

USDA Barriers Consultations 2024

Tribal Briefing Materials

Farming, Ranching, & Conservation



Tribal Barriers at USDA

Farming, Ranching, and Conservation

The Indigenous Food and Agriculture Initiative (IFAI), Intertribal Agriculture Council (IAC), the Intertribal Buffalo Council (ITBC), and the Indian Nations Conservation Alliance (INCA) created the following Tribal Leader Briefing materials ahead of the U.S. Department of Agriculture's (USDA) annual Barriers Tribal Consultation.

This briefing document provides key information and helps inform and educate Indian Country on potential barriers and actions to improve USDA's service and programming to Indian Country.

Tribal Caucus: Wednesday, April 24, 2-3 p.m. EST

Tribal Consultation with USDA: Wednesday, April 24, 3- 4:30 p.m. EST

Listening Session: Wednesday, April 24, 4:30–5:30 p.m.

[Register here – Same link for caucus, consultation and listening session](#)

Note: Listening Session could begin before the proposed time of 4:30 p.m. EST, depending on when the Tribal Consultation period concludes. During the Listening Session portion, Tribal citizens, Tribal staff, and Tribally-serving organizations may provide input.

Find more information:

www.usda.gov/tribalrelations/tribal-consultations

Logistics

During the week of April 22 – 26, 2024, USDA will hold five separate Tribal Consultations for elected officials and their proxies to discuss Tribal barriers at USDA. Consultations will be divided by topic as follows.

- 1 Monday April 22: Education and Research
- 2 Tuesday April 23: Forests and Public Lands Management
- 3 **Wednesday April 24: Farming, Ranching, and Conservation**
- 4 Thursday April 25: Economic Development
- 5 Friday April 26: Food, Safety, and Trade

This briefing material is developed for the Tribal caucus and consultation focused on barriers in **Farming, Ranching and Conservation** on **Wednesday, April 24, 2024**. For more information on the other topic consultations, see the [OTR Tribal Consultation website](#).

On Wednesday, April 24, 2024 there will be a caucus, consultation and listening session for Farming, Ranching, and Conservation.

- The Tribal caucus will begin at 2 p.m. EST and is only open to Tribal leaders, their staff, and Indian Country serving organization staff. No federal staff or officials, nor media, will be on this call.
- The official consultation between USDA and Tribal government officials will immediately follow at 3 p.m. EST.
- The open listening session is anticipated to begin at 4:30 p.m., where Tribal citizens may offer comment.
- All are online only, and pre-registration is required through this one [registration link](#). The caucus, consultation and listening session will all use the same link so you only need to register one time. A Dear Tribal Leader invitation can be found [here](#).
- After registering, you will receive a Zoom confirmation email with connection information. If you are having trouble registering through Zoom, please contact the USDA Office of Tribal Relations at Tribal.Relations@usda.gov.
- If you are a Tribal government staffer/designee appointed to speak on behalf of your Tribe by its elected leadership, you must submit a proxy letter to USDA Office of Tribal Relations at Tribal.Relations@usda.gov before the meeting. The proxy letter template can be downloaded [here](#).
- If schedules do not allow for attendance, written comments can be submitted to Tribal.relations@usda.gov.
- USDA developed a framing paper to provide an agenda for the consultation. The framing paper can be found [here](#).

Logistics

What is a Tribal Caucus?

This is a closed meeting, often held before an official consultation with the federal government. Caucus attendees are only Tribal government leaders, their staff and supporting organizations/individuals who are invited to the meeting. No federal staff or media members can attend, unless explicitly invited by the organizers. This allows attendees to discuss issues amongst themselves, ask questions of subject matter experts and formulate ideas on what they would like to discuss at the official consultation.

What is a Tribal Consultation?

A consultation is an official meeting between sovereigns — the federal government and Tribal nations. Consultations are required by federal law, and those speaking must either be an elected official from a Tribe or their proxy. Proxies must show federal staff their signed proxy letter by their Tribal government in order to speak on behalf of that Tribe.



Introduction & Background

In January 2021, [President Biden signed an Executive Order on Advancing Racial Equity and Support for Underserved Communities to address entrenched disparities in U.S. laws, public policies and private and public institutions](#). Beginning in 2021, USDA and Tribal leaders have sat in consultation annually to discuss Tribal barriers at the agency. This year will mark the fourth annual consultation focused on Tribal barriers at USDA. While progress has been made, Indian Country continues to be underserved and adversely affected by persistent poverty and inequality, including a lack of access to federal programs and services.

Tribal agriculture production and food systems are essential economic development and community drivers in Indian Country. Yet, the ongoing lack of equitable access to USDA programs, credit, and infrastructure continues to pose barriers for Tribal Nations and producers. Removing these barriers can significantly improve Indian Country economies, spurring economic growth in necessary physical infrastructure and creating pathways to Tribal self-determination and Tribal food sovereignty.

