about existing facilities expansion - we have a USDA project at a rural hospital where we are adding an addition to the existing hospital. We would like to match the existing exterior and interior finishes with the new addition. What do we do if the existing palette materials do not comply with BABA?**

Construction alteration and repair of infrastructure, including buildings and real estate, publicly owned and/or privately owned for public use/access are subject to BABAA. If the obligation for the

federal funding in your project occurred on or before February 3, 2023, your project is not covered by BABAA. If funds were obligated after February 3rd, you must seek a public interest waiver from the agency. Please contact your Rural Development representative for more specifics to your project.

13. For broadband - most fiber is produced outside of the United States - this is an issue.

The standard is not whether most fiber is produced outside the U.S., but whether there is sufficient availability of fiber in the U.S. for a specific project. Note, however, that domestic fiber-optic cable production has increased. One respondent to Rural Development's request for a six-month adjustment to the timeline for implementing the Build America, Buy America preference indicated that significant investments in domestic fiber cable production capacity were planned by their entity and others. A respected financial publication reported that four domestic cable producers had announced plans to invest a total of \$275 million in increased production capacity during the year 2021 alone.*

*Roslyn Layton, "US Fiber Production is One Bright Spot in Sobering Supply Chain Report", Forbes, March 1, 2022. <https://www.forbes.com/sites/roslynlayton/2022/03/01/us-fiber-production-is-one-bright-spot-in-sobering-supply-chain-report/>

14. Has there been any investigation into fiber optic cable? Our domestic suppliers wouldn't certify BABAA last year because the investigation into the all the percentages of raw materials going into the manufacturing was too high a cost and time commitment.

Use of materials on a project that are not BABAA compliant cannot be used unless a waiver is obtained. Note, however, that production of domestic fiber is on the rise. See response to Question #13. In addition, the Build America, Buy America Act, administered by the Made In America Office, has requirements for public comments during the waiver process.

15. For telecommunications, can we the facility owner source the materials for the project and provide them to the contractor, or will the materials need to be sourced by the contractor for the project?

Recipients of federal assistance may source their own materials. However, first you must determine whether you are covered under BABAA. Most recipients for the telecommunications program are not non-federal entities, and outside the scope of BABAA. However, Rural Utilities Service (RUS) telecom recipients are still subject to the RUS' Buy American requirements. For programs subject to the use of RUS forms, Form 787 Supplement A is used to indicate owner-supplied materials. At construction closeout, Form 281 is used to tabulate materials supplied to the contractor by the awardee.

16. In 7 CFR 1787 there is a link to the UEP Eligible countries. If our manufacturers are from these countries does that mean they are considered compliant with BABAA?

The lists of eligible countries for the Rural Utilities Service Electric and Telecommunications Programs were negotiated for reciprocal treatment by the United States Trade Representative for those specific programs only. Manufactured goods from these countries would not be considered domestic in other federal programs, unless they are subject to another international agreement. See https://www.rd.usda.gov/files/UEP_Engineering_EligibleCountries.pdf

17. Are there any opportunities to expand existing American Steel businesses/facilities to ensure they have to capacity to keep up with the demand through BABAA?

This matter is outside the scope of Rural Development's efforts to comply with BABAA; however, BABAA is intended to spur domestic production of such materials within the U.S.

18. For a water or sewer project how will the more electronic items be handled? Specifically SCADA, control panels, and other telemetry? These electronic items are typically not manufactured domestically I don't believe.

If certain items are indeed not produced domestically, recipients of federal assistance can request a non-availability waiver to use a non-domestic product.

19. We supplied PVC conduit and we're facing issue on some of materials particularly on additives is there any clause minimum 90% above if domestics then considered still BABA or it will go special case for approval as non-availability

According to the BABAA statute, if the item consists primarily of "plastic and polymer-based products (including polyvinylchloride...", it is considered a construction material. The Office of Management and Budget recently published construction material standards in its proposed BABAA regulations, noting that for *Plastic and polymer-based products* "All manufacturing processes, from initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States". See [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023).

20. Does specialized treatment equipment in a Water/Wastewater Project using SRF funds like an ozone generator that is not manufactured in the US required to be BABA compliant?

Revolving funds for financing water and wastewater projects financed through Rural Utilities Service are capped at \$200,000. As a result, these projects are already covered under the Department's small grant/loan waiver from BABAA.

21. What documentation is needed to show iron or steel used in a project was produced in the US?

A certification from the manufacturer indicating that the iron or steel product complies with BABAA.

22. On the certification requirements/documentation, do we need to have documentation for both AIS compliance and BABAA compliance for those items that have overlap?

