

# **FRAMING PAPER: ECONOMIC DEVELOPMENT**

## **USDA TRIBAL CONSULTATIONS ON BARRIERS/EQUITY: ANNUAL PROGRESS REPORT & FEEDBACK FOR NEXT STEPS**

**Monday April 11, 2022**

### **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 2021 Consultation:** Tribes maintain concurrent jurisdictional authority over their lands, which USDA has not historically recognized when financing infrastructure-related projects. USDA’s requirements for granting preference to pre-existing borrowers (which are usually non-tribal providers) redirects funding that could otherwise be used by Tribal governments to finance projects that they own and operate in serving their members, while often funding non-tribal infrastructure providers that may inadequately service Tribal communities.

**Example of Progress Made to Date:** USDA Rural Development worked to integrate a new set of fundamental principles into its Broadband and Telecom programs to better respect Tribal sovereignty. Through specific program amendments in the ReConnect Round 3 Funding opportunity, RD implemented these Tribal-specific provisions:

- Non-tribal applicants were required to submit a Tribal resolution of support and consent for projects proposing to serve Tribal lands or be deemed ineligible.
- Set aside \$350 million for Tribes and socially vulnerable communities.
- The funds set-aside for Tribes were 100% grant funds with no matching funds required.
- RD allowed Tribal governments to self-certify that the minimum broadband service was not available on Tribal lands that they proposed to serve – pending confirmation from USDA staff.
- RD explicitly required that non-tribal applicants must comply with Tribal laws to comply with program eligibility.

**Potential Next Steps:** USDA RD seeks Tribal input on the following discussion areas:

- Do these steps adequately address Tribal considerations for how USDA should recognize Tribal jurisdictional authority in infrastructure programming? If not, where can USDA strengthen this approach?
- These steps are specific to the USDA ReConnect broadband program. USDA RD provides infrastructure programs for drinking water and waste disposal systems, telecommunications, rural electric generation and transmission, renewable energy community facilities and housing. Where should USDA prioritize making similar steps moving forward?

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### **2. Clarify and Improve Eligibility for Tribal-Owned Entities for USDA Programs.**

**What we heard from Tribes in 2021 Consultation:** 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, in that they are both governmental in nature and “commercial.” This nuance has presented challenges in accessing USDA programs.

**Example of Progress Made to Date:** USDA staff is working on a concerted review of these barriers with the Office of Tribal Relations, the Office of General Counsel, and program staff. One example of a resource under development is a Rural Development program matrix with a Tribal eligibility column that better explains how a broad range of Tribal entities **ARE** eligible for RD programs that should be available later this year.

**Potential Next Steps:** USDA RD seeks Tribal input on the following discussion areas:

- How should USDA RD solicit formal input from Tribes on a subset of Rural Business programs that have historically presented eligibility challenges for Tribes and Tribal entities (i.e., federal register, listening sessions, specific consultation, etc.)?
- What ownership threshold should USDA RD use to affirm that Tribal corporations are Tribally owned and/or part of Tribal government?
- What do you want us to know about Tribal owned business structures as we think through eligibility for both “government” and “commercial” economic development programs?

### **3. Improve Access to USDA Economic Development Financing**

**What we heard from Tribes in 2021 Consultation:** USDA faces challenges with struggles with delivering much needed financing for infrastructure, economic development, and housing in tribal areas. Some of these challenges are related to staff training to underwrite and secure loans on Tribal trust lands. In addition, USDA has not fully incorporated Native CDFIs as partners to increase the availability of capital on Tribal trust land.

**Example of Progress Made to Date:** Since the spring of 2021 Rural Development has redoubled its efforts to build stronger partnerships with Native CDFIs, Native-led lenders, and non-profits to promote and improve access to capital and equity in lending on Tribal lands. Rural Development also continues to implement the Single-Family Housing Native CDFI Relending Pilot Program in South Dakota. Additionally, the President’s FY 2023 Budget proposal included the first request to expand this relending pilot program.

**Potential Next Steps:** USDA RD seeks Tribal input on the following discussion areas:

- What are the priority areas for financing that Tribal governments need to support their communities: housing, infrastructure, or business?

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- RD is developing a Tribal training process for staff. One potential topic for that training is how to adequately secure loans on Tribal trust land. Would it help to include other USDA agency staff in this training? If so, which agencies? Who might be good organizational partners to help develop and deliver this training? What additional details/topics should we think through and make sure to address?
- What regulatory or program requirements are barriers to Native CDFIs, Native-led lenders and others participating in RD Guarantee programs?

### **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 2021 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 including that in some RD programs eligibility requirements are designed around non-commercial activities.

**Example of Progress Made to Date:** Utilizing discretionary authority, the ReConnect Loan and Grant Program Round 3 funding opportunity set-aside \$350 million in grant funding for Tribes and socially vulnerable communities.

#### ***B) Waiver of Matching Requirements***

**What we heard from Tribes in 2021 Consultation:** 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 USDA should allow other agency funds to count as a match and waive matching requirements whenever possible.

