

# COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BUILD AMERICA, BUY AMERICA (BABA) ACT REQUIREMENTS FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

## BACKGROUND INFORMATION

The Build America, Buy America (BABA) Act, 41 USC § 8301 note, was enacted in the Infrastructure Investment and Jobs Act on November 15, 2021. The BABA Act specifies that products purchased in connection with infrastructure projects funded by Federal financial assistance (FFA) programs must be produced in the United States (U.S.). According to the BABA Act, “none of the funds made available for a Federal Financial Assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” This requirement is known as the “**Buy America Preference (BAP)**” (or “domestic procurement requirement”). The purpose of BABA is to stimulate private sector investments in American manufacturing, bolster critical American supply chains, and support the creation of jobs so that America’s workers and firms can compete and lead globally. Additional information is provided on the [HUD BABA website](https://www.hudexchange.info/programs/baba/) at: <https://www.hudexchange.info/programs/baba/>

## REQUIREMENTS

The prime contractor and all subcontractors (all tiers) must comply with the requirements of the BABA Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, as applicable to the Community Development Block Grant (CDBG) infrastructure project. Pursuant to the U.S. Department of Housing and Urban Development’s (HUD’s) [CPD-2023-12](#) notice, “[Public Interest Phased Implementation Waiver for FY2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance](#)” ([88 FR 17001](#)), any funds obligated by HUD on or after the applicable BAP implementation dates listed in [88 FR 17001](#) are subject to BABA requirements, unless excepted by a waiver.

**The contractor (whether a prime contractor or subcontractor – any tier) must:**

- **ensure compliance with the BAP requirement** for all products and materials covered under BABA that are purchased for a CDBG infrastructure project, unless the project or item qualifies for a waiver or exemption; and
- **maintain records that verify compliance with the BAP** for all products and materials covered under BABA and provide them to the CDBG Grantee/unit of general local government (UGLG), State of Wisconsin Department of Administration (DOA) – Division of Energy, Housing and Community Resources (DEHCR), HUD, and/or other regulating entities upon request; and
- **receive the required approvals for any project-specific waiver request prior to purchasing** any product or material not produced in the U.S. that is covered under BABA and not eligible for a general waiver or other exemption.

General waivers and project-specific waiver categories are specified in [88 FR 17001](#).

In accordance with HUD’s phased implementation plan for BABA for the CDBG program,\* iron and steel, manufactured products, and production materials purchased for infrastructure project awarded by DEHCR to a CDBG Grantee/UGLG on or after the dates listed below must be produced in the U.S. unless a waiver or exemption applies:

<u>Category:</u>	<u>WI CDBG Projects Subject to BABA:*</u>
Iron and steel products	Grant Awarded on or after 1/1/2023
Construction materials specifically listed in <a href="#">88 FR 17001</a>	Grant Awarded on or after 1/1/2024
Construction materials <i>not</i> specifically listed in <a href="#">88 FR 17001</a>	Grant Awarded on or after 1/1/2025
Manufactured products	Grant Awarded on or after 1/1/2025

An article, material, or supply is not to be classified into more than one category and must be made based on the status of the article, material, or supply upon arrival to the work site for use in an infrastructure project. Articles, materials, or supplies must meet the BAP for only the single category in which they are classified and, in some cases, may not fall under any of the categories listed above.

## DEFINITIONS

Key terms that have relevance to the interpretation and implementation of the BAP for CDBG are defined in the BABA statute and may be found in HUD Notice [CPD-2023-12](#), [2 CFR 184](#), and [OMB M-24-02](#) guidance.

## BABA PROJECT-SPECIFIC WAIVER REQUEST PROCESS\*\*

Waivers are explained in HUD Notice [CPD-2023-12](#) and [OMB M-24-02](#) and are required by the Infrastructure, Investments and Jobs Act (IIJA) sections 70901 through 70952 for exceptions not otherwise exempt to the BAP.

A contractor seeking a project-specific waiver must demonstrate the criteria for one or more of the project-specific waiver categories are met. Contractors are to consult with and submit waiver requests to the Grantee/UGLG.\*\* The CDBG BABA Project-Specific Waiver Request Form (Attachment 3-K linked on the Wisconsin State CDBG Small Cities Program [CDBG Implementation Handbook](#) website [<https://energyandhousing.wi.gov/Pages/AgencyResources/CDBG-Implementation-Handbook.aspx>]) must be completed and submitted with the required supporting documentation, following the instructions on the form, for project-specific waiver consideration.

The contractor must submit the waiver request documentation to the CDBG Grantee/UGLG, and the CDBG Grantee/UGLG must verify that it is complete and submit it to DEHCR. DEHCR will review the documentation and if it is confirmed to be complete and in compliance, will submit the required waiver request information and additional documentation to the appropriate HUD representative for further review and processing. A waiver must be approved by DEHCR, HUD, and the [Made in America Office](#) (MIAO) prior to an entity proceeding with using any construction items subject to the BAP for the CDBG project that are not produced in the U.S. [*Note: The waiver request review process includes a public notice requirement and the issuance of a decision by HUD and the MIAO may require six (6) weeks or more.*]

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\*Other Federal funding agencies may have different phase-in plans with different phase-in dates.

\*\*If the project is funded with multiple Federal funding sources, to avoid duplicative waiver requests, the Grantee/UGLG and DEHCR are to coordinate with the “Cognizant Agency” (i.e., the entity contributing the greatest amount of Federal funds to the project) to process the waiver request and submit it for approval by the Federal agency and MIAO. The Cognizant Agency is responsible for consulting with the other Federal agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to the MIAO.