

WEBINAR

Build America, Buy America Act (BABA)

Buy America Preference (BAP) for ESG and CoC 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 ESG and CoC grantees
- Cover practical steps grantees should take to implement the BAP



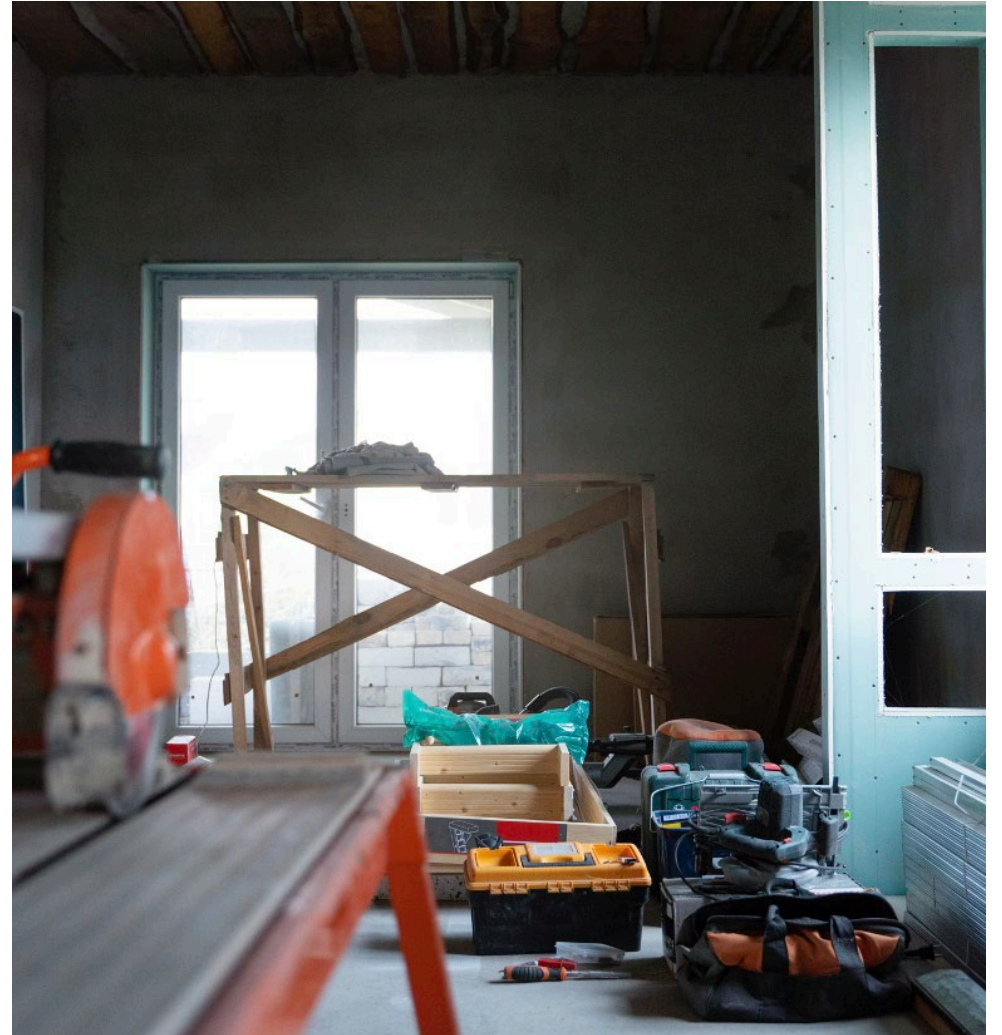


Agenda

- 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?

