

The slide features two logos. On the left is the official seal of the U.S. Department of Housing and Urban Development, which consists of a circular emblem with vertical bars and stars, surrounded by the text "U.S. DEPARTMENT OF HOUSING" and "AND URBAN DEVELOPMENT". To its right is the logo for the "Office of Native American Programs", featuring a stylized profile of a Native American person's head facing left, with the text "Office of Native American Programs" and "Office of Public & Indian Housing" underneath.

Developing and Financing Infrastructure

Virtual Training

January 31, February 1, February 2, 2023

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The slide features three logos. On the left is the logo for the Office of Native American Programs, featuring a stylized sun rising over a red house with a white roof, surrounded by a circular border with the text "Office of Native American Programs" and "Office of Public & Indian Housing". In the center is the official seal of the U.S. Department of Housing and Urban Development, which includes a vertical column of green buildings, four stars, and the text "U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT". On the right is the logo for FirstPic Consulting, consisting of a circular emblem with the words "FIRSTPIC" in the center, flanked by two overlapping circles, with "CONSULTING" written below it.

Introductions

► Trainers



John Clancy Mark Bender Bill Nelson

GODFREY KAHN, S.C.
MILWAUKEE | MADISON | GREEN BAY | APPLETON | WASHINGTON, D.C.

► Participants

- ▷ Name and Role
- ▷ Goals for this Training – targeted audience
- ▷ Topics of Interest
- ▷ Questions want Answered

ORGANIZING FOR DEVELOPMENT

GODFREY KAHN LLC

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Forming Development Team and Partners

Forming a Development Team

- ▶ Form a Team that has or can develop expertise in:
 - ▷ Planning projects,
 - ▷ Identifying financial resources,
 - ▷ Identifying key partners,
 - ▷ Preparing grant and other applications,
 - ▷ Developing projects

Who Should be on the Development Team?

- ▶ Team Leader (e.g., Executive Director, Deputy Director)
- ▶ coordinates the efforts of the development team,
- ▶ assures compliance with procurement and other grant requirements,
- ▶ serves as the TDHE's contact for outside contractors and government agencies,
- ▶ works to assure full support of the TDHE board and the Tribe's elected leaders.

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Who Should be on the Development Team?

Finance Officer (or outside accountant)

- ▶ assists in preparing project budgets and projections,
- ▶ assesses the financial viability of proposed projects,
- ▶ tracks the uses of project funds,
- ▶ prepares financial reports and certifications required by various funding agencies.

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Who Should be on the Development Team?

Attorney

- ▶ advises on legal requirements of the funding programs,
- ▶ reviews or negotiates agreements with contractors, lenders, and government agencies,
- ▶ explains tribal jurisdictional issues to outside parties, deals with the BIA and other governmental agencies on federal approvals and issues,
- ▶ works with the tribe to enact any codes or ordinances to maximize funding eligibility,
- ▶ addresses compliance and other legal issues.

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Who Should be on the Development Team?

In-house grant writer and/or consultant:

- ▶ collects/prepare data and other information to support grant applications,
- ▶ prepares grant applications
- ▶ outside consultant assistance likely more valuable for more complex or specialized grants

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Development Team Funding- Source Partners

- ▶ Key Federal Agencies
 - ▷ HUD
 - ▷ USDA
 - ▷ Department of Energy
 - ▷ BIA
 - ▷ Indian Health Services
- ▶ Key State Agencies
 - ▷ State housing and economic development agencies
 - ▷ State energy efficiency and renewable energy funding programs
- ▶ Private Sources
 - ▷ Federal Home Loan Banks
 - ▷ Foundations
 - ▷ Utilities

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Forming and Implementing Development Plan

What's it For?

- ▶ Provides a road map for development
- ▶ Supports applications for financing projects

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Forming Development Plan

Development Plan identifies one or more projects addressing housing/infrastructure needs and priorities:

- ▶ Infrastructure needs (e.g., roads, water/sewer, storm water facilities, electric lines, gas lines, etc.)
- ▶ Housing type(s) (e.g., new housing, rehab, rental, home ownership, seniors, veterans, etc.)
- ▶ Energy projects (e.g., solar photovoltaic, battery storage, solar hot water, energy efficiency)

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Forming Development Plan

Key inputs for Development Plan:

- ▶ Accurate information regarding the demographics (age, family status, income) of the tribal population and members' housing preferences;
- ▶ Good information regarding project setting, including existing infrastructure and development limitations;
- ▶ Input from community, focus groups, elders, etc.
- ▶ Results of survey or professional market study;
- ▶ Priorities approved by elected leaders

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Forming Development Plan

For each potential project, the Development Plan should consider:

- ▶ Estimated Costs;
- ▶ Potential funding sources;
- ▶ Potential Legal Issues, e.g., jurisdiction, immunity & federal approvals;
- ▶ Potential Site issues, e.g., site control, environmental issues.

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Implementing the Development Plan

1. Evaluate non-financial (land, water, sewer, and other utilities) and financial (potential grants, loans, other) resources available for development;
2. Evaluate the eligibility criteria, amounts available, and funding cycles of the various grant, tax credit and loan programs to determine which are best suited for project;
3. Select project, based on community priorities, the eligibility criteria of the various potential funding sources and other factors;

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Implementing the Development Plan

4. Assure that development team has thorough understanding of regulatory requirements and deadlines associated with finance programs to be used.
5. Obtain TDHE board approval, tribal government approval, as necessary.
6. Prepare necessary grant, tax credit and loan applications – lots of work.
7. Receive grant awards, tax credit eligibility and loan approvals.
8. Execute: meet deadlines and respond promptly to requests for information from government agencies, lenders, and contractors.

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Implementing the Development Plan

9. Comply with applicable program requirements (e.g., procurement, Indian preference, tribal preference);
10. Negotiate contracts to protect tribal interests (e.g., grant and Part 200 requirements, bonding/security, guarantees, warranties, performance benchmarks, dispute resolution, applicability of tribal law, tribal training and employment requirements, etc.);
11. Assure that resolutions provide adequate authority;
12. Monitor contract compliance and address issues that will arise;
13. Ongoing (likely quarterly) reporting;
14. Complete Project (including final reporting).

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Implementing the Development Plan

Repeat Steps 1-14 for next project

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LEGAL BACKGROUND RELATED TO DEVELOPMENT



Tribal Regulatory Authority Over Non-Indians

"For nearly two centuries now, we have recognized Indian tribes as 'distinct, independent political communities,' *Worcester v. Georgia*, 6 Pet. 515, 559, 8 L.Ed. 483 (1832), qualified to exercise many of the powers and prerogatives of self-government."

Plains Commerce Bank v. Long Family Land and Cattle Co., 554 U.S. 316, 327 128 S.Ct. 2709 (2008)

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Tribal Regulatory Authority Over Non-Indians

- ▶ Indian country was once the territory within which the laws of the State "can have no force." *Worcester v. Georgia*, 31 U.S. 515 (1832).
- ▶ Today: "Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, not with the States." *Alaska v. Native Village of Venetie*, 522 U.S. 520, 527 n. 1 (1998).

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Tribal Regulatory Authority Over Non-Indians: The Montana Exceptions

The "Montana" Rule (*Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245 (1981)):

- ▶ Tribal authority doesn't go beyond "what is necessary to protect tribal self-government or to control internal relations."
- ▶ Doesn't include jurisdiction over non-members except:

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The Montana Exceptions

- ▶ "a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." and
- ▶ "a tribe may exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."

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Sovereign Immunity

Housing Authorities are arms of their tribes and should share tribal sovereign immunity:

Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth., 207 F.3d 21, 29 (1st Cir.2000) ("The Authority, as an arm of the Tribe, enjoys the full extent of the Tribe's sovereign immunity"); *Dillon v. Yankton Sioux Tribe Hous. Auth.*, 144 F.3d 581, 583–4 (8th Cir.1998); *Fritcher v. Zucco*, 2012 WL 78257 (E.D. Cal. 2012).

BUT ...

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Sovereign Immunity

HUD 1976 boilerplate IHA ordinance provides:

"The Council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name ..."

Cook v. Avi Casino Enterprises, Inc., 548 F.3d 718, 726 (9th Cir., 2008) ("[T]he issue whether a 'sue and be sued' clause in a tribe's enabling ordinance effectuates a waiver of tribal sovereign immunity remains a live issue for determination in this circuit.")

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Sovereign Immunity

The ordinance should be amended to remove the "sue and be sued" clause or to clarify that each waiver requires specific action by the board.

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Sovereign Immunity

Chinks in the armor: Plaintiffs may seek to avoid sovereign immunity by -

- ▶ seeking injunctive relief under the Ex Parte Young doctrine (*Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024 (2014))
- ▶ naming tribal officials individually (*Lewis v. Clarke*, 137 S.Ct. 1285 (U.S. 2017))
- ▶ asserting that immunity does not apply to torts (*Bay Mills – footnote- Wilkes v. PCI Gaming Authority*, 287 So.3d 330 (Ala. 2017))
- ▶ suing over an off-reservation interest in land (*Upper Skagit Indian Tribe v. Lundgren*, 138 S.Ct. 1649 (U.S. 2018))

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Sovereign Immunity

Tribes and TDHEs should -

- ▶ Be mindful of the chinks in the SI armor
- ▶ Don't waive it if you don't have to
- ▶ Prefer tribal law over state law
- ▶ Prefer tribal court over state court
- ▶ Consider arbitration with enforcement in tribal court as a middle ground

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Federal Approvals

- ▶ Alienation of any kind: 25 U.S.C. 177
- ▶ Leases: 25 C.F.R. 415, 25 C.F.R. Part 162; Requires tribal consent, BIA approval (unless under HEARTH Act)
- ▶ Rights-of-Way: 25 U.S.C. 323-28, 25 C.F.R. Part 169 requires tribal consent and BIA grant
- ▶ Encumbrances: 25 U.S.C. 81, 25 C.F.R. Part 84

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Approvals Needed for Encumbrances

- ▶ Applies to agreements that attach "claim, lien, charge, right of entry or liability to real property."
- ▶ Including "leasehold mortgages, easements, and other contracts or agreements that by their terms could give to a third party exclusive or nearly exclusive proprietary control over tribal land."
- ▶ Requires BIA approval if encumbrance is more than 7 years and agreement has not been approved by Secretary under other law (e.g., leases, leasehold mortgages)

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Tribal legal infrastructure to enhance tribal sovereignty and support and facilitate projects (HEARTH Act leasing, utility, commercial, corporate and environmental ordinances)

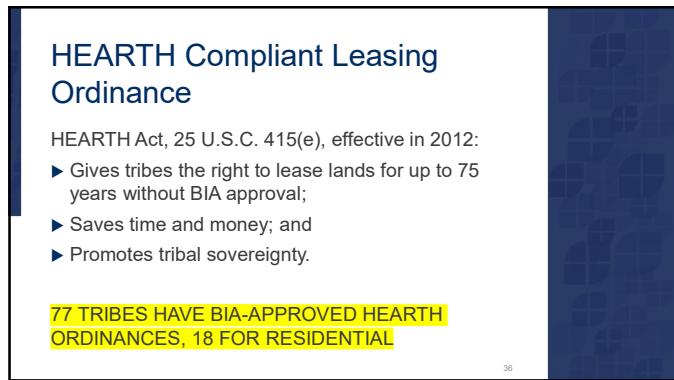


Tribal Laws to Support Development

Enact tribal laws that support development and protect the tribe and its reservation resources:

- ▶ HEARTH Act-Compliant Leasing Ordinance
- ▶ Utility Ordinance
- ▶ Commercial and Corporate Codes
- ▶ Environmental Protection Ordinances

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HEARTH Compliant Leasing Ordinance

HEARTH Act, 25 U.S.C. 415(e), effective in 2012:

- ▶ Gives tribes the right to lease lands for up to 75 years without BIA approval;
- ▶ Saves time and money; and
- ▶ Promotes tribal sovereignty.

77 TRIBES HAVE BIA-APPROVED HEARTH ORDINANCES, 18 FOR RESIDENTIAL

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HEARTH Compliant Leasing Ordinance

Tribe must enact a leasing ordinance that is consistent with regulations at 25 C.F.R. Part 162 and requires –

- ▶ Identification and evaluation of any significant effects on the environment;
- ▶ Public notice and opportunity for comment on significant environmental impacts; and
- ▶ Response to public comments.

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HEARTH Compliant Leasing Ordinance

- ▶ Tribe, not BIA, defines “significant effects” and “public” notice.
- ▶ If federal government environmental review in connection with a federally-funded activity, the tribe can rely on that.

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Utility Ordinance

Utility Ordinance can:

- ▶ provide legal foundation for a tribal electrical or other utility;
- ▶ help address state law limits on energy projects and
- ▶ regulate non-tribal utilities doing business on the reservation.

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Commercial Codes

Commercial and Corporate Codes can provide:

- ▶ option for setting up tribally-chartered LLC or corporation for joint venture with investors;
- ▶ potentially better position for tribal projects regarding sovereign immunity and taxation issues;
- ▶ tribal law for perfecting and enforcing lien rights.

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Environmental Laws

Tribal Environmental laws can provide:

- ▶ a tribal counterpart to the federal NEPA, incorporating tribe's environmental priorities and values;
- ▶ tribal procedures to satisfy environmental requirements for leases and ROWs;
- ▶ specific protections and procedures regarding impacts to reservation resources (e.g., wetland permitting).

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Tribal legal infrastructure to help finance projects (Right-of-Way Regulation and Taxation)

Right-of-Way (“ROW”) Ordinances

- ▶ Potentially significant annual payments for on-reservation rights-of-way.
- ▶ Revenue sources can include:
 - ▷ Right-of-way agreements with annual charges for new or renewed ROWs.
 - ▷ Property taxes of rights-of-way.
 - ▷ Trespass damages or other payments for unauthorized use of ROWs.

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2015 ROW Regulations

The 2015 regulations significantly promote tribal sovereignty by:

- ▶ Establishing timelines for BIA review of rights-of-way requests;
- ▶ Allowing BIA disapproval only where there is a stated compelling reason;
- ▶ Deferring to individual Indian landowner decisions subject to an analysis of whether the decision is in their best interest;
- ▶ Clarifying tribal jurisdiction over lands subject to a right-of-way;
- ▶ Permitting tribes and individual Indian landowners to negotiate the terms of their consent, which BIA incorporates into the ROW grant.

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Compensation

§ 169.110 How much monetary compensation must be paid for a right-of-way over or across tribal land?

(a) A right-of-way over or across tribal land may allow for any payment amount negotiated by the tribe, and we will defer to the tribe and not require a valuation if the tribe submits a tribal authorization expressly stating that it:

- 1) Has agreed upon compensation satisfactory to the tribe;
- 2) Waives valuation; and
- 3) Has determined that accepting such agreed-upon compensation and waiving valuation is in its best interest.

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Compensation

25 CFR 169.110 (cont.)

“(b) The tribe may request, in writing, that we determine fair market value, in which case we will use a valuation in accordance with §169.114. After providing the tribe with the fair market value, we will defer to a tribe's decision to allow for any compensation negotiated by the tribe.”