No, only BABAA certification is required, as it would trump American Iron and Steel (AIS). That said, the requirements of BABAA and AIS are identical, except for the waiver process.

23. When it comes to American Iron and Steel and BABA would you need two Certified Letter from Manufacturer for both BABA and AIS?

See Question #22.

24. Does BABAA have a similar de minimis allotment as AIS?

The BABAA de minimis waiver is similar to, but not identical to the American Iron and Steel de minimis waiver. Under the BABAA de minimis waiver, projects can use non-domestic products

totaling up to the lesser of \$1,000,000 or 5% of total project costs. Under Water and Environmental Program's de minimis waiver, non-domestic incidental components cumulatively may comprise no more than a total of five percent of the total cost of the materials used in and incorporated into a project, while the cost of an individual non-domestic item may not exceed one percent of the total cost of the materials used in and incorporated into a project.

25. How do you determine whether a component within a manufactured product is made in the US?

The USDA relies on the manufacturer's certification that the manufactured product complies with BABAA's requirements. Note, however, that not *all* components of a manufactured product must be manufactured in the U.S. Under Office of Management and Budget's proposed BABAA regulations, a manufactured product is considered domestic if " (i) The product was manufactured in the United States; and (ii) 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The costs of components of a manufactured product are determined according to § 184.5." See [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023).

26. Are manufacturers liable if their product is not actually 55% comprised of components made in the US? We can do due diligence and get the documentation, but how much do we need?

This question is outside the scope of USDA's authority. Obtaining a certification of BABAA compliance is the only duty required of recipients of federal assistance.

27. What if you need something that is not produced within the United States?

If you need something not produced in the U.S., you may seek one of three waivers: non-availability, unreasonable cost, or public interest. See <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>

28. Unreasonable Cost. Per your example, if a \$1,000,000 project is increased to >\$1,250,000 (+25%) to comply with BABAA, that is "unreasonable". Does that apply even if the item involved has a low value? Do you need to pay \$250,000 for a \$10 item?

There could be a misunderstanding here. There is a waiver available if a project cost increases by over 25%. The example of \$1M and \$1.25M was for understanding the requirements. These should all be bonified cost and doesn't follow the second part of your question.

29. Can you clarify the onsite BABAA certification requirement? Is it not adequate to obtain a manufacturer's certification letter prior to delivering the materials to the site? Does an additional certification need to accompany the material so that the RPR can verify?

The manufacturer's BABAA certification must be given for what was actually delivered not promised by the manufacturer. As a result, certifications provided for a bid or prior to delivery are not acceptable.

30. If people say they can comply, but the price is much higher, are you required to use them?

Yes, if the costs of the project are not increased by 25 percent, you must use the domestic product.

31. Will there be site inspections required by USDA staff as was required with AIS? Or will the Engineers/Architects be required to provide documentation instead?

USDA will use a variety of measures to ensure its recipients compliance with BABAA.

32. Have the details of the minor components waiver been determined?

Yes please see the waiver USDA currently has in place for five years at [USDA Departmentwide Public Interest Waivers: De Minimis, Small Grants and Minor Components](#).

33. What is the process to request a waiver?

Guidance on the waiver process can be found at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.

OTHER BABAA TOPICS

1. Has the BABA guidance memorandum been finalized since the OMB document was published in April 18, 2022?

The Office of Management and Budget has recently proposed regulations on BABAA implementation. See [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023).

2. Can these funds be used for "State " recognized Indian tribes? Or only Federally recognized Indian tribes?

BABAA is not a funded program, it is a domestic preference requirement attached to all federal assistance on infrastructure projects constructed by non-federal entities, as defined in [2 CFR 200.1](#).

3. We are manufacturers in Puerto Rico. Who is our local contact?

We have offices in Puerto Rico, and you can find your contacts at [Puerto Rico | Rural Development \(usda.gov\)](#).

4. Do you know if other federal agencies implementing IJA dollars (such as NTIA - BEAD) will use the same process laid out here? Or if they will have their own guidance?

Each federal agency will implement BABAA in their own way; however the Made In America Office is coordinating BABAA implementation throughout the federal government. Please contact NTIA directly for appropriate guidance?

5. When and where do we submit BABAA reporting?

BABAA does not contain reporting requirements. However, it is the duty of the recipient of federal assistance to maintain records of BABAA compliance. Each Rural Development program will have different methods in which they verify compliance.

6. We want to make sure we are certified to supply materials to BABA projects.

That is good, although there is no formal certification. Please review Office of Management and Budget's proposed regulations on BABAA implementation, which will be helpful in certifying your

products. See [Federal Register: Guidance for Grants and Agreements](#), 88 Fed. Reg. 8374 (proposed February 9, 2023).

