



U.S. DEPARTMENT OF
ENERGY

**The Department of Energy's
Identification of Federal
Financial Assistance
Infrastructure Programs Subject
to the Build America, Buy
America Provisions of the
Infrastructure Investment and
Jobs Act**

**Report to the Congress and
the Office of Management and Budget**

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U.S. Department of Energy

The Department of Energy's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act

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Executive Summary

This report provides information on the Federal financial assistance programs for infrastructure or infrastructure-like projects that are administered by the Department of Energy (DOE). At the request of the Office of Management and Budget (OMB), the report updates the information submitted to OMB in 2017 required by Executive Order 13788, and provides the additional information required by Section 70913 of Title IX, Build America, Buy America of the Infrastructure Investment and Jobs Act (IIJA) and OMB.

The report previously provided in 2017 identified DOE's financial assistance programs and the information on relevant authorizing statutes, infrastructure project eligibility, and domestic preference requirements for each program. This 2022 IIJA report updates the 2017 information to include all current and active listings for each DOE financial assistance program, identifies any programs that have infrastructure project eligibility, and lists any deficient programs, as defined by the IIJA. OMB asked agencies to review their programs as broadly as possible and include those that may have activities that can be considered infrastructure-like.

Additionally, for each DOE financial assistance program eligible for infrastructure projects, the following information is provided:

- (1) all domestic content procurement preferences applicable to the Federal financial assistance;
- (2) applicability of the domestic content procurement preference requirements;
- (3) details on any applicable domestic content procurement preference requirement, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement;
- (4) a description of the type of infrastructure projects that receive funding under the program; and
- (5) whether the program is considered deficient, as defined by the IIJA.

DOE currently has 36 active financial assistance programs, and of these programs, five are eligible for infrastructure projects or infrastructure-like activities. The IIJA identifies a deficient program as one that is not consistent with Section 70914 of the IIJA which requires that for infrastructure projects all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. Prior to IIJA, DOE did not have any statutory or regulatory requirements for domestic content procurement preferences. The five programs below are deficient programs as defined by the IIJA, and any future infrastructure or infrastructure-like projects under the programs may need to include the requirement that all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, or DOE may need to approve a waiver to the IIJA domestic requirement.

81.041 - State Energy Program

81.042 - Weatherization Assistance for Low-Income Persons

81.087 - Renewable Energy, Research and Development

81.104 – Environmental Remediation and Waste Processing and Disposal

81.121 – Nuclear Energy Research, Development and Demonstration

In addition, based on the expedited timeframe for issuing this report, there are two DOE programs for which the Department is still evaluating whether the program is a “federal financial assistance program for infrastructure,” as used in the IJA.

Background Information

Previously, no primary statute, similar to the Buy American Act for contracts, imposed or implemented the Federal Government's preferences for domestic products requirements for Federal financial assistance. Applicability of domestic preferences requirements for financial assistance depended on whether the authorizing statutes for individual financial assistance programs, or subsequent appropriations statutes, contain domestic preference requirements for financial assistance recipients.

On November 15, 2021, the President signed into law the IJA, which includes provisions to expand domestic preference procurement policies applicable to Federal financial assistance programs for infrastructure. The IJA statutorily directs the application of "Buy America" domestic preference policies to Federal financial assistance programs for infrastructure, both to financial assistance programs for infrastructure not subject to any such laws currently, as well as to those that are currently subject to Buy America laws that may be limited in scope to specific materials or products. The new statutory direction provided by the IJA is not limited to the funds appropriated or authorized in the IJA. Rather, it directs the application of Buy America requirements to Federally funded infrastructure programs and ensures that Federal financial assistance programs for infrastructure require the use of materials produced in the United States, increase the requirement for American-made content, and strengthen the waiver process associated with Buy American provisions. The IJA requires each agency to submit a report to OMB and to Congress that provides current information about each of its Federal financial assistance programs eligible for infrastructure projects and identifies "deficient programs," which is defined by the IJA as those existing programs for which a domestic content requirement equivalent to that implemented by the IJA does not already apply.

