



**U. S. Department of Housing and Urban Development
Office of Community Planning and Development**

Special Attention of:

NOTICE: CPD-2023-12

All Secretary's Representatives
All State/Area Coordinators
All CPD Division Directors
HUD Field Offices
HUD Regional Offices

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or rescinded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 domestic content procurement preference as part of the Infrastructure Investment and Jobs Act.

This Notice provides initial implementation guidance for programs administered by the U.S. Department of Housing and Urban Development's (HUD) Office of Community Planning and Development (CPD) 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.

This Notice provides CPD grantees and participating jurisdictions, collectively referred to as grantees, an overview of BABA, including key terms, HUD actions to implement BABA, guidance on HUD's general waivers, the phased implementation schedule for the BAP on CPD programs, and proposed next steps. The attached addenda include answers to frequently asked questions, examples of when the BAP applies for CPD grantees, and sample BAP language for agreements.

Purpose of the Notice

This Notice is intended to notify grantees of the “Buy America Preference” (BAP) requirement under the Build America, Buy America Act (BABA) as they apply to CPD programs. This Notice identifies the CPD programs and activities that must comply with BABA along with the timeline for the application of the BAP. It also highlights issues that grantees will want to consider when preparing for HUD’s full implementation of the BAP, 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). This Notice refers to 88 Fed. Reg. 17001 as the “Phased Implementation Waiver” which establishes BAP implementation points according to a schedule across HUD programs.

Note: 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.

I. Overview of Build America, Buy America Act

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 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 in BABA 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 BABA preference for American materials and products applies to all spending on 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 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 applies to funding from CPD programs for 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 III.

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, under Section 70914(c), the head of a Federal agency, including HUD, must make publicly available a detailed written explanation for the proposed determination to issue the waiver 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 Section IV.

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, which 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. Beginning in June 2022, HUD issued a Request for Information (RFI) and collected public comments on potential BABA implications for HUD grantees. Based on these comments and to ease the transition in complying with the BAP, HUD proposed and received four general waivers for covered FFA, which includes CPD programs. These waivers and other BABA information are available on HUD's website at [BABA | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#). Further details on these waivers and their application to CPD programs are provided in Section IV 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. All CPD Fiscal Year (FY) 2022 grant transmittal letters and notices of funding opportunities (NOFOs) included a reference to the BAP

under BABA. For the FY2023 funding allocations, all CPD grant agreements with covered FFA included a clause to require that the grantee must comply with BABA, as applicable. Throughout 2023, CPD has held BABA information sessions for CPD grantees and has a dedicated email box at CPDBABA@hud.gov to answer questions from individual grantees and stakeholders.

HUD is continuing to work towards implementing BABA across its covered FFA programs. Next steps include establishing a centralized waiver process for all HUD covered programs. CPD is incorporating BABA in its existing reporting systems and processes. To assist grantees, CPD is also developing additional guidance materials and support as the phased implementation of BABA progresses.

II. Definitions

Key terms that have relevance to the interpretation and implementation of the BAP for CPD programs are defined in the BABA statute and may be found in 2 CFR part 184 and OMB guidance.

- A. 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)
- B. 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.
- C. 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.

An article, material, or supply should not be classified into more than one category and must be made based on the status of the article, material, or supply upon arrival to the work site for use in an infrastructure project. Articles, materials, or supplies must meet the Buy America Preference for only the single category in which they are classified and, in some cases, may not fall under any of the categories listed above.

- D. 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.
- E. 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.

- F. 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.
- G. Covered CPD Programs. The term “covered CPD programs” means any Federal financial assistance administered by CPD that is used for infrastructure purposes, excepting expenditures related to pre and post disaster or emergency response.
- H. 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.
- I. 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.
- J. Infrastructure is described in 2 CFR 184.4(c) and 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).

