



**Bipartisan Infrastructure Law: Where
Rules and Roads Collide!**

2024 Hub Summit

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Introductions

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Agenda

- ✓ Compliance – what is it and why is it important?
- ✓ Bipartisan Infrastructure Law – what is it?
- ✓ BIL Compliance Requirements
 - ✓ National Environmental Policy Act (NEPA)
 - ✓ Davis Bacon Act (DBA)
 - ✓ Title VI of the Civil Rights Act
 - ✓ Justice40 Initiative
 - ✓ Build America Buy America Act (BABAA)
 - ✓ Uniform Guidance – 2 CFR 200

Compliance – what is it and why is it important?

- Compliance refers to conforming to a law, regulation, guidelines, and standards
- Compliance unites structured set of guidelines and requirements that apply to your organization.
- Failure to comply can seriously damage you, others, and/or your organization with costly fines, penalties, or more serious consequences.



Bipartisan Infrastructure Law (BIL)

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law (BIL), a "once-in-generation investment in our nations' infrastructure, competitiveness, and communities".

BIL will invest **\$1.2 trillion across the United States**. BIL supports investments in **5 major categories**.



The investment includes **400 formula and discretionary grant programs across 12 federal agencies**.

Compliance Requirements for Bipartisan Infrastructure Law (BIL)

- Davis-Bacon Act (DBA)
- Justice40 Initiative
- National Environmental Policy Act (NEPA)
- Build America, Buy America Act (BABAA)
- Title VI of the Civil Rights Act
- Uniform Grant Guidance – 2 CFR 200 (UGG)



ARPA vs. BIL

American Rescue Plan Act (ARPA): March 2021

1. National Environmental Policy Act
2. Title VI
3. Uniform Guidance

Bipartisan Infrastructure Law (BIL): November 2021

1. Build America Buy America
2. Davis Bacon Act
3. Uniform Guidance
4. Justice40

**Toto, we aren't in
ARPA anymore....**

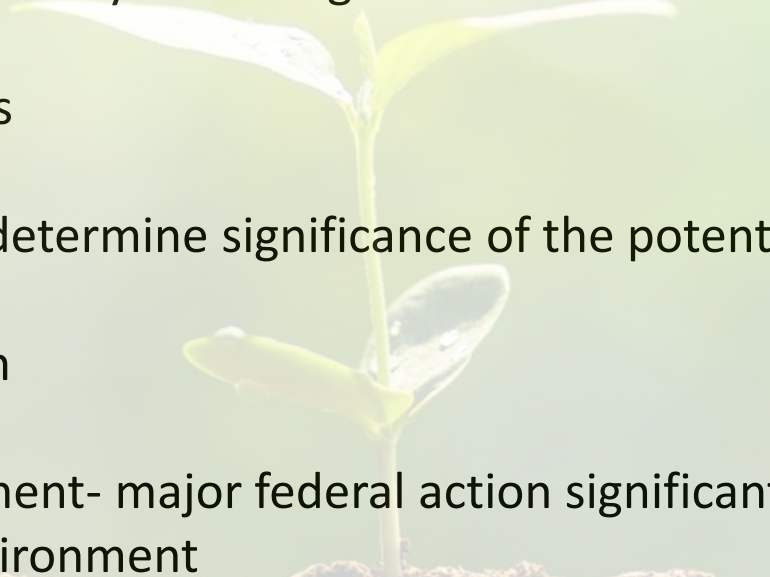


National Environmental Protection Act (NEPA)



The National Environmental Policy Act became law in 1970, establishing broad national framework for protecting the environment.

3 Levels of Review

- Categorical Exclusion- not normally have a significant effect on the human environment
 - Ex: Personnel procedures
 - Environmental Assessment- determine significance of the potential environmental effects
 - Ex: Lesser Prairie Chicken
 - Environmental Impact Statement- major federal action significantly affecting the quality of the human environment
 - Ex: Watershed Plan
- 

Davis Bacon Act (DBA)

The Davis-Bacon Act applies to contractors and subcontractors performing on federally funded or assisted contracts more than **\$2,000** for construction, alteration, or repair (including painting and decorating) of public buildings or public works.

