



BABA Implementation

Presented by: Fenishia Favorite

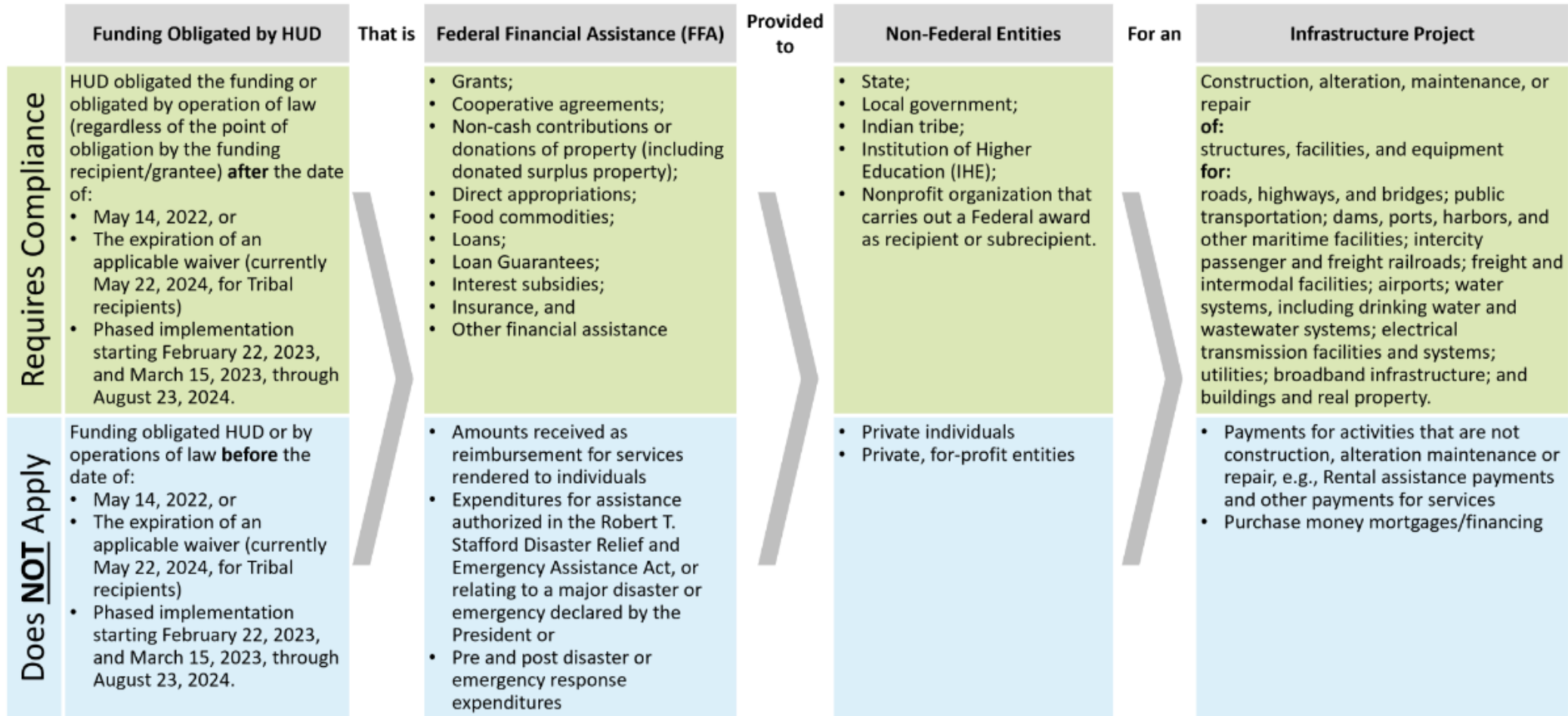
What is BABA?

