

# Funding Opportunities for Tribes under the Inflation Reduction Act

Information for Tribal Nations

March 28, 2024

USET/USET SPF Impact Week

Arlington, VA



# Presenters

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## USET/USET SPF TRIBAL NATIONS

1. Eastern Band of Cherokee Indians  
Ani'Yunwiya
2. Miccosukee Tribe of Indians of Florida  
Mikasuki
3. Mississippi Band of Choctaw Indians  
Chahta
4. Seminole Tribe of Florida  
I:la:ponathli
5. Chitimacha Tribe of Louisiana  
Sitimaxa
6. Seneca Nation of Indians  
Onondowa'ga'
7. Coushatta Tribe of Louisiana  
Koasati
8. Saint Regis Mohawk Tribe  
Akwasasne
9. Penobscot Indian Nation  
Panawahpskek
10. Passamaquoddy Tribe - Pleasant Point  
Peskotomuhkati
11. Passamaquoddy Tribe - Indian Township  
Peskotomuhkati
12. Houlton Band of Maliseet Indians  
Metaksonikewiyik
13. Tunica-Biloxi Tribe of Louisiana  
Tayoroniku - Halyayihku
14. Poarch Band of Creek Indians  
Mvskoke
15. Narragansett Indian Tribe  
Nanaanongseuk
16. Mashantucket Pequot Tribal Nation  
Pequot
17. Wampanoag Tribe of Gay Head (Aquinnah)  
Aquinnah
18. Alabama-Coushatta Tribe of Texas  
Alibamu & Koasati
19. Oneida Indian Nation  
Onyota'a:ka:
20. Aroostook Band of Micmacs  
Mikmaq Nation
21. Catawba Indian Nation  
Ye Iswah h'reh
22. Jena Band of Choctaw Indians  
Chahta
23. The Mohegan Tribe  
Mohiks
24. Cayuga Nation  
Gayogoho:no'
25. Mashpee Wampanoag Tribe  
Maseepee Wöpanáak
26. Shinnecock Indian Nation  
Shinnecock
27. Pamunkey Indian Tribe  
Pamunkey
28. Rappahannock Tribe  
Rappahannock
29. Chickahominy Indian Tribe  
Chickahominy
30. Chickahominy Indian Tribe - Eastern Division  
Chickahominy - Eastern Division
31. Upper Mattaponi Indian Tribe  
Mattaponi
32. Nansemond Indian Nation  
Nansemond
33. Monacan Indian Nation  
Monacan
34. USET Headquarters
35. USET SPF Office



## United South and Eastern Tribes (USET)

Established in 1969, the United South and Eastern Tribes, Inc. (USET) is a non-profit, inter-Tribal organization serving thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET is dedicated to enhancing the development of Tribal Nations, improving the capabilities of Tribal governments, and improving the quality of life for Indian people through a variety of technical and supportive programmatic services.

## USET Sovereignty Protection Fund (USET SPF)

Established in 2014, the 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. 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.

Learn about our work to protect, promote, and advance the inherent sovereign rights and authorities of our member Tribal Nations at [www.usetinc.org](http://www.usetinc.org).

*Because there is Strength in Unity*



# USET National Outreach, Education, and Advocacy Project

- National outreach and education
  - In-person trainings at various org partner meetings and conferences
    - Previous: 80<sup>th</sup> NCAI Annual Convention, 2024 Reservation Economic Summit
    - Upcoming: 2024 Tribal Self-Governance Conference – Tuesday, April 16, 3:15-4:30pm; Chandler, AZ
  - Ongoing scheduled webinars
  - Partnerships with orgs and federal agencies
  - Educational materials: Infrastructure webpage, social media, 1-pagers, short videos, calendar of events related to Tribal infrastructure
- Advocacy for Tribal interests – both on and off Tribal homelands