To assist agencies in identifying applicable financial assistance programs for the 60-day IJA report, OMB issued a data call on November 15, 2021, requesting that agencies update the information previously submitted in accordance with Memorandum M-17- 27, *"Assessment and Enforcement of Domestic Preferences in Accordance with Buy American Laws."* This data call builds on the program information submitted in 2017 and requests additional domestic content preferences information related to these programs. On December 20, 2021, OMB provided additional guidance to further assist agencies regarding the additional information requested for 60-day report in OMB Memorandum M-22-08, *"Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act."*

This 2022 DOE report follows the direction provided to agencies by OMB to update DOE's previous submission from 2017 and provides the additional information required by the IJA. OMB has requested that Agencies apply the review of their programs as broadly as possible to include any activities that may fall under the definition of infrastructure even if the program is not established for infrastructure projects. The report provides summary information, with detailed responses for the specific program Assistance Listings included in the attached spreadsheet.

Domestic Content Procurement Preferences in Financial Assistance

This report reflects the Department of Energy’s initial analysis of its financial assistance programs and associated domestic preference requirements. This report updates the Federal financial assistance program information submitted by DOE in 2017, as recommended by OMB, and provides the additional information related to the DOE financial assistance programs eligible for infrastructure projects as required by the IIJA. Updates provided in this report address the inclusion of the IIJA’s domestic content procurement preferences not initially reported for existing programs, removes programs that no longer receive funding, and adds additional programs that have been created since this information was last reported in 2017.

For each DOE financial assistance program the following is provided in the attached spreadsheet:

A. Program Assistance Listing Number

B. Program Title

C. Federal Financial Assistance Program Authority

D. Identify all domestic content procurement preference requirements applicable to the Federal financial assistance listing. Assess the applicability of the domestic content procurement preference requirements, including those in the following statutes:

- Section 313 of title 23, United States Code
- Section 5323(j) of title 49, United States Code
- Section 22905(a) of title 49, United States Code
- Section 50101 of title 49, United States Code
- Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388)
- Section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(4))
- Section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3914)
- any domestic content procurement preference included in an appropriations Act; and
- any other domestic content procurement preference in Federal law (including regulations).

E. If domestic content procurement preference requirements are applicable, provide the details of the requirement, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement.

F. Determine if infrastructure is an eligible use for this Federal financial assistance listing under any award. (YES/NO)

G. If the answer to F is YES provide a description of the type of infrastructure projects that receive funding under the program.

H. If the answer to F is YES provide the number of FY 2019 Recipients that received awards under the program.

I. If the answer to F is YES provide the number of FY 2020 Recipients that received awards under the program.

J. If the answer to F is YES provide the number of FY 2021 Recipients that received awards under the program.

K. If the answer to F is YES provide the amount of FY2019 Funding.

L. If the answer to F is YES provide the amount of FY2020 Funding.

M. If the answer to F is YES provide the amount of FY2021 Funding.

N. Determine if a domestic content procurement requirement provision exists. (YES/NO)

O. If the answer to N is YES, does the provision require that all of the iron, steel, manufactured products, and construction materials are produced in the United States?
(YES/NO or N/A)

P. If the answer to N is YES, is the provision subject to a waiver of general applicability, not limited to the use of specific products for use in a specific project? (YES/NO or N/A)

Q. If the answer to N is YES, does the provision allow for a waiver if applying the domestic content procurement preference would be inconsistent with the public interest? (YES/NO or N/A)

R. If the answer to N is YES, does the provision allow for a waiver in the case that specific articles of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality? (YES/NO or N/A)

S. If the answer to N is YES, does the provision allow for a waiver in the case that the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent?
(YES/NO or N/A)

T. If the answer to N is YES, does the provision require the agency to post an explanation on a website for the proposed determination to issue the waiver; and provide a period of not less than 15 days for public comment on the proposed waiver? (YES/NO or N/A)

In addition, based on the expedited timeframe for issuing this report, the attached spreadsheet also includes equivalent information for programs for which the Department is still evaluating whether the program is a “federal financial assistance program for infrastructure,” as used in the IJA. The Department is still evaluating programs that may not fall within the definition of “federal financial assistance” as that term is generally used in 2 CFR part 200, but that, pending further guidance from OMB, might nonetheless be a “financial assistance program” as that term is used in the IJA.

