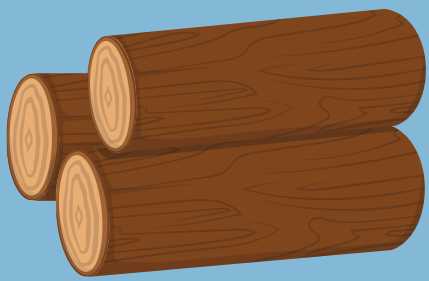


BABA

The Build America, Buy America Act (BABA) requires that all iron and steel, construction materials, and manufactured products used in federally-funded infrastructure projects are produced in the United States. This is known as the “Buy America Preference (BAP)”.

APPLICABILITY

CPD-funded infrastructure projects are subject to the BAP once the obligation date has passed according to HUD’s Phased Implementation Waiver, 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.



IMPLEMENTATION TIMELINE

To facilitate a smooth transition to the BAP requirements, HUD established a Phased Implementation Waiver for its program based on the date when funds are obligated (i.e., typically the date when HUD executes the grant agreement). The BAP will apply on or after the HUD obligates new funds for the following:

CDBG Formula Grants:

- Iron and Steel-- November 15, 2022
- Specifically Listed Construction Materials-- FY24 appropriations
- Not Listed Construction Materials and Manufactured Products-- FY25 appropriations

Recovery Housing Program (RHP) Grants:

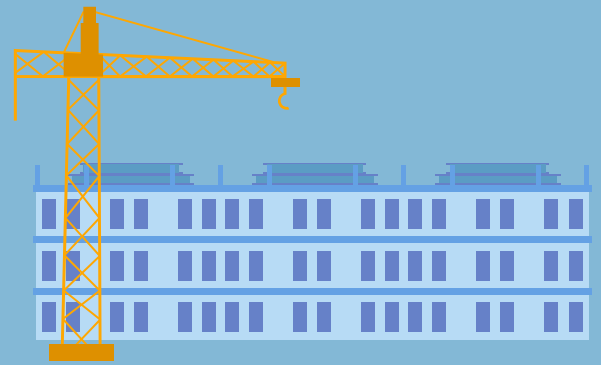
- Iron and Steel-- August 23, 2023
- Specifically Listed Construction Materials-- FY24 appropriations
- Not Listed Construction Materials and Manufactured Products-- FY25 appropriations

All CPD programs, except HOME and Housing Trust Fund

- Iron and Steel-- February 22, 2024
- Specifically Listed Construction Materials, Manufactured Products, Not Listed Construction Materials-- August 23, 2024

All CPD Programs, including HOME and HTF

- Iron and Steel, Specifically Listed Construction Materials, Manufactured Products, and Not Listed Construction Materials-- August 23, 2024



PRODUCTS COVERED

All manufacturing processes for the following materials must occur in the United States:

1. Iron and Steel

2. Construction Materials

- Specifically Listed Construction Materials: Items include non-ferrous metals, lumber, and plastic- and polymer-based composite building materials, pipe, and tube.
- Not Listed Construction Materials: All other plastic- and polymer-based materials (such as polymers used in fiber optic cables); glass; fiber optic cable; optical fiber; engineered wood, and drywall.

3. Manufactured Products

- Includes articles, materials, or supplies that have either been:
 - Processed into a specific form or shape, or
 - Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.



WAIVERS

BAP requirements may be waived for a project if certain conditions are met for a general waiver or project/product specific waiver. General waivers can be employed without the need for a formal request to HUD.

General Waivers

- Exigent Circumstances-- For projects that must be completed immediately to protect life, ensure safety, or prevent the destruction of property. Effective through Nov. 23, 2027.
- De Minimis and Small Grants-- For projects whose total cost (from all sources) does not exceed the simplified acquisition threshold value (\$250,000), OR if BAP materials for a portion of a project comprise no more than 5% 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. Effective through Nov. 23, 2027.

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/Product-Specific Waiver

- 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%.

RECORDKEEPING

The following documentation that demonstrates BABA compliance should be retained:

- All iron, steel, and manufactured products, and construction materials used in infrastructure projects are produced in the U.S., or
- The project is covered by a HUD general waiver and is therefore exempt from the BAP, or
- A project/product-specific waiver was reviewed by HUD and approved by the MIAO.

