Build America, Buy America Act:

Buy America Preference (BAP) Applicability Checklist

Oklahoma Department of Commerce - CDBG Program

COMMUNITY PLANNING & DEVELOPMENT

For more information on BABA and the BAP, visit the BABA page on the HUD exchange.

Grantee Requirement Overview

Please complete this worksheet to assist with determining the Buy America Preference (BAP). This checklist follows the analysis steps as described in **NOTICE CPD-25-01** and should be uploaded with the **CDBG Construction Procurement Checklist** at time of **Notice of Award Submittal**. You may seek assistance from the project engineer and construction contractor to complete the worksheet and provide supporting documents.

Project Information

Grantee Name	
Grant Contract Number	
Activity Description	

Step 1:

Is the project an infrastructure project, as defined by the BABA statute?

☐ Yes	Continue to Step 2.
☐ No	The BAP does not apply. The BAP only applies to infrastructure projects. Stop here.

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Step 2:

Will the project use covered materials?

Each material should be classified into only one category: iron and steel, specifically listed construction materials, not listed construction materials, or manufactured products. This classification is necessary to apply HUD's Phased Implementation waiver.

Check the box below for each type of covered material incorporated into this infrastructure project.

☐	Iron or steel
☐	Specifically Listed Construction materials
☐	Not Listed Construction materials
☐	Manufactured products

If you checked any boxes above, answer yes.

☐ **Yes**	Continue to [redacted] Step 3
☐ **No**	The BAP does not apply to this project because it will not incorporate any covered materials. Stop here.

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Step 3:

Based on the obligation date of the covered CPD program funds, does the BAP apply to the funding source and covered materials that will be used in the project?

Use the phased implementation table to determine whether the BAP applies based on the obligation date for the covered CPD program funds and classification of materials. The BAP may only apply to some covered materials used in the project.

The obligation date is generally the date that HUD executed the grant agreement for covered CPD program funds to the grantee. This date may be found in the grant agreement. The obligation date is not the date when the grantee commits funds to a project under a subrecipient agreement.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	Not Listed Construction Materials	Manufactured Products
CDBG	CDBG funds obligated on or after 11/15/22	Projects using FY24 CDBG funds	Projects using FY25 CDBG funds	Projects using FY25 CDBG funds

☐ Yes	Indicate here which covered materials the BAP applies to and continue to [redacted] Step 4 ☐ Iron and steel ☐ Specifically listed construction materials ☐ Not listed construction materials ☐ Manufactured products
☐ No	The BAP does not apply to this project because the funds were obligated before the effective date for the program/materials used in the project. Stop here.

Step 4

HUD has issued several general waivers. Check the box next to any conditions that apply to the project.

Infrastructure projects that meet the conditions of a general waiver may be exempt in whole or in part from the BAP.

☐	The total cost of the project from all sources (Federal and non-Federal) is an amount equal to or less than the 2 CFR 200.1 simplified acquisitioIn threshold, which is currently $250,000. If checked, the Small Grants Waiver applies, and the project is exempt from the BAP. (Waiver effective until November 23, 2027.)
☐	There is an urgent need to immediately complete the project because of a threat to life, safety, or property. If checked, the Exigent Circumstances Waiver applies, and the project is exempt from the BAP. (Waiver effective until November 23, 2027.)

If you checked any of the boxes above, answer yes below.

☐ **Yes**	The HUD general waiver selected above is being applied to this project, so the BAP does not apply to the entire project. Documentation of the conditions of the waiver should be attached.
☐ **No**	Proceed to Step [redacted]. 4a

Step 4a:

Calculate the *De Minimis* limit for the project:

The total cost of all covered materials includes all iron and steel, construction materials, and manufactured products used in the project, regardless of whether the BAP currently applies under the Phased Implementation waiver.

Enter the total cost of all covered materials:	
Multiply that amount by 0.05 (5%):	
Enter the lower of the number calculated in the row above or $1,000,000 (whichever is less).	

The amount in the third row above is the De Minimis limit for this project. The BAP can be waived for covered materials from foreign or unknown sources at a cost not to exceed the *De Minimis* limit of 5% of the total cost of materials or $1,000,000 (whichever is less). The BAP will still apply to other covered materials used in the project. **Please attach a list of covered materials and their associated costs to which the *De Minimis* limit has been applied.**

Step 5:

Is there a need for a project-/product-specific waiver?

If the BAP applies to a project and all general waiver flexibilities have been utilized, but there are remaining covered materials that can only be sourced from foreign or unknown sources, then a grantee may apply for a project-/product-specific waiver.

☐ Yes	Refer to guidance in Section VIII and IX of Notice CPD-25-01 - (Waiver Instructions from HUD)
☐ No	

Completed by Name and Phone Number	Date Completed

Form 407.8

COMMUNITY PLANNING & DEVELOPMENT

CHECKLIST

Build America, Buy America Act:

Buy America Preference (BAP) Applicability Checklist

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:
All CPD Division Directors
HUD Field Offices
HUD Regional Offices
All CDBG Grantees
All CoC Grantees
All HOME Participating Jurisdictions
All HTF Grantees
All ESG Grantees
All HOPWA Grantees

NOTICE: **CPD-25-01**

Issued: **January 13, 2025**
Supersedes: CPD-2023-12

Expires: This Notice remains in effect until amended, superseded, or rescinded.

Cross Reference:
Sections 70901-52 of Pub. L. No. 117-58

Subject: CPD Implementation Guidance for the Build America, Buy America Act's Buy America Preference.

Overview

This updated Community Planning and Development (CPD) Notice supersedes CPD Notice 2023-12 to provide clarified implementation guidance for the "Buy America Preference" (BAP) imposed by the Build America, Buy America Act (BABA) enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA, Pub. L. No. 117-58) signed into law on November 15, 2021. It describes how grantees can use covered CPD program funds for public infrastructure projects to bolster America's industrial base, protect national security, and support high-paying jobs.

The refreshing of this Notice is intended to provide greater clarity to grantees implementing BABA. Specifically, the Notice clarifies how the BAP applies to public infrastructure for housing projects. Projects with one- to four-units should be classified as private and not subject to BABA. Housing projects with five or more units should be considered as public infrastructure subject to BABA unless another BABA waiver or exemption applies. In addition, the Notice includes a reclassification of HOME-ARP to CPD programs not covered by the BAP, clarification on determining a project scope, BAP applicability to program income, additional recordkeeping considerations, guidance on using HUD's online project-specific waiver application website, and new resources to assist with compliance and determining when a project-specific waiver is appropriate.

This Notice also highlights issues that grantees will want to consider when preparing for

HUD's full implementation of the BAP in FY2025, as described in "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 Fed. Reg. 17001, effective March 15, 2023 ("Phased Implementation Waiver"), which establishes BAP implementation points according to a schedule across HUD programs.