From April 22 to April 26, 2024, Tribal leaders and their representatives will meet with the USDA Consulting Officials on how the Department is incorporating Tribal input to increase Indigenous access to federal programs. Tribal leaders can provide feedback on USDA's commitment to addressing historical and current barriers facing Indian Country through equitable access to USDA programs and services.



Overview

USDA has provided the following lists of items to discuss during the April 24, 2024 consultation:

Progress Report on prior year identified barriers.

- Land Eligibility Issues: Alignment with BIA Agricultural Leases and Federal Grazing Permits
- Indian Country Improving Access to USDA Agricultural/Land Financing
- Implementing Systems to Ensure Accountability in Program and Service Delivery
- Supporting Traditional Food/Food Ways
- Value Added/Shared Supply Chain Resources Targeted for Indian Country
- Creating Systems to Assure Indigenous Knowledge Informs USDA Programs

2024 Tribal Barrier Topics

- Co-location of FSA/NRCS/RD Offices on Reservations
- Coordination with Bureau of Indian Affairs
- Unmet Budget Needs

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



USDA Progress Report

USDA officials are prepared to update Tribal leaders on any progress the Department has made since the previous consultation. Progress reports by topic area can be found at the following links:

- [USDA Tribal Producers](#)
- [USDA Tribal Buffalo Partnership](#)
- [USDA Barriers Removed](#)
- [USDA Tribal Food Sovereignty Progress Update](#)

Additional information can also be found in USDA's [framing paper](#).



2024 Barrier Topics

USDA has identified the following 2024 topics to discuss with Tribal leaders. While these are the topics USDA has chosen to discuss, Tribal leaders are not limited to these topics and may raise any issue during consultation.

1. Revitalizing the USDA Departmental Regulation regarding Co-Location of FSA/NRCS/RD Offices on Reservation.

Since the 1990 Farm Bill, USDA has been obligated to establish a suboffice for what is now FSA and NRCS on reservations. USDA is required to staff an office a minimum of one day a week. Until 2008, the Tribe was required to provide the office space if the Tribe wished to have a sub-office. The 2008 Farm Bill removed the requirement for the Tribe to provide the office space.

In 1991, USDA implemented a Departmental Regulation, [USDA Department Regulation 1340-002 Consolidated USDA Agency Services on Indian Reservations](#) to define USDA policy on how to establish a sub-office on reservations for what is now NRCS and FSA. USDA is currently in the process of updating this policy with a revised departmental regulation.

USDA drafted updates to its departmental regulation and in September of 2023 and held a Tribal consultation.

In the updated draft, USDA added Rural Development to be included in suboffices. USDA also included a detailed process for Tribes to request a suboffice and added options for virtual meetings.

The [Indigenous Food and Agriculture Initiative](#) and [Intertribal Agriculture Council](#) developed briefing materials and facilitated a Tribal caucus in advance of the USDA Tribal Consultation held in September 2023. These briefing materials can be found [here](#).

2024 Barrier Topics

Concerns raised during the caucus in September include:

- Why is USDA requiring Tribes to submit an application and justify their need for a suboffice if it is already USDA's responsibility to provide the office?
- Is USDA contemplating one staff person to cover the broad portfolios of NRCS, FSA, and RD? If so, will this meet Tribal needs?
- Will there be metrics in place to quantify the effectiveness of the office staff?
- USDA should be required to consult with Tribes on any suboffice request. Is USDA planning to do this?
- Will Tribes who do not wish to use a virtual option be more likely to be denied a suboffice?
- Lack of agency funding and budgeting is not a basis for refusing to implement the underlying law for Tribes with reservations, the law requires suboffices be established and staffed with current staff at least one day per week.

USDA states that they have made additional changes to the updated Departmental Regulation since their updated rule was released in 2023 in response to Tribal consultation.

Mainly, USDA describes the additional changes as the coordination of state-level efforts that will be made through interagency USDA State Food and Agriculture Councils (SFACs) instead of individual agencies working with Tribes one-on-one.

Each SFAC will be primarily led by Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and Rural Development (RD), with representatives from other agencies, including Risk Management Agency (RMA), National Agriculture Statistics Service (NASS), Animal Plant Health Inspection Service (APHIS), National Institute of Food and Agriculture (NIFA) and Forest Service (FS). USDA has not released its updated draft regulation.

2024 Barrier Topics

USDA seeks Tribal input on the following discussion areas:

USDA is stating that there is no funding for suboffices and is asking Tribes to provide office space to host USDA staff during days onsite on the reservation.

Tribal Considerations:

- What steps has USDA taken to ensure funding to fulfill its legal obligation to staff suboffices on reservations?
- Why is USDA stating that funding is not available when the law requires it to staff suboffices on reservations with existing staff?
- Will USDA consult with Tribes on every suboffice request?

USDA is asking Tribal leaders to weigh in on whether virtual access to USDA staff would be acceptable and if the Tribe is willing to host USDA virtual office days.