Assessment of Infrastructure Eligibility and Domestic Content Procurement Preference Requirements in DOE Financial Assistance Programs

Assistance Listings

DOE currently has 36 active financial assistance programs, and of these programs, five are eligible for infrastructure or infrastructure-like projects:

81.041 - State Energy Program

81.042 - Weatherization Assistance for Low-Income Persons

81.087 - Renewable Energy, Research and Development

81.104 – Environmental Remediation and Waste Processing and Disposal; and

81.121 – Nuclear Energy Research, Development and Demonstration.

Domestic Content Procurement Preference Requirements

The following domestic content procurement preference requirements do not apply to DOE:

- Department of Transportation statutes found in section 313 of title 23, United States Code; section 5323(j) of title 49, United States Code; section 22905(a) of title 49, United States Code; and section 50101 of title 49, United States Code.
- Environmental Protection Agency statutes found in section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388); section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(4)); and section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3914).

Furthermore, DOE does not have any DOE specific domestic content procurement preference requirements included in any appropriations Act or any other domestic content procurement preference requirements in Federal law (including regulations) for its financial assistance programs.

Award Information

Awards under 81.041 increase market transformation of energy efficiency and renewable energy technologies through policies, strategies, and public-private partnerships that facilitate their adoption and implementation. The program facilitates state-based activities, such as: financing mechanisms for institutional retrofit programs; loan program and management; energy savings performance contracting; comprehensive residential programs for homeowners; transportation programs that accelerate use of alternative fuels; and renewable programs that remove barriers and support supply side and distributed renewable energy. The program's objectives are to: 1) reduce fossil fuel emissions created as a result of activities within the jurisdictions of eligible

entities; 2) reduce the total energy use of the eligible entities; and 3) improve energy efficiency in the transportation, building, and other sectors. Formula grants are to be used by States for the development, implementation, or modification of State plans submitted to and approved by DOE. To be eligible for Federal assistance, each State plan must contain the five program activities required by the Energy Policy and Conservation Act, Public Law 94-163; and may also include a wide range of optional activities. A wide variety of activities are eligible for use of the grant funds including, for example: 1) developing/implementing an energy efficiency and conservation strategy and retaining technical consultant services to assist in the development of such a strategy; 2) conducting residential and commercial building energy audits; 3) establishing financial incentive programs for energy efficiency improvements; 4) providing grants to nonprofit organizations to perform energy efficiency retrofits; and 5) any other activity as determined by the Secretary of Energy in consultation with the Secretaries of Transportation and Housing and Urban Development and the Administrator of the Environmental Protection Agency. Award/project funds cannot be used for the purchase of land, buildings, or any interest therein; construction of buildings or structures; research, development, or demonstration of non-commercially available technology; or subsidies of public transportation, fares, utility rate demonstrations or State tax credits for energy conservation. For fiscal year (FY) 2019, 56 recipients received awards and \$49M in funding was provided by DOE; in FY2020, 56 recipients received awards and \$56M in funding was provided by DOE, and in FY2021, 56 recipients received awards and \$62.5M in funding was provided by DOE.