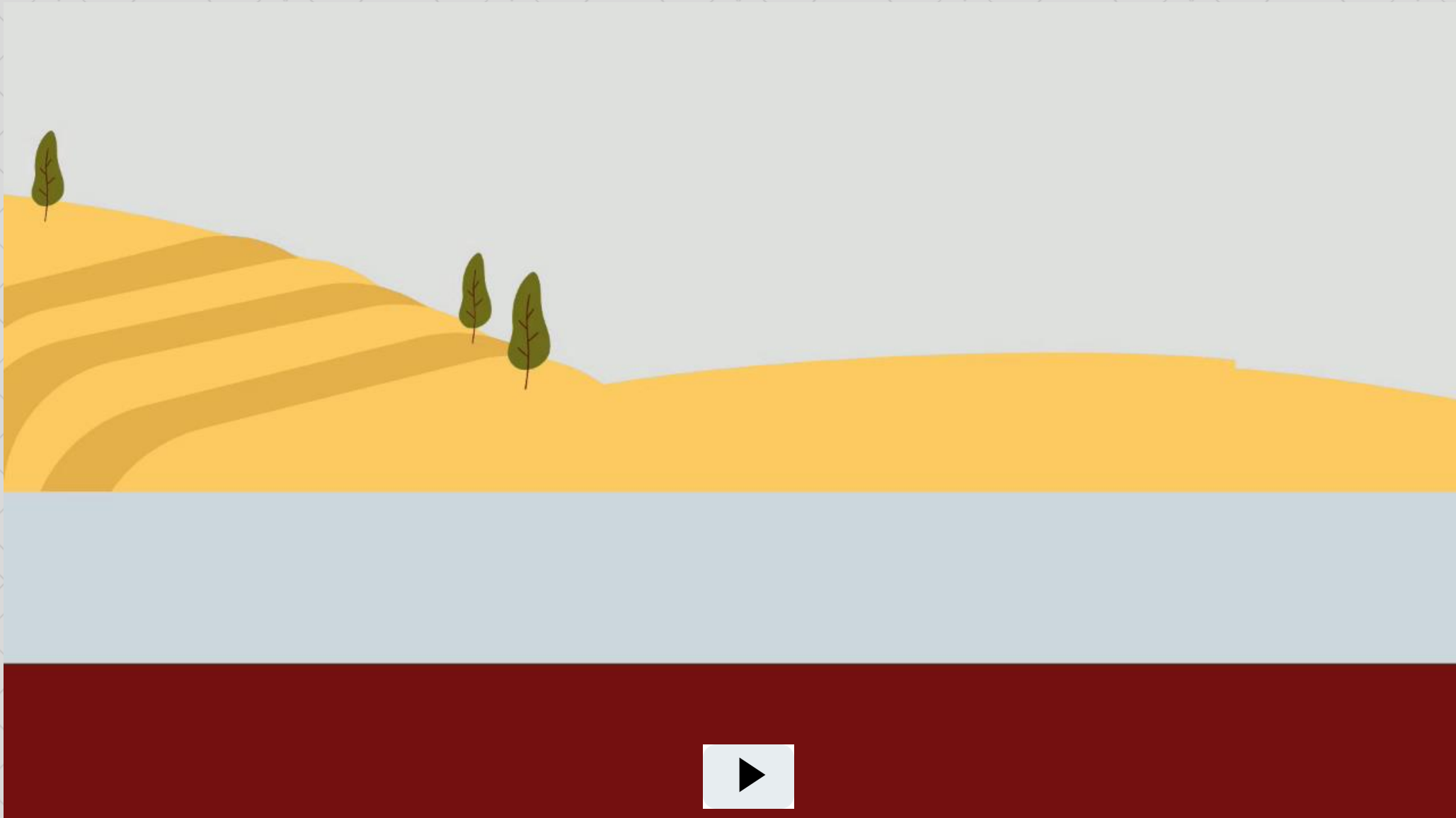


# USET Tribal Infrastructure Development Program Goals

- Awareness of how infrastructure laws impact Tribal Nations and what funding is available
- Access to IRA and other infrastructure funding
  - Implement in ways that work for Tribal Nations
- Equity in the distribution of funding between Tribal Nations and with other units of government
- Flexibility to respond to local conditions
- Streamlining in application and reporting processes
- Protection for Tribal sovereignty, sacred/cultural sites, and public health
- [www.usetinc.org/infrastructure](http://www.usetinc.org/infrastructure)



