

**St. Clair County
Intergovernmental Grants Department/
Community Development**

**Build America, Buy America Act
(BABA)**

Policy and Procedure Manual



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Overview

‘The Build America, Buy America Act (BABA) mandates that all iron and steel, construction materials, and manufactured products used in federally funded infrastructure projects must be produced in the United States. This requirement, referred to as the "Buy America Preference" (BAP), is outlined in the [Public Law 117 - 58 - Infrastructure Investment and Jobs Act](#) and codified under [2 CFR 18- Guidance for Grants and Agreements](#).’

Community Planning and Development (CPD) grantees must collaborate with subrecipients, developers, and contractors to ensure compliance with the BAP when utilizing HUD-funded infrastructure projects. The resource documents available on [HUD Exchange](#) provide guidance on determining the applicability of BAP to specific projects.

Applicability

Per CPD Notice [CPD-25-01](#), BAP applies to CPD-funded infrastructure projects once the obligation date has passed, according to HUD’s [Phased Implementation Waiver](#), unless the project is covered by another general waiver. Refer to [Appendix A](#), which outlines the phased implementation timeline for HUD’s covered programs published in the Phased Implementation 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. Projects with one to four units should be classified as private and not subject to BABA. Housing projects with five or more units should be considered as public infrastructure subject to BABA unless another BABA waiver or exemption applies.

Additionally, the notice emphasizes that all subgrantees, contractors, developers, and other entities receiving covered CPD program funds must comply with BABA requirements. St. Clair County Community Development Group is committed to complying with and enforcing BABA requirements by ensuring that all relevant procurement documents and agreements reflect the necessary Buy American Preference language, thereby promoting adherence to these standards in all projects utilizing covered CPD program funds.

Under Sections 70912 and 70914 , current St Clair County covered CPD Programs include:

- Community Development Block Grant (CDBG)
- HOME Investment Partnerships Program (HOME)
- HOME Investment Partnerships American Rescue Plan Program (HOME-ARP)
- Emergency Solutions Grants (ESG)
- Special NOFA for unsheltered and rural homeless

Under Section 70912(4)(B) and [2 CFR 184.8](#) , BAP does not apply to Federal funds for “pre- and post-disaster or emergency response.” The following St Clair County CPD funds are administered for disaster or emergency-related purposes and therefore the BAP does not apply:

- Community Development Block Grant—Disaster Recovery Funds (CDBG-DR)
- Community Development Block Grant CARES Act (CDBG-CV)

Key Concepts

1. **Buy America Preference (BAP):**
 - BABA mandates that all iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects be produced in the U.S., unless exempt or waived.
2. **Infrastructure Projects:**
 - BABA applies to infrastructure projects funded by federal programs like CDBG, CoC, and ESG. Infrastructure projects include the construction, renovation, or rehabilitation of buildings, roads, bridges, and utilities.
3. **Covered Products:**
 - The BAP covers products like iron, steel, specific construction materials (e.g., lumber, non-ferrous metals), and manufactured products.
4. **Waivers:**
 - Waivers can be granted under certain conditions, such as if applying BABA is inconsistent with the public interest, materials are not available domestically, or the cost would increase by more than 25%.
5. **General and Project-Specific Waivers:**
 - General waivers apply in cases of exigent circumstances, small grants, or tribal recipients. Project-specific waivers are granted after review and must be substantiated with market research, justification, and documentation.
6. **Procurement & Subrecipient Selection:**
 - Grantees must ensure that contracts, subawards, and procurement documents reflect BABA compliance. All parties must be informed of the Buy America Preference requirements.
7. **Recordkeeping:**
 - Grantees are required to maintain documentation demonstrating compliance with BABA, including proof of procurement from domestic sources and any waiver requests.
8. **Enforcement:**
 - Noncompliance with BABA can result in penalties, and grantees are responsible for monitoring compliance throughout the project lifecycle.

For more information, please refer to [Build America, Buy America Act - HUD Exchange](#).

