



U.S. DEPARTMENT OF AGRICULTURE

USDA CONSULTATION & LISTENING SESSION ON TRIBAL BARRIERS
APRIL 22, 2024

Framing Paper:
Education & Research

VIRTUAL CONSULTATION

Registration: [Click to register](#)

AGENDA

2:00-3:00pm ET **TRIBAL CAUCUS** - Hosted by the American Indian Higher Education Consortium (AIHEC) and the American Indian Science and Engineering Society (AISES).

3:00-5:30pm ET **TRIBAL CONSULTATION & LISTENING SESSION: RESEARCH & EDUCATION**

3:00-4:30 **Consultation** (Tribal government officials)

4:30-5:30 **Listening Session** (Open to Indian Country speakers)

Mission Areas: Research, Education, and Economics (REE)

Agencies: Economic Research Service (ERS), National Institute of Food and Agriculture (NIFA), National Agricultural Statistics Service (NASS), Agricultural Research Service (ARS)

Introduction/Consulting Officials: Dr. Chavonda Jacobs-Young, Under Secretary, REE

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Background. Since 2021, the USDA Office of Tribal Relations (OTR) has had robust discussions in the Research & Education space about 1) Integrating Indigenous Ecological Knowledge & Practices, 2) Funding Parity for Tribal Colleges and Universities (TCUs), 3) Increasing USDA Partnerships with TCUs, 4) Streamlining the National Institute for Food and Agriculture's (NIFA's) Grants for TCUs, 5) Increasing Extension Funding and Extend Terms, and 6) Increasing Scholarships and Internships for TCU Students. We have made significant progress in these priorities. This year, we seek input on some new topics: 1) Research Priorities, 2) Indigenous Seeds, and 3) Data Sovereignty.

PROGRESS UPDATES:

- [USDA Tribal Colleges, Students, and Youth](#): Progress Report, *Spring 2024*
- [USDA-Wide Tribal Accomplishments](#), Tribal Nations Summit Report, *Winter 2023*

2024 TRIBAL BARRIERS TOPICS:

1. INDIAN COUNTRY RESEARCH PRIORITIES
2. INDIGENOUS SEEDS
3. TRIBAL DATA SOVEREIGNTY
4. BUDGET INPUT: E.O. 14112 UNMET BUDGET NEEDS

1. INDIAN COUNTRY RESEARCH PRIORITIES

What we heard from Tribes in Prior Consultations: USDA is one of the largest investors in food and agricultural research in the nation. What we heard from Indian Country was a concern that USDA investments in priorities that are important to them, Tribal leaders, Tribal colleges, and Indian Country have been limited.

Examples of Progress Made to Date:

- **OTR Re-Established the Tribal College Faculty Fellowship (Terra Preta do Indio) to Bring Tribal College Faculty Researchers to USDA.** This Fellowship work is key to establishing a shared research agenda between USDA and TCUs. This faculty fellowship program seeks to strengthen TCU research capacity, as well as introducing faculty and staff to USDA programs and services. Five fellows participated in the program during the summer of 2023. In June 2024, the faculty fellows will spend a week in Washington, D.C. to meet with USDA program leads, identify areas for collaboration, and learn more about USDA resources. During a second week, fellows will be placed at a USDA research facility that aligns with their academic research interests. This year's research collaborations will take place with the USDA's Agricultural Research Service (ARS), the Forest Service, and the National Institute of Food and Agriculture. The faculty fellows will then return to their institution with new knowledge to benefit their communities, cooperative research opportunities, and advance their Tribal college land grant mission of research, education, and extension. Learn more at USDA's [Tribal College Program | USDA](#)

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- **ARS Identified Fifty (50) ARS Researchers Interested in Partnering with Indian Country Researchers and Research Topics.** ARS worked to identify fifty (50) researchers interested in partnerships with the Tribal College faculty fellows and other potential partners on indigenous-focused research topics.

Tribal Input Needed:

OTR has compiled a list of research priorities that we have collected from Tribal leaders, Tribal colleges, and others in Indian Country. We seek your input on these priorities.

