

WEBINAR

# Build America, Buy America Act (BABA)

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Buy America Preference (BAP) for CDBG and RHP Grantees



# Presenters

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# Objectives

- Provide an overview of the “Buy America Preference” (BAP) requirement of the Build America, Buy America Act (BABA) as it applies to CDBG and RHP grantees
- Cover practical steps grantees should take to implement the BAP



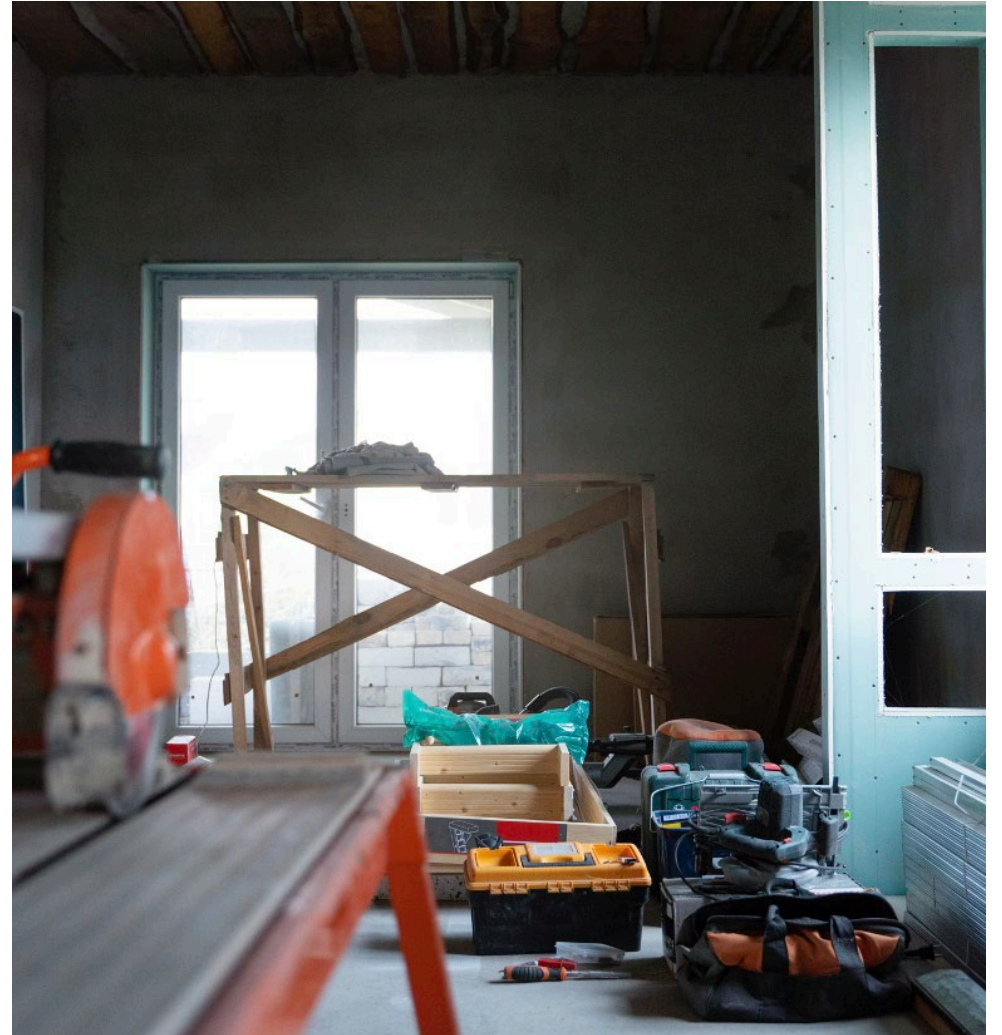


# Agenda

- Project Planning
- Project Implementation and Recordkeeping
- Project Examples

# What Is the Build America, Buy America Act (BABA)?

- Requires that iron, steel, construction materials and manufactured products used in infrastructure projects be produced in the United States
- Buy America Preference (BAP)
  - Requirement established by BABA
  - Applicable to all Federal infrastructure spending