Recipients of BIL funding **must**:

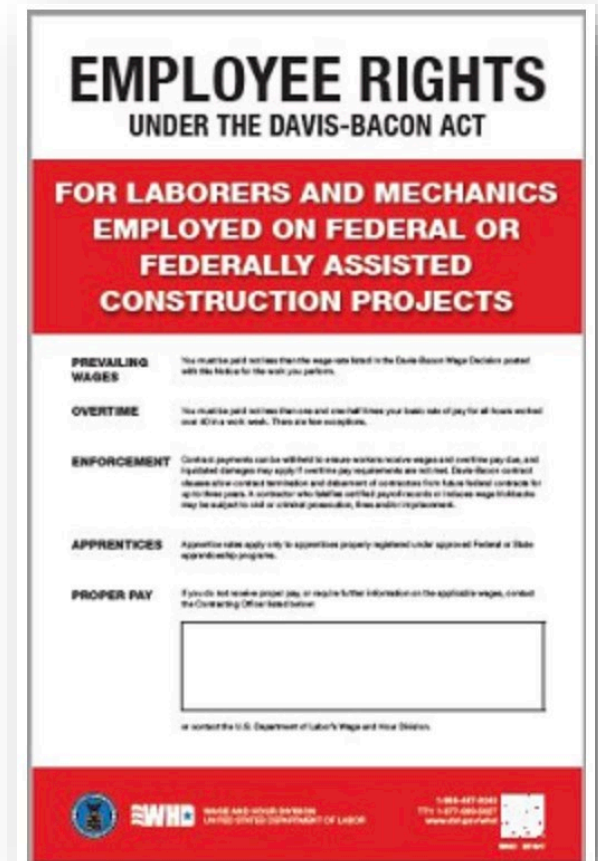
- Understand the wages owed to construction workers (wage determination)
- Ensure DBA clauses are inserted in contracts executed by a recipient/subrecipient of BIL funding
- Provide guidance to subrecipients and contractors
- Conduct monitoring of subrecipients and contractors
- Receive and review certified payrolls for accuracy and completion
- Maintain accurate records of hours and wages

[See BIL – Title XI - Sec. 41101 Wage Rate Requirements](#)

[See BIL Davis-Bacon Act Fact Sheet #66](#)

[SAM.gov | Wage Determinations](#)

[29 CFR 5.5](#)



Davis Bacon - Final Rule Updates

Davis Bacon Final Rule – August 23, 2023

- Applicable to contracts entered into after **October 23, 2023**
- **New definition of “prevailing wage”** – returned to original methodology for determining prevailing wages, known as the “three-step process,” that was in effect before 1983.
 - “30 Percent Rule”
- The final rule codifies and clarifies the **requirement that fringe benefits should be annualized.**
- Final rule adds **new anti-retaliation provisions** to enhance Davis-Bacon enforcement
 - Whistleblowers who are retaliated against are entitled to “make-whole relief,” including reinstatement, back pay and compensatory damages
- The final rule revises the definition of “site of the work” to include “secondary construction site[s]”

Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Recipients of federal aid must adhere to Title VI requirements, which include:

- Prohibiting intentional discrimination
- Addressing disparate impact
- Ensuring equal access

Title VI is Far Reaching

- Compliance is **mandatory** for **all recipients of federal aid**
- To be compliant and maintain federal funding, your organization **must have written policies and procedures** aligning with the federal requirements
- Failure to comply = termination of federal funds and legal action

[Source: DOJ Title VI Legal Manual \(justice.gov\)](#)



Justice40 Initiative

The **Justice40 Initiative**, created by Executive Order 14008, is the federal government's goal to see *"40 percent of certain Federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution."*

Top Priorities:

- Federal agencies will identify which of their programs are covered under Justice40
- 40% of the benefits of certain Federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution.
- All Justice40 covered programs are required to engage in stakeholder consultation and ensure that community stakeholders are meaningfully involved in determining program benefits. Covered programs are also required to report data on the benefits directed to disadvantaged communities.

Justice40 Resources

Each BIL funding opportunity could have different Justice40 requirements and datasets can vary by tool.