- K. 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 infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.
- L. Iron and Steel Products. The term “iron and steel products” is defined in 2 CFR 184.3 and means an article, material, or supply that consists wholly or predominantly of iron or steel, or a combination of both.
- M. 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.
- N. 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, among other things, enforcing compliance with the BAP and establishing the procedures to review waiver requests proposed by a Federal awarding agency.
- O. 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.
- P. Manufacturer is defined in 2 CFR 184.3 and means the entity that performs the final manufacturing process that produces a manufactured product.
- Q. Non-Federal Entity means a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization, as provided in 2 CFR 200.1. Public Housing Agencies are Non-Federal Entities.

- R. 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.
- S. Obligate. The term “obligate,” for purposes of HUD’s phased implementation of BABA, means the date that HUD executed the legal instrument creating the relationship between HUD and the grantee for an award of Federal financial assistance. The milestone that establishes an obligation date depends on each program but for many CPD programs, such as CDBG, the obligation date occurs upon HUD’s execution of the grant agreement.
- T. 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.
- U. 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.
- V. 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.

W. Project. The term “project” means the construction, alteration, maintenance, or repair of infrastructure in the United States. (Section 70912(7) of BABA).

X. 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. These materials are not considered “construction materials” for the purpose of BABA implementation.

Y. 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 on CPD Programs

Under Sections 70912 and 70914, 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 infrastructure, as defined by BABA. Covered CPD Programs currently include:

- Community Development Block Grant Formula Programs (CDBG)
- Section 108 Loan Guarantee
- HOME Investment Partnerships Program (HOME)
- HOME Investment Partnerships American Rescue Plan Program (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 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)

- FY23 Permanent Supportive Housing (PSH) Funds

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 infrastructure and are covered by BABA.

CPD Programs Not Covered by BAP:

Under Section 70912(4)(B), the BAP does not apply to Federal funds for “pre and post disaster or emergency response.” The following CPD funds are administered for disaster or emergency-related purposes and therefore the BAP does not apply:

- 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)
- Housing Opportunities for Persons With AIDS CARES Act (HOPWA-CV)
- Emergency Solutions Grants CARES Act (ESG-CV)

Additionally, the Community Compass Technical Assistance program is excluded from the BAP as the program does not fund any covered infrastructure activities.

IV. Buy America Preference Waivers Currently in Effect for HUD Programs

Under Section 70914(b), HUD is able to issue, after consultation with OMB’s MIAO, general waivers, and project-specific waivers to the BAP if it is determined that a waiver falls into one of the following three categories: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product 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. In order for HUD to consider either a general or project specific waiver request and be able to review it with OMB, the waiver must include a detailed written explanation and allow for the public to comment for at least 15 days, as required under Section 70914(c).

HUD’s General Waivers Applicable to Covered CPD Programs

Four general applicability waivers are currently in effect for HUD programs and apply to all Covered CPD Programs. Each waiver is outlined below.

General Waiver Type	Purpose	Effective Dates
Public Interest Phased Implementation	HUD issued a public interest waiver, <u>“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”</u> 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, <u>“Public Interest Waiver of Build America, Buy America Provisions for Exigent Circumstances as Applied to Certain Recipients of HUD Federal Financial Assistance”</u> . This waiver applies when there is an urgent need by a CPD grantee to immediately complete an infrastructure project because of a threat to life, safety, or property of residents and the community.	The public interest waiver for exigent circumstances is effective from November 23, 2022, for a period of five years ending on November 23, 2027, or such shorter time as HUD may announce via Notice.
De Minimis, Small Grants, and Minor Components	HUD issued a public interest <i>de minimis</i> , small grants, and minor components waiver titled <u>“Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Certain Recipients of HUD Federal Financial Assistance”</u> . 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	The public interest <i>de minimis</i> , small grants, and minor components waiver is effective from November 23, 2022, for a period of five years ending on November 23, 2027, or such shorter time as HUD may announce via Notice.

General Waiver Type	Purpose	Effective Dates
	<i>de minimis</i> 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.	
Tribal Recipients Waiver	HUD issued a public interest waiver, “ <u>Extension of Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance: Final Notice</u> ” for the BAP as it applies to Tribal recipients. HUD will consult with Tribally Designated Housing Entities and other Tribal Entities on how to apply the BAP.	The waiver of the BAP as it applies to Tribal recipients is effective from May 23, 2023, until May 23, 2024.