Guidance for Specific HUD Programs

Community Development Block Grant (CDBG) Program

i. **Planning Phase (set forth by [2 CFR Part 184](#))**

In the planning phase of any CDBG-funded project, grantees must determine whether the project is subject to the Buy America Preference (BAP) and, if applicable, which product classifications are affected. This process helps ensure compliance with BABA regulations

and supports the proper use of funds. The following steps outline the criteria for determining BAP applicability to CDBG projects, with four potential outcomes:

Step 1: Type of Project/Activity

Determine if the project is an infrastructure project, as defined by the Buy America Preference (BAP).

- **If Yes**, proceed to Step 2. The BAP only applies to infrastructure projects.
- **If No**, the BAP does not apply. Activities such as essential services, shelter operations, and rental assistance are not considered infrastructure projects and are exempt from BAP.

Step 2: Funding Source

- Identify all sources of funding for the project, including CDBG and other federal funding that must comply with BAP.
 - **If Yes**, proceed to Step 3.
 - **If No**, the project may still need to comply with the BAP for other federal funding sources but is not required to follow BAP for CDBG funding.

Step 3: Materials (set forth by [2 CFR 184.6](#))

- Identify and classify the materials to be used in the project (e.g., iron, steel, construction materials, or manufactured products). Determine whether these materials are covered by BAP.
 - **If Yes**, proceed to Step 4.
 - **If No**, the BAP does not apply. The BAP only applies to covered materials, and if none are used, the BAP is not required.

Step 4: Date of Obligation (outlined in [Appendix B](#))

- Determine the obligation date for the CDBG funds, which is the date HUD executed the grant agreement.
 - **If Yes**, proceed to Step 5. The BAP applies if the obligation date is on or after the effective date of the BAP.
 - **If No**, the BAP does not apply to materials purchased before the effective date.

Step 5: General Waiver (set forth by [2 CFR 184.7](#))

Consider the available HUD General Waivers that could apply to the project:

- a. **Exigent Circumstances Waiver:** Is there an urgent need to complete the project due to threats to safety, health, or property?

- **If Yes**, the Exigent Circumstances Waiver may apply, and the project would not be subject to the BAP.
- b. **De Minimis, Small Grants, and Minor Components Waiver:** Does the total project cost not exceed \$250,000?
 - **If Yes**, this waiver may apply, and the project may be exempt from the BAP.
 - **Alternatively**, the waiver may apply to a portion of the project if the cumulative cost of the products subject to the BAP does not exceed 5% of the total covered products (up to \$1 million).
- c. **Tribal Recipients Waiver:** Is the project funded by a Tribal recipient?
 - **If Yes**, the Tribal Recipients Waiver may apply, and the project may not be subject to the BAP. Note that this is atypical for CPD programs.
 - **If No** to all general waiver questions, proceed to Step 6.

Step 6: Project Specific Waivers (set forth by [2 CFR 184.7](#))

Evaluate if a project-specific waiver is needed based on factors such as public interest, nonavailability of materials, or unreasonable cost. Consider the following:

- a. **Public Interest:** Would applying the BAP be inconsistent with the public interest?
 - **If Yes**, a project-specific waiver may be considered.
- b. **Nonavailability of Materials:** Are the materials used in the project not produced in the U.S. or not available in sufficient quantities?
 - **If Yes**, a project-specific waiver may be considered.
- c. **Unreasonable Cost:** Would using domestically produced materials increase the project cost by more than 25%?
 - **If Yes**, a project-specific waiver may be considered.
 - **If No** to these waiver questions, BAP compliance applies, and project documentation should reflect that materials were sourced domestically as per BAP.

ii. Project Implementation and Recordkeeping

CDBG grantees are responsible for ensuring that all stakeholders are aware of BAP requirements. Grantees must:

- Determine if the project is subject to the BAP, and if so, for which materials.
- Maintain records to support BAP compliance in line with program requirements.
- Ensure proper documentation of efforts made to source materials domestically, including information from subrecipients, contractors, and vendors.

iii. Project Completion

Upon project completion, CDBG grantees must retain supporting documentation from subrecipients and contractors to show compliance with BABA requirements. This includes:

- Detailed justification for the use of materials produced outside the U.S.
- Certification of good faith efforts to source domestically produced products.
- Relevant waivers, including type and justification.
- Documentation of the infrastructure expenditures, both federal and non-federal sources.