# What Projects and Products Are Covered by the BAP?

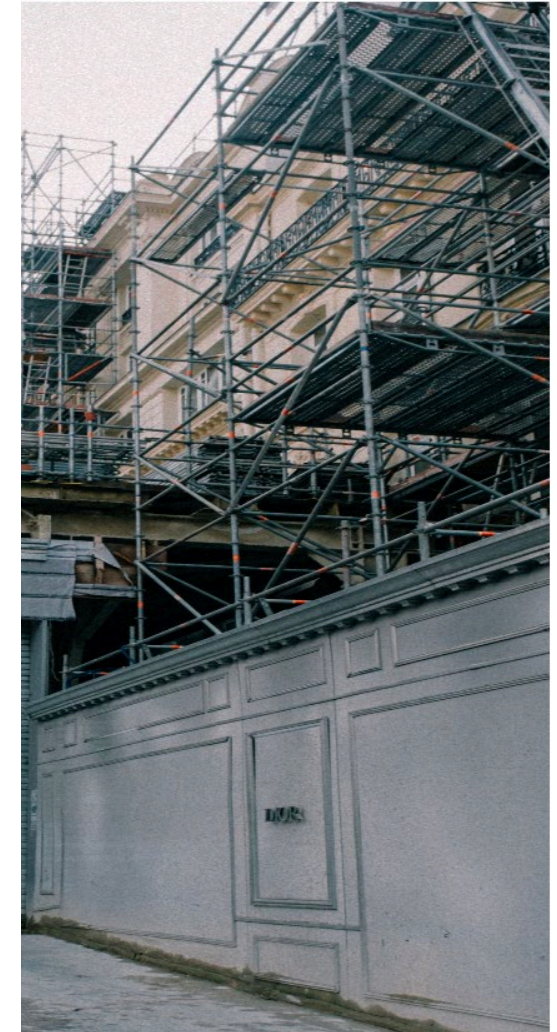


# What Projects Are Covered?

For the purposes of the BAP, an infrastructure project is defined broadly as any project that includes:

- Construction
- Alteration
- Maintenance
- Repair

***Even if the primary purpose of the project is not “infrastructure”***





# What Projects Are Covered?

## Examples of CPD-funded activities that may be subject to the BAP:

- Rehabilitation of buildings and real property
- Construction of public facilities and improvements, such as streets, sidewalks, neighborhood centers, and the conversion of buildings for eligible purposes
- Utility installation or improvements
- Water systems (drinking water and wastewater)
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation infrastructure

## Examples of CPD-funded activities that may NOT be subject to the BAP:

- Acquisition of real property
- Relocation and demolition
- Public services
- Shelter or public facility operating expenses
- Supportive services
- Short-term payments to prevent homelessness
- Special economic development activities
- Administrative activities
- Disaster and emergency response



# What Products Are Covered?

The following products used in covered infrastructure projects **must** be produced in the United States:

- Iron and Steel
- Construction Materials
- Manufactured Products





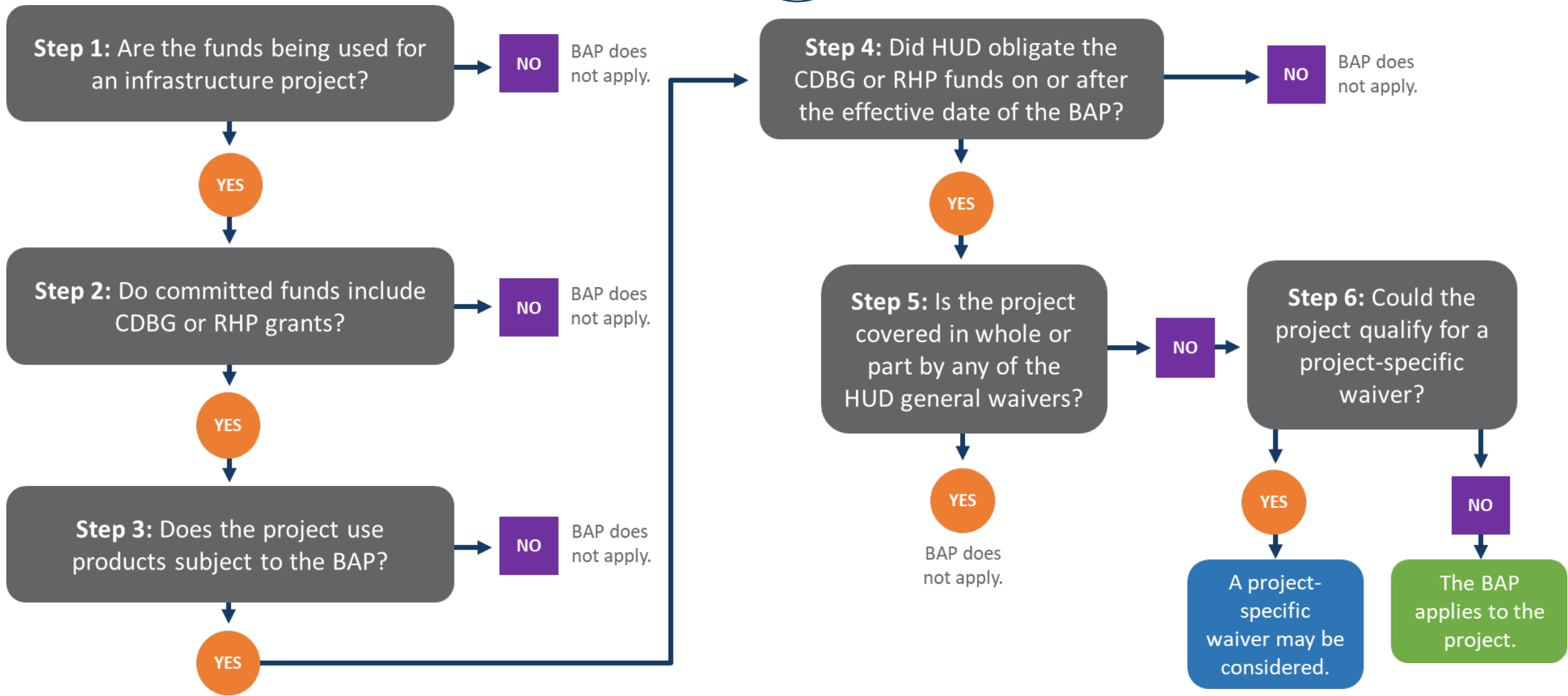
# Project Planning



# BAP Determination Overview

## Possible outcomes of the BAP determination process:

- Comply with the BAP
- Utilize one of HUD's general waivers
- Obtain a project-specific waiver to exclude the project (or a portion of the project) from the BAP
- The BAP does not apply because the project does not meet the definition of an infrastructure project





## Step 1: Are the funds being used for an infrastructure project?

YES

If yes: Continue to Step 2

NO

If no: The BAP does not apply. The BAP only applies to infrastructure projects.

### Examples of CDBG and RHP projects that are considered infrastructure projects according to BABA include:

- Rehabilitation, maintenance, and reconstruction of buildings and real property
- Construction and repair of infrastructure and improvements, such as water, sewer, or other utilities, roads, bridges, sidewalks, or broadband infrastructure
- Construction or repair of public facilities such as homeless shelters, senior centers or parks



## Step 2: Do committed funds include CDBG or RHP grants?

### Review the entire project budget



If yes: Continue to Step 3



If no: The BAP does not apply to this project due to the inclusion of CPD funds. However, the grantee must consider if the BAP would apply due to the inclusion of other Federal funding.



## Step 3: Does the project use products subject to the BAP?

**Identify and classify the products that will be used in the infrastructure project. Will the project incorporate iron or steel, construction materials, or manufactured products?**

**YES** If yes: Continue to Step 4

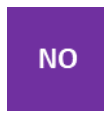
**NO** If no: The BAP does not apply.



