

USDA Report Out on Tribal Consultation and Listening Session on Self-Determination in Food Sovereignty and Nutrition Programs (Food)

2024 Self-Determination Tribal Consultation and Listening Session Report-Out

U.S. Department of Agriculture (USDA)

Food Sovereignty and Nutrition Programs (Food)

June 5, 2024

In-Person and Virtual Meeting

Cherokee, North Carolina

**Mission Area:** Food, Nutrition, and Consumer Services (FNCS)

**Agency:** Food and Nutrition Service (FNS)

**Consulting Officials:**

- Stacy Dean, FNS Deputy Undersecretary

**I. Opening Remarks**

- On its website, USDA has posted its Tribal progress reports and the framing paper for this consultation that highlight some of the significant progress in food and nutrition programs.
- USDA sought Tribal interest in making the Food Distribution Program on Indian Reservations (FDPIR) Self-Determination Demonstration Project permanent and/or expanding it, as well as integrating it into the larger FDPIR program.
- USDA also sought input on whether there might be interest in having legislative language that would authorize USDA to grant purchasing preferences to Tribal producers through a “Buy Indian” preference not only for FDPIR, but also for child nutrition programs.
- USDA also asked for input on locality preferences for purchasing based on previous feedback from Tribes regarding local purchasing preferences, which would allow more purchases from Tribal producers.
- USDA commented on the importance of supporting local food systems, which the FDPIR Self-Determination Demonstration Project allowed USDA to do. However, the Demonstration Project is currently limited by appropriated funding, which could introduce concerns about whether Tribes could continue to operate these programs without sufficient funding.

**II. Nation to Nation Consultation (Tribal government officials)**

*FDPIR*

- Multiple Tribes talked about the current scales on which they serve households. Even Tribes that have operated on a smaller scale have found success with the FDPIR Self-Determination Demonstration Project. At least one Tribe expressed interest in applying for another round of funding for the Demonstration Project.
- Tribal leaders expressed concerns about the potential for the pilot program to end. If it did, then that would essentially end the benefits gained for local purchasing and culturally appropriate foods, particularly on a local and regional level that is not achievable through a nationwide distribution.

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- Tribal leaders, who have received funding and have been successful, expressed support for the program to expand and make it permanent in the next Farm Bill. Leaders further commented that when Tribes receive funding to operate programs independently, they do so more efficiently.
- Several commenters noted their ability to support Tribal and local producers through their self-determination funding that provide numerous benefits to the local community.
  - One commenter expressed interest incorporating more local, high-quality foods with a Tribal preference. They are able to purchase meat from a Tribally-owned and operated processing facility thanks to self-determination pilot. Doing this has helped local schools understand how to procure local meat with their USDA Farm to School program funding. The commenter’s interest included intertribal commerce to support all Tribal producers, which may require the ability to sell meat across state lines.
    - USDA noted that the Local Food Purchase Agreements provided flexible funding for Tribes and many agreements are rolling out in 2024.
  - Similarly, another Tribe was able to offer whitefish from its own Tribal processing company to FDPIR recipients, allowing for identifiable marketing to communicate with clients.
  - Another Tribe shared that it has introduced an agricultural program and would use the self-determination funds to support direct purchasing from those Tribal producers. They were also interested in supporting non-Tribal local farmers.
  - Tribes also expressed a desire to support subsistence foods in Alaska where peninsular communities are considered food insecure. There were concerns with Alaska’s lack of recognition of Tribes on areas under state jurisdiction as well as interest in fishing rights to access traditional foods. One commenter noted that the Tribe was unsuccessful in working with the state to observe treaty rights regarding fishing. Tribal peoples have survived on fish since time immemorial and are now being deprived of basic needs, while travelers are allowed to dispose of bycatch fish. The commenter also expressed frustrations with the Magnuson-Stevenson Act and concerns with the Alaska National Interest Lands Conservation Act (ANILCA), asserting that Natives feel that they have less access to resources than those who moved into Alaska from elsewhere. The commenter stated that they would like to see ANILCA “taken off the books” and for subsistence rights to be revisited.
  - Another commenter noted the importance of subsistence in Alaska and lamented about the inability for elders to take young people salmon fishing because resources were poorly managed.
    - USDA acknowledged concerns regarding subsistence fishing and the challenges of jurisdiction over-fishing rights. USDA noted that it had joined the Department of the Interior (DOI) in adding three new Tribal members to the Federal Subsistence Board, and that the proposed rule regarding that change was open for comment. USDA also acknowledged the White House memo on Indigenous Traditional Ecological Knowledge and its specific references to the Magnuson-Stevenson Act.
- It was also pointed out that self-determination is important in FDPIR, stressing the importance of FDPIR remaining at USDA. A Tribal leader stated that there are rumors

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that the program may be taken over or “pushed” to the Bureau of Indian Affairs (BIA), which Tribal leaders do not support. The Tribal leader asserted that Tribal leaders would request an open discussion if such a change were proposed.

