



Build America, Buy America (BABA)

Virtual Education Outreach Webinar For HUD Grantees

9 November 2023

Questions and Answers

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RESOURCES FOR FURTHER INFORMATION

[Executive Order 14005](#)

[Build America, Buy America Act](#)

[Implementation Notices \(by Program\)](#)

- [CPD Notice 2023-12](#)
- [PIH Notice 2024-01](#)
- [PGI Notice 2024-01](#)

[BABA Published Waivers on HUD's Site](#)

[The Infrastructure Investment and Jobs Act](#)

[Office of Management and Budget \(OMB\) M-24-02](#)

[Made in America Office \(MIAO\) 2 CFR 184](#)

SECTION A: DEFINITION AND IMPLEMENTATION OF BABA

A.1: Office of Community Planning and Development (CPD)

Attendee Question	Answer by CPD
<p>HUD has indicated that Federal Financial Assistance (FFA) obligated by certain dates based on type of funding would trigger BABA. What is HUD's definition of "obligated"? Date of HUD grant agreement or date that grantee can draw funds (period of performance)?</p>	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, 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.</p> <p>For Public Housing, obligation dates and definitions are established in HUD Appropriations Acts and statutory provisions in the United States Housing Act of 1937.</p> <p>During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>
<p>Where does EDI-CPF fund fall in the timeline?</p>	<p>Economic Development Initiative - Community Project Funding (EDI-CPF) is included in the category "All other HUD Federal Financial Assistance (FFA) except HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects." The BAP will apply to iron and steel used in EDI-CPF projects beginning with new Federal Financial Assistance obligated by HUD on or after February 22, 2024, and, for other materials on or after August 23, 2024. Please refer to HUD's Phased Implementation Waiver and CPD Notice 2023-12 for additional details.</p>
<p>Are sidewalks included in "Infrastructure?"</p>	<p>Please consult 2 CFR 184, which also provides definitions of infrastructure and infrastructure projects. 2 CFR 184 provides guidance to all Federal awarding agencies on the implementation of the BAP applicable to Federal Financial Assistance (FFA).</p>
<p>Does BABA apply to lateral lines from a private single-family home to the public water or sewer main?</p>	<p>CPD grantees should follow and document the process described in CPD Notice 2023-12 to analyze if the BAP applies to a project. If you have additional questions regarding BABA for your specific project, please consult with your local HUD Field Office.</p>
<p>If you use HUD funds only for soft costs or relocation costs that are part of a larger mixed finance construction project, would BABA still apply to the development project?</p>	<p>Generally, if funds subject to BABA are mixed with other funds not subject to BABA in the same infrastructure project, the whole project is subject to BABA, but please consult with your field office representative for questions about specific projects/circumstances. An infrastructure</p>

Attendee Question	Answer by CPD
	<p>project is defined at 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. If a project is undertaking any of these activities, the entire project is subject to BABA. See CPD Notice 2023-12 for more details.</p>
<p>When you say Grant Funding Obligated do you mean when we receive our Grant from HUD?</p>	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, 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.</p> <p>For Public Housing, obligation dates and definition are established in HUD Appropriations Act and statutory provisions in the United States Housing Act of 1937.</p> <p>During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>
<p>Is homelessness considered an exigent circumstance, and if so, are projects (mod and new construction) housing unhoused households exempt?</p>	<p>The Exigent Circumstances general waiver applies when there is an urgent need by a grantee to immediately complete an infrastructure project because of a threat to life, safety, or property of residents and the community. Grantees should consult CPD Notice 2023-12 for further information about applying HUD's general waivers.</p>
<p>Can you clarify the obligation date for Federal Financial Assistance (FFA)? Is that awarded from HUD to the PJ, or from the PJ to the subrecipient? (In the case of HOME)?</p>	<p>CPD defines the term “obligate” on page 7 of CPD Notice 2023-12 and as described in charts on pages 13-15.</p>
<p>Does BABA apply to a project regardless of what Federal Financial Assistance (FFA) is specifically used for? For example, if a construction project structures its budget so no FFA is used for construction, alteration, modification, or repair directly (e.g., to pay for land acquisition only), does BABA apply?</p>	<p>Yes. Please refer to the examples listed in Addendum 2 of CPD Notice 2023-12.</p>

