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# USDA Rural Utilities Service's Support for Tribes and Other Indigenous Entities

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## USDA Rural Utilities Service's Support for Tribes and Other Indigenous Entities

The Rural Utilities Service (RUS) in the U.S. Department of Agriculture's (USDA's) Rural Development (RD) mission area administers a range of programs that help offset the costs of building and repairing utility systems in rural areas. Utility systems provide broadband, drinking water, electricity, telephone service, and waste disposal services. Providing utilities to rural homes and other facilities, which are often remote and geographically spread out, can be expensive compared with providing utilities to urban and suburban communities, where homes and other facilities tend to be clustered together. In many cases, utility companies will not extend utility systems to remote rural homes because the utility companies cannot recoup their costs through subscriber fees and generate a profit. As a result, many rural communities lack access to these utilities.

RUS helps eligible applicants provide reliable utilities to rural communities, including tribal communities. Eighteen RUS programs have governing statutes or regulations stating that certain *federally recognized Tribes* (hereinafter, *Tribes*) and *other Indigenous entities* are eligible to apply for RUS programs. Eligibility requirements vary across RUS programs. For example, in many cases, RUS statutes regarding eligibility include a few terms that the RUS regulations further define. In other cases, RUS statutes are silent on eligibility but regulations address the issue. Although statutory provisions for tribal eligibility were not identified for all RUS programs, all RUS program regulations include Tribes as eligible applicants and some allow for other Indigenous entity applicants. For example, sometimes Alaska Native Corporations or tribal organizations are included as eligible entities. State-recognized tribes are explicitly eligible for one RUS program. Native Hawaiians were not identified as eligible for any RUS programs.

RD has two authorities that may help Tribes and other Indigenous entities access RUS programs: the Substantially Underserved Trust Area (SUTA) authority and the technical assistance program authority. The Food, Conservation, and Energy Act of 2008 (P.L. 110-246) provided the RUS Administrator with the authority to adjust or waive certain RUS program requirements for applications for eligible Tribes and certain other Indigenous applicants, known as SUTA authority. In addition, the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334) authorized a new technical assistance program for Tribes and certain other Indigenous entities, but Congress has not appropriated funding.

Several issues arise regarding the eligibility of Tribes and other Indigenous entities for RUS funding. Some Tribes have stressed that their unique government-to-government relationship with the United States grants them access to federal benefits and services that should not be made available to other Indigenous entities. By contrast, some other Indigenous entities have argued that they should have similar access to federal programs and funding as Tribes.

Congress may consider addressing RUS support for Tribes and other Indigenous entities, including program eligibility, financial flexibility, and technical assistance. For instance, Congress may consider the potential impacts of broadening RUS program eligibility to more Indigenous entities, which may address more communities but also may reduce funding for other communities in need. In addition, Congress may want to explore whether to make eligibility requirements consistent within and across RUS programs. Another option would be to amend statutes that currently are silent regarding eligibility to clarify congressional intent. Members of Congress also may evaluate tradeoffs of reducing, maintaining, or expanding current RUS program financial flexibility requirements as a means of supporting Tribes and other Indigenous entities. Some Tribes and other Indigenous entities have supported increasing RUS program financial flexibility, including waiving programmatic loan collateral or grant matching fund requirements, to potentially increase their access. At the same time, waiving these requirements may increase financial risks to the borrower and RUS. In addition, some people may claim that increased program flexibility would unfairly redistribute limited funding from non-tribal communities with utility needs. Whether to reduce, maintain, or expand RUS's technical assistance to Tribes and other Indigenous entities is a potential issue for Congress. Some Members of Congress, Tribes, tribal associations, and other stakeholders have asserted that RUS should provide more technical assistance to help Tribes and other Indigenous entities compete for RUS program funds. These groups argue that assistance is needed to supplement a lack of capacity. At the same time, many of these capacity challenges are not unique to Tribes or other Indigenous entities. In addition, others may argue that more oversight is needed on current technical assistance, such as SUTA authority implementation, before any potential expansion. Alternatively, Congress could take no action and continue to allow RUS discretion in determining program eligibility, financial flexibility, and technical assistance.

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## Introduction

The Rural Utilities Service (RUS) in the U.S. Department of Agriculture's (USDA's) Rural Development (RD) mission area administers a range of programs that help offset the costs of building and repairing utility systems in rural areas. Utility systems provide broadband, drinking water, electricity, telephone service, and waste disposal services. Providing utilities to rural homes and other facilities, which are often remote and geographically spread out, can be expensive compared with providing utilities to urban and suburban communities, where homes and other facilities tend to be clustered together. In many cases, utility companies will not extend utility systems to remote rural homes because the utility companies cannot recoup their costs through subscriber fees and generate a profit. As a result, many rural communities lack access to broadband, drinking water, electricity, telephone service, and waste disposal services.

RUS helps utility companies better serve rural communities, including tribal communities. Eighteen RUS utility programs have governing statutes or regulations stating that certain *federally recognized Tribes* (hereinafter, *Tribes*) and *other Indigenous entities* are eligible to apply for RUS programs. A *Tribe* is an entity formally recognized under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. §5130) as having a government-to-government relationship with the United States.<sup>1</sup> As used in this report, *other Indigenous entities* refers to (1) entities that are affiliated with Tribes (such as tribal organizations or utility companies) or (2) descendants of groups who inhabited the North American continent when people of different cultures or ethnic origins arrived but who are not currently federally recognized.<sup>2</sup> For more information about these terms, see the “Terminology” section.

Many Tribes and other Indigenous entities provide broadband, drinking water, electricity, telephone service, and waste disposal services in areas within their jurisdiction.<sup>3</sup> Some Tribes and other Indigenous entities partner with non-tribal companies to provide these utilities.<sup>4</sup> Tribes also establish tribal organizations such as tribally owned utility companies, tribal health organizations, and tribal development corporations to provide utilities.<sup>5</sup>

This report provides an overview of RUS utility programs as well as the types of tribal and other Indigenous entities that are eligible to apply for RUS programs. The report also describes two RD

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<sup>1</sup> Federal recognition entails special rights, immunities, and privileges as well as eligibility for certain federal programs and services (Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. §5130]). See also 25 C.F.R. §83. For the 2024 list of Tribes, see CRS Report R47414, *The 574 Federally Recognized Indian Tribes in the United States*, by Mainon A. Schwartz.

<sup>2</sup> For purposes of this report, *other Indigenous entities* include Native Hawaiians, Alaska Native Corporations (ANCs), and state-recognized tribes. Although ANCs did not exist as Alaska Native entities until passage of the Alaska Native Claims Settlement Act (ANCSA; 43 U.S.C. §§1601 et. seq) in 1971, their membership generally comprises Alaska Natives. Thus, ANCs fit within *other Indigenous entities* to the extent they lack a government-to-government relationship with the United States.

<sup>3</sup> Margaret Schaff, J.D., “Regulations of Electric Utilities on Indian Reservations: Tribal Governments’ Oversight of Renewable Energy Development and Utility Providers and Authority to Create Tribal Utilities,” *Energy Law Journal*, vol. 41, pp. 261-283.

<sup>4</sup> Western Area Power Administration, *Tribal Authority Process: Case Studies—The Conversion of On-Reservation Electric Utilities to Tribal Ownership and Operation*, report prepared for the U.S. Department of Energy’s Tribal Energy Program, September 2010.