# Step 4: Did HUD obligate the CDBG funds on or after the effective date of the BAP?



If yes: Continue to Step 5

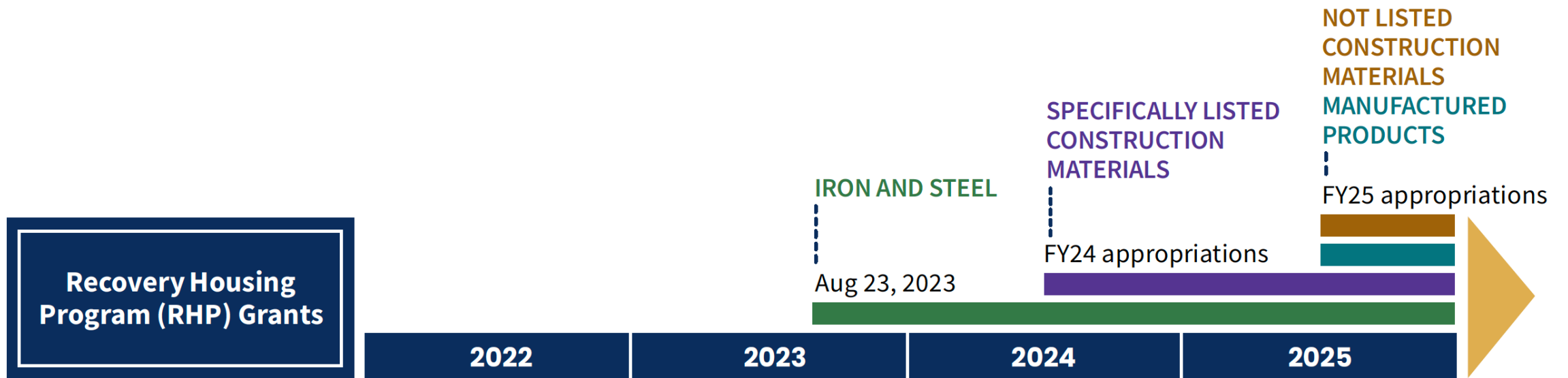


If no: The BAP does not apply.

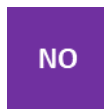




# Step 4: Did HUD obligate the RHP funds on or after the effective date of the BAP?



If yes: Continue to Step 5



If no: The BAP does not apply.



## Step 5: Is the project covered in whole or part by any of the HUD general waivers?

### 1. *Exigent Circumstances:*

- Is there an urgent need to complete the project because of a threat to life, safety, or property?

**YES** If yes: The Exigent Circumstances waiver may apply, and the BAP is not required for the project.

**NO** If no to waivers 1 through 3: Continue to Step 6



## Step 5: Is the project covered in whole or part by any of the HUD general waivers?

### 2. *De Minimis, Small Grants, and Minor Components:*

- Is the total cost of the project from all sources equal to or less than \$250,000?

YES

If yes: The De Minimis waiver may apply, and the BAP would not apply.

- OR -

This 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).

NO

If no to waivers 1 through 3: Continue to Step 6



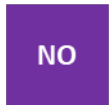
## Step 5: Is the project covered in whole or part by any of the HUD general waivers?

### ***3. Tribal Recipients:***

- Is the project being funded by a Tribal Recipient?



If yes: The Tribal Recipients waiver may apply, and the BAP is not required for the project.



If no to waivers 1 through 3: Continue to Step 6



## Step 6: Could the project qualify for a project-specific waiver?

**HUD may issue a project-specific waiver to the BAP if it is determined that a waiver falls into one of the following three categories: public interest, nonavailability of materials, or unreasonable cost.**

- CPD grantees may request a project-specific waiver on a limited, case-by-case basis
- HUD may grant a project-specific waiver after consultation and review with the OMB's MIAO



## Step 6: Could the project qualify for a project-specific waiver?

- **Public Interest Waiver:** Requiring the use of an American-made product would be inconsistent with the public interest
- **Nonavailability Waiver:** The product you need is not produced in the United States in sufficient quantities or of a satisfactory quality
- **Unreasonable Cost Waiver:** The inclusion of the American-made product will increase the cost of the overall project by more than 25 percent

YES

If yes: A project-specific waiver may be considered.

