MaineHousing
MAINE STATE HOUSING AUTHORITY

Compliance and Implementation Plan for Build America, Buy America ("BABA")

Effective March 17, 2025
Amended June 18, 2026

This Compliance and Implementation Plan is intended to comply with the Federal requirements established by the Department of Housing and Urban Development and the Department of Energy.

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Overview

The Build America, Buy America Act ("BABA") was signed into law by President Biden on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58). The intent of BABA is to stimulate private sector investments in American manufacturing, bolster critical American supply chains, and support the creation of jobs so America's workers and firms can compete and lead globally for years to come.

BABA requires that certain materials purchased in connection with infrastructure projects, which includes all housing projects developed with MaineHousing, funded by Federal financial assistance programs be produced in the United States. This requirement is known as the Buy America Preference ("BAP"). An infrastructure project is defined as any project that includes construction, alteration, maintenance, or repair of: buildings and real property; utilities; water systems (drinking water and waste water); electrical transmission facilities and systems; broadband infrastructure; and transportation infrastructure. Any federally funded infrastructure project that uses iron and steel, manufactured projects and/or construction materials must ensure the materials are produced in the United States.

For more information and additional guidance on BABA you may visit HUD's website at Welcome to HUD Exchange - HUD Exchange.

BAP Applicability to HUD Programs and DOE Weatherization Programs

In order to determine if BAP applies, the funding source(s) must be identified for each project, including HUD funding and other Federal agency funding that must comply with BABA. HUD Guidance states if HUD contributes the largest portion of Federal funds to a project, then the HUD BABA rules apply. If another Federal agency contributes the largest portion of Federal funds to the project, that Federal agency is the "Cognizant Agency for Made in America" and projects must comply with that agency's guidance for applicability of the BAP to a project.

HUD Programs

BABA applies to all Federal financial assistance used for an infrastructure project including:

- Grants;
- Cooperative agreements;
- Non-cash contributions or donations of property;
- Direct assistances;
- Loans;
- Loan guarantees; and
- Other financial assistance.

The BAP currently applies for the following HUD Programs, which MaineHousing administers, subject to change if HUD establishes a new program:

- **Continuum of Care (CoC)**

- **Emergency Solutions Grants (ESG)**
- **HOME Investment Partnerships Program (HOME)**
- **Housing Trust Fund (HTF)**
- **Recovery Housing Program (RHP)**

See the Phased Implementation Waiver section, under HUD General Waivers, for more information on the specific funding/programs that are affected.

The BAP also applies to additional HUD Programs, not currently administered by MaineHousing:

- **Community Development Block Grant Formula Programs (CDBG)**
- Community Project Funding (CPF)/Economic Development Initiatives (EDI)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Pathways to Removing Obstacles to Housing (PRO Housing)
- Preservation and Reinvestment Initiative for Community Enhancement (PRICE)
- Rural Capacity Building
- Section 4 Capacity Building
- Section 108 Loan Guarantee
- Self-Help Homeownership Opportunity Program (SHOP)
- Special NOFA for unsheltered and rural homeless
- Veterans Housing Rehabilitation and Modification Program (VHRMP)
- Continuum of Care Builds Notice of Funding Opportunity (CoCBuilds NOFO)

The BAP **does not apply** to the following HUD Programs:

- Community Development Block Grant CARES Act (CDBG-CV)
- Community Development Block Grant – Disaster Recovery Funds (CDBG-DR)
- Community Development Block Grant – Mitigation (CDBG-MIT)
- Community Development Block Grant – National Disaster Resilience Competition (CDBG-NDR)
- Emergency Solutions Grants CARES Act (ESG-CV)
- Housing Opportunities for Persons With AIDS CARES Act (HOPWA-CV)
- HOME Investment Partnerships American Rescue Plan Program (HOME-ARP)
- Rapid Unsheltered Survivor Housing (RUSH)
- Program income generated through any HUD Programs in which the BAP does apply (program income is not consider Federal financial assistance).

DOE Weatherization Programs

Awards made by the DOE Weatherization Assistance Program ("WAP") after May 14, 2022 are subject to BABA. **Only weatherization on public housing or on privately owned buildings that serve a public function are required to comply with the BABA requirements.**
The BAP currently applies for the following DOE Weatherization Programs:

- WAP Annual Formula Grants for Program Year (PY) 2022 and beyond
- WAP Bipartisan Infrastructure Law (BIL) Grants
- WAP Enhancement & Innovation (E&I) Grants

- WAP Sustainable Energy Resources for Consumers (SERC) Grants
- WAP Community Scale Pilot Program (CSPP) Grants

Definitions

A. Construction. For purposes of this Compliance and Implementation Plan "construction" includes rehabilitation.

B. Contractor. For DOE Programs, Contractor means the individual or entity performing the work under the specific DOE Grant.

C. Developer. For HUD Programs, Developer means the individual or entity responsible for the design and construction of the project and the administration of the Federal financial assistance provided to the project. A Developer may act as part of the ownership entity.

D. Private Projects. The term "Private Projects" is defined as housing projects with one to four units. Private Projects with one to four units, including onsite utilities and related activities are not considered public infrastructure and are not subject to the BAP.

