



USDA TRIBAL CONSULTATION & LISTENING SESSION ON EQUITY/BARRIERS
APRIL 2023

FRAMING PAPER:
ECONOMIC DEVELOPMENT

Register for the Consultation: [HERE](#)

**1. IMPROVE USDA’S RECOGNITION OF TRIBAL JURISDICTION AND SOVEREIGNTY
OVER TRIBAL LANDS AND REDEFINE USE OF “LEGACY” PREFERENCES**

What We Heard from Tribes in Prior Consultations: Tribes maintain concurrent jurisdictional authority over their lands, which USDA has not consistently recognized historically when financing infrastructure-related projects. USDA’s requirements for granting preference to pre-existing borrowers redirects funding Tribal governments could otherwise use to finance projects they own and operate in serving their members. Pre-existing borrowers usually represent non-tribal providers and USDA often funds non-tribal infrastructure providers that tribe do not always view as adequately servicing Tribal communities.

Examples of Progress Made to Date:

USDA Rural Development (RD) worked to integrate a new set of fundamental principles into its infrastructure programs to better respect Tribal sovereignty. Through specific program amendments in the ReConnect Broadband Program and the Electric Programs, RD implemented the following Tribal-specific provisions.

ReConnect Broadband Program – Round 4

- Required non-tribal applicants proposing to serve Tribal lands to submit Tribal Resolutions of Support.
- Allowed Tribes to self-certify broadband service is or is not available on Tribal lands.
- Created a \$421 million Tribal set-aside with no matching funds requirement.
 - Colonias, persistent poverty areas, and socially vulnerable communities were also able to compete for this funding.

Electric Program Streamlining Final Rule

- Required non-tribal applicants proposing to serve Tribal lands to submit Tribal Resolutions of Support.
- Explicitly required non-tribal borrowers to adhere to Tribal laws on Tribal lands.

Tribal Input Needed:

USDA RD seeks Tribal input on the following discussion areas:

- **Tribal Jurisdictional Authority:** Do these steps adequately address Tribal considerations for how USDA should recognize Tribal jurisdictional authority in infrastructure programming? If not, where else can USDA strengthen this approach (within our areas of authorization)?
- **How should USDA define Tribal lands for the purpose of defining tribal jurisdiction?** As RD becomes more clear that tribal consent is required for infrastructure on tribal lands, how do we best define “tribal lands.”?

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- **Further Consistency:** Rural Development provides infrastructure programs for drinking water and waste disposal systems, telecommunications, rural electric generation and transmission, renewable energy, community facilities, and housing. In which programs should USDA prioritize making similar changes moving forward to ensure as consistent approach as possible across Rural Development’s programs?

2. CLARIFY AND IMPROVE ELIGIBILITY FOR TRIBAL-OWNED ENTITIES FOR USDA PROGRAMS

What We Heard from Tribes in Prior Consultations: Tribal nations have no tax base and often participate in the private marketplace through corporations, instrumentalities, and related enterprise structures to generate governmental revenue. Therefore, Tribal-owned corporations, businesses, and enterprises are hybrids and are both governmental in nature and “commercial.” This nuance presents challenges in accessing USDA programs that customarily distinguish between commercial and essential governmental projects.

Examples of Progress Made to Date:

- Expanded Tribal eligibility in meat and poultry processing and fertilizer production expansion programs for tribes and their arms and instrumentalities.
- Drafted a proposed rule for the Rural Business Development Grant (RBDG) program to clarify Tribal applicant eligibility includes Tribal-owned arms and instrumentalities. USDA expects publication later this spring with additional Tribal consultation on these proposed changes to follow.

Potential Next Steps

- Issue RBDG proposed rule in the Federal Register.
- Conduct consultation on RBDG proposed rule.
- Issue RBDG final rule in the Federal Register.
- Reviewing other RD programs to clarify arms and instrumentalities eligibility.

Tribal Input Needed:

USDA RD seeks Tribal input as we analyze and think about favorable changes to increase Tribal applicant eligibility across RD’s programs by asking the following questions:

- What else do you want us to know about the relationship between Tribes and Tribal-owned enterprises/arms and instrumentalities?
- Does your Tribe have any other unique organizational structures for your enterprises that we should consider?