Attendee Question	Answer by CPD
<p>My organization is currently working through some BABA requirements on a HUD-funded housing construction project, using an FY23 award of CDBG funds. From what we understand, the whole project is subject to Build America Buy America requirements for “iron and steel.” Does HUD have a document specifically defining iron and steel products, and what is subject to BABA requirements?</p>	<p>As defined at 2 CFR 184, iron or steel products means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. Please consult CPD Notice 2023-12 for additional details on classifying materials and other BABA requirements.</p>
<p>Does BABA apply to projects funded with the Section 108 Loan Guarantee Program?</p>	<p>Yes. CPD Notice 2023-12 includes the Section 108 Loan Guarantee as a covered CPD Program on page 8.</p>
<p>Does BABA only apply to projects funded with the FY2023 CDBG Formula grants and beyond?</p>	<p>The Buy America Preference (BAP) established by BABA applies to the CDBG program according to HUD's Phased Implementation schedule. The BAP applies to iron and steel used in CDBG projects including CDBG funds obligated on or after November 15, 2022. The date of obligation is the date HUD executes the CDBG grant agreement. For a full explanation of HUD's Phased Implementation schedule, including when the BAP will apply to other materials used in CDBG Projects, please consult CPD Notice 2023-12.</p>
<p>Under the general applicability waiver, the term “obligation” is used to define when BABA waivers apply. Would award of a construction contract by a sub-recipient during the waiver period constitute an “obligation” or would the contract have to be executed? Additionally, the waiver references “expenditures” during this period. If there is a contract in place and the expenditure occurs after the expiration of the waiver period, would they continue to be covered by the waiver?</p>	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, 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.</p> <p>For Public Housing, obligation dates and definitions are established in HUD Appropriations Acts and the United States Housing Act of 1937. During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>
<p>Will HUD provide further information on whether the implementation date of BABA will be further extended or whether there will be any revision of the categories to which it may be applied?</p>	<p>The implementation dates and categories of materials for which the BAP is underway are established by the Phased Implementation Waiver.</p>

Attendee Question	Answer by CPD
	<p>Moreover, it varies by program. CPD issued implementation guidance in CPD Notice 2023-12 that is effective as of January 3, 2024 until amended, superseded, or rescinded on November 2, 2023. PIH issued implementation guidance in PIH Notice 2024-01 that is effective until amended, superseded, or rescinded. Office of Lead Hazard Control and Healthy Homes (OLHCHH) issued implementation guidance in the Policy Guidance Issuance PGI Notice 2024-01 that is effective as of October 5, 2023 until amended, superseded, or rescinded.</p> <p>Please regularly refer to HUD.gov/BABA for information on HUD’s General Waivers and the latest BABA-related updates.</p>
<p>I have a question regarding Construction projects funded through the HUD CDBG program. Does the waiver FR-6331-N-01 exempt projects from the BABA requirements awarded or allocated before November 14, 2022?</p>	<p>The Buy America Preference (BAP) established by BABA applies to the CDBG program according to HUD's Phased Implementation schedule. The BAP applies to iron and steel used in CDBG projects including CDBG funds obligated on or after November 15, 2022. The date of obligation is the date HUD executes the CDBG grant agreement. For a full explanation of HUD's Phased Implementation schedule, including when the BAP will apply to other materials used in CDBG Projects, please consult CPD Notice 2023-12.</p>

A.2 Public and Indian Housing (PIH)

Attendee Question	Answer by PIH
<p>HUD has indicated that Federal Financial Assistance (FFA) obligated by certain dates based on type of funding would trigger BABA. What is HUD's definition of "obligated"? Date of HUD grant agreement or date that grantee can draw funds (period of performance)?</p>	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, 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.</p> <p>For Public Housing, obligation dates and definitions are established in HUD Appropriations Acts and statutory provisions in the United States Housing Act of 1937.</p> <p>During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>