Tribal Considerations:

- Will the Tribe be responsible for installing/maintaining secure and adequate virtual access?
- Will Tribes who do not wish to use a virtual option be more likely to be denied a suboffice?

2024 Barrier Topics

2. Coordination with Bureau of Indian Affairs to Streamline Program Access on Tribal Agricultural Lands.

In 2019, USDA and BIA entered into a Memorandum of Understanding [USDA-BIA 2019 Memorandum of Understanding](#). The purpose of the Memo of Understanding is to establish coordination, planning, and implementation of USDA programs on lands held in trust in an environmentally, culturally, and economically sound manner.

USDA outlines in their framing paper examples of progress made to date but is also looking for Tribal leaders to provide input. USDA lists the following examples of progress made to date:

- Formation of the permanent Interagency Working Group on Tribal Agricultural Lands to improve Indian Country support by both USDA and BIA.
- Streamlining processes between BIA, FSA and NRCS and improving data sharing and communication
- Developing nation-wide USDA/BIA cross-training for federal employees and Tribal department staff – beginning Summer 2024 - to improve uniformity of farm production and conservation technical assistance to Tribal nations, producers, landowners, and Tribal conservation districts.
- Supporting updates to BIA agricultural leasing regulations address barriers to Tribal participation in USDA agriculture and conservation programs.
- Developing plans to exchange data with BIA to coordinate required information on agricultural participation and trust land ownership
- Commitment to extend the existing MOU, which is set to expire on November 5, 2024, for five years.

2024 Barrier Topics

USDA seeks Tribal input on the following discussion areas:

On-going policies and/or barriers negatively impacting Tribal communities.

Tribal Considerations:

- There is a continued failure to fully train local office staff to be knowledgeable in serving Indian Country and the opportunities available to Tribes and Tribal producers.
- For example, FSA Credit staff has limited knowledge of alternative collateral options other than land/real property.
- Staff turnover is high in Tribally-serving positions like NRCS tribal liaisons. A solution could be to create specific career paths for Tribally-serving positions.

Recommendations for the Interagency Working Group on Tribal Lands.

Tribal Considerations:

- One issue that has been raised is BIA failing to sign off in a reasonable time on land-based reviews that are required on tribal lands before enrolling into a federal program or contract. In many cases, it takes more than 90 days and in at least one instance it took two years. This significant contributing factor to why tribal lands are underserved by conservation and other federal ag programs.
- A potential solution is a "deemed approved" deadline so that if BIA fails to act within a set number of days then the substance of the request is deemed approved in order to not delay access to the federal program. This is a big part of why tribal lands are underserved by conservation and other federal agriculture programs.

2024 Barrier Topics

- BIA acreage reports often differ from USDA generated or tribally-generated acreage determinations to the detriment of program eligibility. There should be reconciliation between the two agencies regarding the determination of arable acres, acres in production, acres of pasture vs cropland vs forest, etc.
- A potential solution is that the most recent acreage assessment be the controlling determination or that both agencies use the same formulas AND software programs to determine the calculations.
- In instances where the agencies are already using the same software program, BIA should provide files to the USDA office to avoid duplication.

Communication methods that the Interagency Working Group can use to best inform Tribal leaders and staff, and agricultural producers of changes and updates.

Tribal Considerations:

- Dear Tribal Leader letters are insufficient. Communication must be with Tribal Executives, Tribal Council and Subject Matter Expert Staff. Tribal subject matter staff should be notified if the change or update impacts a program they are responsible for.
- Electronic posting of regulatory or policy change notices should be in one location, and comments on changes should be received before a change is made final. ITOs and Tribal organizations should also have that information shared.
- This could be modeled after the requirement in EO 14112 that agencies compile and update all federal funding opportunities one accessible site. See [EO 14112, Sec. 5\(e\) EO 14112](#)

2024 Barrier Topics

3. Budget Input: E.O 14112 Unmet Budget Needs

In December 2023, the President signed Executive Order (E.O.) 14112, [Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination](#).

The E.O. directs federal agencies to lean into flexibility in support of increasing Tribal self-determination. The E.O. also directs all federal agencies to report to the White House the unmet budget needs for supporting Tribes. IFAI developed a briefing document on E.O. 14112 which can be found [here](#).

USDA seeks Tribal input on the following discussion areas:

Feedback from Tribes about unmet budget needs to support Tribes.

Tribal Considerations:

- Since USDA states that there is no funding available to comply with its requirement to establish suboffices on reservations, this should be included as an unmet budget need.
- Consider funding needed for noxious weed management on Tribal lands.
- Consider funding needed to ensure adequate training for all staff and FSA Committee to ensure awareness and knowledge of Tribal producer issues.
- USDA programs do not adequately support Tribes. Consider funding needed to assess and remedy this problem.
- Consider funding to make permanent positions with career advancement opportunities at all levels of USDA that provide direct support to Tribal producers and governments.
- Consider funding for 638 opportunities expanded throughout USDA.

Thank You!



INDIAN NATIONS
CONSERVATION ALLIANCE