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Trespass

Occupancy of tribal lands without a ROW grant is a trespass:

- ▶ “§ 169.413 What if an individual or entity takes possession of or uses Indian land or BIA land without a right-of-way or other proper authorization?
- ▶ If an individual or entity takes possession of, or uses, Indian land or BIA land without a right-of-way and a right-of-way is required, the unauthorized possession or use is a trespass. An unauthorized use within an existing right-of-way is also a trespass. We may take action to recover possession, including eviction, on behalf of the Indian landowners and pursue any additional remedies available under applicable law. The Indian landowners may pursue any available remedies under applicable law, including applicable tribal law.”

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Tribal ROW Ordinances

ROW ordinance can provide –

- ▶ framework for tribal consent (e.g., required terms, environmental review, process) and for ROW Agreement between tribe and utility;
- ▶ compensation to the Tribe that is not limited to “fair market value” as defined under common law.
- ▶ potential for long-term stream of significant revenue.
- ▶ ability for tribe to consent, or withhold consent, as it deems appropriate. BIA will not interfere.

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Tribal ROW Ordinances

- ▶ For lines not presently authorized, Tribes can set compensation.
- ▶ For example, based on length of lines, voltage of electrical lines, diameter of gas and oil lines, or other basis.
- ▶ Tribe's leverage will depend on circumstances (transmission vs. distribution line, customers served, alternative routes, alternative suppliers).
- ▶ ROW compensation is a potential tribal (non-federal) source of revenue to fund projects.

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ROW Ordinances

- ▶ Many utilities maintain facilities whose ROWs have expired, or which may never have been authorized.
- ▶ ROW ordinances can set fees for presently unauthorized lines.
- ▶ Tribal law can provide monetary penalties for trespass and/or annual fees for trespassing time period.
- ▶ Tribal law can assess annual property taxes on utilities (even those with valid ROWs).
- ▶ **ROW Compensation, trespass penalties and taxes are potential sources of revenue to finance tribal infrastructure, housing and energy projects.**

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Tribal Property Tax Ordinances

- Tribal property tax law -
- ▶ Assesses annual property taxes on ROWs;
 - ▶ Potentially applies to all ROWs within the Tribe's jurisdiction, including fee land owned by tribal members within reservation boundaries;
 - ▶ May be based on value of assets or size of facilities;
 - ▶ Provides a revenue stream even for existing ROWs that are currently authorized;
 - ▶ Level of taxation should consider economic and strategic factors

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Strategic and Economic Factors

In setting levels of compensation, tax or trespass damages, keep in mind that the goals are:

- ▶ to induce voluntary compliance,
- ▶ to achieve revenue streams rapidly; and
- ▶ assert regulatory authority.

Not to trigger years of expensive litigation.

Therefore ...

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Strategic and Economic Factors

▶ Consider what's reasonable by asking:

- ▷ Do the ROWs serve exclusively tribal members or does the utility need the line to serve off-reservation customers?
- ▷ If the latter, how important is the ROW to the utility or other ROW holder?
- ▷ What are the utility's on-reservation and off-reservation revenues from the line?
- ▷ How long are the lines and what is their capacity (e.g., kV rating, diameter, etc.)?
- ▷ What is the status of the lines (e.g., no ROW, expired ROW, valid ROW, soon-to-expire ROW)?

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ROWs and Tribal “Virtual” Energy Utilities

- ▶ Tax and potentially charge right-of-way fees for electric and other lines.
- ▶ Serve facilities with tribal renewable energy projects.
- ▶ Take advantage of your utility's programs such as net metering and potentially community solar.

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FINANCING INFRASTRUCTURE

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Multipurpose Grants (NAHASDA Indian Housing Block Grant (IHBG), Competitive IHBG, Indian Community Development Block Grant (ICDBG), and ICDBG Imminent Threat)

NOTE

- ▶ For more detailed information on many of the financing programs discussed, see National American Indian Housing Council's 2020 Indian Housing Development Handbook, available free at <http://naihc.net/project/indian-housing-development-handbook/>

Multipurpose Grants

- ▶ NAHASDA Indian Housing Block Grant (IHBG)
- ▶ Competitive IHBG
- ▶ Indian Community Development Block Grant (ICDBG)
- ▶ ICDBG Imminent Threat

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“Multi-Purpose”

- ▶ NAHASDA IHBG is primarily a housing finance tool but is “multi-purpose” in the sense that it can also be used for infrastructure.
- ▶ ICDBG truly “multi-purpose:” wide variety of infrastructure uses but also can be used for housing rehab.

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NAHASDA

- ▶ NAHASDA Indian Housing Block Grant (“IHBG”) may be used for:
 - ▷ ...
 - ▷ affordable housing development, including real property acquisition, development and rehabilitation of utilities, necessary infrastructure, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, mold remediation, and related activities
 - ▷ ...
 - ▷ “model activities” approved by HUD
- ▶ 25 U.S. Code § 4132

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NAHASDA

- ▶ Key advantages:
 - ▷ Flexibility of use
 - ▷ Not competitive
- ▶ Key concern:
 - ▷ Needed for operations
- ▶ So, need to find other leveraging sources of funding.

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Competitive IHBG Program

- ▶ Supplements NAHASDA formula-driven IHBG
- ▶ Introduced in 2018/2019 appropriations acts
- ▶ 2017 HUD Needs Study showing an estimated shortage of 68,000 housing units in Indian country
- ▶ FY 2022 Consolidated Appropriations Act provides \$150,000,000 of IHBG funds
- ▶ For “competitive grants to eligible recipients. ... The Secretary shall consider need and administrative capacity and shall give priority to projects that will spur construction and rehabilitation.”

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Competitive IHBG

FY 2022 NOFO FR-6600-N-48 posted July 26, 2022:
 Awards based on six scoring factors with maximum of 104 points:

▶ Capacity of the Applicant	20 points
▶ Need/Extent of the Problem	25 points
▶ Soundness of Approach	40 points
▶ Leveraging Resources	5 points
▶ Comprehensiveness and Coordination	10 points
▶ Preference Points for Climate Change	2 points
▶ Preference Points for Promise Zone*	2 points

*Choctaw, Pine Ridge, Spokane and Turtle Mountain Reservations

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Competitive IHBG

- ▶ Funding of approximately \$129,248,141 is available through this NOFO.
- ▶ HUD expects to make approximately 25 awards under this NOFO
- ▶ Maximum Grant: \$7.5 million
- ▶ Minimum Grant: \$500,000
- ▶ Deadline for applications is November 17, 2022

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ICDBG

Objective is “development of viable Indian and Alaska native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low and moderate income” (i.e., < 80% of area median income). 24 CFR 1003.2

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ICDBG Eligible Uses

- ▶ Acquisition of real property
- ▶ Housing rehabilitation (to be discussed in housing section)
- ▶ Infrastructure projects including streets, roads, water and sewer projects
- ▶ Public facilities and improvements (e.g., shelters for the homeless; convalescent homes, clinics, nursing homes; temporary housing for disaster victims)

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ICDBG Other Eligible Uses

Special economic development activities, including "acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements".

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ICDBG Other Eligible Uses (cont.)

► Planning activities, i.e., "data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to comprehensive plans, community development plans and functional plans in areas such as housing and economic development."

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ICDBG

LMI Program requirements:

1. the project benefits all residents of an area in which at least 51% of the residents are low- and moderate-income persons (LMI);
2. the project benefits a limited clientele of which at least 51% are LMI persons;
3. housing developed with program funds is occupied by LMI persons or, in case of multi-family housing, is at least 51% occupied by LMI persons; or
4. at least 51% of jobs to be created in a job creation project are designated for LMI persons.

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ICDBG Allocations for FY 2022 Grants

Area ONAP Office	Total Area ONAP Allocations
Alaska	\$12,155,709
Eastern Woodlands	\$6,403,754
Northern Plains	\$11,869,436
Northwest	\$4,057,802
Southern Plains	\$23,954,389
Southwest	\$33,868,191

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ICDBG Grant Ceilings for FY 2022 Grants

Area ONAP Office	Population	Ceiling
Alaska	ALL	\$2,000,000
Eastern Woodlands	ALL	\$2,000,000
Northern Plains	ALL	\$2,000,000
Northwest	ALL	\$2,000,000
Southern Plains	ALL	\$2,000,000
Southwest	50,001+	\$5,000,000
	10,501-50,000	\$4,000,000
	7,501-10,500	\$3,000,000
	7,500 and below	\$2,000,000

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ICDBG Awards Based on Six Scoring Factors

Rating Factor Title	Points
Capacity of the Applicant	30 points
Need/Extent of the Problem - Includes 4 points for new category "Connection to Climate Change"	29 points
Soundness of Approach	29 points
Leveraging Resources	6 points
Comprehensiveness and Coordination	6 points
Preference Points for Promise Zone*	2 points
*Choctaw, Pine Ridge, Spokane and Turtle Mountain Reservations	

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ICDBG FY 2022

- ▶ FY 2022 NOFA published July 29, 2022.
- ▶ FY 2022 estimated total funding is \$92,309,280.
- ▶ Application deadline is October 24, 2022.
- ▶ HUD expects to make approximately 80 awards from the funds available under this NOFO.

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ICDBG Imminent Threat (IT)

A portion of ICDBG funds are reserved for “Imminent Threats.” Imminent Threat (“IT”) grants are intended address issues that have a negative impact on public health or safety of tribal residents. According to program guidance, the threat “must be unique, unusual and at a minimum, affect the entire community.”

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ICDBG IT Grants

- ▶ Total grant ceiling for the IT program for FY 2022 is \$5,000,000.
- ▶ Available as needed, outside the annual ICDBG NOFA process.
- ▶ On a first-come first-serve basis until the amount set aside for this purpose is expended.

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ICDBG IT Grants

- ▶ Total grant ceiling for the IT program for FY 2022 is \$5,000,000.
- ▶ Available as needed, outside the annual ICDBG NOFA process.
- ▶ On a first-come first-serve basis until the amount set aside for this purpose is expended.

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Multipurpose Loans (Title VI Loans, Rural Development Community Facilities Program (which includes grant element), Tax-Exempt Bonds)

Multipurpose Loans

- ▶ Title VI Loans
- ▶ Rural Development Community Facilities Program
- ▶ Tax-Exempt Bonds

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Title VI Guarantee Program

- ▶ Guarantee obligations issued by Indian tribes or TDHEs, with tribal approval, to finance NAHASDA affordable housing activities.
- ▶ May be used for modernization or rehabilitation of existing 1937 Act housing, development of new affordable housing, and model housing activities.
- ▶ Guarantee covers 95% of principal balance and accrued interest.

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Title VI Guarantee Program

- ▶ Maximum commitment 5 times the need portion of annual IHBG allocation.
- ▶ Tribe or TDHE must pledge NAHASDA block grant to assure repayment of the loan.
- ▶ Tribe or TDHE must:
 - ▷ demonstrate experience in complex financial transactions,
 - ▷ obtain tribal approval, and
 - ▷ demonstrate an ability to repay obligation without impairing its use of NAHASDA block grant funds.

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RD Community Facilities Program

- ▶ Grant/loan program administered by the Rural Housing Service of Rural Development.
- ▶ Program funds may be used for “essential community facilities.”
- ▶ Essential community facilities includes a broad array of facilities, including but not limited to . . .

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RD Community Facilities Program

- ▶ fire, rescue, and public safety;
- ▶ health services;
- ▶ community, social, or cultural services;
- ▶ transportation facilities (streets, roads, bridges, etc.);
- ▶ natural gas distribution systems; and
- ▶ acquisition of land needed for a facility, necessary professional fees, and purchase of equipment required for its operation.

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Grants

- ▶ Limited to the minimum sufficient for facility operation and maintenance, reasonable reserves, and debt repayment.
- ▶ Grants may be up to 75% of the cost of developing essential community facilities.
- ▶ Smaller communities with the lowest median household income may be eligible for a higher proportion of grant funds.

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Loans

- ▶ Interest rates are similar to those under the RUS utilities program.
- ▶ Rates determined by the median household income of the service area and population of the community.
- ▶ Term may not be longer than the useful life of the facility, the applicant's authority, or a maximum of 40 years, whichever is less.
- ▶ Tax-exempt notes or bonds may be used to secure direct loans but cannot be used for guaranteed loans.

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Guaranteed Loan Program

- ▶ Loan guarantee percentage published annually in a Federal Register.
- ▶ Fiscal Year 2021 80 percent guarantee.
- ▶ Maximum guaranteed loan \$100 million.
- ▶ Cap includes guaranteed and unguaranteed portions and any existing CF guaranteed loans.
- ▶ Interest rates negotiated between lender and borrower, may be fixed or variable.
- ▶ If variable, may not be adjusted more often than quarterly.
- ▶ Tax exempt financing cannot be guaranteed.

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Tax-Exempt Bonds

- ▶ Tribes, like states and municipalities, can issue unlimited amount of tax-exempt bonds to finance projects.
- ▶ Must relate to essential government functions, (e.g., schools, roads, and water systems).
- ▶ Tribal subdivisions, including TDHES, to which tribes have delegated essential governmental functions, may apply for the same authority.
- ▶ Many have done so.

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Tax-Exempt Bonds

- ▶ Bondholders do not pay federal income tax on interest.
- ▶ So willing to accept a lower interest rate.
- ▶ Bonds can often be repaid over a longer period of time than bank loans.
- ▶ Potential bond purchasers: local banks or the RD Office of the USDA.
- ▶ For a larger bond issue, a securities underwriter can arrange public sale of the bonds.
- ▶ Tribe's creditworthiness will affect its ability to sell bonds.

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Tax-Exempt Bonds

- ▶ Tribes issue tax exempt bonds only if substantially all (at least 90%) of the proceeds are used for "essential government functions".
- ▶ Essential governmental functions are those customarily provided by state or local governments.
- ▶ They include housing projects, schools, health care facilities, water, sewer, police and fire, convention halls, administration buildings, child welfare, drug and alcohol treatment centers, etc.

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Tax-Exempt Bonds

- ▶ The issuance of bonds is a complex process.
- ▶ It requires significant investment of time and money.
- ▶ The savings from lower interest rate should be weighed against the costs of issuance.

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New Markets Tax Credit (NMTC) Program

New Markets Tax Credit (NMTC) Program

- ▶ Encourages economic development and job creation in low-income communities by attracting private investment capital.
- ▶ Limited number of tax credits allocated annually to certified Community Development Entities (CDEs).
- ▶ Investors provide equity to the CDEs in return for federal income tax benefits over a seven-year period.
- ▶ The CDEs then provide capital to qualifying businesses.

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NMTC Allocations

- ▶ CDFI Fund allocates NMTCs annually under a highly competitive application process.
- ▶ Early on, few awards were made in rural areas.
- ▶ Now law requires CDFI Fund to ensure non-metropolitan counties receive proportional allocation.

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What is a CDE?

