

Build America, Buy America Act: Buy America Preference Overview for CPD Programs



What is 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.

The BAP establishes a domestic preference for construction materials. For more information: hudexchange.info

This BABA CPD Overview Quick Guide provides grantees with the following details about the BAP:

- Products Covered by the BAP
- BAP Applicability to CPD-funded Projects and Activities
- When the BAP *Doesn't* Apply
- BAP Implementation Timeline for CPD Programs
- Project/Product-Specific Waivers
- Project Implementation and Recordkeeping

Products Covered by the BAP

Products covered under the BAP include:

1. Iron and steel
2. Construction materials
3. Manufactured products

Products should be classified into just one of these categories. The classification must be made based on the product's status when brought to the work site.

Grantees are encouraged to work closely with subrecipients, developers, and contractors to ensure that products used in federally funded infrastructure projects are produced in the United States as required. Federal financial assistance includes grants, cooperative agreements, non-cash contributions or donations, direct assistance, loans and loan guarantees, and other financial assistance.

Iron and Steel

What is it?

Items that consist completely or predominantly of iron, steel, or a combination of both. "Predominantly" means the cost of the iron and steel content exceeds 50% of the total cost of all the item's components.

Production Requirements

All manufacturing processes, starting from the initial melting stage and continuing through the application of coatings, must occur in the United States.

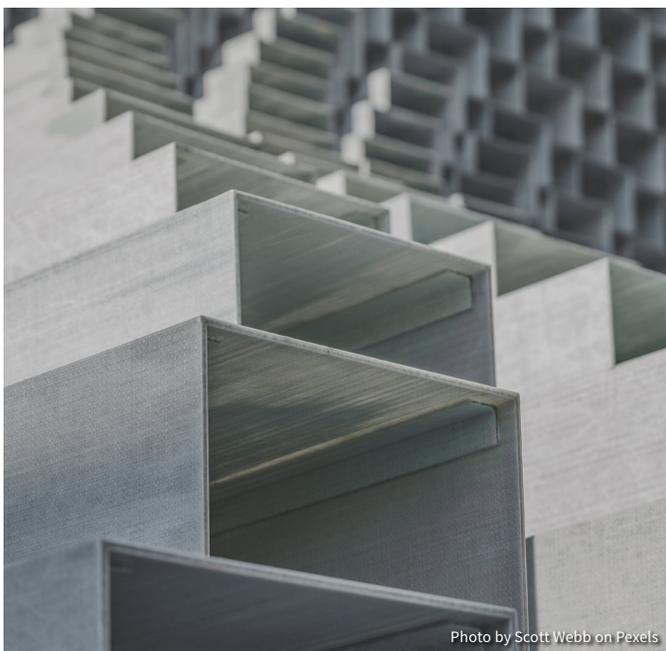


Photo by Scott Webb on Pexels

Construction Materials

What is it?

Articles, materials, or supplies used for construction activities that consist of only one of the items described below. For the purposes of the HUD Phased Implementation Waiver timeline described below, construction materials are divided into two categories: specifically listed construction materials and not listed construction materials.

Specifically Listed Construction Materials: Items include (1) non-ferrous metals; (2) lumber; and (3) plastic- and polymer-based composite building materials, pipe, and tube.

Not Listed Construction Materials: Items include (1) all other plastic- and polymer-based materials (such as polymers used in fiber optic cables), (2) glass, (3) fiber optic cable, (4) optical fiber, (5) engineered wood, and (6) drywall.

Construction Material Standards (2 CFR 184.6)

All manufacturing processes for the construction material must occur in the United States.



Minor additions of materials, supplies, or binding agents to a construction material (such as the binding agent used in engineered wood) do not change the categorization of the construction material.

Manufactured Products¹

What is it?

Manufactured products include articles, materials, or supplies that have either been:

1. Processed into a specific form or shape, or
2. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

A manufactured product may include components that are construction materials or iron and steel products, unless the manufactured product also meets the definition of iron and steel or construction materials. In such instances, the product should be recategorized in the appropriate category.