<sup>5</sup> For example, the Navajo Nation established the Navajo Tribal Utility Authority in 1959 as a tribally owned nonprofit organization to provide utilities to its citizens (Navajo Tribal Utility Authority, “About Us,” <https://www.ntua.com/about-us.html>). See also U.S. Department of Agriculture (USDA) Rural Utilities Service (RUS) and Rural Business-Cooperative Service, “Rural Business Development Grant (RBDG) Regulation: Tribes and Tribal Business Reference to Provide Equitable Access,” final rule and response to comment, 88 *Federal Register* 86567, December 14, 2023.

authorities that may help Tribes and other Indigenous entities access RUS programs. The report ends with a discussion of policy issues for Congress.

## Terminology

This report uses the following terms and phrases:

- *Alaska Native*. This term refers to citizens of the United States who are “one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives.”<sup>6</sup> It also includes any citizen of the United States who is considered an Alaska Native “by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.”<sup>7</sup>
- *Alaska Native Corporation*. The Alaska Native Claims Settlement Act (ANCSA; 43 U.S.C. §§1601 et. seq) divided the state of Alaska into 12 geographic regions and allowed Alaska Native Tribes to form village and regional Alaska Native Corporations (ANCs), which are for-profit corporations that may own and manage tribal resources for the benefit of their shareholders (tribal members).<sup>8</sup> ANCs themselves are not Tribes, although Tribes are located within ANC boundaries.<sup>9</sup> They are considered a type of other Indigenous entity for purposes of this report.
- *Alaska Native Village*. This term refers to “any Tribe, band, clan, group, village, community, or association in Alaska” that the Secretary of the Interior determines was composed of 25 or more Alaska Natives according to the 1970 census or “other evidence satisfactory to the Secretary.”<sup>10</sup> There are 228 Tribes in Alaska, many of which are Alaska Native Villages.<sup>11</sup>
- *Tribe*. This term refers to an entity formally recognized under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. §5130) as having a government-to-government relationship with the United States. This recognition entails special rights, immunities, and privileges as well as eligibility for certain federal programs and services.<sup>12</sup> As of January 8, 2024, there were 574 Tribes located within the 48 contiguous states and Alaska.<sup>13</sup>

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<sup>6</sup> This term was defined in ANCSA (43 U.S.C. §1602).

<sup>7</sup> Ibid.

<sup>8</sup> See generally ANCSA (43 U.S.C. §§1601 et seq).

<sup>9</sup> Department of the Interior (DOI), Bureau of Indian Affairs (BIA), “Alaska Region,” <https://www.bia.gov/regional-office/alaska-region>.

<sup>10</sup> This term was defined in ANCSA (43 U.S.C. §1602).

<sup>11</sup> DOI, BIA, “Alaska Region,” <https://www.bia.gov/regional-office/alaska-region>. For more information on ANCSA and Alaska Native Villages, see CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress*, by Mariel J. Murray.

<sup>12</sup> 25 C.F.R. §83. For the 2024 list of Tribes, see CRS Report R47414, *The 574 Federally Recognized Indian Tribes in the United States*, by Mainon A. Schwartz.

<sup>13</sup> DOI, BIA, “Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs,” 89 *Federal Register* 944.

- *Other Indigenous Entities*. For purposes of this report, this term refers to the following entities:
  - Entities that are affiliated with Tribes (e.g., tribal organizations) or
  - Descendants of groups who inhabited the North American continent when people of different cultures or ethnic origins arrived but who are not currently federally recognized.<sup>14</sup> For purposes of this report, this term includes Native Hawaiians, ANCs, and state-recognized tribes. Although ANCs did not exist as Alaska Native entities until passage of ANCSA in 1971, their membership generally comprises Alaska Natives. Thus, ANCs fit within *other Indigenous entities* to the extent they lack a government-to-government relationship with the United States.
- *Native Hawaiian*. This term refers to any individual who is a descendant of the Indigenous people who, prior to 1778, “occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.”<sup>15</sup> Native Hawaiian communities are considered a type of *other Indigenous entity* for purposes of this report.
- *Native Hawaiian Organization (NHO)*. This term refers to any organization that (1) “serves and represents the interests of Native Hawaiians,” (2) has “as a primary and stated purpose the provision of services to Native Hawaiians,” and (3) has “demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.”<sup>16</sup> NHOs are considered a type of *other Indigenous entity* for purposes of this report.
- *State-Recognized Tribe*. This term refers to groups that have been acknowledged by state law and sometimes reside on state-recognized reservations.<sup>17</sup> State-recognized tribes are considered a type of *other Indigenous entity* for purposes of this report.
- *Tribal Organization*. This term refers to a recognized governing body of a Tribe, any “legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.”<sup>18</sup>

## Overview of RUS Programs

RUS utility programs provide grants, loans, and loan guarantees to support utilities for rural communities, focusing on the following three types of programs:

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<sup>14</sup> The term *Indigenous* is not consistently defined or used in statute; this report uses a definition based on the United Nations definition of Indigenous peoples (United Nations, “Who Are Indigenous Peoples?,” fact sheet, [https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf)).

<sup>15</sup> This report uses the definition of *Native Hawaiian* established in the National Historic Preservation Act (NHPA; 54 U.S.C. §300313).

<sup>16</sup> This report uses the definition of *Native Hawaiian Organization* established in the NHPA (54 U.S.C. §300314).

<sup>17</sup> Felix S. Cohen, *Handbook of Federal Indian Law*, 1982 edition. See §3.02.

<sup>18</sup> This report uses the definition of *tribal organization* established by the Indian Self-Determination and Education Assistance Act (ISDEAA; 25 U.S.C. §5304).

- **Broadband and Telephone Programs.** These programs help deploy broadband and telephone services to rural communities.<sup>19</sup> They also help rural communities develop distance learning and telemedicine programs.
- **Electricity Programs.** These programs help construct, repair, and modernize electric infrastructure in rural communities. They also help lower the cost of energy for residents living in high-cost rural areas.<sup>20</sup>
- **Water and Waste Disposal (WWD) Programs.** These programs help construct, repair, and modernize drinking water systems and waste disposal services, including managing landfill sites.

RUS programs are governed by various statutes and regulations that aim to fulfill RUS's mission of serving rural communities. For example, many statutes authorize RUS to provide funding for projects in rural areas, although the definition of *rural* varies across RUS programs.<sup>21</sup> In addition, RUS statutes and regulations often require the RUS Administrator to make loans that are financially feasible (e.g., projects or enterprises that are able to meet operating expenses and financial performance metrics and that have the ability to repay debt and sustain continued operations through the life of the RUS loan or loan guarantee).<sup>22</sup>

## Program Eligibility

Many Tribes and other Indigenous entities are eligible to apply for RUS utility programs to help offset the costs to build and repair utility systems that serve tribal communities in rural areas. As outlined in the next section, 18 RUS utility programs have governing statutes or regulations that mention Tribes and other Indigenous entities as eligible applicants.<sup>23</sup>

## RUS Broadband and Telephone Programs

Five RUS broadband and telephone programs have governing statutes or regulations that mention Tribes or other Indigenous entities as eligible applicants, as shown in **Table 1**.

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<sup>19</sup> For more information on RUS broadband programs, see CRS Report R47017, *USDA's ReConnect Program: Expanding Rural Broadband*, by Lisa S. Benson.

