QUICK GUIDE

Build America, Buy America Act:

Buy America Preference for CDBG Grantees

COMMUNITY PLANNING & DEVELOPMENT

For more information on BABA and the BAP, visit the BABA page on the HUD Exchange.

Overview of the Buy America Preference

The Build America, Buy America Act (BABA) requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the **"Buy America Preference (BAP)"** and the specific requirements are codified in 2 CFR § 184.

This BABA CDBG Quick Guide is intended to assist grantees in determining when an infrastructure project must comply with the BAP requirements. It is structured into three sections:

- PLANNING
- PROJECT IMPLEMENTATION AND RECORDKEEPING
- PROJECT COMPLETION

See the BABA CPD Overview Quick Guide for information on the applicability, definitions, and requirements of the BAP.

Planning

What projects are subject to the BAP?

In the planning phase of any CDBG-funded project, grantees should determine whether or not the BAP applies to the project, and if so, to which classification of materials. The following process outlines the criteria for CDBG projects subject to the BAP, with four potential outcomes:

1. **Complies with the BAP according to HUD's Phased Implementation Waiver, or**
2. **The BAP is not applicable to the entire project because it is not an infrastructure project, or**
3. **The BAP is not applicable to the project due to one of HUD's general waivers, or**
4. **The BAP is not applicable because a project- or product-specific waiver was reviewed by HUD and approved by the Office of Management and Budget's Made In America Office (MIAO).**

Step 1: Type of project/activity

Are the funds being used for an infrastructure project, as defined by BABA?

- **If yes, proceed to step 2.**
- If no, the BAP does not apply. The BAP only applies to infrastructure projects.

Examples of CDBG projects that are considered infrastructure projects, according to BABA, include:

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

Step 2: Funding source

Identify the source(s) of the project funding, including HUD funding or other Federal agency funding that must comply with the BAP. Does the project funding include CDBG funding?

- **If yes, proceed to step 3.**
- If no, then the grantee does not need to comply with the BAP for CDBG funding but may need to comply with the BAP for other HUD or Federal funding sources.

Step 3: Materials

Identify and classify the products that will be used in each infrastructure project. Does the project use products subject to the BAP (iron, steel, construction materials, or manufactured products)?

- **If yes, proceed to step 4.**
- If no, then the BAP does not apply. The BAP only applies to covered materials.

For more guidance on covered products, see the BABA CPD Overview Quick Guide.

Step 4: Date of obligation

Identify the obligation date of the CDBG funds, which is the date HUD executed the CDBG grant agreement. For each classification of products required to complete the infrastructure project, determine whether the date of obligation for CDBG funds falls on or after the effective date of the BAP (see table on the right).

- **If yes, proceed to step 5.**
- If no, the BAP does not apply to covered products before the effective date.

Covered Product	Obligation Date
Iron and Steel	The BAP applies to the purchase of iron and steel for infrastructure projects using CDBG funds obligated on or after November 15, 2022.
Specifically Listed Construction Materials (non-ferrous metals; lumber; and plastic- and polymer-based composite building materials, pipe, and tube)	The BAP will apply to the purchase of specifically listed construction materials beginning with funding obligations from FY2024 CDBG funds, as well as iron and steel.
Not Listed Construction Materials (all other plastic- and polymer-based products, glass, fiber optic cable, optical fiber, engineered wood, and drywall) **Manufactured Products**	The BAP will apply to the purchase of not listed construction materials and manufactured products beginning with funding obligations from FY2025 CDBG funds, as well as specifically listed construction materials, iron, and steel.

Step 5: General waivers

Consider the available HUD General Waivers and determine if all or a portion of the project is covered by any of the following waivers:

1. ***Exigent Circumstances Waiver:*** Is there an urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community?
   - If yes, the ***Exigent Circumstances Waiver*** may apply, and the project would not be subject to the BAP.
2. ***De Minimis, Small Grants, and Minor Components Waiver:***
   - Is the total cost of the project from all sources equal to or less than $250,000?
     - If yes, the ***De Minimis, Small Grants, and Minor Components Waiver*** may apply, and the project would not be subject to the BAP.

- 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). In such cases, the BAP would be waived for part of the project, but the rest would still need to comply with the BAP.
3. ***Tribal Recipients Waiver:*** Is the project being funded by a Tribal recipient?
   - If yes, the ***Tribal Recipients Waiver*** may apply and the project would not be subject to the BAP. Note that this is atypical for CPD programs.

If no to General Waiver questions 1, 2, and 3, proceed to Step 6.

Step 6: Project-specific waivers

Consider the criteria for project-specific waivers and determine if the project is eligible for a waiver due to the public interest, nonavailability of materials, or unreasonable cost.

1. Is applying the BAP to the project inconsistent with the public interest?
   - If yes, a project-/product-specific waiver may be considered.
2. Are the materials used in the project not produced in the United States or not available in sufficient quantities?
   - If yes, a project-/product-specific waiver may be considered.
3. Would the inclusion of domestically produced materials increase the cost of the overall project by more than 25 percent?
   - If yes, a project-/product-specific waiver may be considered.

