

THE HFA INSTITUTE 2025

Build America Buy America

January 13, 2025

2:45 – 3:45 PM ET



National Council of
State Housing Agencies



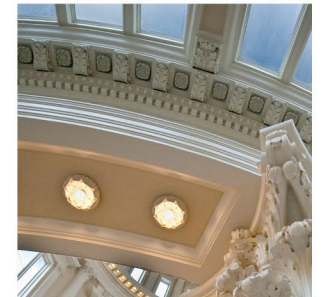
**MRBs and
Other Federal
Homeownership
Programs**
JANUARY 15 – 17



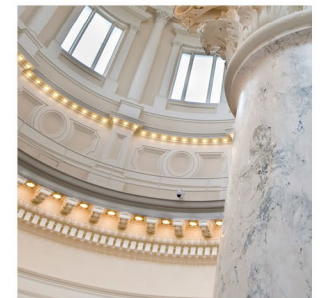
Housing Credit
JANUARY 14 – 16



**Section 8 and
Other Federally
Assisted
Multifamily
Housing**
JANUARY 15 – 17



**HOME and
Housing Trust
Fund**
JANUARY 12 – 14





Build America, Buy America Act (BABA) Policy Updates and Resources

NCSHA HFA Institute – January 13, 2025

Chris Hart, Office of Community Planning and Development, HUD



Agenda

- BABA Updates
 - Frequently Asked Questions
 - Phased Implementation Update
- Implementing BABA
 - Applicability Determination
 - Waivers
- Available Resources





BABA Policy Updates

Refresher: What is BABA?

- Enacted as part of the Infrastructure Investment and Jobs Act signed by President Biden on November 15, 2021.
- The Build America, Buy America Act (BABA) requires that all **iron and steel products, construction materials, and manufactured products** used in Federally funded infrastructure projects must be produced in the United States.
 - This requirement is also known as the **“Buy America Preference (BAP).”**
- BABA regulations are encoded at 2 CFR 184.
- Notice CPD-2023-12 provides implementation guidance for CPD grantees.



Frequently Asked Questions

Does BABA apply to HOME-ARP funding?

- No, because HOME-ARP funding was obligated prior to August 23, 2024.

Does BABA apply to program income?

- No, BABA does not apply to projects funded solely with program income because program income is not considered Federal financial assistance.
- BABA will still apply if program income is combined with other sources of funding subject to BABA.

How do I define a “project” for the purpose of determining whether BABA applies?

- Grantees should use the definition of a project as defined by the CPD program funding the project.
- For example, 24 CFR 92.2 defines a HOME projects 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 activities associated with the site and building.”
- If no program-specific definition of “project” exists, grantees should use the definition of “project” used for environmental review purposes at 24 CFR 58.



HUD Phased Implementation of BABA

- Almost all CPD funds newly obligated after August 23, 2024, are now subject to BABA for all materials.
- Exception: CDBG and RHP will phase in for remaining materials in FY25.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	Not Listed 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
All 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
All HUD FFA	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



What does that mean for your FY24 grants?

- All FY24 formula grants will have obligation dates after August 23, 2024.

Program	Iron and Steel	Specifically Listed Construction Materials	Not Listed Construction Materials	Manufactured Products
CDBG and RHP	✓ BABA applies	✓ BABA applies	✗ BABA doesn't apply	✗ BABA doesn't apply
HOME, HTF, ESG, and HOPWA	✓ BABA applies	✓ BABA applies	✓ BABA applies	✓ BABA applies

- TIP:** If a project uses CPD funding from multiple years, the broader applicability of BABA applies.
 - Example: A project uses both FY24 CDBG funding and FY24 HOME funding. Because FY24 HOME funding is included, BABA applies to the entire project and all covered materials used.





Implementing BABA

Determining BAP Applicability to a Project

- Early planning is important to understand how the BAP will apply to a project.
- These steps will help determine if a project must comply with the BAP.
- See [CPD's BABA implementation notice](#) and [Beyond the Basics: Implementing the BAP](#) webinar for more details and case study examples for applying this analysis to a project.