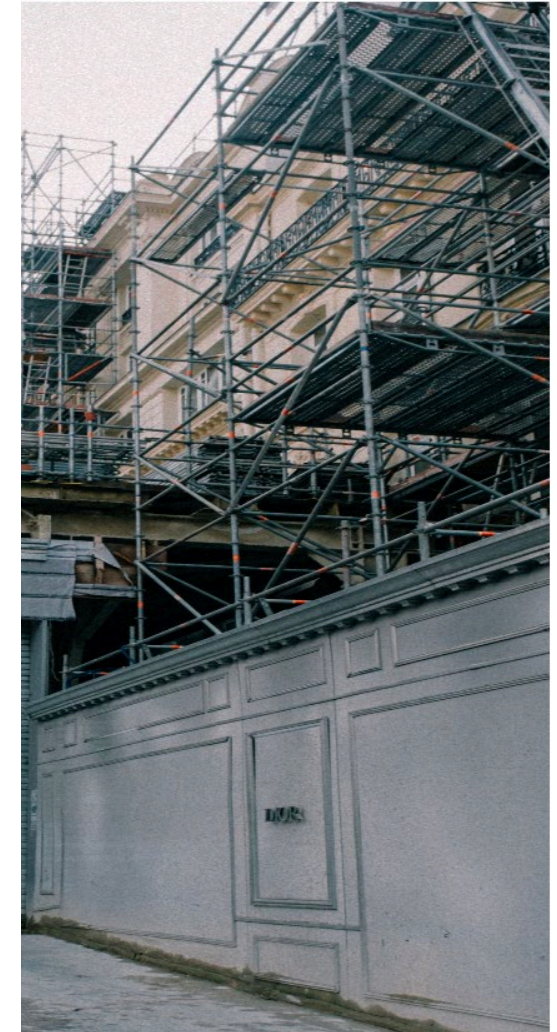


What Projects Are Covered?

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 activities that may be subject to the BAP:

- Rehabilitation of buildings and real property
- Construction of public facilities and improvements, such as shelters

Examples of activities that may NOT be subject to the BAP:

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

What Products Are Covered?

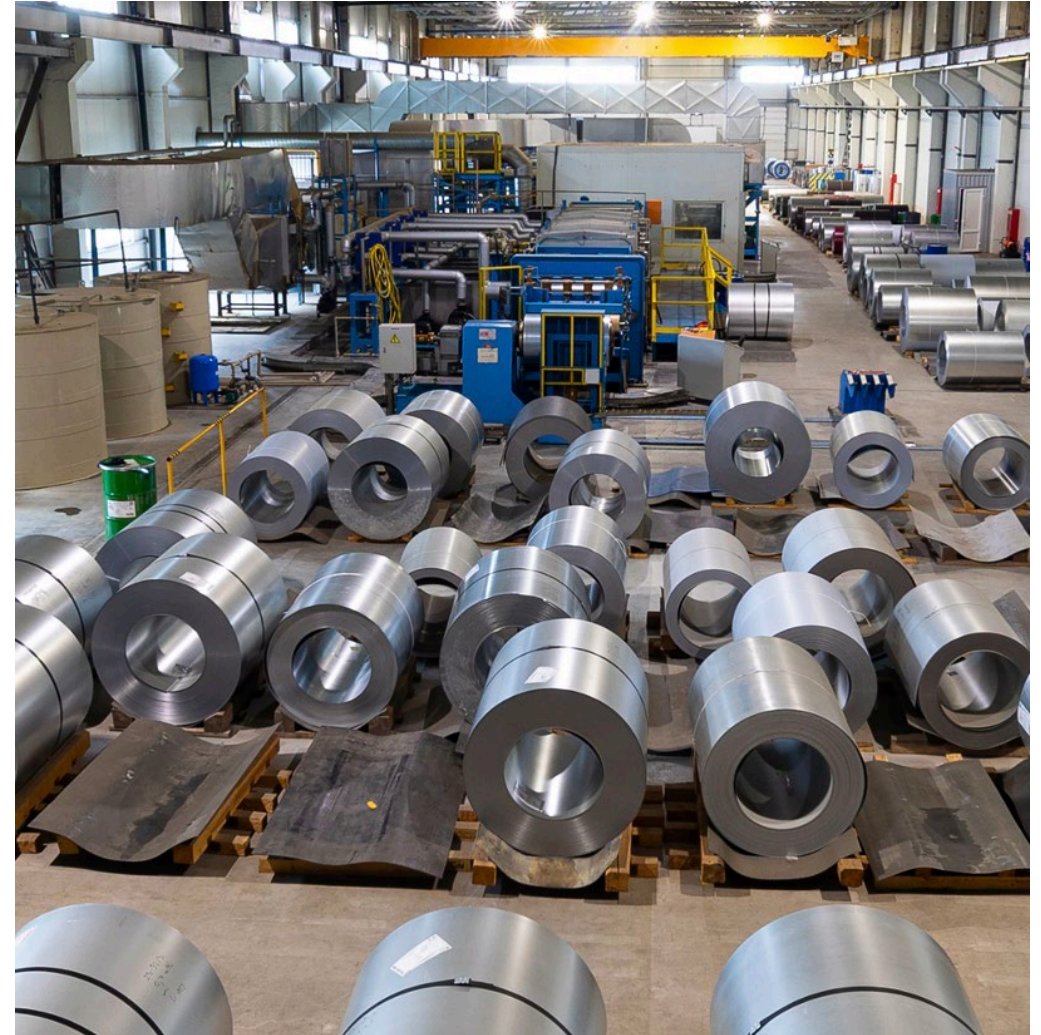
The following products used in covered infrastructure projects must be produced in the United States:

- Iron and Steel
- Construction Materials
- Manufactured Products



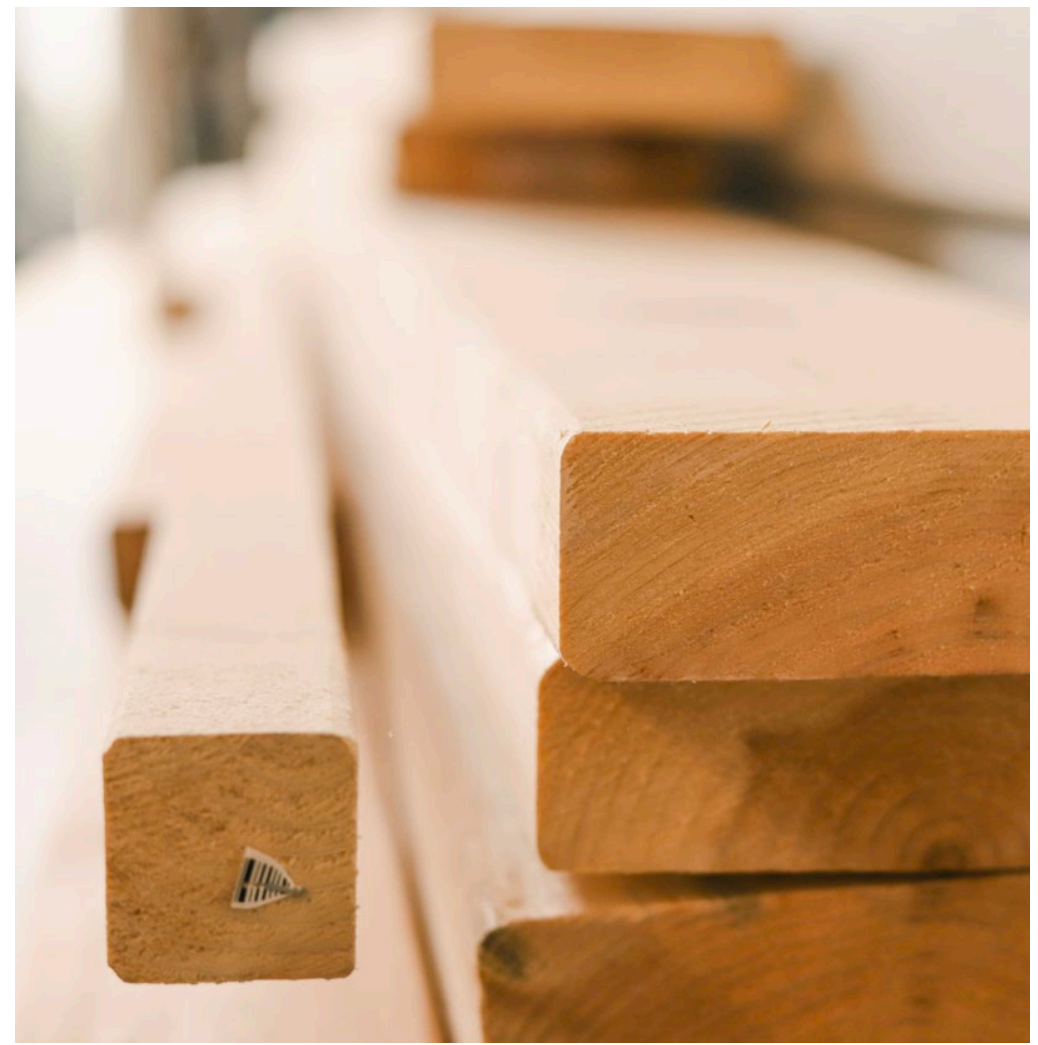
Iron and Steel

- **WHAT:** Items consisting completely or predominantly of iron, steel, or both
- **HOW:** All manufacturing, from initial melting through application of coatings, must occur in the United States



Construction Materials

- **WHAT:** Construction materials are divided into two categories: "specifically listed" and "not listed"
- **HOW:** All manufacturing processes must occur in the United States



Manufactured Products

- **WHAT:** 1) Materials processed into a specific form or shape, OR 2) materials combined with other items to create a product with different properties
- **HOW:** Final product must be manufactured in the US and at least 55% of cost components must be produced or manufactured in the US