More in-depth technical assistance related to both BABA compliance and best practices is available on the HUD Exchange and hud.gov websites. HUD also encourages grantees to contact their assigned local field offices to discuss issues and concerns within the regulatory framework. This Notice uses the term "grantee" generically to also include HOME participating jurisdictions. The guidance provided in this Notice is subject to change if the Office of Management and Budget (OMB) updates guidance on the application of BABA for Federal financial assistance (FFA) programs for infrastructure.

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I. The Build America, Buy America Act (BABA)

The Build America, Buy America Act (BABA) was signed into law by President Biden on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) as Sections 70901-52 of Pub. L. No. 117-58. In addition to providing funding for roads, bridges, rails, and high-speed internet access, it created an incentive to increase domestic manufacturing across the country through the inclusion of BABA's "Buy America Preference" (BAP). In general, the BAP requires that all iron, steel, manufactured products, and construction materials used in public infrastructure projects funded with Federal financial assistance (FFA), as outlined in Section 70914(a) of BABA, must be produced in the United States. The intent of the BAP is to stimulate private-sector investments in domestic manufacturing, bolster critical supply chains, and support the creation of well-paying jobs for people in the United States. The preference is also intended to bolster American firms' ability to compete and lead globally for years to come by requiring entities that receive Federal infrastructure funds to use American materials and products.

The BAP applies to all spending on public infrastructure projects by Federal agencies, including HUD. In BABA, and for purposes of this Notice, the Federal infrastructure spending with a BAP is referred to as "Federal financial assistance" or "FFA." Under Section 70912(7), FFA for public infrastructure "projects" includes the "construction, alteration, maintenance, or repair of infrastructure in the United States". Under Section 70914(a), the use of American iron and steel, construction materials, and manufactured products generally applies to funding from CPD programs for public infrastructure projects. However, the BAP does not apply to "pre and post disaster or emergency response expenditures" under Section 70912(4)(B). A list of CPD disaster or emergency funding meeting these criteria can be found in Section IV.

Effective May 14, 2022, the BAP applies to infrastructure spending unless an agency issues a waiver in three limited situations: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured products or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or 3) where the inclusion of those products and materials will increase the cost of the overall project by more than 25 percent. Before issuing a waiver, HUD, must make a detailed written explanation for the proposed determination to issue the waiver publicly available and provide a period of not less than 15 days for public comment on the proposed waiver. Additional details on waivers can be found in Sections VIII and IX of this Notice.

A. Federal Government-wide Guidance on BABA

As a part of the Federal government's support of domestic production and manufacturing through infrastructure investments, OMB and HUD have taken several steps to implement the BAP by providing guidance and issuing HUD general waivers.

On August 23, 2023, OMB issued final rules for 2 CFR Parts 184 and 200 and provided further guidance on implementing the statutory requirements and improving FFA management and transparency (88 Fed. Reg. 57750, effective October 23, 2023). These government-wide regulations apply to HUD programs and provide direction on implementing a BAP waiver process. The new and revised regulations also provide additional guidance on construction material standards, the cost

components of manufactured products, and their definitions.

On October 25, 2023, OMB issued guidance to all Federal agencies on how to implement BABA consistently across the government. The "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (M-24-02) (OMB Guidance) directs Federal agencies, including HUD, on how to apply the BAP and provides an overview of the BAP waiver requirements. OMB may also issue additional or updated guidance in the future, and HUD will update its guidance as necessary.

B. HUD Actions and Guidance on BABA

BABA is a new and complex statute that became effective in 2022. As such, establishing governmentwide guidance on these new statutory requirements has been an iterative process. Since the passage of BABA, HUD has worked diligently to implement the BAP for all HUD programs. Before the law became effective on May 14, 2022, HUD established a Department-wide BABA leadership committee. On June 1, 2022, HUD issued a Request for Information (RFI) to collect public comments on potential BABA implications for HUD grantees (87 FR 33193). To ease the transition in complying with the BAP, HUD proposed and received several general applicability waivers for covered FFA, which includes CPD programs. These waivers and other BABA information are available on HUD's website at https://www.hud.gov/baba. Further details on these waivers and their application to CPD programs are provided in Section V of this Notice.

CPD has taken several actions to notify and communicate with stakeholders and grantees on BABA requirements and their impact on CPD programs. Since Fiscal Year (FY) 2022, all grant transmittal letters and notices of funding opportunities (NOFOs) have included a reference to the BAP under BABA. For the FY2023 and FY2024 funding allocations, all CPD grant agreements with covered FFA included a clause to require that the grantee must comply with BABA, as applicable, which will remain in place for future allocations. Throughout 2023 and 2024, CPD has held BABA information sessions for CPD grantees and operates a dedicated email box at CPDBABA@hud.gov to answer questions from individual grantees and stakeholders. In October 2023, CPD established a HUD Exchange page (hudexchange.info/programs/baba/) as a central resource for grantees. CPD has developed technical assistance products, including quick guides, webinars, and frequently asked questions (FAQs), that are available to CPD grantees on this site.

II. Definitions

CPD has aligned its definitions regarding policy interpretations of BABA with regulations at 2 CFR part 184 and Appendix 1 of OMB guidance M-24-02 as stated below.

1. Build America, Buy America Act is defined in 2 CFR § 184.3 and means division G, title IX, subtitle A, parts I–II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58).

2. Buy America Preference is defined in 2 CFR § 184.3 and means the "domestic content procurement preference" set forth in section 70914 of BABA, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for

an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

3. Categorization of Articles. The term "categorization of articles" refers to the requirement that articles, materials, and supplies should only be classified into one of the following categories:
    i. Iron or steel products;
    ii. Manufactured products;
    iii. Construction materials; or
    iv. Section 70917(c) materials.

    Each article, material, or supply should be classified in only one of the categories listed above. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

4. Component is defined in 2 CFR § 184.3 and means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

5. Construction Materials is defined in 2 CFR § 184.3 and means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.
    (1) The listed items are:
    i. Non-ferrous metals;
    ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
    iii. Glass (including optic glass);
    iv. Fiber optic cable (including drop cable);
    v. Optical fiber;
    vi. Lumber;
    vii. Engineered wood, and
    viii. Drywall.

    (2) Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material.

6. Covered Materials includes the following when used in connection with an Infrastructure Project:
    (A) all iron and steel;

(B) all Manufactured Products; and
(C) all Construction Materials.

7. Covered CPD Programs. The term "covered CPD programs" means any Federal financial assistance administered by CPD that is used for public infrastructure projects, excepting expenditures related to pre and post disaster or emergency response.