Attendee Question	Answer by PIH
Where does the Capital Fund Program fall under?	Public and Indian Housing. Please see PIH Notice 2024-01 for more information.
Various HUD forms for Public Housing Agencies (PHAs) are scheduled to expire on 11/30/2023 (i.e., HUD form 5370, 5370-C, and 5370-EZ). Is there an estimated deadline as to when updated forms will be issued, and more importantly, will the new forms contain BABA language for procured contracts?	HUD is working to address Paperwork Reduction Act expirations as they occur. Given the potential complexities around BABA applicability, it is uncertain whether the documents will be modified to specifically address BABA.
Are all MTW funds (PH, HCV, and CFP) covered by BABA?	Whether BABA applies is not determined by the program source of the funds, but rather whether they will be used to construct, alter, maintain, or repair an infrastructure project. To the extent that funds from any of the listed sources are to be used as outlined above, they are potentially subject to BABA.
How about public housing authorities or agencies – are they subject to BABA?	One of the tests for whether BABA applies is whether the grantee of funding is a non-Federal entity: Public Housing Agencies (PHAs) are non-Federal entities. There are other criteria that also need to be considered as well (see the presentation), but BABA will generally apply to funding expended on public housing, unless a waiver applies to the project. See BABA Implementation Guidance for the Public Housing Program, PIH Notice 2024-01 .
If HCV funds are exempt and a MTW Public Housing Agency (PHA) uses non-HAP MTW funds for capital work, as permitted in statute, reg, and the MTW agreements, are those capital projects exempt?	Whether BABA applies is not determined by the program source of the funds, but rather whether they will be used to construct, alter, maintain, or repair an infrastructure project. To the extent that funds from any of the listed sources are to be used as outlined above, they are potentially subject to BABA.
Where does the Capital Fund Program fall under on the Implementation schedule?	Capital Funds obligated by HUD to Public Housing Agencies (PHAs) on or after 2/22/24 will be subject to BABA with respect to iron/steel purchases. Capital Funds obligated on or after 8/23/24 will be fully subject to BABA.
How does BABA apply to Public Housing Operating Funds?	Whether BABA applies is not determined by the program source of the funds, but rather whether they will be used to construct, alter, maintain, or repair an infrastructure project. To the extent that Operating Funds are to be used as outlined above, they are potentially subject to BABA.
Does BABA apply to Public Housing Going RAD?	This is a potentially complicated question: HUD is considering this issue and does not have an answer at this time. HUD will provide its answer on HUD's BABA website .
Does obligated mean obligated by HUD, or by the Housing Agency? In other words, if I award a contract for my 2023	BABA applicability under the Phased Implementation waiver is indexed to when HUD obligates funding to Public Housing Agencies (PHAs). For obligations of HUD awarded

Attendee Question	Answer by PIH
capital fund program (which was awarded in 2023 from HUD) does BABA apply?	Federal Financial Assistance (FFA) that are subject to the requirements of BABA (both pursuant to a NOFO and awarded through other mechanisms), HUD will communicate to recipients that their award is subject to the requirements of BABA and may also include provisions in grant agreements clarifying that the recipient must comply with BABA requirements, unless waived.
When you say Grant Funding Obligated do you mean when we receive our Grant from HUD?	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, 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.</p> <p>For Public Housing, obligation dates and definition are established in HUD Appropriations Act and statutory provisions in the United States Housing Act of 1937.</p> <p>During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>
How does BABA apply to public housing built outside of the Choice program, such as mixed finance?	BABA applies to public housing regardless of whether Choice Neighborhoods grant funding is involved or it is part of a mixed finance transaction.
Does BABA apply to small Public Housing Agencies (PHAs) using cap grant exclusively for operations?	Whether BABA applies is not determined by the program source of the funds, but rather whether they will be used to construct, alter, maintain, or repair an infrastructure project. To the extent that Operating Funds are to be used as outlined above or Capital Funds that are eligible to be used for Operations, they are potentially subject to BABA.
If we are using prior year CFP does the effective date of the grant govern when BABA applies?	Capital Funds obligated by HUD to Public Housing Agencies (PHAs) on or after 2/22/24 will be subject to BABA with respect to iron/steel purchases. Capital Funds obligated on or after 8/23/24 will be fully subject to BABA. The fiscal year of the funding does not affect BABA applicability.
Should Public Housing Agencies (PHAs) not expect another CF grant until early 2025, such that there will not be a CF formula grant in 2024?	Congress has not yet passed an appropriation for 2024: when Congress passes an appropriation for 2024, HUD will award 2024 Capital Fund grants within 60 days of enactment.
Is Capital Fund Program starting 2/22/24 or 8/23/24?	Capital Funds obligated by HUD to Public Housing Agencies (PHAs) on or after 2/22/24 will be subject to BABA with