# IRA Educational Video





# Inflation Reduction Act

August 16, 2022: President Biden signs into law **H.R. 5376, the Inflation Reduction Act**

- \$437 billion in spending on energy and climate, reducing health care costs, increasing corporate minimum tax
- Direct Funding to Tribal Nations/Native Hawaiians = \$720M—0.16% of total funding
  - Includes \$75 million for the Tribal Energy Loan Guarantee Program and \$20 billion in allowable loan guarantees

**Tribal Nations are eligible for billions more through dozens of additional federal programs, including tax credits for clean energy projects and a first-of-its-kind opportunity for tax-exempt entities to receive cash payments for the tax credits.**



# Disclaimer

- This presentation provides an overview of certain Inflation Reduction Act funding opportunities for general informational purposes only and is not itself tax guidance or legal advice.
- The content in this presentation is based on final, proposed, and temporary regulations, other tax guidance on official agency websites, webinars, and other public information.
- This deck relies on simplifications and generalizations to convey high-level points about Inflation Reduction Act tax provisions. Please refer to guidance issued by the IRS for detailed information on the rules associated with Inflation Reduction Act tax provisions.
- The Final Rule for Section 6417 Elective Pay was released on March 5, 2024. This presentation does not comprehensively cover the final rule.





# Section 6417 Elective Pay



# What is it?

- Elective pay or direct pay allows tax-exempt and governmental entities that do not owe federal income taxes to receive a payment equal to the full value of tax credits they would otherwise qualify for if they paid federal income taxes.
- Elective pay is a “force multiplier.”



# List of Applicable Entities (Non-Exhaustive)

- “Any organization exempt from the tax imposed by subtitle A of the Internal Revenue Code” – includes 501(c)(3) organizations
- Indian Tribal governments
- Alaska Native Corporations (ANCs)
- Agencies, instrumentalities, and subdivisions of Indian Tribal governments – this category may include:
  - Tribal housing authorities
  - Tribal utility authorities



# What tax credits are eligible for elective pay?

## Energy Generation & Carbon Capture

- Production Tax Credit for Electricity from Renewables (§45, pre-2025)
- Clean Electricity Production Tax Credit (§ 45Y, 2025 onwards)
- Investment Tax Credit for Energy Property (§ 48, pre-2025)
- Clean Electricity Investment Tax Credit (§ 48E, 2025 onwards)
- **Low-Income Communities Bonus Credit (§ 48(e), 48E(h))**
- Credit for Carbon Oxide Sequestration (§45Q)
- Zero-Emission Nuclear Power Production Credit (§ 45U)

## Other Categories

- Manufacturing
  - Advanced Energy Project Credit (§48C)
  - Advanced Manufacturing Production Credit (§ 45X)
- Vehicles
  - Credit for Qualified Commercial Clean Vehicles (§ 45W)
  - Alternative Fuel Vehicle Refueling Property Credit (§ 30C)
- Fuels
  - Clean Hydrogen Production Tax Credit (§ 45V)
  - Clean Fuel Production Credit (§ 45Z, 2025 onwards)



# Examples of Projects that May Qualify for Elective Pay\*



## Wind Power Opportunities

- Wind power is growing in the U.S. and currently supplies more than 10% of electricity generation.
- The IRA extends and increases tax credits for wind energy projects that begin construction prior to January 1, 2025
- The Renewable Electricity Production Tax Credit (PTC)—allows owners and developers of wind energy facilities (land based and offshore) to claim a federal income tax credit on every kilowatt-hour (kWh) of electricity supplied to the power grid annually for a period of 10 years after a facility is placed into service. This applies to Tribal Nations.