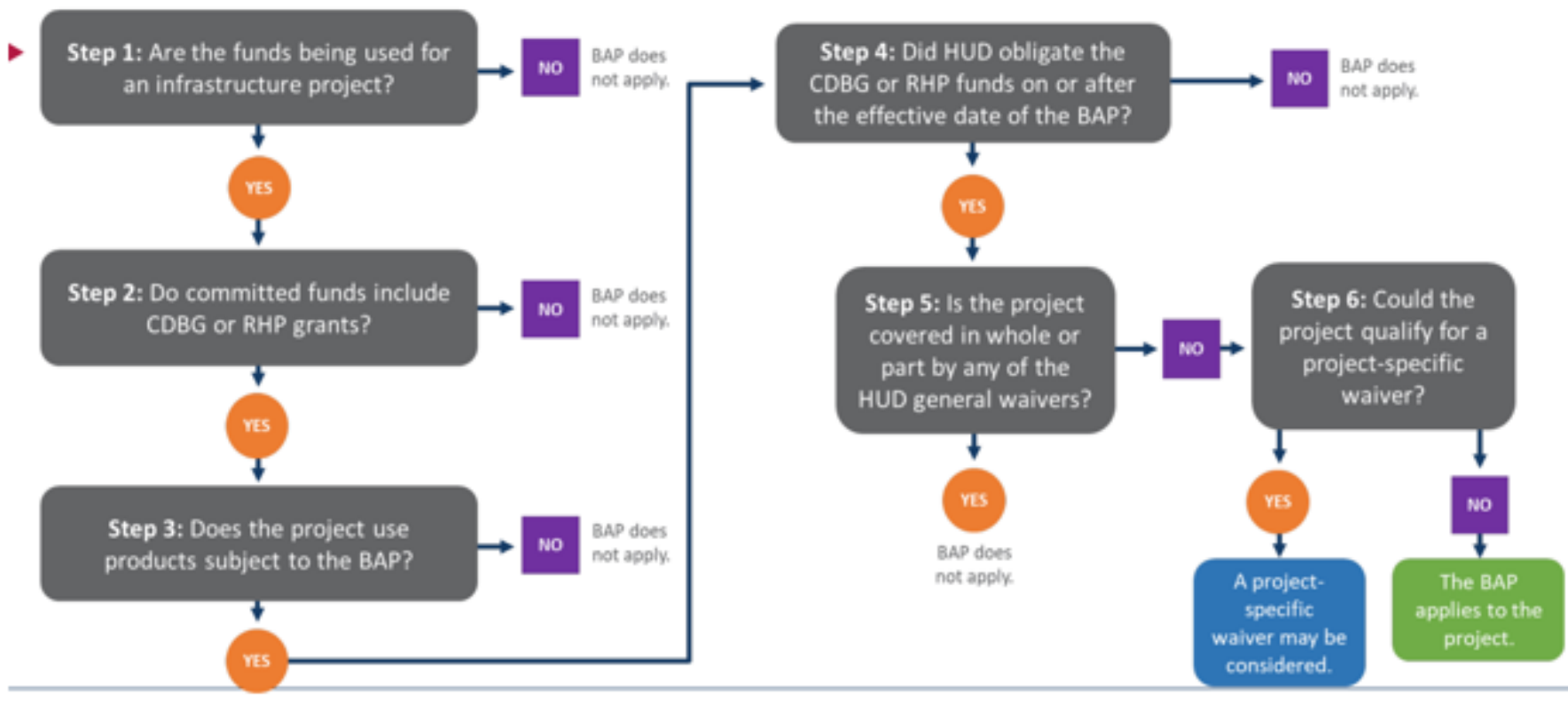
- ▶ The Build America, Buy America Act (BABA), enacted as part of the [Infrastructure Investment and Jobs Act](#) on November 15, 2021, established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. BABA requirements only apply to iron, steel, and manufactured goods brought to a construction site for incorporation into a public building or public work.

HUD's Phased Implementation

- ▶ To facilitate a smooth transition to the BAP requirements, HUD established a Phased Implementation Waiver for its programs based on the date when funds are obligated to the State. All CDBG Formula Grants and Recovery Housing Program Grants funded in FY 2024 that meet BABA requirements and involve the use of Iron and Steel and Construction materials listed (i.e. (1) non-ferrous metals; (2) lumber; and (3) plastic- and polymer based composite building materials, pipe, and tube). Starting in FY 2025, all projects that meet BABA requirements and involve construction materials not listed and manufactured products will be applicable to BAP. More detailed description in the FY 2024 Handbook (P. D-14)

Does BABA apply to my project?