Attendee Question	Answer by PIH
	respect to iron/steel purchases. Capital Funds obligated on or after 8/23/24 will be fully subject to BABA.
For PIH - Does the Capital Fund follow the 2/22/24 or 8/23/24 date on the implementation schedule?	Capital Funds obligated by HUD to Public Housing Agencies (PHAs) on or after 2/22/24 will be subject to BABA with respect to iron/steel purchases. Capital Funds obligated on or after 8/23/24 will be fully subject to BABA.
For CFP does iron & steel mean structural metal for building or iron and steel pipe & fittings?	Iron or steel products is defined in 2 CFR 184.3 , and means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.
What date starts the BABA regulation for Public Housing Authorities (PHAs) Capital Fund Program Dollars?	Capital Funds obligated by HUD to PHAs on or after 2/22/24 will be subject to BABA with respect to iron/steel purchases. Capital Funds obligated on or after 8/23/24 will be fully subject to BABA.
For Public Housing Authorities, are existing grants subject to the BABA Act or just new grants HUD issues after 5/14/22? Is there a date other than 5/14/22 for Public Housing Agencies (PHAs) receiving new grants triggering BABA?	New Choice Neighborhood Implementation grants awarded this past summer are subject to BABA for purchases of iron/steel products. Capital Funds and Operating Funds (other than maintenance) obligated by HUD to PHAs on or after 2/22/24 will be subject to BABA with respect to iron/steel purchases. All PIH funds obligated on or after 8/23/24 will be fully subject to BABA.
My architectural office does mostly design and procurement for renovation/modernization projects for HUD properties that are run by Public Housing Authorities. Most projects are not new infrastructure, but are modernization projects such as: HVAC installation, bathroom and kitchen replacements, electrical panel replacements, replacing hardware, roofing, etc., - the many items that go into rehabbing old units and buildings. Does BABA apply to these types of modernization projects when the Housing Authority uses the HUD capital improvements funding and where the projects are bid out (procured) to contractors?	Yes, BABA does apply.
Under the general applicability waiver, the term “obligation” is used to define when BABA waivers apply. Would award of a construction contract by a sub-recipient during the waiver period constitute an “obligation” or would the contract have to be executed?	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, the term “obligate,” for purposes of HUD’s phased implementation</p>

Attendee Question	Answer by PIH
<p>Additionally, the waiver references “expenditures” during this period. If there is a contract in place and the expenditure occurs after the expiration of the waiver period, would they continue to be covered by the waiver?</p>	<p>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.</p> <p>For Public Housing, obligation dates and definitions are established in HUD Appropriations Acts and the United States Housing Act of 1937. During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>
<p>Will HUD provide further information on whether the implementation date of BABA will be further extended or whether there will be any revision of the categories to which it may be applied?</p>	<p>The implementation dates and categories of materials for which the BAP is underway are established by the Phased Implementation Waiver.</p> <p>Moreover, it varies by program. CPD issued implementation guidance in CPD Notice 2023-12 that is effective as of January 3, 2024 until amended, superseded, or rescinded on November 2, 2023. PIH issued implementation guidance in PIH Notice 2024-01 that is effective until amended, superseded, or rescinded. OLHCHH issued implementation guidance in PGI Notice 2024-01 that is effective as of October 5, 2023 until amended, superseded, or rescinded.</p> <p>Please regularly refer to HUD.gov/BABA for information on HUD’s General Waivers and the latest BABA-related updates.</p>
<p>Who will determine the process for verifying that products and materials are American made (e.g., HAs, contractors, HUD, OMB)?</p>	<p>See PIH Notice 2024-01.</p>
<p>What is the process for verifying that products and materials are American made?</p>	<p>See PIH Notice 2024-01.</p>
<p>Whether it is the HA’s or HA representative’s (e.g., contractor) responsibility to determine what meets the criteria of American made, and what does HUD deem sufficient effort or due diligence to ensure compliance?</p>	<p>See PIH Notice 2024-01.</p>
<p>If contractors, engineers, architects, etc. are so concerned with the added challenges of complying with BABA, as well as the potential for added cost, that they do not reply to requests for proposals (RFPs) and/or submit bids for</p>	<p>See PIH Notice 2024-01.</p>

Attendee Question	Answer by PIH
<p>projects, what steps should HAs take to ensure their projects move forward without delays?</p>	
<p>Will there be additional guidance on obligation and expenditure deadlines? If it takes longer to expend the Capital Funds because it takes longer to find American made materials, then will HUD provide waivers on expenditure deadlines?</p>	<p>The impact of BABA on timely expenditure of Capital Funds is uncertain. The Department will address issues related to this as they arise.</p>

