



Build America, Buy America (BABA)

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Overview

Enacted in November of 2021 as part of the Infrastructure Investment and Jobs Act (IIJA).

- Created a Buy American Preference (BAP) that is applicable to ALL federal agencies and ALL sources of Federal Financial Assistance (FFA) for infrastructure projects, including housing.
- BAP requires all iron, steel, manufactured products, and construction materials used in infrastructure projects (e.g. housing) be produced in the United States – collectively called covered materials.

When Is This Effective?

- BAP applicability is tied to the fund's obligation date, not when the money is spent.
 - Obligate means the date HUD executed the instrument creating the award of FFA.
 - Therefore, funds received before the date BABA became effective means those funds are not subject to BABA requirements nor the projects they fund.

Program	FY23 Q1	FY23 Q2	FY23 Q3	FY23 Q4	FY24 Q1	FY24 Q2	FY24 Q3	FY24 Q4	FY25 Q1
CDBG Formula Grants	● 11/15/22 Iron and steel								
						FY24 Obligation Date (Varies) Construction materials – Specifically-Listed		FY25 Obligation Date (Varies) Construction materials – Not Listed Manufactured products	
Healthy Homes*		● 2/22/23 Iron and steel							● 8/23/24
									● All construction materials ● Manufactured products
Recovery Housing Program ("RHP") Grants				● 8/23/23 Iron and steel					
						FY24 Obligation Date (Varies) Construction materials – Specifically-Listed		FY25 Obligation Date (Varies) Construction materials – Not Listed Manufactured products	
All other HUD FFA**						● 2/22/24 Iron and steel			
									● 8/23/24
									● All construction materials ● Manufactured products
HOME***									
									● Iron and steel ● 8/23/24 ● All construction materials ● Manufactured products

When is Compliance Required?

	Funding Obligated by HUD	That is	Federal Financial Assistance (FFA)	Provided to	Non-Federal Entities	For an	Infrastructure Project
Requires Compliance	<p>HUD obligated the funding or obligated by operation of law (regardless of the point of obligation by the funding recipient/grantee) after the date of:</p> <ul style="list-style-type: none"> • May 14, 2022, or • The expiration of an applicable waiver (currently May 22, 2024, for Tribal recipients) • Phased implementation starting February 22, 2023, and March 15, 2023, through August 23, 2024. 		<ul style="list-style-type: none"> • Grants; • Cooperative agreements; • Non-cash contributions or donations of property (including donated surplus property); • Direct appropriations; • Food commodities; • Loans; • Loan Guarantees; • Interest subsidies; • Insurance, and • Other financial assistance 		<ul style="list-style-type: none"> • State; • Local government; • Indian tribe; • Institution of Higher Education (IHE); • Nonprofit organization that carries out a Federal award as recipient or subrecipient. 		<p>Construction, alteration, maintenance, or repair of: 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.</p>
Does <u>NOT</u> Apply	<p>Funding obligated HUD or by operations of law before the date of:</p> <ul style="list-style-type: none"> • May 14, 2022, or • The expiration of an applicable waiver (currently May 22, 2024, for Tribal recipients) • Phased implementation starting February 22, 2023, and March 15, 2023, through August 23, 2024. 		<ul style="list-style-type: none"> • Amounts received as reimbursement for services rendered to individuals • Expenditures for assistance authorized in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or relating to a major disaster or emergency declared by the President or • Pre and post disaster or emergency response expenditures 		<ul style="list-style-type: none"> • Private individuals • Private, for-profit entities 		<ul style="list-style-type: none"> • Payments for activities that are not construction, alteration maintenance or repair, e.g., Rental assistance payments and other payments for services • Purchase money mortgages/financing

What is Federal Financial Assistance?

- Defined in 2 CFR 200.1 as:
 - Grants; cooperative agreements; non-cash contributions or donations of property (including surplus property); direct appropriations; food commodities; loans; loan guarantees; interest subsidies; insurance; and other financial assistance.
 - FFA includes all expenditures by a Federal Agency to a Non-Federal entity for an infrastructure project.
 - This means both Capital and Operating funds are subject to BABA
 - Also includes any sub-awards
- If FFA gets combined with non-FFA or FFA that did not trigger BABA, it likely will subject the whole project to the BABA requirements.



What is an Infrastructure Project?

- As defined in 2 CFR § 184.3:
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.
- There is a whole list of things that fall under the definition of an infrastructure project but the one that generally applies to PHA's is the inclusion of buildings and real property.
- Effective with PIH Notice 2025-06, buildings with fewer than 5 units are NOT considered to be infrastructure.

What Are Covered Materials?