1. primary mission serving, or providing investment capital for, low-income communities or low-income persons,
2. maintains accountability to residents of low-income communities through their representation governing or advisory board, and
3. is certified by the Secretary as a qualified community development entity.

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Who is an Eligible Borrower of NMTC Funds?

- ▶ Qualified Active Low Income Community Business (QALICB).
- ▶ In order to qualify:
 - ▷ at least 50% of its income from the active conduct of a qualified business within a low-income community and
 - ▷ a substantial portion of its property and employee activity within the low-income community.

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What is a “Low-Income Community?”

- ▶ A census tract with:
 - ▷ at least 20% poverty rate,
 - ▷ median income (in a non-metropolitan area) does not exceed 80% of statewide median family income,
 - ▷ or target area.

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Uses of NMTCs

- ▶ Finance new construction or rehabilitation of “any trade or business”.
- ▶ Manufacturing, real estate development (i.e., development of property for commercial rental to third parties), retail, health care, government facilities, schools, daycare centers, etc.
- ▶ Can be used to develop commercial properties for lease but not for “residential rental property.”
- ▶ Residential rental property means “any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.”

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Financial Benefits of NMTCs

- ▶ Credits are equal to 5% of the investment during years one to three and 6% during years four to seven.
- ▶ Total value of the credits 39 cents per dollar invested.
- ▶ Present value ranging from 25 to 28 cents.
- ▶ Credits used to make equity investments or below-market loans.
- ▶ 10 to 20 percent "free" equity.
- ▶ Significantly reduces project debt service, increases level of hard debt the project can tolerate and may make uneconomic project possible.

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NMTCs

- ▶ NMTCs are complex.
- ▶ Normally for projects more than \$5 million.
- ▶ Can be \$1 million with simple direct bank loan structure.
- ▶ The lender is typically a limited liability company to make a specific loan to a specific QALICB for a specific project.
- ▶ Lender typically 99.9% owned by tax and .1% by the CDE.
- ▶ Lender makes a market rate loan and a low-interest or forgivable loan funded with the investor's equity.
- ▶ Lender normally requires a guarantee from the QALICB's owner or other related entity.

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Water & Waste Water Programs (Rural Utilities Service (RUS) Water & Environmental Program, EPA Drinking Water Grants, EPA Clean Water Set-Aside, Department of Defense Water Resource Grants, IHS Sanitation Grants)

Water & Waste Water Programs

- ▶ RUS Water & Environmental Program
- ▶ EPA Drinking Water Grants
- ▶ EPA Clean Water Set-Aside
- ▶ Department of Defense Water Resource Grants
- ▶ IHS Sanitation Grants

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Rural Utilities Service (RUS) Water & Environmental Program

- ▶ Funds for water and waste disposal facilities.
- ▶ Includes water lines, pumping stations, wells, storage tanks, and sewage treatment facilities.
- ▶ Grants and below-market loans to tribes in areas with a population of less than 10,000.
 - ▷ Up to 75% of project costs may be grant if median income below either 80% of state nonmetropolitan median income or federal poverty line.
 - ▷ If between 80% and 100%, maximum grant is 45%.
 - ▷ Grants not available if exceeds 100%.
 - ▷ Where needed to alleviate health risk, can fund 100% of project costs, up to \$1 million per project.

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Loans

- ▶ Rates based on income levels of tenant population served and are published quarterly.
- ▶ RUS normally requires loan to be structured as a bond.
- ▶ Order of RD's preference Security: (1) the full faith and credit of the borrower (general obligation bonds); and/or (2) pledges of taxes or assessments; and/or (3) pledges of facility revenue.

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RUS Water & Environmental Program

- ▶ When customary the State, liens will be taken on the borrower's interest in land, easements, rights-of-way, water rights, water sales contracts, sewage treatment contracts, and similar property rights.
- ▶ The RUS bond requirements not as onerous those for issuance of most municipal bonds.

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Special Consideration Under SUTA

- ▶ 2008 Farm Bill added "Substantially Underserved Trust Area (SUTA)" initiative.
- ▶ Tribal trust lands included.
- ▶ The SUTA initiative gives Secretary of Agriculture certain discretionary authority under electric, water and waste, and telecommunications, and broadband utilities programs.

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Under SUTA Authority, Secretary May:

- ▶ Provide financing at interest rate as low as 2%;
- ▶ Extend repayment terms;
- ▶ Waive non-duplication restrictions, matching fund requirements, and/or credit support requirements from any RUS loan or grant program; and
- ▶ Give the designated projects the highest funding priority.

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SUTA

- ▶ “Underserved” trust area is “an area or community lacking an adequate level or quality of service in an eligible program.”
- ▶ A “substantially underserved” trust area means “a community in trust land with respect to which the Administrator determines has a high need for the benefits of an eligible program.”

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EPA Drinking Water Infrastructure Grants Tribal Set-Aside

- ▶ Provides funds for drinking water infrastructure needs assessments and construction of facilities for water treatment, storage and distribution.
- ▶ Administered in collaboration with IHS, which uses program funds to design and construct projects.
- ▶ Uses of funds:
 - ▷ investments for public water system to comply with the Safe Drinking Water Act,
 - ▷ assistance that directly and primarily benefits disadvantaged community on per household basis, and
 - ▷ programs for water testing.

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EPA Clean Water Set-Aside

- ▶ Provides funding for the planning, design, and construction of wastewater treatment plant facilities.
- ▶ EPA uses sanitation deficiency system priority lists from IHS to identify wastewater projects for funding.
- ▶ To get on list, meet with IHS area office representatives.

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Department of Defense Water Resource Grants-Tribal Partnership Program

Authorized activities include projects for:

- ▶ flood damage reduction,
- ▶ environmental restoration and protection,
- ▶ preservation of cultural and natural resources,
- ▶ watershed assessments and planning activities,
- ▶ feasibility studies, and
- ▶ "such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate."

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IHS Sanitation Grants

- ▶ Grants, as well as technical, engineering and construction management service.
- ▶ For the installation of sanitation facilities for Indian homes, communities and lands.
- ▶ Includes water supply and waste disposal facilities.
- ▶ IHS provides technical assistance free of charge.
- ▶ Engineering services (preparation of specifications, contracts, drawings, inspections, etc.) for fee equal to 2% to 5% of project cost.
- ▶ Projects may be administered directly by IHS or by a tribe under contract with IHS.

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IHS Sanitation Grants

- ▶ IHS Sanitation Grants generally limited to:
 - ▷ Homes built or renovated under BIA HIP, or
 - ▷ Non-HIP homes built or renovated within past funding year or previous year.
- ▶ HIP-related projects generally given priority.
- ▶ Can be combined RUS Water and Waste Facility Program, private loans, bonds or tribal contributions.

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IHS Sanitation Grants

- On May 31, 2022, IHS announced that it allocated \$700 Million from the Bipartisan Infrastructure Law to Improve Tribal Water and Sanitation Systems.

<https://www.hhs.gov/about/news/2022/05/31/ihs-allocates-700-million-dollars-from-president-bidens-bipartisan-infrastructure-law-to-improve-tribal-water-sanitation-systems.html>

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BRIC Program to finance community and other emergency response facilities

Building Resilient Infrastructure and Communities (“BRIC”)

- Available to states, U.S. territories, federally recognized **tribal governments**, and local communities for hazard mitigation activities.
- Tribes may apply as:
 - ▷ an applicant to FEMA for the Tribal Set-Aside and/or national competition; or
 - ▷ a subapplicant to an eligible state or territory for the State/Territory Allocation and/or national competition.

https://www.fema.gov/sites/default/files/documents/fema_fy21-bric-tribal-information-psm.pdf

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BRIC Background

- ▶ New FEMA pre-disaster hazard mitigation program.
- ▶ Replaces the existing Pre-Disaster Mitigation (PDM) program.

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Cost Share

- ▶ Generally, 75 percent federal/25 percent non-federal.
- ▶ Economically Disadvantaged Rural Communities: up to 90 percent federal/10 percent non-federal.
- ▶ "Economically Disadvantaged Rural Communities" same as "small impoverished communities" in Stafford Act.
- ▶ Small impoverished communities: "a community of 3,000 or fewer individuals . . . that is economically disadvantaged, with residents having an average per capita annual income not exceeding 80 percent of the national per capita income."
- ▶ https://www.fema.gov/sites/default/files/documents/fema_nofo-fiscal-year-2021-building-resilient-infrastructure.pdf

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BRIC Priorities for FY 2021

- ▶ Incentivize natural hazard risk reduction activities that mitigate risk to public infrastructure and disadvantaged communities as referenced in EO 14008;
- ▶ mitigate risk to one or more community lifelines;
- ▶ incorporate nature-based solutions;
- ▶ enhance climate resilience and adaptation; and
- ▶ facilitate the adoption and enforcement of the latest published editions of building codes.

BRIC encourages mitigation projects that meet multiple program priorities.

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FY 2021 Available Funding

- ▶ Tribal Set-Aside: \$25 million
- ▶ Can be for Capability- and Capacity-Building activities and/or mitigation projects.
- ▶ Funds not awarded from the Tribal Set-Aside re-allocated to non-financial Direct Technical Assistance for tribes or to national competition.

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Capability- and Capacity-Building (C&CB) Activities

- ▶ enhance the knowledge, skills, expertise, etc., of the current workforce to expand or improve administration of mitigation assistance.
- ▶ includes activities in the following sub-categories:
 - ▷ building codes activities,
 - ▷ partnerships,
 - ▷ project scoping,
 - ▷ mitigation planning and planning-related activities,
 - ▷ other activities.

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Mitigation Projects

Mitigation Projects are cost-effective projects designed to:

- ▶ increase resilience and public safety;
- ▶ reduce injuries and loss of life; and
- ▶ reduce damage and destruction to property, critical services, facilities, and infrastructure from natural hazards and the effects of climate change.

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Tribal Set-Aside Activity Caps

- Combined cost for any C&CB activities under the Tribal Set-Aside must not exceed \$1,000,000 federal cost.
 - Up to \$500,000 may be used for mitigation planning and planning-related activities.
 - If more than \$25 million is submitted, the C&CB activities and highest-ranked mitigation project subapplications up to \$25 million will be selected.
 - All remaining tribal mitigation project subapplications evaluated under national competition.

https://www.fema.gov/sites/default/files/documents/fema_nofo-fiscal-year-2021-building-resilient-infrastructure.pdf

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Technical Evaluation Criteria

Criteria	Potential Total Points
Infrastructure project	20
Mitigating risk to one or more <u>community lifelines</u>	15
Incorporation of nature-based solutions	10
mandatory building code adoption requirement (2015 version) OR 2018 or 2021 version	10 OR 20
Building Code Effectiveness Grading Schedule (BCEGS) Rating of 1 to 5	20
Application generated from certain previous FEMA or other assistance, or subapplicant is a past recipient of BRIC non-financial Direct Technical Assistance	10
A non-federal cost share of at least 30% (or, for Economically Disadvantaged Rural Communities at least 12%).	5
Economically Disadvantaged Rural Community	15

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Qualitative Evaluation Criteria

Topic	Criteria	Potential Total Points
Risk Reduction/Resiliency Effectiveness	Reduce risk and increase resilience and address inequities and provide greatest support to greatest need.	35
Climate Change and Other Future Conditions Implementation Measures	Enhance climate adaptation and resilience, respond to the effects of climate change and/or other future conditions. Costs and schedule managed, project will be successfully implemented, and innovative techniques used to facilitate implementation.	20
Population Impacted	Community-wide benefits, including maximizing positive impacts and minimize negative impacts to any disadvantaged populations.	15
Outreach Activities	Outreach strategies and subgroups, communities, community planning processes leveraged and input from a diverse range of stakeholders gathered and incorporated into project	25
Leveraging Partners	Partnerships (e.g., state, tribal, private, local community, etc.) to ensure the project meets community needs, including those of disadvantaged populations.	5

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Example of Tribal BRIC Project

- ▶ Shoalwater Bay Indian Tribe Vertical Evacuation Tower
- ▶ "The Pre-Disaster Mitigation Grant [now BRIC] Program is a powerful tool for communities facing threats from tsunamis," FEMA Regional Administrator Mike O'Hare said.
- ▶ "The Shoalwater Bay Indian Tribe's investment in a Vertical Evacuation Tower means that people will have someplace safe to go within minutes of a catastrophic Cascadia Subduction Zone earthquake."

<https://www.fema.gov/news-release/2018/06/26/fema-approves-25-million-shoalwater-bay-indian-tribe-tsunami-vertical>

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Additional Information

- ▶ Notice of Funding Opportunity announcement posted on Grants.gov and the HMA Guidance
- ▶ Available at: <https://www.fema.gov/hazard-mitigation-assistance>.

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Broadband

Broadband Basics

- ▶ “Broadband”
 - ▷ Refers to both infrastructure and high-speed internet access
 - ▷ “25/3” = FCC bandwidth standard for “high speed internet”
 - ▶ 25 megabits per second (Mbps) download and 3 Mbps upload
 - ▶ More people/devices connected, the more bandwidth is needed

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Broadband Basics

- ▶ Infrastructure deployment
 - ▷ Fiber
 - ▷ Cable – coaxial cable TV
 - ▷ Digital subscriber line (DSL) - phone lines
 - ▷ Wireless – mobile or fixed
 - ▶ 3G (3rd generation): usually<1 Mbps.
 - ▶ 4G: usually>1 Mbps.
 - ▶ 5G: usually 1 Gbps or more, still emerging
 - ▷ Satellite (e.g., Starlink)
- ▶ Construction
 - ▷ FTTH/FTTP: long lasting high-quality connection; expensive
 - ▷ Fixed Wireless: faster construction, less reliable; less expensive
 - ▷ Backbone/Middle Mile/Last Mile
 - ▶ Interstate→ state trunk→ surface street
 - ▶ Transmission line → substation/distribution → service drops at house

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Broadband Basics

- ▶ Problem
 - ▷ 7 million Americans do not have High-Speed Internet (25/3 Mbps)
 - ▷ 20.9% of Tribal lands do not have 25/3 access
 - ▷ 17.2% of rural lands
 - ▷ 95.6% of households have access to 25/3 Mbps High-Speed Internet
 - ▷ only 68.9% of households subscribe to service at that level or above.
- ▶ Access v. Affordability

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Infrastructure and Investment and Jobs Act (aka Bipartisan Infrastructure Law)

- ▶ \$65 billion total for broadband across 7 major programs
 - ▷ Broadband Equity, Access, and Deployment Program (\$42.45 billion)
 - ▷ Affordable Connectivity Program (\$14.2 billion)
 - ▷ Digital Equity Act Competitive Grant program (\$1.25 billion)
 - ▷ Private Activity Bonds (~\$600 million)

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Broadband Equity, Access, and Deployment Program (BEAD)