HUD Project-Specific Waivers

Additionally, a CPD grantee may request a project-specific waiver from the BAP for covered FFA on a limited, case-by-case basis. HUD may grant a project specific waiver after consultation and review with the OMB’s MIAO. As with the general waivers, under Section 70914(b) HUD may issue a project-specific waiver to the BAP if it is determined that a waiver falls into one of the following three categories: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product 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. A waiver for a specific project may vary depending upon the circumstances of the project, and specific items, products, or materials in question.

Understanding HUD’s Phased Implementation Approach

Under Section 70914(a), the BAP for covered FFA infrastructure projects, including those funded by CPD programs, was required to be in effect 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 had a BAP under BABA. 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 several general public

interest waivers, including a Phased Implementation Waiver. Over the course of two years, under this waiver, HUD will implement the BAP in an incremental process for all HUD programs, including CPD programs, to come into compliance with BABA. This phased approach is also intended to reduce the burden on grantees due to the uncertain costs of compliance with the BAP. This approach is also intended to provide transparency concerning the full implementation plans in connection with HUD infrastructure projects. HUD wants to avoid any unnecessary and undue hardships that could jeopardize the timely and cost-effective completion of projects that previously were not subject to a BAP and to allow time for grantees to come into full compliance.

In the table below, the columns identify four separate categories of covered materials subject to the BAP (iron and steel, specifically listed construction materials, not listed construction materials, and manufactured products) and the rows identify covered HUD programs. To use the table, find the program that funds the project under consideration, then find the covered materials that 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 the specific materials used in the project under consideration. It is important to note that the date of obligation is 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.

Phased Implementation Schedule for HUD Programs

The table below outlines the phased implementation timeline for HUD’s covered programs published in the Phased Implementation Waiver.

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 HUD other 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

Phased Implementation Schedule for CPD Programs

Covered CPD programs began applying the BAP for infrastructure projects not covered under a general waiver for specific materials in phases beginning on November 15, 2022, and through FY2025. This section describes when the BAP applies to specific Covered CPD programs in accordance with HUD’s Phased Implementation Waiver.

Iron or Steel		
CPD Program	BAP Effective Date	Implementation Examples
CDBG	The BAP first applied to CDBG funds, obligated on or after November 15, 2022, and that will be used to purchase iron and steel for infrastructure projects.	This means CDBG grants obligated via a CDBG grant agreement signed by HUD on or after November 15, 2022, are subject to the BAP. CDBG grants obligated via a CDBG grant agreement signed by HUD prior to November 15, 2022, are not subject to the BAP.
RHP	The BAP will apply to RHP funds obligated on or after August 23, 2023, used to purchase iron or steel for infrastructure projects.	This means RHP grants obligated via a RHP grant agreement signed by HUD on or after August 23, 2023, are subject to the BAP. A RHP grant obligated via a grant agreement signed by HUD prior to August 23, 2023, is not subject to the BAP.
ESG, CoC, HOPWA, SHOP, VHRMP, CPF/EDI, Section 4, Rural Capacity Building, Pro Housing, PRICE, PSH, and NOFOs	The BAP will apply to funds from all other covered CPD programs, except HOME and HTF, obligated on or after February 22, 2024, used to purchase iron or steel for infrastructure projects.	Grantees should identify the execution date by HUD on the grant agreement or other legal instrument. The BAP applies to funds obligated by HUD on or after February 22, 2024. For HOPWA competitive grants, obligation is the date the award letter is signed. HOPWA competitive grantees should compare the date on its award letter to the February 22, 2024, to determine if its grant is subject to the BAP. EDI Community Project Funding has a different obligation determination. Grantees should consult their Congressional Grant Officer for more information.
HOME & HTF	The BAP will apply to HOME and HTF funds obligated on or after August 23, 2024, used to purchase iron or steel for infrastructure projects.	This means HOME and HTF grants obligated via grant agreements signed by HUD on or after August 23, 2024, are subject to the BAP. A HOME or HTF grant obligated via a grant agreement signed by HUD prior to August 23, 2024, is not subject to the BAP.