BUILD AMERICA BUY AMERICA(BABA) GUIDE

When Should I start evaluating the effects of BABA on my project?

- ▶ During the application phase it is important to not only specify on the cost estimate if BABA applies to all materials listed, but also evaluate the costs of American made products. This will help the grantee with cost overruns during the bid phase.
- ▶ Availability of products should be determined by contractors during pre construction.

NIST MEP Supplier Scouting

- ▶ <https://www.nist.gov/mep/supply-chain/supplier-scouting>



Contracts and Bid packages

- ▶ There should be language added to the engineer's contract, construction contract, and the bid package to ensure that all parties are aware that BABA is applicable and must be followed.
- ▶ Updates have been made to the sample bid documents and contracts in the FY 2024 Grantee Handbook (Section D)
- ▶ OCD has also updated the contract between the State and the Grantee to include BABA.

Engineer's Cost Estimate

- ▶ The engineer's cost estimate has been updated to include new federal guidelines related to Build America, Buy America (BABA)
- ▶ Per HUD each line item needed for construction should specify if BABA applies or not.
- ▶ If it is determined that any additional construction materials are needed that were not included on the itemized cost estimate during the application phase, then the contractor is required to inform OCD-LGA and ensure BABA requirements are implemented as needed.

ENGINEER'S COST ESTIMATE (Refer to the instructions for the specific information that must be included herein. Attach additional sheets if necessary.)					
CONSTRUCTION:					
(1) TARGET AREA					
DESCRIPTION	QUANTIT Y	UNIT OF MEASURE	UNIT PRICE	AMOUNT	BABA
4" PVC Waterline	5,500	Lin. Ft.	\$ 6.00	\$ 33,000	Yes
6" PVC Waterline	8,500	Lin. Ft.	\$ 8.00	\$ 68,000	Yes
Jack or Bore 4" Waterline	400	Lin. Ft.	\$ 15.00	\$ 6,000	No
Jack or Bore 6" Waterline	500	Lin. Ft.	\$ 18.00	\$ 9,000	No
4" Gate Valve & Box	8	Each	\$ 400.00	\$ 3,200	No
6" Gate Valve & Box	10	Each	\$ 500.00	\$ 5,000	No
Fire Hydrants	8	Each	\$ 1,500.00	\$ 12,000	No
C.I.M.J. Fittings	3,000	Ton	\$ 3,500.00	\$ 10,500	No
Meter Reconnections	150	Each	\$ 100.00	\$ 15,000	No
¾" PE Service Line	100	Lin. Ft.	\$ 3.00	\$ 300	No
Pavement Restoration	100	Sq. Yd.	\$ 50.00	\$ 5,000	No
Maintenance Aggregate	75	Cu. Yd.	\$ 40.00	\$ 3,000	No
				Subtotal:	\$170,000
				Contingencies:	\$17,000
				Estimated Cost:	\$187,000
(2) SYSTEM-WIDE					
DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT PRICE	AMOUNT	BABA
100,000 Gal. Elev. Storage Tank	Lump	Lump Sum	\$276,000.00	\$ 276,000	No
Sitework	Lump	Lump Sum	\$ 15,000.00	\$ 15,000	No
Electrical Controls	Lump	Lump Sum	\$ 10,000.00	\$ 10,000	No
Piping Modifications	Lump	Lump Sum	\$ 10,000.00	\$ 10,000	No
Fencing	600	Lin. Ft.	\$ 15.00	\$ 9,000	No
				Subtotal:	\$320,000
				Contingencies:	\$32,000
				Estimated Cost:	\$352,000
TOTAL ESTIMATED CONSTRUCTION COST:					\$539,000

Exhibit D-9 BABA Certification Form

D-9: BUY AMERICA CERTIFICATION FORM

PURPOSE: The “Buy America Certification Form” is used to certify that, as required by federal law, all of the iron, steel, specific construction materials – non-ferrous metals, lumber, composite building materials, plastic and polymer based pipe and tube, (for FY24 funded projects and forward), all construction materials, including manufactured products (for FY25 funded projects and forward) utilized in federally funded projects with an aggregate of \$250,000 or more funds, including HUD CDBG and RHP funds, are produced in the United States in a manner that complies with the Build America, Buy America Act, unless an applicable waiver applies or is granted by the Made in America Office of Management and Budget (MIAO).