7. Do entities need to use the Build America Buy America Act when using the American Rescue Plan Act funds?

All federal funding is subject to BABAA if the obligation of such funds occurs on or after February 4, 2023. For such funding, BABAA's domestic preference requirement applies to infrastructure projects constructed by non-federal entities, as defined in [2 CFR 200.1](#).

8. Is this information applicable to other fed agencies--epa, interior, etc.?

Yes, BABAA is applicable to *all* federal funding programs.

9. Do RD waivers applicable to other funding agencies?

No, not unless the project has multiple funding sources from the federal government and Rural Development has the largest investment in that project.

10. Thanks for hosting this webinar - I believe it's the first I've seen of its kind since the BABAA rules have been drastically expanded to include other programs, including NPS. I have a few questions. Have penalties been outlined for non-compliance or issues discovered during auditing? For example, returning grant funding, or fees/fines/penalties? Who conducts these audits? Is there information about the # of audits which may be conducted per year? Are all three waiver types expected to take the same amount of time to process?

There are various remedies for the government regarding non-compliance with BABAA, which are outlined in [2 CFR 200 Subpart F](#) and the recipient's contract with the government.

The Office of Inspector General, as well as Rural Development's own auditing staff, conduct regular audits of Rural Development programs.

The public notice process for waivers is the same no matter the waiver type; however, the documentation for the waiver may take longer depending on the specific facts of the request.

11. Can you speak to inflation's impact on the 'unreasonable cost' waiver request process? 30 days can make a significant difference in costs. Thanks much.

Rural Development recognizes that inflation has impacted costs dramatically in recent years; however, such costs have risen on domestic as well as non-domestic prices. The unreasonable cost waiver is made by comparing domestic prices to non-domestic prices. However, we understand that the longer a waiver takes, the potential that prices may increase in that time period. USDA, however, cannot shorten the waiver process that is mandated by law.

12. Will USDA issue a bulletin for the implementation of BABAA language into EJDCD?

Yes, the bulletin or in our case [USDA Rural Development Build America, Buy America Act - Customer Guide](#) is going through approvals now.

13. If the project for a small school is still in a concept stage, can one apply already for a BABAA grant?

See Question #5 Non BABAA Topics.

14. Is there a database of BABA vendors, perhaps something like what's available for DBE companies?

No, there is currently no database for BABAA-certified vendors.

15. Is AIS a part of BABA or something separate?

American Iron and Steel (AIS) and BABAA are distinct laws; however, the requirements for iron and steel products under BABAA are nearly identical to those under AIS, except that AIS applies to all entities, whereas BABAA applies only to non-federal entities, as defined in [2 CFR 200.1](#). Additionally, the waiver process under BABAA must go through the Made in America Office, whereas AIS waivers are determined at the agency level.

16. How does BABAA differ from the current AIS requirements? Sorry if this was asked already.

See Question #15.

17. How does BABAA interact with the American iron and steel act requirements? Are the AIS requirements embedded within the BABAA requirements or are they separate regs?

See Question #15.

18. Can you provide guidance on documents or forms that should be included in the bid documents with BABAA? Is USDA issuing documents to be included?

Rural Development (RD) is issuing guidance on bid documents for compliance with BABAA. Please contact your RD representative to obtain a copy of such guidance or visit [Build America, Buy America Act | Rural Development \(usda.gov\)](#).

NON BABAA TOPICS

1. Can these spoken amounts and program areas, leadership be posted on a slide? or in the notes?

The spoken amounts were intended to give just an order of magnitude. Please submit a more formal budget request, if there are items you need. Contact your Rural Development representative or [Rural Development \(usda.gov\)](#) for program specifics. And please watch for funding announcements from RD.

2. What is the pipeline of access to these funding sources--are funds awarded directly to municipalities, counties or do we have to go through states?

Rural Development (RD) has offices across rural America, and certain programs will fund these directly to the entities on your inquiry list - municipalities and counties. Please contact your [USDA Rural Development state office](#) or visit [Rural Development \(usda.gov\)](#) for a list of programs.

3. Is there technical assistance (perhaps a pre-grant program) to get small govt units prepared to apply for the main program?

There could very well be. Rural Development (RD) has multiple avenues for technical assistance. Please contact your RD representative in your state for the opportunities or visit [Rural Development \(usda.gov\)](https://www.usda.gov).

4. What are the funding matching requirements?

BABAA is not a funded program, it is a domestic preference requirement attached to all federal assistance on infrastructure projects constructed by non-federal entities, as defined in [2 CFR 200.1](https://www.ecfr.gov/title-2/chapter-I/subchapter-B/part-200/subpart-1/section-200.1). However, if you mean how does BABAA apply to matching, *all* project funds in a project subject to BABAA are subject to BABAA, even matching funds.