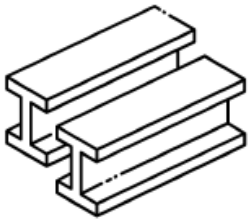
E. Program Income. The term "Program Income" means income generated from a grant-supported activity.

F. Project. The term "project" means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HUD Program funds administered by MaineHousing (defined above) as a single undertaking. The project includes all the activities associated with the site and building. Project sites cannot be split to avoid application of the BAP.

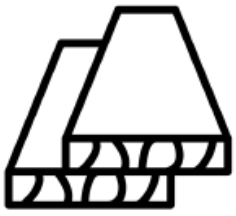
Product Classification

Products should be classified based on their status when they arrive at a project site. Products should be classified into one of the three following categories, but not more than one category:

Iron and Steel



Construction Materials



Manufactured Products



Iron and Steel

Definition: means the product consists completely or predominantly of iron or steel, meaning the cost of the iron or steel content exceeds 50% of the total cost of the product components.
Production Requirements: All manufacturing, from initial melting through application of coatings, must occur in the United States.
Examples: Rebar, Steel playground slide

Construction Materials

Definition: Construction materials include:

- Non-ferrous metals;
- Lumber;
- Plastic- and polymer-based products (including polyvinylchloride, composite building materials and polymers used in fiber optic cables, pipe and tube);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber
- Engineered wood; and
- Drywall.

Production Requirements: All manufacturing processes must occur in the United States. Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the material.

Manufactured Products

Definition: articles, materials or supplies that have been processed into a specific form or shape OR have been combined with other articles, materials or supplies to create a product with different properties.

Production Requirements: The final product must be manufactured in the United States AND at least 55% of the cost of the product must come from components that were mined, produced, or manufactured in the United States.

Examples:

- Pre-fabricated window (combines glass and fiberglass), precast concrete (processed into a specific form before arriving at a job site).
- Items manufactured in a factory that arrive on site together, i.e. a modular box or wall panel. **NOTE: in order to be classified as a manufactured product, these items must be assembled in the factory. They cannot be transported to another location for assembly and the product that is being purchased by the project must be one item in its finished state.**

Excluded Materials

The BAP is not applicable to the following types of materials:

Section 70917(c) Materials

Definition: means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Requirements: Not considered construction materials and generally exempt unless they are used to produce a manufactured product.

Equipment, Supplies and Furnishings

Definition: means tools, equipment, supplies, such as temporary scaffolding brought to a construction site and removed at or before completion of the infrastructure project. Also includes equipment and furnishings, such as chairs, desks and computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Requirements: Exempt from the BABA requirements.

Other Excluded Costs

- Technical Assistance and Management Costs
- Design and Planning Costs
- Labor
- Projects funded solely with Program Income
- Labor and service fees for utilities. If a utility company installs a meter for utilities at the project, as long as the project is not purchasing the meter and is only paying the installation fee and ongoing service fees, the meter would not need to comply with BABA as it is not a product purchased for the project.

MAINEHOUSING'S PLAN TO IMPLEMENT

Developers will classify products using the HUD Build America, Buy America Construction Material Spreadsheet, attached hereto as Appendix L or a substantially similar form approved by MaineHousing.

Developers must classify products into the three different categories, attach a certification for each product, provide a cost, and denote whether or not the product is being included in the *De Minimis* Waiver, if applicable.

Acceptable product certifications include:

- **A signed certificate from the manufacturer or reseller that the product complies with BABA. Appendix R is an example of an acceptable form of certification. The certification must have the BABA language and must be on the company's letter head and list the products with enough specificity to determine compliance.**
- **A certificate or other documentation from the manufacturer demonstrating that the product complies with BABA.**
- **A copy of the product description or technical specifications that provides sufficient detail to conclude that the product will comply with BABA.**
- **A copy or picture of a label that indicates the product was made in the United States.**

Once a product has been certified, Developer will not be required to recertify the product every time it is used. Developer will need to add it to the HUD Build America, Buy America Construction Material Spreadsheet but may refer back to the original certification or label for compliance unless that certification expires. As long as the certification is good at the time the products arrive on site, it may be used.

Process for Documenting BABA Compliance for HUD Programs

MaineHousing's Responsibilities

MaineHousing is required to document the BABA process to analyze if the BAP applies to a project. This includes tracking product purchases in sufficient detail to identify the source of the funding for the purchase and to demonstrate compliance with BABA. All records evidencing compliance with BABA will be retained for a period of five (5) years after the period of affordability for the project expires for HOME, HTF, and Recovery Housing funds. All records evidencing compliance with BABA for all other HUD Programs will be retained in accordance with 2 C.F.R. § 200.334.

MaineHousing will use the MaineHousing HUD BABA Checklist, attached hereto as **Appendix I**, to document BABA Compliance for each project. This Checklist will be completed for every project to determine if BABA applies and MaineHousing will retain the Checklist with the project file and update it during the construction of the project.

MaineHousing will also be required to enter BABA information into the Integrated Disbursement and Information System (IDIS) or the Disaster Recovery Grant Reporting System (DRGR) depending on the HUD Program requirements.

MaineHousing will audit all project files from application to Permanent Loan Closing ("PLC") by performing a desk review of the documentation submitted by Developers. Payment will be conditioned on compliance and Construction Loan Closing ("CLC") and PLC will not occur if the project is out of compliance.

