



WEST VIRGINIA

Economic Development

A Deep Dive into Build America, Buy America (BABA)

June 4, 2026

Disclaimers

- Data is based on latest available sources as indicated.
- Programs use funding allocated to the State of West Virginia under the Infrastructure Investment and Jobs Act (IIJA). Program parameters are subject to National Telecommunication and Information Administration (NTIA) and U.S. Department of Commerce rules and guidance, and other federal and state requirements.
- In the event of any discrepancy between any requirements presented and any federal funding requirements, the latter will prevail and will be reflected in future presentations.

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The West Virginia Office of Technology (WVOT) has made the strategic decision that effective immediately, the use of AI transcription software is prohibited for all Executive Branch State Agencies.

Frequently Asked Questions (FAQ) Process

Process Overview

- WVDED will provide and periodically update a list of frequently asked questions by Subgrantees to support the execution phase of the Subgrantee Agreement
- Subgrantees are permitted to submit questions through the following:

FAQ Submission Form: <https://forms.gle/FT5zDNPpFqf9ZcXs5>

- This will be utilized as the primary method for submitting questions at any time. Subgrantees can use this format for general inquiries, questions ahead of a training, or if you wish to submit a question anonymously.
- If your question contains confidential information, please mark the question as such. WVDED will not release confidential questions or their answers to other Subgrantees.
- Responses to questions through the FAQ submission form will be provided through direct outreach or by updating the BEAD FAQ document.

Meeting Chat during Training Sessions

- For questions that arise during a live training, Subgrantees can utilize the Google Meet chat feature to ask in real-time.
- Confidential questions should not be asked during this time. Subgrantees should not rely on any verbal responses during a live session. For an official written response, Subgrantees should submit through the FAQ submission form, which will be provided through the BEAD FAQ document.

An aerial photograph of the Indiana State Capitol building, featuring a prominent golden dome with intricate patterns. The building is set against a backdrop of rolling hills and a wide river. The entire image is overlaid with a semi-transparent orange filter. The text "Welcome and Objectives" is centered in white, bold font.

Welcome and Objectives

Agenda

- Specific BABA Requirements
- Challenges and Best Practices
- Exemptions and Waivers
- Frequently Asked Questions
- Conclusion/Q&A

Meet the Presenters



Navid Kashani

Director, Government Contractor Services, KPMG LLP.

- Navid has supported commercial, state, and non-profit clients in various industries including aerospace and defense, technology, and healthcare and life sciences. Navid has aided contractors on a wide variety of accounting and compliance regulations, notably the Uniform Administrative Requirements under 2 CFR 200, Federal Acquisition Regulation (FAR), Build America, Buy America (BABA), and Cost Accounting Standards (CAS).
- Notable government contracting compliance support includes, but is not limited to:
 - Experienced in leading and running comprehensive multifaceted 2 CFR 200 compliance assessments to assist organizations (including state broadband offices) in reviewing their federal award grants management processes.
 - Advised clients on the scope and applicability of Build America, Buy America (BABA) and other domestic content regulatory requirements across, clarifying categories for iron/steel, manufactured products, and construction materials.



Anthony Amado

Manager, Infrastructure, Capital Projects & Climate Advisory, KPMG LLP.

- Anthony has supported various government clients with regulatory compliance, fiscal oversight, grants management, and project management, primarily for capital intensive programs. His experience includes specialized projects related to internal audits, enterprise risk management, field monitoring, federal relief funding, Uniform Guidance, and domestic content such as BABA.
- Notable experience includes, but is not limited to:
 - Supported state recovery offices with audit readiness advisory services, overseeing subgrantee assessments, regulatory guidance document, transaction sampling, and 2 CFR 200 compliance testing to identify and remediate compliance gaps.
 - Led comprehensive risk management and governance workstreams for ARPA and IJJA-funded infrastructure programs, helping to establish internal controls and providing ongoing compliance, oversight, and monitoring.

Today's Objectives



Today's Objectives

- Refresh the purpose of the Build America, Buy America Act and its linkage to the Infrastructure, Investment, and Jobs Act (IIJA) and the Broadband, Equity, Access, and Deployment (BEAD) program
- Understand category-specific requirements and how they apply in practice
- Practice domestic content calculations for manufactured products and identify common pitfalls
- Recognize when exemptions/waivers may be applicable at a high level
- Learn practical compliance controls



Key Takeaways

- A clearer framework to plan, procure, and document for BABA compliance across iron/steel, construction materials, and manufactured products
- Practical procurement tools: clauses to include, flow down language for subs/suppliers, and change management tips



Specific Requirements

An aerial photograph of a large, ornate dome building, likely a state capitol, with a river and hills in the background. The image is overlaid with a semi-transparent orange filter. The text "Specific Requirements" is centered in white.