A.3: Guidance for All HUD Programs

Attendee Question	Answer by HUD
<p>HUD has indicated that Federal Financial Assistance (FFA) obligated by certain dates based on type of funding would trigger BABA. What is HUD's definition of "obligated"? Date of HUD grant agreement or date that grantee can draw funds (period of performance)?</p>	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, 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.</p> <p>For Public Housing, obligation dates and definitions are established in HUD Appropriations Acts and statutory provisions in the United States Housing Act of 1937.</p> <p>During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>
<p>Is HUD’s implementation schedule for construction dates or for Federal Fiscal Year funding?</p>	<p>The implementation schedule in HUD's Public Interest Phased Implementation Waiver is based on the obligation of funding to HUD grantees.</p>
<p>When you say Grant Funding Obligated do you mean when we receive our Grant from HUD?</p>	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, 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.</p>

Attendee Question	Answer by HUD
	<p>For Public Housing, obligation dates and definition are established in HUD Appropriations Act and statutory provisions in the United States Housing Act of 1937.</p> <p>During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>
<p>Isn't there a monetary amount that BABA also requires?</p>	<p>Yes. HUD published the De Minimis and Small Grants Waiver that waives BABA applicability for small grants/projects. Please see the text of the waiver for details.</p>
<p>What amount will be considered De Minimis?</p>	<p>Please refer to the text of the De Minimis and Small Grants Waiver for details.</p>
<p>Does the Small Grants waiver threshold of \$250K apply to the total grant amount or the amount of a specific project?</p>	<p>HUD has waived the BAP for infrastructure projects whose total project cost (from all federal and non-federal sources) is an amount equal to or less than the 2 CFR 200.1 Simplified acquisition threshold, which is currently \$250,000. For more information, please refer to HUD's De Minimis and Small Grants Waiver.</p>
<p>Does BABA apply to FHA Risk Sharing program?</p>	<p>BABA does not apply to HUD's Multifamily Risk Share Programs.</p>
<p>Does Made in America refer only to the fifty states, or does it also include U.S. territories?</p>	<p>It includes U.S. Territories.</p>
<p>How do you verify if contractors are compliant? What are the consequences for noncompliance?</p>	<p>Different programs have different policies, procedures, and rules related to addressing non-compliance. HUD is not in a position to articulate a general rule. Any Federal agency has the authority to perform oversight over the funds it awards, and enforcement is discretionary with each Federal agency.</p>
<p>Can the iron and steel product definition be expanded? For example, a rehung door may have really nice hinges that are steel and more than 51% of the cost.</p>	<p>Iron or steel products is defined in 2 CFR 184.3, and means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. The door hinges in the example provided meet the definition of predominantly of iron or steel or a combination of both in 2 CFR 184.3. The rehung door in the example provided would fall under the manufactured product definition in 2 CFR 184.3.</p>
<p>When installing security cameras at a facility or on a site, is this a project subject to BABA, since they are not permanently affixed to the infrastructure, like a stairwell is?</p>	<p>Security cameras would generally not be considered temporary fixtures that would be excluded from BABA. The temporary exclusion examples such as scaffolding do not remain in place after the completion of the infrastructure project in the way that security cameras would.</p>
<p>Under the general applicability waiver, the term "obligation" is used to define</p>	<p>The milestone that establishes an obligation date varies by program. It is best to check with the particular program</p>

Attendee Question	Answer by HUD
<p>when BABA waivers apply. Would award of a construction contract by a sub-recipient during the waiver period constitute an “obligation” or would the contract have to be executed? Additionally, the waiver references “expenditures” during this period. If there is a contract in place and the expenditure occurs after the expiration of the waiver period, would they continue to be covered by the waiver?</p>	<p>regarding the milestone that establishes the obligation date.</p> <p>For most CPD programs, such as CDBG, 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.</p> <p>For Public Housing, obligation dates and definitions are established in HUD Appropriations Acts and the United States Housing Act of 1937. During the transition, HUD intends to communicate which grants will be subject to BABA as it awards them.</p>
<p>Will HUD provide further information on whether the implementation date of BABA will be further extended or whether there will be any revision of the categories to which it may be applied?</p>	<p>The implementation dates and categories of materials for which the BAP is underway are established by the Phased Implementation Waiver.</p> <p>Moreover, it varies by program. CPD issued implementation guidance in CPD Notice 2023-12 that is effective as of January 3, 2024 until amended, superseded, or rescinded on November 2, 2023. PIH issued implementation guidance in PIH Notice 2024-01 that is effective until amended, superseded, or rescinded. OLHCHH issued implementation guidance in PGI Notice 2024-01 that is effective as of October 5, 2023 until amended, superseded, or rescinded.</p> <p>Please regularly refer to HUD.gov/BABA for information on HUD’s General Waivers and the latest BABA-related updates.</p>
<p>How far reaching is the definition of iron & steel product? For example, is something with a steel casing but a different inner material covered under the current conditions of applicability?</p>	<p>See the definition of “Predominantly of iron or steel or a combination of both” in 2 CFR 184.3.</p>
<p>What safe harbors will exist for HAs and their representatives (e.g., contractors) if sufficient effort/due diligence was made, but products were not, in fact, American made? What level of due diligence will ensure safe harbor?</p>	<p>Different programs have different policies, procedures, or rules related to addressing non-compliance. HUD is not in a position to articulate a general rule. For individual program guidance, please refer to the Implementation Notices.</p>
<p>Who is liable when a product or material is marketed as “American Made,” but is not, in fact, “American Made” (e.g., the</p>	<p>Different programs have different policies/procedures/rules related to addressing non-compliance. HUD is not in a position to articulate a general</p>

