



Build America, Buy America Act (BABA)

Buy America Preference for CPD Funding and Programs





BABA Overview

What is the Build America, Buy America Act (BABA)?

- Enacted in the Infrastructure Investment and Jobs Act signed by President Biden on November 15, 2021.
- The Build America, Buy America Act (BABA) requires that products purchased in connection with infrastructure projects funded by Federal financial assistance programs must be produced in the United States.
 - This requirement is known as the “**Buy America Preference (BAP).**”
- The following products used in Federally funded infrastructure projects must be produced in the United States:
 - **Iron and steel;**
 - **Manufactured products;** and
 - **Construction materials.**
- For the purposes of BABA, an infrastructure project is defined as any project that includes the following activities:
 - **Construction,**
 - **Alteration,**
 - **Maintenance, or**
 - **Repair.**



Why is Build America, Buy America Act (BABA) Important?

- **Purposes of Build America, Buy America Act**
 - Stimulate private sector investments in American manufacturing.
 - Bolster critical American supply chains.
 - Support the creation of jobs so that America's workers and firms can compete and lead globally for years to come.
- Government-wide law applicable to all Federal infrastructure spending.



BABA Definitions

Federal Financial Assistance (FFA)

- Grants
- Cooperative agreements
- Non-cash contributions or donations of property
- Direct assistance
- Loans
- Loan guarantees
- Other financial assistance

Buy America Preference (BAP)

- Statutory requirement that Federal funding for infrastructure projects use “covered materials” that are “American-made.”

Infrastructure

- Buildings and real property
 - Including housing
- Utilities
- Water systems (drinking water and wastewater)
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation infrastructure



BABA Definitions

Construction materials

- Includes all raw materials used in construction, including:
 - metals other than iron/steel,
 - plastic materials such as PVC pipe,
 - glass,
 - lumber,
 - drywall.
- Does not include cement and aggregates (stone, sand, gravel).

Iron and steel

- Includes materials that are primarily composed of iron or steel.

Manufactured products

- A material or supply used in an infrastructure project that is not iron or steel or a construction material.
- When two or more materials are combined, they should be treated as a manufactured product.



HUD Construction Materials Groups

HUD's waiver breaks construction materials into two groups for the purposes of HUD's phased implementation: "specifically listed" and "all other construction materials."

Specifically Listed

- Metals other than iron or steel (non-ferrous metals)
- Lumber
- Composite building materials
- Plastic and polymer-based pipe and tube (e.g., PVC pipe)

All Other Construction Materials

- Glass
- Drywall
- Other construction materials





HUD and CPD Impact

HUD's BABA Policy

- HUD's BABA efforts are led and coordinated by the Office of the Chief Financial Officer (OCFO).
- The Department is working on HUD-wide guidance and a project-specific waiver process.

CPD's Efforts to Implement BABA:

- **Stakeholder outreach** to CPD grantees, including CDBG and RHP grantees, state grantee meetings, and individual meetings.
- **FY23 Grant Agreements and grant transmittal letters** include BABA language.
- **HUD-issued general waivers:** General waivers apply to all HUD programs.
- **Developing updates to CPD systems:** IDIS, DRGR, etc.



HUD General Waivers*

Phased Implementation

- Waiver published March 15, 2023, establishes a phased implementation schedule for application of the BAP to HUD programs.

Exigent Circumstances

- BAP may be waived if projects must be completed immediately to protect life, ensure safety, or prevent the destruction of property
- Currently effective until November 23, 2027

De Minimis, Small Grants, and Minor Components

- BAP waived for projects with a total cost of \$250,000 or less
- BAP waived for a *de minimis* portion that comprises no more than 5 percent of the total cost of covered materials used in a project, up to \$1 million
- Currently effective until November 23, 2027

Tribal Recipients

- BAP waived for FFA to Tribes, Tribally Designated Housing Entities, and other Tribal Entities to allow for appropriate tribal consultation
- Currently effective until May 23, 2024

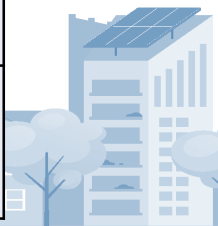
*HUD is currently taking public comment on a new proposed waiver for Pacific Island/Territory Recipients. This is only proposed and **not** an approved HUD waiver.



