

Build America, Buy America Act (BABA) Implementation Checklist

BABA requires iron, steel, construction materials and manufactured products used in infrastructure projects be produced in the United States.

IRON AND STEEL PRODUCT EXAMPLES			
BABA Iron & Steel applies to construction materials if their material cost is made up of more than 50% iron and/or steel. Products less than 50% iron/steel will likely be considered construction material and still need to comply with BABA.			
<ul style="list-style-type: none"> • Railings • Lined/unlined pipes or fittings • Manhole covers • Municipal castings • Roofing 	<ul style="list-style-type: none"> • Hydrants • Pipes, clamps & restraints • Valves; structural steel • Dome structures • Fencing & Fence tubing 	<ul style="list-style-type: none"> • Reinforced precast concrete • Tanks; Concrete reinforcing bars (rebar) • Angles • Tubing • Ductwork 	<ul style="list-style-type: none"> • Joists • Framing • Welding rods • Fasteners
CONSTRUCTION MATERIAL EXAMPLES			
<ul style="list-style-type: none"> • Non-ferrous metals (contain no iron – aluminum, copper, brass, tin, lead) • Plastic and polymer-based products (including PVC, composite building materials) 	<ul style="list-style-type: none"> • Lumber • Drywall • Glass 	<ul style="list-style-type: none"> • Engineered wood 	<p>EXEMPT</p> <ul style="list-style-type: none"> • Cement & cementitious materials • Sand, gravel or aggregate binding agents or additives • Asphalt • Stone
MANUFACTURED PRODUCT EXAMPLES			
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			
<ul style="list-style-type: none"> • Aluminum planter boxes • Fiber optic cable 	<ul style="list-style-type: none"> • Metal trash receptacles • Optical fiber 		

Note: examples provided not an exhaustive list

Infrastructure includes construction, alteration, maintenance, or repair of (2 CFR 184.3):

- 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
- Buildings and real property
- Structure, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging

Certification Information


Municipality: _____ Activity/Award: _____

Total project cost (including CDBG & other sources): _____

Activity Description: _____


Other sources of federal funds for this activity if more than one: _____

1) Are the CDBG funds being used for an infrastructure project, as defined by BABA?

___ No, then BABA does not apply 

___ Yes, continue to next question

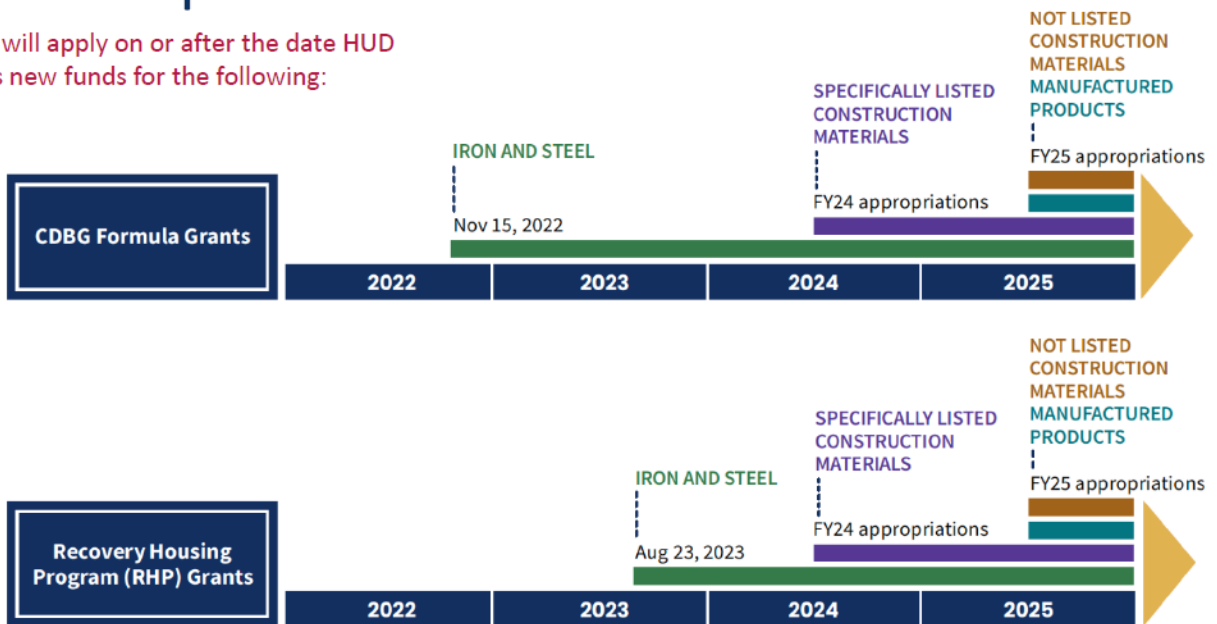
2) Does the project use products subject to BABA? (Iron and Steel, Construction Materials, Manufactured Products)