BABA at a Glance

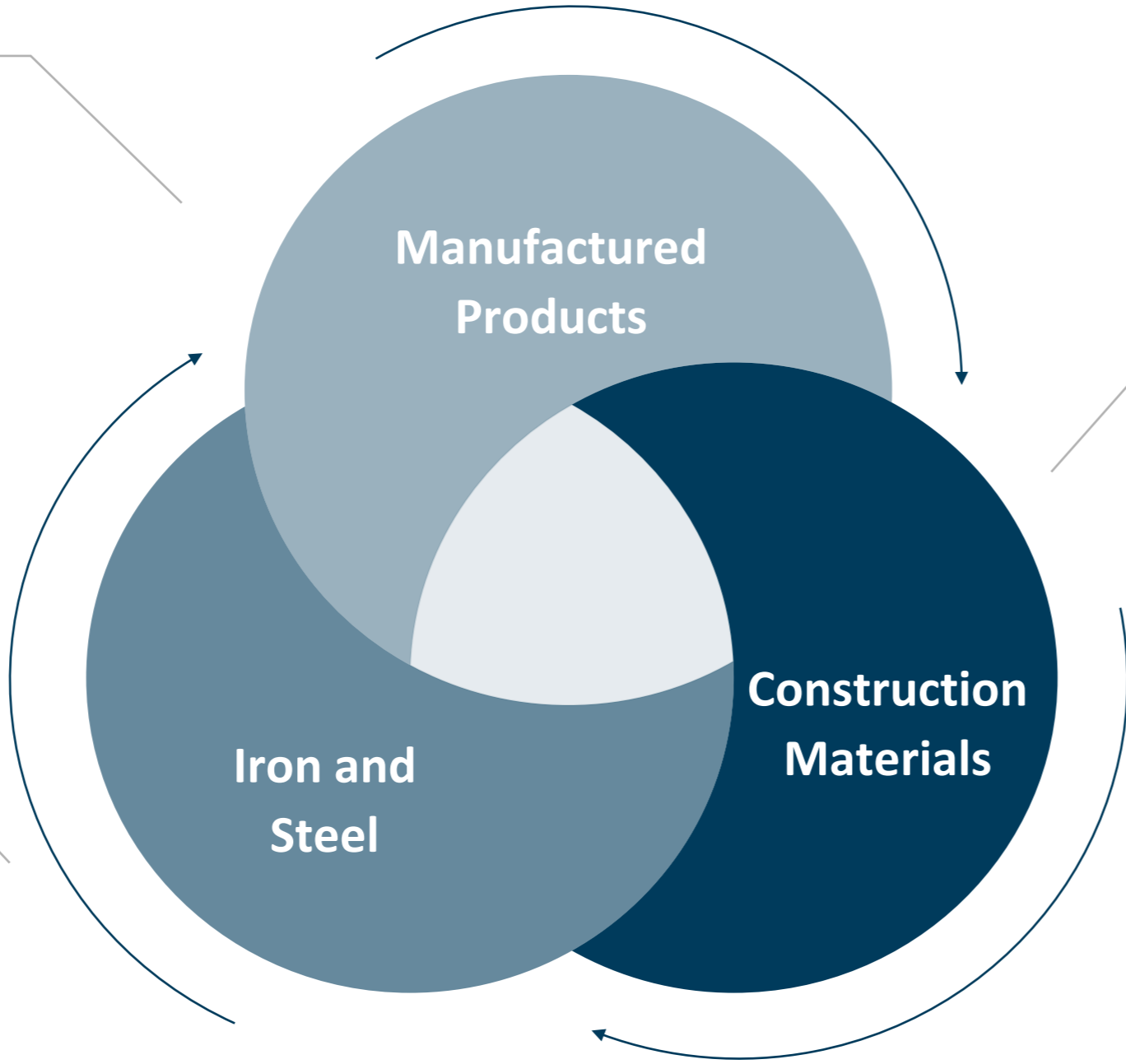
IIJA is a comprehensive infrastructure package aimed at modernizing and upgrading the nation's infrastructure. BABA is integrated into IIJA to ensure that the significant federal investments in infrastructure are aligned with domestic content requirements.



55% of the components of manufactured products used in these projects must be made in the US. Labor to manufacture the product is not included in the calculation.



All iron and steel used in infrastructure projects funded by the IIJA must be produced in the US.



All manufacturing processes must occur in the US.



Other:

Increased Oversight

Establishment of the “Made in America” office to develop transparency and guidance

Application of Domestic Preference

An expansion of domestic preference procurement policies to all federal financial assistance programs for infrastructure (contracts issued on or after May 14, 2022)

If an agency specific requirement exceeds the above standards, the higher standard has precedent.

Knowledge Check 1



Question: Which option correctly pairs each BABA category with its core compliance test?



Iron/Steel: all US processes; Construction Materials: produced in US; Manufactured Products: US-made + content %



Iron/Steel: 55% components; Construction Materials: US assembly; Manufactured Products: any origin OK



Iron/Steel: melt/pour only; Construction Materials: US or Canada; Manufactured Products: US final assembly only



Iron/Steel & Construction Materials: 55% component threshold; Manufactured Products: all processes in US



BABA Compliance Example 1

Product: Network Enclosure

End-Product Manufacturing Location: Ohio

Component Costs:

US: sheet metal panels \$90

power supply \$35

fasteners \$5 → US total = \$130

Foreign: cooling fan \$20

handle set \$10 → Foreign total = \$30

Total component cost = \$160

Does this meet BABA requirements?



BABA Compliance Example 1: Manufactured Goods

Does this meet BABA requirements? YES

BABA Test: Manufactured Product

End-Product: Manufactured in Ohio

Domestic Content Calc: $\$130 / \$160 = 81.25\%$



BABA Compliance Example 2

Product: Optical network terminal (assembled in the US)

Assembly Location: US

Component Costs:

US: \$120

Foreign: \$130

Total component cost = \$250

Does this meet BABA requirements?



