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

Effective December, 2024

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.

Definitions

- A. Build America, Buy America Act is defined in 2 CFR § 184.3 and means 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)
- B. Buy America Preference is defined in 2 CFR § 184.3 and means the “domestic content procurement preference” set forth in section 70914 of BABA, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.
- C. Categorization of Articles. The term “categorization of articles” refers to the requirement that articles, materials, and supplies should only be classified into one of the following categories.
 - i. Iron or steel products;
 - ii. Manufactured products;
 - iii. Construction materials; or
 - iv. Section 70917(c) materials.

An article, material, or supply should not 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 Buy America Preference for only the single category in which they are classified and, in some cases, may not fall under any of the categories listed above.

- D. Component is defined in 2 CFR § 184.3 and means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.
- E. Construction Materials is defined in 2 CFR § 184.3 and means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.
- (1) The listed items are:
- i. Non-ferrous metals;
 - ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - iii. Glass (including optic glass);
 - iv. Fiber optic cable (including drop cable);
 - v. Optical fiber;
 - vi. Lumber;
 - vii. Engineered wood, and
 - viii. Drywall.
- (2) Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material.
- F. Covered Materials is defined in 2 CFR 184.4(e) and includes the following when used in connection with an Infrastructure Project:
- i. all iron and steel;
 - ii. all Manufactured Products; and
 - iii. all Construction Materials.
- G. The Department of Housing and Urban Development (“HUD”) Programs. The term “HUD Programs” means any Federal financial assistance administered by HUD that is used for infrastructure purposes, excepting expenditures related to pre and post disaster or emergency response. HUD also refers to this as CPD Programs.
- H. DOE Weatherization Programs. The term “DOE Weatherization Programs” means the Department of Energy’s Weatherization Assistance Program. Only weatherization on public housing or on privately owned buildings that serve a public function are required to comply with the BABA requirements.
- I. Federal Financial Assistance (FFA) has the meaning given to the term in 2 CFR 200.1 (or successor regulations) and includes all expenditures by a Federal agency to a Non-Federal Entity for an Infrastructure Project, except that it does not include:
- i. expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191); or

- ii. pre and post disaster or emergency response expenditures.
- J. Infrastructure is described in 2 CFR 184.4(c) and encompasses public infrastructure projects in the United States, which includes, at a minimum: the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging. See also 2 CFR 184.4(d).
- K. Infrastructure Project. The term “infrastructure project” is defined in 2 CFR 184.3 and means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. This includes all housing projects developed with MaineHousing funded by Federal Financial Assistance programs, which includes the HUD Programs, laid out below.
- L. Iron and Steel Products. The term “iron and steel products” is defined in 2 CFR 184.3 and means an article, material, or supply that consists wholly or predominantly of iron or steel, or a combination of both.
- M. Predominantly of iron or steel or a combination of both is defined in 2 CFR 184.3 and means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.
- N. Manufactured Products is defined in 2 CFR 184.3 and means:
- i. Articles, materials, or supplies that have been:
 - a. Processed into a specific form and shape; or
 - b. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
 - ii. If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.
- O. Manufacturer is defined in 2 CFR 184.3 and means the entity that performs the final manufacturing process that produces a manufactured product.
- P. Not Listed Construction Materials. The term “not listed construction materials” refers to the category of construction materials that are subject to the BAP, but not included in HUD’s specifically listed construction materials, as defined in the Phased Implementation Waiver. This includes:

- i. plastic and polymer-based products other than composite building materials or plastic and polymer-based pipe or tube;
- ii. glass (including optic glass); and
- iii. drywall.

