



USDA TRIBAL CONSULTATION

FOOD, SAFETY, AND TRADE

TRIBAL LEADER BRIEFING

April 12, 2022

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INTRODUCTION

In January 2021, President Biden signed an Executive Order on Advancing Racial Equity and Support for Underserved Communities¹, which was meant to address the entrenched disparities in U.S. laws and public policies as well as private and public institutions. Indian Country has been and continues to be underserved, marginalized, and adversely affected by persistent poverty and inequality, resulting from a number of factors, including a lack of access to federal programs and services.

From April 11 to 18, 2022, Tribal leaders and their representatives will meet with the U.S. Department of Agriculture (USDA) Consulting Officials to hear the Department affirm how it is incorporating Tribal input to increase Indigenous access to federal programs. Tribal leaders will also provide further feedback and follow up on USDA's commitments to take meaningful steps toward addressing historical and current barriers facing Indian country in equitably accessing USDA programs and services.

On behalf of our respective organizations, we appreciate the opportunity to facilitate the ability for Tribal leaders to address the barriers Indian Country experiences across the USDA and to partner with the Office of Tribal Relations, and all USDA agencies, to provide workable solutions. Government-to-government or Nation-to-Nation consultation between Tribal Nations and the United States federal government has been a core principle of the Tribal-federal partnership for the last twenty years. Tribal leaders will continue to hold the USDA to this principle in acknowledgement of Tribal Nations' sovereignty.

Tribal agriculture production and food systems are essential economic development and community drivers in Indian Country. Yet, ongoing lack of equitable access to USDA programs, credit, and infrastructure continue to pose as barriers for Tribal Nations. Removing the barriers to USDA will help significantly improve Indian Country economies, spurring economic growth that will contribute to necessary physical infrastructure and provide the pathway to Tribal self-determination and Tribal food sovereignty. Economic growth empowers the first keepers of our ecosystems to lead the way toward climate recovery through regenerative agriculture systems that sustain our peoples and lands.



¹ President Biden, *Executive Order on Advancing Racial Equity and Support for Underserved Communities*, Jan. 20, 2021. Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>



FOOD, SAFETY, & TRADE

2021 Barriers Progress & 2022 Next Steps

Animal and Plant Health Inspection Service (APHIS)

Foreign Agriculture Service (FAS)

Food Safety Inspection Service (FSIS)

Food and Nutrition Service (FNS)
FDPIR & WIC



2021 Barriers Progress & 2022 Next Steps

USDA has provided the following list of items to discuss for this consultation:

1. Revising procurement policies for small batch/local indigenous foods
2. Streamlined contracting for Tribal producers;
- 3) Increasing Tribal self-governance,
4. Expanding support for food sovereignty, and
5. Increasing Indigenous foods and Indigenous knowledge into Nutrition education efforts.

Tribal leaders are by no means limited to discussing these topics at the consultation!

This list from USDA merely summarizes dialogue Tribal leaders had with USDA during the 2021 consultation series on Barriers to Racial Equity in the Department. USDA officials will be prepared to update Tribal leaders on any progress the Department has made on these issues in the year that has passed since the previous consultation.

On the following pages, we have provided a short summary of each issue and highlighted any unresolved issues related to these topics. A longer, more comprehensive briefing follows, with information and issues separated by agency.

1) Revise Procurement Policies: Small Batch/Local Indigenous Foods

Agencies involved: Food and Nutrition Service (FNS), Agricultural Marketing Service (AMS)

