

Build America, Buy America Act: Buy America Preference for ESG Grantees



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 ESG 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 ESG-funded project, you should determine whether the project is subject to the BAP and, if so, for which classification(s) of products. The following process outlines the criteria for ESG projects subject to the BAP, with four possible 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. The BAP only applies to infrastructure projects.**
- If no, the BAP does not apply. Note that activities consisting solely of essential services, shelter operations, and rental assistance activities are not defined as infrastructure projects.

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

- Renovation of temporary shelter for homeless individuals and families in emergency situations, including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter

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 ESG funding?

- **If yes, proceed to step 3.**
- If no, then the grantee does not need to comply with the BAP due to the inclusion of ESG funding but may need to comply with the BAP for other HUD or Federal funding sources used in the project.

Step 3: Materials

Identify and classify the products that will be used in this infrastructure project. Does the project use products subject to the BAP (iron or 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 materials, see the [BABA CPD Overview Quick Guide](#).

Step 4: Date of Obligation

Identify the obligation date of the ESG funds, which is the date HUD executed the ESG grant agreement. For each classification of products required to complete the infrastructure project, determine whether the date of obligation for ESG 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 ESG funds obligated by HUD on or after February 22, 2024.
<p>Specifically Listed Construction Materials (non-ferrous metals; lumber; and plastic- and polymer-based composite building materials, pipe, and tube)</p> <p>Not Listed Construction Materials (all other plastic- and polymer-based products, glass, fiber optic cable, optical fiber, engineered wood, and drywall)</p> <p>Manufactured Products</p>	The BAP will apply to the purchase of specifically listed construction materials, not listed construction materials, and manufactured products for infrastructure projects using ESG funds obligated by HUD on or after August 23, 2024, as well as 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 the following waivers:

1. Exigent Circumstances Waiver (November 23, 2027):

- 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 (November 23, 2027):

- Is the total cost of the project 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 of the project would still need to comply with the BAP.

3. Tribal Recipients Waiver (May 23, 2024):

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

Example Projects



Photo courtesy of Keizers

Emergency Shelter Renovation

In July 2024, a grantee awards \$1 million in FY2024 ESG funds (obligated by HUD after February 22, 2024) for the renovation of an emergency shelter.

- The grant funds were obligated by HUD after February 22, 2024
- The project's total budget is \$1 million
- The project is an infrastructure project

Does the BAP apply to this project?

Yes, the BAP applies to this project for iron and steel. Because the funds used in the project were obligated by HUD before August 23, 2024, the grantee does not need to ensure BAP compliance for construction materials or manufactured products.



Photo courtesy of DOHS (public domain)

Emergency Shelter Conversion

In June 2026, a grantee awards \$200,000 in FY2025 ESG funds for the conversion of a building to an emergency shelter. The grantee is using several other local funding sources, and the total project budget is \$500,000.

- The grant funds were obligated by HUD after August 23, 2024
- The project's total budget is \$500,000 even though it is only using \$200,000 in ESG funds
- The project is an infrastructure project

Does the BAP apply to this project?

Yes, the BAP applies to this project for iron and steel, all construction materials, and manufactured products because it is using ESG funds obligated by HUD after August 23, 2024.



Photo by Freepik

Rapid Re-Housing Assistance

In January 2025, a grantee awards \$300,000 in FY2025 funds to a rental assistance rapid re-housing program to help individual families move out of homelessness into permanent housing.

- The grant funds were obligated by HUD after August 23, 2024
- The project's total budget is \$300,000
- The project is not an infrastructure project

Does the BAP apply to this project?

No, the BAP does not apply to this project because it is a rental assistance rapid re-housing project which does not meet the definition of an infrastructure project under BABA.

Procurement and Subrecipient Selection

For projects using ESG funds obligated by HUD on or after February 22, 2024, review existing procurement policies and procedures to ensure that new administrative steps are developed to implement BAP requirements.

When revising administrative documents, make sure to incorporate the BAP into the terms and conditions of all ESG 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 and steel or other classifications of products.

ESG grantees engaging in infrastructure projects must comply with the BAP conditions in the FY2024 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 ESG award.



Project Implementation and Recordkeeping

ESG 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

ESG 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 ESG 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 ESG's record retention requirements.

Additional Resources

- [BABA CPD Overview Quick Guide](#)
- [BABA on HUD Exchange](#)
- [HUD BABA Website](#)
- [2 CFR 184](#)
- [2 CFR 200.322](#)
- [What is Build America Buy America Factsheet \(OMB\)](#)
- [Made in America \(OMB\)](#)
- [CPD Notice 2023-12](#)



QUICK GUIDE

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