



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically
To irahomerebates@hq.doe.gov

September 15, 2023

Henry McKoy
Director
Office of State and Community Energy Programs
Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Dear Director McKoy,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of Energy's (DOE) Notice of Availability and Request for Comment on the intended allocation formula for the \$225 million Tribal Home Electrification and Appliance Rebates Program (Tribal Rebates Program). Published in the Federal Register on August 16, 2023, DOE announced the intended allocations for the Tribal Rebates Program for all federally recognized Tribal Nations. We appreciate that DOE has recognized that all Tribal Nations, regardless of land base or land status, are part of the Administration's Justice40 initiative and are therefore eligible to receive an allocation of funds from the program. Although USET SPF supports an equitable allocation to ensure that every Tribal Nation receives adequate funds from the Tribal Rebates Program, we have concerns with DOE's reliance on the Indian Housing Block Grant (IHBG) program dataset to determine the distribution of remaining funds (weighted allocation) from the Tribal Rebates Program once the minimum allocation is made. USET SPF strongly recommends that DOE host additional consultations with Tribal Nations before finalizing a formula allocation for the Tribal Rebates Program to ensure an equitable and accurate distribution of funds to Tribal Nations.

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

^[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).

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Issues with Use of IHBG Program Data to Determine Allocation of Remaining Tribal Rebates Program Funds

In the August 16, 2023 Federal Register Notice, DOE acknowledged its trust and treaty obligations to treat Tribal Nations equitably by ensuring that all Tribal Nations have an opportunity to receive a minimum allocation of funds from the Tribal Rebates Program. This action was further supported by DOE's reasoning that all Tribal Nations are eligible to receive these funds since we are recognized as Justice40 communities. Therefore, DOE has proposed a minimum allocation of \$150,000 from the Tribal Rebates Program to every Tribal Nation. Further, DOE has stated that Tribal Nations may utilize 20 percent of awarded funds to cover administrative costs for managing a home electrification and appliance rebate program. This would mean that a Tribal Nation receiving a minimum \$150,000 allocation would be able to use \$30,000 for administrative expenses. On this note, we remind DOE that If a Tribal Nation should elect to administer a Tribal rebates program, then DOE must honor the indirect cost (IDC) rates that Tribal Nations have negotiated with the United States and not impose any caps on IDC application and recovery. In addition, recognizing that Tribal Nations may not have the necessary staff capacity to manage our own Tribal rebates program, DOE has also determined that Tribal Nations will be able to apply for the Tribal Rebates Program through a consortium.

USET SPF supports these decisions by DOE to ensure the equitable distribution of Tribal Rebates Program funds. However, DOE has noted in its Federal Register Notice that it is relying on the unadjusted FY 2023 Allocation data from the Department of Housing and Urban Development's (HUD) IHBG program to determine weighted allocations to Tribal Nations. These weighted allocations (above the minimum allocation) would provide increased Tribal Rebates Program funds to Tribal Nations that require housing and energy upgrades as determined by the IHBG program dataset. DOE has stated that it is relying on IHBG program data after evaluating several potential datasets and finding that most do not provide detailed information on housing conditions, energy burden, or did not provide full data for Tribal Nations.

USET SPF is concerned with the use of the IHBG program dataset to determine weighted allocations since it may not fully capture the number of Tribal homes requiring these energy upgrades under the Tribal Rebates Program or the populations of Tribal Nations. The IHBG program dataset is based on the self-report of racial background (American Indian/Alaska Native only or in combination with one or more other races) from the U.S. Census for individuals living within a given 'formula area.' Due to chronic inaccuracies in Census counts, the restriction to 'formula area', and lack of Tribal Nation access to HUD programs, several Tribal Nations, including many USET SPF Tribal Nations, have extremely low population numbers in this dataset or, egregiously, a population number of zero. This does not provide an accurate account of Tribal homes requiring energy upgrades that would qualify for increased funds from the Tribal Rebates Program.

