

# BUILD AMERICA, BUY AMERICA

HOUSING NEW MEXICO  
SUMMIT 2025



**Dekker**





# SPEAKER INTRODUCTIONS



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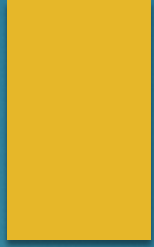
# Build America, Buy America (BABA): Impacts on Affordable Housing Development

▶ With the Build America, Buy America (BABA) Act now in full effect, stakeholders across the affordable housing ecosystem are facing new challenges related to sourcing, compliance, and construction feasibility. This session will explore how BABA is influencing project costs, timelines, and material procurement, particularly for developers and general contractors navigating federal funding requirements.





# BABA Policy Overview



## BABA STANDS FOR THE BUILD AMERICA, BUY AMERICA ACT

- Passed by Congress as part of the Infrastructure Investment and Jobs Act of 2021 and signed into law by President Biden

## BABA REQUIRES

- All iron and steel products, manufactured products, and construction materials used for federally funded “infrastructure projects”, inclusive of buildings and real property, that are constructed, altered, maintained, or repaired are produced in the United States
  - A product should only be classified as one of the three kinds of products or materials based on its status at the time it is brought to the project’s work site
  - If a housing project receives any of our federal funding, all covered materials across the entire project would have to be produced in the United States, not just those costs paid with federal funds

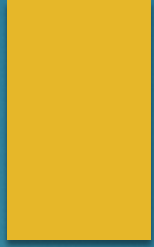


# BABA Obligations: Funds Triggering BABA

1. HOME Investment Partnership Funds (HOME)
  2. National Housing Trust Fund (NHTF)
- All HOME & NHTF funds obligated to Housing New Mexico on or after August 23, 2024
  - Going forward, any HOME or NHTF applied for will require the entire project to comply with BABA



# BABA Obligations: Materials Compliance



## Iron and Steel Products

- Means “articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both” must be “produced in the United States”
  - “Predominantly of iron or steel or a combination of both” means that the cost of iron and steel content in a product exceeds 50% of the total cost of all its components
- “Produced in the United States” means that all manufacturing process, from the initial melting stage through the application of coatings, occurred in the United States

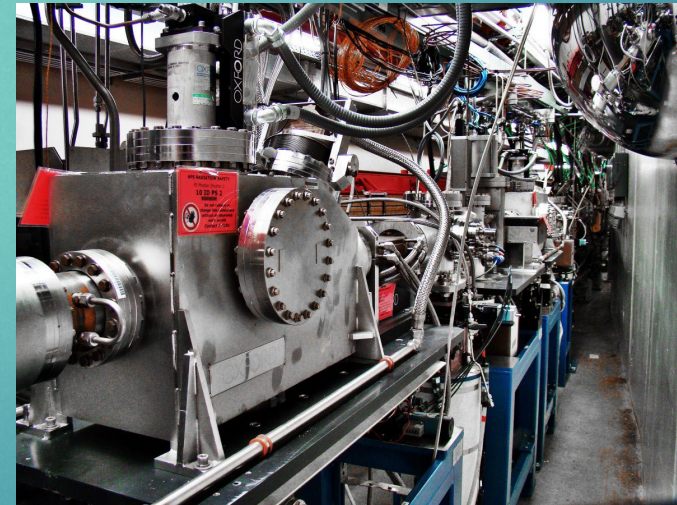




# BABA Obligations: Materials Compliance (Continued)

## Manufactured Products

- Means “articles, materials, or supplies that have been (i) processed into a specific form and shape or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies” must be “manufactured in the United States”
- “Manufactured in the United States” means that the cost of the components of the product that are mined, produced, or manufactured in the United States are greater than 55% of the total cost of all components of the product
- Examples include:
  - Windows
  - Kitchen appliances
  - HVAC units
  - Insulation





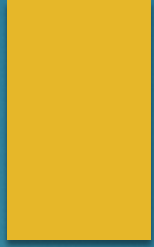
# BABA Obligations: Materials Compliance (Continued)