MAINEHOUSING'S PLAN TO IMPLEMENT

A. BIDDING PROCESS

When Developers are putting projects out for bid, Developers must ensure all contractors/construction managers are on notice of the BABA requirements and provide all contractors/construction managers with a HUD Contractor/Construction Manager Certification Form, attached hereto as Appendix J. The HUD Contractor/Construction Manager Certification Form explains the requirements of BABA to contractors/construction managers and is a certification by the contractors/construction managers that they have read the BABA requirements, the materials listed in their bids meet the BABA requirements (including the materials from all subcontractors), that they will notify all subcontractors of the BABA requirements, and that they will comply with any documentation requirements to verify the materials meet all the requirements.

Each contractor/construction manager must attach an executed copy of Appendix J to their bids.

Developer must provide the executed Appendix J for the successful contractor/construction manager to MaineHousing upon receipt. If a contractor/construction manager refuses to execute Appendix J, that contractor/construction manager is not allowed to bid on the project.

B. PLANS, SPECIFICATIONS AND CONTRACTS

All Plans, Specifications and Contracts must include the following language to inform all parties of the BABA requirements:

_____(developer name) ("Developer") must comply with the requirements of the Build America, Buy America Act (BABA), as defined in 2 CFR § 184.3 as division G, title IX, subtitle A, parts I-II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), and all applicable rules and notices, as may be amended. Pursuant to HUD's Notice, "CPD Implementation Guidance for the Build America, Buy America Act's Buy America Preference" (CPD-25-01), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

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. Developer is responsible for documenting compliance and ensuring that all contractors and subcontractors provide the required information to document compliance. Please see MaineHousing's Compliance and Implementation Plan for Build America, Buy America for more information.

MaineHousing reserves the right to review all Plans, Specifications and Contracts to ensure this information is included. For purposes of this section "Contracts"

includes administration contracts, engineering contracts, construction contracts, engineering contracts, architect contracts, subcontracts, etc.

C. PROJECT DESIGN AND UNDERWRITING SUBMISSIONS

Projects will be expected to submit BABA documentation and certifications during the plan review process at 50% and 90% plan stages and at Guaranteed Maximum Price ("GMP"). At the 50% and 90% plan stages, Developers will be expected to show progress towards BABA compliance, which will be reviewed by Construction Services to ensure projects are progressing appropriately and to provide guidance on the requirements for GMP. If documentation is inadequate, projects will not proceed to the next step until identified deficiencies are corrected.

At GMP, Developers must submit a full BABA package for review by MaineHousing. The BABA package must include a Construction Materials Spreadsheet which lists each product along with the associated cost, quantity, and corresponding certification. *See Appendix L* for guidance. The BABA package will be reviewed in accordance with MaineHousing's BABA Risk-Based Monitoring Policy. Projects will not proceed to CLC until any deficiencies are resolved and the project is approved to proceed. If additional review is required, MaineHousing will identify supplementary data points for review, which could include a full review depending on the deficiencies identified.

D. CONSTRUCTION LOAN CLOSING*

As part of CLC Developer will be required to execute the applicable loan documents based on the funding source (Loan Agreement, HOME Agreement, HTF Agreement, RHP Agreement, etc.), which will outline the requirements of BABA, Developer's obligations, including record keeping requirements under 2 CFR 200, and the penalties for non-compliance.

***If a project only has one closing, the final reconciliation should occur in conjunction with the last requisition. See Section E below.**

E. DURING CONSTRUCTION

During construction Developers must certify which **each** requisition that the products installed or to be installed meet BABA requirements and are consistent with the approved Construction materials Spreadsheet by completing **Appendix K**. The certification will also require Developers to report the De Minimis calculation for the project as a whole to ensure it is below the 5% threshold.

When a change order occurs during construction, Developers will submit an updated Construction Materials Spreadsheet with the supporting certifications for the products subject to BABA that have been substituted, changed out, or modified. This must be submitted with the proposed change order. Additionally, if applicable, Developers must submit a revised De Minimis Reconciliation Form. MaineHousing will review the updated documentation and if approved, the change order will be included in the next requisition for

payment. If additional compliance is necessary, the change order will not be included for payment until approved by MaineHousing.

If a Developer substitutes products during construction for alternative products that are BABA compliant, Developer must provide MaineHousing an updated Construction Materials Spreadsheet and supporting certifications for the substituted products no later than the next requisition.

If at any time during construction a project is at or above the 5% De Minimis threshold, the Developer must notify MaineHousing immediately and provide a written explanation with a proposed resolution. If MaineHousing is not satisfied with the proposed resolution or believes compliance cannot be achieved it can stop processing requisitions until a viable solution is proposed that will reduce the De Minimis threshold below 5%.

PROJECT WITH ONLY ONE CLOSING

Prior to the payment of the final requisition, Developers must ensure all required BABA documentation has been submitted to MaineHousing. If documentation or certifications are missing, final payment will not be made. Developer will execute a HUD Build America, Buy America Self-Certification, attached hereto as Appendix M, certifying and affirming the requirements of BABA have been met, with the final requisition.