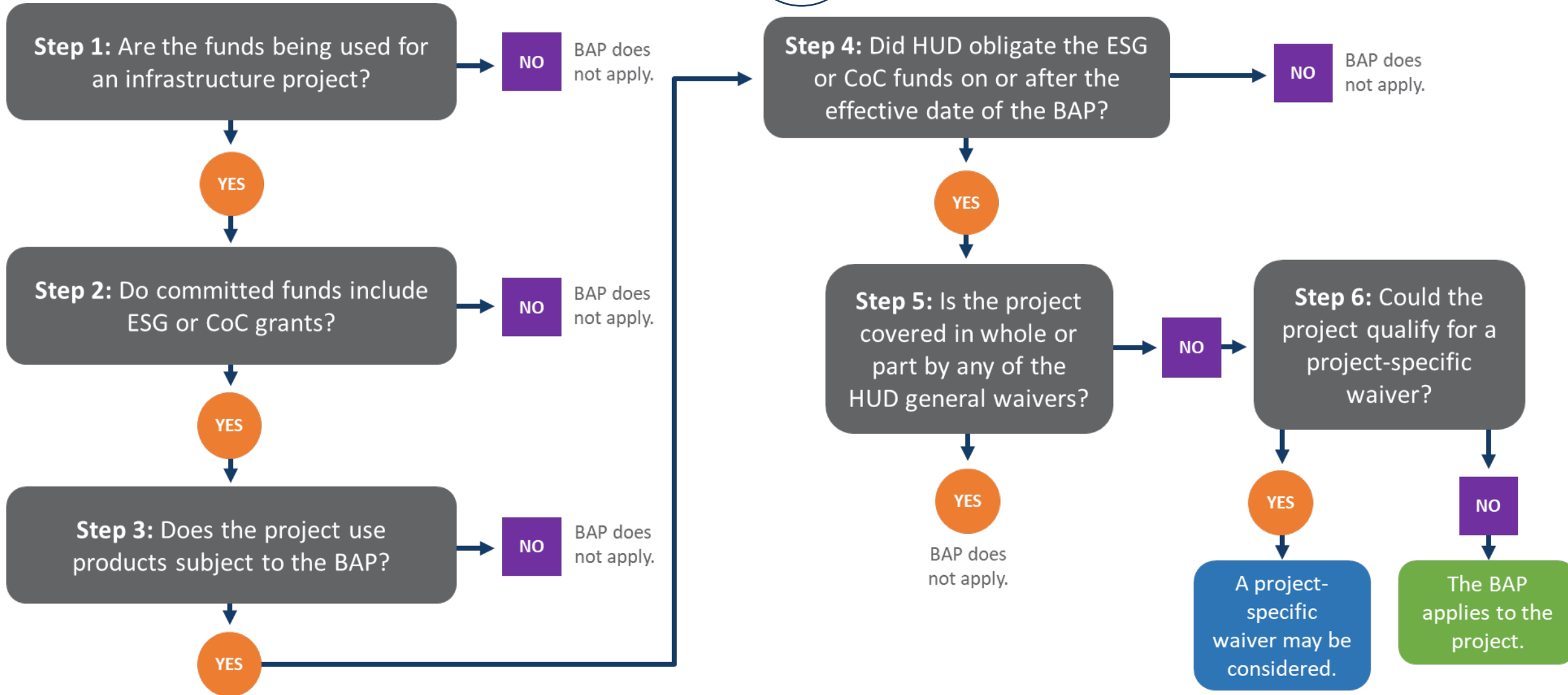
Project Planning



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 ESG and CoC projects that are considered infrastructure projects according to BABA include:

- Rehabilitation, maintenance, and reconstruction of buildings and real property
- Renovation or repair of public facilities such as temporary homeless shelters, emergency shelter, or conversion of a building into an emergency shelter



Step 2: Do committed funds include ESG or CoC grants?

Review the entire project budget

- YES** If yes: Continue to Step 3
- NO** 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

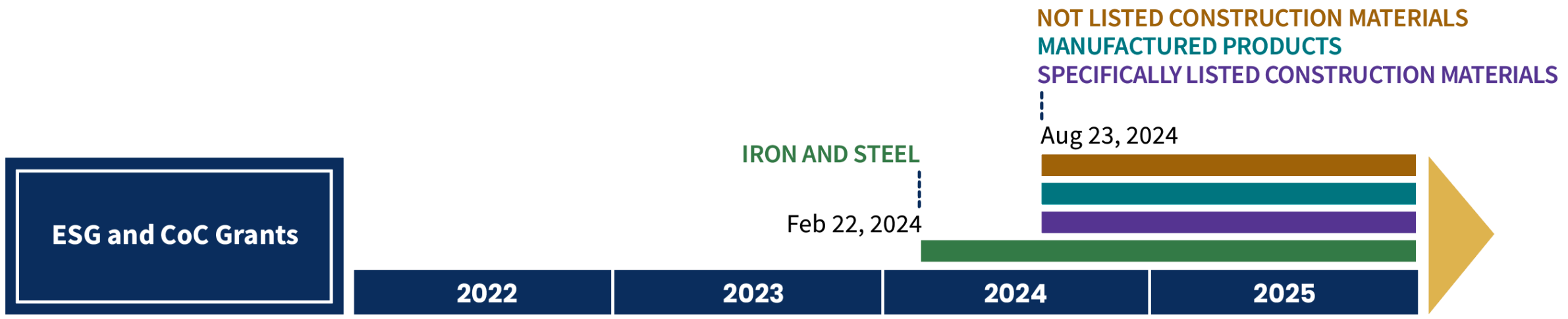
If yes: Continue to Step 4

NO

If no: The BAP does not apply.



Step 4: Did HUD obligate the ESG or CoC 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 thru 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 waiver may apply, and the BAP would not apply to that the project.

NO

If no to waivers 1 thru 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:

- Can it be applied to a portion of the products used in an infrastructure project if cumulative cost of those products does not exceed 5% of total cost of covered products (up to \$1 million)?

YES

If yes: The waiver may apply, and the BAP would not apply to that portion of covered materials.

NO

If no to waivers 1 thru 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?

YES

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

NO

If no to waivers 1 thru 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. 



