



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 20, 2021

M-22-08

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young
Acting Director

SUBJECT: Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA), which includes the “Build America, Buy America Act” (the Act). This Act ensures that Federal infrastructure programs require the use of materials produced in the United States, increases the requirement for American-made content, and strengthens the waiver process associated with Buy American provisions.

The Act requires that within 60 days of its enactment, January 14, 2022, each agency¹ must submit to the Office of Management and Budget (OMB) and Congress a report (“60-day report”) listing all Federal financial assistance programs for infrastructure² administered by the agency. In these 60-day reports, agencies are required to identify and provide a list of which of these programs are “deficient,” as defined in the Act.³ These agency reports must also be published in the Federal Register.⁴

This Memorandum provides initial OMB guidance regarding identification of these programs that agencies must include in the 60-day reports.⁵ Additional OMB guidance will be forthcoming to address additional requirements in the Act, including the application of new

¹ The Act applies to “any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section).” Public Law 117-58, § 70912(3): <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

² The term “infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States: (1) roads, highways, and bridges; (2) public transportation; (3) dams, ports, harbors, and other maritime facilities; (4) intercity passenger and freight railroads; (5) freight and intermodal facilities; (6) airports; (7) water systems, including drinking water and wastewater systems; (8) electrical transmission facilities and systems; (9) utilities; (10) broadband infrastructure; and (11) buildings and real property. Id.

³ Public Law 117-58, § 70913(c)

⁴ Id. at § 70913 (a)(2).

⁵ Id. at § 70915(a)(1)(A).

domestic content procurement preferences under section 70914. Section 70914 provides that, as of May 14, 2022, “none of the funds made available for a Federal financial assistance program⁶ for infrastructure, including each applicable program, *may* be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project⁷ are produced in the United States”⁸ and includes requirements for waiving such requirements,⁹ with written justifications.¹⁰ OMB will work with agencies to develop guidance to ensure agencies have appropriate policies and procedures in place to comply with this new requirement by May 14, 2022.

I. 60-Day Report to OMB and Congress

The Act requires agencies to include a listing of programs inconsistent with section 70914 in their 60-day reports. As such, agencies must identify and evaluate **all** infrastructure programs to determine whether a program is inconsistent with section 70914, as defined in law, regardless of whether or not the program received funding from IIIA.¹¹ Pursuant to the Act, an infrastructure program is considered inconsistent with section 709014 if: (1) it does not require that all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States; (2) it does not issue waivers and written justifications as specified in section 70914; or (3) it is subject to a waiver of general applicability, as referenced above.¹² In identifying applicable Federal financial assistance programs, agencies should err on the side of inclusiveness and consider programs for which funds *may* be obligated for infrastructure under any award.

On November 15, 2021, OMB issued a data call to assist agencies in identifying applicable programs. Agency responses to this data call will be helpful in determining the content of the 60-day reports. If an agency answered “yes” in the data call for a program in section F and either 1) “no” for any of the data fields in sections H-I; K-N or 2) “yes” for the data field in section J, then the agency should include these programs in the agency’s 60-day report.

⁶ Federal financial assistance “includes all expenditures by a Federal agency to a non-Federal entity for an infrastructure project, except that it does not include expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.” *Id.* at § 70912.

⁷ The term “project” refers to specific activities accomplished under a financial assistance program through a financial assistance instrument such as a grant or cooperative agreement. The goals and objectives of each project are associated with the larger program. *Id.*

⁸ *Id.* at § 70914(a). *Emphasis Added.* Note that neither this section, nor section 70913 (Identification of Deficient Programs), includes an explicit limitation to funds provided in Public Law 117-58.

⁹ *Id.* at § 70914(b).

¹⁰ *Id.* at § 70914(c).

¹¹ *Id.* at § 70914(a).

¹² The Act defines “deficient programs” as “any Federal financial assistance program for infrastructure . . . for which a domestic content procurement preference requirement does not apply in a manner consistent with section 70914 of the law; or is subject to a waiver of general applicability not limited to the use of specific products for use in a specific project.” *Id.* at § 70913(c).

The Act also requires that, in its 60-day report, an agency must:

- 1) identify all domestic content procurement preferences applicable to the Federal financial assistance;
- 2) assess the applicability of the domestic content procurement preference requirements, including: (A) section 313 of title 23, United States Code; (B) section 5323(j) of title 49, United States Code; (C) section 22905(a) of title 49, United States Code; (D) section 50101 of title 49, United States Code; (E) section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388); (F) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j-12(a)(4)); (G) section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3 3914); (H) any domestic content procurement preference included in an appropriations Act; and (I) any other domestic content procurement preference in Federal law (including regulations);
- 3) provide details on any applicable domestic content procurement preference requirement, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement; and
- 4) include a description of the type of infrastructure projects that receive funding under the program, including information relating to: (A) the number of entities that are participating in the program; (B) the amount of Federal funds that are made available for the program for each fiscal year; and (C) any other information the head of the Federal agency determines to be relevant.¹³

Agencies should review the information submitted in the remainder of the data call to assist in compiling the information above. Agencies should also carefully reference section 70913 of the Act in preparing fully responsive reports.

On or before January 14, 2022, agencies must submit reports to OMB at MBX.OMB.MadeInAmerica@omb.eop.gov. Reports must also be published in the Federal Register, as well as submitted to Congress, including by providing a separate notice to each appropriate congressional committee, including the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Armed Services of the Senate; and the Committee on Oversight and Reform, the Committee on Armed Services, and the Committee on Transportation and Infrastructure of the House of Representatives.

II. CFO Act Agencies Report to OMB on Relevant Items, Manufactured Goods, and Construction Materials Used in Infrastructure Projects

In order to facilitate forthcoming guidance on implementing the Act in a manner consistent with the President's implementation priorities (see Section 2 of Executive Order 14052,

¹³ Id. at § 70913(b)

Implementation of the Infrastructure Investment and Jobs Act), OMB seeks agency input to help identify relevant iron and steel items, manufactured goods, and construction materials used in infrastructure projects supported by Federal financial assistance programs.

Each CFO Act agency that administers a Federal financial assistance program for infrastructure¹⁴ should submit to OMB a report (separate from the 60-day report required by law above) that identifies typical iron and steel items, manufactured goods, and construction materials used in projects supported by such programs.

For each item, product, or material listed, or, if appropriate, each category of items, goods, and materials listed, please identify:

- Whether the item is relevant to any of the six critical supply chains identified in Executive Order 14017, America's Supply Chains and listed in the [Securing America's Critical Supply Chains Fact Sheet](#).
- Whether the agency is aware of limitations on the domestic manufacturing or production of such item, good, or material.
- Whether the agency has successfully worked to increase or develop domestic production of such items, goods, or materials in the past.

Agencies that lack any information responsive to this inquiry should respond in a manner indicating such. OMB will consider information received in response to this request along with information received from the public as it develops agency guidance further to section 70915 of IIJA.

On or before January 14, 2022, agencies must submit the report on Relevant Items, Manufactured Goods, and Construction Materials Used in Infrastructure Projects to OMB at MBX.OMB.MadeInAmerica@omb.eop.gov.

¹⁴ See footnotes 4, 5, and 6 for definitions.