BABA Compliance Example 2: Manufactured Goods

Does this meet BABA requirements? NO

BABA Test: Manufactured Product

End-Product: assembled in US

Domestic Content Calc: $\$120 / \$250 = 48\%$



BABA Compliance Example 3

Product: Rebar

Assembly Location: Multiple Jurisdictions

- Melt and pour = PA, USA
- Roll = IN, USA
- Epoxy Coat = Canada

Component Costs:

U.S.: \$100

Foreign: \$10

Total component cost = \$110

Does this meet BABA requirements?



BABA Compliance Example 3: Iron & Steel

Does this meet BABA requirements? NO

BABA Test: Iron & Steel









Challenges and Best Practices

Documentation Responsibility / Requirements

Proper documentation is crucial for demonstrating compliance with BABA regulations. The responsibility for maintaining these records typically flows from the Federal awarding agency down to the subgrantees.

Stakeholder	Responsibility
 Federal Awarding Agencies	Responsible for overall compliance and enforcement. They issue guidance and may require specific documentation from recipients.
 Recipients (e.g., State Broadband Offices)	Must ensure that all subawards comply with BABA. They are responsible for collecting and reviewing documentation from subgrantees to ensure compliance before disbursing funds.
 Subgrantees	Are on the front lines of BABA compliance. They are responsible for obtaining and maintaining detailed records from their contractors and suppliers that demonstrate the domestic origin of iron, steel, manufactured products, and construction materials used in the project.
 Contractors and Suppliers	Must provide certifications and other documentation to the subgrantees to verify the origin of their products and materials.

General Compliance and Reporting Requirements - Supporting Documentation

The goal is to create a clear and auditable trail from the materials used in the project back to their source. Subgrantees must be able to prove that every item covered by BABA meets the domestic content requirements.

Document Type	Purpose & Content: What to Verify	Collected From
Vendor/Supplier Certifications	<p>This is your primary proof of compliance. The document must be a formal certification from the manufacturer for each specific product, attesting that it meets the correct BABA standard:</p> <ul style="list-style-type: none"> • Iron/Steel: Certifies 100% of manufacturing processes occurred in the US • Manufactured Products: Certifies the cost of US components is >55% of the total component cost • Construction Materials: Certifies all manufacturing processes occurred in the US 	Contractors / Suppliers
Itemized Bill of Materials (BOM)	<p>This connects certifications to your project. You need a detailed list from the contractor identifying every BABA-covered item being installed. It should include manufacturer names and product numbers that directly match the vendor certifications.</p>	Prime Contractor
Purchase Orders & Invoices	<p>This creates the financial audit trail. These records must align with the Itemized Bill of Materials. The quantities and product details on the invoices should match the materials certified by the vendors and listed on the BOM.</p>	Prime Contractor
Approved Waiver Documentation	<p>This is your exception file. <i>Only applicable if a waiver was secured.</i> You must keep the official, approved waiver notice from the federal awarding agency (e.g., DOC, NTIA) and all associated correspondence showing why the waiver was requested and granted.</p>	Federal Agency / Recipient
Contract & Bid Documents	<p>This sets expectations from the start. Your contracts with prime contractors must contain explicit clauses legally requiring them and all their subcontractors to comply with BABA and to provide all the documentation listed in this table as a condition of payment.</p>	Procurement/Legal

General Compliance and Reporting Requirements – Supporting Documentation (Cont.)

The following are representative examples of documentation expected in the BEAD BABA compliance landscape. Your documentation requirements will vary based on your underlying grant agreement terms and conditions.

Key Elements

Equipment Information

BABA Domestic Preference Requirement reference

Location of Manufacturing

Signature of Authorized Company Representative

Representative Manufacturer Certification Letter

BABA Reporting Subrecipient Tracker for Finished Waived Electronics						
Manufacturer	Electronic Category (e.g., router, switch, power system, radio, etc.)	HS Code (10 digit)	Product Identifier (e.g., SKU, Product ID, etc.)	Common Language Description of Product Function	Country of Origin	Quantity

Representative BABA subgrantee Tracker for Finished Waived Electronics

Manufacturer Certification and Compliance Certificates


A manufacturer should take the following general steps to accurately certify a product. This is the background work that happens before they provide a certification letter to a contractor or subgrantee.

Step	Manufacturer's Action
Identify the Applicable Standard	The manufacturer first determines which BABA category the product falls into: (e.g., Is it primarily iron or steel? Is it a manufactured product? Is it a construction material?)
Conduct an Internal Audit & Analysis	Based on the standard, the manufacturer must conduct a thorough internal analysis: <ul style="list-style-type: none"> • For Manufactured Products: They must trace their supply chain to determine the origin and cost of every single component. They then perform the cost calculation (Cost of US Components / Total Component Cost) to ensure it exceeds 55%. • For Iron/Steel & Construction Materials: They must verify and document that all manufacturing processes for the product occurred within the US.
Create Internal Back-Up Documentation	The manufacturer must keep detailed internal records that justify their certification. This is their evidence in case they are ever audited. These records could include invoices and receipts for all components, traceability documents for raw materials, records of their own manufacturing and assembly locations.
Prepare the Formal Certification Letter	Once the analysis is complete and compliance is confirmed, the manufacturer prepares the official self-certification document. This is the document that the subgrantee needs to collect. It is not a standardized government form, but rather a formal letter on the manufacturer's letterhead that should clearly state: <ul style="list-style-type: none"> • The manufacturer's name and address. • The specific product name(s) and model number(s) being certified. • A clear, unambiguous statement that the product(s) comply with the applicable standard under the Build America, Buy America Act. • The letter should be signed by an authorized representative of the company.