Determining the Cost of Components for Manufactured Products (2 CFR 184.5)

Manufactured products must meet two production requirements. First, the final product must be manufactured in the United States. Second, at least 55% of the cost of the components making up the manufactured product must be associated with components that were mined, produced, or manufactured in the United States.

What materials and activities aren't covered by the BAP?

1. Temporary products and materials that are removed at or before project completion, such as temporary scaffolding, equipment, or tools
2. Equipment and furnishings such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure
3. Technical assistance and management costs
4. Design and planning costs, project scoping, or advance assistance. However, domestic preferences must be considered in planning to ensure compliance for construction projects e.g., design-build contracts
5. Acquisition and demolition projects where there are no articles, materials, or supplies that are incorporated into an infrastructure project

¹ Cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives (collectively known as Section 70917(c) materials) are generally exempt from the BAP. However, Section 70917(c) materials may be used to produce a manufactured product, such as pre-cast concrete. Manufactured products that incorporate Section 70917(c) components are subject to the BAP.



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BAP Applicability to CPD-funded Projects and Activities

CPD-funded infrastructure projects, as broadly defined by 2 CFR 184, are subject to the BAP once the obligation date has passed according to HUD’s Phased Implementation Waiver (see section below), unless the project is covered by another general waiver. For the purposes of the BAP, an infrastructure project is defined as any project that includes construction, alteration, maintenance, or repair of infrastructure regardless of whether infrastructure is the primary purpose of the project.

Examples of CPD-funded activities that may be subject to the BAP:	Examples of CPD-funded activities that may NOT be subject to the BAP:
<ul style="list-style-type: none"> • Rehabilitation of buildings and real property • Construction of public facilities and improvements, such as water and sewer facilities, streets, sidewalks, neighborhood centers, and the conversion of buildings for eligible purposes • Utility installation or improvements • Water systems (drinking water and wastewater) • Electrical transmission facilities and systems • Broadband infrastructure • Transportation infrastructure 	<ul style="list-style-type: none"> • Acquisition of real property • Relocation and demolition • Public services • Shelter or public facility operating expenses • Supportive services • Short-term payments to prevent homelessness • Special economic development activities • Administrative activities • Disaster and emergency response



Projects that exclusively use CDBG-DR, CDBG-MIT, CDBG-CV, ESG-CV, and/or HOPWA-CV funding are not subject to the BAP because funds for disaster and emergency purposes are exempt from the BAP.

When the BAP Doesn't Apply

In addition to the Phased Implementation Waiver described in the section below, HUD has approved three Department-wide public interest general waivers for BAP applicability. If all the conditions for a general waiver are met, the BAP requirements may be waived for that project, or a portion of the materials used in a project.

CPD grantees can employ these waivers without the need for a formal request to HUD and should maintain records to substantiate the waiver's application to a project. For example, a grantee may write a memo to the project file documenting how it determined that a general waiver applied to a specific project.