Materials Other Than Iron or Steel		
	CDBG & RHP Programs	All Other Covered CPD Programs
Specifically Listed Construction Materials (Non-Ferrous Metals, Lumber, Composite Building Materials, Plastic and Polymer Based Pipe and Tube)	The BAP will apply to FY2024 and subsequent CDBG and RHP awards used to purchase specifically listed construction materials as well as to purchase iron and steel.	The BAP will apply to funds from all other Covered CPD programs obligated on or after August 23, 2024, used for the purchase of specifically listed construction materials as well as iron and steel for infrastructure projects.
Not Listed Construction Materials	The BAP will apply to FY2025 and subsequent CDBG and RHP awards used to purchase not listed construction materials for infrastructure projects.	The BAP will apply to all Covered CPD program (except CDBG and RHP) funds obligated on or after August 23, 2024, used for the purchase of not listed construction materials, as well as specifically listed construction materials and iron and steel, for infrastructure projects.
Manufactured Products	The BAP will apply to FY2025 and subsequent CDBG and RHP awards used to purchase manufactured products as well as specifically listed construction materials and iron and steel, for infrastructure projects.	The BAP will apply to all Covered CPD program funds (except CDBG and RHP) obligated on or after August 23, 2024, used for the purchase of manufactured products for infrastructure projects.

Applying the BAP and HUD Waivers to CPD Programs

Once the BAP applies to an infrastructure project, a grantee must:

1. Comply with the BAP, or
2. Utilize one of HUD’s general waivers, or
3. Obtain a project-specific waiver to exclude the project from the BAP.

As a part of its record keeping, a CPD grantee should document its process to analyze if the BAP applies to a project using the approach below:

Step 1: Type of project/activity

Are the funds being used for an infrastructure project, as defined by BABA and explained in this notice?

- If yes, proceed to step 2.
- If no, the BAP does not apply. The BAP only applies to infrastructure projects.

Step 2: Funding source

Identify the source(s) of the project funding, including CPD funding, HUD funding or other Federal agency funding that must comply with BABA. Does the project funding include any Covered CPD Programs listed in this notice? (Note: The BAP does not apply to funds that are for pre- or post-disaster or emergency response.)

- If yes, and HUD contributes the largest portion of Federal funds to the project, proceed to step 3.
- If yes, and another Federal agency contributes the largest portion of Federal funds to the project, that Federal agency is the “Cognizant Agency for Made in America”, and the grantee should follow that agency’s guidance for applicability of the BAP to the project.
- If no, then the project does not need to comply with the BAP for CPD funds but may need to comply with the BAP due to the inclusion of other HUD or Federal funding sources.

Step 3: Materials

Identify the materials that will be used in this infrastructure project. Does the project use materials subject to the BAP (iron or steel, specifically listed construction materials, not listed construction materials, or manufactured products), identified in this Notice?

- If yes, proceed to step 4.
- If no, then the BAP does not apply. The BAP only applies to covered materials.

Step 4: Date of obligation

Consult the Phased Implementation Waiver schedule table. Identify the cell that corresponds to the Covered CPD Program funding and materials used in your project. This cell identifies the date on which the BAP will apply for the Covered CPD Program and the materials. Based on the date of obligation of the Covered CPD Program funds, does the BAP apply to the funding source and materials that will be used in your project?

- If yes, proceed to step 5.
- If no, the BAP does not apply.

Step 5: General waivers

Consider the available HUD General Waivers. As of this Notice, there are three general waivers that may be utilized as an alternative to compliance with the BAP under the Phased Implementation Waiver: 1) Exigent Circumstances Waiver, 2) the De Minimis, Small Grants, and Minor Components Waiver, and 3) the Tribal Recipients Waiver. Analyze each available HUD general waiver, based upon the specific requirements of that waiver.