## Solar Arrays

- The objective of solar projects on Tribal Nation's lands are to offset carbon emissions, increase self-reliance and community resilience, and reduce overall energy cost
- There are many examples of this being done with existing buildings on Tribal land, tax credit is available for these types of innovative projects

\*If all requirements are satisfied.



# How does it work?

- Pursue the tax-credit eligible project and ensure all requirements for the tax credit are met.
- Register the project with the IRS by completing the “pre-filing registration process” at least 120 days before the filing deadline.
- File the required annual tax return (e.g., Form 990-T, for a Tribal government) by the due date and make a valid elective pay election.
- The IRS will issue a cash payment within 45 days of filing.





# Special Rule on Tax-Free Grants & Forgivable Loans

- General rule for tax credits: When a tax-free grant or forgivable loan is used to fund a qualifying project upfront, the **base cost amount is reduced by the amount of the grant or loan** for purposes of calculating the tax credit.
- Example:
  - Total project cost: \$1,000,000
  - Tax credit: 20%
  - Amount of total project cost funded by grant: \$100,000
  - Under the **general rule**, the total cost basis would be **reduced** to \$900,000, **resulting in a tax credit of \$180,000 - \$20,000 less** than if the total cost of the project were included in the project's base



# Special Rule for Grants & Loans (cont'd)

- **The final rule for elective pay waives the general rule for investment tax credits.**
  - Investment Tax Credit for Energy Property (§ 48, pre-2025)
  - Clean Electricity Investment Tax Credit (§ 48E, 2025 onwards)
  - Advanced Energy Project Credit (§48C)
  - Credit for Qualified Commercial Clean Vehicles (§ 45W)
  - Alternative Fuel Vehicle Refueling Property Credit (§ 30C)
- One caveat: The amount of the tax credit + the amount of the tax-free grant or forgivable loan cannot exceed the total cost of investment, **if the grant or loan was received for the specific purpose of obtaining the property.**



# Rules & Guidance

- **Final rule**: Published March 11, takes effect May 10.

The final rule covers:	The final rule does NOT cover:
<ul style="list-style-type: none"><li>• Applicable entities</li><li>• Pre-filing registration</li><li>• How to determine a project’s “tax year”</li><li>• Special rule on tax-free grants and forgivable loans</li></ul>	<ul style="list-style-type: none"><li>• The tax status of Tribally-chartered corporations</li><li>• Rules for elective pay for certain co-ownership arrangements – covered by a separate notice of proposed rulemaking</li></ul>

- Additional Guidance:
  - [IRS Webpage on Elective Pay](#)
  - [IRS Publication 5817 \(3-2024\) – Elective Pay Overview](#)
  - [IRS Publication 5817-F \(3-2024\) – Indian Tribal Governments](#)
  - [Proposed Regulations on effect of domestic content requirements on elective pay](#)
  - [FAQ's](#)
- **Subscribe** to IRS news updates for Tribal governments.



# Upcoming Tribal Consultation

- Treasury will be hosting a Tribal consultation titled “Elective Pay and Certain Joint Ownership Arrangements” on Friday, April 5, 2024, at 1 p.m. Eastern.
- Register [here](#).



# Pre-Filing Registration Resources

- Eligible entities must complete pre-filing registration with enough time (**the current recommendation is at least 120 days**) before the filing deadline for the IRS to provide a **registration number** for each applicable credit property.
- Resources:
  - [Pre-filing registration portal](#)
  - [User guide with step-by-step instructions](#)
- Note: it is very important to review the instructions before beginning the registration process, because **only one authorized representative for an entity may complete the registration**, and submissions **may not be edited** until the IRS responds.



# Pre-Filing Registration Resources (cont'd)

To assist in the pre-filing registration process, the IRS is offering office hours through Microsoft Teams to help entities navigate the pre-filing registration tool.