General Compliance and Reporting Requirements – Semi Annual Reporting

Subgrantees are responsible for tracking their waived electronic purchases. This means each subgrantee should submit semi-annual BABA compliance reports similar to the sample in Appendix B of the BABA Compliance and Documentation Requirements and Procedures.

Waiver Reporting :

- 
- Subgrantees must compile and share a reporting tracker with the BEAD recipient (Eligible Entity).
 - The tracker covers the finished waived electronics used in BEAD projects.
 - BEAD recipients (Eligible Entities) then share the tracker with NTIA as part of semi-annual reports.
 - The tracker gives NTIA insight into the finished waived electronics used to build BEAD-funded broadband networks, including electronics types and country of origin.
 - NTIA designed the tracker to avoid unnecessarily burdening BEAD subgrantees and manufacturers.

The **key elements** of the reporting tracker are:

- 
1. Name of Manufacturer
 2. Category of electronic product (e.g., router, switch, power system, radio, etc.)
 3. HS Code (10 digit)
 4. Product Identifier (e.g., SKU, Product ID, Part No., etc.)
 5. Common language description of the product's function
 6. Country of origin

Source for Appendix B: [Build America, Buy America Compliance and Documentation Requirements and Procedures](#)
Excel Version of Appendix B: [Appendix B BEAD BABA Reporting subgrantee Tracker.xlsx](#)

General Compliance Requirements: Empowering Responsible Parties

Compliance should not be a passive activity. Subgrantees can get ahead of BABA by designating specific individuals to own and manage the process. For BEAD subgrantees, this often involves a mix of roles.



BABA Compliance Officer / Grants Manager

Key Responsibilities:

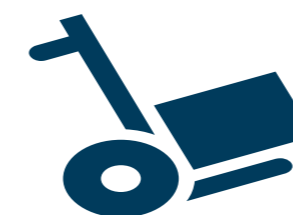
Central owner of the compliance effort. Responsible for understanding the regulations, establishing the documentation process, reviewing all submissions from contractors, and serving as the primary point of contact with the recipient (the state broadband office).



Project Manager / Construction Manager

Key Responsibilities:

Responsible for day-to-day oversight on the ground. Ensures that the materials being delivered and installed on-site match the approved, compliant materials documented by the Compliance Officer. Acts as the first line of defense against non-compliant materials making their way into the project.



Procurement / Contract Manager

Key Responsibilities:

Responsible for ensuring that all contracts and purchase orders with prime contractors and subcontractors explicitly include BABA compliance clauses and documentation requirements.



Legal Counsel

Key Responsibilities:

Should be consulted to review contract language and to advise on any complex compliance questions or potential waiver requests.



Procurement and Flowdown Requirements

Put BABA up front in all procurements

- Reference OMB 2 CFR part 184, agency/program guidance, and 2 CFR 200 (Uniform Guidance)
- Define covered items by category (iron/steel, construction materials, manufactured products)
- Specify that BABA applies to materials permanently incorporated in the project

Required supplier deliverables (before delivery/installation)

- Compliance certification (category-specific)
- Manufactured products: costed BOM showing domestic content percentage; evidence of US Manufacture
- Iron/steel: mill certifications and records of melt, pour, roll, finishing/coating in the US
- Construction materials: production evidence per OMB definitions (e.g., Origin of non-ferrous metals, glass, drywall)
- Any waiver references and conditions (if applicable) manufacturer BABA

Core contract clauses

- Compliance warranty and right to audit/inspect records
- Documentation as a condition of acceptance/payment
- Substitution/change notice and prior approval requirement
- Origin traceability and record retention aligned to award terms (e.g., ≥5 years post-closeout)
- Remedies for noncompliance (withhold, replace, or corrective action at supplier's cost)

Flowdown to subs and vendors

- Bind subcontractors to the same BABA requirements, documentation, and notice triggers
- Prime/vendor responsible for ensuring sub-tier compliance and timely certifications

Bid evaluation and award

- Treat BABA compliance as a pass/fail requirement; assess cost/schedule impacts
- Consider waiver plan/conditions in evaluation when relevant



Strategies for Verifying and Certifying Compliance (1/2)

01

Plan Early And Map Categories

- Identify BABA-covered items and assign category (iron/steel, construction materials, manufactured products)
- Confirm which requirements apply per category and award terms

02

Require standardized supplier certifications

- Use program-aligned templates (e.g., NTIA/BEAD where applicable)
- Include end-product identification, category, US manufacturing location(s), and authorized sign-off
- For manufactured products: include costed BOM and domestic content percentage

03

Verify evidence, don't just file it

- Manufactured products: reconcile BOM to purchase specs; check component costs and US/foreign split; validate “US-manufactured” plant/location
- Iron/steel: review mill certs and records for melt, pour, roll, and finishing/coating, all in the US
- Construction materials: confirm production evidence meets OMB material-specific definitions (e.g., origin for non-ferrous metals, glass)

04

Apply risk-based checks

- Prioritize higher-risk items (complex electronics, multi-tier supply chains, offshore finishing steps)
- Use sampling, spot audits, or third-party verification for critical items



Strategies for Verifying and Certifying Compliance (2/2)

05

Make Compliance a Condition of Acceptance

- Flow requirements to subs/vendors; require notice and pre-approval for substitutions or changes

06

Track, Report, and Retain

- Maintain a project-level compliance tracker (items, category, docs received, status, waivers)
- Log waiver conditions and report per agency guidance (e.g., BEAD waived electronics reporting)
- Retain records per award terms (typically ≥5 years post-closeout)

07

Watch for Red Flags

- Vague or boilerplate certificates, missing BOMs, unwillingness to disclose plant locations
- Percentages that cannot be reconciled to component costs
- Foreign finishing/coating steps on iron/steel; “US assembly only” for manufactured products

08

Continuous Improvement

- Train procurement and project teams on evolving OMB/agency guidance
- Conduct post-project reviews; refine templates, checklists, and controls as requirements evolve



Common Challenges (1/2)

Supply Chain and Availability

- For certain categories of products, especially complex electronics and specialized components common in broadband networks (like antennas, and specific fiber optic components), there may be a limited number of US manufacturers producing a compliant version.
- Market constrains/availability may force subgrantees to either undertake extensive market research or begin the lengthy waiver process.