8. Grantee**.** The term "grantee," as defined at 24 CFR 5.100, means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.

9. Federal Financial Assistance (FFA) has the meaning given to the term in 2 CFR 200.1 (or successor regulations) and includes all expenditures by a Federal agency to a Non-Federal Entity for an Infrastructure Project, except that it does not include:

   (A) expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191); or

   (B) pre and post disaster or emergency response expenditures.

10. Infrastructure as described in 2 CFR 184.4(c), encompasses public infrastructure projects in the United States, which includes, at a minimum: the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging. See also 2 CFR 184.4(d).

11. Infrastructure Project The term "infrastructure project" is defined in 2 CFR 184.3 and means any activity related to the construction, alteration, maintenance, or repair of public infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also 2 CFR 184.4(c) and (d).

12. Iron and Steel Products The term "iron and steel products" is defined in 2 CFR 184.3 and means articles, materials, or supplies that consists wholly or predominantly of iron or steel, or a combination of both.

13. Predominantly of iron or steel or a combination of both is defined in 2 CFR 184.3 and means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

14. Made in America Office. The term "Made in America Office" or "MIAO" means the office at the Office of Management and Budget, established by section 70923 of BABA, that is charged with implementing the BAP and establishing the procedures to review waiver requests.

15. Manufactured Products is defined in 2 CFR 184.3 and means:

    (1) 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.

    (2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

16. Manufacturer is defined in 2 CFR 184.3 and means the entity that performs the final manufacturing process that produces a manufactured product.

17. Non-Federal Entity means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient., as provided in 2 CFR 200.1.

18. Not Listed Construction Materials The term "not listed construction materials" refers to the category of construction materials that are subject to the BAP, but not included in HUD's specifically listed construction materials, as defined in the Phased Implementation Waiver. This includes:
    i. plastic and polymer-based products other than composite building materials or plastic and polymer-based pipe or tube;
    ii. glass (including optic glass); and
    iii. drywall.

19. Obligate means an action taken by HUD that creates a legal liability of the government for the payment of goods and services ordered or received or that administratively recognizes a legal duty on the part of the Agency that could mature into a legal liability by virtue of actions outside of HUD's control. The milestone in the federal assistance award process that establishes the obligation date varies for each program, but for many CPD programs the obligation date occurs upon HUD's execution of the grant agreement.

20. OMB Guidance . The term "OMB guidance" refers to 2 CFR Part 184, the "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (M-24-02), issued October 25, 2023, by the Office of Management and Budget, and any subsequent guidance to rescind or replace M-24-02. This

guidance is applicable to the heads of all Federal agencies for the implementation of BABA's Buy America Preference.

21. Pre and Post Disaster or Emergency Response Expenditures. The term "pre and post disaster or emergency response expenditures" means Federal funding authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively. The BAP does not apply to pre- and post-disaster or emergency response expenditures authorized by statutes other than the Stafford Act and made in anticipation of or in response to an event that qualifies as an emergency or major disaster within the meaning of the Stafford Act.

22. Produced in the United States is defined in 2 CFR 184.3 and means:
    i. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
    ii. In the case of manufactured products:
        1. The product was manufactured in the United States; and
        2. The cost of components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See 2 CFR 184.2(a). The costs of components of a manufactured product are determined according to 2 CFR 184.5.
    iii. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of "all manufacturing processes" for specific construction materials.

23. Section 70917(c) Materials. The term "section 70917(c) materials" is defined in 2 CFR 184.3 and means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

    The Federal Register Notice implementing new BABA regulations at 2 CFR 184 (88 FR 57787) clarifies that all categorizations of Covered Materials should be made based on the status of the material when it arrives at the work site. Section 70917(c) materials that are used at the work site, such as wet concrete or hot asphalt, are not subject to the BAP. However, Section 70917(c) materials may be components of manufactured products if, for example, they are used to produce precast concrete products before being transported to the work site.

24. Specifically listed construction materials. The term "specifically listed construction materials" for HUD programs includes:

a. non-ferrous metals;
b. lumber;
c. composite building materials; and
d. plastic and polymer-based pipe and tube.

III. Applicability of the BAP to CPD Programs and Projects

The BAP applies to the purchase of iron, steel, manufactured products, and construction materials for Covered CPD Programs when funds are used for the construction, alteration, maintenance, or repair of public infrastructure, as defined by BABA. This list of Covered CPD Programs is subject to change if there are any changes to the eligible uses of funds or the establishment of new programs that fund public infrastructure projects and are covered by BABA. Covered CPD Programs currently include:

- Community Development Block Grant Formula Programs (CDBG)
- Section 108 Loan Guarantee
- HOME Investment Partnerships Program (HOME)
- Housing Trust Fund (HTF)
- Recovery Housing Program (RHP)
- 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 homeless
- Veterans Housing Rehabilitation and Modification Program (VHRMP)
- Community Project Funding (CPF)/Economic Development Initiatives (EDI)
- Section 4 Capacity Building
- Rural Capacity Building
- Pathways to Removing Obstacles to Housing (PRO Housing)
- Preservation and Reinvestment Initiative for Community Enhancement (PRICE)
- Continuum of Care Builds Notice of Funding Opportunity (CoCBuilds NOFO)

BABA applies to any project that involves the construction, alteration, maintenance, or repair of public infrastructure, regardless of whether infrastructure is the primary purpose of the project. Since the term "infrastructure" includes the structures, facilities, and equipment for "buildings and real property", the BAP generally applies to Covered CPD Program funds provided for housing projects. OMB acknowledged at 2 CFR 184.4(d) that some projects may be "private" in nature and are not considered public infrastructure subject to BABA. An example OMB provided in M-24-02 is a project consisting solely of the purchase, construction, or improvement of a private single-family home for personal use.

Through this notice, CPD provides further clarification on when grantees should apply BABA's requirements to housing projects as described in M-24-02.

1. Housing projects with one to four units are considered "private," consistent with HUD's definition of single-family housing. Housing projects with one to four units, including

onsite utilities and related activities are therefore not considered public infrastructure and are not subject to the BAP.

2. Housing projects with five or more units are considered public infrastructure. Housing projects with five or more units are therefore subject to the BAP unless another BABA waiver or exemption applies.

Covered Materials incorporated into the public infrastructure project are subject to the BAP, regardless of the specific project costs for which Covered CPD Program funds are expended. To determine the scope of an individual public infrastructure project for BABA purposes, grantees should use the definition of a project as determined by the Covered CPD Program in question. For example, 24 CFR 92.2 defines a HOME project as "a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building."[1]

Where no program-specific definition of a project exists, grantees should use the definition of a "project" at 24 CFR 58 to assist with determining project scope: "an activity or group of integrally related activities designed by the recipient to accomplish, in whole or in part, a specific objective." Grantees cannot split an infrastructure project to avoid application of the BAP to the project, such as by dividing procurements, subgrants, cooperative agreements, etc., into separate and smaller awards or contracts, particularly where the procurements, subgrants, cooperative agreements, etc., are integrally and proximately related to the whole.