- ▶ \$42 billion to fund broadband planning, infrastructure deployment, mapping, equity and adoption
- ▶ Formula-based grants to states; states run competitive grant programs
 - ▷ Every state and territory applied
 - ▷ National Telecommunications and Information Administration (NTIA) evaluates applications and make awards based on FCC's new broadband maps
- ▶ Coordination with Tribal Governments required
- ▶ Funding prioritized:
 1. Unserved locations (No access to 25/3 Mbps)
 2. Underserved locations (No access to 100/20 Mbps)
 3. Community anchor institutions (library/public housing org) (1Gbps/1Gbps)

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Broadband Equity, Access, and Deployment Program (BEAD)

- ▶ Deployment
 - ▷ States choose competitive program design
 - ▶ Ex: PSCW Broadband Expansion Grant Program – competitive grant rounds – estimating \$700 million to \$1.2 billion
 - ▷ Must provide at least 25% cost share to a project
 - ▷ Matching contribution may be provided by subgrantee, a state, local government, utility, cooperative, nonprofit or philanthropic organization, for-profit company, regional planning organization, federal regional commission or authority, or any combination
 - ▷ Generally, other federal funds not allowed as cost share

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Affordable Connectivity Program (ACP)

- ▶ \$14.2 billion via Federal Communications Commission (FCC)
- ▶ Provides aid to use for internet service plan of choice offered by participating ISPs
 - ▷ \$30/month for low-income families
 - ▷ \$75/month for low-income families on Tribal Lands
- ▶ Eligible households can also receive a one-time discount of up to \$100 for a laptop, tablet, or desktop computer (with co-payment of more than \$10 but less than \$50)
- ▶ Limit: 1 monthly service discount and 1 device discount per household.
- ▶ Requires application/enrollment with participating ISP

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ACP Eligibility

- ▶ Household income is at or below 200% of the Federal Poverty Guidelines
- ▶ If a member of the household meets at least one of the following criteria:
 - ▷ Received a Federal Pell Grant during the current award year;
 - ▷ Eligible for a participating ISP existing low-income internet program;
 - ▷ Participates in one of the following:
 - ▶ Free and Reduced-Price School Lunch Program or School Breakfast Program, including at USDA Community Eligibility Provision schools.
 - ▶ Federal Housing Assistance, including Housing Choice Voucher (HCV) Program (Section 8 Vouchers); Project-Based Rental Assistance (PBRA)/Section 202/ Section 811; Public Housing; Affordable Housing Programs for American Indians, Alaska Natives or Native Hawaiians
 - ▶ SNAP; Medicaid; Supplemental Security Income (SSI); WIC; Veterans Pension or Survivor Benefits; Lifeline

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ACP Eligibility

- ▶ Participates in one of the listed assistance programs and lives on Qualifying Tribal lands:
 - ▷ Bureau of Indian Affairs General Assistance
 - ▷ Tribal TANF
 - ▷ Food Distribution Program on Indian Reservations
 - ▷ Tribal Head Start (income based)

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Digital Equity Act (IIJA)

- ▶ \$2.75 billion to establish three grant programs (State Planning Grant, State Capacity Grant, Competitive Grant)
 - ▷ When NTIA begins awarding State Capacity Grants, then a competitive program can be launched (2024?).
- ▶ Digital Equity Competitive Grant Program
 - ▷ \$1.25 billion over 5 years
 - ▷ Digital inclusion activities, facilitate adoption of broadband, training, equipment, network technology
 - ▶ Covered population: includes individuals in covered households, racial or ethnic minority groups, primarily reside in rural areas
 - ▶ Covered household: <150% of poverty level
 - ▷ Indian Tribe/Alaska Native entity/Native Hawaiian organizations eligible
 - ▶ Eligible entities must not have served/be serving as administering entities under the Planning or Capacity programs
 - ▷ Up to 90% federal cost share

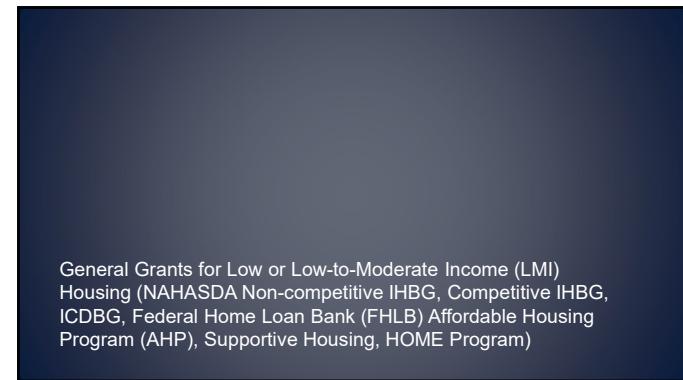
136

Private Activity Bonds

- ▶ IIJA allows state and local governments to issue private activity bonds to finance qualified broadband projects for rural areas
 - ▷ Governmental bonds usually issued to finance projects owned by state and local governments (i.e. government offices, highways, etc.)
 - ▷ Interest exempt from federal income taxes.
- ▶ Qualified private activity bonds are tax-exempt bonds to finance certain private projects that benefit private entities
- ▶ "Qualified broadband project"
 - ▷ Provides service within census block in which >50% of households do not have fixed, terrestrial broadband, and
 - ▷ residences, businesses or a combination gain access to broadband speeds of at least 100/20 mbps, and 2) 90% of the residences and businesses with new access to the 100/20 mbps speeds must have had less than 25/3 before the buildout.
 - ▷ Notification to ISPs

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FINANCING RENTAL HOUSING



Grants

- ▶ NAHASDA Non-competitive IHBG
- ▶ Competitive IHBG
- ▶ ICDBG
- ▶ Federal Home Loan Bank Affordable Housing Program
- ▶ HOME Program

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Eligible Affordable Housing Activities Under NAHASDA

- ▶ NAHASDA Indian Housing Block Grant (IHBG) funds may be used for a broad range of purposes:
 - a) modernization of, or operating assistance to, housing previously developed under a contract between HUD and a tribal housing authority
 - b) affordable housing development, including real property acquisition, site improvement, new construction, rehabilitation, utilities, infrastructure, conversion, demolition, financing, administration and planning, energy efficiency improvement, mold remediation, and related activities
 - c)

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NAHASDA Funds

- ▶ Congressional appropriations have been inadequate to address housing shortages
- ▶ Funds are typically required to cover administrative expenses and costs of operating units developed post-1998

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Competitive IHBG Program

- ▶ Supplements NAHASDA formula-driven IHBG
- ▶ Introduced in 2018/2019 appropriations acts
- ▶ Triggered by 2017 HUD Needs Study showing an estimated shortage of 68,000 housing units in Indian country
- ▶ FY 2022 Consolidated Appropriations Act provides \$150,000,000 of IHBG funds for “competitive grants to eligible recipients. ... The Secretary shall consider need and administrative capacity and shall give priority to projects that will spur construction and rehabilitation.”

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Competitive IHBG

FY 2022 NOFO FR-6600-N-48 posted July 26, 2022:
Awards based on six scoring factors with maximum of 104 points:

- | | |
|----------------------------------------|-----------|
| ▶ Capacity of the Applicant | 20 points |
| ▶ Need/Extent of the Problem | 25 points |
| ▶ Soundness of Approach | 40 points |
| ▶ Leveraging Resources | 5 points |
| ▶ Comprehensiveness and Coordination | 10 points |
| ▶ Preference Points for Climate Change | 2 points |
| ▶ Preference Points for Promise Zone* | 2 points |

*Spokane, Turtle Mountain, Choctaw, and Pine Ridge Reservations

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Competitive IHBG

- ▶ Funding of approximately \$129,248,141 is available through this NOFO
- ▶ HUD expects to make approximately 25 awards under this NOFO
- ▶ Maximum Grant: \$7.5 million
- ▶ Minimum Grant: \$500,000
- ▶ Deadline for applications is November 17, 2022

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Indian Community Development Block Grants (ICDBG)

- ▶ Unlike IHBG, primary focus is non-housing, but grants may be used for a broad range of housing-related purposes, including:
 - ▶ housing rehabilitation,
 - ▶ installation of solar panels and energy efficiency improvements,
 - ▶ land acquisition to support new housing construction, ...

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ICDBG

- ▶ ICDBG funds may be used for new construction of residential housing only as a last resort for relocation of displaced persons or for projects carried out by community-based development organizations.

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ICDBG

- Federally recognized tribes are eligible to apply. In addition, tribal organizations, including TDHEs, may apply if authorized by tribal government resolution and if qualified under the Indian Education and Self-Determination Act of 1975.

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ICDBG

LMI Program requirements:

1. the project benefits all residents of an area in which at least 51% of the residents are low and moderate income persons (LMI);
2. the project benefits a limited clientele of which at least 51% are LMI persons;
3. housing developed with program funds is occupied by LMI persons or, in case of multi-family housing, is at least 51% occupied by LMI persons; or
4. at least 51% of jobs to be created in a job creation project are designated for LMI persons.

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ICDBG FY 2021

- An application announcement is made in accordance with a Notice of Funds Available. www.hud.gov/program_offices/public_indian_housing/ih/grants/icdbg
- FY 2022 NOFA published July 29, 2022.
- Application deadline is October 24, 2022.
- FY 2022 estimated total funding is \$92,309,280.

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ICDBG Allocations for FY 2022 Grants

Area ONAP Office	Total Area ONAP Allocations
Alaska	\$12,155,709
Eastern Woodlands	\$6,403,754
Northern Plains	\$11,869,436
Northwest	\$4,057,802
Southern Plains	\$23,954,389
Southwest	\$33,868,191

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ICDBG Grant Ceilings for FY 2022 Grants

Area ONAP Office	Population	Ceiling
Alaska	ALL	\$2,000,000
Eastern Woodlands	ALL	\$2,000,000
Northern Plains	ALL	\$2,000,000
Northwest	ALL	\$2,000,000
Southern Plains	ALL	\$2,000,000
Southwest	50,001+	\$5,000,000
	10,501-50,000	\$4,000,000
	7,501-10,500	\$3,000,000
	7,500 and below	\$2,000,000

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ICDBG Awards Based on Six Scoring Factors

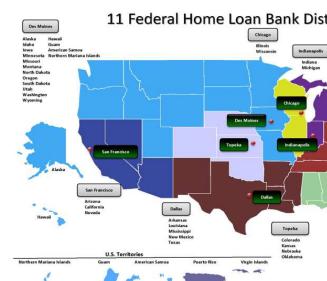
Rating Factor Title	Points
Capacity of the Applicant	30 points
Need/Extent of the Problem - Includes 4 points for new category "Connection to Climate Change"	29 points
Soundness of Approach	29 points
Leveraging Resources	6 points
Comprehensiveness and Coordination	6 points
Preference Points for Promise Zone*	2 points
*Choctaw, Pine Ridge, Spokane and Turtle Mountain Reservations	

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FHLB Affordable Housing Program (AHP) Subsidy

- ▶ There are eleven regional Federal Home Loan Banks (FHLBs) nationwide, each responsible for a particular territory.
- ▶ Created by the Federal Home Loan Bank Act as a government sponsored enterprise to support mortgage lending and community investment.
- ▶ Each FHL Bank is a separate, government-chartered, member-owned corporation.

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April 2019

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FHLB AHP

- ▶ The Affordable Housing Program (AHP) offers subsidies, essentially grants, for both rental and homeownership programs.
- ▶ Each regional FHLB is required to publish its "AHP Implementation Plan" on its website, describing its program requirements relating to income standards, competitive application program requirements, homeownership set-aside programs, revolving loan funds (if applicable), loan pools (if applicable), monitoring requirements and retention agreement requirements.

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AHP

- ▶ The AHP provides subsidies (grants), currently between \$500,000 and \$1,500,000 per project depending on the regional FHLB, for the purchase, construction and/or rehabilitation of rental housing.
- ▶ For maximum scoring, at least 60% of the rental units must be occupied by and affordable for very low-income (not more than 50% of AMI) households.
- ▶ Rents may not exceed 30% of adjusted household income.

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FHLB AHP

The entities involved in an AHP application include:

1. regional FHLB, which scores applications and makes awards,
2. the member bank, which makes the application to the regional FHLB of which it is a member, and
3. project sponsor, which has an ownership interest in the project and is involved in development and management, for a rental project, or provides financing to individuals for the homeownership program.

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FHLB AHP

- ▶ The Tribe or TDHE typically acts as sponsor.
- ▶ The Tribe must identify a bank that is a member of the regional FHLB and work with the bank in the preparation of the application.
- ▶ Often, the sponsor, or the sponsor's consultant, plays a major role in the preparation of the application.
- ▶ The websites of the regional FHLBs list the banks within each area that are FHLB members.
- ▶ Most regional FHLBs have two application rounds annually.

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FHLB AHP

- ▶ Highly competitive: Application must establish:
 1. Showing of need
 2. Sources and uses of funds
 3. Development and operating budgets
 4. Feasibility/market study
 5. Sponsor experience
- ▶ Donation of land for less than fair market value, sponsorship by a tribe, and reservation of at least 60% of project units for families with income not exceeding 50% of AMI are positive scoring considerations that often favor tribal applications.

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FHLB AHP

- ▶ The AHP grantee agrees to retain the project as affordable housing for 15 years from completion in the case of rental units.
- ▶ The grantee must repay the subsidy amount if the agreement is violated.

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HOME Program

- ▶ Created as part of the National Affordable Housing Act of 1990 ("Cranston-Gonzalez Act").
- ▶ Largest Federal block grant to state and local governments for housing for low-income households.
- ▶ Primary purpose is to expand the supply of decent and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans.

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HOME Program

- ▶ Affordable housing-related purposes, including acquisition, rehabilitation, and new construction, tenant-based rental assistance, administrative and planning costs, and operating expenses of Community Housing Development Organizations (CHDOs).
- ▶ HOME funds may be used to assist multi-unit projects.

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HOME Program

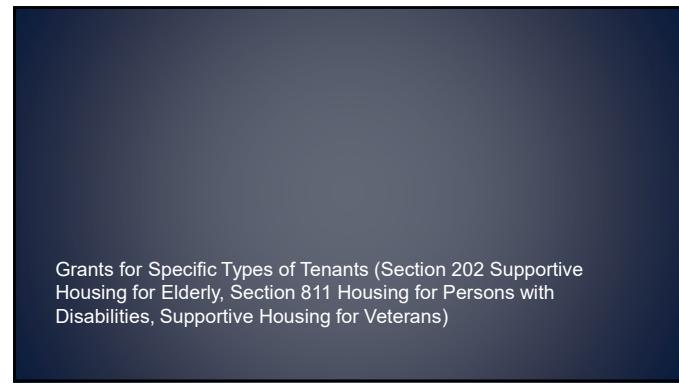
- ▶ Assistance may be in the form of loans, deferred payment loans, grants, equity investments, interest subsidies, guarantees of third-party loans and other forms of assistance approved by HUD.
- ▶ Public bodies, such as tribes or TDHEs, do not qualify as CHDOs but could form a CHDO, provided no more than one third of the CHDO's board members are officials or employees of the tribe.

