

3/20/23



Build America, Buy America Act (BABA) Information Session





Departmental Overview

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

- Enacted in the Infrastructure Investment and Jobs Act
- Establishes the Buy America Preference (BAP)
 - All iron, steel, manufactured products, and construction materials used in covered infrastructure projects must be produced in the United States.
- Applies to all expenditures by a Federal agency to a non-federal entity for an infrastructure project, including:
 - construction,
 - alteration,
 - maintenance,
 - or repair



Key BABA Definitions

Covered Federal Financial Assistance (FFA)

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

Covered infrastructure

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



Key BABA Definitions: Covered Materials

Construction materials

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

Iron and steel

- Includes materials that are primarily composed of iron or steel

Manufactured products

- A definition is forthcoming pending a proposed Office of Management and Budget (OMB) rulemaking



What HUD Has Done:

- **Established Department-wide BABA leadership committee**
- **Identified Impacted HUD Programs:** HUD's Federal financial assistance programs that can be used for infrastructure projects.
- **Identified Difficult to Acquire Items:** Submitted to OMB relevant items, manufactured goods and construction materials used in infrastructure projects that will be difficult to acquire under the terms of the Act.
- **Gathered Public Comments:**
 - Published RFI and general waivers for comment in July 2022.
 - Most recent general waiver finalized and published on March 15.
- **FY22 Grant Transmittal Letters include BABA Language:** All FY22 grant transmittal letters and NOFOs include this language.
- **FY23 Grant Packages** will include BABA language.
- **Finalized HUD general waivers:** General waivers apply to all HUD programs.



HUD General Waivers

Phased Implementation

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

Exigent Circumstances

- BAP may be waived if projects must be completed immediately to protect life, ensure safety, or prevent the destruction of property
- Currently effective until November 23, 2028

De Minimis, Small Grants, and Minor Components

- BAP waived for projects with federal financial assistance of \$250,000 or less
- BAP waived for a *de minimis* portion that comprises no more than 5 percent of the total cost of covered materials used in a project, up to \$1 million
- Currently effective until November 23, 2028

Tribal Recipients

- BAP waived for FFA to Tribes, Tribally Designated Housing Entities, and other Tribal Entities to allow for appropriate tribal consultation
- Currently effective until May 14, 2023



Proposed HUD BABA Rollout

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

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

CPD Impact

CPD Programs for which the BAP now applies:

- CDBG, including Section 108
 - All CDBG funds obligated on or after November 15, 2022, used for iron or steel

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

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

CPD Programs currently under Phased Implementation Waiver:

- HOME/HOME-ARP
- 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 homelessness
- Veterans Housing Rehabilitation and Modification Program (VHRMP)
- Community Project Funding (CPF)/Economic Development Initiative (EDI)
- Section 4
- Rural Capacity Building



What does obligation mean?

The date of obligation is the date the grant agreement is signed by the CPD Field Office director.



Key BABA Definitions: Covered Materials

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Iron and steel

- Includes materials that are primarily composed of iron or steel

Manufactured products

- A definition is forthcoming pending a proposed Office of Management and Budget (OMB) rulemaking



HUD Construction Materials Groups

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

Specifically Listed

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

All Other Construction Materials

- Glass
- Drywall
- Other construction materials

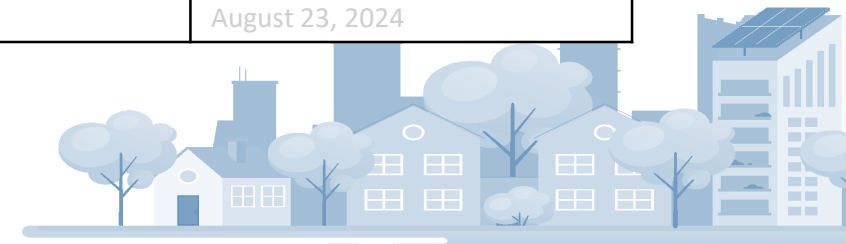


BABA Rollout: CDBG



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

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BABA Rollout: RHP



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

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



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

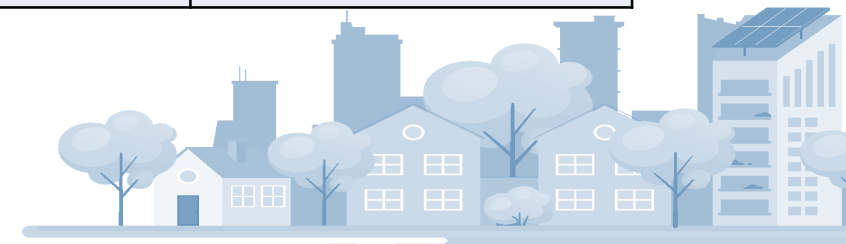
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All HUD FFA (including HOME, HTF)