3. IMPROVE ACCESS TO USDA ECONOMIC DEVELOPMENT FINANCING

What We Heard from Tribes in Prior Consultation: USDA faces challenges in delivering much needed financing for infrastructure, economic development, and housing in Tribal areas. Some of these challenges relate to staff training to underwrite and secure loans on Tribal trust lands. In addition, USDA has not fully incorporated Native Community Development Financial Institutions (CDFIs) as partners to increase the availability of capital on Tribal trust land.

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Examples of Progress Made to Date:

- Expanded the Native CDFI 502 Relending Demonstration Program.
 - Administration requested \$20 million in its FY 23 Budget Request.
 - Congress appropriated funds for \$7.5 million expansion of the demonstration program in the FY23 Budget.
 - Rural Development will release this funding notice later this spring.
- USDA's Office of Tribal Relations signed a cooperative agreement with the Native CDFI Network to create an e-toolkit designed to help more Native CDFIs access RD programs.
- USDA continues to encourage nonregulated lenders to become approved lenders in RD's OneRD and 502 guaranteed loan programs. If interested in additional information we encourage you to watch this webinar recording:
<https://www.youtube.com/watch?v=3AWJiCDY-Cs>
- Issued RD Tribal Policy Statement to all RD staff on November 1, 2022, to underscore the commitment, consultation responsibility, and trust responsibility RD must abide by to better serve Tribes.
- Launched a one-day regional virtual Tribal training session for RD staff in October of 2022 to train staff on the responsibilities and commitments outlined in the RD Tribal Policy Statement.
- Hosted an RD Inflation Reduction Act (IRA) programs Tribal consultation and roundtable in December 2021 and January 2022.
- Participated in the Interagency Tribal Consultation on Build America, Buy America Act (BABAA) in September 2021 with the White House Council on Native American Affairs.
 - Approved RD BABAA public interest waiver on August 4, 2022. The waiver expired on February 3, 2023.
 - Approved USDA-wide De Minimis, Small Grants and Minor Components BABAA waiver on September 13, 2022. The waiver has an indefinite term.

Tribal Input Needed:

USDA RD seeks Tribal input on the following discussion areas:

- **Tribal Training:** RD will provide additional Tribal training throughout FY23 and beyond. What type of Tribal specific training do you think will be the most effective for RD staff?
- **Regulatory and Program Requirements:** What regulatory or program requirements are barriers to Native CDFIs, native-led lenders, and others participating in RD guarantee programs?
- **Paperwork and Required Forms:** What USDA application requirements and required forms have provided challenges in accessing USDA's economic development programs. Are there program requirements that do not apply to Tribes that we should remove? Are there program requirements that should be clarified to better address Tribal specific circumstances? Please offer specific suggestions that will help us reduce or refine USDA's application requirements for Tribes and Tribal applicants.
- **Inflation Reduction Act Renewable Energy Programs:** RD would like to ensure Tribes and Tribal applicants use the Rural Utilities Service IRA programs focused on renewable energy (Section 22001 & 22004). In addition, these programs may benefit Tribes through better collaboration with non-tribal applicants. What type of outreach and technical assistance do you recommend to optimize these opportunities?

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- **Rural Business-Cooperative Service (RBCS) Rural Energy for America Program:** RD would like to ensure Tribal applicants use this IRA program focused on renewable energy and energy efficiency (Section 22002). In addition, this program may benefit Tribes through better collaboration with non-tribal applicants. What type of outreach and technical assistance do you recommend to optimize these opportunities?
- **Current Priority Areas for Tribal Government Financing:** What are the current priority areas for financing that Tribal governments need to support their communities with respect to housing, infrastructure, and/or business and economic development?

4. INCREASE INVESTMENTS TO TRIBES THROUGH USDA ECONOMIC DEVELOPMENT PROGRAMS

A) Tribal Nations Need Grants Not Loans and Additional Program Flexibility

What We Heard from Tribes in Prior Consultation: Unlike municipalities, Tribal governments have no tax base to pay back debt used to invest in infrastructure, housing, and economic development. Therefore, Tribes either need grants, or they must integrate a revenue-generating component into their projects which often introduces barriers to accessing RD programs. This is problematic in many ways since some RD program eligibility requirements are focused on supporting either commercial and non-commercial activities, but rarely both.

Example of Progress Made to Date:

- Recorded an uptick in Tribal-owned applications in the ReConnect Round 3 and ReConnect Round 4 funding opportunities.
- Launched the RD Tribal Obligations Dashboard for RD staff to utilize in October of 2022. RD uses the dashboard internally for Tribal reporting needs. The dashboard also better tracks, in real time, where RD has made Tribal obligations over the last decade and where we can better target geographic and Tribal specific funding gaps.
- Provided additional guidance to RD staff in October of 2022 to more effectively make and service homeownership loans on Tribal trust land.