IV. CPD Programs and Funding Not Covered by the BAP

The BAP does not apply to Federal funds for "pre and post disaster or emergency response." The following list of CPD funds are administered for disaster or emergency-related purposes and therefore the BAP does not apply to them.

- Community Development Block Grant – Disaster Recovery Funds (CDBG-DR)
- Community Development Block Grant – Mitigation (CDBG-MIT)
- Community Development Block Grant – National Disaster Resilience Competition (CDBG-NDR)
- Community Development Block Grant CARES Act (CDBG-CV)
- HOME Investment Partnerships American Rescue Plan Program (HOME-ARP)
- Housing Opportunities for Persons With AIDS CARES Act (HOPWA-CV)
- Emergency Solutions Grants CARES Act (ESG-CV)
- Rapid Unsheltered Survivor Housing (RUSH)

In addition to the funding sources listed above, the BAP does not apply to projects funded solely with program income generated through any Covered CPD Program. Program income is not considered FFA.

[1] See also 24 CFR 93.2 for HTF, 24 CFR 578.3 for CoC, etc.

BABA does not apply to projects that do not include any construction, alteration, maintenance, or repair of public infrastructure. Equipment, tools, and supplies that are brought to a construction site and removed upon completion of the project or furnishings used within the finished project that are not permanently affixed to the public infrastructure project are not covered by the BAP.

V. HUD's General Waivers Applicable to Covered CPD Programs

BABA requirements may be waived by HUD and OMB when applying the BAP would be inconsistent with the public interest, when Covered Materials are not reasonably available in sufficient quantities or quality, or if the inclusion of Covered Materials produced in the United States will increase the overall project by more than 25 percent. The term "general applicability waiver" refers to waivers that have broad applicability across multiple HUD programs. The general applicability waivers for HUD FFA that are currently in effect for all Covered CPD Programs as of publication of this Notice are listed below.

General public interest waivers may be applied to all or a portion of a project without prior approval from HUD when a project meets the conditions established by the waiver. Grantees should maintain documentation demonstrating that the project meets the conditions of each general waiver applied to the project. HUD is responsible for processing and reviewing all waivers, which may only apply prospectively to future expenditures incurred after the effective date of the final waiver. The table below is current as of the publication of this Notice. Details of all proposed and approved waivers can be found at HUD's website at https://www.hud.gov/baba.

General Waiver Type	Purpose	Effective Dates
Public Interest Phased Implementation	HUD issued a public interest waiver, *"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"* to allow for orderly implementation of the BAP across HUD programs. The Phased Implementation Waiver establishes a schedule for the phased implementation of the BAP across CPD programs and infrastructure materials.	The public interest waiver was issued in March 2023 and established a phased implementation schedule for the application of the BAP to HUD programs through FY2025. The BAP has been in effect since November 15, 2022, for the use of iron and steel for infrastructure projects funded with newly obligated FFA through the CDBG program.
Exigent Circumstances	HUD issued a public interest waiver for exigent circumstances, "*Public Interest Waiver of Build America, Buy America Provisions for Exigent Circumstances as Applied to Certain Recipients of HUD Federal Financial Assistance*". This waiver applies when there is an urgent need by a CPD grantee to immediately	The public interest waiver for exigent circumstances is effective from November 23, 2022, until November 23, 2027, or such shorter time as HUD may announce via Notice.

General Waiver Type	Purpose	Effective Dates
	complete an infrastructure project because of a threat to life, safety, or property of residents and the community.	
***De Minimis* and Small Grants**	HUD issued a public interest titled "*Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Certain Recipients of HUD Federal Financial Assistance*". This waives the BAP for all infrastructure projects whose total cost (from all funding sources) is equal to or less than the simplified acquisition threshold at 2 CFR 200.1, which is currently $250,000. This Notice also waives the application of the BAP for a *de minimis* portion of an infrastructure project, meaning a cumulative total of no more than five percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of $1 million.	The public interest *de minimis*, and small grants waiver is effective from November 23, 2022, until on November 23, 2027, or such shorter time as HUD may announce via Notice.
Tribal Recipients Waiver	HUD issued a public interest waiver, "*Extension of Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance*" for the BAP as it applies to Tribal recipients.	The waiver of the BAP as it applies to Tribal recipients was effective for FFA obligated by HUD from May 23, 2023, until September 30, 2024.
Pacific Island Territory Waiver	HUD issued a "*Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Pacific Island Territory Recipients of HUD Federal Financial Assistance: Final Notice*" which waives the BAP for any FFA used for infrastructure projects in the Commonwealth of the Northern Mariana Islands, Guam, and American Samoa.	The waiver is effective from November 15, 2023, until February 15, 2025.

VI. Understanding HUD's Public Interest Phased Implementation General Waiver

Under Section 70914(a), the BAP was required to be in effect for all FFA for public infrastructure projects no later than 180 days after it was signed into law. Thus, starting May 14, 2022, all new awards of covered FFA for infrastructure projects obligated by HUD would have been required to comply with the BAP. Due to the short implementation period of 180 days, and to allow for the domestic industry and FFA recipients to have the time and notice necessary to implement BABA efficiently and effectively, HUD issued a Phased Implementation Waiver. This waiver enabled HUD to implement the BAP in an incremental process, resulting in full compliance with the BAP for all HUD obligations in FY 2025.

Covered CPD Programs began applying the BAP to public infrastructure projects beginning with CDBG funds obligated by HUD on and after November 15, 2022. The table below outlines the timeline for applicability of the BAP to each classification of Covered Materials incorporated into public infrastructure projects undertaken with Covered CPD Program funds. The columns identify categories of Covered Materials subject to the BAP and the rows identify covered HUD FFA, some of which are Covered CPD Programs and some of which are FFA from other HUD offices that may contribute funding to CPD-funded projects. Note that HUD's Phased Implementation Waiver divides the statutorily defined category of construction materials into two separate buckets for purposes of applying the BAP. See definitions of specifically listed and not listed construction materials in Section II.

To use the table, find the program(s) that funds the project under consideration, then identify which Covered Materials will be used in the project. The cell in the table where the applicable row and column intersect indicates the date on which the BAP will begin applying to each classification of Covered Materials used in the project. It is important to note that the date of obligation is typically the date on which HUD executed the legal instrument creating the relationship between HUD and the grantee for an award of FFA, commonly the date the grant agreement is signed by HUD. The date on which the grantee commits funds to a project or awards funds to a subrecipient does not impact applicability of the BAP.