Attendee Question	Answer by HUD
manufacturer, the HA, or their designated representative)?	rule. For individual program guidance, please refer to the Implementation Notices .
When an agency, or agency representative is out of compliance, what will be HUD’s or OMB’s cure for noncompliance?	Different programs have different policies/procedures/rules related to addressing non-compliance. HUD is not in a position to articulate a general rule. For individual program guidance, please refer to the Implementation Notices .
Does BABA compliance apply to Low-Income Housing Tax Credits?	The answer to this is not straightforward given that there are factors not included in the scenario that could impact the answer (e.g., whether the LIHTC funding is part of a larger "project" that includes funding subject to BABA). For individual program guidance, please refer to the Implementation Notices .

SECTION B: COMPLIANCE AND DOCUMENTATION

B.1: Office of Community Planning and Development (CPD)

Attendee Question	Answer by CPD
<p>Would the grantee be expected to keep track of the steel and iron from the signing of the financial award with 2023 funds (that are covered under BABA) and make sure that steel and iron is American made? If they sign a financial award on January 1, 2024, any steel or iron paid for (even if it’s not paid for with CDBG) for the project would have to be American made? And we just don’t worry about the iron and steel prior to January 1, 2024? And this wouldn’t automatically be eligible for a project-specific waiver, only if it met the thresholds (probably the 25% increase in cost one), correct?</p>	<p>There is a Departmental BABA FAQ that addresses this scenario (available at HUD.gov/BABA):</p> <p>Does BABA apply to amendments or renewals of awards made on or after November 15, 2022?</p> <ul style="list-style-type: none"> • It depends. If HUD obligates any new or additional funds in connection with the amendment or renewal of prior awards, then all funds will be subject to BABA unless HUD grants a waiver. Any amendments made by a recipient using funds that it received from HUD before BABA became applicable, would not require the application of the BAP. However, if the recipient adds funds that are subject to the BAP to a project, the entirety of the project would be required to comply with the BAP unless HUD grants a waiver. • To apply for a project-specific waiver, a grantee can complete the waiver request form available on HUD.gov and follow the instructions located on that webpage. • Grantees may contact CPDBABA@hud.gov for technical

Attendee Question	Answer by CPD
	assistance with grant applications. Project-specific waivers are available for the categories of public interest, non-availability of materials, and unreasonable cost.
Will the Department provide entitlement communities with guidance on the type of acceptable document that must be maintained in projects files to show compliance with BABA?	Please refer to CPD Notice 2023-12 , which includes information on required documentation that grantees should maintain.

B.2: Public and Indian Housing (PIH)

Attendee Question	Answer by PIH
For small Public Housing Agencies (PHAs), are there different requirements?	Perhaps. Please refer to HUD’s De Minimis and Small Grants Waiver , which will likely waive BABA applicability for many small PHAs.

B.3: Guidance for All HUD Programs

Attendee Question	Answer by HUD
What are the documentation requirements related to showing all covered materials are made in America?	It depends on your program. For individual program guidance, please refer to the Implementation Notices .
What exact documents must States need to have on file for each sub-awardee to demonstrate BABA compliance?	It depends on your program. For individual program guidance, please refer to the Implementation Notices .
What supporting documentation that is required from bidding contractors that they are providing cost for materials from BABA compliant sources?	It depends on your program. For individual program guidance, please refer to the Implementation Notices .
If an Infrastructure project includes buildings and construction materials will need to be documented, does this mean we need to have records that demonstration all items in the housing meet BABA? (Doors, Windows, Roof materials, concrete, door levers, plumbing materials, cabinets, fasteners, nails, caulking, shelving, lighting, insulation, etc.)	It depends on your program. For individual program guidance, please refer to the Implementation Notices .
Does the certification form need to be signed at closing or requisition?	It depends on your program. For individual program guidance, please refer to the Implementation Notices .