F. PERMANENT LOAN CLOSING

Prior to PLC Developers must ensure all required documentation in accordance with this Compliance and Implementation Plan, including the applicable BABA Self-Certification, **Appendix M,** has been provided to MaineHousing.

MaineHousing will review and conduct a final review of the submitted certifications and documentation in accordance with its BABA Risk-Based Monitoring Policy and will not proceed with PLC until all required documentation has been received and identified issues have been resolved.

Failure to comply with the BABA requirements and this Compliance and Implementation Plan will result in a loss of funding and default and may result in a loss of funding for future projects.

G. COORDINATION OF BABA EFFORTS

Where BABA compliance is triggered by federal funding from another agency and MaineHousing is not providing Federal Financial Assistance to the project, MaineHousing is not the responsible entity for ensuring compliance with BABA requirements.

In such cases, the entity administering the Federal Financial Assistance retains responsibility for implementing, monitoring, and enforcing BABA compliance.

Prior to PLC, MaineHousing will require the Developer to provide a certification that the project has complied with applicable BABA requirements, as administered by the Federal funding agency responsible using **Appendix S**. MaineHousing may rely on such certification and any supporting documentation, as applicable, to confirm that BABA compliance has been addressed for the project and reserves the right to request additional information as needed.

Process for Documenting BABA Compliance for DOE Weatherization Assistance Programs

MaineHousing is required to document the BABA process to analyze if the BAP applies to a project. If there are no program-specific records requirements, MaineHousing will follow 2 C.F.R. § 200.334.

MaineHousing will use the MaineHousing DOE BABA Checklist, attached hereto as **Appendix N**, to document BABA Compliance for each project.

MAINEHOUSING'S PLAN TO IMPLEMENT

Subgrantees administering DOE Weatherization Programs on MaineHousing's behalf ("Subgrantees") must include the following language on a project's Work Order that goes out for bid so that Contractors are aware of the BABA requirements:

> **All Contractors must comply with the requirements of Section 70914 of the Infrastructure Investment and Jobs Act, and all applicable rules and notices, as may be amended. Pursuant to DOE's Memorandum, reissued February 23, 2024, "Weatherization Assistance Program "Build America, Buy America" Requirements – Revised", awards made by the DOE Weatherization Assistance Program after May 14, 2022 are subject to BABA requirements, unless excepted by a waiver. This only applies to weatherization on public housing or on privately owned buildings that serve a public function.**
>
> **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. Contractors will be responsible for documenting compliance and ensuring that all subcontractors provide the required information to document compliance. Please see MaineHousing's Compliance and Implementation Plan for Build America, Buy America for more information.**

Subgrantees will be required to have all bidders for a project complete a DOE Bidder Certification Form, attached hereto as Appendix O, acknowledging that the project is subject to BABA.

Contractors will be responsible for documenting compliance with BABA. Contractors must identify the materials that will be used in the project and properly classify the products as either iron or steel, specifically listed construction materials, not listed construction materials, and manufactured products. Contractors will submit a DOE Build America, Buy

America Construction Material Spreadsheet, attached hereto as Appendix P, prior to the start of the project that will be updated quarterly as the project progresses. The DOE Build America, Buy America Construction Material Spreadsheet should classify products as they arrive on site.

Payments to Contractor will be withheld if Contract fails to provide the required Construction Material Spreadsheet and/or the BABA requirements are not met. Additionally, failure to comply with the BABA requirements and this Compliance and Implementation Plan will result in a loss of funding and may result in a loss of funding for future projects.

Contractor must attach certifications for each product certifying that products are made in America. Acceptable forms of certification are as follows:

- **A certificate from the manufacturer or reseller that the product complies with BABA. Appendix R is an example of an acceptable form of certification. The certification must have the BABA language and must be on the company's letter head and list the products with enough specificity to determine compliance.**
- **For products that cost less than $100 per product, a copy of a label that indicates the product was made in the United States.**

Once a product has been certified, Contractors will not be required to recertify the product every time it is used. Contractor may refer back to the original certification or label for compliance.

Upon completion of the project, prior to final payment, Contractor will execute a DOE Build America, Buy America Self-Certification, attached hereto as Appendix Q, certifying and affirming the requirements of BABA have been met.

HUD General Waivers

The BAP applies to all federally funded infrastructure projects unless a project obtains a waiver. The BAP can be waived in very limited circumstances.

HUD has currently established three general waivers:

1. Exigent Circumstances Waiver
2. *De Minimis* and Small Grants Waiver
3. Phased Implementation Waiver

If any of the general waivers apply, MaineHousing may waive the BAP for a project or a portion of a project. No formal request to HUD is needed to use these waivers. MaineHousing is responsible for maintaining documentation that demonstrates the applicability of the waiver to a project, consistent with the BABA requirements.

Exigent Circumstances Waiver (Effective until November 23, 2027)

> **Requirements:** The BAP may be waived if projects must be complete immediately to protect life, ensure safety, or prevent the destruction of property.

Example: 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.

De Minimis and Small Grants Waiver (Effective until November 23, 2027)

De Minimis Waiver

Requirements: The BAP can be waived for a portion of the materials used in a project if the cost of those materials comprises no more than 5% of the total cost of the iron, steel, construction materials and manufactured products used in the project (not to exceed $1 million) and there is a justification for the waiver, such as the materials are not domestically produced. "Total cost" does not include labor or other materials that are exempt from the BAP.

