



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

January 18, 2023

Via Email

Dear Tribal Leader:

As the Point of Contact for Tribal Consultation for the U.S. Department of the Treasury (Treasury), I invite you to a consultation on the General Applicability Adjustment Period Waiver of Build America, Buy America Provisions for Tribal Government Recipients of the Local Assistance and Tribal Consistency Fund. The consultation will be held virtually on Tuesday, February 21, 2023, 2pm-5pm EDT. [Register here for the consultation.](#)

### ***Background***

The [Local Assistance and Tribal Consistency Fund \(LATCF\)](#) is a general revenue enhancement program that provides additional assistance to eligible revenue sharing counties and eligible Tribal governments. The American Rescue Plan appropriated \$2 billion to Treasury across fiscal years 2022 and 2023 to provide payments to eligible revenue sharing counties and eligible Tribal governments for use on any governmental purpose except for a lobbying activity. Specifically, the American Rescue Plan reserves \$250 million to allocate and pay to eligible Tribal governments for each of fiscal years 2022 and 2023. Under this program, recipients have broad discretion on uses of funds, similar to the ways in which they may use funds generated from their own revenue sources.

In February 2022, [Treasury hosted three Tribal consultations](#) to gather input from Tribal leaders on allocation methodologies and the use of fund. In July 2022, Treasury launched the LATCF program for Tribal government recipients.

According to the [LATCF guidance](#), the Build America, Buy America Act establishes domestic content procurement preference requirements for federal financial assistance programs for infrastructure.<sup>1</sup> These requirements apply to the LATCF. As such, expenditures for iron, steel, manufactured products, and construction materials used in an infrastructure project funded using a LATCF award generally must be produced in the United States. These requirements do not apply to non-infrastructure projects or to infrastructure projects undertaken in response to the COVID-19 public health emergency. Recipients should review the details of these domestic content procurement requirements as provided in the terms and conditions of the LATCF award, which follow the guidance provided by the Office of Management and Budget (OMB).<sup>2</sup>

The Buy America, Build America Act requirements do not apply to expenditures using

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<sup>1</sup> See section 70914(a) of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (IIJA). The Buy America, Build America Act was included as sections 70901-27 of the IIJA.

<sup>2</sup> OMB's guidance is provided in OMB Memorandum M-22-11, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (April 18, 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.

LATCF funds for infrastructure projects undertaken in response to the COVID-19 public health emergency or in response to or anticipation of other major disasters or emergencies declared by the President under the Stafford Act.<sup>3</sup> Treasury recognizes that the public health emergency is impacting recipients in different ways and that recipients are impacted by a broad range of other types of major disasters and emergencies declared under the Stafford Act. Accordingly, recipients should make their own determinations as to what infrastructure projects they need to undertake to respond to the COVID-19 public health emergency or other Stafford Act disaster or emergency.

The Department of the Treasury has issued a [general applicability waiver](#) from the Buy America Domestic Content Procurement Preference (BAP) as applied to federal financial assistance provided to Tribal government recipients of the LATCF. This waiver would cover all iron and steel, manufactured products, and construction materials used in infrastructure projects required by the Build America, Buy America Act. The one-year adjustment period waiver to conduct Tribal consultations would apply to all award agreements entered into with Tribal governments after the date of the final tribal consultation waiver. In addition, in the case of award agreements entered into with Tribal governments prior to the date of the final waiver, the adjustment period waiver will apply to all expenditures incurred after the date of the final waiver on an infrastructure project. This waiver does not apply to Tribal governments that have expended LATCF funds on non-exempt infrastructure projects.

Treasury looks forward to engaging with Tribal governments on how the General Applicability Adjustment Period Waiver of BABA Provisions for Tribal Government Recipients of the LATCF will directly impact your citizens and communities.

Specifically, we hope to receive your input on the following questions:

1. What questions, comments, or concerns do you have regarding the General Applicability Adjustment Period Waiver that Treasury has issued for Tribal government recipients?
2. Regarding Tribal governments who have not yet submitted for the LATCF funding, or who have received payment of their allocation, but not yet obligated or expended the funds, what questions or concerns do you have for the General Applicability Adjustment Period Waiver?
3. Regarding Tribal governments who have received payment of their allocation prior to Treasury issuing the Waiver and expended the funds on infrastructure projects that are not undertaken in response to the COVID-19 public health emergency, what questions or concerns do you have for the General Applicability Adjustment Period Waiver?

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<sup>3</sup> More specifically, as provided in OMB's guidance, the requirements of the Buy America, Build America Act do not apply to expenditures made in anticipation of or in response to an event or events that qualify as an "emergency" or "major disaster" within the meaning of the Stafford Act, 42 U.S.C. § 5122(1), (2). See OMB Memorandum M-22-11 at 3-4.

4. As provided in [OMB's guidance](#), the requirements of the Buy America, Build America Act do not apply to expenditures made in anticipation of or in response to an event or events that qualify as an "emergency" or "major disaster" within the meaning of the Stafford Act. What questions or concerns do you have regarding infrastructure projects that are undertaken in response to the COVID-19 public health emergency?

[Register here for the Tuesday, February 21, 2023, at 2:00 pm EDT session.](#)

We respectfully request that each Tribal government register one primary leader or designee to provide comments. All others are welcome to register as listen-only participants. Please note that each consultation can host 500 participants.

The deadline to submit written comments is Friday, March 31, 2023, at 11:59 p.m. Alaska Time. Written comments should be sent to [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov).

**Consultations are off the record and not for press purposes.**

If you have any questions, please email [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov). We look forward to hearing your feedback on this issue to ensure Tribal governments and communities are integrated into the work of our department.

Sincerely,

Chief Lynn Malerba  
Treasurer of the United States  
Point of Contact for Tribal Consultation  
U.S. Department of the Treasury