Awards under 81.042 improve home energy efficiency for low-income families through the most cost-effective measures possible. The program's additional objectives are to: 1) to reduce fossil fuel emissions created as a result of activities within the jurisdictions of eligible entities; and 2) reduce the total energy use of the eligible units while ensuring their health and safety. Formula grants are used by States and Territories for the improvement of the thermal efficiency and cooling of dwellings by the installation of weatherization materials such as attic insulation, caulking, weather-stripping, furnace efficiency modifications, certain mechanical measures to heating and cooling systems, and replacement furnaces, boilers, and air-conditioners. Grantees may average expenditures per dwelling unit for materials, program support and labor costs not to exceed an average per unit of \$7,700 adjusted annually for inflation. Up to 10 percent of each grant may be spent by a Grantee and its subgrantees for administrative expenses (in the formula grants a Grantee may not use more than 5 percent of the total State grant for such purposes). For FY2019, 57 recipients received awards and \$251M in funding was provided by DOE; in FY2020, 57 recipients received awards and \$305M in funding was provided by DOE, and in FY2021, 57 recipients received awards and \$315M in funding was provided by DOE.

The awards under 81.087 are made to conduct balanced research and development efforts in the following energy technologies: solar, biomass, hydrogen fuel cells and infrastructure, wind, hydropower, and geothermal. Grants are awarded to develop and transfer to the nonfederal sector various renewable energy technologies on a competitive basis. For FY2019, no awards were made and no funding was provided by DOE; in FY2020, no awards were made and \$26M in funding was provided by DOE to one award made prior to FY2019, and in FY2021, no awards were made and \$6.4M in funding was provided by DOE to two awards made prior to FY2019.

The award under 81.104 will complete construction of the East Jemez Rd-NM-4 intersection. The improvements will consist of: 1) pavement reconstruction; 2) the addition of left and right turn lanes; and 3) extension of the structural plate pipe arch, culvert pipes, drop inlets, curb and gutters, retaining walls, ADA ramps, metal barriers, signing and striping, signals and lighting, and intersection warning flashers. Extension of the road work along East Jemez Rd, beginning from the turn in to the NPS parking lot is 1,115 feet. Extension of the road work along NM-4 is 2,045 feet. One award was made in FY2020 and \$6,000,000 was provided in FY2021 funding.

Awards under 81.121 include research and development in the following areas: Advanced Nuclear Technology Development; Nuclear Energy University Program; Accident Tolerant Fuel; Small Modular Reactor; Advanced Reactor Demonstration Program; and Carbon Free Power Project. For FY2019, 108 recipients received awards and \$294,952,570 in funding was provided by DOE; in FY2020, 65 recipients received awards and \$428,412,593 in funding was provided by DOE, and in FY2021, 154 recipients received awards and \$4,832,606,159 in funding was provided by DOE.

List of Deficient Programs at DOE

Five financial assistance programs at DOE are eligible to be used for infrastructure or infrastructure-like projects, Program Assistance Listings 81.041, 81.042, 81.087, 81.104 and 81.121. Since these programs do not have domestic content procurement preference requirements for its financial assistance recipients, are not subject to a waiver of general applicability not limited to the use of specific products for use in a specific project, and are not consistent with the requirements of Section 70914 of the IIJA, they are identified as deficient. Any future infrastructure or infrastructure-like projects under the programs may need to include the requirement that all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, or DOE may need to approve a waiver to the IIJA domestic requirement.

DOE lists the following programs as deficient:

81.041 - State Energy Program

81.042 - Weatherization Assistance for Low-Income Persons

81.087 - Renewable Energy, Research and Development

81.104 – Environmental Remediation and Waste Processing and Disposal; and

81.121 – Nuclear Energy Research, Development and Demonstration.

List of Programs DOE is Still Evaluating

For the reasons explained above, DOE is still evaluating two programs that may or may not fit the definition of “Federal financial assistance” as that term is defined in Section 70912 of the IIJA. Neither program has a domestic content preference. Those programs are:

- Federal Loan Guarantees for Innovative Energy Technologies
- Western Area Power Administration Transmission Infrastructure Program

Inclusion of a program on this list does not necessarily mean that DOE will require application of a domestic content procurement preference for that program going forward under Section 70914 of the IIJA. After OMB releases implementation guidance pursuant to Section 70915 of the IIJA, the Department will work closely with OMB to ensure that domestic content procurement preferences are administered consistent with that OMB guidance and applicable law.