- Q. Obligate. The term “obligate,” for purposes of HUD’s phased implementation of BABA, means the date that HUD executed the legal instrument creating the relationship between HUD and the grantee for an award of Federal financial assistance. The milestone that establishes an obligation date depends on each program but for many HUD Programs, such as CDBG, the obligation date occurs upon HUD’s execution of the grant agreement.
- R. Pre and Post Disaster or Emergency Response Expenditures. The term “pre and post disaster or emergency response expenditures” means Federal funding authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively. The BAP does not apply to pre and post disaster or emergency response expenditures authorized by statutes other than the Stafford Act and made in anticipation of or in response to an event that qualifies as an emergency or major disaster within the meaning of the Stafford Act.
- S. Predominantly of iron or steel or a combination of both is defined in 2 CFR 184.3 and means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of product and a good faith estimate of the cost of iron or steel components.
- T. Produced in the United States is defined in 2 CFR 184.3 and means:
- i. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - ii. In the case of manufactured products:
 - a. The product was manufactured in the United States; and
 - b. The cost of components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See 2 CFR 184.2(a). The costs of components of a manufactured product are determined according to 2 CFR 184.5.
 - iii. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.
- U. Project. The term “project” means the construction, alteration, maintenance, or repair of infrastructure, including housing, in the United States. (Section 70912(7) of BABA).

- V. Section 70917(c) Materials. The term “section 70917(c) materials” is defined in 2 CFR 184.3 and means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives. These materials are not considered “construction materials” for the purpose of BABA implementation.
- W. Specifically listed construction materials. The term “specifically listed construction materials” for HUD programs includes:
- i. non-ferrous metals;
 - ii. lumber;
 - iii. composite building materials; and
 - iv. plastic and polymer-based pipe and tube.

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:

- **Continuum of Care (CoC)**
- **Emergency Solutions Grants (ESG)**
- **HOME Investment Partnerships Program (HOME)**
- **HOME Investment Partnerships American Rescue Plan Program (HOME-ARP)**
- **Housing Trust Fund (HTF)**
- **Recovery Housing Program (RHP)**

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)**

- FY23 Permanent Supportive Housing (PSH) Funds
- 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)

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

- Community Compass Technical Assistance Program
- 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)

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.**

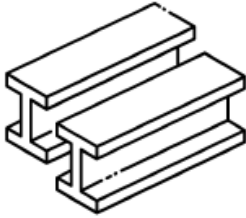
The BAP currently applies for the following DOE Weatherization Programs:

- 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

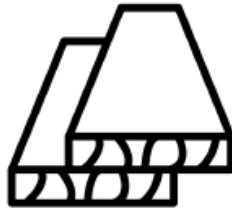
Product Classification

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 are divided into two categories:

1. **Specifically Listed Construction Materials:** Non-ferrous metals, lumber, plastic- and polymer-based composite building materials, pipe, and tube.
2. **Not Listed Construction Materials:** All other plastic- and polymer-based materials, glass, fiber-optic cables, optical fiber, engineered wood, and drywall.

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

Manufactured Products

Definition: materials that have been processed into a specific form or shape OR materials combined with other items 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).

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

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 four general waivers:

1. Exigent Circumstances Waiver
2. *De Minimis* and Small Grants Waiver
3. Phased Implementation Waiver
4. Pacific Island Territories 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% ($\$500,000 \times .05 = \$25,000$) 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 \$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: A participating jurisdiction contributes \$2,000,000 in HOME funds for construction of a multi-unit residential building. The project will use steel, construction materials, and manufactured products. *The funds were obligated by HUD on July 15, 2023.*

- This project is an infrastructure project because it involves construction of a building.
- This project is funded using HOME, which is a covered HUD Program under BABA.
- This project contains steel, construction materials, and manufactured products.
- HOME-funded projects will not be required to comply with the BAP until August 23, 2024.
- This project is not eligible for any general waivers.

Requirements: The Phased Implementation Waiver establishes a schedule for when the BAP will apply to HUD Programs. MaineHousing must know which HUD funds are The BAP does not apply to this project because the funds were obligated by HUD before August 23, 2024 (the phased implementation date for HOME).

The below chart represents the Phase Implementation Schedule for BABA:

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

Pacific Island Territories Waiver (Effective until February 15, 2025)

Requirements: The BAP is currently waived for all Federal financial assistance for infrastructure projects in the Northern Mariana Islands, American Samoa, and Guam.