Example: construction of a new playground, where almost all the materials can be found domestically except for a $20,000 slide. The total cost of the materials used in the project is $500,000. Since the cost of the slide is less than 5% ($500,000 x .05 = $25,000) of the total cost of the materials, the *de minimis* waiver can be used on the slide. **Note the BAP would still apply to the other materials used in the project**

Small Grants Waiver (Effective until November 23, 2027)

Requirements: The BAP can be waived for a project if the **total project cost** (including all sources of funding, both Federal, State and other) is less than the simplified acquisition threshold defined at 2 CFR 200.1 (currently $250,000 or less). "Total project cost" means the total cost of development (all the work that goes into the project). **In this case the BAP can be waived for the entire project.**

Example: A grantee is using $200,000 in ESG funding to rehabilitate the bathroom facilities in an emergency shelter. The grantee is also contributing $25,000 in local funds. Because of the total cost of the project is less than the $250,000 threshold, the Small Grants waiver applies.

Phased Implementation Waiver

Requirements: The Phased Implementation Waiver establishes a schedule for when the BAP will apply to HUD Programs. MaineHousing must know which HUD funds are used in a project, the products used in a project, and the obligation date of the HUD funds in order to determine if the Phased Implementation Waiver applies. The "obligation date" is the date the grant agreement is signed by HUD.

Example: Below is a chart showing the MaineHousing funds that are currently subject to BABA:

HUD Program	Effected Funds	MaineHousing Program
Recovery Housing Program	B-24-RH-23-001 (obligated 9/11/24) All future Recovery Housing Funds	2024 Recovery Housing Program – Request for Proposals All future Recovery Housing Programs
Housing Trust Fund (HTF)	F24-SG230100 (obligated 9/4/24) All future HTF Funds	2025 Low-Income Housing Tax Credit Programs (Federal and State) All future Low-Income Housing Tax Credit Programs
HOME Investment Partnerships Program	M24-SG230100 (obligated 8/29/24) All future HOME Funds	2025 Low-Income Housing Tax Credit Programs (Federal and State) All future Low-Income Housing Tax Credit Programs
Lead Hazard Reduction, and Healthy Homes Production Grants	MELHD0502-23 (obligated 7/26/24) All future Lead Hazard Reduction and Healthy Homes Production Grants Funds	MELHD0502-23 Funds require BABA compliance for iron and steel only. The current Lead Hazard Control Programs and Healthy Homes Programs will require BABA compliance for iron and steel only. All current and future Lead Hazard Control Programs and Healthy Homes Programs
Emergency Solutions Grant (ESG)	E-24-DC-23-001 (obligated 9/3/24) All future ESG Funds	No rehabilitation/renovation programs are funded by MaineHousing at this time
Continuum of Care	Anything obligated after 8/23/24	No rehabilitation/renovation programs are funded by MaineHousing at this time
Choice Neighborhood	Anything obligated after 8/23/24	Any new project with Choice Neighborhood funds
All other HUD Programs that include federal financial assistance	Anything obligated after 8/23/24	Any MaineHousing Programs that include other HUD funds not already mentioned above

MAINEHOUSING'S PLAN TO IMPLEMENT

All HUD General Waivers will be handled by MaineHousing. Developers should reach out to MaineHousing to request a HUD General Waiver.

Phase Implementation Waiver

The Phased Implementation Waiver applies to projects based on the funding a project receives. MaineHousing will not require a request for waiver in these situations and will inform Developers whether or not BABA applies to their project.

Exigent Circumstances Waiver

For Exigent Circumstances Waivers MaineHousing will approve a request for a waiver if there is an urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community. Developers should complete the General Waiver Form, attached hereto as Appendix A, and provide the required information, as outlined in the Form. MaineHousing will review the waiver, and either approve or deny the waiver based on the information presented.

Small Grant Waiver

For projects whose total project cost (including all sources of funding, materials and labor) is less than the simplified acquisition threshold (currently $250,000) MaineHousing will approve a Small Grants Waiver. Developer should complete the General Waiver Form, attached hereto as Appendix A, and provide the required information, as outlined in the Form. MaineHousing will review the waiver, and either approve or deny the waiver based on the information presented.

***De Minimis* Waiver**

A. **Developers are responsible for: (1) providing MaineHousing with an estimate of the total cost of the iron, steel, construction materials and manufactured products to be used in the project; and (2) calculating the 5% *De Minimis* figure.**

B. **Upon request from the Developer, MaineHousing will grant the *De Minimis* Waiver for a project, and document it using the De Minimis Waiver Form, attached hereto as Appendix T..**

C. **Developer should use the *De Minimis* Reconciliation Form, attached hereto as Appendix E or a substantially similar form approved by MaineHousing to track the *De Minimis*.**

D. **If Developer exceeds the *De Minimis* threshold of 5% of the total cost of the iron, steel, construction materials and manufactured products, Developer will be in non-compliance.**

E. **Prior to and during construction Developer will be required to provide MaineHousing with the *De Minimis* calculation. If at any time the project is at or above the 5% De Minimis threshold, the Developer must notify MaineHousing immediately and provide a written explanation with a proposed resolution.**

HUD Project-Specific Waivers

In addition to the HUD General Waivers, project-specific waivers may be available for projects where the BAP would otherwise apply. HUD will review project-specific waivers on a case-by-case basis. There are currently three project-specific waivers available:

1. Public Interest

2. Nonavailability
3. Unreasonable Cost

If a project has multiple sources of federal funding, the Federal agency contributing the greatest amount of Federal funding for the project may be considered the Cognizant Agency for Made in America and may take responsibility for coordinating with other Federal awarding agencies. Each Federal agency waiving the BAP must make its own waiver determination. A Cognizant Agency cannot independently issue a waiver that applies to other Federal agencies.