## Construction Materials

- Means articles, materials, or supplies that are listed below must be “produced in the United States”
- Items specifically listed by HUD as construction materials are:
  - Non-ferrous metals
  - Plastic and polymer-based products (including polyvinylchloride and composite building materials)
  - Glass
  - Fiber optic cable
  - Optical fiber
  - Lumber
  - Engineered wood
  - Drywall
- “Produced in the United States” means that all manufacturing processes for the construction material occurred in the United States



# BABA Regulatory Context: Enforcement



## New Clause & Exhibit In HOME & NHTF Loan Agreements

- Requires the Borrower & General Contractor comply with BABA and collect and retain documentation showing all materials used in the project complied with BABA
- Housing New Mexico recommends the Borrower & General Contractor retain these documents for at least five years after the project completion date

**Housing New Mexico will collect BABA compliance documentation as part of the 50% construction completion draw and the final draw of HOME and/or NHTF**



# Implementation

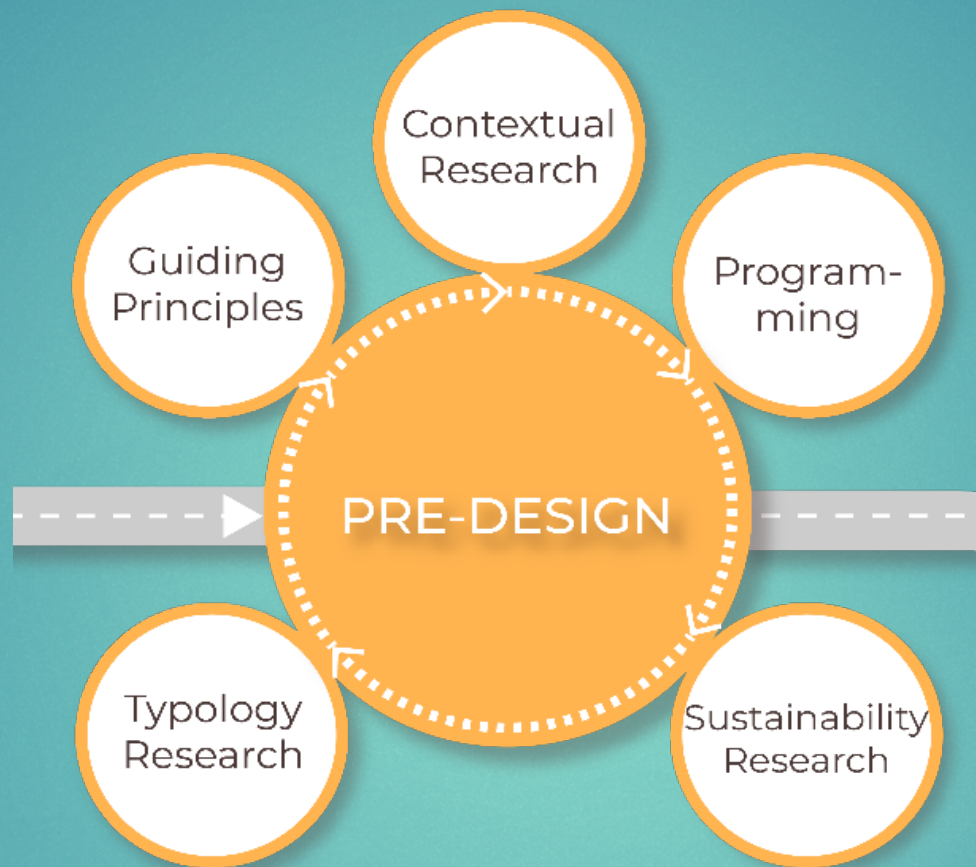
## Laying the Groundwork

- ▶ Need to start early (at same time as Green/LEED design charrettes)
- ▶ Need contractor on board early to help architect with setting the project specifications

