

# The applicability of the Build America, Buy America Act to federal financial assistance programs

US Forensic & Integrity Services

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The Infrastructure Investment and Jobs Act (IIJA) was signed into law by President Biden on November 15, 2021. The law strengthened mandates beyond the requirements of pre-existing domestic preference statutes, which traditionally only applied to the purchase of iron, steel, and some manufactured goods for transportation and water-related infrastructure projects. They now include domestic preference mandates for other types of materials and expand infrastructure projects to include transmission facilities, electric utility structures and equipment, and broadband infrastructure.

The U.S. Office of Management and Budget (OMB) issued initial implementation guidance on the application of a “Buy America” preference in Federal financial assistance programs for infrastructure projects. OMB stated that its guidance applies to all Federal financial assistance programs, whether or not funded through IIJA, where funds are used for an infrastructure project. However, there are several Federal financial assistance programs for infrastructure projects in which domestic preference mandates do not apply.

Federal Financial Assistance Funding Source	Domestic Preference Mandate
FEMA Public Assistance (PA) Program	No
FEMA Hazard Mitigation Grant Program (HMGP)	No
HUD Community Development Block Grant Program (CDBG-DR)	No
Emergency Assistance Act	No
American Rescue Plan Act (ARPA) Capital Projects Funds (CPF)	No
ARPA State and Local Fiscal Recovery Fund (SLFRF)*	No
Infrastructure Investment and Jobs Act (IIJA)	Yes

(\*Note: If ARPA SLFRF funds are being used as matching support and the grant program that is requiring the match requires adherence to Buy America provisions, then domestic preference mandates may apply.)

In addition, certain situations could result in the issuance of a waiver if the head of the procuring agency determines the domestic preference mandate is inconsistent with public interest, the unavailability of American-made materials, or if the cost of acquiring the domestic product is unreasonable.

In summary, with the enactment of the IIJA, the “Buy America” domestic preference mandate has been expanded to a variety of federal grant-making authorities. However, the applicability of domestic preference mandates for projects funded by Federal financial assistance programs will depend on several factors, which may include the source of their federal infrastructure grants, OMB’s oversight of agencies’ implementation of the IIJA’s domestic preference provisions, and the guidance which each agency develops relating to its own grant-making authorities.



## Ernst & Young LLP (EY US) contacts



**Bradley (BJ) Nichols**, Partner  
EY Americas Insurance &  
Federal Claims Services Leader  
Forensic & Integrity Services  
+1 202 327 8719  
bradley.nichols@ey.com



**Matt Jadacki**, Managing Director  
Insurance & Federal Claims Services  
Forensic & Integrity Services  
+1 202 327 6807  
matt.jadacki@ey.com



**Christopher Terry**, Senior Manager  
Insurance & Federal Claims Services  
Forensic & Integrity Services  
+1 214 754 3446  
christopher.terry@ey.com

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