It should be noted that project/product-specific waivers cannot be approved retroactively for items that have already been purchased or incorporated into a project. If a waiver is necessary, it must be obtained prior to the purchase of the product.

Public Interest Waiver

Requirements: A Public Interest Waiver may be available when applying the BAP would be inconsistent with the public interest.

Applying for a Waiver: When applying for a waiver the waiver should explain how waiving the BAP for the project or product serves the public interest and it should demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project.

Example: The Environmental Protection Agency ("EPA") is working to upgrade the nation's water infrastructure, to increase the resilience of communities and ecosystems, and to effectively implement infrastructure appropriations in a timely and cost-effective manner. Applying the BAP to this project would increase project and construction costs, delay compliance with the Clean Water Act and Safe Drinking Water Act Requirements, delay achieving water quality and other public health goals, require re-evaluation of design decisions, and result in a decline of the use of EPA funds. Applying the BAP would be inconsistent with the public interest and therefore a waiver would be justified.

Nonavailability Waiver

Requirements: A Nonavailability Waiver may be available when a particular iron or steel product, construction material, or manufactured product is not produced in the United States in sufficient quantities or of a satisfactory quality.

Applying for a Waiver: When applying for a waiver the waiver should demonstrate that the grantee has conducted market research and adequately considered qualified alternative items and describe the due diligence performed, including information, quotes, and/or responses from manufacturers, distributors, or suppliers.

Example 1: A Developer, through market research, which included contacting ten potential manufacturers, discovered that none of the manufacturers were able to produce a BABA-compliant window that met the technical specifications for the project. The Developer

proposes procuring the window from a manufacturer in Canada as no domestic alternative products were identified through the market research.

Example 2: A Developer, through market research, which included contacting ten potential manufacturers, discovered that only one manufacturer was able to produce BABA-compliant windows, however the lead time to obtain the windows was eighteen (18) months and the cost of the windows would increase the overall project cost by 25%. The Developer proposes procuring the windows from a manufacturer in Canada as the lead time is excessive and the cost pushes the project above the 25% threshold.

Unreasonable Cost Waiver

Requirements: An Unreasonable Cost waiver may be available when applying the BAP will increase the total project cost by more than 25%."Total project cost" means the total cost of development (all the work that goes into the project).

Applying for a Waiver: When applying for a waiver the waiver should demonstrate that applying the BAP increases the total project cost by more than 25%, determine the additional cost of BAP-compliant products, determine the dollar amount to be waived, and demonstrate that no domestic alternatives are available within the project budget.

Example:

Product Name	**Estimated cost for BABA compliant product(s)**	**Estimated cost for non-BABA compliant product(s)**
Heat pump – COP 3.5	$60,000	$36,000
Corrosion resistant Vents	$40,000	$24,000
All other project costs (installation, permitting, overhead, profit)	$12,000	$12,000
Total Project cost	$112,000	$72,000
Percentage difference	**156%**	

MAINEHOUSING'S PLAN TO IMPLEMENT

All Project-Specific Waiver requests must go through MaineHousing. Developers will complete the applicable Project-Specific Waiver Form, *see Appendices B, C & D*, and submit the form to MaineHousing along with the supporting documentation. MaineHousing's Waiver Review Team, which will be made up of at least three members and include staff from the Development and Legal and Compliance Department, will review waivers on a case-by-case basis. MaineHousing expects compliance with BABA and will only review waivers in very limited circumstances where the waiver is clearly justified. If a waiver will cause unreasonable delay and cost to a project, it will not be considered.

Public Interest Waiver

In order to apply for a Public Interest Waiver the Developer must show that applying the BAP will be inconsistent with public interest. Developer must complete and submit Appendix B to MaineHousing.

The Developer will be required to provide documentation evidencing:

1. **How waiving the BAP for the project or a specific product would serve public interest;**
2. **A narrative explaining the anticipated impact to the project or product if a waiver is denied and impacts on the community if a specific item, product or material could not be utilized in the project because of the BABA requirements;**
3. **Either a report showing the results of a supplier scouting service provided by the National Institute of Standards and Technology (NIST), the Manufacturing Extension Partnership (MEP) or similar supplier scouting service OR a description of the market research/due diligence performed for the specific item, product or material, showing a good faith effort (see below) to contact a minimum of three (3) manufacturers or suppliers, including documentation such as PDF files or screenshots of Internet searches or email communications, or documentation of phone conversations that note the date and time of the call, the contact person with whom the Developer spoke, and a summary of the information/response received; and**
4. **For project level waivers, how Developer will maximize the use of products made in America even if a waiver is granted.**

The Developer must also document total estimated infrastructure costs (iron & steel, construction materials and manufactured products) and total estimated project costs (everything) broken down by funding source.