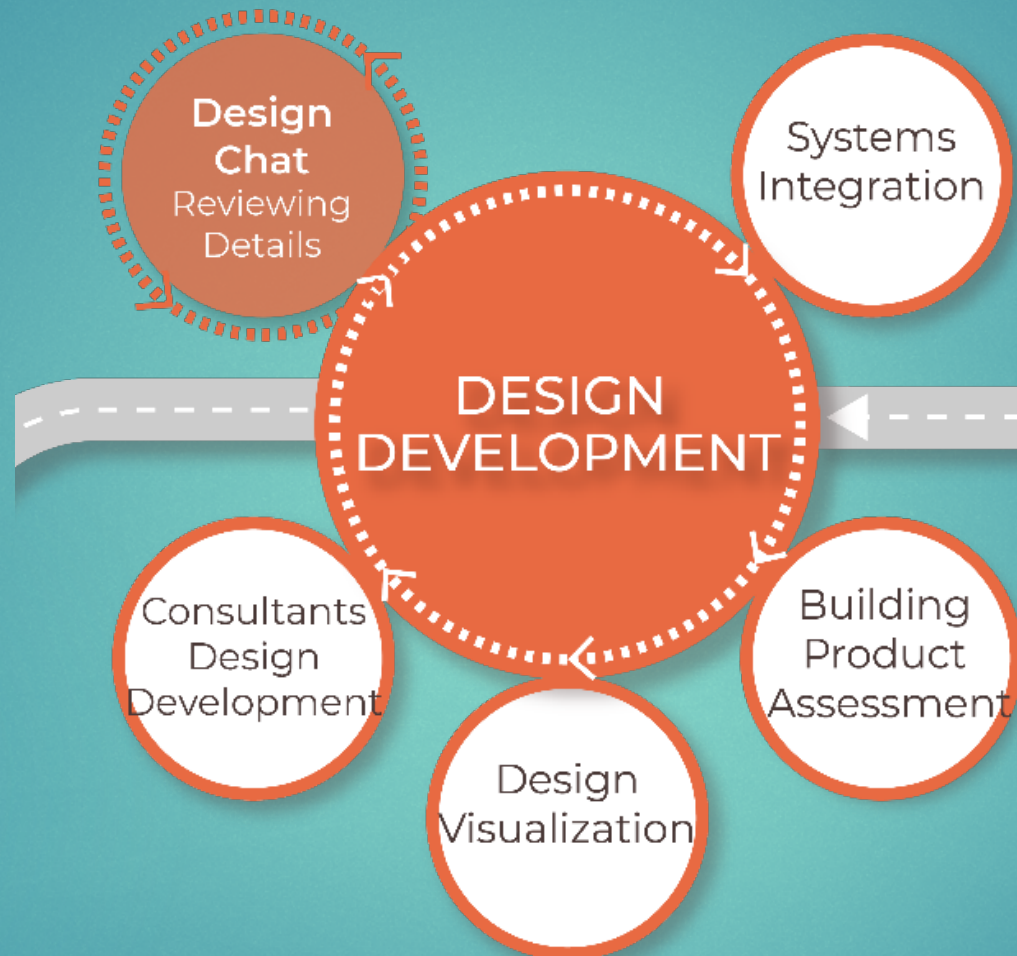




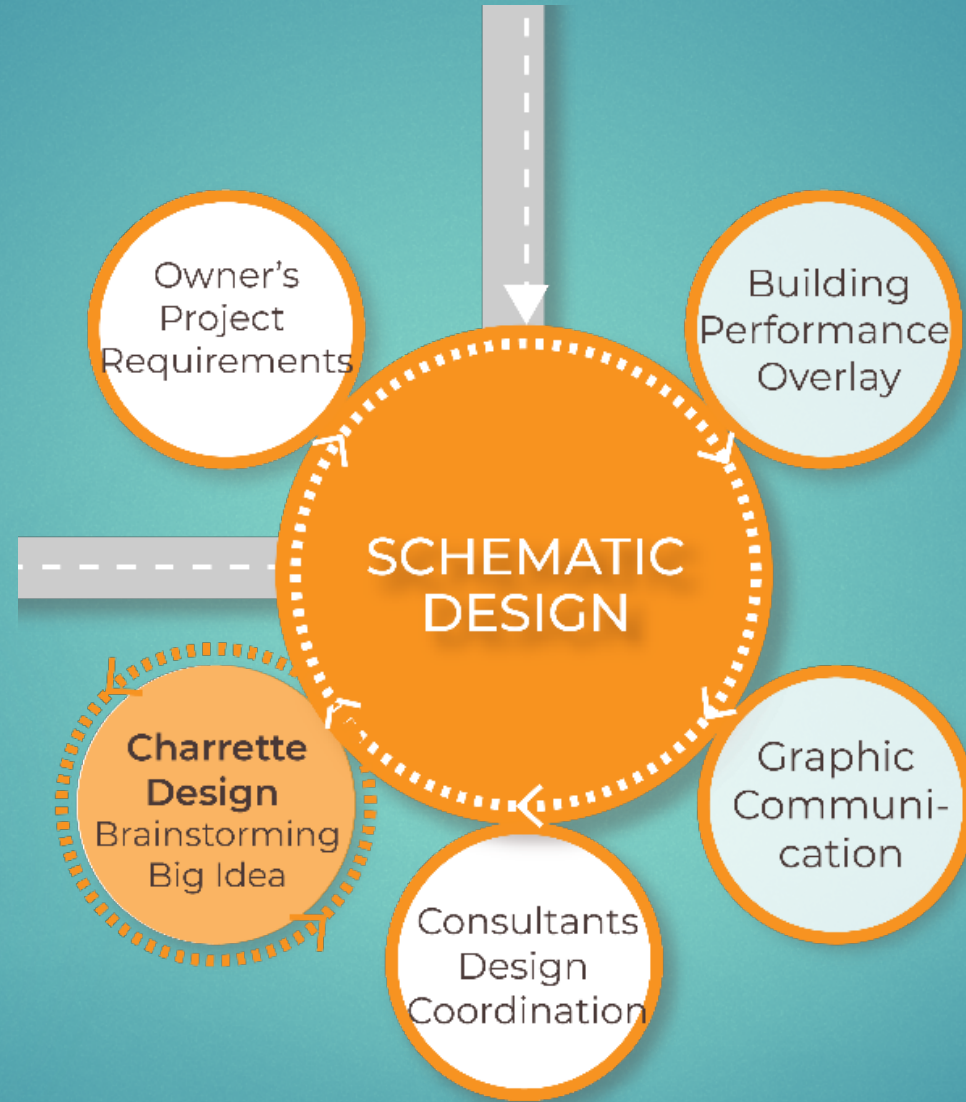




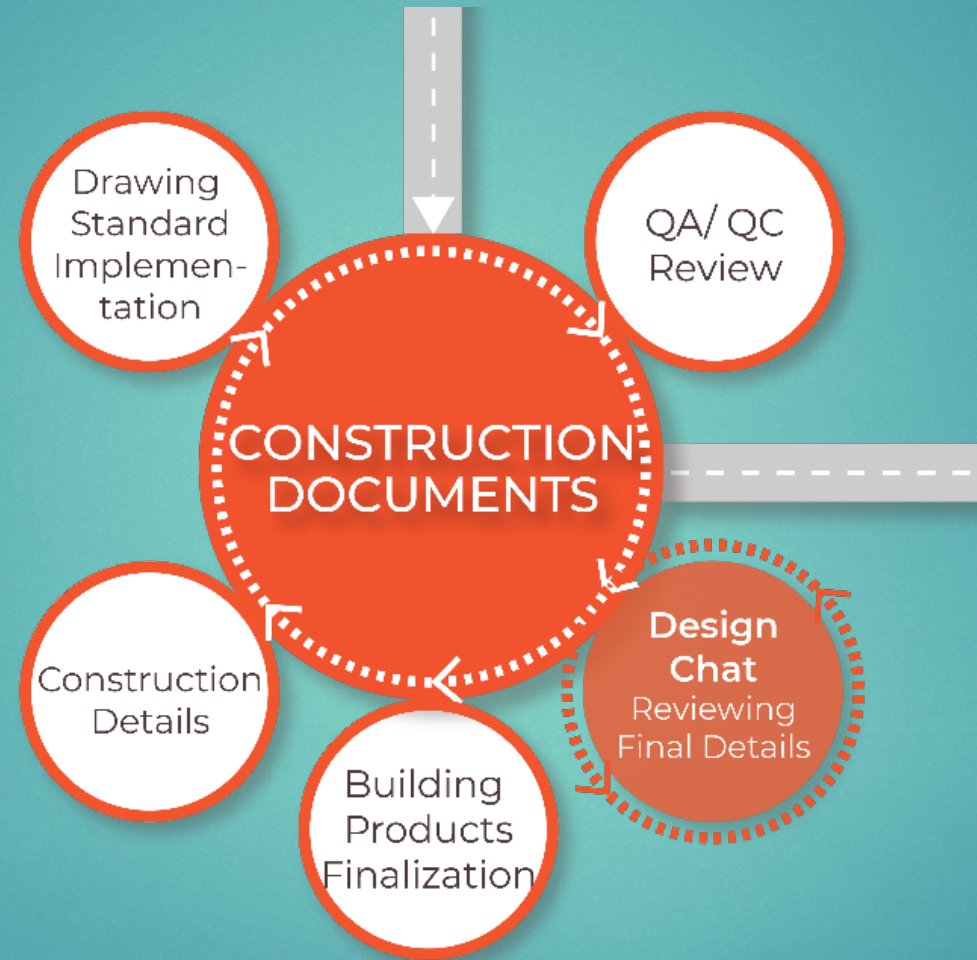






















# Design & Specification Planning for Compliance

- ▶ Material selection and specification strategies under BABA
- ▶ Working with contractors to align design with compliant supply chains



# Flexibility in the process

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- ▶ Balancing BABA with cost, availability, and project goals
- ▶ Need to continue monitoring cost *and availability* of desired materials/amenities



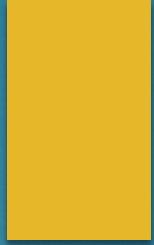
# Execution

## Integrating BABA into Construction

- ▶ Addressing BABA in project solicitations and sub-tier bid scopes
- ▶ Ensuring subcontractor and supplier certifications
- ▶ Construction phase practices to manage compliance:
  - i. Material Submittals with BABA cover sheet