SECTION C: AVAILABILITY OF MATERIALS

C.1: Public and Indian Housing (PIH)

Attendee Question	Answer by PIH
Will HUD be publishing sample contract provisions for Public Housing Agency (PHA) contracts with vendors supplying materials covered by BABA?	The impact of BABA on procurements is likely to vary enough that it would be difficult for HUD to promulgate a standard certification as proposed. There are no current plans to require use of a standard certification.
Will the Department waive expenditure dates for Capital Funds when products and materials are not available in sufficient and reasonably available quantities?	The impact of BABA on timely expenditure of Capital Funds is uncertain. The Department will address issues related to this as they arise.

C.2: Guidance for All HUD Programs

Attendee Question	Answer by HUD
What is the penalty if non-BABA compliant materials are inadvertently used in a project or if a contractor verified that materials were compliant, and they were not?	Different programs have different policies, procedures, and rules related to addressing non-compliance. HUD is not in a position to articulate a general rule. For individual program guidance, please refer to the Implementation Notices .
What's an example of public interest other than the materials being too expensive or of low quality?	All the waivers HUD has published so far are examples of public interest waivers. All published waivers can be found at the HUD BABA website's " What if I need a BABA waiver? " page.
Do we need to have material of origins on all products?	It depends on your program. For individual program guidance, please refer to the Implementation Notices .

SECTION D: WAIVERS AND EXEMPTIONS

D.1: Office of Community Planning and Development (CPD)

Attendee Question	Answer by CPD
To clarify, are State Small Cities program sub-awardees (local governments) to submit an application for a project-specific waiver directly to HUD through the email or do they submit it to the State and the State submits it to HUD?	The HUD grantee (i.e., the State) should apply for a project-specific waiver since waivers of regulatory requirements are issued to direct HUD funding recipients. As a result, the State Small Cities program sub-awardees should submit their request and supporting information to their State.

D.2: Public and Indian Housing (PIH)

Attendee Question	Answer by PIH
This question relates to PIH and BABA. Is there written guidance somewhere that states supplemental CNI awards received this summer are automatically waived?	This is addressed in HUD’s Phased Implementation waiver : toward the top of page 7, there is a specific exclusion for supplemental grant funding.
How does HUD define whether a product is available in sufficient and reasonably available quantities or satisfactory quality?	Please refer to the PIH Notice 2024-01 .
If contractors, engineers, architects, etc. do not respond to RFPs, how does an HA know if the BAP would increase the cost of the overall project by more than 25%?	PIH intends to address this issue in guidance that is not yet developed.

D.3: Guidance for all Programs

Attendee Question	Answer by HUD
Will the Simplified Acquisition Threshold ever change? If so, where can it be referenced?	The simplified acquisition threshold is set in regulations issued by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration. Those agencies have the authority to change the threshold. (The current value of the threshold