1. *Exigent Circumstances Waiver*: Is there an urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community?
 - If yes, the Exigent Circumstances Waiver may apply, and the project would not be subject to the BAP.
2. *De Minimis, Small Grants, and Minor Components Waiver*: Is the total cost of the project equal to or less than \$250,000?
 - If yes, the *De Minimis*, Small Grants, and Minor Components Waiver may apply, and the project would not be subject to the BAP.

OR

This waiver can be applied to a portion of the products used in an infrastructure project if the cumulative cost of those products does not exceed five percent of the total cost of covered products used in the project (up to \$1 million).

- In that case, the BAP would be waived for part of the project, but the rest of the project would still need to comply with the BAP.

3. *Tribal Recipients Waiver*: Is the project being funded by a Tribal recipient?

- If yes, the Tribal Recipients Waiver may apply, and the project would not be subject to the BAP. (This is rare for CPD programs.)
- If no to General Waiver questions 1, 2, and 3, proceed to Step 6.

Step 6: Project-specific waivers

Consider the criteria for project-specific waivers. Project-specific waivers to the BAP may be available if it is determined that a waiver falls into one of the following three categories: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product 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. Project-specific waivers are available on a limited, case-by-case basis, after HUD's consultation and review with OMB's MIAO.

1. Would applying the BAP to the project be inconsistent with the public interest?
 - If yes, a project-specific waiver may be considered.
2. Are the types of iron, steel, manufactured products, or construction materials used in the project not produced in the United States in sufficient and reasonable available quantities or of a satisfactory quality?
 - If yes, a project-specific waiver may be considered.
3. Would the inclusion of iron, steel, manufactured products, or construction materials produced in the United States increase the cost of the overall project by more than 25 percent?
 - If yes, a project-specific waiver may be considered.
 - If no to Project specific waiver questions 1, 2, and 3, the BAP likely applies to the project and the project should comply with the requirements of the BAP.

Grantees should consult the entirety of this Notice and other applicable BABA guidance before making a determination on BAP applicability to a specific project. Grantees should reach out to their local CPD field office if they require additional assistance with determining BAP applicability.

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

Under Section 70914(b), BABA allows a Federal agency, such as HUD, to waive the BAP for covered FFA in three instances: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product 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. To direct Federal agencies on how to implement this waiver process, OMB issued guidance that HUD will follow when reviewing a waiver request from a CPD grantee. According to OMB, agencies may reject or grant waivers in whole or in part. When an agency is considering a waiver, it should, to the greatest extent possible, be issued at the project level and be product specific. When that is not possible, an agency may issue a broader waiver. The agency should follow three principles before issuing any type of waiver:

- 1) The waiver may be time-limited, meaning it is issued for a certain period of time, rather than for a specific project. For example, a time-limited waiver may apply when an item that is “nonavailable” is widely used in projects funded by a particular program.
- 2) The waiver should be targeted, meaning it should only apply to specific item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s).
- 3) The waiver may be conditional with conditions that support the policies of BABA.

OMB guidance outlined the waiver review process for agencies to follow before issuing a waiver. Based on this guidance, HUD is developing its Department-wide project-specific waiver process. For HUD to consider a project or product-specific waiver it must:

- Have a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States.
- A certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers.
- In addition, at a minimum and to the greatest extent practicable, each proposed waiver submitted for consideration by the MIAO should include the following information, as applicable:
 - Waiver type (nonavailability, unreasonable cost, or public interest).
 - Recipient name and Unique Entity Identifier (UEI).
 - Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code).
 - Financial assistance listing name and number.
 - Federal financial assistance program name.
 - Federal Award Identification Number (FAIN) (if available).
 - Federal financial assistance funding amount.

- Total estimated infrastructure expenditures, including all Federal and non-Federal funds (to the extent known).
- Infrastructure project description and location (to the extent known).
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each.
- A certification that the Federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
- A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach), by the Federal awarding agency and, in the case of a project or award specific waiver, by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Anticipated impact if no waiver is issued.
- Any relevant comments received through the public comment period.

The purpose of the information is to ensure that HUD has adequate information to perform due diligence, that MIAO has sufficient information to determine whether the proposed waiver is consistent with law and policy, and that sufficient information is available for public review. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference.