- Tribal leaders have previously asked USDA to intentionally source more traditional, culturally-appropriate, and/or Indigenous-produced foods for USDA food assistance programs serving Tribal citizens, like the Food Distribution Program on Indian Reservations (FDPIR) or Commodity Supplemental Food Program (CSFP).
- USDA does not have the authority to amend those regulations on its own – they are made by a different federal agency, the General Services Administration (GSA) – but there are still creative ways USDA can source foods from Indigenous producers, and Tribal leaders asked USDA at the 2021 consultation to look into those.
- What pathways can USDA identify to assist Tribal Nations in becoming vendors for USDA programs? Are there creative pathways like the Local Food Cooperative Agreement Program, which do not require Vendor Certification, that could be applied more broadly across USDA?
- Has the Historically Underutilized Business Zone (HUBZone) already been utilized to expand contracting opportunities to Tribal communities? If so, what kind of successes and challenges can be identified from this expansion?
- Developing and implementing outreach activities require a good understanding of the issues and realities of the audience AMS is trying to reach. Tribal nations have unique needs born out of factors such as culture, geographic location, economic resources, as well as access to broadband and food sources. As such, a database of tribal areas of interest and tribal points of contact should be developed to effectively target consultation and outreach efforts.
- A more proactive outreach (beyond holding “office hours”) to tribal producers would be helpful and ensure that much needed information gets to the hands of those that need it most.



2) Streamline Contracting for Tribal Providers

Agencies involved: Food and Nutrition Service (FNS), Agricultural Marketing Service (AMS)

- Tribal leaders have previously asked USDA to make contracting less burdensome for Tribal providers. Federal contracting processes are lengthy, paperwork intensive, and often costly, all of which pose a barrier to Tribal producers trying to sell food to USDA.
- As discussed above, some of these contracting regulations are set by other federal agencies and USDA may not have flexibility to amend all of them.
- USDA should be reporting back to Tribal leaders about how they intend to reduce these barriers so that Tribal producers and providers can more easily have a pathway to contract with USDA.
- Federal procurement policies – the Federal Acquisitions Regulations (FAR) – pose a barrier to Native producers selling foods to USDA for these programs.
 - Altering or supporting the amendment of Part 26-1 of the FAR would allow the incentives Native producers need to access more USDA Food markets beyond programs like FDPIR.
 - This provision applies to prime vendors and provides the prime vendor an incentive to work with the Native subcontractor– but no incentives are provided to the Native subcontractor. An additional provision could be added to the FAR that does provide an incentive for Native owned businesses, whether prime vendors or subcontractors. USDA likely can't make this change, but could support it.
 - Native producers' experience under similar circumstances in the Farmers to Families program have shown difficulty in working with prime vendors often because of pre-existing disparities in market access.
 - AMS must provide better technical assistance to producers interested in seeking subcontracts with prime vendors.

3) Increase Tribal Self-Governance Opportunities

Agencies Involved: All of USDA

- For nearly 50 years, the Indian Self-Determination and Education Assistance Act (ISDEAA) has acknowledged Tribal sovereignty by enabling Tribal Nations to take on programs, services, functions, and activities of federal programs.
- During the 2018 Farm Bill process, Tribal leaders repeatedly called on Congress to extend this acknowledgement of Tribal sovereignty to USDA programs. This authority had never applied to USDA programs until 2018, when the Agricultural Improvement Act of 2018 (“the 2018 Farm Bill”) applied “638” authority to the FDPIR for direct Tribal procurement of foods, and to some Tribal forestry projects through the Tribal Forest Protection Act.
- Since these historic changes in the 2018 Farm Bill, Tribal leaders have continued to call for expansion of 638 authority to other USDA programs. USDA will need broader authority from Congress to fully engage in contracting or compacting across the Department, but USDA’s support for 638 is still very important, as Congress will call on USDA officials for technical advice when drafting the 2023 Farm Bill.
- Outside of being able to expand 638, what administrative actions can USDA take to support further tribal self-governance and self-determination?
- USDA should provide an update on support for Tribal-self governance expansion at this consultation. That update should include discussion on Secretary Vilsack’s sweeping commitment to Tribal self-governance expansion, which he made in November 2021.
- In 2020-2021, there were timing challenges in USDA’s ability to process applications for the FDPIR project in terms of growing seasons and FDPIR participants’ ability to receive indigenous grown foods, which also delayed Native producers seeing an economic benefit from these contracts. What steps has USDA taken to expedite the application process?
- The FY20 Congressional Appropriations included a directive for USDA “to conduct a study on the challenges that the Food Distribution Program on Indian Reservations, and other food distribution programs administered by the Secretary, face in reaching underserved populations. FNS awarded a contract to Ken Consulting in FY21 to conduct a brief, targeted survey of ITOs and State agencies administering FDPIR. FNS and the contractor planned to conduct a pre-test of the survey with nine ITOs and field survey to all ITOs and States administering FDPIR in 2022. Is there an update on this survey?”