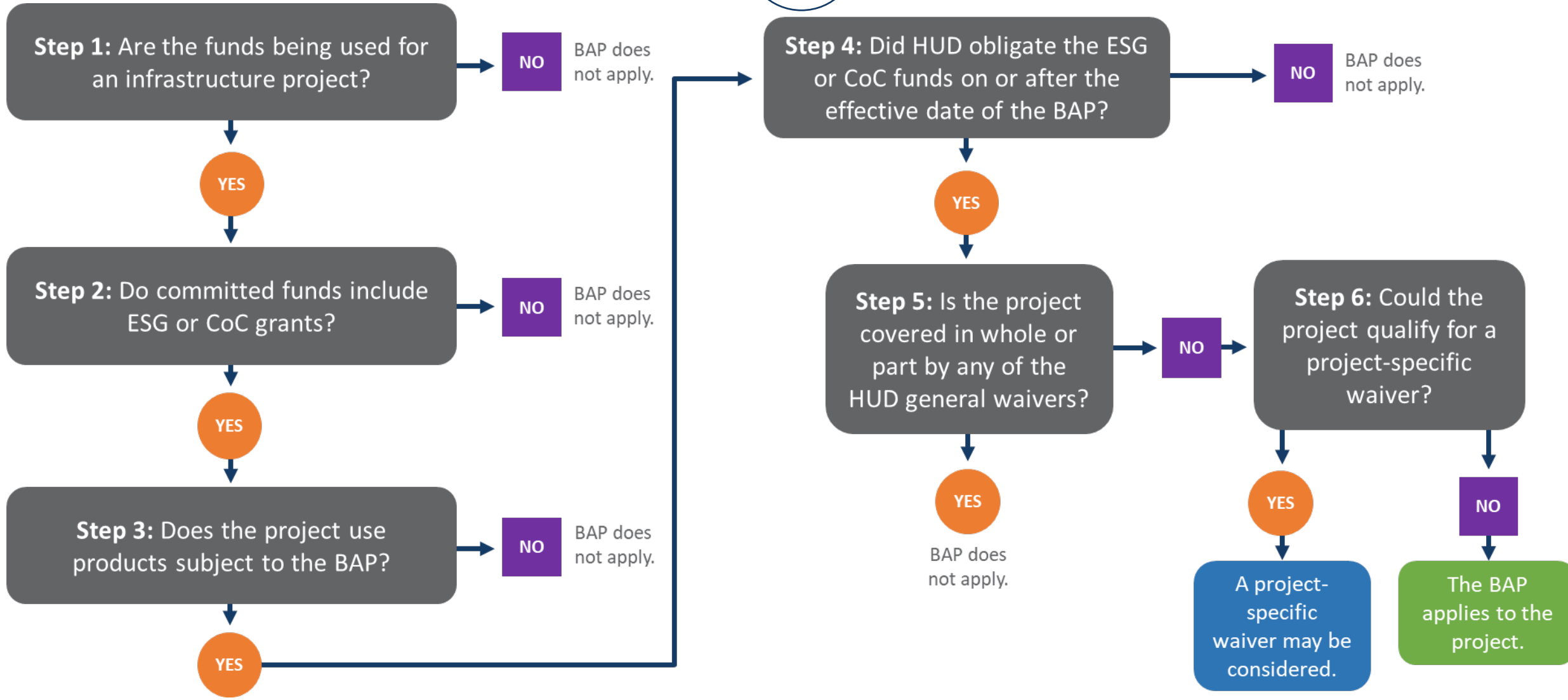
Step 6: Could the project qualify for a project-specific waiver?

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 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
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).