1

Is the project an infrastructure project?

2

What HUD programs are funding the project?

3

What materials will be used in the project?

4

When were the funds obligated by HUD?

5

How do available HUD general waivers apply to the project?

6

Is there a need to for a project-specific waiver?



Determining BAP Applicability to a Project

1

Is the project a public infrastructure project?

- An infrastructure project means any activity related to the construction, alteration, maintenance, or repair of public infrastructure.
- Public infrastructure projects include:
 - Roads, highways, and bridges;
 - Public transportation;
 - Water systems (drinking water and wastewater);
 - Utilities and broadband infrastructure;
 - Buildings and real property.

2

What HUD programs are funding the project?

- Most CPD programs, including HOME and HTF, are subject to BABA.
- Exceptions for disaster and emergency-related programs:
 - CDBG-DR
 - CARES Act programs



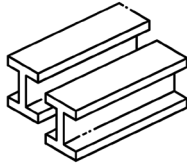
Determining BAP Applicability to a Project

3

What materials will be used in the project?

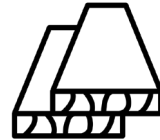
- It is important to understand which materials used in projects are subject to BAP requirements.
- There are three categories of materials subject to the BAP:

Iron and Steel



Products that consist predominantly of iron and steel

Construction Materials



- Non-ferrous metals
- Plastic and polymer-based products
- Glass
- Fiber optic cable and optical fiber
- Lumber and engineered wood
- Drywall

Manufactured Products



Products that are processed into a specific form and shape or combined with other products or materials to create a product with different properties.

- Each material should be classified into only **one** of these categories.
- Classifications must be made based on the material's status **when it arrives at the project site**.
 - For example, a central heat pump split system installed in a multifamily building should comply with the BAP requirements for manufactured products.
 - The individual components of the manufactured product do not have to be analyzed separately from the final product.



Determining BAP Applicability to a Project

4

When were the
funds obligated by
HUD?

- BABA applicability depends on the date that the CPD funding was obligated by HUD.
- For HOME PJs and HTF grantees, this is the date that the CPD director signed your grant agreement.
- The date on which funds are committed to a specific project or subawarded to a subrecipient do not impact the determination of BAP applicability.





BABA Waivers

5

How do available HUD general waivers apply to the project?

6

Is there a need to for a project-specific waiver?

BABA Waivers Overview

- Two types of BABA waivers
- General Waivers
 - Public Interest waivers granted at the departmental level that apply to all HUD-funded projects that meet the waiver criteria.
- Project-/Product-Specific Waivers
 - Targeted waivers that individual grantees may apply for.
 - Applied to a specific project or a specific product(s) used in a project.



HUD General Waivers

- HUD general waivers offer flexibility to all HUD-funded infrastructure projects and should be carefully considered before pursuing a project-specific waiver.
- No formal request to HUD is needed to use these waivers.
- Grantees should maintain documentation that demonstrates the applicability of the waiver to a project, consistent with program regulations.
- HUD currently has five general waivers available
 - Exigent Circumstances Waiver
 - Tribal Recipients Waiver
 - Pacific Island Territories Waiver
 - Small Grants Waiver
 - *De Minimis* Waiver



Waivers that Apply to an Entire Project

Exigent Circumstances Waiver

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

Small Grants Waiver

- The BAP can be waived for an entire project if the total project cost (including all sources of funding) is \$250,000 or less. Expires November 23, 2027.

Pacific Island Territories Waiver

- The BAP is currently waived for all Federal financial assistance for infrastructure projects in the Northern Mariana Islands, American Samoa, and Guam. Expires January 10, 2030.
- Exceptions for some critical supply chains.