4) Expand Support for Indigenous Food Sovereignty

Agencies Involved: All of USDA

- A definition of food sovereignty for Indian country may look different for each community depending on factors such as geography and belief systems. As such, the question of how USDA can encourage / support tribes and tribal producers as they navigate USDA programs and services is dependent upon USDA staff fully understanding and committing to the principle of nation-to-nation or government-to-government engagement and consultation; by putting this principle into practice, USDA staff would begin to understand the uniqueness of each tribe that make up Indian country.
- USDA must remember that Sovereignty for Tribal Nations is a matter of legal and political distinction. Food sovereignty for Tribal Nations involves matters of Tribal governance, law, and policy. Any concept of food sovereignty that does not include Tribal Nations' unique relationship as sovereigns with the federal government will be incomplete.
- USDA must hold regional Tribal consultations when looking to expand support for Indigenous Food Sovereignty. As mentioned above, Indigenous food sovereignty looks different across Indian Country, and USDA should take into consideration the different food priorities across regions. Specifically, Alaska Native Villages have different priorities for food sovereignty (e.g. Subsistence Fishing and Hunting), than Tribal Nations in the lower 48.
- USDA should recognize the unique space Tribal Nations occupy with regard to land stewardship and agriculture. As the original stewards of lands on this continent, Tribal Nations have engaged in land stewardship as part of agricultural practices since time immemorial, but USDA's current definition of agriculture does not always encompass these activities, such as intensive ecosystems management around wild rice harvesting. Food sovereignty for Indian Country may have different understandings of agriculture and agricultural production, and USDA should include these as well.
- Supporting Indigenous Food Sovereignty also means understanding the differences in the costs of doing business in Indian country (e.g. contracting costs and lack of experience and knowledge) and the barriers that cost-sharing presents to farmers and producers. Thus, implementing policy ought to shift closer to understanding processes and realities on the ground and finding the necessary flexibilities to fully administer authorities with the intent of helping Tribal communities.
- Supporting Indigenous food sovereignty also means protecting the integrity and sustainability of tribally produced food products both in the United States and abroad. Non-tribal organizations should not be allowed to participate in the Market Access Program who focus solely on American Indian Food readiness.
- As part of the trust responsibility, USDA should also work with Tribes to protect Tribal foods and ensure that American Indian products can be readily produced by tribal producers / operators themselves, in order to prevent consumer confusion about the authenticity of these products.
- As the various US federal agencies continue to build trust with those in Indian country, there is an opportunity to create local liaison positions that would help Indian Country navigate USDA programs, policies and services.

5) Increase Indigenous Foods/Incorporating Indigenous Knowledge into Nutrition Education

Agencies Involved: Food and Nutrition Service (FNS)