NO

If no: The BAP applies to the project. 



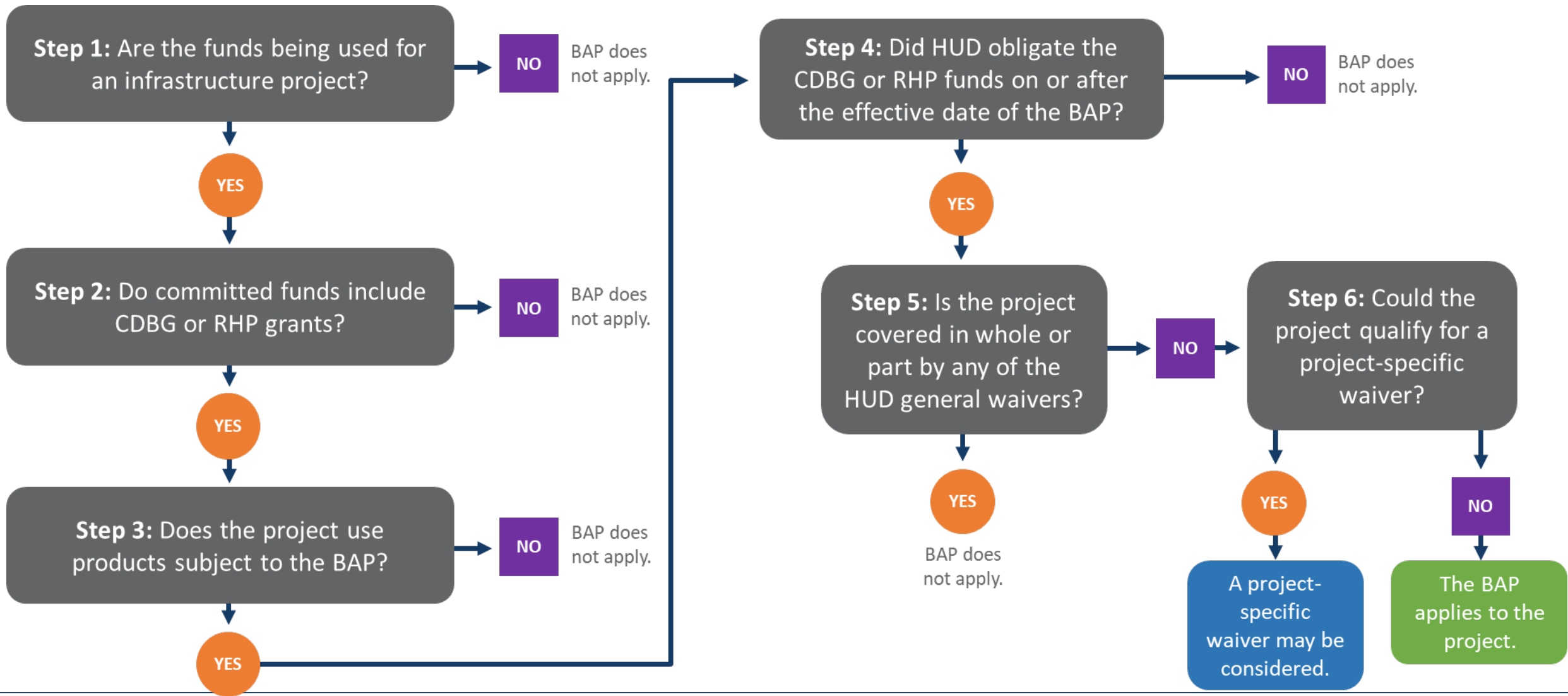
## Step 6: Could the project qualify for a project-specific waiver?

YES

If yes: A project-specific waiver may be considered.

At this time, HUD's BABA waiver process is as follows:

1. Contact [CPDBABA@hud.gov](mailto:CPDBABA@hud.gov) for technical assistance as needed
2. Prepare a "Build America Buy America Waiver Request" with the information required by the MIAO
3. Submit a waiver application with all necessary information to HUD at [BuildAmericaBuyAmerica@hud.gov](mailto:BuildAmericaBuyAmerica@hud.gov)
4. Provide additional information as requested by HUD during the review process to proceed with public comment in the Federal Register and final approval by MIAO
5. HUD reviews waivers before they are posted to the Federal Register for public comment and sent to the MIAO for approval. If approved, the waiver is posted on [MadeInAmerica.gov](https://www.madeinamerica.gov).