<sup>20</sup> For more information on RUS renewable energy programs, see CRS In Focus IF10639, *Farm Bill Primer: Energy Title*, by Kelsi Bracmort. For more information on other RUS programs, see CRS Report R46912, *USDA Rural Broadband, Electric, and Water Programs: FY2022 Appropriations*, by Lisa S. Benson.

<sup>21</sup> See, for example, 7 U.S.C. §913. For more information about definitions of *rural*, see CRS Report R46912, *USDA Rural Broadband, Electric, and Water Programs: FY2022 Appropriations*, by Lisa S. Benson.

<sup>22</sup> 7 C.F.R. §1700.104; 7 C.F.R. §1700.101. See also §306F(c)(4) of the Rural Electrification Act of 1936 (P.L. 74-605), as amended, which states that the Secretary of Agriculture “shall only make loans or loan guarantees that are found to be financially feasible.”

<sup>23</sup> Both statutes and regulations are primary sources of law. Primary sources include statutes, orders, decisions, and rules or regulations issued by a governmental entity or official from one of the branches of government (Georgetown Law Library, “U.S. Primary Sources & Topical Reporters Guide,” <https://guides.ll.georgetown.edu/usprimarysources>). When a statute is silent on an issue, it is possible that Congress intended to provide the agency discretion in interpreting and implementing the statute (see *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 104 S. Ct. 2778 (1984)).

**Table I. Eligibility for Rural Utilities Service Broadband and Telephone Programs**  
(according to statutes and program regulations)

Program	Eligible Applicants in Statute (U.S.C.)	Eligible Applicants in Regulations (C.F.R.)
Community Connect Program	“Indian Tribe or Tribal organization” (7 U.S.C. §950bb-3(a)(3)(A))	“Indian tribe or tribal organization, as defined in 25 U.S.C. §450b(e) [reclassified as 25 U.S.C. §5304]” (7 C.F.R. §1739.10)
Distance Learning and Telemedicine Program	Not identified	“Indian tribe or tribal organization, as defined in 25 U.S.C. §450b(b) and (c) [reclassified as 25 U.S.C. §5304]” (7 C.F.R. §1734.4)
ReConnect Program	Not identified <sup>a</sup>	“Indian tribe, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. §450b) [reclassified as 25 U.S.C. §5304]” (7 C.F.R. §1740.9)
Rural Broadband Loan and Guarantee Program	“Indian tribe” (7 U.S.C. §950bb(d)(4))	“Indian tribe or tribal organization as defined in 25 U.S.C. §5304” (7 C.F.R. §1738.51)
Telecommunications Infrastructure Loan and Loan Guarantee Program	Not identified	“Indian Tribes (as defined in §4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. §450b) [reclassified as 25 U.S.C. §5304]” (7 C.F.R. §1735.14)

**Source:** Compiled by CRS using the *U.S. Code* (U.S.C) and the *Code of Federal Regulations* (C.F.R.).

a. The ReConnect Program is a pilot program not authorized by statute. As of April 19, 2024, Congress had not codified this program.

**Note:** *Not identified* indicates that CRS did not find applicable content in the statutes reviewed.

RUS broadband and telephone program statutes and regulations differ regarding tribal and other Indigenous entity eligibility. Statutes authorizing two of the five RUS broadband and telephone programs—the Community Connect Program and the Rural Broadband Loan and Guarantee Program—specify that Tribes or tribal organizations are eligible. Statutes for the other three RUS broadband and telephone programs are silent on eligibility. In contrast, all RUS broadband and telephone program regulations specify that Tribes are eligible, using the definition from the Indian Self-Determination and Education Assistance Act (ISDEAA; 25 U.S.C. §5304). The ISDEAA definition has been interpreted to include both federally recognized Tribes and ANCs.<sup>24</sup> In addition, regulations for three RUS broadband and telephone programs—the Community Connect Program, the Distance Learning and Telemedicine Program, and the Rural Broadband Loan and Guarantee program—allow for certain other Indigenous entities to apply. Specifically, those regulations include tribal organizations, as defined by ISDEAA (see the “Terminology” section above). See **Table 2** for a summary of eligible Tribes and other Indigenous entities for RUS broadband and telephone programs.

<sup>24</sup> See *Yellen v. Confederated Tribes of the Chehalis Reservation*, 141 S. Ct. 2434 (2021).



**Table 2. Summary of Tribes and Other Indigenous Entities That Are Eligible for Rural Utilities Service Broadband and Telephone Programs**  
(CRS analysis of statutes and program regulations)

RUS Program	Tribes Eligible	Other Indigenous Entities Eligible			
		Alaska Native Corporations	State-Recognized Tribes	Native Hawaiians	Tribal Organizations
Community Connect Program	Yes	Yes	No	No	Yes
Distance Learning and Telemedicine Program	Yes	Yes	No	No	Yes
ReConnect Program	Yes	Yes	No	No	No
Rural Broadband Loan and Guarantee Program	Yes	Yes	No	No	Yes
Telecommunications Infrastructure Loan and Loan Guarantee Program	Yes	Yes	No	No	No

**Source:** Compiled by CRS using the *U.S. Code* and the *Code of Federal Regulations*.

**Notes:** The ReConnect Program is a pilot program not authorized by statute. As of March 19, 2024, Congress had not codified this program.

## RUS Electric Programs

Four RUS electric programs have governing statutes or regulations that mention Tribes or other Indigenous entities as eligible applicants, as shown in **Table 3**.

**Table 3. Eligibility for Rural Utilities Service Electric Programs**  
(according to statute and program regulations)

Program	Eligible Applicants in Statute (U.S.C.)	Eligible Applicants in Regulations (C.F.R.)
Denali Commission High Energy Cost Grants Program	Not identified	“Indian tribes, other tribal entities, and Alaska Native Corporations” (7 C.F.R. §1709.106) “Indian Tribe means a Federally recognized tribe as defined under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b) [reclassified as 25 U.S.C. §5304]” (7 C.F.R. §1709.3)
Electric Infrastructure Loan and Loan Guarantee Program	Not identified	“Tribes” (7 C.F.R. §1710.101)

Program	Eligible Applicants in Statute (U.S.C.)	Eligible Applicants in Regulations (C.F.R.)
High Energy Cost Grants Program	Not identified	“Indian tribes, other tribal entities, and Alaska Native Corporations” (7 C.F.R. §1709.106) “Indian Tribe means a Federally recognized tribe as defined under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b) [reclassified as 25 U.S.C. §5304]” (7 C.F.R. §1709.3)
Rural Energy Savings Program	Not identified	“Tribes” (7 C.F.R. §1719.4, 7 C.F.R. §1710.101)

**Source:** Compiled by CRS using the *U.S. Code* (U.S.C.) and the *Code of Federal Regulations* (C.F.R.).

**Note:** *Not identified* indicates that CRS did not find applicable content in the statutes reviewed.

RUS electric program statutes and regulations differ regarding tribal and other Indigenous entity eligibility. All RUS electric statutory provisions are silent regarding tribal and other Indigenous entity eligibility for RUS electric programs. Nonetheless, all RUS electric program regulations include Tribes as eligible applicants, and some allow for other Indigenous entity applicants. Regulations for two programs—the Electric Infrastructure Loan and Loan Guarantee Program and the Rural Energy Savings Program—mention Tribes but do not define the term. Regulations for the other two electric programs, the Denali Commission High Energy Cost Grants Program and the High Energy Cost Grants Program, both define Tribes using the ISDEAA definition (which would include ANCs) and specifically mention ANCs.<sup>25</sup> The Denali Commission High Energy Cost Grants Program and the High Energy Cost Grants Program regulations also state that “other tribal entities” are eligible; however, because the regulations do not define this term, it is unclear which other Indigenous entities are eligible.<sup>26</sup> See **Table 4** for a summary of eligible Tribes and other Indigenous entities for RUS electric programs.