For product specific waivers, Developer must classify the product, provide the country of origin (if known), provide the PSC or NAICS code, and provide the cost for U.S. Made vs. Foreign Made.

For assistance with completing the required market research/due diligence, Developer may choose to reach out to Maine Manufacturing Extension Partnership (www.mainemep.org, contact@mainemep.org, (207) 623-0680), who can assist with identifying a domestic manufacturer that can supply the necessary materials or conduct the necessary market research to support the need for a waiver.

Nonavailability Waiver

In order to apply for a Nonavailability Waiver the Developer must show they are unable to obtain the American-made iron, steel, manufactured product, or construction material in sufficient and reasonably available quantities or of a satisfactory quality. Developer must complete and submit Appendix C to MaineHousing.

The Developer will be required to provide documentation evidencing:

1. **Either a report showing the results of a supplier scouting service provided by the National Institute of Standards and Technology (NIST), the Manufacturing Extension Partnership (MEP) or similar supplier scouting service OR a description of the market research/due diligence performed for the specific item, product or material, showing a good faith effort (see below) to contact a minimum of three (3) manufacturers or suppliers, including documentation such as PDF files or screenshots of Internet searches or email communications, or documentation of phone conversations that note the date and time of the call, the contact person with whom the Developer spoke, and a summary of the information/response received;**
2. **A narrative explaining the market research activities and methods used to identify domestically manufactured items capable of satisfying the BABA requirements, including the timing of the research and the conclusions reached on the availability of sources and lead times and the anticipated impacts if no waiver is granted; and**
3. **For lead time based waivers, Developer must provide documentation showing the BABA compliant item will increase total project costs by 25% or more.**

The Developer must also document total estimated infrastructure costs (iron & steel, construction materials and manufactured products) and total estimated project costs (everything) broken down by funding source.

For product specific waivers, Developer must classify the product, provide the country of origin (if known), provide the PSC or NAICS code, provide the cost for U.S. Made vs. Foreign Made and provide the required quantities of each product to be waived.

For assistance with completing the required market research/due diligence, Developer may choose to reach out to Maine Manufacturing Extension Partnership (www.mainemep.org, contact@mainemep.org, (207) 623-0680), who can assist with identifying a domestic manufacturer that can supply the necessary materials or conduct the necessary market research to support the need for a waiver.

Unreasonable Cost Waiver

In order to apply for an Unreasonable Cost Waiver the Developer must show inclusion of iron, steel, a manufactured product, or a construction material produced in the United States will increase the total project cost to the overall project by more than 25%. The Developer must complete and submit Appendix D to MaineHousing.

The Developer will be required to provide documentation evidencing:

1. **Either a report showing the results of a supplier scouting service provided by the National Institute of Standards and Technology (NIST), the Manufacturing Extension Partnership (MEP) or similar supplier scouting service OR a description of the market research/due diligence performed for the specific item, product or material, showing a good faith effort (see below) to contact a minimum of three (3) manufacturers or suppliers, including documentation such as PDF files or screenshots of Internet searches or email communications, or documentation of phone conversations that note the date and time of the call, the**

contact person with whom the Developer spoke, and a summary of the information/response received; and

2. **Documentation showing the cost for the BABA compliant item and the non-compliant item; and**
3. **A narrative demonstrating how the BABA-compliant items increases the total project cost by 25% and identifying any anticipated impacts if no waiver is granted.**

The Developer must include a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products.

The Developer must also document total estimated infrastructure costs (iron & steel, construction materials and manufactured products) and total estimated project costs (everything) broken down by funding source.

The Developer will also be required to classify the product, provide the country of origin (if known), provide the PSC or NAICS code, and provide the cost for U.S. Made vs. Foreign Made.

For assistance with completing the required market research/due diligence, Developer may choose to reach out to Maine Manufacturing Extension Partnership (www.mainemep.org, contact@mainemep.org, (207) 623-0680), who can assist with identifying a domestic manufacturer that can supply the necessary materials or conduct the necessary market research to support the need for a waiver.

Good Faith Effort

The following will be considered a "good faith effort" for the purpose of providing the required market research/due diligence for a Project-Specific Waiver:

Type of Purchase	**Requirement**	**No Results**	**Results**
Micro-purchases (total cost is $10,000 or less)	Search "made in America" or "made in the USA" using Google, Bing or Yahoo or Home Depot, Lowe's, Ace Hardware, or other large home improvement retailer's website.	Attach a PFD/screenshot of the top 10 search results (including the webpage showing the search terms and results) If there are results, but there are less than 3, attach this documentation and contact the product makers that are available and document in accordance with the "Results" requirement.	Contact the product makers (at least 3) and attach email communications, or documentation of phone conversations that note the date and time of the call, the contact person with whom you spoke, and a summary of the information/response received.

