



USDA TRIBAL CONSULTATION

APRIL 14, 2022

FARMING, RANCHING, AND CONSERVATION

TRIBAL LEADER BRIEFING

TABLE OF CONTENTS

4 INTRODUCTION

5 FARMING, RANCHING, and CONSERVATION

6 - 2021 BARRIERS PROGRESS & 2022 NEXT STEPS

14- FSA

15- NRCS

17- RMA

18- AMS

19- USDA - Office of Tribal Relations

CONTRIBUTORS



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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 on barriers to effectively accessing 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.



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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/>



FARMING, RANCHING, & CONSERVATION

2021 Barriers Progress & 2022 Next Steps

Farm Service Agency

Natural Resources Conservation Service

Risk Management Agency

Agricultural Marketing Service



2021 Barriers Progress & 2022 Next Steps

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

- 1) Eligibility Issues: Land, Leases, & Farms/Misalignment with BIA Agricultural Leases
- 2) Indian Country Lack of Access to USDA Agricultural/Land Financing
- 3) Expand Support for Traditional Foods/Food Ways
- 4) Value Add/Shared Supply Chain Resources Targeted for Indian Country
- 5) Increase Field Office Knowledge
- 6) Tribal Representation and Voice at USDA.

Tribal leaders are by no means limited to discussing only 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.



Eligibility Issues: Land, Leases, & Farms/Misalignment with BIA Agricultural Leases

Due to the general lack of credit availability on Indian reservations, it is difficult to access manageable credit rates, even for experienced producers operating farms and ranches on trust lands.

- Removing the graduation requirement from FSA programs for producers on Indian Reservations would allow for more stable agriculture operations.
- There is a general lack of private lenders on Indian reservations; as such the requirement for 3 denial letters from private credit sources poses as barrier for Tribal farmers and producers.
- Lingering administrative issues continue to exist when Tribal producers must deal with both the BIA and USDA in seeking loans or loan servicing. USDA and BIA should be required to create an interagency Memorandum of Understanding and dedicated administrative team tasked with reviewing and updating all practices and regulations that hinder tribal food production, tribal food system lending, and tribal loan servicing.
 - The Tribal Advisory Committee created by the 2018 Farm Bill would have required this kind of interagency cooperation. However, the committee's implementation has yet to occur.



Indian Country Lack of Access to USDA Agriculture/Land Financing

- There are multiple definitions of “Tribal lands” throughout USDA, leading to confusion as well as inequitable and inconsistent access to programs; thus, creating barriers and uncertainty.
- USDA must administratively apply a standardized definition of Tribal lands. Clearing up this confusion will not only open up additional opportunities for conservation and production, but honor the Nation-to-Nation relationship between Tribes and the federal government.





Expand Support for Traditional Food and Food Ways

By leveraging self-sourcing opportunities to meet existing demand in tribal programs, like schools, health care facilities, daycares and elder services, tribes reinject dollars into the tribal economy. Creating that kind of regenerative, local tribal food system means supporting sourcing and processing within the community.

- USDA has made \$32 million in grants to 167 existing meat and poultry processing facilities to help them reach more customers by becoming Federally inspected. How many of these 167 processing facilities are Native owned and operated?





Value Add/Shared Supply Chain Resources Targeted for Indian Country

- Funding for the Federally Recognized Tribes Extension Program has been at \$3 million since its inception in 1990 and has led FRTEP agents to do more with less. On the other hand, all other extension service programs have seen budget increases over time to keep up with inflation.
- Although the Market Access Program is meant to help establish U.S.-branded goods in foreign markets, it is still a program that expands market opportunities and income for Tribal nations.

Outside of the IAC, how many other Tribal entities received funding allocations for MAP in 2022?

- If IAC is indeed the only Tribal entity funded by MAP, then it is important that MAP be expanded by substantially increasing the funding available to the IAC to coordinate and administer the program for Tribal audiences so that more tribal food and agriculture businesses can benefit from the program.



