



Dear Tribal Leader,

The Economic Development Administration (EDA) is committed to strengthening Tribal sovereignty and self-governance and will be hosting a Tribal Consultation on July 10, 2024. EDA frequently works with Tribal Nations to help advance their vision for economic opportunity and seeks input on a waiver and revised forms. We are hosting this consultation to fulfill federal trust responsibilities and treaty obligations to Tribal Nations, the cornerstones of government-to-government policymaking. These consultations are also conducted in furtherance of [Executive Order 13175, Consultation and Coordination with Indian Tribal Governments \(November 6, 2000\)](#) and [Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#).

PURPOSE OF CONSULTATION

On behalf of the Department of Commerce (DOC), I am pleased to invite you to participate in Tribal consultations which will focus on two matters. The first matter relates to DOC financial assistance programs and the Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52), which was enacted as part of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), also known as the Bipartisan Infrastructure Law. DOC would like to solicit Tribal input on any challenges and concerns about DOC financial assistance programs and BABA requirements during the open period of the DOC Tribal BABA waiver. DOC plans to utilize the information from the Tribal consultations to assess the need for targeted BABA waivers in the future to address the diverse needs of Tribes.

EDA is also seeking input on a new “Certificate as to Project Site, Rights-of-Way, and Easements” (Site Certificate) that is specifically for lands held in trust for the benefit of an Indian Tribe (“tribal lands”). Similarly, EDA is also proposing a new “Covenant of Purpose, Use and Ownership” specifically for tribal lands. For consistency, EDA is also creating a new checklist, instructions and summary page for these forms.

BACKGROUND

DOC Tribal BABA Waiver

The Buy America Preference set forth in section 70914 of the Build America, Buy America Act (BABA) requires all iron, steel, manufactured products, and construction materials used for infrastructure projects under Federal financial assistance awards be produced in the United States. On May 8, 2024, DOC issued a general applicability waiver of the BABA requirements for financial assistance agreements awarded to Federally recognized Indian Tribes in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200.

Existing waivers and additional information are available on the DOC website at <https://www.commerce.gov/oam/build-america-buy-america>. In particular, we are interested in Tribal views on the following specific topics related to BABA:

1. What are your concerns about BABA requirements on your Tribal infrastructure programs?
2. How can DOC assist Tribes in implementing the BABA requirements?
3. What barriers currently exist that may prevent your Tribe from being able to comply with BABA requirements?
4. What are your most important training and technical assistance needs relating to BABA?
5. What Tribal concerns should DOC consider when developing and implementing BABA policy and waivers?
6. What is the current/future capability of Tribal business manufacturing/selling of iron, steel, manufactured products/and or construction materials that could be used in infrastructure projects?

Revised EDA Tribal Documents

For the Site Certificate, Covenant of Purpose, Use and Ownership, and the Checklist, the intention of these new documents is to have national EDA template forms that recognize the unique status of lands held in trust for the benefit of an Indian Tribe. Previously, the only available national forms were not specific to

Indian Tribes. For example, the currently available national forms require stating that the EDA Recipient holds marketable fee title. Tribal lands are held in trust by the United States of America for the benefit of the Tribe. Due to the manner in which title is held and because the transfer of tribal lands is restricted under federal law, the interest a Tribe holds would not be considered “marketable fee title”.

As such, there was often understandable confusion and frustration when a Tribe was asked to fill out a national EDA form document that clearly was not intended for use with tribal lands.

In addition, Tribes and their counsels needed to revise the national form and coordinate revisions with EDA for each instance in which tribal lands were being improved with EDA funding. This created an additional, unique barrier for Tribes implementing EDA funded construction projects. The intention of these revised forms is to remove, or at least significantly lower, this burden.

Some questions to consider prior to the Consultation are below. Your suggestions and feedback are welcome to help EDA’s effort to reduce burden(s).

1. What Tribal concerns should EDA consider when further developing and implementing these new forms?
2. Are there any additional edits that would increase efficiency or clarity?
3. Are any of the revisions problematic for your Tribe?
4. How else could EDA better assist Tribes in implementing construction projects funded by EDA?

INFORMATION ON CONSULTATION

EDA hopes to consult with Tribal Leaders or their direct proxies.

The Consultation will be held via Microsoft Teams. Please register to attend the Tribal Consultation via the link provided below.

- July 10, 2024 2:00pm – 3:30pm EST
- Please use this link to register:

<https://events.gcc.teams.microsoft.com/event/62e69562-26bf-44c7-9212-73120e59b379@44cf3ec3-840c-4086-b7de-e3bc9a6c2db4>

This will be conducted via a virtual platform through which participants may provide live written comments. Participation via written channels and the platform's chat capabilities is highly encouraged. EDA has also established an email address and phone number for participants to provide additional feedback. Some questions received will be addressed specifically during the live event. All questions and comments will be reviewed and considered.

- Please send written questions and comments via email to: EDAconsultations@eda.gov
- Please leave any phone voice messages at: 202-482-5479
- These platforms will be available until August 10, 2024.

You can find information about this consultation and previous engagements at www.eda.gov/tribal. We look forward to strengthening our relationship with Tribal Nations through this important Tribal consultation.

As the Assistant Secretary of Commerce for Economic Development and the Deputy Assistant Secretary for Economic Development and Chief Operating Officer, we are responsible for, and committed to, ensuring that EDA's programs and resources are meeting the needs of our stakeholders. We are also committed to the President's economic agenda to support place-based economic development to unlock economic opportunity for all families and communities which includes maintaining and strengthening ties to Tribal Nations across the country. We look forward to participating in these forums and we hope that you will be able to join us. Thank you.

Sincerely,

Alejandra Y. Castillo

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Assistant Secretary of Commerce for Economic Development

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Deputy Assistant Secretary for Economic Development and Chief Operating Officer