Tribal Recipients Waiver

- The BAP is waived for all Federal financial assistance for infrastructure projects awarded to Tribes prior to September 30, 2024.
- For awards on or after January 10, 2025: BABA does not apply to awards and subawards to Tribes of \$2.5 million or less. Expires January 10, 20230.
- Waiver for all manufactured products for Tribes. Expires September 30, 2026.



De Minimis Waiver

- If none of the other general waivers apply to a project, the *de minimis* waiver gives grantees additional flexibility to waive the BAP for ***a portion of a project***.
- The *de minimis* waiver allows grantees to waive the BAP for materials whose total cost is less than 5% of all materials used in a project (up to \$1,000,000).
 - The total cost of materials includes all iron and steel, construction materials, and manufactured products, regardless of where the project falls in HUD's phased implementation.

Example: \$500,000 (total cost of materials) x **5%** = **\$25,000** *De Minimis* limit

- If a grantee has a particular product(s) that is below the *de minimis* limit and no domestically produced equivalent is available, the BAP can be waived for that product(s) only.
 - The BAP will still apply to the rest of the materials used in the project.



Project-/Product-Specific Waivers

Tips before Applying for a Project-/Product-Specific Waiver

- ✓ The project is subject to the BAP.

- ✓ No general waivers apply to the project.

- ✓ Confirm that the products for which you need a waiver exceed the *de minimis* limit.

- ✓ Complete market research to attempt to locate domestic made equivalents for products that exceed the *de minimis* limit.
 - NIST MEP supplier scouting can help!

- ✓ Submit the waiver application as early as possible and **before** funds have been spent on the project, if possible.
 - OMB Made in America Office (MIAO) will not approve retroactive waivers for items that have already been purchased.

- ✓ Only the direct recipient of Federal funding can submit a waiver application.
 - Subrecipients should coordinate with the direct recipient for waiver submission.



Types of Project-Specific Waivers

Non-availability

No domestic product is available

Unreasonable Cost

Inclusion of a domestically produced product would increase the cost of the overall project by more than 25%.

Public Interest

Complying with BABA would be inconsistent with the public interest

TIP: The OMB Made in America Office posts all approved waivers to madeinamerica.gov/waivers.

REVIEWED

Air Source Heat Pumps and Air Handling Systems

Waiver type - Financial Assistance: Nonavailability
 Agency: ENERGY, DEPARTMENT OF • Waiver Level: project • Product Service Code (PSC) : 4120 | Last Modified: 07/11/2024

Procurement Summary
 Market research was not able to yield manufacturers who were able to meet the 55% cost of components requirement for the manufactured products listed above that are required for the project's completion. These products were found to be manufactured in the United States, but did not meet the 55% cost of components test. After extensive outreach, no domestic manufacturer was able to provide the materials necessary to meet the BABA requirements for all products specified in this waiver. These requirements are important for the systems total lifetime cost and to meet the owner's energy savings targets.

Description of items, products and materials or categories of such anticipated to be covered by this waiver

Public comment link
<https://www.energy.gov/management/baba-waiver-request-2024-02>

Final waiver link
<https://www.energy.gov/sites/default/files/2024-07/DOE%20Final%20Waiver%20Nonavailability%20HVAC%20Charlo%20School%20FINAL.pdf>

Is this a general applicability waiver?
 no

OMB Determination
 consistentWithPolicy

Product
 AIR CONDITIONING EQUIPMENT

NAICS
 333415 - Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing

Type of item
 manufacturedProduct

Date Submitted
 05/10/2024

Federal Agency Office Name
 ENERGY, DEPARTMENT OF

Award ID
 Federal Award Identification Number (FAIN)
 Financial Assistance Listing Name
 Unique Entity Identifier



Applying for Project-Specific Waivers

Complete 6-step analysis. Contact CPD field office for technical assistance if needed.

Complete [online waiver application](#).

- **TIP:** The application cannot be saved. Download the [PDF version](#) of the application to prepare info in advance. You may also refer to the HUD [User Manual](#) and [training video](#) to explain the process.