Inadequate or Incomplete Documentation

Common issues with paperwork include:

- Vague Certifications - receiving a letter from a manufacturer that simply says "we are BABA compliant" without specifying the product or the standard it meets.
- Missing Certifications - a prime contractor may fail to collect a certification for every required item.
- Untraceable Documents - the paperwork doesn't create a clear link from the invoice to the Bill of Materials to the certification, making an audit difficult.

Subcontractor and Distributor Management ("Flowdown")

- Ensuring that the BABA requirements are understood and enforced by everyone involved in the project (including distributors who may be sourcing from multiple places) is a major management challenge.
- Being aware of potential issues from the outset can help build a compliance strategy that is proactive, includes clear communication with contractors, and allocates realistic timelines for sourcing and documentation.



Common Challenges (2/2)

Cost Pressures and the "Unreasonable Cost" Waiver Threshold

Domestic products can sometimes be more expensive. While BABA allows for an "unreasonable cost" waiver, the threshold is still high (it must increase the total project cost by more than 25%, not just the item cost).

The "higher bar" for unreasonable costs bar means the waiver is not always an option for managing budget pressures, and subgrantees may have to absorb the higher cost of compliant goods.

Project Delays

The process of ensuring compliance takes time. Activities that can lead to significant delays include:

- Waiting for manufacturers to provide proper documentation.
- Conducting additional market research when a compliant product isn't immediately available.
- The 60-90+ day process of getting a waiver proposed, commented on, and approved by the federal agency.

Lack of Manufacturer Awareness

- While awareness of BABA is growing, many manufacturers (especially smaller or foreign-based ones) may not be familiar with the requirements.
- Manufacturers may be unable, or sometimes unwilling, to perform the detailed supply chain analysis needed to provide a valid certification.



Knowledge Check 2 (1/2)



Question: What's the key document to verify manufactured product domestic content?



Costed BOM showing US/foreign component split



Marketing brochure/spec sheet



Supplier org chart



Shipping receipt

Knowledge Check 2 (2/2)



Question: For iron/steel products, which evidence demonstrates compliance?



Mill certifications covering melt, pour, roll, and finishing/coating



“Made in USA” label



Supplier org chart



Purchase order



Exemptions & Waivers

An aerial photograph of the Indiana State Capitol building, featuring its prominent golden dome. The building is situated on a hillside overlooking a wide river. In the background, rolling hills and a town are visible under a hazy, overcast sky. The entire image is overlaid with a semi-transparent orange filter.

BABA Waivers

General Waiver Authority

- **In general** – A federal agency can grant a waiver from BABA domestic sourcing requirements under specific conditions. For the BEAD program, the Department of Commerce (Department, DOC) and National Telecommunications and Information Administration (NTIA) are responsible for reviewing and issuing such waivers.
- These limited set of circumstances are for:
 - **Public Interest** - can be granted when it is determined that a BABA waiver is in the public interest of the US.
 - **Nonavailability** - is applicable when the necessary iron, steel, manufactured products, or construction materials are not produced in the US in sufficient and reasonably available quantities or are not of a satisfactory quality.
 - **Unreasonable costs** - can be obtained if the inclusion of domestically produced iron, steel, manufactured products, or construction materials will increase the cost of the overall project by more than 25 percent.
- **Obtaining a waiver means that a project would be permitted to use certain foreign-sourced materials for their broadband project that would otherwise be non-compliant with the BABA rules.**
- **Waivers must be approved prior to acquisition in order to be compliant.**
- **The process for obtaining a waiver typically involves submitting a detailed justification to the funding agency for review and public comment. The following slide provides a general overview of the waiver submission process.**

Waiver Submission Process

Step	Description
Subgrantee Prepares Justification	The subgrantee (the entity receiving BEAD funds from the state) must first determine that a waiver is needed and gather extensive documentation to support the request. This includes detailed information about the materials in question, evidence of a thorough search for domestic suppliers, and a clear rationale based on non-availability, unreasonable cost, or public interest.
Submission to State/Territory	The subgrantee submits the formal waiver request and all supporting documentation to the state or territory broadband office that is administering the BEAD funds.
State/Territory Review	The state or territory reviews the waiver request for completeness and validity. If it concurs with the subgrantee's assessment, it will formally submit the waiver request to the DOC on the subgrantee's behalf.
DOC Initial Review	The DOC receives the request and conducts an initial review to ensure the justification is sound and all required information has been provided.
Public Comment Period	The DOC posts the proposed waiver on its website and in the Federal Register for a public comment period, which typically lasts for 15 days. This allows other stakeholders, such as domestic manufacturers, to submit comments or evidence challenging the basis for the waiver (for example, by showing that a domestic alternative is, in fact, available).
NTIA Review and Determination	After the comment period closes, the DOC reviews all comments received in consultation with the White House Made in America Office (MIAO) and makes a final decision. It will either grant or deny the waiver request. The final determination, including a response to the public comments, is then published.