Once HUD has reviewed all required information, it will notify OMB's MIAO. The purpose of this consultation is for the MIAO to identify any opportunities to structure the waiver to maximize the use of goods, products, and materials produced in the United States to the greatest extent possible consistent with law. Following this consultation with MIAO, HUD is required to post the proposed waiver on its BABA website with a detailed written explanation of the proposed determination to issue the waiver and must provide at least 15 days for public comment. General applicability waivers require a minimum 30-day public comment period. Once the public comment period ends, HUD will submit the proposed waiver to MIAO to determine if the waiver is consistent with applicable law and policy. The MIAO will notify the agency of its determination of the proposed waiver. Only after this process has been completed may the HUD issue the waiver.

Applying for a HUD Specific Waiver

Prior to seeking a waiver, grantees should determine if and how BABA applies and follow measures to maximize compliance with the BAP based on the above guidance. At this time, HUD's BABA waiver process is as follows:

1. Contact CPDBABA@hud.gov for BABA technical assistance as needed.
2. Prepare a "[*Build America Buy America Waiver Request*](#)" with the information required by the MIAO.

3. Submit a waiver application with all necessary information to HUD at BuildAmericaBuyAmerica@hud.gov.
 - HUD is currently using email while an automated process is under development.
4. Provide additional information as requested by HUD during the review process to proceed with public comment in the Federal Register, and final approval by MIAO.
5. HUD reviews waivers before they are posted to the Federal Register for public comment and sent to the MIAO for approval. If approved, the waiver is posted on MadeInAmerica.gov.

CPD Grantees Receiving Funds from Multiple Federal Agencies

For CPD grantees that receive funds from multiple Federal agencies for an infrastructure project, the Federal agency contributing the greatest amount of covered FFA for the project will be considered the “Cognizant Agency for Made in America,” according to OMB Guidance. This lead agency should take responsibility for coordinating with the other Federal awarding agencies. Such coordination will provide uniform waiver criteria and adjudication processes, minimize duplicative efforts among Federal agencies, and reduce burdens on recipients. The Cognizant Agency for Made in America shall be responsible for consulting with the other Federal awarding agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to MIAO.

CPD Record Keeping Requirements

To comply with BABA, the BAP must be included in the terms and conditions of all federal awards including subawards, contracts, and purchase orders for the work performed or products supplied for infrastructure projects. CPD grantees should document the process to analyze if the BAP applies to a project using the approach in this Notice and collect records to demonstrate compliance with BABA requirements. 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.

HUD will issue guidance about reporting on BABA required activities under 24 CFR 91.520, at a later date. At this time, CPD is working to include the BAP into its existing CPD systems (Integrated Disbursement and Information System, Disaster Recovery Grant Reporting System) for grantees to generate reports to track progress and compliance with BABA. Additional details on record keeping requirements will be determined by HUD and shared with CPD grantees as it is available.

V. Contact Information

Grantees that have questions on this Notice should contact their assigned HUD Field Office Representative or send their request directly to CPDBABA@hud.gov. CPD Field Offices should direct inquiries and comments to their program desk officer.

Addendum 1

Frequently Asked Questions

General Information

1. What is BABA? What is the “Buy America Preference”?

The Build America, Buy America (BABA) Act was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58) also known as the Bipartisan Infrastructure Law. BABA establishes a domestic content procurement preference known as the “Buy America Preference” (BAP) for Federal infrastructure spending. The BAP requires that all iron, steel, manufactured products, and construction materials used in infrastructure projects funded with Federal financial assistance must be produced in the United States.

2. What types of Federal financial assistance (FFA) are subject to the BAP?

FFA subject to BABA includes all expenditures by a Federal agency to a non-Federal entity for an infrastructure project, including grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance.

3. What projects or activities does the BAP apply to?

The BAP applies to the iron, steel, construction materials, and manufactured products used in infrastructure projects funded by Federal financial assistance (FFA), which includes covered materials and covered activities. Infrastructure projects include construction, alteration, maintenance, or repair of any infrastructure in the United States as defined in the next paragraph and in the Definitions section of this Notice.