Waiver application is reviewed by HUD. HUD may request additional supporting information.

If approved by HUD, waiver is sent to OMB MIAO for review, including a 15-day public comment period.

OMB MIAO will issue final decision, which HUD will communicate to grantee.

Plan ahead! The waiver process is anticipated to take a minimum of 6-8 weeks to complete.





Compliance and Recordkeeping

Subrecipient Compliance

- All subrecipients (subgrantees, contractors, developers, etc.) 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.
- The Optional BAP Certification posted to the HUDEXchange can be used or adapted to assist with monitoring subrecipient compliance.



Required Documentation

- Grantees must maintain documentation of compliance with the BAP, which may be requested for monitoring purposes.
- IDIS/DRGR systems include a mandatory question that must be answered to indicate whether a project is an infrastructure project as defined by BABA.
- Minimum documentation requirements:
 - Determination of BAP applicability to the project.
 - Even if the project is determined to be exempt, documentation should be retained in the grant files.
 - The Optional BAP Applicability Checklist posted to the HUDEXchange can assist with documentation.
 - If a project is subject to the BAP, documentation that all Covered Materials subject to the BAP were procured from BABA-compliant sources.
 - 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.






Available Resources

Optional BAP Applicability Checklist

CHECKLIST

Build America, Buy America Act: Optional Buy America Preference (BAP) Applicability Checklist



**COMMUNITY
PLANNING
&
DEVELOPMENT**

For more information on BABA and the BAP, [visit the BABA page](#) on the HUD exchange.

Overview

This checklist is an optional tool that may be used or adapted to assist with determining if the Buy America Preference (BAP) applies to an infrastructure project funded by a covered CPD program. This checklist follows the analysis steps as described in [Notice CPD 2023-12](#) and may be retained for recordkeeping purposes.


Project Information	
Grantee	
Grant Number	
Activity Name	
Activity Number (DIS/DRGR)	

Step 1:

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

<input type="checkbox"/> Yes	Continue to Step 2.
<input type="checkbox"/> No	The BAP does not apply. The BAP only applies to infrastructure projects. Stop here.

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Build America, Buy America Act

Optional Buy America Preference (BAP) Applicability Checklist

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			
<input type="checkbox"/> CDBG	<input type="checkbox"/> SHOP	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Section 108	<input type="checkbox"/> VHRMP	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> HOME	<input type="checkbox"/> CPF/EDI	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> HTF	<input type="checkbox"/> Section 4	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> RHP	<input type="checkbox"/> Rural Capacity Building	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> ESG	<input type="checkbox"/> PRO Housing	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> CoC	<input type="checkbox"/> PRICE	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> HOPWA	<input type="checkbox"/> FY23 PSH Funds	<input type="checkbox"/>	<input type="checkbox"/>

Group B: CPD Programs Not Covered by the BAP			
<input type="checkbox"/> CDBG-DR	<input type="checkbox"/> CDBG-CV	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> CDBG-MIT	<input type="checkbox"/> HOPWA-CV	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> CDBG-NDR	<input type="checkbox"/> ESG-CV	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> HOME-ARP		<input type="checkbox"/>	<input type="checkbox"/>

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.

<input type="checkbox"/> Yes	Continue to Step 3.
<input type="checkbox"/> No	The BAP does not apply to this project because it is not funded by a covered CPD program. Stop here.

- 2 -

This [optional checklist](#) follows the six-step analysis described in the CPD's BABA Implementation guidance and can be used or modified for recordkeeping.

TIP: Completing this analysis will help determine if a project-specific waiver is needed.



Optional BAP Certification

CERTIFICATION



Build America, Buy America Act: Optional Buy America Preference (BAP) 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 an infrastructure project are produced in the United States, unless exempted by a HUD general waiver or a project-/product-specific waiver approved by 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;
- 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 hereby certify this information is complete and accurate and agree to provide documentation collected on the country of origin for all covered materials I caused to be incorporated into or affixed to an infrastructure project to the CPD grantee and HUD upon request. I understand and agree that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature	Title/Organization	Date

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This optional certification can be used or adapted as a tool for subrecipient or contractor compliance with BABA requirements.

