

Substantially Underserved Trust Areas (SUTA) Provision

Section 6105 of the Food, Conservation & Energy Act of 2008

2008 - Farm Bill





SUTA Provision

- Amended the Rural Electrification Act of 1936
- Affects Rural Utilities Service Programs Only
 - Rural Electrification Loans and Guaranteed Loans, including High Cost Energy Grants
 - Water & Waste Disposal Loans, Guaranteed Loans and Grants
 - Telecommunications Infrastructure Loans & Guaranteed Loans
 - Distance Learning and Telemedicine Grants
 - Broadband Loans and Guaranteed Loans
- No additional funding was appropriated

General SUTA Summary

- The provision allows RD to provide loans at a lower interest rate, over a longer period of time, to help make financing projects more affordable in Substantially Underserved Trust Areas (SUTA) through certain Rural Utilities Service Programs.
- The RUS Administrator can also waive certain restrictions and requirements as well as provide priority to designated projects in SUTA.

SUTA Provisions are in effect for the Rural Broadband Loan Program

- Interim rule issued March 14, 2011
 - Comment period closed May 13, 2011
 - **No Comments related to SUTA were received** (Specifically Sec. 1738.3)
- If the Administrator determines a community in a Trust Land has a ***high need***, he/she may designate that community as a **“Substantially Underserved Trust Area”**

To improve availability of the Broadband Loan Program in SUTA

- The Administrator can use his discretion to implement the additional SUTA Authorities
- Applicants should notify the National Office before they apply that they are planning to seek waivers or adjustments based on this section

*See Slide 9 - Sec. 1700.106 for
Discretionary provisions.*

Trust Areas Defined

Trust Areas Definition for SUTA Cites Title 38 Section 3765 (Department of Veterans Affairs)

The term “trust land” means any land that—

- (A) is held in trust by the United States for Native Americans;
- (B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands);
- (C) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j)); or
- (D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

See Slide 13 Sec. 1700.105 for Guidance on whether land meets the definition.

Substantially Underserved-Not Defined

A community in 'trust land' (as defined in section 3765 of title 38, United States Code) with respect **to which the Secretary determines has a high need for the benefits of an eligible program.**

Specific SUTA Provisions Sec. 1700.106

Rural Utilities Service Authorities: (on a case by case basis)

- May make loans and loan guarantees with interest *as low as* 2 percent **and/or** with extended repayment terms
- May waive non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant program administered by RUS to facilitate construction, acquisition or improvements of infrastructure
- May give highest priority to designated projects in SUTA

Administrator may use discretion without written application

- Shall only make loans that are financially feasible and that provide eligible program benefits to SUTA

SUTA Regulation Guidance

Some Key Definitions:

- **Applicant** means an entity that is eligible for an RUS program under that program's eligibility criteria.
- **Credit support** means equity, cash requirements, letters of credit, and other financial commitments provided in support of a loan or loan guarantee.
- **Financial feasibility** means the ability of a project or enterprise to meet operating expenses, financial performance metrics, such as debt service coverage requirements and return on investment, and the general ability to repay debt and sustain continued operations at least through the life of the RUS loan or loan guarantee.
- **Underserved** means an area or community lacking an adequate level or quality of service in an eligible program, including areas of duplication of service provided by an existing provider where such provider has not provided or will not provide adequate level or quality of service.

SUTA Regulation Guidance Sec. 1700.103

Eligible Communities:

- *Is a community located on a Trust Land*
- *May be served by an RUS Administered Program, and*
- *Is determined by the Administrator as having a High Need for eligible programs*

SUTA Regulation Guidance Sec. 1700.104

Financial Feasibility:

- *Determined pursuant to normal underwriting practices for eligible program, as supplemented by available SUTA Provisions*
- *All Income & Assets under control of the applicant will be considered in the Financial Profile*

SUTA Regulation Guidance Sec. 1700.105

Determining whether Land meets Statutory Definition:

- a) *Official Maps of Federal Indian Reservations (Dept. Of Interior – Bureau of Indian Affairs)*
- b) *Title Status Reports (DOI-BIA)*
- c) *Trust Asset & Accounting Management System data (DOI-BIA)*
- d) *Official Maps of Dept of Hawaiian Homelands (Sec. 204 of Hawaiian Homes Commission Act, 1920)*
- e) *Official Records of DOI, State of Alaska, or documentation of ownership showing title is owned by Regional Corporation or Village Corporation (Alaska Native Claims Settlement Act)*
- f) *Evidence the locations in Guam, American Samoa or Commonwealth of the Northern Mariana Islands and eligible for VA direct loan programs*
- g) *Other evidence Satisfactory to the Administrator*

SUTA Regulation Guidance Sec. 1700.107

Discretionary Provisions:

- a) 2% interest or extended Terms*
- b) Non-duplication Waiver*

c) Waiver of Matching fund requirements

d) Waiver of Credit Support relative to loan security

e) Assigning Highest Funding priority

Relevant Considerations:

- a) Extent needed for financial feasibility*
- b) All existing services, size, cost, quality, ability and financial feasibility or other RUS borrower ability to repay their debt*

c) Financial feasibility, statutory prohibitions, ranking & scoring, as if met

d) Cost, availability of credit support relative to loan security, extent of barrier to participation in program, alternatives to non-waiver

e) In NOFA assign extra SUTA points, or announcement of special competitive SUTA support into rules or scoring