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

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HUD General Waivers

Phased Implementation

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Exigent Circumstances

- BAP may be waived if projects must be completed immediately to protect life, ensure safety, or prevent the destruction of property
- Currently effective until November 23, 2028

De Minimis, Small Grants, and Minor Components

- BAP waived for projects with federal financial assistance of \$250,000 or less
- BAP waived for a *de minimis* portion that comprises no more than 5 percent of the total cost of covered materials used in a project, up to \$1 million
- Currently effective until November 23, 2028

Tribal Recipients

- BAP waived for federal financial assistance to Tribes, Tribally Designated Housing Entities, and other Tribal Entities to allow for appropriate tribal consultation
- Currently effective until May 14, 2023



Project-specific Waivers

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





CDBG & RHP Impact

CDBG Impact

- The Buy America Preference (BAP) currently applies to some CDBG infrastructure and housing projects/activities.
- BAP **now applies** to:
 - Projects using **CDBG funds obligated on or after November 15, 2022**
 - AND containing **iron or steel**
 - AND with total federal financial assistance **greater than \$250,000**
- BAP **will not apply** to:
 - Projects that do not contain **iron or steel**
 - Projects with total federal financial assistance of **\$250,000 or less**
 - Projects using CDBG funds obligated **before November 15, 2022**
 - **CDBG-DR, CDBG-MIT, or CDBG-CV** projects
 - Projects that qualify for another **HUD waiver**



Immediate Impacts for CDBG

- The BAP now applies to all CDBG grantees, but some will be impacted sooner than others.
- “Early impact” grantees:
 - Grantees with FY22 CDBG funds obligated on or after November 15, 2022
 - This applies to a small number of FY22 grantees.
 - FY23 PY Start Dates:
 - January 1
 - February 1
 - March 1
 - April 1
- **All** CDBG FY23 grantees need to be aware as they begin planning.
- **All FY22 CPD grant transmittal letters included BABA language.** All FY23 grant packages will include BABA language.
- BABA requirements flow with funding. **Subrecipients and contractors must comply.**



Upcoming Recovery Housing Program (RHP) Impact

- **BAP will apply to some RHP projects/activities starting August 23, 2023**
- **BAP will apply to:**
 - Projects using **RHP funds obligated on or after August 23, 2023**
 - AND containing **iron or steel**
 - AND with total federal financial assistance **greater than \$250,000**
- **BAP will not apply to:**
 - Projects that do not contain **iron or steel**
 - Projects using RHP funds obligated **prior to August 23, 2023**
 - Projects with total federal financial assistance of **\$250,000 or less**
 - Projects that qualify for another **HUD waiver**

