


MEMORANDUM

May 31, 2023

TO: TRIBAL HOUSING CLIENTS

FROM:  Ed Clay Goodman and Cari L. Baermann
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RE: ***Debt Limit Bill Eliminates Some Unobligated COVID Funds; White House Tribal Engagement Session on Inflation Reduction Act***

This memorandum reports on a couple of important funding matters for tribal housing. On May 28, 2023, the U.S. House of Representatives released the debt limit bill ([H.R. 3746](#), the Fiscal Responsibility Act of 2023) (“Debt Limit Bill”) to extend the debt ceiling and avoid defaulting on the United States’ debt payments. Additionally, on Tuesday, May 30, 2023, the White House and the White House Council on Native American Affairs (WHCNA) hosted a virtual tribal engagement session to discuss the Inflation Reduction Act (P.L. 117—169) (IRA) and its potential benefits for tribal nations and Native communities. Below is a summary of the provisions of the Debt Limit Bill that rescind unobligated funds for housing programs, and of the IRA tribal engagement session.

I. Debt Limit Bill

The U.S. House of Representatives released the Debt Limit Bill that President Biden and Speaker McCarthy reached to extend the debt ceiling and avoid defaulting on the United States’ debt payments. The Debt Limit Bill cleared the House Rules Committee on May 30, 2023, and the House Floor considered the Debt Limit Bill on May 31, 2023. The Senate could vote on it as soon as June 2, 2023, or sometime this weekend.

As has been widely reported, the Federal Government has been at loggerheads over raising the current debt limit. Treasury Secretary Janet Yellen has indicated that the United States Government is spending at a rate that requires the debt limit be raised by approximately June 5 if the United States is to continue to borrow money to meet its obligations. President Biden’s position has been that Congress should pass only a debt ceiling increase without additional provisions. The House Republicans, on the other hand, believe that any temporary increase in the debt limit must be paired with cost cutting provisions.

The Debt Limit Bill has been criticized from both the left and the right, and still needs to be enacted into law. However, with the June 5, 2023 date looming, there will be great pressure on Congress to pass the legislation. The deal extends the debt ceiling beyond the 2024 elections in exchange for funding cuts. Federal spending on domestic programs would essentially be frozen.

The bill does not say what the funding levels would be for each program. Instead, it imposes broad spending caps for future appropriations.

As part of the negotiations, the Republicans insisted on a number of provisions that would rescind \$28 billion in unobligated balances of COVID relief funds from the Consolidated Appropriations Act, 2021, Pub. L. 116–260, and the American Rescue Plan Act (ARPA), Pub. L. 117-2, among other sources. One of the key questions raised by the Debt Limit Bill is what “unobligated balances” means. The bill does not define “unobligated balances.” However, the White House has defined “unobligated balances” as “balances that have not yet been committed by contract or other legally binding action by the Government.”¹ Thus, it is our understanding that funds already disbursed to a tribe have already been obligated, but, in general, funds disbursed to a federal agency for future disbursement to a tribe have not been obligated.

The Debt Limit Bill rescinds unobligated balances for programs at the Department of Housing and Urban Development (HUD), including Tenant-based Rental Assistance (involving Section 8 vouchers), Native American Programs, Housing for Persons with Disabilities, Project-based Rental Assistance (involving Section 8 vouchers), Housing for the Elderly, and Fair Housing Activities. The Debt Limit Bill also rescinds unobligated federal funds from a number of housing programs enacted into law through the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Public Law 116–136, ARPA, and other COVID relief legislation.

The CARES Act provided a \$200 million increase for the annual Indian Housing Block Grant (IHBG) and \$100 million for Indian Community Development Block Grant (ICDBG). Under the Debt Limit bill, unobligated IHBG-CARES and ICDBG-CARES funds are therefore subject to rescission. Most tribes received those funds three years ago and have had a long enough opportunity to spend those funds down. However, several other COVID-related funding sources started coming in after the CARES Act funding, with tighter deadlines for expenditure, and tribal housing programs had to shift their focus to expend those other funds. Some tribes therefore may still have some unobligated CARES Act funding. However, based on the White House’s definition of “unobligated balances,” it is likely that if a tribe signed a contract with HUD for the IHBG-CARES funds, and those funds are in the tribe’s Line of Credit Control System (LOCCS) (HUD’s primary grant disbursement system), those funds will not be rescinded.

The Debt Limit Bill rescinds unobligated balances of amounts made available under the CARES Act for “Tenant-Based Rental Assistance” and “Project-Based Rental Assistance” that affect Section 8 vouchers. While these provisions are not tribal-specific, some of this funding may have been available to use with some tribal projects.

ARPA provided a \$450 million increase for the annual IHBG (IHBG-ARPA) and \$280 million for ICDBG (ICDBG-ARPA). The Debt Limit Bill does not rescind the \$750 million in housing assistance funds made available under Section 11003 of ARPA, which includes IHBG-

¹ Office of Management and Budget, *Balances of Budget Authority, Budget of the U.S. Government, Fiscal Year 2024*, 3 https://www.whitehouse.gov/wp-content/uploads/2023/03/balances_fy2024.pdf.