SUTA Regulation Guidance Sec. 1700.108

Application Requirements:

- a) Completed Application with all information required by the program & Written notification seeking SUTA authorities
 - 1) Description of applicant documenting eligibility
 - 2) Community to be served documenting eligibility
 - 3) Explain and Document High Need (See next slide)
 - 4) Impact of Specific Authorities Sought
- b) Information RUS may consider relevant for application evaluation
- c) RUS may request modifications, including fund requested
- d) Completed application within the application window and guidelines for specific eligible program

SUTA Regulation Guidance Sec. 1700.108

Application Requirements:

a) Written notification seeking SUTA authorities

3) Explain and Document High Need

- i. Document lack of service, no service or inadequate service*
- ii. Significant health risk to community's residents*
- iii. Need of community which may include*
 - A. Per capita Income (DOCommerce or DOI)*
 - B. Local unemployment (DOL-BLS and/or DOI-BIA)*
 - C. Supplemental Nutrition Assistance Program participation (USDA-ERS)*
 - D. National School Lunch Program participation (USDA-FNS)*
 - E. Temporary Assistance for Needy Families Program Participation (HHS)*
 - F. Lifeline Assistance and Link-up America Program (FCC & UASC)*
 - G. Examples of economic opportunities lost without improvement*
 - H. Data from Tribes or jurisdictional entities on "Trust Lands"*




United States Department of Agriculture
Rural Development
 March 24, 2005
 PAY TO THE ORDER OF The Havasupai Tribe **\$1,247,705**
 One million two hundred forty-seven
 Thousand seven hundred and five _____ DOLLARS
 EDDIE BROWNING
 Arizona State Director

PEPSI

Report

RUS Must Submit an Annual SUTA Report to Congress that:

- Describes the progress of SUTA implementation
- Provides recommendations for any regulatory or legislative changes that would be appropriate to improve services to SUTA

Legislative Direction to Consult

The Secretary, in consultation with local governments and Federal agencies, may implement an initiative to identify and improve the availability of eligible programs in communities in SUTA.



SACRED WIND
COMMUNICATIONS
Huerfano Computer
Training Center



Water and Environmental Programs

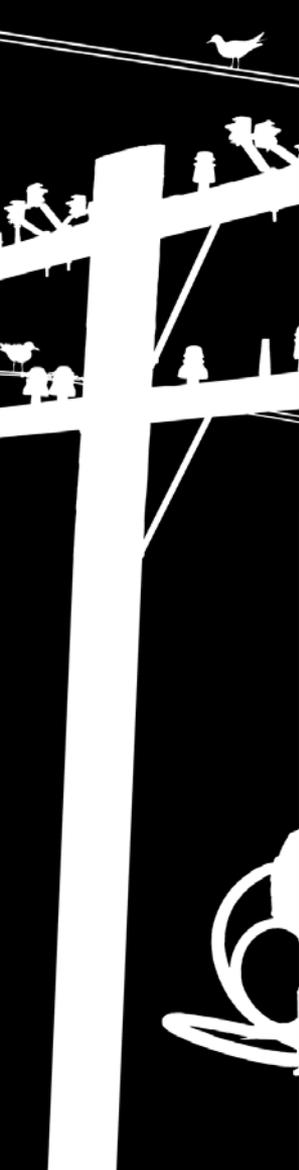
- Water and Environmental Programs (WEP) provides loans, grants and loan guarantees for drinking water, sanitary sewer, solid waste and storm drainage facilities in rural areas and cities and towns of 10,000 or less.
 - Public bodies, non-profit organizations and recognized Indian tribes may qualify for assistance.
 - WEP also makes grants to nonprofit organizations to provide technical assistance and training to assist rural communities with their water, wastewater, and solid waste problems.

Telecommunication Programs

- USDA'S Rural Utilities Service provides programs to finance rural America's telecommunications infrastructure.
 - The **Telecommunications Infrastructure program** provides loans to finance traditional telecommunications infrastructure in rural communities nationwide.
 - The **Broadband Loan program** provides loans to fund the costs of constructing, improving and acquiring facilities to provide broadband service to eligible rural communities.
 - The **Distance Learning and Telemedicine program** brings electronic educational resources to rural schools and improves health care delivery in rural America.
 - The **Community Connect Grant program** provides financial assistance to eligible applicants that will provide broadband in unserved areas to provide public safety services and foster economic growth. **(not SUTA Eligible)**

Electric Programs

- Providing reliable, affordable electricity is essential to the economic well-being and quality of life for all of the nation's rural residents.
 - Loans and loan guarantees finance the construction of electric distribution, transmission, and generation facilities, including system improvements and replacement required to furnish and improve electric service in rural areas
 - Loans and loan guarantees finance can also finance demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems.
 - Loans are made to corporations, states, territories and subdivisions and agencies such as municipalities, people's utility districts, and cooperative, nonprofit, limited-dividend, or mutual associations that provide retail electric service needs to rural areas or supply the power needs of distribution borrowers in rural areas.



***Our job
is not done!***

Final Responses
Due
Jan. 17, 2012

<http://www.regulations.gov>.
Follow instructions for submitting comments.

- ***Postal Mail/Commercial Delivery:***
Please send your comment addressed to
Michele Brooks, Director, PDRA
USDA Rural Development, 1400
Independence Avenue, STOP 1522,
Room 5159, Washington, DC 20250–1522.