GENERAL INFORMATION: BABA guidance requires the following Buy America preference: 1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States for FY 2023 funded projects forward; and, 2. All listed manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and, for FY 2025 funded projects forward; 3. All (listed and non-listed) construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

CERTIFICATION: I hereby certify the materials installed/to be installed pursuant to the attached Submittal conform to the Build America, Buy America Provisions. Signing this document does not alleviate the signee of providing evidence of such a request.

Grantee Name & Grant Number: _____
Authorized Representative (Print): _____
Signature: _____
Prime Contractor: _____
Phone Number: _____
Email: _____

The Prime Contractor is responsible for all subcontractors and also ensuring that all manufacturers and suppliers certify materials with the understanding that those certifying the material assume full legal responsibility of the material and are subject to providing documentation verifying the material meets all requirements upon demand. Engineers and/or Architects signed or stamped acceptance of the attached submittal declares the submittals and accompanying materials meet BABA requirements. Any additional materials needed for the project should be itemized, specify if BABA applies, and then certified by the engineer prior to submittal to OCD.

*** Attach the final certified itemized cost estimate that identifies all materials subject to BABA**

General Waivers

- ▶ Emergency - This waiver applies when there is an urgent need by a grantee to immediately complete an infrastructure project because of a “exigent circumstances,” or a threat to life, safety, or property of residents and the community.
- ▶ Small Grants - BABA requirements do not apply to infrastructure projects whose total cost is equal to or less than the current Simplified Acquisition Threshold of \$250,000.
- ▶ De Minimis Waiver -BABA requirements do not apply for a De Minimis portion of an infrastructure project, meaning a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials, up to a maximum of \$1 million.

De Minimis Waiver Example

- ▶ The de minimis waiver gives grantees the flexibility to waive the “Buy America Preference (BAP)” for a 5 percent de minimis portion of materials used in a project if domestically produced equivalents cannot be identified, up to \$1 million.
- ▶ To determine the de minimis limit for a project, first calculate the total cost of materials used in the project. Then, find 5 percent of that total.
- ▶ For example, if the total cost of materials in a project is \$450,000, and you are unable to locate a domestically produced material, you have the flexibility to procure up to \$22,500 in materials from foreign sources using the de minimis waiver.
- ▶ OCD must be notified of the intent to use general waivers! Please submit a request including all documentation.

Project - Specific Waivers

- ▶ Project/product-specific waivers are available on a limited, case-by-case basis, after OCD-LGA and HUD's review, a public comment period, and final approval from the Office of Management and Budget's Made In America Office (MIAO).
- ▶ A waiver should be requested from OCD-LGA if an extenuating circumstance occurs that meets one of the following criteria: 1. Public interest: Adhering to the BAP would be inconsistent with the public interest. 2. Non-availability: Covered materials are not produced in the USA in sufficient and reasonably available quantities or of a satisfactory quality. 3. Unreasonable cost: Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25 percent.
- ▶ If more than one Federal agency is funding an infrastructure project, project-specific waivers will require coordination among those Federal agencies prior to a determination by the MIAO.
- ▶ **Due to the time restraints attached to CDBG projects OCD-LGA will only approve timely waivers be sent to HUD with substantial documentation meeting the above-listed criteria.**

Questions?

- ▶ **BABA is new and OCD's BABA policies may be updated based on HUD guidance.**

- ▶ Fenishia Favorite
225-342-5884
Fenishia.Favorite@la.gov