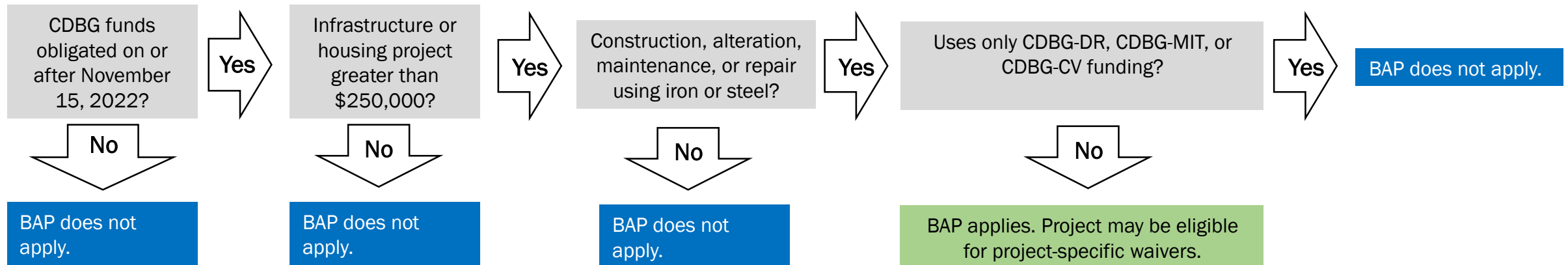


Steps grantees can take now

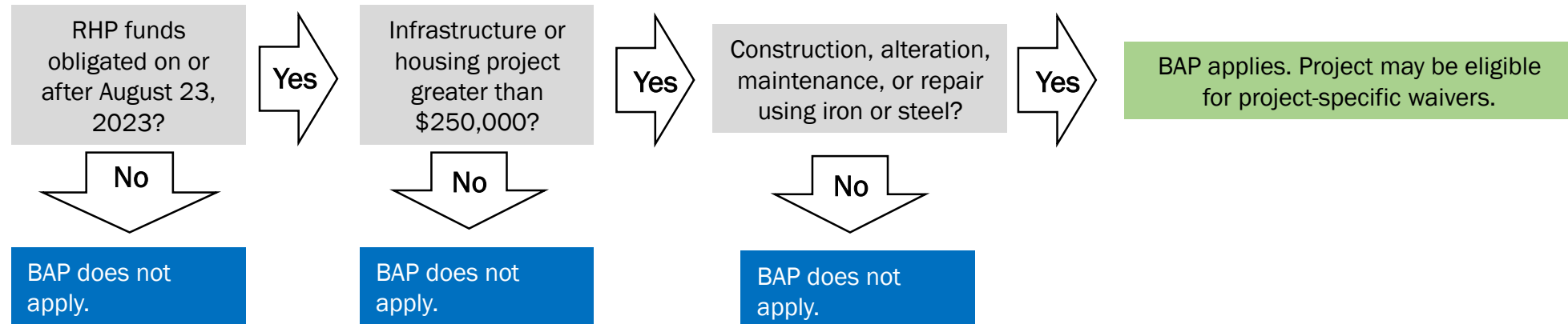
- Familiarize yourself with BABA guidance posted on HUD.gov (https://www.hud.gov/program_offices/general_counsel/BABA)
- Start planning for BABA as you draft your action plan
 - Do you have any planned projects for which the BAP now applies?
 - Look back at previous projects. Are there types of projects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



Determining BAP Applicability for FY23 CDBG Funding (Iron and steel only)



Determining BAP Applicability for FY23 RHP Funding (Iron or steel)



Project-specific Waivers

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



Examples – Does the BAP apply?

- Grantee funds a water & sewer project containing iron and steel. The project is funded using \$1 million in CDBG funding. The total federal financial assistance for the project is \$30 million.
 - **YES**, iron and steel used in a CDBG project greater than \$250,000.
- Grantee funds a water & sewer project containing iron and steel. The project is funded using \$100,000 in CDBG funding. The total federal financial assistance for the project is \$2 million.
 - **YES**, iron and steel used in a CDBG project with total FFA greater than \$250,000.



Examples – Does the BAP apply?

- Grantee uses \$1.2 million in Section 108 to build a community facility containing iron or steel.
 - **YES**, iron and steel used in a Section 108 project of \$250,000 or greater.
- Grantee use \$1.2 million in Section 108 to fund water infrastructure improvements. \$250,000 in CDBG will be used for the annual 108 payment.
 - **YES**, because the funds are being used for loan repayment on a project that is subject to BABA.



Examples – Does the BAP apply?

- PJ contributes \$2,000,000 in HOME funds for construction of a multi-unit residential building, using iron or steel. The funds are obligated on July 15, 2023.
 - **NO**, funding is obligated before the BAP applies to HOME funds.
- Grantee funds a housing rehabilitation program for a designated neighborhood. Each home can receive up to \$30,000 in CDBG loans or grants and separate environmental reviews are done for each home. The total program uses \$1 million of CDBG funding.
 - **NO**, the individual projects (as defined by the scope of the individual environmental reviews) are less than \$250,000.



Examples – Does the BAP apply?

- Grantee funds acquisition of land using \$300,000 in RHP. The land will be used for multifamily housing.
 - **NO**, the funding is not used for a covered activity (construction, alteration, maintenance, or repair.)
- Grantee purchases a fire engine (to serve a low- to moderate-income neighborhood) with \$300,000 in CDBG funding.
 - **NO**, the funding is not used for a covered activity (construction, alteration, maintenance, or repair.)



Examples – Does the BAP apply?

- Grantee uses \$400,000 in RHP funds to rehabilitate a multi-unit residential building, using iron or steel. The funds are obligated after August 23, 2023.
 - **YES**, funding is obligated after BABA becomes applicable to RHP projects using iron or steel.
- PJ contributes \$2,000,000 in HOME funds for construction of a multi-unit residential building, using iron or steel. The funds are obligated after August 23, 2024.
 - **YES**, funding is obligated after BABA becomes applicable to HOME projects using iron or steel.



Recap

- **BAP now applies to:**
 - Projects using **CDBG funds obligated on or after November 15, 2022**
 - AND containing **iron or steel**
 - AND with total federal financial assistance of **\$250,000 or greater**
- The BAP will apply to other CPD programs on a phased implementation schedule.
 - The BAP will apply to RHP projects using iron or steel beginning August 23, 2023.
- Projects may be eligible for a project-specific waiver.
 - More details are coming!



Next Steps

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





Questions?