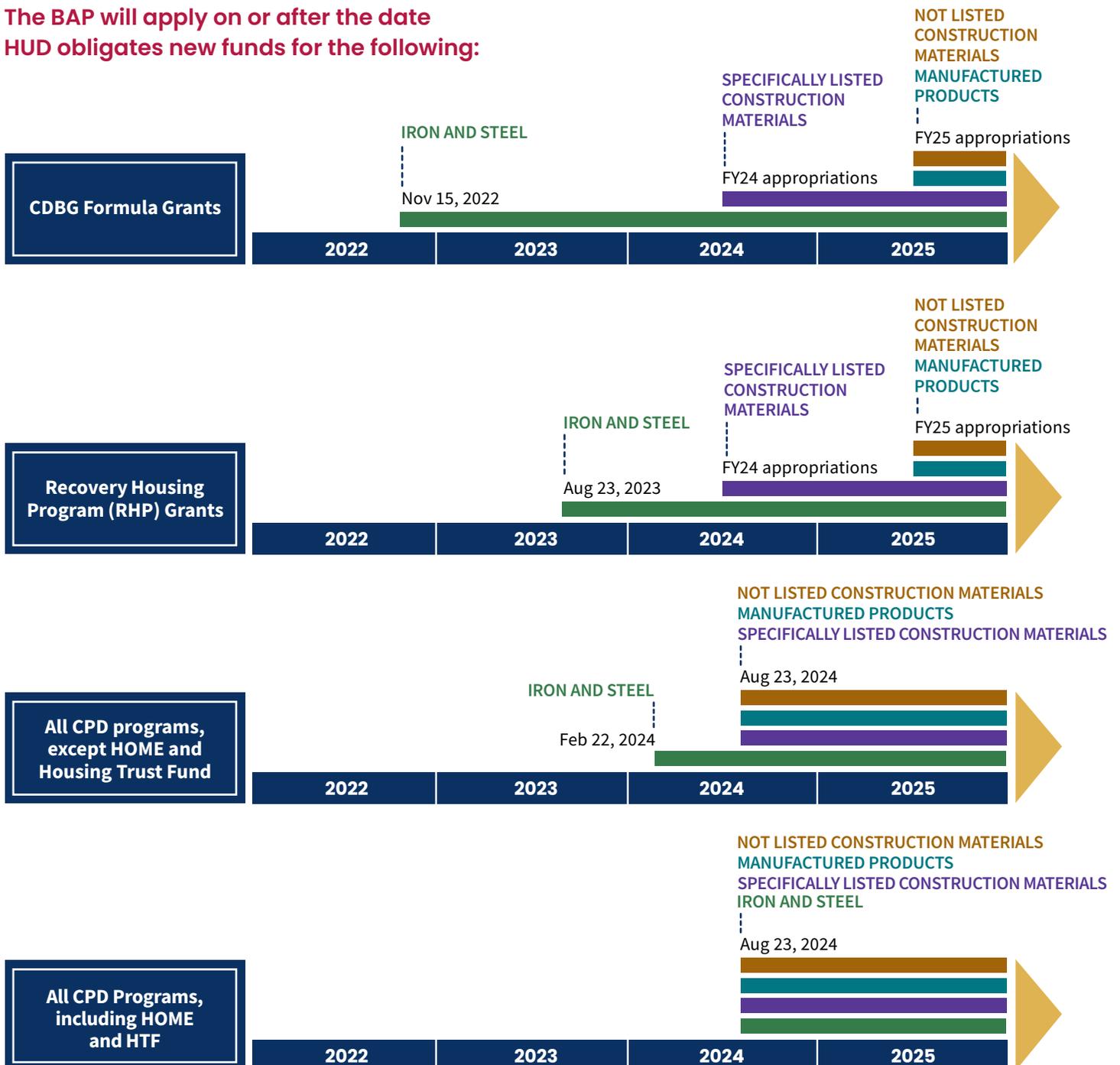
HUD General Waivers	What is it?	Examples
Exigent Circumstances	This public interest general waiver is effective through November 23, 2027, for projects that must be completed immediately to protect life, ensure safety, or prevent the destruction of property	<p>A HOME-funded multi-family rental development is damaged by a burst hot water pipe in the middle of winter. Repairs to the damaged structure must be completed immediately to protect the life, safety, and property of the residents of the housing development.</p> <p>Following a tornado, CDBG funds are used to repair public facilities made structurally unsound during the disaster. Stabilizing these buildings is critical to prevent further destruction of property.</p>
De Minimis and Small Grants	<p>This public interest general waiver is effective through November 23, 2027, for projects whose total cost (from all sources) does not exceed the simplified acquisition threshold value (\$250,000), OR</p> <p>If covered BAP materials for a portion of the project comprise no more than 5 percent of the total cost of covered materials used in a project (not to exceed \$1 million), the BAP can be waived for that portion of the project.</p>	<p>A homeless service provider is rehabilitating an emergency shelter to update bathroom facilities. The provider is using \$100,000 in ESG funding for the project and a State grant is contributing an additional \$100,000. Because the total project cost does not exceed \$250,000, the BAP does not apply.</p> <p>A city is using CDBG funds for construction of a playground. The total cost of materials used in the project is \$1 million. The city can source domestic materials for nearly all the items needed for the playground but cannot find a domestically produced equivalent of a particular slide. The slide costs \$20,000. Because this is less than 5% of the total cost of materials used in the project, the city can use the De Minimis Waiver to waive the BAP for the slide. The other materials used in the project still must comply with the BAP.</p>
Tribal Recipients	The BAP does not apply for HUD funds to Tribes, Tribally Designated Housing Entities, and other Tribal Entities covered by this public interest general waiver effective until May 23, 2024.	After receiving Tribal feedback, HUD will implement the BAP through an approach that does not serve as a major barrier to Tribal community efforts to develop infrastructure. HUD's Phased Implementation Waiver does not apply to funds awarded to Tribes.
Pacific Island/Territory Recipients	HUD accepted public comment on a <i>proposed</i> general waiver for Pacific Island/Territory recipients through September 1, 2023.	HUD will consider the public comments received and base its decision for adoption of the BAP in Pacific Island/Territory Communities in a future general waiver published in the Federal Register.