ARPA and ICDBG-ARPA funds. Our understanding is that there is still a fair amount of unobligated IHBG-ARPA funds. Based on the current language in the Debt Limit Bill, that funding will not be rescinded, even if unobligated.

The Debt Limit Bill also permanently rescinds unobligated balances of amounts made available under the U.S. Treasury’s Emergency Rental Assistance (ERA) program (Section 501(a)(1) of Title V of Division N of Public Law 116–260). However, the Debt Limit Bill does not appear to rescind unobligated balances of the Treasury’s Homeowner Assistance Fund (HAF) program.

II. WHCNAA Engagement Session on Inflation Reduction Act

a. Federal Agency Presentation

The WHCNAA co-chair and Department of the Interior (DOI) Secretary Deb Haaland convened the tribal engagement session on the IRA. The purpose of the call was to provide an opportunity for tribal leaders to share their input and priorities on how the Inflation Reduction Act can meet the needs of their communities with White House and White House Council on Native American Affairs. U.S. Department of Energy (DOE) Secretary Jennifer Granholm, Environmental Protection Agency (EPA) Administrator Michael Regan, and Senior Advisor to the President for Clean Energy Innovation and Implementation John Podesta also provided updates from the Biden Administration on the IRA.

Below is a chart with a list of some of the IRA programs available for tribes and Native Hawaiians.

INFLATION REDUCTION ACT FUNDING PROGRAMS DEDICATED TO TRIBES AND NATIVE HAWAIIANS				
Agency	Program Name	Funding Amount	Program Description	Timing for Funding Announcements
Energy	High-Efficiency Electric Home Rebate Program – Tribal Allocation	\$225 million	To award grants to Tribal entities to develop and implement a high-efficiency electric home rebate program.	Full application and guidance available to Tribes late Summer 2023.
Energy	Tribal Energy Loan Guarantee Program	\$75 million	To support \$20 billion in loan authority for Tribal investment in energy-related projects.	Open for applications on a rolling basis.
Interior	Tribal Electrification Program	\$150 million	To provide financial and technical assistance to Tribes to increase the number of Tribal homes with zero-emission electricity.	Spring 2023
Interior	Tribal Climate Resilience	\$225 million	To support climate resilience planning to help sustain Tribal ecosystems and natural and cultural resources, economies, infrastructure, human health, and safety.	Before the end of 2023
Interior	Tribal Climate Resilience: Fish Hatchery Operations and Maintenance	\$10 million	To extend the life of 88 Tribal hatcheries and support hatchery rearing and stocking programs.	Before the end of 2023
Interior	Native Hawaiian Climate Resilience	\$25 million	To develop and implement a Native Hawaiian Climate Resilience Program.	Spring 2023
Interior	Emergency Drought Relief for Tribes	\$12.5 million	To fund near-term drought relief actions to mitigate drought impacts for Indian Tribes.	Funding opportunity in 2023

Secretary Haaland noted that the IRA is a significant piece of clean energy and climate legislation that provides \$720 million exclusively for tribal nations and Native communities. Some of the highlights of the IRA include the Tribal Electrification Program, which includes \$145 million in funding to assist Tribal homes in areas without adequate electricity in becoming electrified through zero-emissions energy systems, or in transitioning to a zero-emissions energy system. The funding includes technical assistance, planning, and implementation. Secretary Haaland also noted that IRA funding, along with Bipartisan Infrastructure Law funding, is being used to address climate change resilience planning and adaption, habitat restoration, and community relocation. In particular, she noted that DOI recently supported a community-driven relocation effort, with \$135 million committed from the Biden-Harris Administration's Investing in America agenda, to help eleven tribes with their relocation and adaptation efforts.

Senior Advisor Podesta commented on a number of clean energy projects through which tribes can obtain funding. He noted that the IRA set aside \$720 million to tribes for restoration programs on tribal lands. In addition, he noted that the National Oceanographic and Atmospheric Administration is investing \$2.6 billion for coastal resilience, which will include support for tribal fisheries; and the Department of Agriculture is currently accepting applications for clean energy and electrification programs to help rural small businesses, farmers, ranchers, and foresters.

Secretary Granholm noted that the DOE has a Tribal Energy Finance Program offered through its Loan Programs Office (LPO), which will allow it to direct loans to tribes for up to 80% of a tribe's total energy costs without requiring direct application fees or a partial guarantee from a commercial lender. The LPO supports tribal investment in energy-related projects by providing direct loans or partial loan guarantees to federally recognized tribes, including Alaska Native villages or regional or village corporations. Additionally, the LPO now has the ability to work with tribes in a one-on-one manner throughout the entire loan process, which can take up to two years.