If no to project-/product-specific waiver questions 1, 2, and 3, the BAP likely applies and the project documentation should demonstrate that materials were procured from domestic sources in compliance with the BAP.

Project-/product-specific waivers are available on a limited, case-by-case basis, after HUD's review, a public comment period, and final approval from the MIAO. If more than one Federal agency is funding an infrastructure project, project-/product-specific waivers will require coordination among those Federal agencies prior to a determination by the MIAO.

Example Projects

Photo by Freepik

Community Center Development

In September 2023, a grantee awarded $1 million in FY23 CDBG funds for the construction of a community center in a low- to moderate-income census tract.

- The project is an infrastructure project because it is funding construction of a building.
- The grant funds were obligated after November 15, 2022.
- The project's total budget is $1 million.

Does the BAP apply to this project?

The BAP applies to any iron or steel used in this project. The project is not using FY2024 or later grant funds; therefore, the BAP does not apply to construction materials or manufactured products used in this project.

Photo by Quang Nguyen Vinhon Pexels

Community Park Rehabilitation

In September 2023, a grantee awarded $1 million in FY23 CDBG funds for the construction of a community center in a low- to moderate-income census tract.

- The grant funds were obligated after November 15, 2022.
- The project's total budget is $500,000 even though it is only using $200,000 in CDBG funds.
- The project is an infrastructure project.

Does the BAP apply to this project?

Yes, the BAP applies to any iron, steel, or specifically listed construction materials used in this project. The BAP does not apply to not listed construction materials and manufactured products because the CDBG funds were obligated prior to the effective date for those products.

Photo by Robert Linderon Unsplash

Owner-Occupied Rehab Program

A grantee operates an owner-occupied rehabilitation program using FY2024 and FY2025 CDBG funds. The maximum allowable rehabilitation budget for each property is $100,000.

- The grant funds were obligated after November 15, 2022.
- The per property budget does not exceed $250,000.

Does the BAP apply to this project?

No, the BAP does not apply to this program because the budget for each property (i.e., project) does not exceed $100,000 and thus each individual project is exempt from the BAP under the De Minimis and Small Grants Waiver.

Procurement and Subrecipient Selection

For projects using CDBG funds obligated by HUD on or after November 15, 2022, review existing procurement policies and procedures to ensure that new administrative steps are developed to implement the BAP requirements.

When revising administrative documents, make sure to incorporate the BAP into the terms and conditions of all CDBG awards for infrastructure projects. Additionally, it is recommended to assess whether any projects that are currently underway or in the planning stages are subject to the BAP for iron, steel or other classifications of products.

CDBG grantees engaging in infrastructure projects must comply with the BAP conditions in the FY2023 HUD grant agreement. Since the terms and conditions of the BAP flow down to subrecipients, the BAP language found in the "Special Conditions" section should be incorporated into all agreements, even if the BAP does not yet apply based on the phased implementation date. The BAP must be included in all subawards, contracts, and purchase orders for the products supplied to complete the work under a CDBG award.

Photo by usertrmk on Freepik

Project Implementation and Recordkeeping

CDBG grantees should ensure that all relevant stakeholders are informed about the BAP requirements and determine whether a project is subject to the BAP and, if so, for which classification(s) of materials.

Grantees must maintain documentation in accordance with applicable program requirements for recordkeeping and record retention. It is the grantee's responsibility to ensure that all records related to BABA compliance are properly maintained, including any records kept by third parties (subrecipients, contractors, etc.).

Project Completion

CDBG grantees must retain supporting documentation from subrecipients, contractors, and vendors to develop records demonstrating compliance with the BABA requirements on a project and material level basis, regardless of whether infrastructure is the primary purpose of the project.

For HUD to consider a project/product-specific waiver the CDBG grantee must provide the following details as required by the MIAO:

- **A detailed justification for the use of materials produced or manufactured outside the United States with a description of efforts made (e.g., market research, industry outreach) to avoid the need for a waiver**
- **A certification of a good faith effort to source domestically produced products supported by terms contained in requests for proposals, contracts, and other communications with potential vendors**
- **Waiver type (nonavailability, unreasonable cost, or public interest)**
- **Recipient name and Unique Entity Identifier**
- **Federal financial assistance program name**
- **Federal financial assistance funding amount**
- **Financial assistance listing name and number**
- **Federal Award Identification Number (FAIN) (if available)**
- **Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code)**
- **Total cost of infrastructure expenditures, including all Federal and non-Federal sources (as known)**
- **Infrastructure project description and location (as known)**
- **List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from the BAP, including name, cost, country(ies) of origin (if known), and PSC and NAICS code for each**
- **Anticipated impact if no waiver is issued**
- **Any relevant comments received during the public comment period**

BAP documentation should be maintained in compliance with CDBG's record retention requirements.

Additional Resources

- BABA CPD Overview Quick Guide
- BABA on HUD Exchange
- BABA on HUD.gov
- 2 CFR 184
- 2 CFR 200.322
- What is Build America, Buy America Factsheet (OMB)
- Made in America (OMB)

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