MAINEHOUSING’S PLAN TO IMPLEMENT

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.

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.

For projects whose total project cost (including all sources of funding, materials and labor) is less than \$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.

For *De Minimis* Waivers MaineHousing will review a request for a waiver if the cost of the materials for which the waiver is sought 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). Developer should complete the General Waiver Form, attached hereto as Appendix A, and provide the required information, as outlined in the Form.

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 and HUD is not the largest portion of that funding, waivers should be submitted to the federal agency with the largest source of funds.

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 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

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.

Developer will need to submit to MaineHousing a HUD Project-Specific Waiver Form that corresponds with the type of waiver being requested. The Project-Specific Waiver Forms are attached hereto as Appendices B, C & D. Developer 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 Developer.

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. This means the waiver must be for a specific project and a specific item, not multiple items. If this is not possible, MaineHousing, in its sole discretion, may consider a broader waiver.

In considering a broader waiver, MaineHousing may require the waiver to be:

1. Time-limited, meaning it is issued for a certain period of time rather than for a specific project;
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.

For broader waivers, all projects affected by the issue must participate in the waiver request and coordinate completion of the Broad Waiver Project-Specific Waiver Form, attached hereto as Appendix E. Broad Waivers will not be provided for Unreasonable Costs. If MaineHousing directs the completion of the Broad Waiver Project-Specific Waiver Form, MaineHousing may designate one Developer to complete the Form.

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 HUD BABA Waiver Form, attached hereto as Appendix F, and go through HUD's project-specific waiver process. The Made in America Officer ("MIAO") will be the final determining factor if a waiver is approved. Developer will cooperate with MaineHousing through the HUD waiver process to provide any additional information that may be required in a timely manner. It should be noted that HUD must publish the proposed waiver determination and provide for a period of public comment on the waiver of at least 15 days. This will add to the time required to obtain a waiver.

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.

Process for Documenting BABA Compliance for HUD Programs

MaineHousing is required to document the BABA process to analyze if the BAP applies to a project using the approach as outlined in the CPD-2023-12 Notice, issued November 2, 2023 and Notice 2024-01pihn, dated January 3, 2024. This includes tracking product purchases in sufficient detail to identify the source of the funding for the purchase and to demonstrate compliance with BABA. Records will be retained in accordance with existing records retention requirements for the applicable HUD Program. If there are no HUD program-specific records requirements, MaineHousing will follow 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.

MAINEHOUSING'S PLAN TO IMPLEMENT

Developers will be required to have all bidders for a project complete a HUD Bidder Certification Form, attached hereto as **Appendix J**, acknowledging that the project is subject to BABA.

Developers must include the following language on the project's plans and specifications to inform all parties of the BABA requirements:

_____ (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.

Developers will be responsible for documenting compliance with BABA and ensuring that all contractors and subcontractors comply with BABA. All Contractors and Subcontractors will be required to complete the AIA G702 Certification Addendum when requesting payment. The AIA G702 Certification Addendum is attached hereto as Appendix K. Payment will not be made until this certification is provided.

Developers 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. Developers will submit a HUD Build America, Buy America Construction Material Spreadsheet, attached hereto as Appendix L, prior to the start of construction that will be updated monthly on either the 1st or the 15th of the month depending on what the Developer selects for a requisition schedule. The HUD Build America, Buy America Construction Material Spreadsheet should classify products as they arrive on site.

Payment of a specific requisition will be conditioned on providing the Construction Material Spreadsheet and required Made In America certifications. MaineHousing will withhold payment if Developer is not in compliance with BABA requirements. If Developer is not submitting a requisition for a specific month, Developer is still expected to submit the Construction Material Spreadsheet and Made In America certifications for that month. Additionally, 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.

Developer 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, Developer will not be required to recertify the product every time it is used. Developer may refer back to the original certification or label for compliance.

Upon completion of construction, Developers 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.

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 the 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.

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