  - ii. Substitution requests paired with waiver justification (e.g., de minimis, not available)
  - iii. Close-out documentation tied to BABA compliance
- ▶ Project Analytics (First Met)
- ▶ Example Project



# BABA Regulatory Context: Waivers



**HUD General Waivers** - these waivers can be granted at housing New Mexico's discretion without sending a formal request to HUD

1. Tribal Recipients Waiver

- Awards of federal funds to tribes of \$2.5 million or less
- Expires January 10, 2030

2. De Minimis Waiver

- Waive BABA's applicability to materials whose cost is less than or equal to 5% of the total cost of materials used in a project, up to \$1,000,000
- Expires November 23, 2027



# BABA Regulatory Context: Waivers (Continued)

Project specific waivers - these waivers must be formally requested from HUD by housing New Mexico

1. Unreasonable Cost Waiver

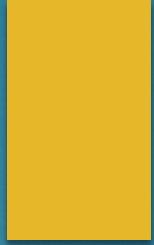
- Project's compliance with BABA would increase the overall cost of the project by more than 25% compared to the project using non-BABA compliant products and materials

2. Non-availability Waiver

- Specific product(s) cannot be sourced in the United States



# BABA Regulatory Context: Waivers (Continued)



## HUD General Waiver Application Process

1. Developer submitted HUD general waiver request form to housing New Mexico
2. Housing New Mexico reviews and approves waiver application

## Project specific waiver application process

1. Developer submits project specific waiver request form to housing New Mexico
2. Housing New Mexico submits online waiver application to HUD
3. HUD approves waiver application, submits it to the office of management and budgets made in America office (MIAO)
4. MIAO makes final decision approving waiver

*ANY BABA WAIVER REQUEST MUST BE APPROVED PRIOR TO COMMITTING FEDERAL FUNDS TO A PROJECT.*





# Discussion & Questions

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