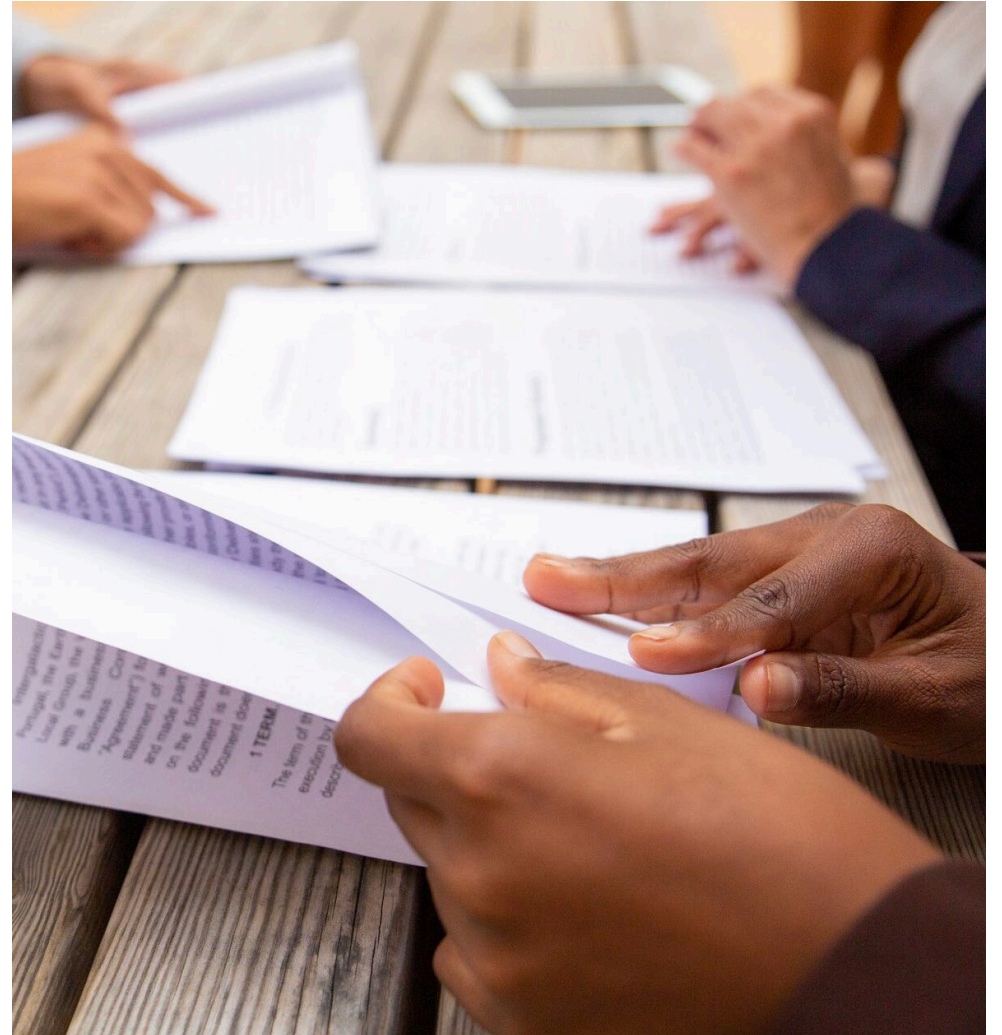




# Project Implementation and Recordkeeping

# Procurement and Subrecipient Selection

- Review existing procurement policies and procedures and develop new administrative steps to implement the BAP requirements
- Ensure all CDBG and RHP awards for infrastructure projects include the BAP in the terms and conditions





# Recordkeeping

- Ensure that all relevant stakeholders are informed about the BAP requirements
- Determine whether a project is subject to the BAP and, if so, for which classification(s) of products
- Maintain documentation in accordance with applicable program requirements for recordkeeping and record retention
- Grantees are responsible for ensuring that all records related to BABA compliance are properly maintained, including any records kept by third parties (subrecipients, contractors, etc.)