- At the 2021 consultation, Tribal leaders called for more Indigenous-led nutrition education for Tribal citizens.
- Indigenous-led nutrition education is more relevant to Tribal communities and incorporates both culturally appropriate foods as well as traditional principles of Indigenous nutrition science that has kept Indigenous peoples on this continent healthy and thriving since time immemorial.
- Additionally, Tribal leaders have called for the need to also extend Indigenous-led nutrition and education funding opportunities to individual Tribal citizens or entities outside of Tribal governments.
- Incorporating Indigenous Knowledge into nutrition education and across USDA programs is a critical matter for Tribal Nations. USDA must increase funding for tribally-driven community research and for Tribal Institutional Review Boards (IRBs) to empower tribally controlled research.
- Indigenous knowledge isn't a one-size-fits-all approach across Indian Country. USDA must ensure Indigenous knowledge is incorporated from several different regions across Indian Country and the educational materials developed with Indigenous Knowledge must be regionally, and sometimes tribally, tailored.
- How will USDA gather information on Indigenous Knowledge across different regions? Will USDA hold consultations in different regions to ensure nutrition education materials are regionally diverse?
- How will USDA ensure that Indigenous Knowledge and teachings in nutrition education are protected for intellectual property reasons?
- How will USDA protect culturally sensitive Indigenous knowledge that may not be open for public consumption?





Animal and Plant Health Inspection Service (APHIS)

Cooperative Agreements

- USDA should make every effort to increase the number of cooperative agreements between the Animal and Plant Health Inspection Service and Tribal Nations, strengthening these authorities as necessary to enhance these relationships.
- Tribal nations often reside in remote locations of the country where accessing veterinarians can be challenging, so it is imperative that APHS be available to support tribal initiatives in monitoring animal and plant disease.

Tribal Youth Engagement

- APHIS' Safeguarding Natural Heritage Program provides a meaningful way for tribal youth to see Tribal Colleges and Universities and other Native-serving institutions in a 2-week experiential learning opportunity on agriculture, animal sciences, wildlife, and agri-business management.
- Only 5 of 38 Tribal Colleges and Universities have collaborated with APHIS to support this program, at no cost to these land-grant universities which often operate under strained budgets.
- USDA should prioritize these and other programs that support direct engagement, outreach, and education for tribal youth on agriculture and food systems management.
- There is a significant need for veterinary services, especially large animal vets, across Indian Country.
- How can APHIS support and facilitate tribal students enrolling in educational programs that support future careers as veterinarians? Can APHIS create partnerships with organizations like the Native American Agriculture Fund to provide scholarships, internships, fellowships and career opportunities for Native students?

Foreign Agriculture Service (FAS)

- In the Foreign Agricultural Service programs, the federal lexicon of acronyms and terms are often confusing and unfamiliar to those who have not yet encountered them. Participants sometimes report feeling confused by the information.
- Outreach to participants needs to take this lack of familiarity with specialized terminology into account. Additionally, increased education is necessary to the availability of resources on export steps and requirements, as well as marketing strategies and business planning.
- It would be beneficial to develop a more unified approach to trade such that more cross promotions are done among Market Access Program cooperators, State Trade Regional Groups, and State Agricultural Departments.
- For those who lack experience in foreign markets, it is plausible that prices may not match product values. It is also possible that unique products that fare well may be replicated by competitors or unethical sellers who take advantage of producers' lack of knowledge.
- How does USDA address this potential for fraud or harm to historically underserved producers engaging in foreign markets?
- Participants with minimal resources may be irreparably harmed by failed business deals and the absence of support to navigate these issues.
- Foreign trade participants may not understand the certification, licensing, and registration protocol in the U.S. and various countries (for exports). Oftentimes, producers do not have the cash flow to cover packaging, repackaging, or labeling costs.
 - Funding assistance either directly to producers or via Market Access Program cooperators could help defray these costs for producers.



