

## CHECKLIST

# Build America, Buy America Act: Optional Buy America Preference (BAP) Applicability Checklist



For more information on BABA and the BAP, [visit the BABA page](#) on the HUD exchange.

## Overview

This checklist is an optional tool that may be used or adapted to assist with determining if the Buy America Preference (BAP) applies to an infrastructure project funded by a covered CPD program. This checklist follows the analysis steps as described in [Notice CPD 2023-12](#) and may be retained for recordkeeping purposes.

## Project Information

Grantee	
Grant Number	
Activity Name	
Activity Number (IDIS/DRGR)	

### Step 1:

Is the project an infrastructure project, as defined by the BABA statute?

<input type="checkbox"/> Yes	Continue to Step 2.
<input type="checkbox"/> No	The BAP does not apply. The BAP only applies to infrastructure projects. Stop here.

This material is based upon work supported, in whole or in part, by Federal award number C 21 TA MD 0009 awarded to Enterprise Community Partners, Inc. by the US Dept of HUD. The substance and findings of the work are dedicated to the public. Neither the United States Government, nor any of its employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any individuals, agencies, companies, products, process, services, service by trade name, trademark, manufacturer, or otherwise does not constitute or imply an endorsement, recommendation, or favoring by the author(s), contributor(s), the U.S. Government or any agency thereof. Opinions contained herein are those of the author(s) and do not necessarily reflect the official position of, or a position that is endorsed by, HUD or any Federal agency.



**Step 2:**

Is the project funded using a covered CPD program? (Check the box below for each CPD program funding this project.)

**Group A: Covered CPD Programs**

<input type="checkbox"/>	CDBG	<input type="checkbox"/>	SHOP
<input type="checkbox"/>	Section 108	<input type="checkbox"/>	VHRMP
<input type="checkbox"/>	HOME	<input type="checkbox"/>	CPF/EDI
<input type="checkbox"/>	HTF	<input type="checkbox"/>	Section 4
<input type="checkbox"/>	RHP	<input type="checkbox"/>	Rural Capacity Building
<input type="checkbox"/>	ESG	<input type="checkbox"/>	PRO Housing
<input type="checkbox"/>	CoC	<input type="checkbox"/>	PRICE
<input type="checkbox"/>	HOPWA	<input type="checkbox"/>	FY23 PSH Funds

**Group B: CPD Programs Not Covered by the BAP**

<input type="checkbox"/>	CDBG-DR	<input type="checkbox"/>	CDBG-CV
<input type="checkbox"/>	CDBG-MIT	<input type="checkbox"/>	HOPWA-CV
<input type="checkbox"/>	CDBG-NDR	<input type="checkbox"/>	ESG-CV
<input type="checkbox"/>	HOME-ARP		

If you selected **any** Group A programs (even if Group B programs are also selected), answer yes. If you selected **only** Group B programs, answer no.

<input type="checkbox"/> <b>Yes</b>	Continue to Step 3.
<input type="checkbox"/> <b>No</b>	The BAP does not apply to this project because it is not funded by a covered CPD program. Stop here.

**Step 3:**

**Will the project use covered materials?**

Each material should be classified into only one category: iron and steel, specifically listed construction materials, not listed construction materials, or manufactured products. This classification is necessary to apply HUD’s Phased Implementation waiver.

Check the box below for each type of covered material incorporated into this infrastructure project.

<input type="checkbox"/>	Iron or steel
<input type="checkbox"/>	Specifically Listed Construction materials
<input type="checkbox"/>	Not Listed Construction materials
<input type="checkbox"/>	Manufactured products

If you checked any boxes above, answer yes.

<input type="checkbox"/> <b>Yes</b>	Continue to Step 4.
<input type="checkbox"/> <b>No</b>	The BAP does not apply to this project because it will not incorporate any covered materials. Stop here.



Photo by Pixabayon Pexels



Photo by Marissa Daeger on Unsplash



Photo by Freepik



**Step 4:**

**Based on the obligation date of the covered CPD program funds, does the BAP apply to the funding source and covered materials that will be used in the project?**

Use the phased implementation table to determine whether the BAP applies based on the obligation date for the covered CPD program funds and classification of materials. The BAP may only apply to some covered materials used in the project.