Tribal Nations have already experienced issues with use of IHBG program data when the Department of the Treasury used this dataset to determine how to allocate funds to Tribal Nations through the Coronavirus Relief Fund established by the 2020 CARES Act. Recognizing that this is a limited amount of funds available to Tribal Nations, DOE must ensure that distribution of Tribal Rebates Program funds is conducted in an equitable and accurate manner. If DOE moves forward with a weighted allocation methodology, then Tribal Nations deciding to apply for the Tribal Rebates Program must receive the fullest allocation possible under this methodology through interpretation of accurate Tribal housing and energy

data. To accomplish this, DOE must accept self-certified/attested data from Tribal Nations that accurately depicts the population, housing, and energy upgrade priorities of our communities. This may also include data that has already been shared with the Department of the Interior, Bureau of Indian Affairs.

Recommending Tribal Consultation Prior to the Finalization of an Allocation Formula for the Tribal Rebates Program

The last Tribal consultation DOE held on the Tribal Rebates Program was on March 29, 2023. This consultation primarily focused on how to structure the program. DOE has stated that it intends to release guidance on how to apply for the Tribal Rebates Program in the coming month(s) based on feedback received during this consultation. However, it has not consulted on the intended allocation formula issued in this Federal Register Notice, especially on use of the FY 2023 Allocation data from the IHBG program to determine how the remaining program funds will be allocated once a Tribal applicant receives the initial minimum \$150,000 allocation. DOE is relying on comments received in response to the August 2023 Federal Register Notice to inform its decision on finalizing an allocation formula for the Tribal Rebates Program.

While soliciting Tribal Nation feedback to a Federal Register Notice is part of the consultation process, we believe that further verbal consultation is necessary to ensure Tribal Nations have appropriate and ample opportunity to respond to the intended allocation methodology prior to its finalization. Pursuing these verbal Tribal consultation efforts on this matter would also provide an opportunity for Tribal Nations to recommend additional datasets that DOE could utilize to inform allocation of the Tribal Rebates Program. These actions would uphold the directives of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments", and DOE's efforts to ensure equitable distribution of funds from the Tribal Rebates Program. Moving forward, USET SPF fully supports an equitable distribution of the Tribal Rebates Program funds through a minimum amount threshold to ensure every Tribal Nation can access these funds. However, we believe that verbal Tribal consultation should be conducted on the intended allocation methodology of the remaining Tribal Rebates Program funds once that minimum allocation is made.

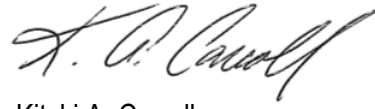
Conclusion

The federal government must uphold its trust and treaty obligations by ensuring that Tribal Nations equitably receive the necessary funds and resources to support our efforts in Nation rebuilding. As a matter of supporting Tribal sovereignty and self-determination, DOE must look to Tribal Nations and recognize our sovereign right to identify the critical housing and energy priorities in our communities. This includes working with Tribal Nations to identify Tribal citizens and houses, both inside and outside of our jurisdictional boundaries, that would benefit from receiving funds for energy upgrades from the Tribal Rebates Program and other DOE programs. Instead of relying on a federal dataset, such as that of the IHBG program, to determine how federal funds should be allocated to Tribal communities, DOE must work with Tribal Nations to determine a solution that better reflects the true housing and energy conditions within our communities. This can be accomplished by DOE by working with Tribal Nations to obtain Tribally self-certified population, housing, and energy data on these conditions. For these reasons, we firmly recommend that DOE should conduct additional Tribal consultations prior to adopting a final determination for how Tribal Rebates Program funds should be allocated. While we appreciate DOE's initial decision to equitably allocate a minimum amount of Tribal Rebates Program funds to all Tribal Nations, there must be further consultation to determine if Tribal Nations are satisfied with the intended allocation amounts that DOE has published. 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 'Kirk Francis', with a long horizontal stroke extending to the right.

Chief Kirk Francis
President

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

Kitcki A. Carroll
Executive Director