The term “infrastructure” includes the structures, facilities, and equipment for projects traditionally considered infrastructure, including 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;
- housing construction and rehabilitation;
- community facility construction and rehabilitation;
- homeless shelter construction and rehabilitation;
- and other CPD-funded activities that are defined as infrastructure according to BABA (section 70912(5)).

4. What materials does the BAP apply to?

The BAP requires that all iron, steel, manufactured products, and construction materials used in infrastructure projects funded with Federal financial assistance must be produced in the United States.

5. What does “produced in the United States” mean for materials to which the BAP applies?

The term “produced in the United States,” as defined in 2 CFR 184.3, means:

- in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- in the case of manufactured products that:
 - the product was manufactured in the United States; and
 - 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; and
- in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

CPD Program Specific

6. Which CPD programs are subject to the BAP?

Any CPD program that can be used for the purpose of infrastructure as defined by BABA. These programs are considered Covered CPD programs.

7. Which CPD funds or programs are NOT subject to the BAP?

The BAP does not apply to Federal funds for “pre and post disaster or emergency response” according to BABA. Therefore, at the time of publication of this notice, the BAP does not apply to the following CPD funds or programs that administer disaster related FFA:

- 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)
- Housing Opportunities for Persons With AIDS CARES Act (HOPWA-CV)
- Emergency Solutions Grants CARES Act (ESG-CV)

The Community Compass Technical Assistance program is also excluded from the BAP as the program does not fund any covered infrastructure activities.

- 8. I am funding a project with CDBG funds that were obligated (i.e., the grant agreement was signed by HUD) before November 15, 2022. Does the BAP apply?**

No, the BAP does not apply to HUD funds that were obligated before November 15, 2022. HUD defines the date of obligation as the date that HUD signed the agreement with the grantee. The BAP will apply to CDBG funds used for iron or steel that were obligated on or after November 15, 2022.

There is an additional consideration. If FY funds for which BABA applies are added to this infrastructure project, BABA then will apply to the entire project.

- 9. I am a grantee funding a project with CDBG funds that were obligated (i.e., the grant agreement was signed by HUD) on or after November 15, 2022. Does the BAP apply?**

If the CDBG funds used in your infrastructure project were obligated on or after November 15, 2022, the BAP will apply to all iron or steel used in the project, unless a waiver applies to the project. If these BABA funds are applied to an infrastructure project that does not have a BAP, the addition of these funds will attach BABA to the entire project. BABA would apply as described in HUD's Phased Implementation Waiver unless there is a project-specific waiver approved by the MIAO.

- 10. I am funding a public facilities project with total FFA of \$2,500,000. \$400,000 of CDBG funds are being used for engineering and administration fees of a project. Other federal funding will pay for the remaining construction activities. Is the BAP applicable to this project?**

Yes, the total project cost is over \$250,000 and the project is construction of an infrastructure project. The total cost of a project must not exceed \$250,000 from all sources to qualify for an exemption of the BAP under HUD's general waiver for small projects.

Documentation and Grant Management

- 11. Does the BAP apply to subrecipients or contractors?**

In most cases, yes, the BAP requirements apply to subgrantees, including subrecipients, contractors, and developers who are awarded Federal financial assistance for use in public infrastructure projects. The BAP requirements apply to all FFA and do not distinguish between the end user of the federal funds. The BAP applies as long as the funding is derived from a Federal agency, even if they are a pass-through entity unless a particular section of the terms and conditions of the Federal award specifically indicates otherwise.

12. Is there standard language grantees can include in subrecipient/bid contract documents?

Grantees should include the BABA language from their grant agreement in any subrecipient and bid contract documents to ensure BABA compliance by subrecipients, developers and/or contractors. Please refer to Addendum 3 for the language used in CPD grant agreements.

