



RSA UPDATES

REHABILITATION SERVICES ADMINISTRATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dear VR Director,

This email is to update State Vocational Rehabilitation (VR) agencies of a change in the applicability of the Build America, Buy America Act (BABAA) to home modifications under the VR program. Since issuing its initial guidance to VR agencies on March 23, 2023, the Rehabilitation Services Administration (RSA) has continued to receive inquiries about the applicability of BABAA to home modification projects undertaken by VR agencies for VR program participants pursuant to an Individualized Plan for Employment (IPE). Specifically, agencies continue to ask whether these home modification projects constitute “infrastructure” projects, for purposes of [2 C.F.R. § 184.4\(c\)](#) and, thus, whether the BABAA preferences for iron, steel, and other construction materials apply. In this updated guidance, RSA provides clarification to VR agencies as its interpretation of the applicability of BABAA to home modification projects under the VR program has evolved in response to guidance issued to the Office of Management and Budget’s (OMB) final regulations published at [88 FR 57787](#) on August 23, 2023, and its Memorandum [M-24-02](#), “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure,” dated October 25, 2023, which contained supplemental guidance for the Heads of Federal Executive Departments and Agencies.

Both [2 C.F.R. § 184.4\(d\)](#) and OMB-[M-24-02](#), published after the RSA guidance, make clear:

When determining if a particular project of a type not listed in the description in paragraph (c) constitutes “infrastructure,” the Federal awarding agency should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.

OMB-[M-24-02](#) states further:

Through this memorandum, OMB notes that projects with the former “public” qualities have greater indicia (or distinguishing features) of “infrastructure,” while projects with the latter “private” quality have fewer. As a result, projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute a public infrastructure project for purposes of BABAA.

Given this guidance from OMB and its final regulation at [2 C.F.R. § 184.4\(d\)](#), RSA amends its previous guidance to State VR agencies. Specifically, RSA wants to make clear that *home modification projects done by State VR agencies to participants' homes for their own personal and private use would not constitute an "infrastructure" project, for purposes of [2 C.F.R. § 184.4\(c\)](#) and, thus, the BABAA requirements would not apply. However, in the event a VR agency were to modify a participant's home for purposes of operating a small business open to customers and vendors, such a project would constitute a public interest for purposes of BABAA even though the site at issue is a private home.* In this latter example, the BABAA requirements would apply because the project would constitute an "infrastructure" project for purposes of [2 C.F.R. § 184.4](#).

Nothing in this updated guidance affects BABAA's applicability to the VR program in other contexts in which it engages in projects that constitute "infrastructure" projects, such as those involving community rehabilitation programs, one-stop centers, VR office space, and vending facilities. For these types of projects, the BABAA requirements would apply.

If you have any questions regarding this email, please contact the [RSA Financial Management Specialist](#) assigned to your agency.

Regards,

David



David K. Steele, MA, MSW
Chief, Fiscal Unit, Rehabilitation Services Administration
Office of Special Education and Rehabilitative Services | U.S.
Department of Education
400 Maryland Avenue SW | Washington, D.C. 20202
Phone: (202) 245-6358
Email: david.steele@ed.gov