Date	Time	Registration Link
February 28, 2024	1-2:30 PM EST	<a href="#">Register Here</a>
March 6, 2024	1-2:30 PM EST	<a href="#">Register Here</a>
March 13, 2024	1-2:30 PM EDT	<a href="#">Register Here</a>
March 20, 2024	1-2:30 PM EDT	<a href="#">Register Here</a>
March 27, 2024	1-2:30 PM EDT	<a href="#">Register Here</a>
April 3, 2024	1-2:30 PM EDT	<a href="#">Register Here</a>
April 10, 2024	1-2:30 PM EDT	<a href="#">Register Here</a>
April 17, 2024	1-2:30 PM EDT	<a href="#">Register Here</a>
April 24, 2024	1-2:30 PM EDT	<a href="#">Register Here</a>





# Elective Pay FAQs

- **Question:** Is elective pay worth the upfront risk? What if I unexpectedly run out of funding to complete the project?
- **Answer:** Eligible entities seeking to take advantage of elective pay must be willing to address two primary areas of risk:
  - **Project Completion:** Related to the failure to put a project into service.
  - **Compliance:** Related to ensuring that a completed project meets all the underlying requirements of the applicable tax credit and any bonus credits.

While these project completion and compliance risks can take substantial resources, they are common risks associated with other forms of federal funding or tax code benefits.



# Elective Pay FAQs (cont'd)

- **Question:** If the payment doesn't come until after a project has been put in service, where does the up-front funding come from?
- **Answer:**
  - For investment-related tax credits, funding can come from tax-free grants and forgivable loans, as well as other sources.
    - [USDA Rural Economic Development Loan & Grant Program](#)
    - [USDA Strategic Economic and Community Development Program](#)
  - For other tax credits, funding can come from bridge or debt financing.
    - [Department of Energy Tribal Energy Finance Program](#)
    - [Other Department of Energy Funding and Financing Programs](#)



# Elective Pay FAQs (cont'd)

- **Question:** My Tribe/Tribal organization is very small. How do I know if we have the capacity to implement a tax creditable project?
- **Answer:** This is a judgment call all eligible entities will need to make for themselves. Some ways to make things easier:
  - Seek out technical advice and assistance from other entities
  - Pursue projects with a larger, higher capacity eligible entity as a partner and leader



# Low Income Communities Bonus Credit (26 U.S.C. § 48(e))



# Introduction

The Low-Income Communities Bonus Credit Program adds a 10% or 20% increase to the existing energy investment tax credit for **qualified solar and wind facilities < 5 MW-AC.**



# Introduction (cont'd)

- The Section 48 renewable energy investment tax credit operates on a tier structure:
  - Tier 1: 6% base credit for baseline requirements
  - Tier 2: + 24% credit for prevailing wage and apprenticeship labor requirements
  - Tier 3: + 10% bonus for each of the following categories –
    - The project is located in an “energy community”
    - The project meets domestic content requirements
    - The project benefits “low-income communities” – some projects may qualify for a 20% bonus
- **If a project meets all of the tiers, it could be eligible for a tax credit up to 70% of the base cost.**





# Introduction (cont'd)

## Investment Tax Credit (ITC)

Construction Date	Base (Project does not satisfy prevailing wage and apprenticeship requirements)			Bonus Rate (Project satisfies prevailing wage and apprenticeship requirements)			Additional Bonus: Low-Income Community (<5MW project)	
	Base Credit	Bonus: Domestic Content	Bonus: Energy Community	Base Credit	Bonus: Domestic Content	Bonus: Energy Community	Low-Income Community/ Indian Land	Qualified Low-Income Residential Building / Economic Benefit Project
2020 - 2021	26%	-	-	26%	-	-	-	-
2022	6%	-	-	30%	-	-	-	-
2023 – 2033*	6%	2%	2%	30%	10%	10%	10%	20%