For example, a grantee uses FY24 CDBG funding to build a new senior center and the HUD grant agreement was signed by the CPD Director on September 15, 2024. The grantee would use the phased implementation table to determine that:

- Since the funds were from FY24 appropriations and HUD executed the grant agreement after November 15, 2022, the BAP applies to all iron or steel materials and any specifically listed construction materials incorporated into the public infrastructure project; and
- Any not listed construction materials and manufactured products incorporated into the project are not subject to the BAP.
- However, if the grantee were to add funds from an FY25 CDBG grant in the future, then the BAP would apply to all Covered Materials used in the public infrastructure project.

A public infrastructure project may use funding from multiple Covered CPD Programs that impose the BAP to Covered Materials at different points in time. In that case, the procurement of Covered Materials for the project must comply with the program that applies the BAP most broadly.

For example, a public infrastructure project uses FY23 CDBG funding and FY24 HOME funding in the construction of a new multifamily housing development with 12 total units. HUD executed the CDBG grant agreement on September 15, 2023, and HUD executed the HOME grant agreement on September 12, 2024. The phased implementation table is used to determine that:

- HUD executed the CDBG grant agreement after November 15, 2022, but prior to FY24 appropriations. The BAP would apply to iron and steel products incorporated in the public infrastructure project.
- HUD executed the HOME grant agreement after August 23, 2024. The BAP would apply to iron and steel products, construction materials, and manufactured products (all Covered Materials) incorporated into the public infrastructure project.
- In this case, the HOME requirements are broader. Therefore, the procurement of all iron and steel products, construction materials, and manufactured products incorporated in the public infrastructure project must comply with the BAP.

Grantees who are considering adding Covered CPD Program funds for construction, maintenance, alteration, or repair of an infrastructure project that was not previously subject to BABA should contact their local CPD Field Office for technical assistance.

BAP will apply to…	Iron and Steel	Construction Materials – Specifically Listed	Construction Materials – Not Listed	Manufactured Products
CDBG Formula Grants	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 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 Fiscal Year 2024 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations
All other HUD FFA except HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects	New FFA obligated by HUD on or after February 22, 2024	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
HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects	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	New FFA obligated by HUD on or after August 23, 2024

VII. Applying the BAP and HUD General Waivers to Covered CPD Programs

Grantees should assess each project undertaken with Covered CPD Program funds to determine which Covered Materials incorporated into the project are subject to the BAP based on the effective dates in the Phased Implementation Waiver described above. This section describes the process grantees should follow to determine whether a project is subject to the BAP and if the project may be exempted in whole or in part by one of HUD's general waivers.

As a part of its record-keeping, a CPD grantee should document its process to analyze if the

BAP applies to a public infrastructure project using the approach described below. An optional "Buy America Preference Applicability Checklist" is included in Appendix 2 of this Notice. Grantees may choose to use or adapt the tool to serve as a record of the analysis completed for each project.

Step 1: Type of project/activity

Determine if the project is a public infrastructure project as defined in Sections II and III of this Notice. If the project is a public infrastructure project, the analysis continues to step 2.

Step 2: Funding sources

Identify the source(s) of the project funding, including Covered CPD Programs, other HUD funds, or other Federal agency funding. If the project includes funding from a Covered CPD Program listed in this Notice, the analysis continues to Step 3.

Step 3: Covered Materials

Identify and classify all the materials that will be incorporated into the project. Each material should be classified into only one category: iron and steel, specifically listed construction materials, not listed construction materials, or manufactured products. It is important to classify all Covered Materials used in the project to accurately determine BAP applicability because the BAP may only apply to some Covered Materials used in the project under the Phased Implementation Waiver.

The classification must be made based on the material's status at the time it is brought to the location for incorporation into a public infrastructure project. If the project contains any Covered Materials, continue to Step 4.

Step 4: Date of obligation

Use the phased implementation table provided in Section VI of this Notice to determine when the BAP applies to each classification of Covered Materials, based on the obligation date for the Covered CPD Program funds. If the project uses any Covered CPD Program funds subject to the BAP based on the HUD obligation date, identify which Covered Materials must be produced in the United States. The obligation date is generally the date that HUD makes a legal commitment for Covered CPD Program funds to the grantee. The date on which a grantee commits funds to a specific project does not impact the applicability of the BAP.

The obligation date is typically when HUD executes the grant agreement, but this may vary by program. For example, the obligation date for CDBG funds can be found in the CDBG grant agreement. Refer to Appendix 1 or contact your local CPD Field Office for assistance regarding the obligation date. If the project needs a waiver of the BAP for any Covered Materials, continue the analysis to Step 5.

Step 5: General waivers

Analyze each available HUD general waiver, based upon the specific requirements of that waiver. Public infrastructure projects that meet the conditions of a general waiver may be exempt in whole or in part from the BAP. Most HUD general waivers provide exemptions for an entire public infrastructure project that meets the waiver's conditions. Grantees that apply a general waiver to an entire project should maintain documentation in their project records.

The *De Minimis and Small Grants Waiver* is uniquely useful for public infrastructure projects that are not covered in their entirety by the other general waivers. The *De Minimis and Small Grants Waiver* offers flexibility to incorporate Covered Materials of foreign or unknown origin up to 5% of the total cost of Covered Materials used in the project or $1 million, whichever is less. The total cost of Covered Materials includes all classifications of materials, regardless of whether they are subject to the BAP based on HUD's Phased Implementation Waiver. This waiver advances compliance with the BAP by reducing the administrative burden to grantees where the costs of compliance with the BAP could distract from the focus on higher value BAP-compliant items. When using the *De Minimis* waiver, the grantee should document which Covered Materials the waiver was applied to in the project records.

For example, if the total cost of Covered Materials in a project is $100,000, then the grantee should calculate 5% of that total, which equals $5,000. The grantee may use the *De Minimis* waiver to use Covered Materials from foreign or unknown sources up to $5,000. This flexibility can be used towards a specific high-value item or multiple items with lesser values, up to a total of $5,000.

Grantees should calculate this limit for all public infrastructure projects and maximize this flexibility before seeking project-/product-specific waivers. For projects where general waivers do not provide relief for Covered Materials that cannot be procured from domestic sources, a project-/product-specific waiver may be appropriate. Continue the analysis in Step 6.