Small purchases ($10,001 - $249,999)	Make **TWO** attempts to search "made in America" or "made in the USA" using Google, Bing or Yahoo or Home Depot, Lowe's, Ace Hardware, or other large home improvement retailer's website.	Attach a PFD/screenshot of the top 20 search results (including the webpage showing the search terms and results) If there are results, but there are less than 3, attach this documentation and contact the product makers that are available and document in accordance with the "Results" requirement.	Contact the product makers (at least 3) and attach email communications, or documentation of phone conversations that note the date and time of the call, the contact person with whom you spoke, and a summary of the information/response received.
Large purchases ($250,000 or more)	Make **THREE** attempts to search "made in America" or "made in the USA" using Google, Bing or Yahoo or Home Depot, Lowe's, Ace Hardware, or other large home improvement retailer's website.	Attach a PFD/screenshot of the top 30 search results (including the webpage showing the search terms and results) If there are results, but there are less than 3, attach this documentation and contact the product makers that are available and document in accordance with the "Results" requirement.	Contact the product makers (at least 3) and attach email communications, or documentation of phone conversations that note the date and time of the call, the contact person with whom you spoke, and a summary of the information/response received.

If the product maker does not respond within five (5) business days, provide a written statement stating as such and the market research/due diligence is complete.

Processing a Waiver

Upon receipt of all the necessary information and review of the request, MaineHousing will either deny, approve or approve in part a waiver request. It should be noted that HUD requires MaineHousing to consider including the products to be waived as part of the *De Minimis* limit prior to submitting a waiver. If there is flexibility within the *De Minimis* limit category, HUD will likely not approve a waiver.

The decision will be communicated to Developer. If approved, MaineHousing will then complete a HUD BABA Waiver Form, attached hereto as Appendix F, and submit the Form through the BABA Waiver Submission Site. Developer will cooperate with MaineHousing through the HUD waiver process to provide any additional information that may be required in a timely manner.

If the application for a waiver is approved by HUD, HUD will post the proposed waiver in the Federal Register for a minimum 15-day comment period and submit the request to the Made In America Office ("MIAO"). The MIAO will review the proposed waiver and public comments for final approval, and communicate a final decision to HUD, which will

communicate it to MaineHousing. MaineHousing will inform the Developer of the decision upon receiving notice from HUD.

DOE Waivers

The BAP also applies to the DOE Weatherization Assistance Programs infrastructure projects on public housing or on privately owned buildings that serve a public function. When necessary, recipients may apply for, and DOE may grant, a waiver from the BAP requirements. To request a waiver, a recipient should put the request in writing. Waivers are subject to review by the Office of Management and Budget ("OMB") and subject to public comment.

DOE allows for three types of waivers:

1. Public Interest Waiver
2. Nonavailability Waiver
3. Unreasonable Cost Waiver

Public Interest Waiver

Requirements: A Public Interest Waiver may be available when apply the BAP would be inconsistent with the public interest.

Applying for a Waiver: When applying for a waiver the waiver should include a detailed justification as to how the non-domestic item(s) is/are essential to the project. The waiver should also show a good faith effort to solicit bids for domestic products were made and a justification statement as to why the items in question cannot be procured domestically.

Nonavailability Waiver

Requirements: A Nonavailability Waiver may be available when a particular iron or steel product, construction material, or manufactured product is not produced in the United States in sufficient quantities or of a satisfactory quality.

Applying for a Waiver: When applying for a waiver the waiver should include a detailed justification as to how the non-domestic item(s) is/are essential to the project. The waiver should also show a good faith effort to solicit bids for domestic products were made and a justification statement as to why the items in question cannot be procured domestically.

Unreasonable Cost Waiver

Requirements: An Unreasonable Cost waiver may be available when applying the BAP will increase the cost of the overall project by more than 25%."Total project cost" means all the work that goes into the project.

Applying for a Waiver: When applying for a waiver the waiver should include a detailed justification as to how the non-domestic item(s) is/are essential to the project. The waiver should also show a good faith effort to solicit bids for domestic products were made and a justification statement as to why the items in question cannot be procured domestically.

MAINEHOUSING'S PLAN TO IMPLEMENT

MaineHousing will review waivers on a case-by-case basis. MaineHousing expects compliance with BABA and will only review waivers in very limited circumstances where the waiver is clearly justified. If a waiver will cause unreasonable delay and cost to a project, it will not be considered.

Contractor will need to submit to MaineHousing a DOE Project-Specific Waiver Form, which is attached hereto as Appendix G. Contractor must provide the required information, as outlined in the Form, in order for MaineHousing to consider the request. Incomplete Forms will not be considered and will be returned to the Contractor.

In reviewing a request, MaineHousing, to the greatest extent possible, will look to have the request for a waiver be at the project level and be product specific, rather than being a broader request for a waiver. MaineHousing may require the request for a waiver to be:

1. **Time-limited, meaning it is issued for a certain period of time;**
2. **Targeted, meaning it will only apply to specific item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s); and**
3. **Conditional with conditions that support the policies of BABA.**

Upon receipt of all the necessary information and review of the request, MaineHousing will either deny, approve or approve in part a waiver request. This will be communicated to Developer. MaineHousing will then complete a DOE BABA Waiver Form, attached hereto as Appendix H, and submit the request to its DOE PO for review. DOE will be the final determining factor if a waiver is approved. Contractor will cooperate with MaineHousing through the DOE waiver process to provide any additional information that may be required in a timely manner.

The final approval or rejection of a waiver request by DOE may not be appealed.