164

HOME Program

- ▶ Program is underused in Indian Country
- ▶ State Housing Finance Agencies assume tribes can be excluded because they have NAHASDA
- ▶ Tribes are eligible
- ▶ Tribes should meet with state housing finance agency to assure Tribe's access to funds

165



Grants for Specific Types of Tenants (Section 202 Supportive Housing for Elderly, Section 811 Housing for Persons with Disabilities, Supportive Housing for Veterans)

A complex block containing a section header and a list of grants.

Grants for Specific Types of Tenants

- ▶ Section 202 Supportive Housing for Elderly
- ▶ Section 811 Supportive Housing for Persons with Disabilities
- ▶ Supportive Housing for Veterans
- ▶ Supportive Housing = Subsidized rents + services provided to tenants

167

A complex block containing a section header and a list of details for Section 202 Supportive Housing for the Elderly.

Section 202 Supportive Housing for the Elderly

- ▶ “Capital advances” fund supportive housing for elderly (at least 62) very low income (<50% AMI)
- ▶ Development, rehab and rental assistance subsidies, subject to congressional appropriations
- ▶ Supportive services, e.g., cleaning, cooking, transportation, nurse visits etc.

168

Section 202 Supportive Housing for the Elderly

- ▶ Interest-free capital advance that does not have to be repaid if the housing remains available for very low-income elderly persons for at least 40 years.
- ▶ Rental assistance covers the difference between the HUD-approved operating costs of the project and the tenants' contribution toward rent, usually 30% of adjusted income. The initial term of the project rental assistance contract is five years and can be renewed if funds are available.

169

Section 202 Supportive Housing for the Elderly

- ▶ Section 202 has rarely been used in Indian Country because tribal governments and TDHEs are not eligible applicants.
- ▶ Several tribes in recent years have teamed with nonprofits to meet the needs of tribal elders.
- ▶ In order to access the program, a tribe must grant a long-term lease to a nonprofit developer/applicant.
- ▶ For Indian Country projects, applications are made by a nonprofit entity, with the tribe's support.
- ▶ A notice of funding availability (NOFA) is made annually.
- ▶ For more information, visit the HUD Section 202 website
https://www.hud.gov/program_offices/housing/mfh/progdesc/eld202

170

Section 811 Housing for Persons with Disabilities

- ▶ Section 811 of the National Affordable Housing Act of 1990.
- ▶ Interest-free capital advance that does not have to be repaid if the housing remains available for very low-income persons with disabilities for at least 40 years.
- ▶ Rental assistance covers the difference between the HUD-approved operating costs of the project and the tenants' contribution toward rent, usually 30% of adjusted income.
- ▶ The initial term of the project rental assistance contract is five years and can be renewed if funds are available. The program is limited to very low-income households whose income does not exceed 50% of area median income.

171

Section 811 Housing for Persons with Disabilities

- ▶ A "person with disabilities" is someone determined to have a physical, mental, or emotional impairment, which (1) is expected to be of long-continued and indefinite duration; (2) substantially impedes his or her ability to live independently; and (3) is of such a nature that such ability could be improved by more suitable housing conditions.
- ▶ Capital advances may be made only to private nonprofit organizations, which could include nonprofits serving tribal communities.
- ▶ Tribes may qualify as project sponsors for purposes of applying for rental assistance provided they meet the project sponsor criteria established by the state housing finance agency.

172

Supportive Housing for Vets

- ▶ HUD and the Veterans Administration established the HUD-VA Supportive Housing ("HUD-VASH") program to serve homeless Veterans and their immediate families.
- ▶ The VA provides case management and eligibility screening services, while HUD allocates permanent housing subsidies.
- ▶ The allocation process for HUD-VASH relies on (i) HUD's point-in-time data submitted by Continuums of Care (CoCs), (ii) VA Medical Center (VAMC) data on the number of contacts with homeless Veterans, and (iii) performance data from PHAs and VAMCs.
- ▶ There is at least one site in each of the 50 states, in the District of Columbia, Puerto Rico and Guam.

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Supportive Housing for Vets

- ▶ For FY 2015, Congress authorized a rental demonstration *Tribal* HUD-VA Supportive Housing (Tribal HUD-VASH) program.
- ▶ It provided a total of \$5.9 million to 26 tribes for rental assistance for homeless American Indian or those at risk of homelessness living on or off tribal lands (within the authorized tribal/tribally designated housing entities (TDHEs) service areas).
- ▶ Grants ranged from \$123,288 to \$391,740. Tribes partner with VA to provide case management and supportive, e.g., health care services to vets.
- ▶ HUD rental assistance which may be tenant-based or project-based.

174

Supportive Housing for Vets

- ▶ A NOFO for Tribal HUD-VASH Expansion FR-6400-N-73 was issued on December 23, 2021, with applications due January 24, 2022.
- ▶ This NOFO announces the availability of the remaining \$2,212,614 in FY 2017 funding for new Tribal HUD-VASH grants.
- ▶ Of this total, HUD intends to award up to \$1,212,614 to eligible Indian Tribes and TDHEs that have not previously received a Tribal HUD-VASH grant. HUD intends to award up to \$1 million to Indian Tribes and TDHEs currently participating in the Tribal HUD-VASH program that have continued to demonstrate administrative capacity and need based on the funding criteria described in this NOFO.
- ▶ HUD expects to make approximately 20 awards from the funds available under this NOFO.

https://www.hud.gov/sites/dfiles/PIH/documents/FY_20_THV_FR-6400-N-73_12.23.21.pdf

175

Loan Programs (Title VI Guarantee Program, HUD Section 184
Loan Guarantee, Section 515 Rural Rental Housing Loans,
Section 538 Guarantee Program)

Loan Programs

- ▶ Title VI Guarantee Program;
- ▶ HUD Section 184 Loan Guarantee;
- ▶ Section 515 Rural Rental Housing Loans;
- ▶ Section 538 Guarantee Program.

177

Title VI Guarantee Program

- ▶ NAHASDA Title VI authorizes HUD to guarantee notes and other obligations issued by Indian tribes or TDHEs, with tribal approval, to finance affordable housing activities under NAHASDA.
- ▶ Proceeds from guaranteed loans or other obligations may be used for:
 - ▷ modernization or rehabilitation of existing 1937 Act housing,
 - ▷ development of new affordable housing, and
 - ▷ model housing activities.
- ▶ The guarantee covers 95% of the outstanding principal balance and accrued interest due on the loan.

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Title VI Guarantee Program

- ▶ The maximum Title VI commitment is:
 - ▷ the amount of a tribe's current NAHASDA block grant,
 - ▷ less the amount required to maintain current assisted stock,
 - ▷ multiplied by five.
- ▶ The tribe or TDHE must pledge its NAHASDA block grant to assure repayment of the loan.

179

Title VI Guaranty Program

- ▶ Tribe or TDHE must demonstrate:
 - ▷ experience in complex financial transactions;
 - ▷ tribal government approval; and
 - ▷ ability to repay the obligation without impairing its use of NAHASDA block grant funds.

Best Use: Gap financing

180

HUD Section 184 Loan Guarantee

- ▶ Section 184 of the Housing and Community Development Act of 1992 offers lenders a 100% guarantee of loans made to qualifying Indians.
- ▶ A loan guaranteed under Section 184 may be used to:
 - ▷ purchase or rehabilitate an existing house,
 - ▷ purchase manufactured housing,
 - ▷ purchase and rehabilitate an existing house, or
 - ▷ construct new housing.
- ▶ The program is available only for single-family housing or one to four units located on tribal trust land, allotted trust land or fee simple land in an Indian area.

181

Section 184 Loan Guarantee

- ▶ The borrower may be an individual tribal member, tribe or TDHE.
- ▶ Although designed to facilitate home ownership for tribal members, the program may also be useful to tribes and TDHEs who wish to develop subdivisions of homes for sale to tribal members.

182

Section 184 Loan Guarantee

- ▶ Tribe first negotiates the loan with a HUD-approved lender.
- ▶ Lender submits the underwriting package to HUD, which either denies or approves the guarantee.
- ▶ Where home is on fee land, lender takes a standard mortgage.
- ▶ Where home is on tribal trust land, lender takes a mortgage on the borrower's leasehold.
- ▶ Unless the Tribe has enacted a leasing law approved under the HEARTH Act, BIA must approve the lease and leasehold mortgage and provide title status reports.

183

Section 515 Rural Rental Housing Loans

- ▶ Under Section 515 of the 1949 Housing Act, RHS can make loans to TDHEs at a 1% rate of interest for new, or rehabbed, low-income rental housing for families at or below 80% of area median income.
- ▶ In recent years, all appropriations have gone to preserve existing Section 515 projects – unclear when, if ever, Congress will fund new construction or rehab of non-Section 515.

184

Section 538 Guarantee Program

- ▶ The Section 538 Program finances the construction, acquisition, or rehabilitation of new and improved multifamily housing for low- and moderate-income households (i.e., incomes do not exceed 115% of area median income).
- ▶ Rent for units capped at 30% of AGI.
- ▶ Tribe or TDHE must first negotiate the terms of the loan with a private lender, which then applies for a guarantee.
- ▶ RHS guarantees 90% of the total development cost and will not pay more than 90% of the outstanding principal and interest in the event of default.
- ▶ For at least 20% of the loans guaranteed, RHS also offers interest credits to reduce the loan interest rate, but such reduction may not be lower than the applicable federal rate.

185

Section 538 Guarantee Program

- ▶ Lender pays 0.65% initial guarantee fee and 0.35% annual guarantee fee (lower for workforce housing, new construction and substantial rehab)
- ▶ Selection criteria include:
 - ▷ size of population,
 - ▷ neediness (based on median income),
 - ▷ Partnering and leveraging tax credits and other sources of financing to maximize the number of units,
 - ▷ percentage of three-to-five bedroom units in the project,
 - ▷ location on tribal lands, and
 - ▷ long commitment to low-income housing.

186

LIHTC - 9% Competitive Program

Low-Income Housing Tax Credits (LIHTCs)

- ▶ Produce or preserve homes for an estimated 6.7 million low-income households since 1986.
- ▶ Many tribes used for new units or to rehabilitate existing ones.
- ▶ The 9% program allows investors a credit equal to 9% of their investment each year for ten years.

188

Complex But Valuable

- ▶ Function like a very complex grant.
- ▶ Competitive and require complex transaction with investor.
- ▶ 9% tax credits may provide up to 70% or more of cost of new construction or rehabilitation.

189

Competitive Nature

- ▶ Because 9% tax credits are quite valuable and since they are in limited supply, it is quite competitive to get them.
- ▶ State housing finance agencies allocate credits under their respective Qualified Allocation Plans, which set forth their scoring criteria for applications.
- ▶ It is important to be aware of the scoring criteria and to shape your project to score well under those criteria.
- ▶ Many tribes work with consultants to help put together tax credit applications.

190

Combining LIHTCs with Other Funding

- ▶ NAHASDA IHBG
- ▶ Competitive IHBG
- ▶ NAHASDA Title VI guaranteed loan
- ▶ ICDBG
- ▶ HUD Section 184 guaranteed loans
- ▶ RD Section 515 loans
- ▶ RUS water/sewer grant/loans
- ▶ FHLB AHP
- ▶ HOME funds
- ▶ Renewable energy and energy efficiency grants, etc.

191

LIHTCs

- ▶ A low-income household = income not more than 60% of Area Median Income (AMI).
- ▶ Income compliance determined when tenant moves in.
- ▶ A qualified low-income project:
 - ▷ either at least 20% of tenants have income under 50% of AMI, or
 - ▷ at least 40% of tenants have income under 60% of AMI.
- ▶ Income averaging, which permits 60% ceiling to the average of all units.

192

LIHTCs

- ▶ Gross rents, including utilities, may not exceed 30% of the maximum qualifying income.
- ▶ May be used for multifamily or single-family housing.
- ▶ Single-family housing may be part of a subdivision or scattered site.
- ▶ Tenants can be given the opportunity to purchase their homes after the initial 15-year compliance period.
- ▶ Price: amount of the debt, if any, associated with their unit.

193

LIHTC - 4% Program and Leveraging Strategies

Low-Income Housing Tax Credits (LIHTCs)

- ▶ Competitive 9% program and essentially non-competitive 4% programs.
- ▶ Subject to income and rental rate limits.
- ▶ 9% tax credits may provide up to 70% or more of project costs.
- ▶ 4% tax credits provide closer to 35 to 40%.
- ▶ Tribal focus on 9% program.

195

Value of 4% Program

- ▶ If apply for multifamily housing bonds, receive 4% tax credits.
- ▶ Many applicants for 9% credits don't get them.
- ▶ 4% tax credits valuable if it can be leveraged with other funds.

196

Leveraging Strategies

- ▶ A Title VI guarantee could secure repayment of the tax-exempt bonds up to five times the Tribe's IHBG needs portion.
- ▶ Additional sources of funding for 4% tax credit projects could include ICDBG, FHLB AHP, state/utility energy incentives, DOE funding, and COVID relief funds.
- ▶ Because of significant ARPA funds tribes received, they could be used with 4% tax credits to significantly increase low-income tribal housing.

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LIHTCs

- ▶ If receive competitive 9% credits, more valuable.
- ▶ But if don't receive 9% credits, 4% can be helpful with leveraging.
- ▶ With funding available, even if get 9% tax credits, may want to use 4% combined with other funds.

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FINANCING HOME OWNERSHIP

GODFREY & KAHN LLC

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Grants (ICDBG, FHLB AHP Home Ownership, Community Development Financial Institutions (CDFI) Fund, American Dream Down Payment, BIA HIP Program, Section 502/523 Mutual Self-Help Housing Program (which is a grant and loan program))

Grants

- ▶ ICDBG
- ▶ FHLB AHP Home Ownership
- ▶ Community Development Financial Institutions (CDFI) Fund
- ▶ American Dream Down Payment
- ▶ BIA HIP Program

Indian Community Development Block Grants (ICDBG)

ICDBG funds can be used for homeownership assistance to low and moderate-income households, including:

- ▶ down payment assistance,
- ▶ interest rate subsidization, and
- ▶ guarantees.

202

FHLB AHP Homeownership Program

- ▶ Regional Federal Home Loan Banks may establish non-competitive set-aside programs to assist low- and moderate-income homebuyers (i.e., up 80% of AMI), especially those purchasing a home for the first time.

203

FHLB Homeownership Program

- ▶ Loan agreement is between homebuyer and FHLB member bank
- ▶ Tribal/TDHE role likely is as provider of homebuyer training, credit rehab, technical assistance, leasing (if on trust land) or financing assistance

204

FHLB Homeownership Program

Homebuyer must –

- ▶ Have income at or below 80% of AMI
- ▶ Complete a homebuyer or homeowner counseling program provided by tribe or other qualified organization
- ▶ Be first-time homebuyer

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FHLB AHP Homeownership

Grants up to \$22,000 for
“down payment, closing cost, counseling, or
rehabilitation assistance in connection with the
household's purchase or rehabilitation of an
owner-occupied unit, including a condominium
or cooperative housing unit or manufactured
housing, to be used as the household's
primary residence.”

206

FHLB Down Payment Assistance

- ▶ The grant is forgiven over a five-year period.
- ▶ If the borrower sells the home at a profit
within five years, the home buyer must repay
a pro-rata share of the grant.