Step 6: Project-/Product-Specific Waivers

If the BAP applies to a project and all general waiver flexibilities have been utilized, but there are remaining Covered Materials that can only be sourced from foreign or unknown sources, then a grantee may apply for a project-/product-specific waiver. Prior to submitting a project-/product-specific waiver, the grantee must conduct market research to demonstrate its efforts to procure domestic products. One optional resource for conducting market research is the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP) center in the grantee's state. Grantees are encouraged to collaborate with relevant members of the project team to identify Covered Materials that cannot be obtained from domestic sources as early as possible in the project life cycle. NIST MEP's free supplier scouting resources can attempt to identify a domestic manufacturer that can supply the necessary materials or conduct the necessary market research to support the need for a project-/product-specific waiver.

As a part of its record-keeping, a grantee should document its process to analyze how the

BAP applies to a public infrastructure project using the approach described in this section and in Appendix 2. Grantees may also consult their local CPD Field Office for assistance in confirming the analysis completed for a specific project before applying for a project-/product-specific waiver.

VIII. Federal Government-wide Guidance on Project-/Product-Specific Waivers

Once a grantee has completed the analysis described in Section VII and determined that a project-/product-specific waiver is required, the grantee should consider which type of project/product-specific waiver is appropriate, as described below.

The three types of project-/product-specific waivers for which a grantee may apply are described below.

1. A **nonavailability waiver** may be requested if the types of iron, steel, manufactured products, or construction materials required for the project are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality

2. An **unreasonable cost waiver** may be requested when the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

3. A **public interest waiver** may be requested if the use of American made products would be inconsistent with the public interest. Grantees should explain how waiving the BABA requirement for this project or covered material will serve the public interest and demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project to support this waiver type.

A. Waivers for Infrastructure Projects Funded by Multiple Federal Agencies

If a waiver is required for a public infrastructure project funded by multiple Federal agencies, the Federal agency contributing the greatest amount of Federal funds for the project may be considered the Cognizant Agency for Made in America ("Cognizant Agency") and may take responsibility for coordinating with the other Federal awarding agencies. Each Federal agency waiving the BAP must make its own waiver determination. A Cognizant Agency cannot independently issue a waiver that applies to other agencies. Grantees that fund public infrastructure projects with other Federal agencies should contact the local CPD office as early as possible to coordinate review with other Federal agencies in the event a project-/product-specific waiver is needed.

OMB guidance outlined the waiver review process for agencies to follow before issuing a waiver. Based on this guidance, HUD has developed a Department-wide project-/product-specific waiver submission process, described in Section IX.

IX. Applying for a HUD Specific Waiver

This section describes the process a grantee should follow to request a project-/product-specific waiver. Only the direct HUD recipient should submit a waiver request. Subrecipients and/or subcontractors may not submit a waiver request. The direct recipient should work with project partners to obtain necessary information. Project-/product-specific waivers cannot be approved retroactively for items that have already been purchased or incorporated into a project, so grantees should determine if a project-/product-specific waiver is needed as early as possible in the planning process.

1. Complete the BAP analysis described in Section VII of this Notice to confirm that the project is subject to the BAP and that the grantee has maximized the flexibility provided by HUD general waivers. Grantees may use the optional recordkeeping tool in Appendix 2 and contact the local CPD Field Office if technical assistance is needed.
    a) This step should always include calculating the *De Minimis* limit allowed by HUD's *De Minimis* waiver and applying that flexibility to the products used in the project that cannot be procured from domestic manufacturers, as described in Section VII, Step 5.
2. Complete the necessary market research to support the need for a waiver. Market research may be completed by the grantee or the subrecipient/contractor who has been awarded funds and is purchasing the materials that will be incorporated into the infrastructure project. Acceptable market research strategies may include one or more of the following:
    b) Document the report showing results of supplier scouting services provided by the NIST MEP, or similar supplier scouting service. For more information about the supplier scouting process, contact the local MEP center.
    c) Document that the purchaser has made a good faith effort to contact a minimum of three (3) manufacturers or suppliers to determine if a BABA-compliant material is available in sufficient quantity and satisfactory quality. Documentation may include PDF files or screenshots of Internet searches or email communications, or documentation of phone conversations that notes the date and time of the call, the contact person with whom the purchaser spoke, and a summary of the information received.
3. Collect the required information to complete a waiver application using HUD's BABA Waiver Submission Site (https://babawaiver.hud.gov/s/). Access the PDF version of the application form to see questions ahead of time to assist with preparation. Once started, the application cannot be saved, so make sure all information has been collected in advance.
4. Submit a BABA waiver application through the BABA Waiver Submission Site. For help with completing the application, access the Grantee User Manual or view the BABA Waiver System Training video. For additional technical assistance navigating the waiver system, please email BuildAmericaBuyAmerica@hud.gov.
5. HUD may contact the grantee for additional information as part of a review of the waiver application to validate the need for a waiver.

6. If an application is approved, HUD will post the proposed waiver in the Federal Register for a minimum 15-day public comment period and submit the request to the Made In America Office (MIAO). The MIAO will then review the proposed waiver and public comments for final approval, and communicate a final decision to HUD, which will communicate it to the grantee.

X. Documentation of Compliance with the BAP

This section describes documentation that grantees should maintain to demonstrate compliance with the BAP for Covered Materials, including required terms and conditions of subawards. Project records should describe the public infrastructure project, identify the Covered Materials subject to the BAP, and include documentation that all iron and steel, manufactured products, and construction materials were produced in the United States or evidence of how a waiver was applicable.

Grantees are encouraged to coordinate with relevant members of the public infrastructure project team to ensure that the Covered Materials delivered to the project site are accompanied by documentation that demonstrates compliance with the BAP. Early and frequent coordination, such as pre-bid meetings to identify any Covered Materials that may be a challenge to source domestically, are recommended.

Grantees must maintain documentation of compliance with the BAP in hard copy or electronic formats, or in grant management software and must make it available to HUD upon request for monitoring purposes. Records should be consistent with existing records retention requirements for each of the Covered CPD programs. If there are no CPD program-specific records requirements, the CPD grantee may follow "retention requirements for records," under 2 CFR § 200.334 as applicable to Federal grants. The compliance documentation must support the following:

- Documentation of the determination of BAP applicability to the Covered Materials used in the public infrastructure project. Even if the project is determined to be exempt, documentation of that determination should be retained in the grant files to support the determination. See Section VII and the optional BAP Applicability Checklist in Appendix 2.
- If a project is subject to the BAP, documentation that all Covered Materials subject to the BAP were procured from BABA-compliant sources, as determined by HUD's Phased Implementation Waiver.
- If a general waiver was applied to the project, documentation that supports that the project meets the conditions of the waiver.
- If a project-/product-specific waiver was obtained for the project, a copy of the approved waiver and market research supporting the need for the waiver.