# Project Examples



# Examples - Does the BAP Apply?

In April 2025, a grantee awards \$100,000 in FY24 CDBG funds and \$500,000 in FY22 CDBG funds for the rehabilitation of a community park. The grantee classified all items needed to complete the project, which include iron and steel, manufactured products, specifically listed construction materials and other not listed construction materials. Does the BAP apply to this project?





## Examples - Does the BAP Apply?

- ✓ The project is an infrastructure project using items from each type of product classification
- ✓ The project's total budget is \$600,000
- ✓ The project is using FY2024 CDBG funds

**YES**

**The BAP applies to iron or steel and specifically listed construction materials used in this project.**

The BAP does not apply to not listed construction materials and manufactured products used in this project because the CDBG funds were obligated prior to the effective date for those products. Note that because the project includes funds subject to the BAP, the entire project is subject to the BAP, even though some of the CDBG funds were obligated before the BAP applied.



# Examples - Does the BAP Apply?

An RHP subrecipient undertakes a project to provide financial assistance to eligible beneficiaries to pay for recovery housing through monthly rent and utility subsidies. The program budget is \$300,000 using FY2023 and FY2024 awards. Does the BAP apply to this project?

*Note: Income payments must be paid on behalf of the beneficiary, not as a direct cash payment.*





# Examples - Does the BAP Apply?

- ✓ The RHP funds were obligated in FY2024
- ✓ The total budget is \$300,000
- ❖ The project does not involve construction, alteration, maintenance, or repair of infrastructure such as building and real property improvements

**NO**

**The BAP does not apply to this project even though the RHP funds were obligated by HUD in FY2024 because it is not an infrastructure project.**





# Key Takeaways



# Key Takeaways

- The BAP applies to projects that include the construction, alteration, maintenance, and repair of infrastructure
- All components necessary to complete an infrastructure project should be classified to identify each item as either iron and steel, construction materials, or a manufactured products to determine when the BAP applies
- Review the pipeline of planned and underway CDBG and RHP funded infrastructure projects to identify which funding sources and materials are subject to the BAP
- For more details on these items, refer to the CPD Quick Guide posted on the HUD Exchange



# Key Takeaways

- Review the steps in Notice CPD-2023-12 to determine applicability of the BAP at the project and product level
- Grantees should document the process to analyze if the BAP applies as part of recordkeeping for CDBG and RHP funded infrastructure projects
- Include the BAP language in all written agreements, contracts, subawards, and material procurement documents



# Key Takeaways

## General waivers include:

- Exigent Circumstances
- Small Grants and De Minimis
- Tribal Recipients
- Phased Implementation

## Project-specific waivers include:

- Public Interest
- Nonavailability
- Unreasonable Cost



# Q & A



# Resources

- [BABA on HUD Exchange](#)
- [BABA on HUD.gov](#)
- [BABA CPD Overview Quick Guide](#)
- BABA [CDBG Quick Guide](#) and [RHP Quick Guide](#)
- [2 CFR 184](#)
- [2 CFR 200.322](#)
- [Notice CPD-23-12](#)

