

MAINEHOUSING HUD PROGRAMS BABA CHECKLIST

Applying BAP and HUD Waivers to HUD Programs

Project Name:
Project Location:
Developer:

Step 1: Does BABA Apply?

Are the funds being used for an infrastructure project, as defined by BABA?

YES

NO

If **YES**, proceed to Step 2.If **NO**, BAP does not apply. Sign below and the Checklist is complete.

Signature
Name and Title:

Date

Step 2: Funding Source

Check the funding sources that apply:

- Community Development Block Grant Formula Programs (CDBG)
- Community Project Funding (CPF)/Economic Development Initiatives (EDI)
- Continuum of Care (CoC)
- Emergency Solutions Grants (ESG)
- FY23 Permanent Supportive Housing (PSH) Funds
- HOME Investment Partnerships Program (HOME)
- HOME Investment Partnerships American Rescue Plan Program (HOME-ARP)
- Housing Opportunities for Persons With AIDS (HOPWA)
- Housing Trust Fund (HTF)
- Pathways to Removing Obstacles to Housing (PRO Housing)
- Preservation and Reinvestment Initiative for Community Enhancement (PRICE)
- Recovery Housing Program (RHP)
- 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)

If none of these funding sources apply, BAP does not apply.

If one of these funding sources apply and are the largest portion of Federal funds contributed to the project, proceed to Step 3.

If they are not the largest portion of Federal funds then the BABA requirements for the largest source of Federal funds will apply. What is the largest source of Federal funds:

If they are not HUD funds, you will need to consult guidance for the source of funds that are the largest to determine how to proceed.

Step 3: Materials

Identify the materials that will be used in this infrastructure project. Check all that apply.

- Iron and Steel
- Specifically Listed Construction Materials
- Not-Listed Construction Materials
- Manufactured Products

If any of these materials are being used, proceed to Step 4.

If none are being used, BAP does not apply.

Step 4: Date of Obligation

Identify the date the grant agreement(s) was signed for the funding sources that apply.

Funding Source	Date Grant Agreement Was Signed

Determine if the BAP applies:

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	Not Listed Construction Materials	Manufactured Products
CDBG Formula Grants	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from FY24 appropriations	As of the date HUD obligates new FFA from FY25 appropriations	As of the date HUD obligates new FFA from FY25 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 FY24 appropriations	As of the date HUD obligates new FFA from FY25 appropriations	As of the date HUD obligates new FFA from FY25 appropriations
All other HUD FFA except HOME, HTF, 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
All HUD FFA	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

If **YES** proceed to Step 5.

If no, the BAP does not apply.

Step 5: General Waivers

Determine if a General Waiver applies:

- Exigent Circumstances Waiver
 - Is there a urgent need to immediately complete the project because of a threat to life, safety, or property of residents and the community?

YES NO

- *De Minimis* Waiver
 - Is the cost of the products for which the waiver is sought no more than 5% of the total cost of all the iron and steel, construction materials and manufactured products used in the project (not to exceed \$1 million).

YES NO

- Small Grants Waiver
 - Is the total project cost (all the work/total development cost) less than \$250,000 (including all sources of funding)?

YES

NO

If you answered **YES** to any of the above, review the General Waiver Form submitted by the Developer and ensure proper documentation has been provided to justify the waiver. Complete the General Waiver Form either approving, approving in part or denying the request and listing any conditions.

If no General Waiver applies, move to Step 6.

Step 6: Project-Specific Waivers

Determine if a Project-specific waiver applies. Project-specific waivers are available on limited, case-by-case basis, after HUD’s consultation and review with OMB’s Made In America Office (“MIAO”).

- Public Interest Waiver
 - Would apply the BAP to the project be inconsistent with public interest?

YES

NO

- Nonavailability Waiver
 - Is a particular iron, steel, manufactured product, or construction material not produced in the United States in sufficient quantities or of a satisfactory quality?

YES

NO

- Unreasonable Cost Waiver
 - Would the inclusion of iron, steel, manufactured products or construction materials produced in the United States increase the cost of the overall project (total project cost/total development cost) by more than 25%?

YES

NO

If you answered **YES** to any of the above, review the corresponding Project-Specific Waiver Form submitted by the Developer and ensure proper documentation has been provided to justify the waiver. If the waiver is justified, approve the corresponding Project-Specific Waiver Form and proceed to Step 7.

If you answered **NO** to all of the above, or if the waiver is not justified, BAP applies and the Developer will have to comply with it. Complete the corresponding Project-Specific Waiver Form denying the request. Then skip to Step 8.

Step 7: Submitting a Project-Specific Waiver to HUD

The Development Department is responsible for gathering all of the required information needed in order to submit a Project-Specific Waiver to HUD. In determining whether or not a waiver is justified the Waiver Review Team, which will be made up of members from the Development Department and the Legal and Compliance Department, will review the waivers and make a decision. Upon receipt of all the required information and an approval of moving forward with a waiver, the Development Department will provide the information to the Legal and Compliance Department who will submit the waiver to HUD.

1. Contact CPDBABA@hud.gov for BABA technical assistance as needed.
2. Prepare a *Build America Buy America Waiver Request Form* with the information required by the MIAO.
3. Submit a waiver application with all necessary information to HUD at BuildAmericaBuyAmerica@hud.gov
4. Provide additional information as requested by HUD during the review process to proceed with public comment in the Federal Register, and final approval by MIAO.
5. HUD reviews waivers before they are posted to the Federal Register for public comment and sent to the MIAO for approval. If approved, the waiver is posted on MadeInAmerica.gov.

Step 8: Compliance

All backup documentation for the below must be stored in the project files.

1. Did Developer have all bidders for the project complete a HUD Bidder Certification Form?

YES
 NO
2. Is the following language included on the project’s plans and specifications?

_____ (developer name) (“Developer”) must comply with the requirements of the Build America, Buy America Act (BABA), 41 USC 8301 note, and all applicable rules and notices, as may be amended. Pursuant to HUD’s Notice, “Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provision as Applied to recipients of HUD Federal Financial Assistance” (88 FR 17001), 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 the MaineHousing's Compliance and Implementation Plan for Build America, Buy America for more information.

YES NO

3. Did the Developer complete the Build America, Buy America Construction Material Spreadsheet prior to the start of construction?

YES NO

4. Did the Developer submit monthly Construction Material Spreadsheets?

YES NO

5. Do the Build America, Buy America Construction Material Spreadsheets properly classify the products?

YES NO

6. Are the Build America, Buy America Construction Material Spreadsheets complete?

YES NO

7. **Have we allocated the funding source to each material on the Construction Materials Spreadsheet?**

YES NO

8. Has Developer attached proper certifications for each product certifying that the products are made in America?

YES NO

9. Did the Contractors and Subcontracts complete the AIA G702 Certification with each request for payment?

YES NO

10. Upon completion of construction, did Developer execute a Build America, Buy America Self-Certification?

YES NO

If you answered NO to any of the above questions and a waiver does not apply you must go back to the Developer and have the items completed. Please explain corrective actions:

Signature
Name and Title:

Date