CPD grantees are required to identify whether an activity is an infrastructure project, as defined by BABA, in the Integrated Disbursement and Information System (IDIS) or the Disaster Recovery Grant Reporting System (DRGR), depending on the covered CPD program. Grantees will be prompted to answer a question regarding BAP applicability when creating a new activity or adding new funds to an existing activity. Grantees should answer the question based on the analysis in Section VII.

If the project is subject to the BAP requirements, the following are examples of information and documentation that the grantee may retain to demonstrate compliance. This is not an exhaustive or mandatory list and simply provides examples of documentation that can be maintained to support the conditions outlined above.

A. Project budget specifying the total project cost and the cost of Covered Materials.

B. Procurement list(s) of Covered Materials purchased for the public infrastructure project, either by the grantee, subrecipient, or contractor. This list(s) should reflect, for example:

    a. Type of covered material, (iron, steel, manufactured product, or construction material);
    b. Product or Material;
    c. FFA Source(s);
    d. FFA Obligation Date(s);
    e. Costs per unit;
    f. Total cost of product purchase or contract;
    g. Manufacturer or Vendor;
    h. Actual purchaser (grantee, sub-recipient, contractor);
    i. Special Quality Standards, if applicable; and
    j. U.S. Made verification, if available (Made in the USA label, product specifications, vendor or contractor certification, etc.).

C. Documentation supporting the Covered Materials incorporated into the public infrastructure were made in the United States, for example:

    a. A copy of the label indicating the product was made in the United States;
    b. A copy of the product description or technical specifications that provides sufficient detail to conclude that the Covered Materials comply with BABA;
    c. A certificate or other documentation from the manufacturer demonstrating that the Covered Materials comply with BABA;
    d. A signed certification from the contractor of a project certifying compliance with BABA. (See Appendix 3 for an example.);
    e. A signed certification from the manufacturer of the Covered Materials certifying compliance with BABA.

D. Results of market research and product sourcing to include, for example, the following:

    a. Results of a supplier scouting search conducted by NIST MEP or another supplier scouting service;
    b. Copies of web searches used (e.g., PDF/JPEG copies of web pages showing search terms and results including sources considered, eliminated, and chosen for further research);
    c. Copies of email, fax, or mail correspondence with Covered Materials manufacturers or suppliers; and

d. Records of phone communications with Covered Materials manufacturers or suppliers, including:
    i. Dates and times of phone calls,
    ii. Phone numbers used,
    iii. Whether the phone communication was successful in making it possible to reach a staff person manufacturer or supplier able to respond to questions about BABA compliance, or whether the attempt at communication was 14 unsuccessful (e.g., left a message, phone line was busy, or phone line was disconnected),
    iv. If the phone communication resulted in reaching someone, the name of the person contacted,
    v. Notes describing the substance of the conversation (e.g., manufactured product is assembled in U.S., but the manufacturer is uncertain whether 55% of the value of the materials/components are sourced in the United States).

XI. Subrecipient Compliance with BABA Requirements

The terms and conditions of Federal awards attach to the FFA and flow down to subrecipients at all tiers. This means that all subgrantees, contractors, developers, etc., who receive Covered CPD Program funds through a CPD grantee must comply with BABA requirements. Language notifying subrecipients that the procurement of materials for public infrastructure projects must comply with the BAP must be included in all subawards, contracts, purchase orders, requests for proposals, and all other relevant procurement and bid documents. Sample language that grantees may use for this purpose is included below.

> "Pursuant to the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58, 41 U.S.C. § 8301 note, the Federal Financial Assistance used to fund this infrastructure project is required to apply a domestic content procurement preference (the "Buy America Preference" or "BAP") for all construction, alteration, maintenance, or repair of infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD. Additional details on fulfilling the BABA requirements can be found at https://www.hud.gov/baba.

XII. Contact Information

Grantees that have questions on this Notice should contact their assigned CPD Field Office Representative or request technical assistance from CPD staff at CPDBABA@hud.gov.

Appendix 1 - Frequently Asked Questions

This Notice includes CPD-specific frequently asked questions (FAQs). For additional FAQs, please view the BABA HUDExchange site, hudexchange.info/programs/baba.

1. **What projects or activities does the BAP apply to?**

   The BAP applies to the Covered Materials used in construction, alteration, maintenance, or repair of public infrastructure projects funded by Covered CPD Programs. The term "infrastructure" includes the structures, facilities, and equipment for projects traditionally considered infrastructure, and buildings and real property. For CPD programs, this may include, but is not limited to, certain funding for:
   - road and sidewalk improvement projects;
   - water, sewer, and other utility projects;
   - broadband infrastructure;
   - affordable housing construction and rehabilitation of buildings with five or more units;
   - community facility construction and rehabilitation;
   - homeless shelter construction and rehabilitation; and
   - other activities that are defined as public infrastructure according to BABA.

2. **What projects or activities are not subject to the BAP?**

   The BAP does not apply to projects undertaken with Covered CPD Program funds that do not involve any construction, alteration, maintenance, or repair of public infrastructure. Examples of CPD-funded projects to which the BAP does not apply include planning, capacity building, program administration, public services, training, counseling, short-term rental assistance, land acquisition and demolition projects where there are no articles, materials or supplies that are consumed in, incorporated into, or affixed to infrastructure. The BAP does not apply to affordable housing development projects with one to four units.

3. **How can I find products that are Made in the USA?**

   The Federal Trade Commission requires that products advertised or labeled as "Made in the USA" are generally assembled with parts and materials made of U.S. origin. Some manufacturers provide certification letters available on their website or upon request. HUD encourages grantees to coordinate with their local NIST Manufacturing Extension Partnership (MEP) center or similar supplier scouting service to find potential domestic manufacturers of items that cannot readily be sourced domestically.

4. **If a project is already underway with funds not subject to the BAP and new funding is added that is subject to the BAP, does the entire project need to comply with the BAP?**

   Yes, if any funds subject to the BAP are included in a project, the entire project must comply with the BAP for Covered Materials based on HUD's and any other applicable

general waivers, regardless of when the project was originally funded. Grantees who are considering adding Covered CPD Program funds for construction, maintenance, alteration or repair of an infrastructure project that was not previously subject to BABA requirements, should contact the local CPD Field Office for technical assistance.

5. How do I find the obligation date of my grant?

The obligation date is, in most cases, the date the grant agreement was signed by the CPD Director. You can locate this date by looking at the original grant agreement or navigating to IDIS or DRGR. For grants managed in IDIS, navigate to the View Grant screen and locate the date in the Obligation Date field. For grants managed in DRGR, navigate to the View Grant screen and locate the Contract Effective Date.

Appendix 2 - Optional Buy America Preference Applicability Checklist

This checklist is an optional tool that may be used or adapted to assist with determining if the Buy America Preference (BAP) applies to a public infrastructure project funded by a covered CPD program. This checklist follows the analysis steps as described in Section VII of Notice CPD-25-01 and may be retained for recordkeeping purposes.