**Example of Progress Made to Date:** ReConnect Loan and Grant Program Round 3 funding opportunity included funding set-aside for Tribes **that required no match**. In addition, USDA is conducting an internal review of matching fund requirements to see in which programs it is statutorily required and in which programs there may be discretion to waive matching funds requirements.

#### ***C) Use of Other Federal Funds in Conjunction with USDA Funding***

**What we heard from Tribes in 2021 Consultation:** Where USDA cannot waive a matching requirement or otherwise require 0 percent match, USDA should allow other funding, including from the Federal government programs, to serve as a match.

**Example of Progress Made to Date:** Federal appropriations law prohibits federal or nonfederal share of a grant program to be used as a match for another program unless specifically authorized by law. A change would require action by Congress. However, USDA RD continues to leverage our relationships with Federal partners to capitalize on and identify available resources for Tribes that may authorize the use of Federal funds as a

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match, including funds that lose their Federal status as with 638 compacted and contracted funding, and expanding opportunities when “in kind” contributions may be used for match.

### ***D) Tribal Government Set-Asides***

**What we heard from Tribes in 2021 Consultation:** Tribes have requested set-asides based on our trust responsibility combined with the historical systemic and legal barriers for Tribes accessing capital and navigating USDA programs.

**Example of Progress Made to Date:** Rural Development has six programs that include Tribal set-asides. This includes the funds that were set-aside for Tribes and socially vulnerable communities in Round 3 of the *ReConnect Loan and Grant Program*. Other Tribal set-aside funding is available through the *Community Facilities Tribal College Grant Initiative*, which was increased to \$10 million in FY 2022; the *Rural Business Development Grant Program*; the *Rural Business Intermediary Relending Program*; the *Rural Alaska Village Grant Program*; and the *Water and Environmental 306c Tribal Set Aside Grant Program*.

**Potential Next Steps:** USDA RD seeks Tribal input on the following discussion areas:

- Many of the programs that RD administers receive appropriations that direct funding that is made available through direct and guaranteed loans. Assuming that will continue in the future, what recommendations do Tribes have to making RD’s loan programs more accessible? Alternatively, in what program areas is more grant funding needed (Water, Community Facilities, Broadband, Economic Development, Housing, etc.)?
- What can USDA learn from Tribes’ experiences using other federal programs, where matching requirements were less burdensome, and the federal agency allowed other federal funds to be used as federal match? Be as specific in the examples you provide as possible.
- If other federal funds cannot be used as matching funds for RD programs, what can USDA do to ensure its easier for Tribes to leverage multiple federal funding streams to fully fund Tribal projects?

### **5. Clarify Tribal Definitions & Utilize Tribal Data Whenever Possible**

**What we heard from Tribes in 2021 Consultation:** USDA uses data from state and federal agencies to affirm levels of need, project effectiveness, and program criteria but 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:** USDA’s Office of Tribal Relations, OGC, and agency and program staff are examining opportunities where statutes allow for flexibility in data sources. In some cases, program criteria, including poverty thresholds or rurality may require the use of very specific data sets, but other programs may allow for greater flexibility.

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**Potential Next Steps:** USDA RD seeks Tribal input on the following discussion areas:

- Data from federal or state sources often has a series of checks to affirm that it is statistically accurate. Should USDA RD seek any similar safeguards from Tribes intending to utilize their data?
- What types of data do Tribes maintain that they would be willing to share through a project application, noting that this data may then become part of federal record if the project is awarded? Conversely what type of data is particularly sensitive?
- **Cross agency collaboration** - USDA is working with DOI to understand the geospatial / mapping information they maintain to help USDA better identify and differentiate 1) areas of Tribal jurisdiction, 2) areas where Tribes provide governmental services, and 3) areas with significant Tribal member/Native American populations.
- **Investment Dashboard** – USDA Rural Development is currently building an internal automated reporting dashboard to assist staff in measuring the amount of funding that is being invested in Tribal communities. Although this will be an internal tool for RD staff to track and improve its investments to Tribal communities, USDA plans on soliciting feedback from Tribes in the future through listening sessions and/or consultation to ensure the tool is reflecting actual investments benefitting Tribal communities as possible.
- **Tribal Economic Well-being Index**– To help target place-based community and economic development initiatives with Tribes USDA has created a quantitative Tribal Economic Well-being Index. The index consists of percentile rankings for the following variables, across federally recognized Tribal lands: poverty rate, percentage of adults above 25 without a high school diploma or equivalent, housing vacancy rate (excluding occasional, seasonal, or recreational use), percentage of adults 25 to 64 not working (unemployed and not in labor force, excluding the armed forces), and the ratio between the median household income (MHI) for a Tribal region compared to the state MHI. For Tribal lands in multiple states, the average of the states' MHI was used for the MHI ratio calculation. The average of these five indicators was then normalized on a 0-100 scale to create the index. USDA plans on soliciting feedback from Tribes in the future through listening sessions and/or consultation to ensure the index is accurately reflecting need in Tribal communities and determine what could be done to improve the index and decide if it should be used for other purposes moving forward.