Agriculture Research

- **Indigenous & resilient crops.** Research on plants/crops indigenous to North America that require fewer inputs and are more climate resilient (i.e., tepary beans, quinoa).
- **Wild indigenous edible plants.** Research and education on edible plants indigenous to North America particularly to support wild propagation, and measure impacts of changing climates on existing wild populations.
- **Indigenous agricultural techniques.** Effectiveness and broader applicability of indigenous agricultural techniques (i.e., Hopi dry farming, multi-cropping/companion planting, subsistence).
- **Subsistence.** Inclusion of subsistence measurements and impacts in statistical data collection with the USDA National Agricultural Statistics Service (NASS).

Nutrition Research

- **Nutritional value of indigenous foods.** Measuring the nutritional value of indigenous plants/crops and native animals (i.e., bison, blue corn) to support their incorporation into USDA's Food Buying Guide and increased consumption of nutrient-dense foods.
- **Native bodies' nutritional needs.** Analyzing the nutritional needs of indigenous peoples compared to the general population to assist in informing federal nutritional guidelines (i.e., Alaska high fat diet, digestibility of simple carbohydrates/milk, etc.)

2. INDIGENOUS SEEDS

What we heard from Tribes in Prior Consultations: Tribes and Tribal Colleges want USDA to invest more time and resources in supporting the protection and propagation of indigenous seeds.

Examples of Progress Made to Date:

- **ARS Indigenous Traditional Knowledge & Foods Seed Propagation Research Collaborations with United Tribes Technical University (UTTC) and Nueta Hidatsa Sahnish College (NHSC).** The Agricultural Research Service (ARS) created collaborations with TCUs to promote Indigenous Traditional Ecological Knowledge (ITEK) and Food Systems. ARS implemented cooperative agreements with UTTC and NHSC to rematriate traditional cultivars and develop propagation techniques for culturally important native plant species. This information provides a building block to replicate

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ITEK systems, providing a model to enhance TCU research relationships celebrating Indigenous Knowledge throughout ARS research facilities. ARS is collaborating with UTTC to evaluate native prairie plant species that have medicinal and edible uses and determine their feasibility for plant propagation. ARS and NHSC are focusing their partnership on seed sovereignty by increasing the varieties and quantities of seeds available to Mandan, Hidatsa, and Arikara Tribal members. The goal for these agreements is to develop best practices for working collaboratively with TCUs and Tribes on propagating Tribal traditional seeds and plants and developing Native food systems.

- **OTR/Natural Resources Conservation Service (NRCS) Native Grasses and Forbs Research with Institute of American Indian Arts (IAIA).** USDA’s Office of Tribal Relations has entered into two Cooperative Agreements with the Tribal Alliance for Pollinators (TAP) and the Institute of American Indian Arts (IAIA) to expand native grass and forbs seeds for pollinators, grasslands, and working lands restoration. The TAP agreement includes work to improve access to USDA’s resources and programming for our Tribal partners and producers through educating consumers, agency staff, and federal policy decision makers about native grasses and forbs that complement native grassland conservation and livestock consumption. TAP will partner with USDA’s NRCS to update the NRCS state foraging seed lists to incorporate more native grasses and forbs and amend EQIP reimbursement for seeding as appropriate. The IAIA agreement focuses on improving access to USDAs resources and programing for TCUs, Tribal partners and producers through educating consumers, agency staff, and federal policy decision makers about the cultural importance of pollinators and their products.

Tribal Input Needed:

Based on Indian Country feedback thus far, we have identified several areas where USDA may be able to provide additional support for Tribal goals regarding seeds. We have labeled the effort the “**USDA Indigenous Seeds Series.**” We welcome your review and feedback.