Non-availability Waiver

The non-availability waiver can be granted when the specific iron, steel, manufactured products, or construction materials needed for a project are simply not produced in the US in sufficient and reasonably available quantities or of a satisfactory quality. This waiver acknowledges that despite the goals of BABA, the domestic manufacturing base may not currently produce every single item needed for a complex broadband infrastructure project.



To successfully obtain this waiver, the request must prove that the needed items are unavailable based on two key metrics:

- **Sufficient and Reasonably Available Quantities:** This means that a domestic supplier cannot produce the required quantity of the item within the project's timeline. For example, if a project needs 10,000 units of a specific fiber optic connector by June, but all domestic suppliers combined can only produce 2,000 units by that date, a non-availability waiver could be justified for the remaining 8,000 units.
- **Satisfactory Quality:** This applies if a domestically produced item exists, but it does not meet the necessary technical specifications or quality standards for the project. The subgrantee must provide clear evidence (e.g., engineering reports, spec sheets) demonstrating why the domestic product is unsuitable for its intended use in the network.



Key components of non-availability waiver request is demonstrating due diligence. The subgrantee cannot simply claim they couldn't find a product, they must provide detailed, documented proof of their good-faith effort to source the item domestically. This includes:

- **Market Research:** Evidence of a thorough search across the domestic marketplace.
- **Direct Outreach:** Records of communication (emails, call logs, formal inquiries) with known domestic manufacturers of similar products.
- **Supplier Consultation:** Inquiries made to industry trade groups, supplier scouting services, and other relevant associations.
- **Documented Responses:** Keeping a clear record of all responses from potential suppliers, including any quotes received or statements confirming their inability to meet the project's needs.



During the public comment period for a non-availability waiver, domestic manufacturers can review the request. If a manufacturer steps forward and proves they can, in fact, supply the required product in the necessary quantity and quality, the waiver request may then be denied.

The DOC has already issued a limited general applicability nonavailability waiver of BABA requirements for certain construction materials and manufactured products:

- **Non-optic glass inputs**
- **Electronics in BEAD programs, with exception**



Unreasonable Cost Waiver

The key to this waiver is that the definition of "unreasonable" is not subjective. The Infrastructure Investment and Jobs Act (IIJA), which contains the BABA provisions, established a clear benchmark, meaning it would increase the total cost of the entire infrastructure project by more than 25 percent.

The 25% threshold does not apply to the cost of a single component; it applies to the total project cost. The waiver request must include a detailed analysis comparing two scenarios:

Scenario	Description
Scenario A: Cost with Foreign Item(s)	Calculate the total estimated cost for the entire project, assuming you are using the cheaper, non-compliant foreign-sourced item(s).
Scenario B: Cost with Domestic Item(s)	Recalculate the total estimated cost for the entire project, this time substituting the compliant, domestic-sourced item(s).

A waiver can be justified if $\text{Total Cost of Scenario B} > (\text{Total Cost of Scenario A} \times 1.25)$. Let's say a subgrantee is planning a rural broadband project.

- 1. Total Project Cost with Foreign Components (Scenario A):** The total budgeted cost for the entire project, using some non-domestic components, is \$2,000,000.
- 2. Total Project Cost with Domestic Components (Scenario B):** Sourcing the BABA-compliant domestic versions of those same electronic components is significantly more expensive. When substituted, the total cost for the entire project rises to \$2,600,000.
- 3. Analysis:** The cost increase is \$600,000 or 30%: $(\$600,000 / \$2,000,000) = 0.30$, or 30%.

To substantiate this waiver, the application would need to include all the quotes, bids, and financial estimates used to arrive at these two total project cost figures. The DOC would then review this financial data for accuracy during the waiver review process.

Public Interest Waiver

Unlike the Non-availability or Unreasonable Cost waivers, which are based on empirical tests, the public interest waiver is based on a more qualitative assessment. A public interest waiver can be granted when a federal agency determines that applying the BABA domestic content preference would be inconsistent with the public interest. This means the entity requesting the waiver must demonstrate that the harm to the public from enforcing the Buy America rules in a specific situation would outweigh the public benefit of applying them.

While there is no exhaustive list, here are some common scenarios where a public interest waiver might be considered for a BEAD project:

Scenario	Rationale
Preventing Significant Project Delays	If using only domestic products would cause a major delay to a critical broadband project, and that delay would deprive a community of essential connectivity for an extended period, a public interest case may be made. The argument is that the public's need for timely internet access outweighs the benefit of domestic sourcing in this specific instance.
Conflict with International Agreements	In some cases, applying BABA requirements might conflict with existing international trade agreements that the US is a party to. A waiver may be granted to ensure compliance with these international obligations.
Addressing Emergency or Disaster Situations	If a broadband network needs to be repaired or built urgently in response to a natural disaster, a waiver could be justified to expedite the process and restore critical communication services to the public as quickly as possible.

BEAD De Minimis Waiver

The de minimis waiver is a general or "blanket" public interest waiver issued by the NTIA for the BEAD program. It acknowledges that it is not practical or in the public interest to track and source a domestic alternative for every single low-value component in a large infrastructure project. A subgrantee can use non-compliant manufactured products as long as their total cost does not exceed the lesser of \$1,000,000 or 5% of the total project cost.