If a project-specific waiver is needed, grantees must provide:

- A thorough justification for using foreign materials.
- Evidence of efforts to find domestic sources.
- Relevant waiver details (type, recipient, funding sources, etc.).

BAP documentation should be maintained in compliance with the latest HUD requirements and any updates to the BAP regulations, as well as CDBG's record retention requirements.

For full details on specific BAP requirements, refer to [BABA Quick Guide: CDBG](#).

Continuum of Care (CoC) Program

i. Planning Phase (set forth by [2 CFR Part 184](#))

At the planning phase of any CoC-funded project, it is essential to determine whether the project is subject to the Buy American Preference (BAP) and, if so, for which classifications of products. The following process outlines the criteria for CoC projects subject to BAP, with four possible outcomes:

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

Step 1: Type of Project/Activity

- Determine if the project qualifies as an infrastructure project under BABA guidelines. If yes, proceed to Step 2. If no, the BAP does not apply.
- Examples of CoC infrastructure projects include:
 - Rehabilitation, reconstruction, or new construction of permanent and transitional housing.
 - Rehabilitation, reconstruction, or new construction of buildings for supportive services for homeless persons.
- Projects consisting solely of essential services, shelter operations, or rental assistance are not considered infrastructure projects and are not subject to BAP.

Step 2: Funding Source

- Identify whether the project includes CoC funding. If yes, proceed to Step 3.
- If CoC funds are not involved, determine if other HUD or Federal funding sources require BAP compliance.

Step 3: Materials (set forth by [2 CFR 184.6](#))

- Identify and classify the materials used in the project. The BAP applies only to covered materials such as iron, steel, construction materials, or manufactured products.
- If the project does not use these materials, BAP does not apply.

Step 4: Date of Obligation (outlined in [Appendix B](#))

- Identify the date of obligation for the CoC funds (the date HUD executed the CoC grant agreement).
- Compare this date to the effective date of the BAP for each classification of products. If the obligation date is on or after the effective date, proceed to Step 5. If not, BAP does not apply.

Step 5: General Waiver (set forth by [2 CFR 184.7](#))

- Consider the available HUD General Waivers. If any of the following apply, the project is exempt from the BAP:
 - **Exigent Circumstances Waiver (November 23, 2027):** If there is an urgent need due to life, safety, or property concerns.
 - **De Minimis, Small Grants, and Minor Components Waiver (November 23, 2027):** If the total project cost is \$250,000 or less, or if the cost of covered products used does not exceed 5% of the total cost (up to \$1 million).
 - **Tribal Recipients Waiver (May 23, 2024):** If the project is funded by a Tribal recipient.
- If no general waivers apply, proceed to Step 6.

Step 6: Project Specific Waivers (set forth by [2 CFR 184.7](#))

- Determine if a project-specific waiver applies based on the following criteria:
 1. The BAP is inconsistent with the public interest.
 2. Materials are unavailable in the United States or in sufficient quantities.
 3. The cost of domestically produced materials exceeds 25% of the total project cost.
- If any of these conditions are met, a project-specific waiver may be considered. If not, the project must comply with the BAP.

ii. Project Implementation and Recordkeeping

CoC grantees must ensure all relevant stakeholders are aware of BAP requirements. Recordkeeping and documentation should comply with program requirements, ensuring that all records related to BABA compliance are maintained, including those from subrecipients, contractors, and vendors.

iii. Project Completion

CoC grantees must retain supporting documentation from subrecipients, contractors, and vendors to demonstrate compliance with the BABA requirements on both a project and material level. This documentation should be maintained for HUD review and in line with the program's recordkeeping and retention policies.

BAP documentation should be maintained in compliance with the latest HUD requirements and any updates to the BAP regulations, as well as CoC's record retention requirements.

For full details on specific BAP requirements, refer to [BABA Quick Guide: CoC](#)

Emergency Solutions Grants (ESG) Program

i. Planning Phase (set forth by [2 CFR Part 184](#))

In the planning phase of any ESG-funded project, grantees should determine whether the project is subject to the Build America, Buy America Act (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.