Waivers

13. Are there any waivers available for the BAP?

There are currently four general applicability waivers in effect for HUD programs that apply to CPD programs: 1) Phased Implementation Waiver, 2) Exigent Circumstances Waiver, 3) *De Minimis*, Small Grants, and Minor Components Waiver, and 4) Tribal Recipients Waiver. The details of each of these waivers can be found in Section IV of this Notice, or by visiting HUD's BABA website to see the latest available HUD waivers at: https://www.hud.gov/program_offices/general_counsel/baba. Waivers, as they are approved by the MIAO, will be updated on HUD's website.

14. Will there be project or product specific waivers of the BAP?

In addition to HUD's general waivers, HUD may also grant "project-specific" waivers from the BAP for covered FFA on a limited, case-by-case basis, after consultation and review with the MIAO at OMB. HUD may issue a project-specific waiver to the BAP if it is determined that a waiver falls into one of the following three categories: 1) when applying the domestic content procurement preference would be inconsistent with the public interest, 2) when types of iron, steel, manufactured product 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. A waiver for a specific project may vary depending upon the circumstances of the project, and specific items, products, or materials in question. HUD is currently developing the process through which a grantee may request a waiver. More information will be made available once that process is developed.

Addendum 2

Examples of BAP for CPD Programs

This appendix provides a selection of illustrative examples to assist grantees in determining if the BAP applies to their projects.

Example 1: A grantee funds a water and sewer project containing iron and steel. The project is funded using \$1 million in FY23 CDBG funding. The total Federal financial assistance for the project is \$3 million.

The BAP applies to this project because it is a CDBG project using funding obligated on or after November 15, 2022, the project contains iron or steel, and the total cost of the project is greater than the simplified acquisition threshold at 2 CFR 200.1 which is currently \$250,000.

Example 2: A grantee funds a water and sewer project containing iron and steel. The project is funded using \$100,000 in FY23 CDBG funding. The total Federal financial assistance for the project is \$2 million.

The BAP applies to this project because it is a CDBG project using funding obligated on or after November 15, 2022, the project contains iron or steel, and the total cost of the project is greater than \$250,000.

Example 3: A participating jurisdiction contributes \$2 million in HOME funds for construction of a multi-unit residential building, which includes iron or steel. The funds are obligated by HUD on July 15, 2023.

The BAP does not apply to this project because the BAP will not apply to HOME funds used for iron or steel until August 23, 2024.

Example 4: A participating jurisdiction contributes \$2 million in HOME funds for the construction of a multi-unit residential building, using iron or steel. The funds are obligated by HUD after August 23, 2024.

The BAP applies to this project because the project includes iron or steel, the total cost of the project is greater than \$250,000, and the project uses HOME funds obligated after the date on which the BAP begins to apply to HOME funds used for iron or steel.

Example 5: A grantee funds acquisition of land using \$300,000 in Recovery Housing Program (RHP) funds that were obligated on September 1, 2023. The acquisition is part of a multifamily housing construction project containing iron or steel.

The BAP applies because the purpose of the funding is a covered activity (construction) that includes iron or steel. The total cost of the project from all sources is greater than \$250,000 and the funds are obligated after the date on which the BAP applies to RHP funds used for iron or steel.

Example 6: A grantee purchases a fire engine which will serve a low- to -moderate-income neighborhood. The grantees uses \$300,000 in FY23 CDBG funding for the purchase.

The BAP does not apply because the funding is not used for a covered activity (construction, alteration, maintenance, or repair) for an infrastructure project.

Example 7: A grantee uses \$400,000 in Recovery Housing Program (RHP) funds to rehabilitate a multi-unit residential building, using iron or steel. The funds are obligated by HUD after August 23, 2023.

The BAP applies to this project because it uses iron or steel, the total cost of the project is greater than \$250,000, and the project uses RHP funding that is obligated after the date on which the BAP begins to apply to RHP funds used for iron or steel (August 23, 2023).

Addendum 3

Sample BABA Language in Grant Agreements

The language below is included in all CPD program NOFOs and grant agreements. Similar to other cross cutting requirements, grantees should include the following BABA language in all contracts and agreements with subrecipients, contractors, developers and subgrantees. Grantees and subrecipients should include this language in any NOFOs and procurement bid/contract documents to ensure BABA compliance by subgrantees, developers and/or contractors.

The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.