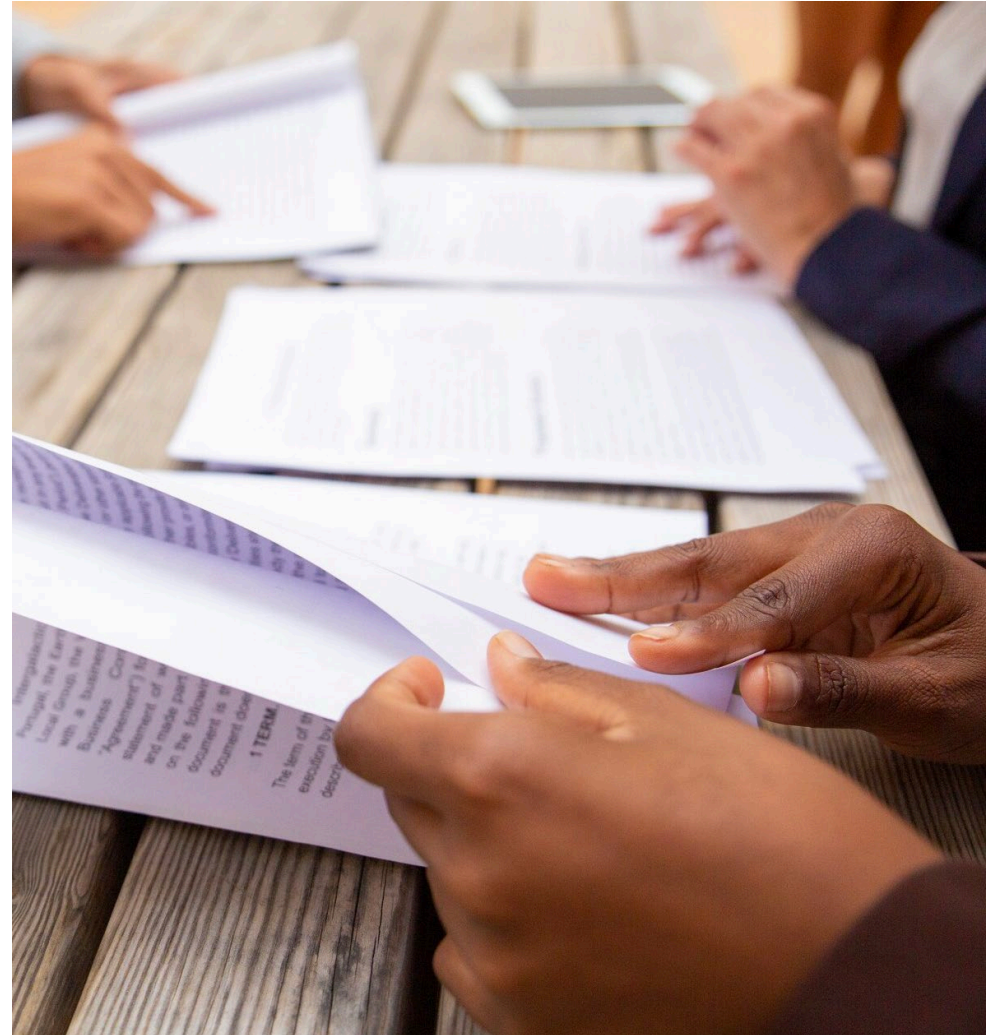




Project Implementation and Recordkeeping

Procurement and Subrecipient Selection

- Review existing procurement policies and procedures and develop new administrative steps to implement the BAP requirements
- Ensure all ESG and CoC 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 July 2024, a grantee awarded \$1 million in FY2024 ESG funds (obligated by HUD after February 22, 2024) to the renovation of an emergency shelter. Does the BAP apply to this project?





Examples - Does the BAP Apply?

- ✓ The project is an infrastructure project
- ✓ The grant funds were obligated after February 22, 2024
- ✓ The project's total budget is \$1 million

YES

The BAP applies to this project for iron and steel.

Because the funds were obligated by HUD before August 23, 2024, the grantee does not need to ensure BAP compliance for construction materials or manufactured products.



Examples - Does the BAP Apply?

In September 2024, a grantee awards \$1 million in CoC funds obligated by HUD in April 2025 to provide operations support for a project-based rental assistance facility. Does the BAP apply?





Examples - Does the BAP Apply?