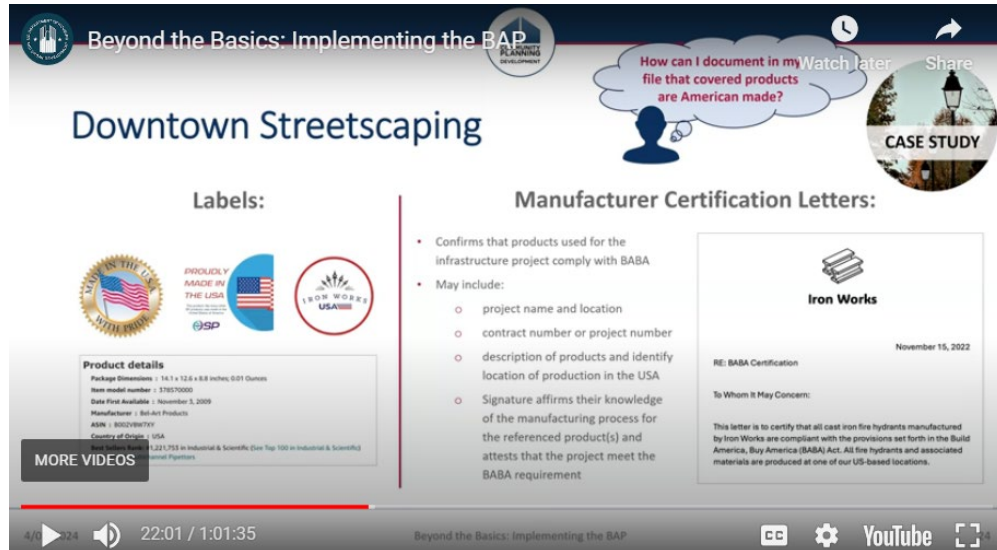


NIST Manufacturing Extension Partnership (MEP)

- FREE resource for grantees
- Supplier Scouting can:
 - Attempt to identify manufacturers that produce BABA-compliant products
 - Demonstrate completion of market research before submitting a project-specific waiver for unavailable products.
- To get started:
 - Submit a [Supplier Scouting Opportunity Synopsis \(SSO\) Form](#).
 - Contact your [local MEP center](#).



BABA Resources



Beyond the Basics: Implementing the BAP

Downtown Streetscaping

Labels:

Product details

Package Dimensions : 14.1 x 12.6 x 8.8 inches, 0.01 Ounces
Item model number : 378270000
Date First Available : November 3, 2009
Manufacturer : Sell-Net Products
ASIN : B00D9B7Y7Y
Country of Origin : USA

Manufacturer Certification Letters:

- Confirms that products used for the infrastructure project comply with BABA
- May include:
 - project name and location
 - contract number or project number
 - description of products and identify location of production in the USA
 - Signature affirms their knowledge of the manufacturing process for the referenced product(s) and attests that the project meet the BABA requirement

Iron Works

RE: BABA Certification November 15, 2022

To Whom It May Concern:

This letter is to certify that all cast iron fire hydrants manufactured by Iron Works are compliant with the provisions set forth in the Build America, Buy America (BABA) Act. All fire hydrants and associated materials are produced at one of our US-based locations.

22:01 / 1:01:35

Get Help

Get answers to your BABA questions.

[View BABA FAQs](#)

[Ask A Question](#)

- [HUD Exchange BABA](#)
 - AAQ Help Desk
 - FAQ's
 - Waiver Resources
 - Regs & Policies
 - Webinars
 - Program Quick Guides
- [CPD Notice 23-12](#)
- [Beyond the Basics: Implementing the BAP Webinar](#)
- [BABA on HUD.gov](#)
- [BABA Waiver Submission Site](#)