There are several tools that are being used by federal agencies to determine social and economic impacts

- [USDOT Equitable Transportation Community \(ETC\) Explorer \(arcgis.com\)](#)
- [Climate and Economic Justice Screening Tool \(CEJST\)](#)
- [Access the Areas of Persistent Poverty & Historically Disadvantaged Communities tool \(USDOT\)](#)
- [EPA's Environmental Justice Screening and Mapping Tool](#)
- [PLACES by CDC – PLACES Data Portal](#)
- [Justice40 Rail Explorer \(USDOT\)](#)

Note: Land within the boundaries of Federally Recognized Tribes are designated as disadvantaged on the map.

Build America Buy America Act (BABAA)

BABAA established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. This preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States.

3 Key Requirements:

1. **Domestic Preference** - Recipients and subrecipients must ensure that all iron, steel, manufactured products, and construction materials used in infrastructure projects are produced in U.S.
2. **Contract Language** - Contracts must include a contract provision explaining the BABAA requirements and a self-certification of compliance with the domestic preference requirements.
3. **Waivers** - Recipients and subrecipients may request a waiver from the federal awarding agency if the circumstances meet the criteria for an allowable waiver type.

BABAA Waiver Types

According to the guidance provided by the Office of Management and Budget (OMB), waivers from the BABAA requirements can be justified under certain circumstances:

General Applicability Waivers

- **Project-Specific Waivers:** Used for specific non-domestic products in a single project.

Waivers Based on Specific Criteria

- **Public Interest:** If applying the Buy America requirements would be inconsistent with the public interest.
- **Nonavailability:** If the needed items are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality.
- **Unreasonable Cost:** If including domestic materials will increase the cost of the overall project by more than 25%.

Federal financial assistance recipients may request waivers from a Federal awarding agency if the recipient reasonably believes a waiver is justified. Open for public comment (15 days).

Resource: [QA-BABA-Guidance.Final .pdf \(whitehouse.gov\)](#) and [Build America, Buy America Act – Federal Financial Assistance | OMB | The White House](#)

BABAA Waivers and Compliance Supplement Resources

Full list of waivers can be found at

www.madeinamerica.gov

- [Waivers | Made in America](#)
- [Buy America Waivers for Federal Financial Assistance | Made in America](#)
- Federal agencies publish waiver requests
- Title 2 of the Code of Federal Regulations (CFR) to implement BABA provisions
 - [2 CFR PART 184—BUY AMERICA PREFERENCES FOR INFRASTRUCTURE PROJECTS](#)

REVIEWED	Sumatriptan Injection Syringe for National CMOP		View Waiver
Date	Agency	Waiver Type	
04/12/2024	VETERANS AFFAIRS, DEPARTMENT OF	Procurement: Nonavailability	
SUBMITTED	HX2 Replacement Temperature Control Valve		View Waiver
Date	Agency	Waiver Type	
04/11/2024	DEPT OF THE NAVY	Procurement: Nonavailability	
SUBMITTED	Buy America Waiver Request for the Utah Department of Transportation to Purchase Avalanche Control Systems		View Waiver
Date	Agency	Waiver Type	
04/10/2024	TRANSPORTATION, DEPARTMENT OF	Financial Assistance: Nonavailability	

Uniform Grant Guidance (2 CFR 200)

BIL grants are funded from the General Fund; therefore, Federal Awards to non-Federal entities are subject to 2 CFR Part 200. Of particular importance:

- Subpart D – Post Federal Award Requirements
 - Procurement Standards 2 CFR 200.317 - 2 CFR 200.327
 - 2 CFR 200.318 – Procurement Standards
 - 2 CFR 200.319 - Competition
 - One item often found in reviews and audits is 2 CFR 200.319(d) - (non-existence of) written procedures for procurement transactions
 - 2 CFR 200.320 - Methods of procurement to be followed
 - Informal procurement methods: Micro-purchase, and Small purchase, Formal procurement methods: Sealed bid, and proposals, Noncompetitive procurement (ex. Single source)
 - 2 CFR 200.322 - Domestic preferences for procurements (see BABAA also)
 - 2 CFR 200.327 - Contract provisions
 - Subrecipient Monitoring – 2 CFR 200.331 - 200.333
- Subpart E – Cost principles – 2 CFR 200.400 - 2 CFR 200.476
- UG updated on April 1, 2024 – goes into effect October 1, 2024

Questions?





Thank you