



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
To aian@usda.gov*

August 14, 2023

Debra DuMontier
Acting Director
Office of Tribal Relations
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1590

Karama Neal
Administrator
Rural Business-Cooperative Service
Rural Development
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1590

Dear Acting Director DuMontier and Administrator Neal,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the U.S. Department of Agriculture's (USDA) Tribal consultation and listening session held on July 12, 2023 on the Rural Business Development Grant (RBDG) Program Proposed Rule. The RBDG Program is intended for governmental entities and non-profit entities that foster economic development, job creation, and business creation in rural and Tribal communities. USDA initiated this rulemaking to amend the RBDG Program regulations to clarify and expand eligibility for Tribal Nations to support wholly owned Tribal government entities as program beneficiaries. USET SPF generally supports the proposed changes to the RBDG Program regulations, especially clarification of the definition for "Conflict of Interest" and how the agency defines the relationship between Tribal Nations and our Tribally owned entities. However, we do have a concern regarding expansion of the definition of "Small and Emerging Business" as well as issues that are not being addressed in this current rulemaking proceeding.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), , Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Further Clarification Required in Expansion of “Small and Emerging Business” Definition

In the Proposed Rule, USDA is expanding the definition of “Small and Emerging Business” to add language to clarify the relationship of Tribal governments and Tribally owned entities. The proposed changes to this definition would specify that the management of the Board of Directors of the Tribal government owned entity or business does not have to be independent of the Tribal Council. Additional language has been proposed to also clarify that the asset and employee size limitations to qualify as a small and emerging business are limited to the Tribal entity that is applying for RBDG assistance and is not intended to be inclusive of all Tribal assets or all Tribal employees. Although these distinctions are important to appropriately assess and identify the relationship between Tribal governments and Tribally owned entities and businesses, we want to ensure that language is included recognizing that Tribal governments are not business entities. Language should be added that emphasizes that Tribal governments are distinct sovereigns with a legally established, recognized, and upheld nation-to-nation, government-to-government relationship with the U.S. federal government. This legally binding relationship was established by the U.S. Constitution, through treaty-making with Tribal Nations, the adoption of federal statutes, and upheld and enforced by the federal judiciary system.

USDA Must Educate and Train its State Offices and Officers on Tribal Sovereignty and U.S.-Tribal Nation Relations

It has come to our attention that some of USET SPF’s member Tribal Nations have experienced unnecessary and burdensome challenges in applying for the RBDG Program. These issues have primarily stemmed from a lack of understanding by USDA State Offices and Officers on the distinction between Tribal governments and Tribally owned entities and businesses when the latter apply for the RBDG Program. While the proposed revisions to the “Emerging and Small Business” definition may address this issue, USET SPF firmly believes further emphasis must be placed on training and education for USDA state office personnel to better understand Tribal sovereignty, U.S.-Tribal Nation relations, and the unique distinctions between Tribal governments and Tribally owned and operated entities and businesses. Further, USDA should develop clear guidance on these issues for its state offices since the personnel in these offices are responsible for initial review of RBDG Program applications prior to submitting them to the USDA Rural Development National Office. This process, and the lack of understanding by USDA state office personnel on these unique distinctions, has led to Tribally owned entity and business applications for the RBDG Program being denied. This has led to unnecessary delays in obtaining funding from the RBDG Program as Tribal Nations have to exert and expend additional personnel time and funds to work with the USDA state and DC Offices to clarify that the Tribally owned entity and its assets are not inclusive of the Tribal government’s assets.

Conclusion

In moving forward with the proposed revisions to the RBDG Program regulations, we strongly recommend that the USDA Rural Development National Office, as well as the pertinent USDA staff that liaise, consult, and otherwise work with Tribal Nations on USDA programs and services, coordinate with the USDA state offices to provide guidance and support in the review of Tribal RBDG applications. USDA should also take notice of and integrate the forthcoming Tribal consultation training currently being developed by the Department of the Interior and the Office of Personnel Management. These actions will uphold USDA’s trust and treaty obligations to Tribal Nations and support the delivery of RBDG funds to our Tribally owned entities and businesses. The intent of the current proposed revisions to the RBDG Program is to increase access to the program for Tribally owned entities and businesses. Therefore, USDA must take all necessary actions to ensure that the RBDG applications filed by our Tribally owned entities and businesses are not denied on the grounds of a misunderstanding or misinterpretation of regulations. In implementing the proposed changes to the RBDG Program, USDA must actively develop guidance and provide necessary support to its state offices and personnel to ensure these misunderstanding and

misinterpretations of the regulations does not continue to prevent our Tribally owned entities and businesses from participating in the program. We look forward to continued dialogue on these important matters and anticipate that in the Final Rule USDA will include specific language and develop further guidance to address these issues. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Francis', with a long horizontal stroke extending to the right.

Chief Kirk Francis
President

A handwritten signature in black ink, appearing to read 'K. A. Carroll', written in a cursive style.

Kitcki A. Carroll
Executive Director