5. Where can we find out how much money is available to each state?

BABAA is not a funded program, it is a domestic preference requirement attached to all federal assistance on infrastructure projects constructed by non-federal entities, as defined in [2 CFR 200.1](https://www.ecfr.gov/title-2/chapter-I/subchapter-B/part-200/subpart-1/section-200.1).

6. Thank you for the timely response. Am an attended at the World Bank Data Protection live meeting concurrent with this meeting. Yet we are establishing an IHE in rural Oregon, to upscale a nutrition biomedicine protocol, solar/wind well water pump/filtration device and an URBAN farm indoors using vertical devices exclusively. Seeking funding immediately, as the executive office/residence will be a part to the reconfiguration of a former USDA building now privately owned in rural Oregon. Please excuse my short time shared herein, as my resources in staffing have suffered as a result of climate change disaster costs, and the pandemic. Good Day! Driving my EV for 11 years, now leaving your meeting.

Thank you for your comments. If you have not already done so, please consult with the [Oregon | Rural Development \(usda.gov\)](https://www.usda.gov) State Office to discuss your specific project in further detail.

7. How do we get information and help with small composting food waste business? I'm a 100% disabled veteran working toward being a small farmer and composting is a part of our plan.

Please contact the Rural Development Rural Business-Cooperative Service staff serving your State: [USDA Rural Development state office](https://www.usda.gov).

8. Looking for help in Puerto Rican City to revitalize my small city 's Waste Management System, ferry Docking stations, Airport building Repairs, Roads, City Buildings and Real Property and Educational Facilities for the community. A person to work with my be ideal to make sure I have everything needed is in place.

Contact the Rural Development (RD) office nearest to your project for further direction on RD lending opportunities. Our Puerto Rico State Office contacts can be found at [Puerto Rico | Rural Development \(usda.gov\)](https://www.usda.gov).

9. Our irrigation district just trimmed hydropower production because we can't afford a fiber optic upgrade imposed by our interconnect utility. Would a project like that fall in RD domain?

This possibly could be in the Rural Development (RD) domain. Contact your [USDA Rural Development state office](https://www.usda.gov) to discuss the details.

10. Would it be possible for Aylene to talk a bit more about broadband--perhaps examples of projects and upcoming opportunities?

The ReConnect Round 4 application window closed January 30. Another round of ReConnect will be forthcoming towards the end of this fiscal year or the beginning of the 2024 fiscal year. Please click on this link <https://www.usda.gov/reconnect> for additional ReConnect information and Funding Opportunity Announcement (FOA).

11. We are a start nonprofit that has worked on an infrastructure project to launch better broadband for the small Community of Chubbtown in Georgia. We have worked on the project for almost three years. Is there funding that is tailored for small nonprofits taking on large projects? Currently, our Senators have approved funding for vendors. However, there is still a need for a liaison to work with the vendors, FCC, and community.

The Rural Utilities Service has five programs to support broadband projects in small communities. Eligible entities include cooperatives, nonprofits, limited dividend, or mutual associations—entities “capable of carrying out the purposes of the Rural Electrification Act and that have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.” (§1739.10(b)). It is suggested you contact your Georgia state General Field Representative (GFR), Andrew Hayes, andrew.hayes@usda.gov.

12. This may be slightly off subject, but I'm curious if there will be another round of ReConnect this year? If so, when might we look for that to launch?

The ReConnect Round 4 application window closed January 30. Another round of ReConnect will be forthcoming towards the end of this fiscal year or the beginning of the 2024 fiscal year. Please click on this link: <https://www.usda.gov/reconnect> for additional ReConnect information and Funding Opportunity Announcement (FOA).

13. We are a nonprofit community center in rural MS struggling with reliable internet service for our teaching/computer lab. Can we get assistance through this program?

Either or both the Distance Learning and Telemedicine Program and the Community Connect Program are fashioned to help with cases like this. If the entity operating the community center qualifies as an eligible organization under the Rules, an application may be submitted to Rural Utilities Service (RUS). A new position at RUS has been established to help inexperienced entities through the application process. Contact your General Field Representative (GFR), Anthony Tindall, anthony.tindall@usda.gov, for information on how to proceed.

14. Val cut out earlier - he mentioned a new \$300 million water/sewer program. What is that program?

Water and Environmental Programs received \$325mm in funding through Division N (Disaster Relief Supplemental Appropriations) of the Consolidated Appropriations Act, 2023 (PL 117-328). A Notice of Funding Availability with details will be published soon.