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MEMORANDUM

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TO: TRIBAL HOUSING CLIENTS

FROM:  Ed Clay Goodman, Cari L. Baermann, and Julie C. Van Winkle
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RE: ***HUD Update on Build America, Buy America Act (BABA)’s Applicability To Tribal Housing Projects***

On November 26, 2024, the United States Department of Housing and Urban Development (HUD) Office of Native American Programs (ONAP) issued a Codetalk Notice via email, including a brief update regarding “New Guidance on Applicability of Build America Buy America Act (BABA) Requirements to Housing Projects.”¹ In this update, HUD clarified that **the domestic procurement requirements of BABA do not apply single family housing projects, including buildings consisting of 1–4 dwelling units.**² This new guidance will benefit Tribes and Tribally Designated Housing Entities (TDHEs) seeking to avoid application of BABA domestic procurement requirements to small-scale projects. However, HUD noted that “BABA requirements will apply to projects involving the construction, maintenance, alteration, or repair of housing with 5 or more units (multifamily housing projects).”³

There is some ambiguity as to what types of projects are covered under the language “buildings consisting of 1–4 dwelling units.” Specifically, there appear to be two possible interpretations. First, that language could mean that if a TDHE builds 25 single family homes in a scattered site housing project, it is a “single family housing project” that is exempt from BABA. Such a project would be comprised of “buildings consisting of 1-4 dwelling units,” since each house consists of only one dwelling unit. On the other hand, that exemption language of “buildings consisting of 1–4 dwelling units” could instead mean that a TDHE can build up to four dwelling units (whether in a single building or scattered site housing) before it becomes a multifamily housing project. ONAP staff have stated that ONAP will address this ambiguity in future guidance.

BABA’s domestic procurement preference requires that all iron, steel, manufactured products, and construction materials procured for use in infrastructure projects funded by federal

¹ U.S. Dep’t of Housing & Urban Devel. Email, What’s New on Codetalk – November 26, 2024, “New Guidance on Applicability of Build America Buy America Act (BABA) Requirements to Housing Projects” (November 26, 2024).

² *Id.*

³ *Id.*

financial assistance be produced in the United States. The Notice states that ONAP “will issue additional guidance and update existing guidance for Tribal Recipients relating to BABA and housing projects soon.”⁴ ONAP’s BABA Guidance, [Implementation Guidance for Tribal Recipients, Notice PIH 2024-35](#), was issued on October 11, 2024.

Conclusion

We will continue to provide updates on ONAP guidance and other updates regarding BABA’s applicability to Tribal housing projects. If you have any questions about this memorandum or any of the topics discussed in this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com), Cari Baermann (cbaermann@hobbsstrauss.com), or Julie Van Winkle (jvanwinkle@hobbsstrauss.com). They may also be reached at 503-242-1745.

⁴ *Id.*