Food Safety Inspection Service

- The coronavirus pandemic highlighted our current meat supply chain vulnerability. Outbreaks have had a crippling effect on meat packing plants across the country. The impacts that these plant closures had on Tribal communities, many of whom live in food deserts, have highlighted the importance of promoting and supporting food sovereignty. Value-added agriculture like processing can address these issues. There is an urgent need to create and support a more resilient meat supply chain by focusing on building capacity and infrastructure at the local level that ensures that local producers and consumers have reliable access to sustainably-managed, high-quality protein. At the same time, the demand for culturally relevant foods is not currently being met, resulting in untapped markets to serve.
- The USDA Inspection process can be difficult for many processors to navigate and is guided by different rules and standards depending on the type of processing the facilities engage in. Operation on tribal trust land further complicates this by creating jurisdictional concerns for regulations. Because FSIS is the entity with inspection authority for both the Federal Meat Inspection Act (FMIA) and Poultry Products Inspection Act (PPIA), discussing these kinds of concerns with FSIS officials to help them understand how to better serve Indian Country's unique needs is important.
- The Hazard Analysis Critical Control Point (HACCP) food safety planning can be tricky for first time processors to understand and develop, and in practice it often requires additional funds for Tribal meat processing operators to hire consultants to sort out the process. Additional funding supports for Tribes that contemplate these kinds of needs are critical to success.
- If Indian farmers and producers are to thrive and participate in a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain as envisioned in President Biden's January 2022 Executive Order, they need to be supported in overcoming existing barriers.



Food Safety Inspection Service Continued

- On January 27, 2022, USDA held a consultation and listening session with Tribal Leaders to obtain feedback on expanding independent processing capacity and supporting workers and the independent processor industry. What updates does USDA have on funding opportunities identified in President Biden's Executive Order, including
 - Phase 1 (worth \$150 million, as a 20% max grant up to \$25M aka \$125M max budget per individual project. Phase designers intended 20% as a grant and the remainder could be made up through federal financing or credit opportunities) to jumpstart an estimated 15 projects focused on deploying financial support for projects with the greatest near-term impact.

How many Native farmers, producers, and meat processors were able to participate? If not, why not?

- Phase 2 (worth \$225 million) to support additional projects in the Summer of 2022

What will USDA do to encourage and enable successful Tribal producers' applications?

- Up to \$275 million will be deployed for USDA to work with lenders to make more capital available to independent processors that need credit.

How will USDA ensure that criteria that lenders use will enable successful applications from Indian Country?

- Dedicate \$100 million to support development of a well-trained workforce, safe workplaces, and good-paying, quality jobs
- Invest \$50 million in technical assistance and research and development to help independent business owners, entrepreneurs, producers, and other groups



Food and Nutrition Service

FNS is the federal agency responsible for administering all food and nutrition assistance programs at USDA. Although Tribal citizens participate in all food and nutrition assistance programs at USDA, Tribal Nations are only legally authorized to administer a handful of those programs. Included below are some additional items raised previously by Tribal leaders on programs that Tribal Nations do currently administer: the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), and the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC).

Commodity Supplemental Food Program (CSFP)

This program serves elders over the age of 60. Participating elders receive food packages from Indian Tribal Organizations (ITOs) or State Agencies. Food packages vary but are mostly shelf-stable/canned products.

- 7 Tribes administer this program currently. How is USDA working with those Tribal Nations to ensure that their needs are met?
- Some of the ITOs administering this program have had issues with food quantity and quality. Some of the food packaging has not been appropriate. For example, in 2021 CSFP delivered unlabeled five pound plastic bags of spaghetti sauce to ITOs for distribution to elders. This is an inappropriate way to serve Tribal elders.
- USDA also regularly decreases the guide rate of certain CSFP foods which reduces the overall amount of foods.
- Most non-Tribal CSFP sites are food banks, which are often 501(c)(3) public charities that have more resources to offer additional package options like fresh fruits and vegetables. More Tribes might be willing to offer the program if there were opportunities for Tribes to contract for fresh fruits and vegetables as well, along with more administrative dollar support.
- USDA has not consulted with Tribal Nations directly on this program. Nation to Nation dialogue with Tribal leaders and USDA officials could facilitate an increase in Tribal participation of CSFP, and offer elders more culturally appropriate service.

Food and Nutrition Service - FDPIR

This program serves between 47,000-90,000 people per month across Indian Country. Around 42% of FDPIR households have an elder (over the age of 60) in the home, and about 1/3 have children under the age of 18. Participating households receive food packages from Indian Tribal Organizations (ITOs) or State Agencies. Packages include some traditional/culturally appropriate foods as well as fresh fruits and vegetables.