How this works in practice:

Key Aspect	Description
The De Minimis Cap Example	For a \$10M project, the cap is \$500,000 (since 5% is less than \$1M). For a \$40M project, the cap is \$1,000,000 (since \$1M is less than the 5% value of \$2M).
No Application Needed	Because the NTIA has issued this as a blanket waiver, subgrantees do not need to go through the public waiver submission process for these items. It is a pre-approved exemption.
Record-Keeping is Crucial	While there is no application, the subgrantee must maintain meticulous records. They need to track the cost of all non-compliant materials to be able to prove to auditors that they have stayed within the final cap.
Allowable and Unallowable Uses	<p>The de minimis waiver CAN be used for non-compliant materials in these categories:</p> <ul style="list-style-type: none"> • Iron or steel products • Other network equipment (e.g., conduit, mounting brackets, patch panels) <p>The de minimis waiver CANNOT be used for these items, regardless of cost:</p> <ul style="list-style-type: none"> • Optical fiber and fiber optic cable • Specific electronics, such as optical line terminals (OLTs), OLT line cards, optic pluggables, optical network terminals (ONTs) / optical network units (ONUs) • All Enclosures (cabinets, vaults, pedestals, etc.)

Minor Components Waiver




The Minor Components Waiver is a targeted exemption that allows a small, strictly capped percentage of project materials to bypass BABA domestic sourcing rules.

Key Aspect	Description
Scope of Waiver	Prevents significant administrative burden for low-cost, miscellaneous, or highly specialized non-domestic components (e.g., specialized fasteners, unique electronic connectors). <i>However</i> , major infrastructure components like optical fiber, fiber optic cable, and core transmission equipment do not qualify.
How it works	Generally, allows up to 5% of the total cost of materials to be non-domestic without violating BABA. Applies only to material costs, not overall project costs (excludes labor, engineering, equipment rentals, etc.). For example, if a subgrantee buys a U.S.-made steel enclosure, but that enclosure uses foreign-made hinges or locks, those "minor components" are exempt as long as they cost less than 5% of the total material cost of that specific enclosure.
Internal waiver supporting documentation	<p>This can be achieved through a clear, auditable ledger showing the total cost of all iron, steel, manufactured products, and construction materials used in the project (excluding labor, property, equipment rentals, and administrative costs). To augment this, the cost of all non-domestic items utilizing the waiver should be kept in a running tally to prove that the cumulative total strictly remains at or below the 5% threshold of the total material cost. Additionally, for all material where the minor components waiver is being claimed, also consider having records that show:</p> <ul style="list-style-type: none"> • Precise product description and part number. • Manufacturer and supplier names. • Verified country of origin. • Unit cost and total cost of the items. • Date of purchase and date of incorporation into the project.

Source: [Department Wide Public Interest Waiver De Minimis Package.pdf](#)



Waiver Summary Comparison

Feature	Non-Availability Waiver	Unreasonable Cost Waiver	Public Interest Waiver
Core Justification 	The required product is not produced in the US in the necessary quantity or quality.	The cost of using the domestic product makes the entire project prohibitively expensive.	Applying the BABA rule would be contrary to the public's best interest.
Key Question 	"After a thorough search, can this item be sourced domestically to meet project specifications and timelines?"	"Does using the domestic item increase the <i>total project cost</i> by more than 25%?"	"Is there a compelling reason why enforcing BABA would harm the public more than it helps?"
Primary Evidence 	Market Research & Due Diligence: Documentation of a good-faith effort to find a domestic supplier (e.g., emails, call logs, supplier lists).	Financial Analysis: Detailed cost comparison of the total project budget with and without the domestic item, supported by quotes and bids.	Narrative & Data: A well-reasoned argument supported by data (e.g., project delay impacts, analysis of de minimis costs, emergency needs).

BEAD Waiver Overview

The BEAD BABA waiver applies different rules to various product categories, so it is important to understand which items are fully waived, which must be compliant, and which can use the de minimis allowance. This table breaks down the specific compliance pathway for each major type of equipment.

Category	Item	Buy America Preference Status	Can the De Minimis Waiver Be Used?	Rule for BEAD Subgrantees
Construction Materials	Optical Fiber & Fiber Optic Cable	NOT WAIVED	✘	Must be BABA Compliant. These items must be produced in the US and cannot be counted towards the de minimis allowance.
Manufactured Products	Electronics (<i>General</i>)	WAIVED	<i>Not Applicable</i>	No BABA requirements. Most electronics are covered by a blanket waiver and can be sourced globally. Their cost is irrelevant to de minimis calculations.
	Electronics (4 Key Exceptions: OLTs/rOLTs, OLT Line Cards, Subscriber-facing Pluggables, ONTs/ONUs)	NOT WAIVED*	✘	Must be BABA Compliant. These specific items are critical and are excluded from all waivers. They must be domestically produced.
	Enclosures	NOT WAIVED	✘	Must be BABA Compliant. This includes all cabinets, vaults, pedestals, and closures. They must be domestically produced.
	Passive Optical Equipment	WAIVED	<i>Not Applicable</i>	No BABA requirements. These items are covered by a blanket waiver and can be sourced globally.
	Other Network Equipment(<i>e.g., conduit, brackets, patch panels</i>)	NOT WAIVED	✔	Must be BABA Compliant OR use the De Minimis Waiver. If sourced from a foreign supplier, their cost must be tracked against the de minimis cap.
Iron or Steel Products	Iron or Steel Products	NOT WAIVED	✔	Must be BABA Compliant OR use the De Minimis Waiver. If sourced from a foreign supplier, their cost must be tracked against the de minimis cap.