USDA INDIGENOUS SEEDS SERIES:

- **Tribal Government Seed Security Submissions.** To ensure global food security, the USDA-ARS National Plant Germplasm System (the USDA “Seed Bank”) protects security backup seed collections for governments and other eligible entities, including tribal governments. Tribes are often unaware of this important food security resource, so OTR will work with ARS to tailor the Seed Bank Storage policy for Tribes and work together on amplification.
- **Tribal Seed Labeling.** Many of the seeds indigenous to the United States in USDA’s collection have accessions that do not include their original indigenous names. OTR is working with ARS to consult with Tribes to collect common Tribal names to augment the historical labeling.
- **Augment NRCS Livestock Feed Seed Lists with Additional Native Grasses.** NRCS plays an important role ensuring the health of livestock and the soil. OTR will work with NRCS, ARS, and cooperative agreement partners to augment the NRCS grasslands list with additional appropriate native grasses.

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- **Tribal Seed “Low Inventory” Propagation & Distribution Partnership.** USDA’s seed bank ([Germplasm Resources Information Network](#)) includes significant collections of Tribal specific seeds. To diversify our national seed security and support our general Tribal trust responsibilities, OTR will work with ARS, TCUs, and Tribal organizations to propagate “low inventory” indigenous seeds, as well as bundling and distributing seed packages directly to applicable Tribal nations.

3. TRIBAL DATA SOVEREIGNTY

What we heard from Tribes in Prior Consultations: Indian Country wants to work with USDA, but several areas of cooperation, such as Sacred Sites, indigenous seeds, Indigenous Ecological Knowledge, include sensitive cultural information. Tribes have stated that they do not want such information shared publicly, and they expressed concerns about making sensitive cultural heritage available for commodification or private industry use without Tribal consent. The question is, how can Tribes work with USDA while also protect their information?

On April 11, 2024, the USDA Research, Education, and Economics (REE) will hold a consultation specific to Tribal data within the federally funded research context. Their Framing Paper provides additional background and can be found here: [Framing Paper: Public Access to USDA-Supported Research Results and Indigenous Data Sovereignty](#).

Examples of Progress Made to Date:

OTR and ARS Partnered with UTTC and NHSC to Think Through Best Practices on Data Sovereignty. Cooperative agreements between ARS and UTTC and ARS and NHSC have been implemented to rematriate traditional cultivars and develop propagation techniques for culturally important native plant species. This information provides a model that can be developed to enhance TCU research relationships celebrating Indigenous Knowledge throughout ARS research facilities. From the beginning there have been up-front conversations about what protections can be offered by ARS and what cannot. Together the partners have discussed non-assistance cooperative agreement (NACA) and material transfer agreement (MTA) language. This partnership prompted the ARS Office of Technology Transfer to collaborate with the TCUs on a MTA that was acceptable to both parties. MTAs are used to protect interests in the material exchanged, facilitate cooperative sharing, protect ownership rights, and limit how the material might be used. This coordination will be documented in the white paper authored by ARS and the TCUs. This partnership has also sparked ongoing discussions and research about the Freedom of Information Act (FOIA) and how it relates to the protection of indigenous data and data sovereignty. Continued work will include the development of a short fact sheet to assist Tribes and TCUs in their decision-making process.

Tribal Input Needed:

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Absent an Act of Congress providing Tribes and/or Indigenous Data an exemption from FOIA, USDA seems limited in the protections it can guarantee Tribal partners. Here are some initial thoughts for discussion:

Limitations on USDA's Ability to Protect Tribal Data

- 1) **FOIA.** [FOIA](#) requires disclosure of most information in USDA's possession upon request by the public.
 - **FOIA Exemptions.** While there are some exceptions to FOIA, there are no broad exemptions for Tribal data. The current statutory exemptions may not directly align with the information or data Indian Country is seeking to protect. Examples of exemptions include:
 - Information that is classified to protect national security.
 - Information that is prohibited from disclosure by another federal law.
 - Trade secrets or commercial or financial information that is confidential or privileged.
 - Privileged communications within or between agencies, including those protected by the:
 - Deliberative Process Privilege (provided the records were created less than 25 years before the date on which they were requested).
 - Attorney-Work Product Privilege.
 - Attorney-Client Privilege.
 - Presidential Communications Privilege.
 - Information that, if disclosed, would invade another individual's personal privacy.
 - Information compiled for law enforcement purposes that:
 - Could reasonably be expected to interfere with enforcement proceedings.
 - Would deprive a person of a right to a fair trial or an impartial adjudication.
 - Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
 - Could reasonably be expected to disclose the identity of a confidential source.
 - Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.
 - Could reasonably be expected to endanger the life or physical safety of any individual.
 - Information that concerns the supervision of financial institutions.
 - **USDA Cannot Promise it will Assert a FOIA Exemption.** Many Tribes have asked if USDA can put a commitment in its Cooperative Agreement or contract that it will claim a specific exemption to FOIA for the work they are creating.