HUD Phased Implementation of BABA

- The Phased Implementation waiver published on March 15, 2023, established the following implementation schedule for HUD programs.
- Note: the waiver does not apply to FFA to Tribes, which is covered by a separate waiver.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	All Other Construction Materials	Manufactured Products
CDBG Formula Grants	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from FY24 appropriations	As of the date HUD obligates new FFA from FY25 appropriations	As of the date HUD obligates new FFA from FY25 appropriations
Choice Neighborhood, Lead Hazard Reduction, and Healthy Homes Production Grants	New FFA obligated by HUD on or after February 22, 2023	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024
Recovery Housing Program (RHP) Grants	New FFA obligated by HUD on or after August 23, 2023	As of the date HUD obligates new FFA from FY24 appropriations	As of the date HUD obligates new FFA from FY25 appropriations	As of the date HUD obligates new FFA from FY25 appropriations
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BABA and Obligation Date

- The BAP applies to HUD funds that are obligated **on or after** the implementation date for those funds (as determined in HUD's phased implementation waiver chart).
 - The BAP does not apply to any funds that were obligated before the implementation date for those funds.
- What does **obligation** mean?
 - The date of obligation is the point at which HUD is legally committed to make funds available to a grantee.
 - For example, in CDBG, the date of obligation is the date the grant agreement is signed by HUD.



BABA Applies to CPD Programs and Funding

CPD Funding for which the BAP now applies:

- CDBG, including Section 108
 - CDBG funds obligated on or after November 15, 2022, used for iron or steel
- Recovery Housing Program (RHP)
 - RHP funding obligated on or after August 23, 2023, used for iron or steel

Future CPD Programs BABA Will Apply to Under Phased Implementation Waiver:

- HOME
- HOME-ARP
- Housing Trust Fund (HTF)
- Emergency Solutions Grants (ESG)
- Continuum of Care (CoC)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Self-Help Homeownership Opportunity Program (SHOP)
- Special NOFA for unsheltered and rural homelessness
- Veterans Housing Rehabilitation and Modification Program (VHRMP)
- Community Project Funding (CPF)/Economic Development Initiative (EDI)
- Section 4
- Rural Capacity Building
- Pathways to Removing Obstacles to Housing (PRO Housing)
- Other new CPD programs



CPD Programs and Funds Not Impacted by BABA

“Disaster and emergency funding” are not subject to BABA.

CPD Programs/Funds for which the BAP will not apply:

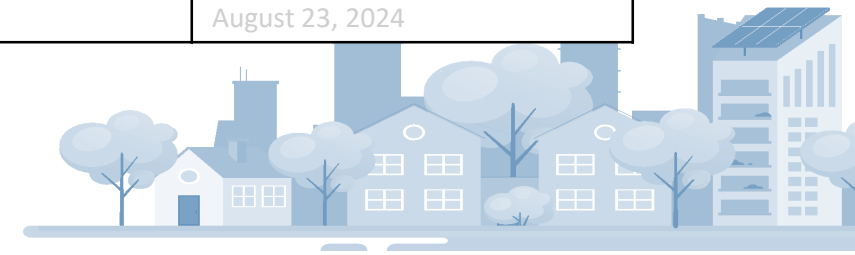
- CDBG-DR
- CDBG-MIT
- CDBG-CV
- ESG-CV
- HOPWA-CV
- Community Compass Technical Assistance



BABA Rollout: CDBG

The BAP is now in effect for CDBG iron or steel projects using funds obligated on or after November 15, 2022.

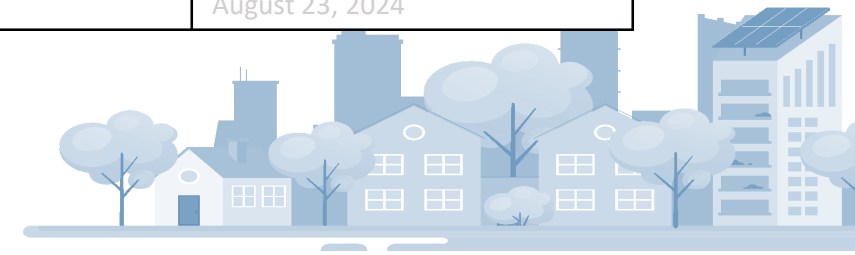
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BABA Rollout: Recovery Housing Program (RHP)

The BAP will be in effect for RHP iron or steel projects using funds obligated on or after August 23, 2023.

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BABA Rollout: Other CPD Programs (except HOME, HTF)

This rollout phase will include all other CPD programs except HOME and HTF. The BAP will apply to iron or steel projects using funds obligated on or after February 22, 2024.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	All Other Construction Materials	Manufactured Products
CDBG Formula Grants	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from FY24 appropriations	As of the date HUD obligates new FFA from FY25 appropriations	As of the date HUD obligates new FFA from FY25 appropriations
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All HUD FFA (including HOME, HTF)

This rollout phase will cover all HUD federal financial assistance programs. For CPD, this will include HOME and HTF.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	All Other Construction Materials	Manufactured Products
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Project-Specific Waivers

- In addition to the general waivers, **project-specific waivers may be granted** for projects where the BAP would otherwise apply.
- **Three categories** of waivers:
 - **Public interest:** BAP would be inconsistent with the public interest.
 - **Nonavailability:** covered materials are not produced in the US in sufficient and reasonably available quantities or of a satisfactory quality.
 - **Unreasonable cost:** inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25 percent.
- **The process for requesting project-specific waivers is under development** and more information will be shared as it becomes available.