**Under the BEAD General Applicability Nonavailability Waiver, the cost of components test is waived for this category, but there are required domestic processes. Refer to the waiver for additional details.*

Knowledge Check 3



Question: A BEAD subgrantee is building a fiber network. They find that using a required BABA-compliant electronic component will raise the total project cost from \$1,000,000 to \$1,300,000. Under which BABA waiver could the subgrantee most likely apply?

A

The Non-Availability Waiver, because the cost makes it unavailable.

B

The Public Interest Waiver, because saving money is in the public's interest.

C

The Unreasonable Cost Waiver, because the total project cost increased by more than 25%.

D

The Unreasonable Cost Waiver, because the component itself costs more than 25% more.



An aerial photograph of the Indiana State Capitol building, focusing on its ornate, golden dome. The dome is the central focus, with its intricate architectural details visible. In the background, a wide river flows through a valley, surrounded by rolling hills and some residential or commercial buildings. The entire image has a warm, golden-brown color cast, giving it a historical or official feel. The text "Regulatory Update and Frequently Asked Questions" is overlaid in white, bold, sans-serif font across the middle of the image.

Regulatory Update and Frequently Asked Questions

Regulatory Update

In early March 2026, the President signed Executive Order 14392, “Ensuring Truthful Advertising of Products Claiming to be Made in America”



The Executive Order contains a multitude of provisions, but a few to consider:

- Prioritized FTC Enforcement
- Calls on agencies to consider issuing proposed regulations for online marketplaces offering
- **Directs agencies overseeing Federal procurement contracts to review domestic origin representations for procurements acquired under domestic content regulations**
- Refer suspected misrepresentations for enforcement

FAQs



Question: If most of the project is BABA compliant, and a small portion is not, can a funding recipient self-fund (i.e., pay with non-federal dollars for) the non-compliant products?

Answer: No



Question: Do the tools and equipment used to perform construction activities for a BEAD project need to be BABA compliant?

Answer: No



Question: Do BABA requirements “flow down” to subgrantees?

Answer: Yes



Question: For the purposes of the BEAD Program, what does it mean for a manufactured product to be “produced in the US”?

Answer: 2 CFR § 184.3 and Section III.A.2. of the BEAD BABA waiver define the requirements for manufactured products to be considered “produced in the US.”



FAQs (contd.)



Question: Will software, R&D cost, or labor count in calculating the cost of components for a manufactured product?

Answer: No



Question: Can I buy equipment or materials from China?

Answer: No



Question: If a recipient has received a waiver on behalf of a subgrantee for a specific manufactured product, is that manufactured product waived for all BEAD subgrantees?

Answer: It depends

Conclusion



Key Takeaways



1

Know Your Categories and Rules: BABA compliance hinges on correctly categorizing every purchased item into one of three groups, each with a distinct rule (iron and steel, construction materials, and manufactured products).



2

Understand the BEAD-Specific Waivers: Not all products have the same requirements under BEAD due to a specific waiver issued by the NTIA. Subgrantees must understand what is and isn't covered.



3

Documentation Is Your Proof of Compliance: Create a clear, auditable trail for all BABA-covered items. Failing to maintain proper records is a major compliance risk. Key documents to collect include manufacturer certifications, bill of materials, purchase orders, and invoices.



Key Takeaways



4

Integrate BABA from Day One: Proactive procurement is a sound risk management tool. Embed compliance requirements directly into your contracts, begin to establish compliance governance, and begin connecting with suppliers ASAP.



5

Understand the High Bar for Project-Specific Waivers: While waivers for non-availability, unreasonable cost, or public interest exist, they are not a simple solution. The process is lengthy and requires extensive justification and public review.



6

Assign Clear Roles and Responsibilities: Designate a BABA Compliance Officer or Grants Manager to own the process. This individual should be responsible for understanding the regulations, reviewing contractor submissions, and serving as the primary point of contact for BABA compliance questions.



Resources

Infrastructure Investment and Jobs Act – [H.R.3684 - Infrastructure Investment and Jobs Act](#)

Build America, Buy America Act - [TITLE IX—BUILD AMERICA, BUY](#)

Helpful Resources:

- NTIA Office of Internet Connectivity and Growth (OICG) BABA Overview: <https://www.ntia.gov/programs-and-initiatives/build-america-buy-america>
- BABA FAQ for BEAD Program: <https://www.commerce.gov/sites/default/files/2024-02/BEAD%20FAQs%202-22-24.pdf>
- BABA Self Certification List: https://www.commerce.gov/sites/default/files/2024-07/BABA_Self_Certification_List.PDF
- Office of Acquisition Management BABA Page: <https://www.commerce.gov/oam/build-america-buy-america>
- Broadband USA BABA Compliance and Self Certification: https://broadbandusa.ntia.gov/technical-assistance/BABA_Compliance_and_Self_Certification
- BABA Compliance and Reporting Requirements and Procedures: https://broadbandusa.ntia.gov/sites/default/files/2025-10/NTIA_BABA_Compliance_and_Reporting_Requirements.pdf

Thank you

Questions



An aerial photograph of the Indiana State Capitol building, focusing on its ornate, golden dome. The dome features intricate patterns and a central spire topped with a torch. The building is set against a backdrop of rolling hills and a wide river, likely the Wabash River. The entire image is overlaid with a semi-transparent, warm-toned filter. The text "Thank You!" is centered in the upper half of the image.

Thank You!



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