The obligation date is generally the date that HUD executed the grant agreement for covered CPD program funds to the grantee. This date may be found in the grant agreement. The obligation date is not the date when the grantee commits funds to a project under a subrecipient agreement.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	Not Listed Construction Materials	Manufactured Products
<b>CDBG</b>	CDBG funds obligated on or after 11/15/22	Projects using FY24 CDBG funds	Projects using FY25 CDBG funds	Projects using FY25 CDBG funds
<b>RHP</b>	RHP funds obligated on or after 8/23/23	Projects using FY24 RHP funds	Projects using FY25 RHP funds	Projects using FY25 RHP funds
<b>All other CPD programs except HOME and HTF</b>	Funds obligated on or after 2/22/24	Funds obligated on or after 8/23/24	Funds obligated on or after 8/23/24	Funds obligated on or after 8/23/24
<b>HOME and HTF</b>	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24	HOME or HTF funds obligated on or after 8/23/24

<input type="checkbox"/> <b>Yes</b>	Indicate here which covered materials the BAP applies to and continue to Step 5: <input type="checkbox"/> Iron and steel <input type="checkbox"/> Specifically listed construction materials <input type="checkbox"/> Not listed construction materials <input type="checkbox"/> Manufactured products
<input type="checkbox"/> <b>No</b>	The BAP does not apply to this project because the funds were obligated before the effective date for the program/materials used in the project. Stop here.



**Step 5:**

**HUD has issued several general waivers. Check the box next to any conditions that apply to the project.**

*Infrastructure projects that meet the conditions of a general waiver may be exempt in whole or in part from the BAP.*

<input type="checkbox"/>	The total cost of the project from all sources (Federal and non-Federal) is an amount equal to or less than the 2 CFR 200.1 simplified acquisition threshold, which is currently \$250,000. If checked, the Small Grants Waiver applies, and the project is exempt from the BAP. (Waiver effective until November 23, 2027.)
<input type="checkbox"/>	There is an urgent need to immediately complete the project because of a threat to life, safety, or property. If checked, the Exigent Circumstances Waiver applies, and the project is exempt from the BAP. (Waiver effective until November 23, 2027.)
<input type="checkbox"/>	The project is in Guam, American Samoa, or the Northern Mariana Islands. If checked, the Pacific Island Territories Waiver applies, and the project is exempt from the BAP. (Waiver effective until February 15, 2025.)
<input type="checkbox"/>	The project is being funded by a Tribal recipient. If checked, the Tribal Recipients Waiver may apply, and the project is exempt from the BAP. (Waiver effective until September 30, 2024.)

If you checked any of the boxes above, answer yes below.

<input type="checkbox"/>	<b>Yes</b>	The HUD general waiver selected above is being applied to this project, so the BAP does not apply to the entire project. Documentation of the conditions of the waiver should be attached.
<input type="checkbox"/>	<b>No</b>	Proceed to Step 5a.

**Step 5a:**

**Calculate the *De Minimis* limit for the project:**

*The total cost of all covered materials includes all iron and steel, construction materials, and manufactured products used in the project, regardless of whether the BAP currently applies under the Phased Implementation waiver.*

Enter the total cost of all covered materials:	
Multiply that amount by 0.05 (5%):	
Enter the lower of the number calculated in the row above or \$1,000,000:	

The amount in the third row above is the *De Minimis* limit for this project. The BAP can be waived for covered materials from foreign or unknown sources at a cost not to exceed the *De Minimis* limit of 5% of the total cost of materials or \$1,000,000 (whichever is less). The BAP will still apply to other covered materials used in the project. **Attach a list of covered materials and their associated costs to which the *De Minimis* limit has been applied.**



**Step 6:**

**Is there a need for a project-/product-specific waiver?**

*If the BAP applies to a project and all general waiver flexibilities have been utilized, but there are remaining covered materials that can only be sourced from foreign or unknown sources, then a grantee may apply for a project-/product-specific waiver.*

<input type="checkbox"/> <b>Yes</b>	Refer to guidance in Section VII Step 6 of Notice CPD 2023-12.
<input type="checkbox"/> <b>No</b>	Stop here and retain this analysis in project records.

Completed by	Date Completed



**CHECKLIST**

**Build America, Buy America Act:**  
Optional Buy America Preference  
(BAP) Applicability Checklist