B) Waiver of Matching Requirements

What We Heard from Tribes in Prior Consultations: The USDA has a federal trust responsibility to help grow and sustain Tribal economies. As such, the regular arguments for matching requirements are not applicable. In addition, as shared trustees, the USDA should allow other agency funds to count as a match and waive matching requirements whenever possible.

Example of Progress Made to Date:

- Included funding set aside for Tribes **that required no match** during the ReConnect Loan and Grant Program Rounds 3 and 4.
- Increased the federal grant share to the statutory maximum of 50 percent for projects submitted by eligible Tribal entities for Rural Energy for America Program (REAP) IRA funding.
- Waived matching funds requirements in the Fertilizer Production Expansion Program (FPEP) for Tribes and Tribal entities owned by Tribes requesting less than \$5 million in grant funding.

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- Reduced matching funds requirements to 50 percent in the Fertilizer Production Expansion Programs for Tribes and Tribal entities owned by Tribes requesting \$5 million or more in grant funding.

Tribal Input Needed:

USDA RD seeks Tribal input on the following discussion areas:

- **Substantially Underserved Trust Areas (SUTA):** Currently, in many of the Rural Utilities Service (RUS) programs, RD has the authority to reduce interest rates, waive credit support requirements, waive non-duplication requirements and provide priority for projects that propose to serve SUTA. But SUTA is statutorily limited to only RUS programs within RD. USDA does not draft the Farm Bill or statutory changes. But we do get asked for our technical assistance sometimes. If we are asked by Congress, would Tribes like to see SUTA expand to cover more RD programs, such as Rural Housing and Rural Businesses programs? If so, what programs would you like to see covered first?
- **Collaboration with Other Federal Agencies:** USDA continues to collaborate with other federal agencies through the White House Council on Native American Affairs on these economic development focused efforts:
 - Access to Capital Initiative
 - Renewable Energy and Electric Vehicle InitiativeHow can USDA better collaborate with other federal agencies through these efforts to ensure our programs better align with Tribal needs? How can USDA make programs more consistent with other federal programs that provide economic development assistance to Tribes?
- **Cost Share and Matching Fund Reductions:** Were the cost share and matching fund reductions in the FPEP and REAP programs helpful? Do any continuing USDA matching fund requirements create an ongoing challenge and barrier, even at a reduced level of matched funding?

5. CLARIFY TRIBAL DEFINITIONS AND UTILIZE TRIBAL DATA WHENEVER POSSIBLE

What We Heard from Tribes in Prior Consultation: The USDA uses data from state and federal agencies to affirm levels of need, project effectiveness, and program criteria. However, the USDA does not afford the same recognition to Tribes requesting to utilize their own Tribal government data for similar purposes.

Example of Progress Made to Date:

- Ensured RD used a consistent approach for defining Tribes and Tribal applicant eligibility in RD program regulations and funding opportunities.
 - RD used a consistent approach to define Tribes and Tribal entities in various RBCS programs, including the Meat and Poultry Processing and Fertilizer Production Expansion programs and the proposed changes to the Rural Business Development Grant program.
 - RD will utilize a consistent approach on forthcoming program announcements.

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Tribal Input Needed:

USDA RD seeks Tribal input on the following discussion areas:

- **Cross Agency Collaboration:** USDA is working with the Department of Interior and an interagency working group to better understand the data, geospatial and mapping information maintained across the federal government. Better understanding this information will help the USDA develop strategies and tolls to identify, differentiate and determine the following:
 1. Areas of Tribal jurisdiction.
 2. Areas where Tribes provide governmental services.
 3. Areas with significant Tribal member and Native American populations.
- **Program and Grant Eligibility:** What data challenges related to program and grant eligibility has your Tribe faced when trying to utilize USDA's economic development programs?
- **Data Source Regulatory Relief:** Do you have any suggestions or recommendations regarding regulatory changes, or statutory clarification, regarding data sources for Tribal project eligibility?
- **Data Sharing:** What types of data do Tribes maintain that they would be willing to share through a project application? Please note this data may then become part of the federal record if we award the project. Conversely, what type of data do Tribes maintain that is particularly sensitive?