BABA Implementation

Current CPD BABA Status

- BAP **now applies** to:
 - Infrastructure projects with:
 - **CDBG funds obligated on or after November 15, 2022**
 - **Recovery Housing Program funds obligated on or after August 23, 2023**
 - AND containing **iron or steel**
 - AND with a total cost **greater than \$250,000**.
- BAP does **not** apply to:
 - Non-infrastructure funding.
 - Infrastructure projects using CDBG funds obligated before November 15, 2022, or RHP funds obligated before August 23, 2023.
 - Infrastructure projects that do not contain **iron or steel**.
 - Infrastructure projects with a total cost **of \$250,000 or less**.
 - **CDBG-DR, CDBG-MIT, or CDBG-CV** projects.
 - Projects that qualify for another **HUD general waiver**.
- The next phase of implementation will apply the BAP for iron and steel to all other CPD Funding (excluding HOME and Housing Trust Fund) with obligations on or after **February 22, 2024**.



Things You Can Do Now

- Familiarize yourself with BABA guidance posted on HUD.gov.
(https://www.hud.gov/program_offices/general_counsel/BABA)
- Attend CPD's BABA Webinars and check for more information from HUD and CPD, as it is available.
- Start planning for BABA as you draft your action plan.
 - Do you have any planned projects for which the BAP now applies?
 - Look back at previous projects. Are there types of projects that you typically complete that the BAP would apply to?



More Things to Do Now

- Ensure that projects comply with the BAP.
 - Review current and planned projects to determine if the BAP applies.
 - Consider if a project-specific waiver may be necessary.
- BABA applies to subrecipients and contractors.
 - All FY23 grant agreements include BABA language that should be included in all agreements and contracts with subrecipients and contractors.
- Implementation and Compliance Should be Documented.
 - Grantees should maintain financial records, supporting documents, and all other non-Federal records for the project under the existing CPD program reporting requirements.

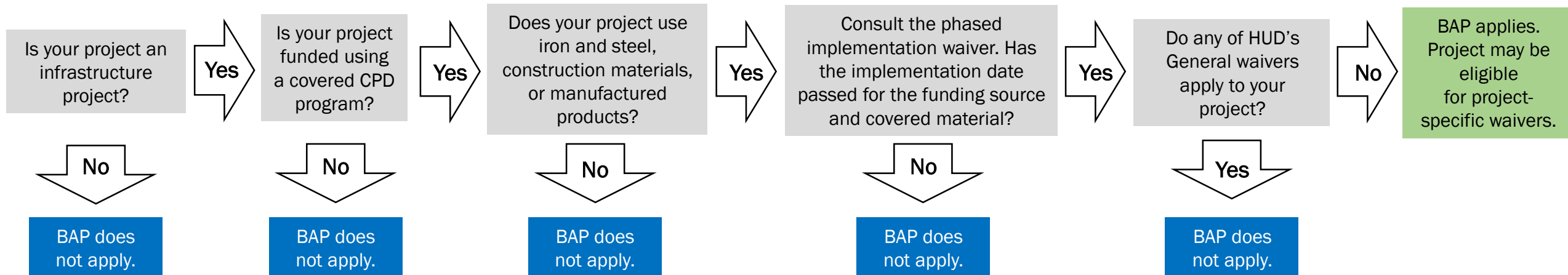


Implementing BABA: Grant Agreement Language

- All FY23 grant agreements include BABA language.
 - *The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.*
- This language should be included in all agreements with subrecipients and contractors, even if the BAP does not yet apply under the Phased Implementation Waiver.
- This language can be found in the "Special Conditions" section of your grant agreement.



Implementing BABA: Does the BAP Apply to Your Project?





Examples

Examples – Does the BAP apply?

Grantee funds a water & sewer project containing iron and steel. The project is funded using \$2 million in CDBG funding. The total project cost (including other Federal financial assistance) is \$3 million.



Examples – Does the BAP apply?

Grantee funds a water & sewer project containing iron and steel. The project is funded using \$2 million in CDBG funding. The total project cost (including other Federal financial assistance) is \$3 million.

YES, the BAP applies to the iron and steel used in this project because the total project cost is greater than \$250,000 and the project uses CDBG funding.



Examples – Does the BAP apply?

Grantee funds a water & sewer project containing iron and steel. The project is funded using \$100,000 in CDBG funding. The total project cost (including other Federal financial assistance) is \$300,000.



Examples – Does the BAP apply?

Grantee funds a water & sewer project containing iron and steel. The project is funded using \$100,000 in CDBG funding. The total project cost (including other Federal financial assistance) is \$300,000.