- A commenter asked if USDA has seen the progress of this pilot program, and what are USDA’s thoughts on how the pilot program has materialized? They have heard tremendous success from the project in building local food economies, and this has been a clear opportunity to maximize and capitalize on that concept. It is important to hear USDA’s support.
  - USDA responded that it is fiercely proud of FDPIR and has heard no discussion of moving the program. USDA expects FDPIR to continue to be operated by FNS at USDA. USDA is grateful for partnership with BIA on the self-determination pilot, but since this program is quite different from what BIA normally does, FNS has worked to increase its own expertise to bring all functions of the self-determination program within the agency.
  - USDA also reiterated the incredible success of the pilot program and the seamless integration into the existing FDPIR program to advance goals for self-determination. Where there have been stumbles, they have taught USDA staff how to do it better.
  - Some lessons learned included the discretionary nature of the pilot program potentially resulting in a conflict between maintaining existing contracts versus funding new programs. It is very important to maintain continuity with contracts for both Tribes and producers while also being able to welcome new Tribes to the program. Also, USDA will look to more flexibility in definitions so it can widen the foods eligible for incorporation into this program.
  - USDA has awarded extensions to existing FDPIR self-determination contracts, and the agency is waiting for the next appropriation, at which point it would expect to offer opportunities to additional Tribes. USDA welcomes more interest and is also happy to provide support to Tribes to help them apply for this program.
- FDPIR Tribal leaders thanked USDA for its immediate and supportive response, noting that they do not always hear feedback. Tribal leaders asked for this consultation to be documented, given the uncertain future of USDA leadership with upcoming election.
  - USDA responded that the [framing paper](#) is currently available for the public to download. Many career staff who presented during the consultation will continue their service regardless of the election. USDA has also been Tribal liaisons hired with deep experience in this topic.
- A commenter stated that USDA needs to ensure that all USDA foods distributed to Indian reservations are showing up as edible. There was a problem in Alaska, where there is a lack of accountability with the state and a lack of quality.
  - USDA responded that the Tribal liaison for the Western Region and the Associate Deputy Administrator for FNS’ Supplemental Nutrition & Safety Programs committed to following up.
- A commenter reminded the group that the FDPIR Tribal Leaders Work Group has existed for nine years across three administrations. A commenter reminded Tribal leaders that all must take up the responsibility to continue that dialogue and ensure that it works.

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### *The Emergency Food Assistance Program (TEFAP)*

- TEFAP is the food that the Federal government provides to state agencies for distribution to “eligible recipient agencies” (typically regional food banks) who in turn distribute to homeless shelters, soup kitchens, and the like.
- Only two Tribes present stated that they had a food bank. FNS noted that food distribution to food banks can be chaotic, giving an example of a delivery of a full truck of (perishable) apples suddenly without planning. USDA is seeking more Tribal engagement in food banks; however, statutorily, food bank distribution goes through states since Tribes are authorized only as second or third tier recipients but are not eligible as states. Therefore, USDA sought input on Tribal interest in acting as a state agency, where states would receive TEFAP foods directly from USDA, and/or designating Tribes as eligible recipient agencies, which would then receive foods from States.
- Notably, TEFAP foods are not often the majority of foods deposited into food banks. Food banks often solicit donations elsewhere, and Tribes can be disadvantaged by not being the first receiver of those foods. For-profit organizations could receive a tax deduction for their food donations; however, Tribes are not eligible for that tax deduction.
- Tribal leaders expressed interest in having an option like this long-term to have more direct access to foods during disasters. Tribes distribute foods outside the reservation, and many have the capacity to do so thanks to investments in infrastructure like cold storage made during the pandemic.
- Tribal leaders expressed interest in supporting individuals who may not qualify for the FDPIR program. They also noted that ongoing communication with the state is not always good; they want to be mindful of the strain on regional food banks from Tribal needs and want to make sure that all entities accessing these institutions can be served. One Tribal leader expressed an interest in maintaining relationships with regional food banks while augmenting their capacity with Tribal resources.
  - USDA affirmed the interest in maintaining resources for regional food banks while noting that additional resources would be needed to allow Tribal participation in TEFAP.
  - TEFAP offers very little support for infrastructure funding. If this change occurs, Congress will need to be made aware of the need for infrastructure funding.
  - USDA received confirmation from the Internal Revenue Service (IRS) that, while donations to Tribes are typically tax deductible, that provision does not apply to food. USDA shared that information for Tribal leaders’ awareness of the tax code.