Tribal leaders have called for more nutrition education funding for FDPIR sites, and USDA has recently asked for and received more funds from Congress.

- How does USDA plan to spend these funds?
- What would be allowable expenses for Tribes who access these nutrition education dollars? For example, there are good nutrition education opportunities that may benefit agricultural producers at the same time, like establishing community or school gardens. Would those be allowable costs?

The Secretary of Agriculture committed the entire USDA to promoting Tribal-self governance in November 2021, which was a significant step forward for USDA. Self-governance and self-determination through 638 compacts and contracts has been in place in other federal agencies like Indian Health Service and Bureau of Indian Affairs for 47 years, but it's relatively new and still very limited at USDA.

- If Congress were to expand 638 authority in the upcoming Farm Bill, does FNS support the expansion of 638 authority to more food assistance programs?
- What specific barriers does USDA see to effective expansion of 638 authority and other flexibilities that also reach direct services Tribes? How can Tribal Nations and USDA work together to solve those barriers?

There are currently 8 Tribal Nations holding 638 self-determination contracts for FDPIR food procurement. Congress has consistently appropriated \$3 million in each appropriations year to fund this program.

- Will USDA be opening 638 applications to more Tribes outside the current 8 Tribes? If so, when could Tribes expect that process to open?



Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC)

USDA

Modernizing Requirements for Participating WIC Families

- The physical presence requirement for families who must bring babies and young children to WIC clinics is a barrier to ongoing participation. Waivers during the pandemic enabled a more modern and digital approach.
- While a completely digital approach may not currently be feasible in Indian Country due to lack of access to high speed internet and broadband, the waivers allowing for remote certification greatly helped to modernize the program and support participation and better nutrition for families.
- Families in Indian Country also struggle with access to reliable transportation to these required appointments. USDA Economic Research Service data, for example, show a significant overlap in places with low vehicle access and Tribal jurisdictions. Digital flexibilities greatly help address this issue and help more Native families participate in WIC.
- Some of the documentation requirements families must meet also pose a barrier. Secure digital options for documents, like apps or websites with secure upload functions to the WIC Management Information System (MIS), could greatly reduce this burden.
 - What authority does USDA have to offer those flexibilities long-term for Tribal Nations?
 - If USDA lacks the authority to make these changes, does USDA foresee any barriers in implementing these digital flexibilities if Congress were to make these options available through legislative changes in the Child Nutrition Reauthorization process?
 - How can FNS work with other USDA agencies, like Rural Development (RD), to support better broadband that will enable all Tribal Nations to offer more modern approaches in the future?

Examples of progress that USDA has made on this topic seem to all be very promising and commit to meaningful engagement and consultation; however, what will USDA put in place to ensure that participation from Tribal nations and organizations are enabled?

- How does USDA measure the success of its engagement and consultations (including distribution of promotional and educational materials)? For example, a measure of success based on number of webinars delivered and total number of participants differ from measuring success based on number of successful Tribal grant applications. All this to say, success of programs and services intended to support Indian country ought to be defined by Indian country.
- The current USDA consultation policy discusses reporting requirements with respect to internal reporting and reporting to other government agencies, but it is silent on reporting to Tribal Nations
- Will USDA commit to tribal follow-up meetings that would serve as after action items after information sessions or webinars and ensure that questions and requests for additional information are addressed? This has been raised by Tribal leaders in the past. For example, were there follow-up meetings held with Tribal representatives who attended the November 2021 consultation on the WIC Food Package Proposed Rule?
- At a recent consultation with Tribal leaders and representatives from Montana, an issue was raised about how information is distributed to Tribal communities. Is information presented in such a way that takes into consideration factors such as learning styles (e.g. visual learning), lack of experience and context and knowledge of federal lexicon.