Image courtesy of Forest Brown Todd



# How does the bonus credit work?

- The Department of Energy will allocate 1.8 GW of capacity per year among four categories of facility.
- For Program Year 2023, the 1.8 GW was divided amongst the categories as follows:

Category	Allocation (megawatts)	Tax Credit Percentage
(1) Located in a Low-Income Community	700	10%
(2) Located on Indian Land	200	10%
(3) Qualified Low-Income Residential Building Project	200	20%
(4) Qualified Low-Income Economic Benefit Project	700	20%

- Owners of eligible facilities may apply for a Capacity Limitation allocation.
  - Example: the owner of a 2 Mw solar facility located on Indian land can apply for 2 MW of the 200 MW allocation for Category 2.

Chart courtesy of the Department of Energy



# How does it work? (cont'd)

- Once the applicant receives an allocation, it has four years to place the facility in service. *Receipt of an allocation does not guarantee eligibility for the bonus credit.*
- After the facility has been placed in service, the IRS will determine whether the facility is eligible for the bonus credit, or disqualified.
- The IRS will issue an eligibility or disqualification letter. If the IRS issues an eligibility letter, the applicant may claim the bonus credit on their applicable tax filing form OR make a direct pay election, if applicable.



# Application Process

- Applications for Program Year 2023 closed on February 29, 2024. **Applications for Program Year 2024 are expected to open in early spring and unlock a new 1.8 gigawatt Capacity Limitation.**
- Application Process for 2023:
  - Applications opened on October 19, 2023 for an initial 30-day period.
  - Applications submitted within 30 days of the application opening were treated as submitted on the same date and at the same time.
  - At the conclusion of the 30-day period, DOE received over 46,000 applications, representing more than 8 gigawatts of proposed capacity.



# Application Process for 2023 (cont'd)

- Applications were accepted on a rolling basis for categories with available capacity until February 29, 2024.
- A [program capacity dashboard](#) was published after the 30-day period to track the status of the 1.8 GW allocation.





# Additional Selection Criteria

- Program Year 2023 set aside at least 50% of the total capacity in each category facilities that met Additional Selection Criteria.
- Facilities could qualify for Additional Selection Criteria based on Ownership or Geography.

Ownership Criteria Includes:	Geographic Criteria Includes:
<ul style="list-style-type: none"><li>- Tribal enterprises</li><li>- Alaska Native Corporations</li><li>- Renewable energy cooperatives</li><li>- Qualified renewable energy companies</li><li>- Qualified tax-exempt entities</li></ul>	Census- and other federally-designated persistent poverty and environmental justice areas





# Program Resources

- [Ejbonussupport@hq.doe.gov](mailto:Ejbonussupport@hq.doe.gov) – for program questions and applicant portal assistance
- [DOE Program Landing Page](#) – on this page:
  - [Low Income Communities Bonus Credit Final Rule](#)
  - [IRS Procedural Guidance](#)
  - [Applicant Checklist](#)
  - [Applicant User Guide](#)



# Final Thoughts

- Elective Pay and the Low Income Communities Bonus Credit are Congress's most recent efforts to invest in clean energy in Indian Country and offer novel funding mechanisms.
- However, there are still high barriers to entry to take advantage of these opportunities.
- These programs require additional technical assistance, upfront funding, and sophisticated applicants to succeed.