**Table 4. Summary of Tribes and Other Indigenous Entities That Are Eligible for Rural Utilities Service Electric Programs**

(CRS analysis of statutes and program regulations)

RUS Program	Tribes Eligible	Other Indigenous Entities Eligible			
		Alaska Native Corporations	State-Recognized Tribes	Native Hawaiians	Tribal Organizations
Denali Commission High Energy Cost Grants Program	Yes	Yes	Not identified	Not identified	Not identified
Electric Infrastructure Loan and Loan Guarantee Program	Yes	Not identified	Not identified	Not identified	Not identified
High Energy Cost Grants Program	Yes	Yes	Not identified	Not identified	Not identified

<sup>25</sup> See generally 7 C.F.R. §1709.

<sup>26</sup> *Ibid.*

RUS Program	Tribes Eligible	Other Indigenous Entities Eligible			
		Alaska Native Corporations	State-Recognized Tribes	Native Hawaiians	Tribal Organizations
Rural Energy Savings Program	Yes	Not identified	Not identified	Not identified	Not identified

**Source:** Compiled by CRS using the *U.S. Code* and the *Code of Federal Regulations*.

**Notes:** *Not identified* indicates that CRS did not find applicable content in the statutes and regulations reviewed.

## RUS Water and Waste Disposal Programs

Eight RUS WWD programs have governing statutes or regulations that mention Tribes or other Indigenous entities as eligible applicants, as shown in **Table 5**.

**Table 5. Eligibility for Rural Utilities Service Water and Waste Disposal Programs**

(according to statutes and program regulations)

Program	Eligible Applicants in Statute (U.S.C.)	Eligible Applicants in Regulations (C.F.R.)
Emergency Community Water Assistance Program	Not identified	“Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas” (7 C.F.R. §1778.6)
Grants for Rural and Native Alaskan Villages Program	“A consortium formed pursuant to section 325 of the Department of the Interior and Related Agencies Appropriations Act, 1998 (P.L. 105-83; 111 Stat. 1597), and Native villages (as defined in section 1602 of title 43)” (7 U.S.C. §1926d)	“Native village in Alaska” or “ANTHC [Alaska Native Tribal Health Consortium] on behalf of one or more recipient communities in Alaska” (7 C.F.R. §1784.8) “Native Villages in Alaska means a Native village in Alaska which meet the definition of a village as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)” (7 C.F.R. §1784.2)
Revolving Funds for Financing Water and Wastewater Projects	“Indian tribes on Federal and State reservations and other federally recognized Indian tribes” (7 U.S.C. §1926(a)(2)(B), 7 U.S.C. §1926(a)(1))	“Indian tribes on Federal and State reservations and other federally recognized Indian tribes” (7 C.F.R. §1783.3, 7 U.S.C. §1926(a)(1))
Special Evaluation Assistance for Rural Communities and Household (SEARCH)	Not identified	“Indian Tribes on Federal and State reservations and other Federally recognized Indian Tribes” (7 C.F.R. §1774.12)
Solid Waste Management Grant Program	Not identified	“Federally acknowledged or State-recognized Native American tribe or group” (7 C.F.R. §1775.65)
Water and Waste Facility Loans and Grants to Alleviate Health Risks Program	“Indian tribes on Federal and State reservations and other federally recognized Indian tribes” (7 U.S.C. §1926c(a)(1))	“Federally Recognized Tribes as defined in the Federally Recognized Indian Tribal List Act of 1994 (P.L. 103-454, 108 Stat. 4791-4792), as well as Tribal organizations, enterprises, authorities and utilities that are duly established pursuant to the Constitution and bylaws of such Tribe” (7 C.F.R. §1777.4) “Projects for which the applicant is not a Federally Recognized Tribe, but which will benefit Tribal members, may be considered eligible for funds under this part if the applicant provides acceptable documentation and certifies that more than 50 percent of the users in the project service area are members of Tribes.... If the applicant is not a Tribe, the applicant must solicit a resolution or letter of consent in support of the application from the benefiting Tribe.” (7 C.F.R. §1777.12(a)(3))

Program	Eligible Applicants in Statute (U.S.C.)	Eligible Applicants in Regulations (C.F.R.)
Water and Waste Disposal (WWD) Loan and Grant Program	“Indian tribes on Federal and State reservations and other federally recognized Indian tribes” (7 U.S.C. §1926(a)(1)) <sup>a</sup>	“Indian tribes on Federal and State reservations and other Federally recognized Indian Tribes” (7 C.F.R. §1780.7)
WWD Loan Guarantee Program	“Indian tribes on Federal and State reservations and other federally recognized Indian tribes” (7 U.S.C. §1926(a)(1))	“Indian tribes on Federal and State reservations and other Federally recognized Indian tribes” (7 C.F.R. §5001.126(c)(1)) “Indian tribe means the term as defined in 25 U.S.C. 5304(e)” (7 C.F.R. §5001.3)

**Source:** Compiled by CRS from the *U.S. Code*, *Code of Federal Regulations*, and USDA, “Substantially Underserved Trust Area (SUTA),” <https://www.rd.usda.gov/about-rd/initiatives/substantially-underserved-trust-area-suta>.

- a. 7 U.S.C. §1926(a)(1) references eligible Tribes for loans for the Water and Waste Disposal Loan Program. Statute for the grants for the Water and Waste Loan and Grant Program do not reference eligible Tribes or other Indigenous entities.

RUS WWD program statutes and regulations differ regarding tribal and other Indigenous entity eligibility. Statutes for five RUS water and wastewater programs—Grants for Rural and Native Alaskan Villages Program, Revolving Funds for Financing Water and Wastewater Projects, the Water and Waste Facility Loans and Grants to Alleviate Health Risks Program, the WWD Loan and Grant Program, and the WWD Loan Guarantee Program—include Tribes as eligible entities. Statutes for three RUS WWD programs—the Emergency Community Water Assistance Program, Special Evaluation Assistance for Rural Communities and Household (SEARCH), and the Solid Waste Management Grant Program—are silent on eligibility.

Nevertheless, regulations for all RUS WWD programs except the Grants for Rural and Native Alaskan Villages Program appear to include Tribes as eligible applicants. Five programs have regulations stating that Tribes “on federal and state reservations and other federally recognized Indian Tribes” are eligible applicants (these programs include the Emergency Community Water Assistance Program, Revolving Funds for Financing Water and Wastewater Projects, SEARCH, the WWD Loan and Grant Program, and the WWD Loan Guarantee Program).<sup>27</sup> The WWD Loan Guarantee Program regulations also adopt the ISDEAA definition of Tribe (which would include ANCs), but it is unclear whether the other programs would accept ANC applicants.<sup>28</sup> In addition, whether state-recognized tribes would be eligible for these programs is uncertain.