___ No, then BABA does not apply 

___ Yes, continue to next question

Phased Implementation

The BAP will apply on or after the date HUD obligates new funds for the following:



3) Were funds obligated to the activity on or after the effective implementation dates listed in the phased implementation chart?

PY 20/21, PY 22 & PY 23 Award Implementation Date 11/18/2022 (Iron & Steel). Any CDBG contract with RI Department of Housing that was signed after 11/18/2022 is subject to BABA review.

Date contract signed with RI Department of Housing: _____

Do any project materials require compliance with BABA at this time?

___ No, then BABA does not apply 

___ Yes, continue to next question

General Waivers

Reference - NOTICE: CPD- 2023-12

General Waiver Type	Purpose	Effective Dates
Public Interest Phased Implementation	HUD issued a public interest waiver 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. 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 Grant and Minor Components	HUD issued a public interest de minimis, small grants, and minor components. 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 de minimis 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.	The public interest de minimis, 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.
Tribal Recipients Waiver	HUD issued a public interest waiver 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.

Check any that apply: <https://www.hudexchange.info/programs/baba/waivers/>


Exigent Circumstances Waiver

De Minimis Waiver

Small Grants Waiver*

Tribal Recipients Waiver

4) Is the project covered in whole or part by any of the HUD general waivers above?

Yes. BABA does not apply 

No. Could the project qualify for a project-specific waiver?

5) Is the project eligible for a project-specific waiver? (Inconsistent with public interest, materials used in the product are not produced in U.S., inclusion of domestically produced materials will increase the overall project by more than 25 percent)

____ No. BABA applies.

____ Yes. The state can apply to HUD for a project-specific waiver. UGLGs should contact the RI Department of Housing if they believe a project-specific waiver applies.

Implementation Considerations

For projects using CDBG funds obligated by HUD on or after November 15, 2022, review existing procurement policies and procedures to ensure that new administrative steps are developed to implement the Buy America Preference (BAP) requirements.

When revising administrative documents, make sure to incorporate the BAP into the terms and conditions of all CDBG awards for infrastructure projects. Additionally, it is recommended to assess whether any projects that are currently underway or in the planning stages are subject to the BAP for iron, steel or other classifications of products.

CDBG subgrantees engaging in infrastructure projects must comply with the BAP conditions in the FY2023 HUD grant agreement. Since the terms and conditions of the BAP flow down to subrecipients, the BAP language found in the "Special Conditions" section should be incorporated into all agreements, even if the BAP does not yet apply based on the phased implementation date. The BAP must be included in all subawards, contracts, and purchase orders for the products supplied to complete the work under a CDBG award.

CDBG subgrantees should ensure that all relevant stakeholders are informed about the BAP requirements and determine whether a project is subject to the BAP and, if so, for which classification(s) of materials.

Subgrantees must maintain documentation in accordance with applicable program requirements for recordkeeping and record retention. It is the subgrantee's responsibility to ensure that all records related to BABA compliance are properly maintained, including any records kept by third parties (contractors, etc.).

Municipal Certification: _____

Date: _____