# Current Opportunities to Access Infrastructure-Related Funds

- USDA, RUS ReConnect Program for FY 2024 (Application Deadline May 21, 2024)
- DOI, IED, Tribal Tourism Grant Program (Application Period Opening Spring 2024)
- DOE, Tribal Energy Financing Program (Ongoing until September 30, 2026)
- DOE, Tribal Energy Loan Guarantee Program (Ongoing until August 31, 2028)
- USDA, RUS, Emergency Community Water Assistance Grants (Ongoing)
- USDA Loan Guarantee Programs (Ongoing)
- Helpful resource: BIA Access to Capital Clearinghouse at <http://www.bia.gov/atc>



# USDA ReConnect Program

- The ReConnect Program provides loans and grants for the costs of construction, improvement, or acquisition of facilities and equipment needed to provide broadband service in eligible rural areas.
- The program offers a 100% covered grant for Tribal governments, and Persistent Poverty Areas and Socially Vulnerable Communities.
- Applicants must provide 100 Mbps in the proposed area.
- The maximum award for Tribal governments is \$25 million and no match is required, but the applications are evaluated on a competitive basis.
- The application window closes on May 21, 2024.



# DOI Tribal Tourism Grant Program

- The Office of Indian Economic Development's Tribal Tourism Grant Program (TTGP) aims to support Tribal economic development and fulfill the mission of the [NATIVE Act](#) by providing funding for Tribal Nations to conduct [feasibility studies](#) to help make informed decisions about potential tourism projects.
- The TTPG also provides funding for Tribal Nations to develop business plans for already completed tourism feasibility studies.
- In addition to feasibility studies, TTPG may fund business plans for Tribal tourism businesses that are recovering from the economic impact of the COVID-19 pandemic.



# DOE Tribal Energy Financing Program

- The DOE Loan Program Office supports Tribal investment in energy-related projects by providing direct loans or partial loan guarantees to federally recognized Tribal Nations, including Alaska Native village or regional or village corporations; or a Tribal Energy Development Organization (TEDO) that is wholly or substantially owned by a federally recognized Indian Tribe or Alaska Native Corporation.
- Eligible projects include: Electricity generation, transmission and/or distribution facilities, utilizing renewable or conventional energy sources;
  - Energy storage facilities, whether or not integrated with any of the above
  - Energy resource extraction, refining or processing facilities
  - Energy transportation facilities, including pipelines
  - District heating and cooling facilities
  - Cogeneration facilities
  - Distributed energy project portfolios, including portfolios of smaller distributed generation and storage facilities employed pursuant to a unified business plan





# DOE Tribal Energy Loan Guarantee Program

- The Tribal Energy Loan Guarantee Program supports Tribal investment in energy-related projects by providing loan guarantees to federally recognized Tribal Nations, including Alaska Native villages or regional or village corporations, or a Tribal Energy Development Organization that is wholly or substantially owned by a federally recognized Indian Tribe or Alaska Native Corporation.
- The IRA increased the available loan authority from \$2 billion to \$20 billion and provided \$75 million to carry out the program.
- Loan Guarantees, including guarantees of Federal Financing Bank loans.
- Loan Guarantee authority has no expiration.



# USDA Emergency Community Water Assistance Grant

- This program helps eligible communities prepare, or recover from, an emergency that threatens the availability of safe, reliable drinking water.
- Applicants must show that a major decline in quantity or quality of water occurred within two years of the date of the application. Grants are also awarded when a significant decline in quality and quantity of water is imminent.
- Events that qualify for an emergency grant include:
  - Drought or flood
  - Earthquake
  - Tornado or hurricane
  - Disease outbreak
  - Chemical spill, leak or seepage
  - Other disasters
- NOTE: A federal disaster declaration is not required.



# USDA Loan Guarantee Program

- Loan guarantees for water and waste disposal
- Community Facilities Guaranteed Loan Program
- Loan Guarantees for companies and industries
- Rural Energy for America Guaranteed Loan Program
- More information can be found on USDA's Loan Guarantee Program website at [www.rd.usda.gov/onerdguarantee](http://www.rd.usda.gov/onerdguarantee)



# Questions?



**USET Tribal Infrastructure  
Development Program**



# Thank You!

## Future Presentations:

*Opportunities for Tribal Nations Under the Inflation Reduction Act*

United South & Eastern Tribes

Tribal Self-Governance Conference

April 16, 2024, 3:30-4:45 p.m.



**USET Tribal Infrastructure  
Development Program**