Regulations for several RUS WWD programs allow certain other Indigenous entities to apply. Regulations for the Grants for Rural and Native Alaskan Villages Program state that Alaska Native Villages and the Alaska Native Tribal Health Consortium are eligible applicants.<sup>29</sup> The Alaska Native Tribal Health Consortium is a nonprofit tribal organization that provides health services to Alaska Native and American Indian people living in Alaska.<sup>30</sup> Only the Solid Waste Management Program regulations explicitly include state-recognized tribes.<sup>31</sup> In addition, the Water and Waste Facility Loans and Grants to Alleviate Health Risks Program regulations state that tribal organizations are eligible applicants.<sup>32</sup> Regulations for this program also appear to allow other Indigenous entities to apply, if the applicant “provides acceptable documentation and certifies that more than 50 percent of the users in the project service area are members of Tribes.”<sup>33</sup> For example, these applicants could conceivably be ANCs or state-recognized tribes but not Native Hawaiians, because there are no Tribes in Hawaii that could benefit from a proposed project. See **Table 6** for a summary of Tribes and other Indigenous entities eligible for RUS water and waste disposal programs.

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<sup>27</sup> 7 C.F.R. §1778.6; 7 U.S.C. §1926(a)(2)(B); 7 C.F.R. §1774.12; 7 U.S.C. §1926c(a)(1); 7 U.S.C. §1926(a)(1); 7 C.F.R. §1780.7; 7 C.F.R. §5001.126(c).

<sup>28</sup> 7 C.F.R. §5001.3.

<sup>29</sup> 7 C.F.R. §1784.8; 7 C.F.R. §1784.2.

<sup>30</sup> The Alaska Native Health Consortium administers programs and provides services in accordance with the Department of the Interior and Related Agencies Appropriations Act, 1988 (P.L. 105-83, §325). For more information, see the Alaska Native Health Consortium website at <https://www.anthc.org/>.

<sup>31</sup> 7 C.F.R. §1775.65.

<sup>32</sup> 7 C.F.R. §1777.4.

<sup>33</sup> 7 C.F.R. §1777.12(a)(3).

**Table 6. Summary of Tribes and Other Indigenous Entities That Are Eligible for Rural Utilities Service Water and Waste Disposal Programs**  
(CRS analysis of program statutes and regulations)

RUS Program	Tribes Eligible	Other Indigenous Entities Eligible			
		Alaska Native Corporations	State-Recognized Tribes	Native Hawaiians	Tribal Organizations
Emergency Community Water Assistance Program	Yes	Not identified	Not identified	Not identified	Not identified
Grants for Rural and Native Alaskan Villages Program	Yes (must also be an Alaska Native Village)	No	No	No	Yes (Alaska Native Tribal Health Consortium)
Revolving Funds for Financing Water and Wastewater Projects	Yes	Not identified	Not identified	Not identified	Not identified
Special Evaluation Assistance for Rural Communities and Household (SEARCH)	Yes	Not identified	Not identified	Not identified	Not identified
Solid Waste Management Grant Program	Yes	Not identified	Yes	Not identified	Not identified
Water and Waste Facility Loans and Grants to Alleviate Health Risks Program	Yes	Yes <sup>a</sup>	Yes <sup>a</sup>	No	Yes
Water and Waste Disposal (WWD) Loan and Grant Program	Yes	Not identified	Not identified	Not identified	Not identified
WWD Loan Guarantee Program	Yes	Yes	Not identified	Not identified	Not identified

**Source:** Compiled by CRS using the *U.S. Code* and the *Code of Federal Regulations*.

**Notes:** *Not identified* indicates that CRS did not find applicable content in the statutes and regulations reviewed.

- a. Per the program regulations, “projects for which the applicant is not a Federally Recognized Tribe, but which will benefit Tribal members, may be considered eligible for funds under this part if the applicant provides acceptable documentation and certifies that more than 50 percent of the users in the project service area are members of Tribes.... If the applicant is not a Tribe, the applicant must solicit a resolution or letter of consent in support of the application from the benefiting Tribe” (7 C.F.R. §1777.12(a)(3)). These applicants could conceivably be Alaska Native Corporations or state-recognized tribes but not Native Hawaiians because there are no Tribes in Hawaii.

## Access to RUS Programs

Congress authorized RUS to help Tribes and other Indigenous entities access RUS programs. The following RUS authorities and programs aim to increase RUS program access for Tribes and other Indigenous entities.

### Substantially Underserved Trust Areas

The Substantially Underserved Trust Area (SUTA) authority allows RUS to adjust or waive program requirements for Tribes and certain other Indigenous entity applicants if they meet specific conditions. Section 6105 of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) provides the RUS Administrator with the authority to adjust or waive certain RUS program requirements for applications serving communities on trust areas with “high need for the benefits of an eligible program.”<sup>34</sup> This SUTA authority defines *trust areas* as lands held in trust or restricted fee status (including Native Hawaiian homelands), lands owned by ANCs, and any land on islands that are communally owned (by cultural tradition) in the Pacific Ocean.<sup>35</sup>

When the RUS Administrator designates an RUS application as potentially serving SUTAs, then the Administrator can apply any of the following waivers or program adjustments:<sup>36</sup>

- Offer loan interest rates as low as 2%
- Extend the time period in which loans are repaid
- Waive documentation requirements and matching fund or credit support requirements for loans or grants facilitating the construction, acquisition, or improvement of infrastructure
- Provide the highest priority for funding to eligible applications that will serve trust areas

The SUTA authority is restricted to RUS programs authorized under the Rural Electrification Act of 1936 (P.L. 74-605), as amended, or the Consolidated Farm and Rural Development Act (P.L. 87-128), as amended.<sup>37</sup> The Secretary of Agriculture has the discretion to select which programs among the more than 30 RUS programs authorized by these two laws may use the SUTA authority.<sup>38</sup> RUS, on behalf of the Secretary of Agriculture, has selected the following programs as eligible for SUTA benefits:<sup>39</sup>

- Electric Infrastructure Loan and Loan Guarantee Program
- High Energy Cost Grant Program
- Rural Broadband Loan and Loan Guarantee Program

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<sup>34</sup> §6105 of Title VI: Rural Development of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246); 7 U.S.C. §936f.

<sup>35</sup> 38 U.S.C. §3765. *Trust lands* are lands or interests in land owned by a Tribe or individual tribal member that are held in trust by the federal government. *Restricted fee lands* are lands restricted from being sold or transferred without approval from the Secretary of the Interior (25 C.F.R. §151.2). For more information on tribal lands, see CRS In Focus IF11944, *Tribal Lands: An Overview*, by Mariel J. Murray.

<sup>36</sup> 7 U.S.C. §936f(c).

<sup>37</sup> 7 U.S.C. §936f(a)(1).

<sup>38</sup> 7 U.S.C. §936f(c).

<sup>39</sup> USDA, “Substantially Underserved Trust Area (SUTA),” <https://www.rd.usda.gov/about-rd/initiatives/substantially-underserved-trust-area-suta>.



- Telecommunications Infrastructure Loan and Loan Guarantee Program
- WWD Loan and Grant Program
- WWD Loan Guarantee Program

During the Biden Administration, RUS staff asserted that the SUTA authority has increased access but noted that challenges remain. For example, the authority offers flexibility for RUS staff to allow tribal and other Indigenous entity applicants that otherwise would not meet program requirements to receive RUS grants.<sup>40</sup> At the same time, RUS staff are unable to use the authority for loan and loan guarantee programs, because doing so would incur a cost that could violate the Anti-deficiency Act (31 U.S.C. §1341).<sup>41</sup> RUS cited the example of reducing the loan interest rate to 2% as an example of an action that could violate the Anti-deficiency Act, because it would require USDA to spend federal funds in excess of the amount appropriated by Congress for the loan programs. RUS also stated that it does not track how often it uses the SUTA authority; therefore, it is hard to measure the authority's impact.<sup>42</sup>

## Technical Assistance

Congress has authorized RD to increase technical assistance to Tribes through a technical assistance program but has not appropriated funding for the program. Section 6302 of the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334) established a USDA RD technical assistance program to help tribal and certain other Indigenous entities apply to RUS and other RD programs.<sup>43</sup> Congress has not provided funding to develop the program.