- ✓ The grant funds were obligated after February 22, 2024
- ✓ The project's total budget is \$1 million
- ❖ 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 because the project 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 ESG and CoC 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 ESG and CoC 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 ESG Quick Guide](#)
- [BABA CoC Quick Guide](#)
- [2 CFR 184](#)
- [2 CFR 200.322](#)
- [Notice CPD-23-12](#)

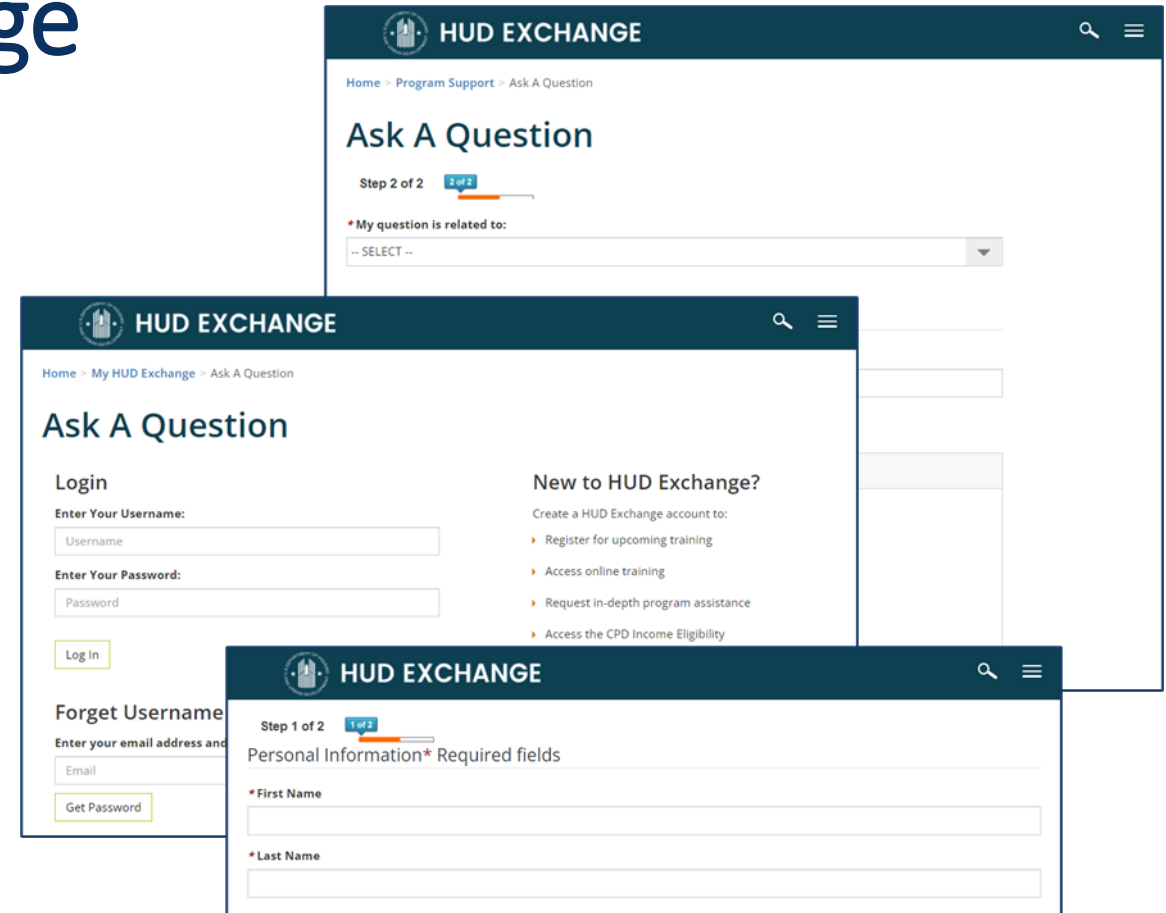


Questions?
Submit an AAQ on HUDEXchange



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 now posted to BABA on HUD Exchange
BABA Webinar for CDBG and RHP Grantees	Materials will be posted to BABA on HUD Exchange
BABA Webinar for ESG and CoC Grantees	Materials will be posted to BABA on HUD Exchange
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

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