207

Community Development Financial Institutions (CDFI) Fund

- ▶ U.S. Treasury Department administers "Community Development Financial Institutions Fund."
- ▶ The Fund's purpose is to promote economic revitalization and community development through investment and assistance to fund-certified CDFIs.
- ▶ The Fund offers grants, loans, equity investments, and other forms of assistance on a matching funds basis to non-governmental lending entities serving a targeted low-income population.

208

CDFI

- ▶ Native American CDFI Assistance ("NACA") Program is designed to assist CDFIs that focus at least 50 percent of their business activities on American Indians.
- ▶ To obtain funding from the Fund a CDFI must demonstrate:
 - ▷ its independence from tribal government, and
 - ▷ inclusion of its target population on its board of directors.
- ▶ HUD's Office of Native American Programs (ONAP) will certify a tribal CDFI as an originator of Section 184 Guaranteed Loans.
- ▶ Rural Development (RD), a USDA agency, will pay tribal entities a fee for "packaging" loans made under RD's Section 502 loan program.

209

American Dream Down Payment

- ▶ The American Dream Down Payment Initiative provides down payment assistance to first-time homebuyers.
- ▶ Terms similar to the program offered by the regional FHLBs.
- ▶ Participating jurisdictions must allocate 15% of their HOME funds to projects developed, sponsored, or owned by Community Development Housing Organizations (CDHOs), nonprofit 501(c)(3) entities that satisfy requirements set forth in federal regulations.

210

BIA HIP Program

- The Bureau of Indian Affairs (BIA) Housing Improvement Program (HIP) provides grants to repair, renovate, replace or provide housing for the neediest Indian families.
 - HIP grants may be for interim improvements (up to \$2,500), repairs and renovation (up to \$35,000) or replacement of housing (sufficient for a "modest dwelling").
 - The program is administered by the BIA in cooperation with tribal governments or by a tribal government through a contract or self-governance contract.
 - The program is coordinated with the Indian Health Service's (IHS) Sanitation Facilities Program, which provides water and wastewater facilities for HIP homes.

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BIA HIP Program

A member of a federally-recognized tribe who lives in an approved tribal service area is eligible if:

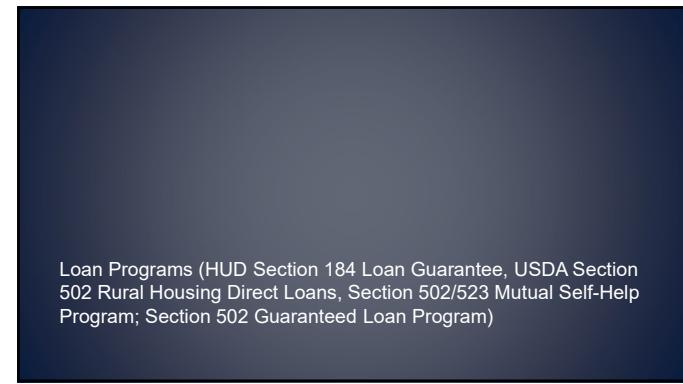
1. household annual income does not exceed 125% of poverty income guidelines;
 2. present housing is substandard;
 3. he or she has not received assistance after October 1, 1986 for repairs, renovation, replacement, housing or down payment assistance;
 4. the present home was not acquired through a federal housing program, such as the Housing Act of 1937 or NAHASDA;
 5. he or she is without alternative housing assistance; and
 6. ownership requirements are met.

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BIA HIP Program

- ▶ The individual tribal member applies by filing an application form, together with documentary evidence of membership, household income and land tenure.
 - ▶ Applications are ranked by the HIP Servicing Office according to need.
 - ▶ Funds are allocated based on information provided by tribes to their regional BIA offices under a competitive process that takes into account the number of members who meet age, income, disability and family size criteria.
 - ▶ Funding has been low.

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Loan Programs

- ▶ HUD Section 184 Loan Guarantee
- ▶ USDA Section 502 Rural Housing Direct Loans
- ▶ USDA Section 502/523 Mutual
- ▶ Section 502 Guaranteed Loan Program

215

HUD Section 184 Loan Guarantee

- ▶ Section 184 of the Housing and Community Development Act of 1992 offers lenders a 100% guarantee of loans made to qualifying Indians.
- ▶ A guaranteed loan may be used to purchase or rehabilitate an existing house, purchase manufactured housing, purchase and rehabilitate an existing house, or construct new housing.
- ▶ The program is available only for single-family housing of one to four units located on tribal trust land, allotted trust land or fee simple land in an Indian area.
- ▶ The borrower may be an individual tribal member, tribe or TDHE.
- ▶ Section 184 guarantees are not reserved for moderate- and low-income homebuyers.

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HUD Section 184 Loan Guarantee

- ▶ Down payment of 1.25% on loans under \$50,000 or 2.25% if the loan exceeds that amount, from private funds or a gift from the tribe or TDHE. If the borrower's income is less than 80% of AMI, NAHASDA funds can be used to cover the down payment.
- ▶ HUD charges a 1.5% guarantee fee and a 0.15% annual loan guarantee premium and, for loans whose loan to value ratio exceeds 78%, an annual insurance premium equal to .25% of the loan balance.
- ▶ Lender must evaluate the ability to repay the loan, considering income history and stability, credit history and other factors.
- ▶ Generally, the borrower's total debt-to-income ratio may not exceed 41%, although HUD may make exceptions in appropriate circumstances.

217

Section 184 Loan Program

- ▶ Tribes must enact the legal infrastructure to support mortgage lending on trust lands
 - ▷ Leasing law
 - ▷ Mortgage foreclosure (A tribal right of first refusal in the event of default is a common provision)
 - ▷ Eviction procedures

218

HUD Section 184 Loan Guarantee

- ▶ Program Guidelines
 - ▶ https://www.hud.gov/program_offices/public_indian_housing/i/h/homeownership/184/guidelines
- ▶ Tribes wishing to make the Section 184 program available for their members should contact the Office of Loan Guarantee, Office of Native American Programs, U.S. Department of Housing and Community Development, Section184@hud.gov

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USDA Section 502 Rural Housing Direct Loans

- ▶ Under the Section 502 direct loan program, RHS provides loans at below-market interest rates to home buyers whose household incomes do not exceed 80% of AMI.
- ▶ Tribe must provide legal infrastructure (leasing, mortgage, eviction laws) to support the program.
- ▶ Loan terms are up to 33 years and, for households with income less than 60% of AMI, may extend longer.
- ▶ Subsidies, based on the home buyer's income, may reduce interest rate to 1%.
- ▶ Although the monthly payment rises as the homeowner's income rises, the note rate establishes a cap on monthly payments.
- ▶ Loans may cover 100% of the cost of purchasing a new or existing home, as well as costs of appraisal, title insurance and other closing costs.
- ▶ Funds may also be used to repair or relocate a home, prepare a site, or provide water and sewer facilities.

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Section 502 Rural Housing Direct Loans

- ▶ Home buyers must show that they are unable to obtain financing from conventional sources on reasonable terms and can afford to repay the loan.
- ▶ Generally, a low-income applicant's repayment ability is demonstrated if principal, interest, taxes and insurance do not amount to more than 29% of income and total monthly debt does not exceed 41% of income. For low-income borrowers, the percentages are 33% and 41%.
- ▶ The home buyer must agree to refinance the home if the home buyer is able. Retention agreement: when title is transferred to a third party, requires the home buyer to repay the interest assistance or 50% of the value of the appreciation of the home, whichever is less.

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Section 502 Rural Housing Direct Loans

- ▶ Need Tribal court enforcement procedures, including foreclosure in the event of default.
- ▶ The HUD/USDA/VA model lease, and mortgage foreclosure and eviction ordinances, developed through inter-agency the "One-Stop" Mortgage Initiative, also satisfy RD requirements.
- ▶ The individual, rather than the tribe or TDHE, applies for a Section 502 loan at the local RD Office.
- ▶ The TDHE can facilitate the Section 502 loan process by providing information and counseling to interested tribal members and by acting as "packager," putting together home specifications, assisting in the hiring of a general contractor and helping to prepare applications.
- ▶ Section 502 permits the TDHE to receive a fee, funded from loan proceeds, for these services.

222

Section 502 Rural Housing Direct Loans

- ▶ Section 502 can also be used as part of a rent-to-own program.
- ▶ The TDHE develops and owns the homes initially, using other financing programs. Over a period of 12-24 months, tribal members who would otherwise not qualify for Section 502 loans create the necessary credit history through a program of payroll deduction and credit counseling.
- ▶ Once qualified, members purchase their homes from the TDHE with Section 502 mortgage loans.

223

Section 502 Guaranteed Loan Program

- ▶ Section 502 authorizes RD to guarantee 30-year, fixed-rate mortgage loans made by commercial lenders to low- and moderate-income homebuyers for new construction or repairs of an existing home.
- ▶ Up to 100% loan-to-value financing, enabling tribal members who lack funds for a down payment to purchase a home.
- ▶ May be used to purchase and prepare sites and provide water and sewage facilities.
- ▶ RHS may provide payment subsidies to eligible borrowers, effectively reducing the rate of interest on their guaranteed loans and lowering their monthly debt payments.
- ▶ Not available for multifamily housing.
- ▶ Available only to individuals, not to tribes or TDHEs.

224

Section 502/523 Mutual Self-Help Housing Program

- Section 523 provides grant to a sponsor, including a tribe or TDHE, to:
- ▶ provide technical assistance to 5-10 participating families,
 - ▶ cover TDHE's costs for construction supervisor and a case worker; office expenses; bookkeeping; purchase of tools; insurance; fees for training of grantee personnel, including board members; and
 - ▶ consulting, accounting and legal fees required to administer the grant.
 - ▶ TDHE's construction supervisor teaches participants to build their own, and each other's, homes.
 - ▶ the home buyers learn building trade skills and, by investing "sweat equity" into home, reduce the cost of home and amount they must borrow.

225

Section 502/523 Mutual Self-Help Housing Program

- ▶ Home buyers are also eligible for Section 502 down payment assistance, significantly reducing monthly debt payments.
- ▶ Home buyer borrows money (at a subsidized rate of interest), signs a mortgage and note, takes legal title to the home immediately, subject only to the mortgage.

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Section 502/523 Mutual Self-Help Housing Program

- ▶ Participants must have acceptable credit, but RHS will not apply standards as stringent as those of a commercial lender.
- ▶ The participating family is expected to perform 65% of the labor associated with construction of the home.
- ▶ Forty percent of the participating families must have income at or below 50% of AMI.

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Section 502/523 Mutual Self-Help Housing Program

- ▶ For tribal members living on trust land, tribes must have tribal court enforcement procedures, including foreclosure in the event of default.
- ▶ The HUD/USDA/VA model lease, and mortgage foreclosure and eviction ordinances, developed through inter-agency the "One-Stop" Mortgage Initiative, also satisfy RD requirements.

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Section 502/523 Mutual Self-Help Housing Program

- ▶ Rather than apply for assistance directly, a TDHE can also partner with an off-reservation applicant to administer the grant and provide related services while the TDHE focuses on identifying and assisting potential homeowners.
- ▶ RHS publishes a Notice of Funding Availability (NOFA) annually, usually in spring, in the Federal Register. Additional information is available at <https://www.offices.usda.gov>. Funding is limited and applications are scored competitively.

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FINANCING RENEWABLE ENERGY, ENERGY EFFICIENCY AND ELECTRIFICATION PROJECTS

GODFREY KAHN sc

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Energy, Renewable Energy and Electrification Basics

Key Energy Sources for Housing

- ▶ Electricity
- ▶ Natural Gas
- ▶ Propane
- ▶ Wood

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Beneficial Electrification

- ▶ “**Beneficial electrification** (or strategic electrification) is a term for replacing direct fossil fuel use (e.g., propane, heating oil, gasoline) with electricity in a way that reduces overall emissions and energy costs. There are many opportunities across the residential and commercial sectors. This can include switching to an electric vehicle or an electric heating system—as long as the end-user and the environment both benefit.”

▶ <https://www.eesi.org/electrification/be>

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Heat Pump Example of Beneficial Electrification

- ▶ Example technology: heat pumps
- ▶ Often more efficient than fossil fuel-powered HVAC technologies.
- ▶ Can save consumers money and reduce negative environmental impacts.
- ▶ Can be modulated to enable better grid management, (such as by preheating or precooling spaces during times of lower demand).

▶ <https://activeefficiency.org/focus-areas/beneficial-electrification/>

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Other Examples of Residential Beneficial Electrification

- ▶ Household equipment such as electric water heaters, space heaters (heat pumps),
- ▶ Cooking equipment (including electric induction stoves), and
- ▶ Household appliances like clothes dryers, lawn mowers, and leaf blowers.
- ▶ Transportation electrification
- ▶ <https://activeefficiency.org/focus-areas/beneficial-electrification/>

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Not all Electrification is Beneficial

- ▶ Can reduce efficiency, increase emissions or raise costs.
- ▶ Regulatory Assistance Project (RAP) limits “beneficial electrification” where one or more of the following is met without adversely affecting the other(s):
 - ▷ Saves consumers money over the long run;
 - ▷ Enables better grid management; and
 - ▷ Reduces negative environmental impacts.

236

Renewable Energy Basics: Wind and Solar Limitation

- ▶ Electricity consumed not only during the day but also in the evening and at night.
- ▶ Solar produces energy only during daylight.
- ▶ Wind produces energy only when the wind blows.
- ▶ Meaning a key to renewable energy finance is ...

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Renewable Energy Basics: Key Concepts

- ▶ Net Metering: customer sells renewable energy it produces, but does not consume, and receives a retail energy credit.
- ▶ Interconnection: Process of connecting energy generation system with utility grid.
- ▶ Net Zero: The goal of producing enough renewable energy to meet a building's entire energy needs.
 - ▷ Generally easier to meet if building is all electric

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Residential Average Electricity Consumption & Cost (2021)*

State	Average Monthly Consumption (kWh)	Average Price (cents/kWh)	Average Monthly Bill (dollars and cents)
Arizona	1,048	12.54	131.35
California	542	22.82	123.67
Iowa	861	12.73	109.63
Michigan	670	17.54	117.57
Minnesota	776	13.50	104.76
New York	599	19.48	116.70
Washington	984	10.11	99.45
Wisconsin	690	14.52	100.18
U.S.	886	13.66	121.01

*Latest data available from U.S. Energy Information Agency
https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_a.pdf

239

Commercial Average Electricity Consumption & Cost (2021)*

State	Average Monthly Consumption (kWh)	Average Price (cents/kWh)	Average Monthly Bill (dollars and cents)
Arizona	7,452	10.33	769.97
California	5,176	19.18	992.86
Iowa	4,101	10.17	417.19
Michigan	5,578	12.31	686.57
Minnesota	6,005	11.22	673.61
New York	5,015	16.07	806.07
Washington	6,057	9.14	553.80
Wisconsin	5,362	10.95	587.18
U.S.	5,795	11.22	650.04

*Latest data available from U.S. Energy Information Agency
https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_b.pdf

240

Programs to Help Build Tribal Capacity (DOI TEDC and EMDP Grants and HUD TA)

Federal Grants

- ▶ Department of Interior Grants
 - ▷ Tribal Energy Development Capacity (TEDC)
 - ▷ Energy and Mineral Development Program (EMDP)
- ▶ HUD ONAP Technical Assistance

242

Tribal Energy Development Capacity (TEDC) Grant

- ▶ Division of Energy and Mineral Development (DEMD)
- ▶ Annual Tribal Energy Development Capacity (TEDC) grant
- ▶ Purpose: develop tribal managerial, organizational and technical capacity to maximize economic impact of energy resource development on Indian land
- ▶ Focus: enhancing business and regulatory environment for energy resource development.