BAP Implementation Timeline for CPD Programs

To facilitate a smooth transition to the BAP requirements, HUD established a Phased Implementation Waiver for its programs based on the date when funds are obligated (i.e., typically the date when HUD executes the grant agreement). As illustrated below, the BAP is phased both by program and the type of product (iron and steel, construction materials, and manufactured products).

HUD chose to initially implement the BAP for all iron and steel products used in CDBG infrastructure projects using funding obligated on or after November 15, 2022. The specific focus on iron and steel in infrastructure projects will gradually extend to encompass the full implementation of the BAP across all HUD programs.

The BAP will apply on or after the date HUD obligates new funds for the following:



Project Examples



Senior Center New Construction

A grantee is using FY2023 CDBG funds (grant agreement executed by HUD in September 2023) to construct a new senior center. Because the project is using funds obligated after November 15, 2022, the grantee must ensure that the iron and steel used in the project complies with the BAP requirements. However, the project does not need to comply with the BAP requirements for construction materials or manufactured products because the funds do not include funding obligated from FY24 or FY25 appropriations.



Single-Family Owner-Occupied Rehab Program

A participating jurisdiction (PJ) operates a single-family owner-occupied rehabilitation program using HOME funds obligated after August 23, 2024. The PJ determines that since the total project costs from all sources for each activity do not exceed \$250,000, individual rehabilitation activities are covered by the Small Grant Waiver and do not need to comply with the BAP.



Project/Product-Specific Waivers

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 Office of Management and Budget's Made In America Office (MIAO). Project-specific waivers are generally available for three reasons:

- **Public interest:** Adhering to the BAP would be inconsistent with the public interest.
- **Nonavailability:** Covered materials are not produced in the USA in sufficient and reasonably available quantities or of a satisfactory quality.

- **Unreasonable cost:** Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25 percent.

If more than one Federal agency is funding an infrastructure project, project-specific waivers will require coordination among those Federal agencies prior to a determination by the MIAO.

Project Implementation and Recordkeeping

CPD grantees engaging in infrastructure projects must comply with the BAP. 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.

Grantees may want to use activity by grant expenditure reports to help identify which projects might be subject to BAP requirements. In some instances, grantees may need to amend existing agreements or other award documents.

The BAP requirements must be included in the terms and conditions for subrecipient agreements, contracts, subawards, and purchase orders for all infrastructure projects. Grantees must maintain documentation of compliance with BAP requirements or exemption due to a waiver in accordance with program-specific recordkeeping requirements and 2 CFR § 200.334 as applicable to Federal grants.



CPD grantees should retain documentation that demonstrates:

1. *All the iron, steel, manufactured products, and construction materials used in infrastructure projects are produced in the United States in accordance with HUD's Phased Implementation Waiver, or*
2. *The project is covered by a HUD general waiver and is therefore exempt from the BAP, or*
3. *A project/product-specific waiver was reviewed by HUD and approved by the MIAO.*

Additional Resources

- [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 \(OMB\)](#)



QUICK GUIDE

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