



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

COSCD A Annual Training Conference – September 18, 2024

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## Agenda



- BABA Implementation Updates
- New Resources
- BABA Waivers



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## BABA Implementation Updates

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### 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 certain materials purchased in connection with infrastructure projects funded by Federal financial assistance programs must be produced in the United States.
  - This requirement is known as the **“Buy America Preference (BAP).”**
- BABA regulations are encoded at 2 CFR 184.
- Notice CPD-23-12 provides implementation guidance for CPD grantees.



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## Where are we in phased implementation?

- 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



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## 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 more restrictive rules apply.
  - Example: A project uses both FY23 and FY24 HOME funding. Because FY24 funding is included, BABA applies to the entire project and all covered materials used.



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# New Resources

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## Determining BABA Applicability 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 for a project-specific waiver?

See [CPD's BABA implementation notice](#) and [Beyond the Basics: Implementing the BAP](#) for more details on applying this analysis to a project.



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# New Resource: Optional BAP Checklist

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

**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 CDP program. This checklist follows the analysis steps as described in [Module CPD 2023.02](#) and may be retained for recordkeeping purposes.

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

**Project Information**

Grantee	
Grant Number	
Activity Name	
Activity Number (DIS/CRGR)	

**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.

**Group A: Covered CDP Programs**

<input type="checkbox"/> CDBG	<input type="checkbox"/> BIPID
<input type="checkbox"/> Section 508	<input type="checkbox"/> NHDHP
<input type="checkbox"/> HOME	<input type="checkbox"/> CDF-EDA
<input type="checkbox"/> HTF	<input type="checkbox"/> Section 4
<input type="checkbox"/> BAP	<input type="checkbox"/> Rural Community Building
<input type="checkbox"/> ESG	<input type="checkbox"/> PRO Housing
<input type="checkbox"/> CAC	<input type="checkbox"/> PRCE
<input type="checkbox"/> HOPWA	<input type="checkbox"/> F123 PSH-Funds

**Group B: CDP Programs Not Covered by the BAP**

<input type="checkbox"/> CDBG-DR	<input type="checkbox"/> E286-CV
<input type="checkbox"/> CDBG-MIT	<input type="checkbox"/> HOPWA-CV
<input type="checkbox"/> CDBG-NDR	<input type="checkbox"/> E36-CV
<input type="checkbox"/> HOME-ASP	

If you selected **any** Group A programs (and 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 CDP program. Stop here.

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.



# New Resource: Optional BAP Certification

**CERTIFICATION**  
**Build America, Buy America Act: Optional Buy America Preference (BAP) Certification**

**Project Information**

Grantee	
Grant Number	
Activity Name	
Activity Number (DIS/CRGR)	

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's product-specific waiver approved by the Made in America Office (MAO) 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 ceased to be incorporated into or affixed to an infrastructure project to the CDP 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

This [optional certification](#) can be used or adapted as a tool for subrecipient or contractor compliance with BABA requirements.





## BABA Waivers

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## 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



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## 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.

### Tribal Recipients Waiver

- The BAP is currently waived for all Federal financial assistance for infrastructure projects awarded to Tribes, Tribally Designated Housing Entities, and other Tribal Entities. **Expires September 30, 2024!**

### 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 February 15, 2025.

### 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.



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## 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.



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# Project-Specific Waivers

If...

- ✓ The project is subject to BABA based on the obligation date of the funds and the materials used in the project.
- ✓ No general waivers apply to the entire project,
- ✓ You've calculated the 5% de minimis limit and taken advantage of the flexibility to source foreign-made goods up to the *de minimis* limit,
- ✓ You've done due diligence/market research to find domestic made equivalents for products that do not fall under the *de minimis* limit.
  - NIST MEP supplier scouting can help!
- ✓ You are the direct recipient of the Federal funding.
  - Subrecipients should coordinate with the direct recipient for waiver submission.

Then, you may apply for a project-specific waiver for the project.



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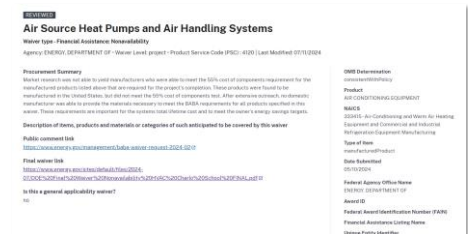
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# Types of Project-Specific Waivers



<b>Non-availability</b>	No domestic product is available
<b>Unreasonable Cost</b>	Inclusion of a domestically produced product would increase the cost of the overall project by more than 25%.
<b>Public Interest</b>	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](https://www.madeinamerica.gov/waivers).



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## 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 for review, including a 15-day public comment period.

OMB will issue final decision.

**Plan ahead! The waiver process is anticipated to take a minimum of six weeks.**



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## Requesting Technical Assistance

1. Watch "[Beyond the Basics: Implementing the BAP](#)"
2. Gather project details including:
  - ✓ Project description,
  - ✓ Funding sources,
  - ✓ HUD obligation date,
  - ✓ Materials classifications,
  - ✓ Total project cost,
  - ✓ Total cost of materials
3. Use the [Optional Buy America Preference Checklist](#)
4. Grantees should contact their local CPD Field Office representative for technical assistance.



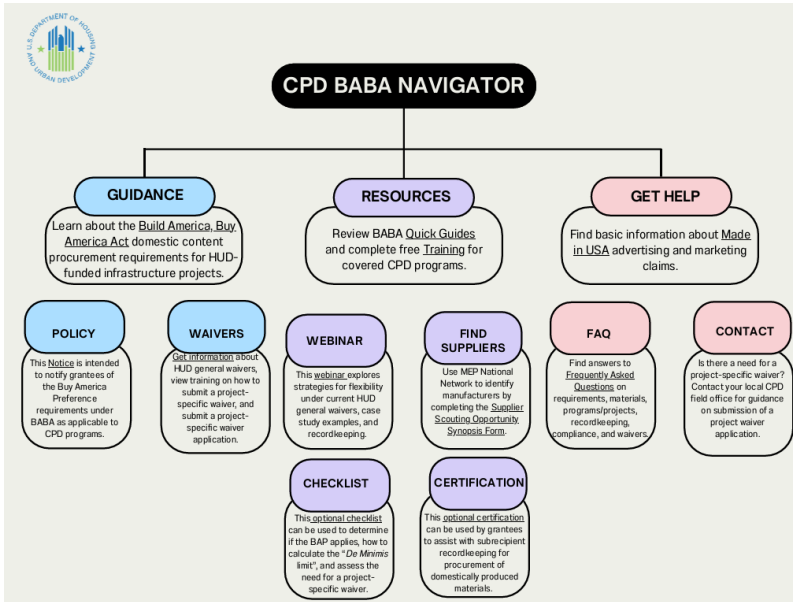
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# Navigating BABA Resources



The handout you have received contains clickable links to available resources.