243

TEDC Grant

Financial Assistance to:

- ▶ Establish business entity and/or organizational structures for energy resource development
- ▶ Develop or enhance key regulatory activities.

244

Eligible Development Activities

- ▶ Legal infrastructure for any type of Tribal energy business
- ▶ Establishing an energy-focused corporation under Tribal or state incorporation codes
- ▶ Establishing an energy-related Tribal business charter under federal law (IRA Section 17 corporation)

245

Eligible Regulatory Activities

- ▶ Developing or enhancing tribal policies, codes, regulations, or ordinances regarding energy resources
- ▶ Could include land-lease regulations under HEARTH Act
- ▶ Establishing a Tribal utility authority
- ▶ Adopting a secured transaction code

246

New in 2022 TEDC Announcement

- ▶ Development of emergency response during heat and cold waves that may correspond to increased fuel costs and decreased accessibility to fuels; and development of strategies to plan for circumstances that put a significant financial and safety burden on Tribes.
- ▶ Grant awards range from \$10,000 to \$1,000,000 with no cost share matching requirement.
- ▶ Applications were due May 13, 2022.

247

Energy and Mineral Development Program (EMDP) Grant

- ▶ Annual grant opportunity.
- ▶ Financial assistance to tribes and Indian allottees on trust lands in evaluating energy and mineral resources.

248

Resources Eligible for Funding Under EMDP Grant

- ▶ Minerals (precious, industrial, base and ferrous metal)
- ▶ Biomass – Woody and Waste
- ▶ Hydro
- ▶ Solar
- ▶ Wind
- ▶ Geothermal
- ▶ Oil, natural gas, coal and uranium

249

Activities Eligible for Funding Under EMDP Grant

- ▶ Resource Assessment
- ▶ Exploration Studies
- ▶ Feasibility Studies
- ▶ Market Studies
- ▶ Engineering Studies
- ▶ Economic Evaluation

250

HUD ONAP TA

- ▶ Variety of valuable topics
- ▶ Includes renewable energy and energy efficiency finance
- ▶ On-site or virtual
- ▶ Develop specific strategies and plans

251

HUD ONAP TA Request

- ▶ The TDHE sends regional coordinator a Request for Training/Technical Assistance. To get the form, go to http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/training and click on the link “Technical Assistance Request Form”
- ▶ HUD contacts one of the authorized T/TA providers.

252

Develop Strategies and Plans Based on:

- ▶ Tribal and TDHE goals
- ▶ General location and specific locational issues
- ▶ Available energy resources
- ▶ Utility provider and rate structures
- ▶ Available federal, state and utility programs

253

Key Federal Grants (ICDBG, DOE Office of Indian Energy Infrastructure Grant, BRIC Grant and Instructure Act EV Charging Grants)

Key Federal Grants

- ▶ ICDBG
- ▶ DOE Office of Indian Energy Infrastructure Grant
- ▶ Rural Energy for America Program (REAP)
- ▶ New Grants under Inflation Reduction Act
- ▶ Instructure Act EV Charging Grants

255

ICDBG

Objective is “providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of **low and moderate income** (i.e., < 80% of area median income).

24 CFR 1003.208

256

ICDBG LMI Program Requirements

- ▶ the project benefits all residents of an area in which at least 51% of the residents are low and moderate income persons (LMI);
- ▶ the project benefits a limited clientele of which at least 51% are LMI persons;
- ▶ housing developed with program funds is occupied by LMI persons or, in case of multi-family housing, is at least 51% occupied by LMI persons; or
- ▶ at least 51% of jobs to be created in a job creation project are designated for LMI persons.

257

Grants: ICDBG

Eligible Uses include:

- ▶ Housing rehabilitation, including improvements to increase energy efficiency through installation of storm windows and doors ...[etc.] and modification or replacement of heating and cooling equipment, including the use of solar energy equipment.”

1003.202(b)(4).

258

ICDBG Allocations for FY 2022 Grants

Area ONAP Office	Total Area ONAP Allocations
Alaska	\$12,155,709
Eastern Woodlands	\$6,403,754
Northern Plains	\$11,869,436
Northwest	\$4,057,802
Southern Plains	\$23,954,389
Southwest	\$33,868,191

259

ICDBG Grant Ceilings for FY 2022 Grants

Area ONAP Office	Population	Ceiling
Alaska	ALL	\$2,000,000
Eastern Woodlands	ALL	\$2,000,000
Northern Plains	ALL	\$2,000,000
Northwest	ALL	\$2,000,000
Southern Plains	ALL	\$2,000,000
Southwest	50,001+	\$5,000,000
	10,501-50,000	\$4,000,000
	7,501-10,500	\$3,000,000
	7,500 and below	\$2,000,000

260

ICDBG Awards Based on Six Scoring Factors

Rating Factor Title	Points
Capacity of the Applicant	30 points
Need/Extent of the Problem - Includes 4 points for new category "Connection to Climate Change"	29 points
Soundness of Approach	29 points
Leveraging Resources	6 points
Comprehensiveness and Coordination	6 points
Preference Points for Promise Zone*	2 points
*Choctaw, Pine Ridge, Spokane and Turtle Mountain Reservations	

261

ICDBG FY 2022

- ▶ FY 2022 NOFA published July 29, 2022.
- ▶ FY 2022 estimated total funding is \$92,309,280.
- ▶ Application deadline was October 24, 2022.
- ▶ HUD expects to make approximately 80 awards.

262

DOE Tribal Energy Grants 2022

- ▶ Clean Energy Technology Deployment on Tribal Lands - 2022 (DE-FOA-0002774)
- ▶ Funding Opportunity Announcement issued November 1, 2022.
- ▶ Submission Deadline February 9, 2023, at 5:00 p.m. Eastern Time

263

Topic Areas

- 1) Clean Energy Generating System(s) and/or Energy Efficiency Measure(s) for Tribal Building(s) (Topic Area 1)
 - a. Clean Energy Generating System(s) (Topic Area 1.a.)
 - b. Energy Efficiency Measure(s) (Topic Area 1.b.)
 - c. Clean Energy Generating System(s) and Energy Efficiency Measure(s) (Topic Area 1.c.) **Or,**
- 2) Community-Scale Clean Energy Generating System(s) or Community Energy Storage Deployment (Topic Area 2)
 - a. Community-Scale Clean Energy Generating System(s) (Topic Area 2.a.)
 - b. Community-Scale Energy Storage (Topic Area 2.b.) **Or,**
- 3) Integrated Energy System(s) for Autonomous Operation (Topic Area 3)
 - a. Powering Essential Tribal Building(s) (Topic Area 3.a.)
 - b. Tribal Community Resilience (Topic Area 3.b.)

264

Award Amounts

- ▶ Approximately \$20 million in federal funds
- ▶ DOE funding per individual award will range from:
 - ▷ Between \$100,000 and \$2,000,000 for Topic Area 1,
 - ▷ Between \$250,000 and \$4,000,000 for Topic Area 2,
 - ▷ Between \$100,000 and \$2,000,000 for Topic Area 3.a., and
 - ▷ Between \$250,000 and \$4,000,000 for Topic Area 3.b.

265

Cost Share

- ▶ A 20% cost share of the total allowable costs of the project (i.e., the sum of the DOE share, and the Recipient share of allowable costs equals the total allowable cost of the project) is required
- ▶ If requested by the Applicant as part of its application, a cost share reduction to not less than 10% may be considered, based on poverty rate and median household income of the tribal community relative to the statewide median household income

266

Key DOE Application Requirements

- ▶ Energy audits (for efficiency projects) and/or feasibility studies (for energy generation projects)
- ▶ Technical Volume
- ▶ Work Plan

267

Technical Volume (15-page limit)

- ▶ Project goals and measurable objectives
- ▶ Detailed project description, including buildings served
- ▶ Explanation of meeting of “community-scale” and “substantial” aspect
- ▶ Justification of why interconnection infrastructure is essential
- ▶ Potential barriers or obstacles and plans to overcome

268

Technical Volume (cont.)

- ▶ Energy savings/production
- ▶ Operation and maintenance plans
- ▶ Demonstration of economic viability (project cost, life and payback, financing sources)
- ▶ Jobs created, people trained
- ▶ Environmental benefits
- ▶ Roles and responsibilities of project participants

269

Work Plan

- ▶ 5-page limit excluding milestones
- ▶ Project summary
- ▶ Brief summary of applicant, goals and objectives
- ▶ Project approach
- ▶ Tasks to be performed
- ▶ Milestones chart
- ▶ A short statement on whether the project will involve the construction, alteration, and/or repair of infrastructure in the United States

270

Buy America Requirements for Infrastructure Projects

- In accordance with Section 70914 of the Bipartisan Infrastructure Law, none of the project funds (includes federal share and Recipient cost share) may be used for a project for infrastructure unless:
 1. all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
 2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

271

Buy America Requirements for Infrastructure Projects (continued)

- 3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.
 - ▶ The Buy America requirements only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.
 - ▶ An infrastructure project must be publicly owned or serve a public function. If "public" nature isn't clear, DOE strongly recommends the assumption that Buy America Requirements apply.

272

Waivers of Buy America Requirements

- ▶ In limited circumstances, DOE may waive the application of the Buy America requirements where DOE determines that:
 - ▷ applying the Buy America requirements would be inconsistent with the public interest;
 - ▷ the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality, or
 - ▷ the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.
 - ▶ If an Applicant is seeking a waiver of the Buy America requirements, it may submit a waiver request after it has been notified of its selection for negotiation of award.

273

DOE Tribal Energy Grants 2022

- ▶ **Powering Unelectrified Tribal Building(s) - 2022 (DE-FOA-0002771)**
- ▶ Funding Opportunity Announcement issued November 1, 2022.
- ▶ Submission Deadline February 23, 2023, at 5:00 p.m. Eastern Time

274

Topic Areas

- ▶ Integrated Energy System(s) for Electrification (Topic Area 1) Or,
- ▶ Energy Infrastructure for Electrification (Topic Area 2)
- ▶ “Projects proposed under this FOA are intended for unelectrified Tribal Building(s), where “unelectrified” means Tribal Building(s) that are not connected to (1) the traditional centralized electric power grid, and not connected to (2) an integrated energy system(s) operating independent of the traditional centralized electric power grid.”

275

Award Amounts

- ▶ Approximately \$15 million in federal funds
- ▶ DOE funding per individual award will range from between \$250,000 and \$4,000,000 for both Topic Areas

276

Cost Share (same as Clean Energy Technology Deployment grant)

- ▶ A 20% cost share of the total allowable costs of the project (i.e., the sum of the DOE share, and the Recipient share of allowable costs equals the total allowable cost of the project) is required
- ▶ If requested by the Applicant as part of its application, a cost share reduction to not less than 10% may be considered, based on poverty rate and median household income of the tribal community relative to the statewide median household income

277

Grants: USDA Rural Energy for America Program (REAP)

- ▶ Renewable Energy Systems & Energy Efficiency Improvement Loans and Grants
- ▶ Competitive Unrestricted Grants (up to \$1,000,000) available at specific times
- ▶ Competitive Loan Guarantees are available continuously throughout the year

278

Grants: REAP

- ▶ Renewable Energy System Grants:
 - ▷ \$2,500 minimum
 - ▷ \$1,000,000 maximum
- ▶ Energy Efficiency Grants:
 - ▷ \$1,500 minimum
 - ▷ \$500,000 maximum

279

Significantly Increased Funding Under Inflation Reduction Act

- ▶ \$2 billion in additional funding
- ▶ Increases REAP grants from 25% to 40% of project costs

280

Grants: REAP

- ▶ Who may apply for this program?
 - ▷ Agricultural producers with at least 50% of gross income coming from agricultural operations, and
 - ▷ Small businesses (including tribal businesses) in eligible rural areas.
- ▶ What is an eligible area?
 - ▷ Businesses must be in an area other than a city or town with a population of greater than 50,000 inhabitants and the urbanized area of that city or town.

281

Grants: REAP

- ▶ Projects greater than \$200,000 require a technical report.
- ▶ Energy efficiency projects require an energy audit or assessment.
- ▶ Loan guarantees on loans up to 75% of total eligible project costs.
- ▶ Combined grant and loan guarantee funding up to 75% of total eligible project costs.

282

Additional Funding under the Inflation Reduction Act

283

High-Efficiency Electric Home Rebate Program

- ▶ Covers up to 100% of home electrification project costs for low-income households, and up to 50% for moderate-income households (up to \$14,000)
- ▶ Covers equipment and installation costs, via point-of-sale rebate
- ▶ \$225 million reserved for Tribes. Funds are distributed to Tribal governments for administration via an application process.

▶ Source: Department of Energy

Qualified Projects
Heat pump HVAC systems
Heat pump hot water systems
Electric stoves and cooktops
Electric heat pump clothes dryer
Upgrading circuit panels
Insulation
Air sealing and ventilation
Wiring

284

Tribal Electrification Program

- ▶ Will provide **\$145.5** million to help tribal communities transition to clean, zero-emission, electric energy systems. Funds can be used for
 - ▷ The provision of electricity to unelectrified Tribal homes through zero-emissions energy system
 - ▷ To transition electrified Tribal homes to zero emissions energy system
 - ▷ Associated home repairs and retrofitting necessary to install the zero emissions energy systems authorized
- ▶ No cost sharing and matching requirements
- ▶ Available until **2031**
- ▶ Administered through the Bureau of Indian Affairs

▶ Source: Department of Energy

285

Tribal Climate Resilience

- ▶ Bureau of Indian Affairs
- ▶ \$220 million
- ▶ No cost-sharing or matching requirements
- ▶ Available until September 30, 2031

286

Home Energy Property Credit

- ▶ Total credit equal to 30% of the sum of any qualified energy efficiency improvements and the total residential energy property expenditures up to \$1,200 per year
- ▶ No lifetime limit
- ▶ Also, tax credits for specific energy-efficient improvement and other measures:
 - ▷ Home energy audit: \$150
 - ▷ Exterior doors: \$250 per door, up to a maximum of \$500
 - ▷ Exterior windows and skylights, central A/C, and other equipment: \$600
 - ▷ Certain heating appliances powered by electricity or natural gas: \$2,000

287

Additional Funding Available Under Inflation Reduction Act

- ▶ Climate Pollution Reduction Grants
- ▶ Environmental and Climate Justice Block Grants
- ▶ Partially Forgivable Loans for Rural Electric Generation
- ▶ Greenhouse Gas Reduction Fund
- ▶ 179D Tax Deduction for Building Energy Efficiency

288

Climate Pollution Reduction Grants

- ▶ \$5 billion in funding
- ▶ Planning grants (\$250,000)
- ▶ Implementation grants (\$4.75 billion) grants
- ▶ For programs, policies, measures, and projects that will achieve or facilitate the reduction of greenhouse gas air pollution
- ▶ States, municipalities, and tribes eligible

289

Environmental and Climate Justice Block Grants (ECJBG)

- ▶ \$2.8 billion in funding
- ▶ Eligible entities:
 - ▷ community-based organizations or
 - ▷ partnerships of those organizations with municipalities, tribes or institutions of higher learning
- ▶ To benefit disadvantaged communities

290

Uses of ECJBG

- ▶ Community-led air and other pollution monitoring, prevention and remediation,
- ▶ Investments in low- and zero-emission and resilient technologies
- ▶ Mitigating climate and health risks from urban heat islands, extreme heat, wood heater emissions, and wildfire events
- ▶ Climate resiliency and adaptation
- ▶ Reducing indoor toxics and indoor air pollution or
- ▶ Facilitating engagement of disadvantaged communities in State and Federal public processes.

