

## USDA Rural Development Tribal Consultation

### Rural Business Development Grant Program Proposed Rule Framing Paper

July 12, 2023

#### What We Heard from Tribes in Prior Consultation

Tribal nations have no tax base and often participate in the private marketplace through corporations, instrumentalities, and related enterprise structures to generate governmental revenue. Therefore, Tribal-owned corporations, businesses, and enterprises are hybrids and are both governmental in nature and “commercial.” This nuance presents challenges in accessing U.S. Department of Agriculture (USDA) programs that customarily distinguish between commercial and essential governmental projects.

#### Progress Made to Date

- The U.S. Department of Agriculture conducted prior consultations and listening sessions to identify barriers and solicit input from Tribal leaders and Tribal partners accessing USDA programs and services.
  - Participants provided feedback that helped clarify and improve eligibility for Tribal-owned entities participating in USDA programs and services.
  - On March 9 and 11, 2021 and April 11, 2022, the USDA Office of Tribal Relations conducted Tribal Consultations on Equity and Barriers.
  - Link to prior consultations: [Tribal Consultations Webpage](#)
- The U.S. Department of Agriculture issued a proposed rule for the Rural Business Development Grant (RBDG) program to expand Tribal applicant eligibility to include Tribal-owned entities.
  - Link to the proposed rule: [7 CFR Chapter XLII — Rural Business Development Grant Regulation: Tribes and Tribal Business References to Provide Equitable Access](#)
- The U.S. Department of Agriculture scheduled a virtual Tribal consultation and listening session on July 12, 2023.
  - The consultation and listening session will begin at 2:00 p.m. ET.
  - A Tribal Caucus at 1 p.m. ET will proceed the consultation.
  - Link to register for the caucus and the Tribal consultation and listening session: [Meeting Registration](#)

## Program Summary and Summary of Regulatory Changes

The [RBDG program](#) is intended for governmental entities and non-profits that foster economic development, job creation, and business creation in rural and Tribal communities.

Eligible applicants for RBDG assistance include:

- Rural towns.
- Rural communities.
- State agencies.
- Authorities.
- Nonprofit corporations.
- Institutions of higher education.
- Federally recognized Tribes.
- Cooperatives organized as a private nonprofit corporation.

The Proposed Rule amends the RBDG program regulations to clarify and expand eligibility for federally recognized Tribes to support wholly owned Tribal-government entities as program beneficiaries.

The proposed rule changes aim to:

- Expand the “Small and Emerging Business” definition to include Tribal governments and Tribal-owned entities.
- Clarify the definition for “Conflict of Interest” to explain how the agency defines the relationship between Tribal Nations and their Tribal-owned entities.

[Page 33552 of Volume 88, Number 100](#) of the Federal Register incorporates the proposed updated regulatory language in the “Definitions” section.

The “Definitions” section reads as follows:

### § 4280.403 Definitions

- **Conflict of Interest.** When the grantee’s employees, Board of Directors, or their immediate families have a legal or personal financial interest in the recipient(s) receiving the benefits or services of the grant. Tribal Governments, subdivisions of Tribal Governments (chapters, districts, authorities, townships, etc.), and Tribal arms and instrumentalities, entities wholly-owned and chartered by Tribal Governments including but not limited to: Tribal owned corporations (including Section 17 Corporations, Community Development Corporations and Economic Development Corporations), Tribal owned businesses, Tribal owned authorities, Tribal owned utilities, other Tribally owned enterprises and their subsidiaries will not be considered as having a conflict of interest due to their, or their Board’s, ties to their associated Tribe or each other.
- **Indian Tribe (Tribal), Tribal Government and/or Federally Recognized Tribes.** Any Indian or Alaska Native tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103–454).

- **Small and Emerging Business.** Any private and/or nonprofit business which will employ 50 or fewer new employees and has less than \$1 million in gross revenue; for retail operations, gross revenue may be reduced by cost of goods sold and returns or for a service organization, gross revenue may be reduced by the cost of providing service or for a manufacturing operation, gross revenue may be reduced by the cost of raw materials and the cost of production. The \$1 million gross revenue and 50 or fewer new employee thresholds apply only to each individual Tribal owned enterprise applicant or recipient. Due to the unique structuring of Tribal economic development, the revenue or employees of the Tribe and/or parent Tribal enterprise will not apply towards the individual Tribal enterprise applicant or recipient, regardless of shared ownership or Directors. The revenue of Tribes, subdivisions of Tribes and Tribal entity applicants, will not be considered revenue in determining program and project eligibility.

## Consultation Input Requested

The RBDG program, by statute, remains an intermediary program. The program allows USDA to make grants to eligible applicants to support rural economic development, create new business and jobs, and save existing rural businesses and jobs. The updated regulatory language will not address the challenges Tribes and Tribally owned entities face when purchasing equipment or real estate the eligible applicant will own or that will directly benefit the applicant.

Rural Development seeks Tribal input on these specific changes to ensure the changes will increase Tribal access to the program.

- Do Tribal leaders agree these changes will help increase tribal eligibility within the RBDG program?
- Is there anything we should strike or edit in the updated regulatory language?
- Is there anything we overlooked that we should include in the updated regulatory language?
- Does your Tribe have any unique organizational structures for your enterprises that we should consider as we finalize these changes?

## Next Steps

- Analyze the RBDG proposed rule feedback garnered through Tribal consultation.
- Address the RBDG proposed rule formal comments made through the federal register.
- Utilize the feedback gathered from consultation and written comments to issue the RBDG final rule in the Federal Register.