Beyond the 2018 farm bill program, USDA RD provides technical assistance to Tribes and other Indigenous entities to increase access to RUS programs as follows.<sup>44</sup>

- Provides RUS coordinators in each state with Tribes or state-recognized tribes to help them access programs and resources<sup>45</sup>
- Provides planning assistance to implement tribal economic development plans through the Rural Economic Development Innovation Initiative<sup>46</sup>
- Partners with Tribes, tribal members, and other Indigenous entities through the RD Tribal Relations Office to increase access to USDA RD programs; the Office

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<sup>40</sup> CRS communication with USDA RUS Administrator Christopher McLean and USDA Rural Development (RD) staff members Shawn Arner, Tedd Buelow, and Laurel Leverrier on November 6, 2023.

<sup>41</sup> The Anti-deficiency Act (P.L. 97-258; 31 U.S.C. §1341) states federal employees “may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.”

<sup>42</sup> Ibid.

<sup>43</sup> The program is meant “to address the unique challenge of Tribal governments, Tribal producers, Tribal businesses, Tribal business entities, and tribally designated housing entities” in accessing RD programs (§6302 of Title VI: Rural Development of the Agriculture Improvement Act of 2018 (P.L. 115-334)).

<sup>44</sup> USDA, RD, *Collaborating for Prosperity with American Indians and Alaska Natives: Rural Development Programs for Tribes, Tribal Families, Children, and Communities*, September 2019, p. 2, [https://www.rd.usda.gov/files/508\\_RD\\_TribalReport\\_2019.pdf](https://www.rd.usda.gov/files/508_RD_TribalReport_2019.pdf).

<sup>45</sup> Ibid., p. 25.

<sup>46</sup> The Rural Economic Development Innovation (REDI) Initiative provides free technical assistance for up to two years to help rural towns and regions create and implement economic development plans. In 2019, RUS announced that a REDI Initiative partner would support the Washoe Tribe of Nevada and California and the Cheyenne River Sioux Tribe implement their plans (USDA, RD, “Rural Economic Development Innovation (REDI),” fact sheet, June 2019; USDA, “Rural Economic Development Innovation: June 6, 2019,” [https://www.rd.usda.gov/files/RuralEcon\\_DevelopInnov\\_CHART0619.pdf](https://www.rd.usda.gov/files/RuralEcon_DevelopInnov_CHART0619.pdf)).

conducts outreach webinars and listening sessions with Tribes and other Indigenous entities<sup>47</sup>

## Policy Issues

Congress may choose to constrict, maintain, or expand statutes governing tribal and other Indigenous entity access to RUS programs. If Congress chooses to change the statutes governing these programs, it may consider the following policy issues:

- Program eligibility
- Program financial flexibility
- Technical assistance
- Use of the SUTA authority

## Program Eligibility

Currently, the eligibility of tribal and other Indigenous entity applicants varies across RUS programs. For example, in many cases, RUS statutes may include a few terms related to eligibility that the RUS regulations further define. In other cases, RUS statutes are silent on eligibility but regulations address it.<sup>48</sup> Although statutory provisions were not identified for all RUS programs, all regulations include Tribes as eligible applicants and some allow for other Indigenous entity applicants. For example, sometimes ANCs or tribal organizations are included as eligible entities. State-recognized tribes are explicitly eligible for one RUS program. Native Hawaiians were not identified as eligible for any RUS programs.

Congress may consider the potential impacts of broadening eligibility to more Indigenous entities and of creating consistent eligibility requirements within and across RUS programs.

## Eligibility of Tribes vs. Other Indigenous Entities

Some Tribes have stressed that their unique government-to-government relationship with the United States grants them access to federal benefits and services that should not be made available to other Indigenous entities. For example, when the U.S. Department of the Treasury determined that ANCs were eligible for funding under Title V of the CARES Act (P.L. 116-136), even though ANCs are not Tribes, some Tribes sued the federal government.<sup>49</sup> Those Tribes argued that the United States has a federal trust responsibility, or legal obligation, only toward Tribes.<sup>50</sup> Similarly, some tribal associations have argued against the participation of Indigenous entities, including ANCs, in federal consultation and policymaking.<sup>51</sup>

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<sup>47</sup> For example, USDA RD conducted a consultation and listening session with tribal leaders and tribal partners in April 2023 exploring tribal barriers to accessing RUS programs and services titled, "Consultation and Listening Session on Tribal Barriers at USDA."

<sup>48</sup> When that occurs, it is possible that Congress intended to provide the agency discretion in interpreting and implementing the statute. See *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 104 S. Ct. 2778 (1984).

<sup>49</sup> See *Yellen v. Confederated Tribes of the Chehalis Reservation*, 141 S. Ct. 2434 (2021).

<sup>50</sup> *Yellen v. Confederated Tribes of the Chehalis Reservation*, 141 S. Ct. 2434 (2021), Brief for Respondents Confederated Tribes of the Chehalis Reservation, et. al, March 24, 2021, p. 45, [https://sct.narf.org/documents/alaska\\_native\\_corp\\_v\\_chehalis/brief\\_respondent.pdf](https://sct.narf.org/documents/alaska_native_corp_v_chehalis/brief_respondent.pdf). For information about the federal trust responsibility, see *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942).

<sup>51</sup> See, for example, Letter from United South and Eastern Tribes Sovereignty Protection Fund to Raul Grijalva, (continued...)

By contrast, certain other Indigenous entities have argued that they should have similar access to federal programs and funding as Tribes. ANCs have asserted that many Tribes in Alaska lack the capacity to manage federal programs or funding compared with ANCs.<sup>52</sup> Furthermore, ANCs have argued that they provide benefits and services to more than 100,000 Alaska Natives.<sup>53</sup> Others argue that all Indigenous peoples should be treated equitably. For example, some Native Hawaiians have asked for “funding and programming equity for all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians.”<sup>54</sup>

Congress has recognized the unique status of certain other Indigenous entities, but not consistently.<sup>55</sup> For example, both statute and regulations make Alaska Native Villages and the Alaska Native Tribal Health Consortium eligible for the RUS Grants for Rural and Native Alaskan Villages Program.<sup>56</sup> Although RUS statutes do not mention ANCs, at times, Congress has required federal agencies to treat ANCs like Tribes for certain purposes.<sup>57</sup> In addition, Congress has authorized programs to benefit state-recognized tribes.<sup>58</sup> Further, Congress has enacted legislation to benefit Native Hawaiians.<sup>59</sup>

Members of Congress may consider whether to constrict, maintain, or expand current RUS program eligibility requirements. Constricting eligibility for RUS programs may allow Congress to prioritize funding for specific tribal or other Indigenous entity applicants. Broadening eligibility for RUS programs to include more Indigenous entities may result in RUS programs serving a wider range of communities in need. At the same time, expanding eligibility could dilute the amount of funding all eligible parties could receive. In that case, Congress would be faced with the choice of whether to allocate additional funds to RUS programs to make up for less funding per eligible entity or to keep funding at current levels, resulting in more eligibility but fewer dollars per entity.