291

Greenhouse Gas Reduction Fund

- ▶ \$27 billion available to eligible entities to use to provide funding and financing
- ▶ \$7 billion for zero-emission projects
- ▶ Approximately \$12 billion for projects, activities and technologies that reduce or avoid greenhouse gas emissions and other forms of air pollution or assist communities in reducing or avoiding greenhouse gas emissions and other forms of air pollution
- ▶ \$8 billion for same purposes but focused on low income and disadvantaged communities

292

Significant Increase in 179D Tax Deduction for Building Energy Efficiency

- ▶ Increases the current maximum of \$1.88 per square foot deduction to \$5.00 per square foot to incentivize energy efficient construction and rehabilitation
- ▶ Commercial buildings and multifamily buildings that are four stories or taller
- ▶ Governments, including tribes, able to allocate 179D tax deductions to architects, engineers, and designers responsible for designing a building's energy efficient systems

293

Infrastructure Act EV Grants for Charging and Fueling

- ▶ Grant Program by November 15, 2022, for:
 - ▷ Projects along Alternative Fuel Corridors
 - ▷ Community Grants
- ▶ States, metropolitan planning organizations, local governments, special purpose districts or public authorities with a transportation function, **Indian tribes** and territories are eligible.

294

Designated Alternative Fuel Corridors (DAFC) and Community Projects

- ▶ Publicly accessible EV charging and hydrogen, propane, and natural gas fueling infrastructure.
- ▶ Along DAFCs or in certain other locations [for Community Projects] accessible to all.
- ▶ Designation of Alternative Fuel Corridors (which includes interstate and certain highly traveled state routes) completed, and map is available at https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/maps/.
- ▶ \$2.5 billion funding over five years (Fiscal Years 2022 through 2026).
- ▶ Federal share can be up to 80% of total project cost.

295

Community Grants

- ▶ 50% of funding reserved for Community Grants.
- ▶ Maximum community grant up to \$15 million.
- ▶ For projects to reduce GHG emissions and to expand or fill gaps in publicly accessible charging or fueling including:
 - ▷ preconstruction activities (e.g., planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work).
 - ▷ acquisition and installation of charging or fueling infrastructure including construction or reconstruction and the acquisition of real property for the project.

296

Community Grant Project Locations

- ▶ On any public road or in other publicly accessible locations.
- ▶ Priority given to projects within
 - ▷ rural areas,
 - ▷ low- and moderate-income neighborhoods, and
 - ▷ communities with a low ratio of private parking spaces to households or a high ratio of multiunit dwellings to single family homes.

297

Priority for Community Grants

- ▶ Geographic diversity, including achieving balance between urban and rural communities, and
- ▶ Meeting current or anticipated market demands for charging or fueling infrastructure, including faster charging or refueling speeds to minimize time.

298

Partnering With Private Entities Under Community Grants

- ▶ An eligible entity **may use grant funds to contract with** a private entity.
- ▶ For acquisition, construction, installation, maintenance, or operation of charging or fueling infrastructure.

299

Foundation Grants (e.g., Tribal Solar Accelerator Fund)

TSAF Project Funding in 2022

- ▶ Tribal Facility and Residential Project Grants
 - ▷ Up to \$200,000 (can include combination of facility and residential projects)
- ▶ Gap Funding Grant
 - ▷ Up to \$250,000

301

Tribal Facility Solar Projects

- ▶ Priority: significant cost-savings to the tribe, and/or catalyze other business development outcomes.
- ▶ Objectives:
 - ▷ Enhance and strengthen tribal energy development and infrastructure
 - ▷ Support solar projects that benefit tribal community members, tribal staff/administration, and/or tribal programs
 - ▷ Serve tribal facilities with high energy needs and costs

302

Tribal Residential Solar Project Funding

- ▶ Designated for solar energy installed on a single-family home or small multi-family complex.
- ▶ Goal to significantly reduce the financial burden spent on electricity costs.
- ▶ For low-income single-family homes.

303

Tribal Residential Solar Projects Priority

► Priority: Significant cost-savings to tribal residents.

► Objectives:

- ▷ Bring solar energy to low-income single-family homes or small multi-family complexes on tribal land.
- ▷ Reduce and stabilize energy costs for low-income tribal members.
- ▷ Serve tribal members with high energy needs and costs.

304



TSAF Review and Selection Criteria

► Matches between project purpose and funding priority area

► Clear focus on building renewable energy infrastructure in tribal community

► Demonstrated ability and/or experience for successful project

► Clear plan of action, including specific goals and measurable objectives

► Feasible, cost-effective, and sustainable budget

► Partnerships that engage broad tribal community

► Potential for application and replication in other tribal communities

305



TSAF Eligibility

► Federally recognized tribal governments in the lower 48 states and Alaska (tribal government programs, including tribal housing authorities).

► For tribal facility projects, the community served must be designated low-to-moderate income (LMI) for federal, state, or tribal low-income programs, or with Census data.

► For tribal household or multi-family projects, the resident households must be 80% or below the area median income.

306



TSAF Gap Funding Grant

- ▶ Solar projects of any type that require a tribal cost-share (ex. Federal or State grant programs) or are leveraging funding from other sources.
- ▶ Projects ready to deploy with an existing funding gap (cost share) preventing the project implementation.

307

Gap Funding Objectives

- ▶ Enhance and strengthen tribal solar energy development and infrastructure inclusive of other impactful renewable energy technologies (battery storage, clean mobility/charging stations etc.).
- ▶ Provide funding to larger scale solar projects that benefit a lot of tribal community members.
- ▶ Initiate demonstration project systems that will strengthen tribal energy resilience.

308

Gap Funding Grant RFP Eligibility

- ▶ Tribal government programs, including tribal housing authorities).
- ▶ The community served for your project must be designated LMI.

309

State and Utility Incentives (including federal funds provided through states)

State Energy Efficiency and Renewable Energy Incentive Programs

- ▶ Most fund energy efficiency projects.
- ▶ Some fund renewable energy and more recently battery storage.
- ▶ Examples: NYSERDA in New York and Focus on Energy in Wisconsin.
- ▶ In some states, just individual utilities programs.
- ▶ Sometimes individual utilities provide incentives in addition to state-wide program.

311

Federal Funding Provided Through States

- ▶ Department of Energy funding provided through state agencies.
 - ▷ e.g., Energy Innovation Grants in Wisconsin, Department of Commerce grants in Washington, DOE weatherization
- ▶ Key issue: federal and state cost share requirements.

312

Information Regarding State and Utility Incentives

- ▶ NC Clean Energy maintains a database:
<http://www.dsireusa.org/>
- ▶ WARNING: The site is not always current
- ▶ Use to identify other sites to search

313

Renewable Energy Investment Tax Credits: The Basics – It's All New under the Inflation Reduction Act

Extension and Modification of ITC Under Build Back Better Bill

- ▶ Base credit rate of 6%, or
- ▶ Bonus credit rate of 30%.

315

Requirements for Bonus Credits

- ▶ Less than 1 megawatt AC (project includes one or more energy properties part of single project),
- ▶ Construction begins before 60 days after guidance on prevailing wage and apprenticeships (i.e., by 1/28/23), or
- ▶ Meets prevailing wage and apprenticeship.

316

Apprenticeship Requirements

- ▶ Begin construction before January 1, 2023, 10 percent,
- ▶ Begin construction in 2024, 12.5 percent, and
- ▶ Begin construction after December 31, 2023, 15 percent.

Rates are subject to any applicable apprentice-to-journeyworker ratio from Department of Labor or the applicable state apprenticeship agency.

317

Prevailing Wage Requirements

- ▶ Construction, and
- ▶ Alteration and repair during first 5 years of operation.

318

Prevailing Wage Requirements

- ▶ Any laborers and mechanics paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality.

319

ITC Extended to Cover Storage and Microgrid Controls

- ▶ Energy storage receives, stores, and delivers energy for conversion to electricity and has a capacity of at least **5 kWh**.
- ▶ Microgrid Controllers: control the energy resources of a microgrid and capable of:
 - ▷ operating in connection with the grid,
 - ▷ as a single controllable entity in connection with the grid, and
 - ▷ independent from the grid.

320

Basis Can Include Interconnection Equipment

- ▶ Expenditures paid or incurred for interconnection property
- ▶ Projects with maximum net output of not greater than 5 megawatts

321

Increased Credit for Domestic Content

- ▶ Increase of 2 percentage points (or 10 percentage points, if the prevailing wage and apprenticeship requirements met).

322

Certification Requirement for Domestic Content Bonus Credit Amount

- ▶ Any steel, iron, or manufactured product which is a component of such facility (upon completion of construction) was produced in the United States.

323

Specific Steel and Iron Requirement

- ▶ “All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.”
- ▶ Does not apply to steel or iron used as part of other manufactured products or rolling stock.

324

Percentage Requirements for Manufactured Products

- ▶ Not less than the 40 percent of the total costs across all manufactured products of a facility must be attributable to manufactured products (including components) which are mined, produced, or manufactured in the United States.

325

Increase in Credit Rate for Energy Communities

- ▶ 2 percentage points (or 10 percentage points, if taxpayer meets the prevailing wage and apprenticeship requirements).
- ▶ Energy community includes:
 - ▷ a brownfield site,
 - ▷ a statistical area meeting criteria regarding coal, oil or natural gas extraction, processing, transport or storage, and
 - ▷ a census tract or any adjacent census tract in which (1) after December 31, 1999, a coal mine has closed, (2) after December 31, 2009, a coal-fired electric generating unit has been retired.

326

Potential Increase in Energy Credit for Solar and Wind Facilities Placed in Service in Connection with Low-Income Communities or on Tribal Land

- ▶ Enhanced incentive for solar and wind facilities with net output of less than 5 MW.
- ▶ Property eligible includes energy storage technology related to the solar or wind property.

327

Secretary's Allocation

- To develop allocation plan within 180 days of enactment (i.e., February 12, 2023).

328

Caps

- 1.8 gigawatts in 2023 (carry over excess to 2024)
- 1.8 gigawatts in 2024 (no carry over)

329

Amount of Increase in Credits

- An additional 10% credit if located in a low-income community or on Indian land, or
- An additional 20% credit if such project is a qualifying low-income residential building project or a low-income economic benefit project.

330

Renewable Energy Investment Tax Credits:
How to "Monetize" Them

Pre-Inflation Reduction Act

- ▶ Since Tribes and TDHE's don't pay income tax, needed taxable partner.
- ▶ Tax partner initially owns 99% or 100% of project LLC.
- ▶ The investor gets tax credits and depreciation deductions.

332

Tax Credits: Key Business Terms

- ▶ Tax Credit: A dollar-for-dollar credit against income taxes otherwise due.
- ▶ Depreciation: The right to deduct capital costs, over time, from taxable income.
- ▶ Limited Liability Company ("LLC"): A partnership-like structure that allows for allocation ownership interests for tax purposes.

333

Pre-Inflation Reduction Act

- ▶ Tribes and TDHEs don't pay income tax, so they needed to partner with investors.
- ▶ The investor owns 99% of LLC (if Tribe/TDHE is member) or 100% (if Tribe/TDHE is not member).
- ▶ Investor claims 99% or 100% of the tax credits (which the Tribe/TDHE couldn't use).
- ▶ The investor also gets depreciation tax deductions.
- ▶ LLC sells energy to Tribe/TDHE at price that reflects sharing of tax benefits.

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Key Change under IRA: Ability for Tribes to Receive Tax Credit

- ▶ Tribes and tax-exempt entities allowed to elect to be treated as having made a payment of tax equal to the value of the credit.
- ▶ Does not apply to depreciation deductions.

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Question: Which Option is best?

- ▶ Confirmation of Ability to use tax credit as non-federal cost share.
- ▶ Whether need money in addition to tax credit and potential grants.
- ▶ Value of depreciation deduction vs. return required by investor.
- ▶ Potential complexity of investor involvement.

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Partially Forgivable Loans for Rural Electric Generation and RUS Electric Loan Program

Partially Forgivable Loans for Rural Electric Generation

- ▶ IRA: \$1 billion for rural electric loans.
- ▶ For electric generation (including energy storage) from renewable energy resources for resale to residents.
- ▶ Loans potentially forgivable up to 50%.
- ▶ Rates equal to average tax-exempt municipal bond rate.

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RUS Electric Program

- ▶ RUS, through FFB, offers direct loans, loan insurance and loan guarantees to Tribes.
- ▶ Maybe used for:
 - ▷ Electric distribution, transmission, and generation facilities.
 - ▷ Demand side management.
 - ▷ Energy conservation programs.
 - ▷ On-grid and off-grid renewable energy systems.

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RUS Electric Program

- ▶ **Guarantee up to 100% of loans.**
- ▶ Security interest in equipment or receivables required.
- ▶ **Repayment not exceed the useful life**, with maximum of 35 years.
- ▶ **Treasury plus 1/8 of 1%.**
- ▶ Hardship loan interest fixed at 5% up to 35 years.
- ▶ As of June 2022, for FY 2022, the FFB had **\$858 million remaining**.

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RUS Electric Program

- ▶ Facilities must be used for a public purpose.
- ▶ RUS General Field Representatives accept applications year-round.
- ▶ Contact information for the state offices:
<https://www.rd.usda.gov/contact-us/state-offices>.
- ▶ National Electric Program office: 202-720-1422.

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Overall Strategies for Projects

- ▶ Identify priority project(s)
- ▶ Identify federal, state utility and other grants and other incentives that best match the priority project(s)
- ▶ Confirm tax credits that apply to the priority projects
- ▶ Pursue federal and state grants and incentives
- ▶ Identify partners, e.g., installer and potentially, investor

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THANK YOU
