

Business Operations

Build America, Buy America

Issue Overview

The Build America, Buy America Act (BABA) was enacted on Nov. 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA). It establishes a domestic content procurement preference for all federal financial assistance (FFA) used to finance infrastructure projects, including real estate. This requirement is referred to as the Buy America Preference (BAP) and is being implemented by the federal agencies responsible for providing financing for infrastructure projects. Materials that are required to comply with BABA standards include iron, steel, manufactured products, and construction materials, all of which must be produced in the United States.

The primary agencies impacted by BABA for housing are HUD and USDA, although only some of their programs are covered by the BAP. The agencies continue to work with the Office of Management and Budget (OMB) and the Made in America Office (MIAO) to develop more detailed guidance on the products and materials that need to comply with BAP and how to demonstrate compliance in a timely and cost-efficient manner. NAHB has also called on the affected federal agencies to urge OMB and MIAO to exempt housing from the BAP requirements.

Applying BABA to HOME funds would harm low-income renters and significantly exacerbate the housing affordability crisis. HUD's HOME program is most commonly used by NAHB members to provide additional financing for Low-Income Housing Tax Credit (LIHTC) projects. If the BAP discourages developers and builders from using federal financing, it may negatively impact access to federal gap financing for LIHTC projects and other state and local affordable housing production programs.

Solutions

- Exempt single-family and multifamily housing projects receiving FFA from the BAP.
- Reinststitute a waiver for BAP compliance for FFA recipients until additional compliance resources are provided for grantees.
- Standardize, streamline, and consolidate HUD, USDA and OMB training and compliance resources to allow real estate projects receiving FFA covered by the BAP to comply with BABA while remaining within their current timelines and budgets.

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FinCEN Beneficial Ownership Information Reporting Requirements

Issue Overview

The National Defense Authorization Act for fiscal year 2021 enacted the Corporate Transparency Act (CTA) to require America’s small and independent businesses to file beneficial ownership information (BOI) with U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) . The CTA is designed to help the U.S. government identify money laundering, corruption, tax evasion, drug trafficking, fraud and other financial crimes. Congress passed the CTA to make it harder for these illegal activities and their perpetrators to hide from law enforcement officials.

As of Jan. 1, 2025, approximately 32 million business entities were required to file BOI reports with FinCEN, identifying those individuals who directly or indirectly own or control reporting companies. The BOI reporting requirements, however, have been subject to legal challenge. On Dec. 3, 2024, in *Texas Top Cop Shop v. Garland*, the U.S. District Court for the Eastern District of Texas held “the CTA is likely unconstitutional as outside of Congress’s power” and ordered a nationwide injunction preventing the government from enforcing the CTA and its corresponding reporting rule. On appeal, a Motions Panel of the Fifth Circuit granted a stay (suspension) of the injunction. Three days later, on December 26, 2024, a Merits Panel of the Fifth Circuit reinstated the nationwide injunction. Not to be undone, on New Years Eve, the Department of Justice asked the U.S. Supreme Court to weigh in. Until further order from the courts, all business filing deadlines under the CTA are suspended.

Many of the nation’s home builders are small business entities and are subject to the CTA’s reporting requirement. In addition, home builders often use limited liability corporations or other such entities to set up joint ventures, develop land, build subdivisions, develop multifamily housing and other related activities. The reporting requirements add an administrative burden and potentially exposes legally operating companies to excessive penalties due to paperwork errors. FinCEN has estimated that the total cost of BOI reporting will be \$22.7 billion in 2025 alone. The dizzying back-and-forth in *Texas Top Cop Shop*, together with related litigation in the Fourth, Ninth, and Eleventh Circuits has created uncertainty and create confusion for small business owners that must navigate the reporting regime and risk significant civil and criminal penalties for failing to comply.

Solutions

- Extend the compliance deadline for at least one year.
- Issue guidance to clarify FinCEN’s interpretation of the court rulings and confirm its expectations regarding the year-end reporting deadline.