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Chairman of the House Natural Resources Committee, March 11, 2022, pp. 2-3, [https://www.usetinc.org/wp-content/uploads/2022/04/USET-SPF-Comments-RESPECT-Act-FINAL-3\\_11\\_22\\_-002.pdf](https://www.usetinc.org/wp-content/uploads/2022/04/USET-SPF-Comments-RESPECT-Act-FINAL-3_11_22_-002.pdf).

<sup>52</sup> *Yellen v. Confederated Tribes of the Chehalis Reservation*, 141 S. Ct. 2434 (2021), Brief for Petitioners, February 22, 2021, p. 22, [https://www.supremecourt.gov/DocketPDF/20/20-543/169530/20210222130534513\\_20-544%20ts%20anc%20merits%20brief%20final.pdf](https://www.supremecourt.gov/DocketPDF/20/20-543/169530/20210222130534513_20-544%20ts%20anc%20merits%20brief%20final.pdf).

<sup>53</sup> *Ibid.*

<sup>54</sup> Prepared Statement of Hon. Carmen “Hulu” Lindsey, Chair, Board of Trustees, Office of Hawaiian Affairs, U.S. Congress, Senate Indian Affairs, *Upholding the Federal Trust Responsibility: Funding and Program Access for Innovation for Native Hawaiians—Part 1 and 2*, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 2022, S. Hrg. 117-318 (Washington: GPO, 2022), p. 4. Some Native Hawaiians have cited a lack of community broadband access as an issue of “digital inequity” (Prepared Statement of William J. Aila, Jr., Chairman, Hawaiian Homes Commission, U.S. Congress, Senate Indian Affairs, *Upholding the Federal Trust Responsibility: Funding and Program Access for Innovation for Native Hawaiians—Part 1 and 2*, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 2022, S. Hrg. 117-318 (Washington: GPO, 2022), p. 4).

<sup>55</sup> For example, in ANCSA, Congress highlighted the need to provide for “the real economic and social needs of Natives . . . with maximum participation by Natives in decisions . . . affecting their rights and property” (43 U.S.C. §§1601).

<sup>56</sup> 7 U.S.C. §1926d and 7 C.F.R. §1784.8.

<sup>57</sup> For example, the Consolidated Appropriations Act, 2004 (P.L. 108-199, Div. H, §161), required federal agencies to consult with ANCs on the same basis as Tribes under Executive Order 13175.

<sup>58</sup> See, for example, 25 U.S.C. §4103.

<sup>59</sup> See, for example, 25 U.S.C. §11701 (“the authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii”).

## Eligibility Requirements Within and Across RUS Programs

The differences in program eligibility across RUS utility programs raise several questions. First, there is a question of whether the current differences in program eligibility comport with congressional intent. For example, many statutes are silent regarding the eligibility of Tribes and other Indigenous entities, whereas regulations may address the matter of their eligibility. Alternatively, RUS may interpret the same statutory language differently depending on the program. For example, statutes or regulations for six programs state that Tribes “on federal and state reservations and other federally recognized Indian Tribes” are eligible applicants.<sup>60</sup> Tribes are eligible for all of these programs, but it is unclear whether state-recognized tribes are eligible. The Water and Waste Facility Loans and Grants to Alleviate Health Risks Program’s regulations limit eligibility to Tribes (and tribal organizations).<sup>61</sup> Alternatively, perhaps due to the statutory ambiguity, the Solid Waste Management Grant Program regulations also allow state-recognized tribes to apply.<sup>62</sup>

Another issue is whether these differences in program eligibility impact program implementation. Program differences may make it challenging for RUS, Tribes, and other Indigenous entities to understand RUS eligibility requirements. For example, some RUS program statutes or regulations include ANCs explicitly, some include ANCs implicitly (by referencing the ISDEAA definition of Tribe), and others are silent on the eligibility of ANCs. In addition, some RUS electric program regulations state that “other tribal entities” are eligible but do not define the term; therefore, it is unclear which other Indigenous entities are eligible.<sup>63</sup>

Congress has several options regarding programmatic eligibility. It may want to explore whether to make eligibility requirements consistent across RUS programs or within RUS program areas. Another option would be to amend statutes that currently are silent regarding eligibility to clarify congressional intent. Alternatively, Congress could not take action and continue to allow RUS discretion in determining eligibility.

## Program Financial Flexibility

Some Tribes and other Indigenous entities have supported increasing RUS program financial flexibility, such as waiving matching fund requirements for grants, to potentially increase their access. For example, Native Hawaiian communities have asked RUS to consider the financial feasibility of a proposed project rather than the financial standing of the applicant to enable more applicants to get loans.<sup>64</sup> Some tribal associations have asked RUS to waive matching requirements for RUS programs, asserting that matching requirements can be “a significant barrier.”<sup>65</sup>

During the Biden Administration, RUS has expressed support for increasing tribal access through providing program flexibility. One example concerns the ReConnect Program, which provides

<sup>60</sup> 7 C.F.R. §1778.6; 7 U.S.C. §1926(a)(2)(B); 7 C.F.R. §1774.12; 7 U.S.C. §1926c(a)(1); 7 U.S.C. §1926(a)(1); 7 C.F.R. §1780.7; 7 C.F.R. §5001.126(c).

<sup>61</sup> 7 C.F.R. §1777.4

<sup>62</sup> 7 C.F.R. §1775.65.

<sup>63</sup> Ibid.

<sup>64</sup> RUS, “Substantially Underserved Trust Areas, Final Rule,” 77 *Federal Register* 35247, June 13, 2012.

<sup>65</sup> Erin Parker et al., *Gaining Ground: A Report on the 2018 Farm Bill Successes for Indian Country and Opportunities for 2023*, Native Farm Bill Coalition, Commissioned by the Native American Agriculture Fund and Skakopee Mdewakanton Sioux Community, 2022, p. 69, <https://www.nativefarmbill.com/gaining-ground> (hereinafter NFBC, *Gaining Ground*).

grants and loans to deploy broadband to rural areas. In the 2022 ReConnect Program Notice of Funding Opportunity, RUS waived the matching requirements for tribal applicants proposing to provide service to tribal lands.<sup>66</sup> In addition, RD has stated that Tribes are “encouraged” to request flexibility and to explore waivers, although it also has acknowledged its limited statutory discretion regarding financial requirements.<sup>67</sup>

Some people may oppose increasing program flexibility for various reasons. First, doing so may increase financial risks to the borrower and RUS. In addition, some people may claim that increased program flexibility would unfairly redistribute limited funding from non-Native communities with utility needs. Increasing program flexibility for issuing loans may have other consequences, including increased financial risk. If RUS programs waive certain fiscal requirements for applicants, then the risk of default increases. Applicants may receive loans that they are unable to pay back and may risk losing any property or equipment they put up for collateral. In addition, the loan subsidy amount for the RUS loan and loan guarantee programs may need to increase to account for a potentially higher rate of default, thereby increasing the cost of the programs to federal taxpayers.

Members of Congress may consider whether to constrict, maintain, or expand current RUS program financial flexibility requirements. Congress has waived matching requirements for ReConnect Program grants for applicants that are “Alaska Native Corporations or federally-recognized Tribes” on SUTAs, as defined by the statute governing the SUTA authority.<sup>68</sup> This waiver was limited to ReConnect Program grants funded through the Infrastructure Investment and Jobs Act (P.L. 117-58).