Attendee Question	Answer by HUD
	<p>was set in 2001.) The regulation is within the Federal Acquisition Regulation, specifically, at 48 CFR 2.101 “Simplified acquisition threshold”. For more information, please refer to HUD’s De Minimis and Small Grants Waiver. Additionally, please refer to the 2 CFR 200.1 because that is what the De Minimis waiver references in regard to the simplified acquisition threshold, and 2 CFR 200.1 references 48 CFR 2.1.</p>
<p>So, if the total project is over \$250K, but individual contracts are less than \$250K, it still applies to all contracts?</p>	<p>The answer to this is not straightforward given that there are factors not included in the scenario that could impact the answer. We recommend consulting individual program guidance, which can be found in the Implementation Notices. Additionally, it may be helpful to consult HUD’s De Minimis and Small Grants Waiver.</p>
<p>If I understand this correctly, the small grant waiver does not relate to the size of a grant but the cost of the project?</p>	<p>Total project cost should be used to determine waiver applicability. For more information, please refer to HUD’s De Minimis and Small Grants Waiver.</p>
<p>I have a construction/infrastructure project that totals \$4.9M. The federal funds are only \$150K. 5% of the \$4.9M is \$246K. So, this would meet the De Minimis waiver?</p>	<p>The De Minimis 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). Please see the De Minimis and Small Grants Waiver for more details.</p>
<p>Is the Small Grant waiver the same as the De Minimis waiver?</p>	<p>No. While De Minimis and Small Grants refer to two different approaches to a waiver, they live in the same document. For more information, please refer to HUD’s De Minimis and Small Grants Waiver.</p>
<p>What threshold will the Department utilize to determine that BABA is excessively disruptive and contrary to the public interest?</p>	<p>The answer to this is not straightforward given that there are factors not included in the scenario that could impact the answer. We recommend consulting individual program guidance, which can be found in the Implementation Notices.</p>
<p>In the event an agency would like to request a waiver in a circumstance of new construction or rehabilitation that involves a “capital stack” that includes numerous Federal financial assistance funds from multiple Federal agencies, is the HA required to submit multiple waivers for each funding source? What if</p>	<p>OMB has communicated that waivers cannot be issued above the individual agency level. Where funding from multiple agencies is involved, the agencies will have to coordinate to avoid conflicts. In its waiver request to each of the Federal agencies from which it is receiving these Federal financial assistance funds, the housing agency should let each agency know about the other agencies, so they can begin the coordination process.</p>

Attendee Question	Answer by HUD
one waiver is approved, but the other(s) is not? How will the various Federal agencies be communicating with one another?	
If the State obligates funds to the HA, does the HA submit a waiver request to the State? Does the State submit a waiver request to HUD?	Waiver requests ultimately have to be authorized by the grantee/recipient of the funding from the Federal Agency that awarded the funding. In this case, it is the State, rather than the housing agency, that submits the waiver request to HUD.

SECTION E: MISCELLANEOUS

Subsection 1: Office of Community Planning and Development (CPD)

Attendee Question	Answer by CPD
Is there BABA language sample to be used?	CPD has provided sample BABA language that CPD grantees should include in all contracts and agreements with subrecipients, contractors, developers, and subgrantees. The language is available in Addendum 3 of CPD Notice 2023-12 .
Can local CDBG grantee require sub-grantee full compliance to BABA for FY23 funding?	The Buy America Preference applies to the iron and steel used in CDBG-funded projects if the CDBG funds were obligated on or after November 15, 2022. All BAP requirements flow with Federal funding and therefore all requirements apply to subgrantees. Additional subgrantee requirements beyond regulatory requirements are at the discretion of the CDBG grantee.
Are we going to have to enter BABA data in IDIS?	Yes, CPD grantees will need to determine if new activities are infrastructure projects as defined by BABA and answer a question providing that information at activity set up in IDIS or DRGR, depending on the program. Additional guidance for CPD grantees is forthcoming.
CDBG will fund \$2.5M of construction costs and \$2M of architectural services and soft costs for a \$28M YMCA construction project. CDBG for construction costs was awarded to city for PY 48 and prior years. CDBG for architectural services and soft costs was awarded to city in PY 49, after November 15, 2022. Does CDBG for architectural services and soft costs trigger BABA for the entire project.	<p>There is a Departmental BABA FAQ available on HUD.gov/BABA that addresses this scenario:</p> <p>Does BABA apply to amendments or renewals of awards made on or after November 15, 2022?</p> <ul style="list-style-type: none"> • It depends. If HUD obligates any new or additional funds in connection with the amendment or renewal of prior awards, then all funds will be subject to BABA unless HUD grants a waiver. Any amendments made by a recipient using funds that it received from HUD before BABA became applicable, would not require the application of the BAP. However, if the recipient adds funds that are subject to the BAP to a project, the entirety of the project would be required to comply with the BAP unless HUD grants a waiver. • To apply for a project-specific waiver, a grantee can complete the waiver request form available on HUD.gov and follow the instructions located on that webpage. Grantees may contact CPDBABA@hud.gov for technical assistance with grant applications. Project-specific waivers are available for the categories of public interest, non-availability of materials, and unreasonable cost.

Subsection 2: Guidance for All HUD Programs

Attendee Question	Answer by HUD
Who is tracking? The grantee/pass-through or the vendor/sub?	The grantee is ultimately responsible but will likely have to rely on information provided by others who will purchase products with grant funds.
Does HUD maintain a comprehensive list of programs covered by BABA that is available to the public?	No, HUD does not have such a list.