Secretary Granholm also discussed the Tribal Home Energy Rebates ("Energy Rebates") program, which is managed by the DOE Office of State and Community Energy Programs. The Energy Rebates program will help eligible households receive up to \$14,000.00 in rebates, which can go toward energy improvements such as a heat pump, induction stove, electrical wiring, insulation, and more. Twenty percent of funding will be available for tribes to use for administrative management of the program. DOE is seeking tribal input on the Energy Rebates program to make sure it works for tribes. Additionally, the DOE is aiming to release administrative and legal guidance for the Energy Rebates program this summer, and to make technical assistance available shortly thereafter.

Administrator Regan discussed several opportunities available to tribes through the EPA. Specifically, he noted that there was \$20 million available for tribes partnering on community-based projects, as well as \$5 million set aside for state-recognized tribes. With regard to technical assistance for investments relating to *all* IRA grants, the EPA is assisting with the opening of 17 resource centers across the country. The National Indian Health Board will be operating one of the resource centers, which is set to open later this summer.

Administrator Regan noted that there will be two additional tribal-specific IRA funding announcements in the coming weeks related to Drinking Water Infrastructure Allotments and Emerging Contaminants for Aquatic Life. Additionally, he noted that the Greenhouse Gas Reduction Fund—a \$27 billion investment—is available for tribes to use to mobilize financing and private capital to address the climate crisis and to promote energy independence. The implementation framework for the Greenhouse Gas Reduction Fund was released on April 19, 2023, and can be found [here](#). Of the \$27 billion, \$7 billion is set aside for the Solar for All competition, which aims to offer affordable, resilient, and clean solar energy. Up to three awards for the Solar for All competition will be set aside for Tribes.

Additional information on other funding available to tribes under the IRA can be found in the [Inflation Reduction Act Tribal Guidebook](#).

b. Tribal Leaders' Feedback

Assistant Secretary of DOI for the Bureau of Indian Affairs (BIA), Bryan Newland, then moderated a discussion with tribal leaders on the call. Tribal leaders were invited to share their input and priorities on how the IRA could best meet the needs of their communities. The WHCNA and the White House specifically asked for feedback on questions included in a Dear Tribal Leader Letter (DTLL) that the White House released on May 23, 2023:

1. What type of technical assistance do you need to better access and use the resources of the Inflation Reduction Act (IRA)?
2. What are the early successes you have experienced with using the IRA funding?
3. What are the challenges you have experienced in using the IRA funding?
4. How can federal agencies be more responsive to your needs in the implementation of the IRA?
5. Are there additional legislative/regulatory/policy changes you recommend to better implement the IRA for Indian Country?

Below are some comments and questions raised by the tribal leaders, along with the responses by federal representatives to some of the comments and questions. The federal representatives did not provide a response to each comment; where they did respond, we have provided that response below the comment or question.

- Is there any technical assistance available for tribes to utilize on an individual level to assist tribes in evaluating the IRA funding opportunities available for tribes?
 - DOI and DOE have released guidance on the IRA specific to tribes that includes information on technical assistance. Additionally, the LPO offers technical assistance teams devoted to working directly with tribes, and the EPA's 17 technical assistance centers offer assistance to tribes as well.
- The federal government should focus on incorporating tribal ecological knowledge into energy, restoration, and conservation projects. Such knowledge is critical to make sure that energy projects restore and conserve tribal natural resources

- The various United States agencies are working to coordinate interagency efforts to engage with and assist tribes in energy projects. The agencies welcome tribal feedback on how to further incorporate tribal ecological knowledge into the projects.
- The federal government must address poverty in Indian country through the energy projects. Projects must also be done in a manner that protects and conserves the environment, including water, forests, and wildlife.
 - EPA, DOI, and DOE are aware of and devoted to protecting the environment. They would welcome opportunities to engage with tribes on how to do this better.
- Tribes recommend that the federal government focus more efforts on helping tribes quantify their water rights, particularly for those tribes in Colorado River Basin. Tribes also need further opportunities and funding to sustainably utilize their water rights and to replace infrastructure that is currently contaminating water. Finally, tribes need funding to enable them to become self-sufficient and to not rely on the federal government to protect the environment.
 - One of EPA's current priorities is implementing uranium cleanup and improving water infrastructure. EPA is therefore awarding grants to specifically address these issues.
- Tribes face challenges in obtaining strong grant writers to help them secure grants. Without strong grant writers, tribes often have trouble obtaining grants. Tribes therefore need funding to specifically cover the costs of grant writing. Tribes also need additional technical assistance for grant writers to train them in how to write successful grants. Finally, tribes suggest that all federal agencies focus on decolonizing their practices and reducing federal agency distrust of tribes in the implementation of projects.
- Tribes need funding to improve the electrical grid to address current energy issues. Additionally, tribes and the federal government must focus on developing and implementing green energy initiatives that do not threaten tribal culture and resources. Any such projects should incorporate funding to help tribes develop damage mitigation initiatives.
 - DOE is providing funding for opportunities to recycle batteries. There are also a number of other IRA funding opportunities that tribes can use to develop projects that mitigate damage to the environment.

Conclusion

If you have any questions about this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com) or Cari Baermann (cbaermann@hobbsstrauss.com); both may be reached by phone at 503-242-1745.