In the 118<sup>th</sup> Congress, several bills would reduce the matching requirements for several RUS programs. For example, S. 1580, the MORE USDA Grants Act, would reduce the matching requirement by 50% for several programs, including RUS programs, in certain geographic areas.<sup>69</sup> In addition, S. 2385, the Tribal Access to Clean Water Act of 2023, would waive matching requirements for RUS grants for technical assistance.

Another option may be to provide financial flexibility in using the SUTA authority. Congress may consider whether to increase appropriations for RUS loan programs to cover increased costs associated with offering 2% interest rate loans for RUS programs for Tribes and Indigenous entities applying for funding. This approach could provide clarity and could address RUS’s concern about violating the Anti-deficiency Act.

## Tribal Technical Assistance

Some Members of Congress, Tribes, tribal associations, and other stakeholders have asserted that USDA RD should provide more technical assistance and outreach to help Tribes compete for RUS program funds.<sup>70</sup> Many Tribes and other Indigenous entities have asserted that USDA

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<sup>66</sup> RUS, “Rural e-Connectivity Program,” 87 *Federal Register* 47692, August 4, 2022.

<sup>67</sup> RD, “Collaborating.” p. 2. See also RUS, “Substantially Underserved Trust Areas, Final Rule,” 77 *Federal Register* 35247, June 13, 2012.

<sup>68</sup> Infrastructure Investment and Jobs Act (P.L. 117-58), Division J, Title I. SUTA authority is provided in 7 U.S.C. §936f(a)(2).

<sup>69</sup> S. 1580.

<sup>70</sup> Letter from Native Farm Bill Coalition (NFBC), Intertribal Agriculture Council, and Indigenous Food and Agriculture Initiative, to Heather Dawn Thompson, Director of the USDA Office of Tribal Relations, March 22, 2021, p. 8, [https://www.indianag.org/\\_files/ugd/53da25\\_e69b33eb4a3e4ee09fe3391e7aea671c.pdf](https://www.indianag.org/_files/ugd/53da25_e69b33eb4a3e4ee09fe3391e7aea671c.pdf) (hereinafter NFBC, “Letter”). See also USDA Equity Commission, *Interim Report 2023: Recommendations Made to the U.S. Department* (continued...)

technical assistance is needed because they often lack the technical capacity or information to navigate USDA programs and services.<sup>71</sup> For example, RUS's loan and grant programs may require architectural and engineering designs, contracting documents, tribal codes and ordinances, land leases, and loan and/or grant agreements.<sup>72</sup> In addition, some claim that although tribal and other Indigenous entities are eligible for RUS broadband funding, they often compete against governmental, corporate, and nonprofit entities with more capacity.<sup>73</sup>

Tribal associations and other stakeholders have made various suggestions for improving RUS's tribal technical assistance processes. For example, the Native Farm Bill Coalition recommended that USDA RD establish the Tribal Technical Assistance Office authorized in the 2018 farm bill.<sup>74</sup> Indigenous entities also have recommended that Congress appropriate funding for this office.<sup>75</sup> In addition, USDA could award funding to third-party organizations to provide technical assistance to Tribes and other Indigenous entities.<sup>76</sup>

Some stakeholders have raised concerns about the possibility of USDA providing additional technical assistance to Tribes and other Indigenous entities. They note, for example, that capacity challenges are not unique to Tribes and other Indigenous entities. For example, remote rural communities with small populations may face similar challenges accessing adequate utilities as rural tribal communities. Providing more assistance to Tribes or other Indigenous entities could result in less assistance provided to other rural communities in need.

If Congress seeks to take action, it could consider whether to maintain or expand RUS's technical assistance to Tribes and other Indigenous entities. In the 118<sup>th</sup> Congress, a hearing was held on S. 2385, the Tribal Access to Clean Water Act of 2023, which among other things would amend RUS's water and wastewater authority (7 U.S.C. §§1926c-1926d) to enable the agency to make or insure loans and make grants to eligible entities for technical assistance.<sup>77</sup> If Congress determines that technical assistance should be increased, it could consider whether to appropriate funding to the USDA RD Tribal Technical Assistance Office, which Congress authorized in 2018.

## Use of the Substantially Unserved Trust Areas Authority

Tribal associations, such as the Native Farm Bill Coalition, have called on Congress to expand the SUTA authority to all USDA RD programs.<sup>78</sup> The coalition, RUS staff, and others have stated that the SUTA authority's flexibility has allowed more tribal and other Indigenous entities to access RUS programs.<sup>79</sup>

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*of Agriculture to Advance Equity for All*, p. 20, <https://www.usda.gov/sites/default/files/documents/usda-ec-interim-report-2023.pdf> (hereinafter USDA EC, *Interim Report*).

<sup>71</sup> *Ibid.* See also Testimony of Manuel Heart, Chairman, Ute Mountain Ute Tribe, in U.S. Congress, Senate Committee on Indian Affairs, *Legislative Hearing to Receive Testimony on S. 2385, S. 2868, S. 3022, S. 2796 & S. 3230*, 118<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 8, 2024 pp. 2-3, <https://www.indian.senate.gov/wp-content/uploads/2024-02-08-HRG-Testimony-Heart.pdf> (hereinafter SCIA Water Hearing).

<sup>72</sup> RD, "Collaborating," p. 24.

<sup>73</sup> NFBC, *Gaining Ground*, p. 66.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*, p. 68.

<sup>76</sup> USDA EC, *Interim Report*.

<sup>77</sup> SCIA Water Hearing.

<sup>78</sup> NFBC, *Gaining Ground*, p. 65.

<sup>79</sup> *Ibid.*

Others may argue that more oversight is needed on current SUTA authority implementation before any potential expansion. In a 2019 report, the USDA Office of the Inspector General (OIG) reported that RUS did not efficiently and effectively track its SUTA-related loans and grants.<sup>80</sup> OIG recommended that RUS establish a new online application system to track (1) the number of loans and grants made specifically to Native American communities and (2) whether SUTA provisions were applied to these loans and grants. Evidence of RUS implementation of these recommendations was not identified.

If Congress seeks to take action, it could consider whether Congress could expand or eliminate the SUTA authority is a source of debate. Congress has highlighted potential uses of the SUTA authority. For example, the conference report for the 2018 farm bill (H.Rept. 115-102) stated that SUTA authority could be used to refinance loans issued through the Telecommunication Infrastructure Loan and Loan Guarantee Program for broadband loans. The report acknowledged that these loans are “serving the most difficult, and highest cost areas of the country, and allowing for the refinancing of higher interest loans will provide the ability for these telecommunications carriers to continue to build high-speed broadband networks.”<sup>81</sup> Also, Congress may want to consider directing RUS to collect and report data on its current implementation of SUTA authorities to help inform a decision on whether to expand authority to designate SUTAs to all USDA RD programs, as the 2019 OIG report suggested. This report could include information such as how often SUTA is used and for which RUS programs, as well as which tribal or other Indigenous entities benefit.

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<sup>80</sup> U.S. Office of the Inspector General, *Infrastructure Funding for Substantially Underserved Trust Areas (SUTA)*, Audit Report 09601-0002-41, June 2019.

<sup>81</sup> H.Rept. 115-102 for the Agriculture Improvement Act of 2018 (P.L. 115-334).