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Unfortunately, the FOIA process does not allow a pre-emptive commitment. Each FOIA request is reviewed on its merits at the time of the FOIA requestor's inquiry, by the USDA FOIA office.

2) Directive for Public Access to Federally Funded Research.

- **White House Office of Science and Technology Policy (OSTP) – Public Access to Research Directives:**

- [Increasing Access to the Results of Federally Funded Scientific Research](#) (February 22, 2013)
- [Ensuring Free, Immediate, and Equitable Access to Federally Funded Research](#) (August 25, 2022)
- **USDA Framing Paper on Access to Research: [Public Access to USDA-Supported Research Results and Indigenous Data Sovereignty](#)**

Potential Paths Forward

- **Tribal Data Sovereignty Disclosure Document.** One of the paths USDA can take is to create a document disclosing the limitations on data protections to Indian Country partners so that they can decide if and how they wish to partner with USDA.
- **Rethinking Agreement Structures.** Some Indian Country partners have proposed some creative restructuring ideas on how to better protect their data in partnerships. These include housing all data with the Tribe or making the project providing technical assistance to the Tribe rather than the research itself. These have not been fully reviewed by USDA to determine viability.
- **US Forest Service FOIA Exemption.** The US Forest Service does currently have a specific statutory authority for non-disclosure of information under the Freedom of Information Act (FOIA) but is limited in its applicability:
 - **USFS Cultural Heritage Cooperation Authority** (25 U.S.C. § 3051): The Secretary shall not disclose under section 552 of title 5 (commonly known as the “Freedom of Information Act”), information relating to—
 - (A) subject to subsection (b)(1), human remains or cultural items reburied on National Forest System land under section 3053 of this title; or
 - (B) subject to subsection (b)(2), resources, cultural items, uses, or activities that—
 - (i) have a traditional and cultural purpose; and
 - (ii) are provided to the Secretary by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out under the authority of the Forest Service.
- **USDA Providing Protections Public Policy**
 - While it would not address the FOIA concerns, since the law applies to all federal agencies, USDA has its own [Department Regulation \(DR 1020-006\)](#) outlining its requirements regarding the publication of research funded by USDA.
 - **USDA Framing Paper on Access to Research: [Public Access to USDA-Supported Research Results and Indigenous Data Sovereignty](#)**

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- **Would Tribal nations support adding indigenous data to the list of data categories in DR 1020-006 that are not required to be made publicly accessible? How can USDA recognize indigenous data sovereignty in its public access policy?**
 - Context: Departmental Regulation (DR 1020-006) lists nine data categories that are not required to be made publicly accessible, consistent with statutes and other directives, i.e., proprietary information, information that would hurt national security, the physical location of sensitive cultural or archaeological sites, etc. USDA could expand this list to explicitly name indigenous data using language such as: “Data that would violate Tribal nations’ data sovereignty, including data collected about their citizens, lands, and resources that is not authorized by tribal nations to be made publicly available.”
 - Should Indigenous Knowledge be included?

4. BUDGET INPUT: E.O. 14112 UNMET BUDGET NEEDS

Background: In December 2023, the President signed EO 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 EO directs federal agencies to lean into flexibility in support of increased Tribal self-determination. The EO also directs all federal agencies to report to the White House what unmet budget needs for supporting Tribes. While USDA has time to report back, we want to begin the conversation now on unmet budget needs.

Tribal Input Needed:

- **Q1:** What unmet budget needs do you want to flag for USDA?