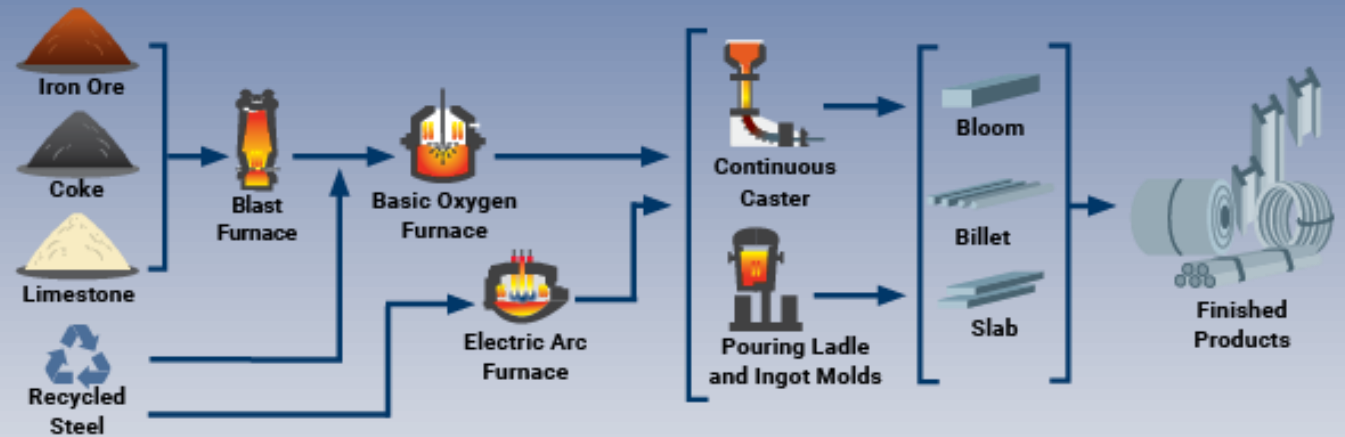
- Essentially anything that can be affixed to or incorporated into infrastructure – for a PHA, this generally means buildings or real property.
 - Temporary things like concrete formwork or scaffolding are not subject to BABA.
 - It also must be more than just plugging in. For example, a smoke detector that plugs into an outlet wouldn't be subject to BABA but one that is hardwired into the wall would be.
- Three categories of Covered Materials:
 - Iron and Steel Products
 - Manufactured Products
 - Construction Materials



Iron and Steel

- Articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.
 - Predominantly means the cost of the iron and steel content exceeds 50% of the total cost of all its components. This is the cost of the milled product through casting or forging.

The Steel Mill Life Cycle



Manufactured Products

- Are articles, materials, or supplies that have been:
 - Processed into a specific form or shape;
 - Combined with other articles, materials, or supplies to create a product with different properties than they were as individual materials.
- Individual components may be classified as iron or steel or construction materials.





Produced in the United States

Iron or steel products: all manufacturing process, from the initial melting through the application of coatings occurred in the United States.

Manufactured products:

- The product was manufactured in the United States, and;
- The cost of the manufactured product's components that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components.

Construction materials: all manufacturing processes for the construction materials occurred in the United States.

General Waivers

- These are automatically granted and in effect through November 2027 – must document you meet the requirements and place a copy of the waiver in the purchase file
 - **Exigent Circumstances** – applies when there is an urgent need by a grantee to immediately complete an infrastructure project due to the threat to life, safety, or property of residents and the community.
 - **Small Grants** – infrastructure projects whose total cost is equal to or less than the Simplified Acquisition Threshold (\$250,000)
 - **De Minimis** – BABA requirements do not apply for a De Minimis portion of an infrastructure project, meaning a cumulative total of no more than 5% of the total cost of covered materials used in and incorporated into a project, not to exceed \$1 million.

Project Specific Waivers

- These must be requested through HUD's BABA website
 - **Public Interest Waiver** – would be granted if you can demonstrate how using American made product would be inconsistent with public interest.
 - **Non-Availability Waiver** – would be granted if the product needed is not produced in the United States in sufficient quantities or in a satisfactory quality
 - Need to consider alternates and sufficient due diligence needs to be conducted (see PIH Notice 2025-06)
 - **Unreasonable Cost Waiver** – would be granted if the inclusion of the US produced product will increase the cost of the overall project by more than 25%.

Questions to Ask About Your Project



- Is the project an infrastructure project?
- Is there funding in the project that is considered FFA?
 - What is the obligation date of the FFA being used, if applicable?
- Will there be BABA covered materials?
- Are there any general applicability waivers that can be applied?
- Are there any project specific waivers that can be submitted?

Helpful Resources

- HUD's BABA Site:
 - https://www.hud.gov/program_offices/general_counsel/build_america_buy_america
 - Helpful FAQs, general waiver forms, and project specific waiver portal
- PIH Notice 2025-06 which outlines HUD guidance on compliance.



Questions