Increase Field Office Tribal Knowledge

The Framing paper for this section speaks of an objective to obtain recommendations on “ways to improve the tribal customer experience”. This is an inherently problematic perspective because there is, at its core, an imbalance of power; one that doesn’t necessarily place the power with the customer (as things are, there are often no other service providers in Indian Country when it comes to federal programs and services) , but on the service provider who is in a position to decide whether or not to take the customer’s feedback on board. President Biden said, “Tribal Nations are sovereign governments recognized under the Constitution”. Tribal Nations are not customers; they are sovereign governments with whom the U.S. government has the responsibility to have “regular, meaningful, and robust consultations”.

Therefore, the relationship ought to be one of partnership, which is closer to the principle of nation-to-nation or government-to-government relationship and more readily accepts Tribal Nations as sovereign governments.

The current USDA consultation policies have been in effect since 2013. There are areas where the policy could be updated and improved. USDA reported at the 2021 consultation that the policy is being revised. What timeline does USDA anticipate for updated consultation policies? USDA officials and staff should take to heart the meaning of government-to-government consultation; a first step would be to increase the numbers of Working Effectively with American Indians Training; this will improve USDA staff’s lack of exposure to the intricacies of Indian Country dynamics and needs.



Increase Field Office Knowledge Continued

Additional training should be provided for those staff positions most commonly involved in tribal consultation.

A database of tribal areas of interest and tribal points of contact should be developed to additionally target consultation efforts.

Fulfill the current consultation policy commitment to “create a new internal Working Group on Tribal Consultation and Collaboration” with representatives from all USDA agencies.

Inconsistencies still exist between USDA agencies on how they handle control of land issues for Indian Country.

The Tribal Advisory Council created by the 2018 Farm Bill could help address field knowledge issues and improve USDA/BIA coordination and collaboration, but it has not been implemented.



Tribal Representation and Voice within USDA

Tribal leaders have called for more Indigenous employees across USDA, especially for Tribal-facing roles. Tribal leaders have previously identified two pathways to increase more Indigenous candidates for USDA jobs: better position description structuring, and better outreach and intentional advertising of open positions.

- Position descriptions for these roles can be written to require a certain amount of experience working with Tribal Nations. This helps to ensure that Indigenous candidates make cert for positions that are Tribal-facing without running afoul of any civil rights concerns for USDA.
- Job postings for USDA jobs that serve Indian Country or are Tribal-facing can be better advertised to Tribal Nations, Indian Country media, and Native organizations. Native organizations in particular are a free resource in this regard. Many have large listservs and social media followings and can share job information directly to potential Indigenous candidates, but USDA must meet these organizations in the middle and share postings as they are available.

- More Tribal representation is needed on local, county, and state boards that make critical decisions on allocation funding and resources.
- Debt relief for Native producers and access to technical assistance in obtaining agricultural credit.
- The Farm Service Agency Farm Ownership Loans require having a signed offer to purchase before initiating the loan review process, and financial approval can take up to 30 days; most producers are uninterested in waiting so long for approval. A pre-approval process, like ones available under most commercial credit scenarios, is needed. Another solution could be using cash flow prior to closing to demonstrate repayment ability.



The Grasslands Reserve Program excludes permit style range leases that aren't in contract form, which disqualifies a large portion of Indian Country.

- Eligible acreage has to be in a producers operation for a year prior to eligibility, which causes a barrier to five-year lease contracts with the BIA, and has verbiage that excludes federally-controlled lands.
- NRCS Tribal Advisory Councils started well, and during the first five years of existence, there was great collaboration between NRCS and the Tribes, with information provided to the Councils about how many Tribes were participating in programs, how many dollars were allocated to Tribes, et cetera. More recent meetings have been agency updates and information sessions without true interaction with the USDA agencies and Tribes. Getting back to that collaborative information sharing is essential in benchmarking success in Tribes accessing NRCS programs.
- NRCS payments, and other cost payment schedules for reimbursement, need to be updated to fund projects as many currently do not align with actual costs.
- These estimated costs do not account for the additional considerations of costs in Indian Country – such as reduced access to labor and contractors, higher costs, rural location, etc.