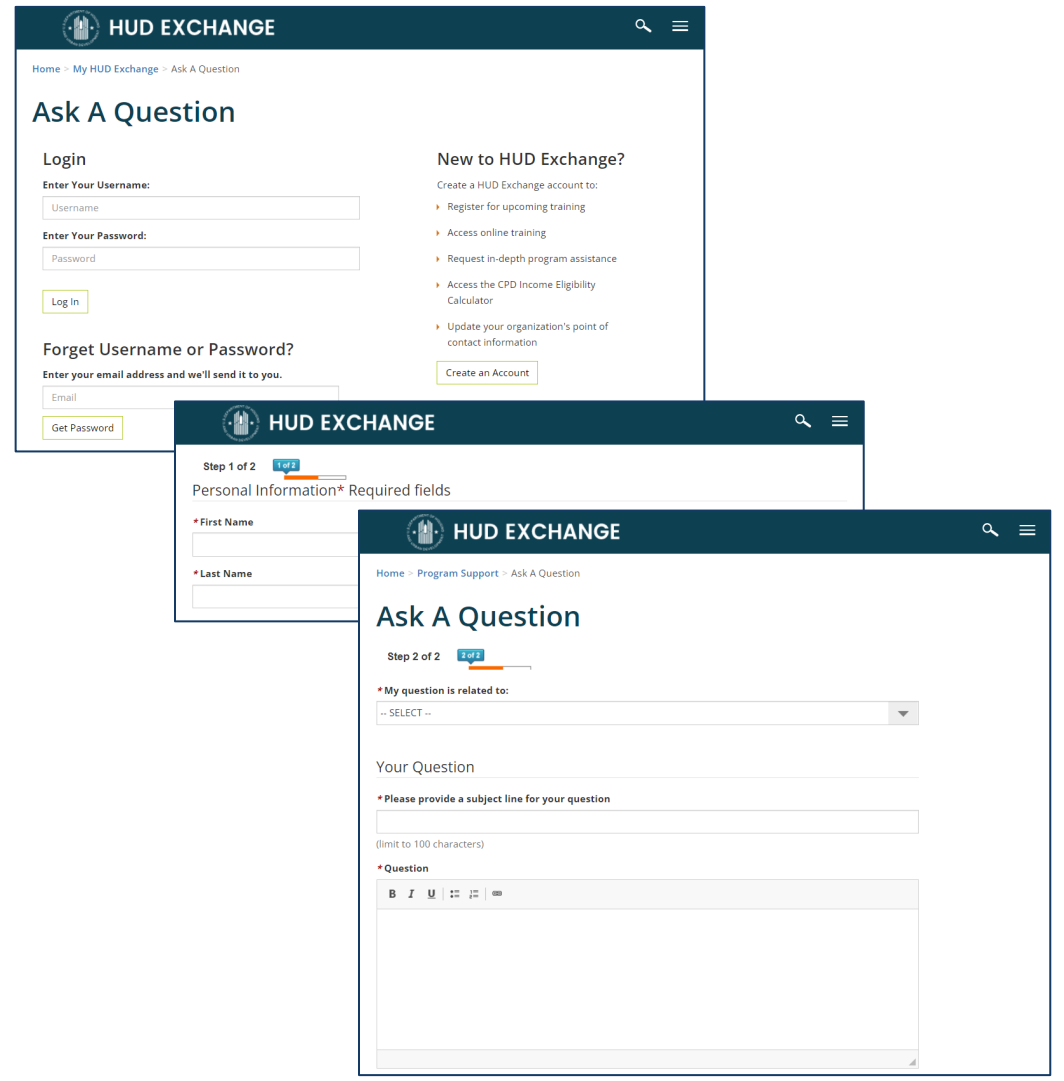


# Questions? Submit an AAQ on HUD Exchange



# BABA AAQ on HUD Exchange

- Go to [HUD Exchange AAQ](#) website
- Log in or create an account
- Enter Personal Information
- Enter Question
  - My question is related to:  
BABA: Build America, Buy America Act







# Next Steps



# BABA Webinar Series

Topic	Date and Time
BABA Webinar for HUD CPD Grantees	Materials will be posted to <a href="#">BABA on HUD Exchange</a>
BABA Webinar for CDBG and RHP Grantees	Materials will be posted to <a href="#">BABA on HUD Exchange</a>
BABA Webinar for ESG and CoC Grantees	November 29, 2023; 2-3pm EST
BABA Webinar for CPF Grantees	December 5, 2023; 2-3pm EST
BABA Webinar for HOPWA Grantees	January 17, 2024; 2-3pm EST
BABA Case Studies	January 31, 2024; 2-3pm EST
BABA Webinar for HOME and HTF Grantees	April 23, 2024; 2-3pm EST

# THANK YOU!

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