YES, the BAP applies to the iron and steel used in a CDBG project with a total cost greater than \$250,000.



Examples – Does the BAP apply?

Grantee uses \$1.2 million in Section 108 to build a community facility containing iron or steel.



Examples – Does the BAP apply?

Grantee uses \$1.2 million in Section 108 to build a community facility containing iron or steel.

YES, iron and steel used in a Section 108 project with a total cost of \$250,000 or greater.



Examples – Does the BAP apply?

Grantee uses \$1.2 million in Section 108 to fund water infrastructure improvements. \$250,000 in CDBG will be used for the annual 108 payment.



Examples – Does the BAP apply?

Grantee uses \$1.2 million in Section 108 to fund water infrastructure improvements. \$250,000 in CDBG will be used for the annual 108 payment.

YES, because the funds are being used for loan repayment on a project that is subject to BABA.



Examples – Does the BAP apply?

PJ contributes \$2,000,000 in HOME funds for construction of a multi-unit residential building, using iron or steel. The funds are obligated on July 15, 2023.



Examples – Does the BAP apply?

PJ contributes \$2,000,000 in HOME funds for construction of a multi-unit residential building, using iron or steel. The funds are obligated on July 15, 2023.

NO, funding is obligated before the BAP applies to HOME funds used for iron or steel (August 23, 2024).



Examples – Does the BAP apply?

Grantee funds acquisition of land using \$300,000 in RHP funds that were obligated on September 1, 2023. The acquisition is one piece of a multifamily housing construction project containing iron or steel.



Examples – Does the BAP apply?

Grantee funds acquisition of land using \$300,000 in RHP funds that were obligated on September 1, 2023. The acquisition is one piece of a multifamily housing construction project containing iron or steel.

YES, the funding is part of the total cost of a covered project and is therefore subject to the BAP.



Examples – Does the BAP apply?

Grantee purchases a fire engine (to serve a low- to moderate-income neighborhood) with \$300,000 in CDBG funding.



Examples – Does the BAP apply?

Grantee purchases a fire engine (to serve a low- to moderate-income neighborhood) with \$300,000 in CDBG funding.

NO, the funding is not used for a covered activity (construction, alteration, maintenance, or repair.)



Examples – Does the BAP apply?

Grantee uses \$400,000 in RHP funds to rehabilitate a multi-unit residential building, using iron or steel. The funds are obligated after August 23, 2023.



Examples – Does the BAP apply?

Grantee uses \$400,000 in RHP funds to rehabilitate a multi-unit residential building, using iron or steel. The funds are obligated after August 23, 2023.

YES, funding is obligated after the BAP becomes applicable to RHP projects using iron or steel.



Examples – Does the BAP apply?

PJ contributes \$2,000,000 in HOME funds for construction of a multi-unit residential building, using iron or steel. The funds are obligated after August 23, 2024.



Examples – Does the BAP apply?

PJ contributes \$2,000,000 in HOME funds for construction of a multi-unit residential building, using iron or steel. The funds are obligated after August 23, 2024.

YES, funding is obligated after the BAP becomes applicable to HOME projects using iron or steel.





Recap and Next Steps

CPD Recap

- BAP **now applies** to:
 - Infrastructure projects with:
 - CDBG funds obligated on or after **November 15, 2022**, and/or
 - Recovery Housing Program funds obligated on or after **August 23, 2023**
 - AND containing **iron or steel**
 - AND with a total cost **greater than \$250,000**.
- The BAP **will apply** to other CPD programs on a phased implementation schedule.
 - The BAP for iron and steel infrastructure projects will apply to all CPD funding, excluding HOME and Housing Trust Fund, for obligations on and after **February 22, 2024**.
- Projects may be eligible for a project-specific waiver.
 - More details are coming!



Key Takeaways

- Purpose of BABA
 - Stimulate private-sector investments in domestic manufacturing.
 - Bolster critical domestic supply chains.
 - Support the creation of well-paying jobs for people in the United States.
- It's New!
 - Applies to HUD funding over the next three Fiscal Years based on the Phased Implementation Waiver available [here](#).
- It's Required!
 - Grantees engaging in infrastructure must comply with the BABA-specific conditions in their grant agreements.
- Implementation and Compliance Should be Documented.
 - Grantees should maintain financial records, supporting documents, and all other non-Federal records for the project under the existing CPD program reporting requirements.
- Applies to CPD grantees, subrecipients, contractors and vendors.



HUD and CPD Next Steps

- Establishing centralized Department-wide waiver process.
- Additional resources are under development to support grantees as they begin to implement BABA requirements:
 - FAQs
 - Quick Guides
 - Grantee webinars
- Email address for CPD BABA questions: CPDBABA@hud.gov
- Visit HUD's BABA website for more details:
https://www.hud.gov/program_offices/general_counsel/baba





Questions? Please email
CPDBABA@hud.gov