

3/19/24



Build America, Buy America Act (BABA) Updates, Resources, and Tips

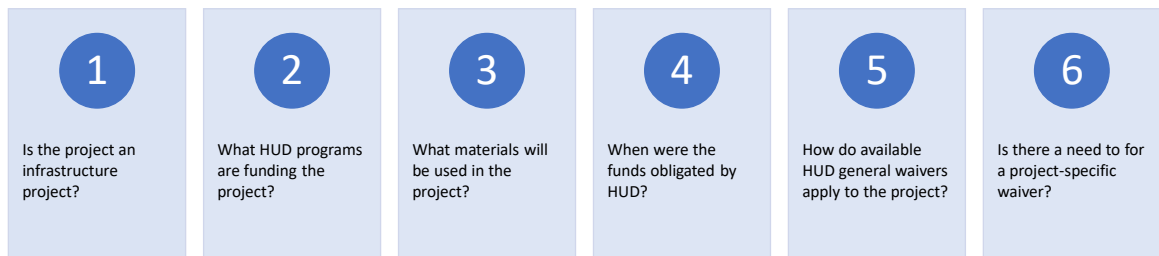
COSCD 2024 Program Managers Training Conference

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Refresher: Determining BABA Applicability



See [CPD's BABA implementation notice](#) for more details on applying this analysis to a project.



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Refresher: HUD General Waivers

- HUD currently has five general waivers available
 - Exigent Circumstances Waiver
 - Tribal Recipients Waiver
 - Pacific Island Territories Waiver
 - Small Grant Waiver
 - *De Minimis* Waiver
- These waivers offer flexibility to all HUD-funded infrastructure projects and should be carefully considered before pursuing a project-specific waiver.
- No formal request to HUD is needed to use these waivers.
- Grantees should maintain documentation that demonstrates the applicability of the waiver to a project, consistent with program regulations.



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Waivers that Apply to an Entire Project



Exigent Circumstances Waiver

- The BAP may be waived if projects must be completed immediately to protect life, ensure safety, or prevent the destruction of property.

Tribal Recipients Waiver

- The BAP is currently waived for all Federal financial assistance for infrastructure projects awarded to Tribes, Tribally Designated Housing Entities, and other Tribal Entities.

Pacific Island Territories Waiver

- The BAP is currently waived for all Federal financial assistance for infrastructure projects in the Northern Mariana Islands, American Samoa, and Guam.

Small Grants Waiver

- The BAP can be waived for an entire project if the total project cost (including all sources of funding) is \$250,000 or less.



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De Minimis Waiver

- If none of the other general waivers apply to a project, the *de minimis* waiver gives grantees additional flexibility to waive the BAP for **a portion of a project**.
- The *de minimis* waiver allows grantees to waive the BAP for materials whose total cost is less than 5% of all materials used in a project (up to \$1,000,000).

\$500,000 (total cost of materials) x **5%** = **\$25,000** *De Minimis* limit

- If a grantee has a particular product that is below the *de minimis* limit and no domestically produced equivalent is available, the BAP can be waived for that product only.
 - The BAP will still apply to the rest of the materials.



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Project-Specific Waivers



If...

- No general waivers apply to the entire project,
- You've calculated your 5% *de minimis* limit and taken advantage of the flexibility to source foreign-made goods up to the limit,
- You've done due diligence to find domestic made equivalents for products above the *de minimis* limit.

Then, you may be eligible for a project-specific waiver

- Non-availability – no domestic product available
- Unreasonable cost – total project cost increases more than 25% when including domestic materials
- Public interest – complying with BABA would be inconsistent with the public interest



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Submitting a Waiver: New Online Waiver System

- HUD has launched a new online service for submitting project-specific waiver requests at babawaiver.hud.gov.
- HUD has released a [User Manual](#) and [training video](#) to assist grantees with the process.
- All waivers must be reviewed by HUD and OMB and posted for a 15-day public comment period.
 - **Plan ahead!** Waiver review will require a minimum of six weeks.



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Waiver Submission Checklist



Before submitting a project-specific waiver...

- ✓ Determine that the project is subject to BABA based on the obligation date of the funds and the materials used in the project.
- ✓ Review HUD's general waivers on HUD.gov/BABA and determine that the project does not qualify for relief under existing waivers.
- ✓ Conduct the necessary market research to support the need for a waiver.
- ✓ Ensure you are the direct recipient. Subrecipients should not submit waiver requests directly to HUD but should coordinate with the direct recipient for submission.



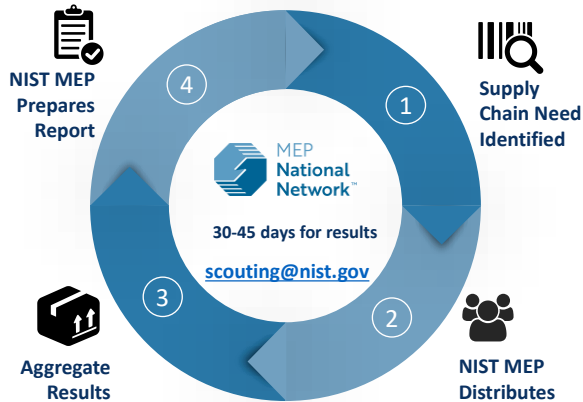
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NIST Manufacturing Extension Partnership

- Grantees should leverage their state MEP network to locate domestic suppliers.



**MEP Supplier Scouting
Opportunity Synopsis**
[MEPNN Supplier Scouting
Request \(nist.gov\)](https://www.nist.gov/mep/scouting-request)

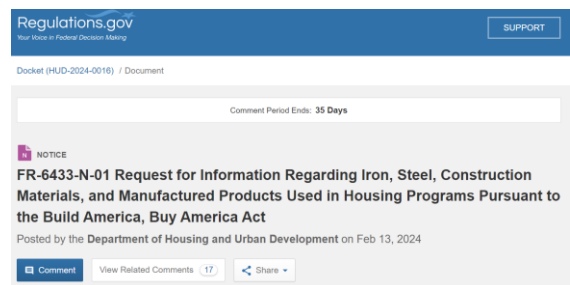
Visit <https://www.nist.gov/mep/executive-order-14005> for more information



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HUD's BABA Request for Information

- HUD has an RFI on BABA implementation open for public comment through April 15, 2024.
- Your input is critical as HUD continues to develop policies and procedures around BABA implementation.
- Please provide specific, verified, data-driven comments on how BABA regulations have impacted your projects.
- [RFI video](#) provides more background from the department
- Comments should be submitted via [regulations.gov](https://www.regulations.gov) [HERE](#).



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BABA Resources

- [CPD Notice 23-12](#)
 - CPD BABA [Technical Assistance Products](#)
 - [BABA on HUD.gov](#)
 - More information on project-specific waiver process available here.
 - BABA Regulations: [2 CFR 184](#)
 - [OMB Memorandum M-24-02](#)
- **New “Beyond the Basics” Webinar Coming Soon!**



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