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Natural Resources Conservation Service

- Some Indian Country participants report that under cost estimates driven by the NRCS payment schedule, 90% of conservation project costs would be covered. However, once their project was complete, only about 40% of the total cost was covered because actual costs in Indian Country so far exceeded the NRCS estimate
- Ensuring that NRCS Projects on Tribal and Trust lands receive additional points in the ranking process for Tribal-set aside funding pools for all programs. Presently, in South Dakota, Tribal set aside dollars are not adequately reaching Tribal land bases, and the funds are being used for larger projects off reservation.
- Tribal set-aside funding pools are not reaching the target. Instead, they are reaching producers not historically underserved but operating within the reservation.
- Due to how the points system works for EQIP ranking, people who operate more land types and can install more practices, especially cropland being seeded to hayland for example, will always score higher points and be awarded a contract before an application with Rangeland with Rangeland-related Practices only.
- Historically Underserved operators normally do not operate multiple land types like farmland in addition to their Rangeland, due to historical and economic reasons.
- In South Dakota, the South Dakota Tribal Advisory Committee recognized this and recommended a solution that prioritizes both Historically Underserved Producers and also maximizes the amount of percent of the pot of the money for the set aside (19% of the land in SD is Reservation therefore they receive 19% of the total pot) because it was targeting a land type, which was Tribal Fee, or Trust Land, (which anyone can operate) and not a race of people.

- The 2018 Farm Bill requires that the Secretary of Agriculture and the Federal Crop Insurance Board evaluate whether insurance policies and plans available in each state are adequately serving “underserved producers” – including Tribal producers; to date, no public information about this report is available. Is there an update?
- RMA should release this study and discuss findings with Tribal stakeholders and technical assistance providers so that the report is inclusive, comprehensive, and proposes practical solutions
- Increasing insurance through Enhanced Coverage Option (ECO) and Supplemental Coverage Option (SCO) could allow Native farmers to leverage greater access to credit.



Agricultural Marketing Services

- Lack of infrastructure to support producers getting food to market - some of the identified needs and investment opportunities include, increased processing capacity and access to certified facilities; preservation and storage infrastructure investment such as cold storage for traditional foods and perishable goods; and the logistics and distribution infrastructure for food.
- Lack of technical assistance in achieving Vendor Certification for Native producers
- Lack of Native producers being reached on institutional market opportunities at USDA
- AMS check-off dollars do not make it back to Tribal producers, and it is a cumbersome process and challenging for Tribal producers to navigate. Specific support, capacity building, and technical assistance is needed.
- Additional funding and specific Tribal set asides in the Local Agricultural Marketing Program (LAMP) and other marketing programs are essential to ensure that Tribal producers can build out their local production, which will help support strong food system development. However, adequate notice of programming is critical to Indian Country involvement. A 45-day notice is too short for many Tribal governments to prepare for, and the lack of current Tribal infrastructure is also problematic.
- The new program and funding opportunities that USDA has released over the last year address some of these problems raised in last year's consultation, but they are not reaching Tribes and Tribal producers in the numbers they should. Part of that is driven by paperwork-intensive application requirements, and part of it is dedicated outreach. How will AMS work better with Indian Country technical assistance providers in the next year to make sure that as programs roll out, Tribal producers have dedicated outreach?
- President Biden's executive order on buying American products could be put into action here at USDA. When President Biden signed that order, he specifically mentioned sourcing products from Black and Native-owned businesses. Creating a Native set-aside in any future Farmers to Families food sourcing opportunities would fulfill the promise of this executive order and get Native-grown food products onto the tables of Tribal citizens who need them.
- On Organic Standards: Ensure government parity by including Tribal Nations as state authorities in the Organic Foods Production Act so they can operate their own organic certification programs.





USDA - Office of Tribal Relations

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's revised consultation policy include required reporting to Tribal Nations after consultations?
- 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.
- 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.