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 (set forth by [2 CFR 184.6](#))

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.

Step 4: Date of Obligation (outlined in [Appendix B](#))

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.

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

Step 5: General Waiver (set forth by [2 CFR 184.7](#))

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 (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 waiver may apply, and the project would not be subject to the BAP.
 - 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).

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 (set forth by [2 CFR 184.7](#))

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.

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.
- A certification of a good faith effort to source domestically produced products.
- Waiver type (nonavailability, unreasonable cost, or public interest).
- Recipient name and Unique Entity Identifier.
- Federal financial assistance program name and amount.
- Federal Award Identification Number (FAIN), if available.
- Infrastructure project description and location.
- List of iron or steel items, manufactured products, and construction materials proposed to be excepted from the BAP.
- Anticipated impact if no waiver is issued.
- Any relevant comments received during the public comment period.

ii. **Project Implementation and Record Keeping**

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.).

iii. **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.

BAP documentation should be maintained in compliance with the latest HUD requirements and any updates to the BAP regulations, as well as ESG's record retention requirements

For full details on specific BAP requirements, refer to [BABA Quick Guide: ESG](#)

Self-Monitoring

Compliance monitoring will be conducted by the St. Clair County Intergovernmental Grants' Department Group's Community Development Group. Through self-monitoring, the Community Development Group can regularly assess its operations, identify areas for improvement, and address deficiencies proactively, well before external monitoring or reviews take place. The goal is to uphold the highest standards of compliance, efficiency, and effectiveness, ensuring all activities align with HUD's policies and the applicable regulations. Details of compliance monitoring are outlined in the Policy and Procedure Manual for Compliance Monitoring, available on [St. Clair County Illinois > Departments > Intergovernmental Grants > Community Development \(RC Version: 9.13.3.0\)](#).

Appendix A

Program	Iron and Steel	Construction Materials – Specifically Listed	Construction Materials – Not Listed	Manufactured Products
CDBG Formula Grants	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations
Choice Neighborhood, Lead Hazard Reduction, and Healthy Homes Production Grants	New FFA obligated by HUD on or after February 22, 2023	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024
Recovery Housing Program (RHP) Grants	New FFA obligated by HUD on or after August 23, 2023	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations
All HUD other FFA except HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects	New FFA obligated by HUD on or after February 22, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024
HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024	New FFA obligated by HUD on or after August 23, 2024

Appendix B

Covered Product	ESG Obligation Date	CDBG Obligation Date	CoC 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.	The BAP applies to the purchase of iron and steel for infrastructure projects using CDBG funds obligated on or after November 15, 2022.	The BAP applies to the purchase of iron and steel for infrastructure projects using CoC funds obligated by HUD on or after February 22, 2024.
Specifically Listed Construction Materials <i>(non-ferrous metals, lumber, and plastic- and polymer-based composite building materials, pipe, and tube)</i>	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.	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.	The BAP applies to the purchase of specifically listed construction materials, not listed construction materials, and manufactured products for infrastructure projects using CoC funds obligated by HUD on or after August 23, 2024, as well as iron and steel.
Not Listed Construction Materials <i>(all other plastic- and polymer-based products, glass, fiber optic cable, optical fiber, engineered wood, and drywall)</i>	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.	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.	The BAP applies to the purchase of specifically listed construction materials, not listed construction materials, and manufactured products for infrastructure projects using CoC funds obligated by HUD on or after August 23, 2024, as well as iron and steel.
Manufactured Products	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.	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.	The BAP applies to the purchase of specifically listed construction materials, not listed construction materials, and manufactured products for infrastructure projects using CoC funds obligated by HUD on or after August 23, 2024, as well as iron and steel.

Appendix C

Additional Resources

[Optional Buy America Preference Checklist](#)

[BABA Quick Guide: CPD Overview](#)

[Build America, Buy America Act - HUD Exchange](#)

[Public Law 117 - 58 - Infrastructure Investment and Jobs Act - Content Details -](#)