Project Information

Grantee	
Grant Number	
Activity Name	
Activity Number (IDIS/DRGR)	

Step 1. Determine if the project is a public infrastructure project as defined in Sections II and III of Notice CPD-25-01.

☐Yes	Continue to Step 2.
☐No	The BAP does not apply. The BAP only applies to public infrastructure projects. Stop here.

Step 2. Is the project funded using a Covered CPD Program?

Check the box below for each CPD program funding this project.

Group A: Covered CPD Programs

☐	CDBG	☐	SHOP
☐	Section 108	☐	VHRMP
☐	HOME	☐	CPF/EDI
☐	HTF	☐	Section 4
☐	RHP	☐	Rural Capacity Building
☐	ESG	☐	PRO Housing
☐	CoC	☐	PRICE
☐	HOPWA	☐	FY23 PSH Funds

Group B: CPD Programs Not Covered by the BAP

☐	CDBG-DR	☐	CDBG-CV
☐	CDBG-MIT	☐	HOPWA-CV
☐	CDBG-NDR	☐	ESG-CV
☐	HOME-ARP		

If you selected **any** Group A programs (even if Group B programs are also selected), answer yes. If you selected **only** Group B programs, answer no.

☐Yes	Continue to Step 3.
☐No	The BAP does not apply to this project because it is not funded by a covered CPD program. Stop here.

Step 3. Will the project use Covered Materials?

Each material should be classified into only one category: iron and steel, specifically listed construction materials, not listed construction materials, or manufactured products. This classification is necessary to apply HUD's Phased Implementation Waiver.

Check the box below for each type of covered material incorporated into this infrastructure project.

☐	Iron or steel
☐	Specifically Listed Construction materials
☐	Not Listed Construction materials
☐	Manufactured products

If you checked any boxes above, answer yes.

☐Yes	Continue to Step 4.
☐No	The BAP does not apply to this project because it will not incorporate any Covered Materials. Stop here.

Analysis continues on next page.

Step 4. Based on the obligation date of the covered CPD program funds, does the BAP apply to the funding source and Covered Materials that will be used in the project?

Use the phased implementation table to determine whether the BAP applies based on the obligation date for the covered CPD program funds and classification of materials. The BAP may only apply to some Covered Materials used in the project.

The obligation date is generally the date that HUD executed the grant agreement for covered CPD program funds to the grantee. This date may be found in the grant agreement. The obligation date is not the date when the grantee commits funds to a project under a subrecipient agreement.

BAP will apply to…	**Iron and Steel**	**Specifically Listed Construction Materials**	**Not Listed Construction Materials**	**Manufactured Products**
CDBG	CDBG funds obligated on or after 11/15/22	Projects using FY24 CDBG funds	Projects using FY25 CDBG funds	Projects using FY25 funds.
RHP	RHP funds obligated on or after 8/23/23	RHP funds obligated on or after 8/23/24	RHP funds obligated on or after 8/23/24	RHP funds obligated on or after 8/23/24
All other CPD programs except HOME and HTF	Funds obligated on or after 2/22/24	Funds obligated on or after 8/23/24	Funds obligated on or after 8/23/24	Funds obligated on or after 8/23/24
HOME and HTF	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24

☐ Yes	Indicate here which Covered Materials the BAP applies to and continue to Step 5: ☐ Iron and steel ☐ Specifically listed construction materials ☐ Not listed construction materials ☐ Manufactured products
☐ No	The BAP does not apply to this project because the funds were obligated before the effective date for the program/materials used in the project. Stop here.

Step 5. HUD has issued several general waivers. Check the box next to any conditions that apply to the project.

Public infrastructure projects that meet the conditions of a general waiver may be exempt in whole or in part from the BAP.

☐	The total cost of the project from all sources (Federal and non-Federal) is $250,000 or less. If checked, the Small Grants Waiver applies, and the project is exempt from the BAP.
☐	There is an urgent need to immediately complete the project because of a threat to life, safety, or property. If checked, the Exigent Circumstances Waiver applies, and the project is exempt from the BAP.
☐	The project is in Guam, American Samoa, or the Northern Mariana Islands. If checked, the Pacific Island Territories Waiver applies, and the project is exempt from the BAP.
☐	The project is being funded by a Tribal recipient. If checked, the Tribal Recipients Waiver applies, and the project is exempt from the BAP.

If you checked any of the boxes above, answer yes below.

☐ Yes	The HUD general waiver selected above is being applied to this project, so the BAP does not apply to the entire project. Attach documentation of the conditions of the waiver and then stop here.
☐ No	Proceed to Step 5a.

Step 5a. Calculate the *De Minimis* limit for the project:

The total cost of all Covered Materials includes all iron and steel, construction materials, and manufactured products used in the project, regardless of whether the BAP currently applies under the Phased Implementation Waiver.

Enter the total cost of all Covered Materials:	
Multiply that amount by 0.05 (5%):	
Enter the lower of the number calculated in the row above or $1,000,000:	

The amount in the third row above is the *De Minimis* limit for this project. The BAP can be waived for Covered Materials from foreign or unknown sources at a cost not to exceed the *De Minimis* limit of 5% of the total cost of materials or $1,000,000 (whichever is less). The BAP

will still apply to other Covered Materials used in the project. **Attach a list of Covered Materials and their associated costs to which the *De Minimis* limit has been applied.**

Step 6. Is there a need for a project-/product-specific waiver?

If the BAP applies to a project and all general waiver flexibilities have been utilized, but there are remaining Covered Materials that can only be sourced from foreign or unknown sources, then a grantee may apply for a project-/product-specific waiver.

☐ Yes	Refer to guidance in Section VII Step 6 of Notice CPD 25-01.
☐ No	Stop here and retain this analysis in project records.

_____ _____

Completed by Date Completed

Appendix 3 - Optional Buy America Preference Certification

Project Information

Grantee	
Grant Number	
Activity Name	
Activity Number (IDIS/DRGR)	

This *"Optional Buy America Preference Certification"* is used to certify that, as required by the Build America, Buy America (BABA) Act, all of the iron, steel, manufactured products, and construction materials incorporated into a public infrastructure project are produced in the United States, unless exempted by a HUD general waiver or a project-/product-specific waiver approved by HUD and the Made in America Office (MIAO) at the Office of Management and Budget (OMB).

For Covered Materials not otherwise exempted from the Buy America Preference (BAP), the undersigned certifies the following:

- All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- All construction materials used in the project are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Attach a list of all Covered Materials procured by the signatory and used in the project.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §§ 3729, 3802).

Signature	Title/Organization	Date