### *Pilot Programs for Tribes to Operate Child Nutrition Programs as State Agencies*

- In March 2024, Congress authorized pilot projects for Tribes to administer one or more of the following programs as a state agency: the National School Lunch Program, the Summer Food Service Program, the National School Breakfast Program, and the Child and Adult Care Food Program. Congress appropriated \$2 million for USDA to carry out up to 10 pilot projects to explore Tribal operations administering one or more of these

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programs as a state. Tribes would operate \$10,000 to \$100,000 per year for up to two years to operate the programs at Bureau of Indian Education-funded (BIE) schools, schools on or near reservations, or in early child education facilities.

- USDA is setting up a work group for setting up the plan for the pilot project and to solicit Tribal input in the development of this grant program. It is a relatively small amount of funding, so USDA is carefully assessing the scale and scope of this project.
- A Tribal leader talked about a current lack of funding, and formulas for distribution are inadequate. All students at these schools qualify for free and reduced lunches, and the Tribe gets reimbursed from the state. However, the state takes administrative costs and the Tribe is required to purchase specific foods. The increased costs pose challenges.
- The concept of a pilot program on the reservation would allow Tribes to get direct funding for meals in schools, thereby reducing their costs. Other parameters would be allowing sovereign or traditional foods, representative of traditional meats and foods like bison.
  - USDA acknowledged real enthusiasm for this concept and noted that the funding cap of \$100,000 may limit some ambitions.
- One Tribal leader offered to support other Tribes with a lack of capacity. It is paramount to enlist as many Tribes as possible in these programs because the relationships between states and Tribes are not always as they should be. The Tribal leader shared an example of the State of Oklahoma declining to participate in the summer EBT program, where multiple Tribes have elected to participate to provide those nutrition benefits not just to Tribal members, but also to surrounding communities. The Tribe's administration of the program has caused some confusion because Tribal leaders have had to explain to non-Tribal neighbors that they are eligible to participate in programs administered by Tribes as states.
- A commenter offered appreciation for USDA's framing paper and how questions were posed. Tribes feel that they know what is best not just for their Tribal members, but for everyone who is neighboring—they work, live, and rejoice together. Tribes are asking USDA to help enlist as many Tribes as possible and look for parity between Tribes and states, particularly where states elect not to participate in programs. Tribes are stepping up to deliver food and nutrition programs. Pilot programs may require investments in infrastructure to run and maintain these programs with consistency in delivery and execution.
  - USDA thanked the Tribes for their early support of the summer EBT program, making that option available in their areas.
- BIE schools do not get funding for school meals from BIE. That funding comes from USDA. BIE money only provides funding for one cook, and USDA provides the remaining funding. During the pandemic, there was a 40 cent increase on reimbursement for school meals and in 2024, that rate is now close to 36 cents post-COVID and has not kept up with inflation. Tribal schools are small and do not have as much overhead as state agencies, so administering those school meals programs on their own could reduce costs.
- In 2016, USDA released a *Feasibility of Tribal Administration of Federal Nutrition Assistance Programs* [study](#) on whether Tribal schools could administer school meals programs as a state agency. Approximately 90 percent of Tribes responded “yes,” and expressed interest in administering one or more Federal nutrition assistance programs

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since they administer many other programs through 638 contracts and compacts. They have the capacity to administer these programs themselves and skip the middle man.

- A Tribal stakeholder offered another proposal to have Tribal communities serve more traditional and cultural foods because a lot of the foods served to Tribal schools come from states. Many Tribal members are lactose intolerant, but USDA dietary guidelines require that meals still must offer milk (as well as milk alternatives). The commenter noted that those foods are inappropriate to traditional diets and surmised that the government would not require a Hindu to be offered beef. Tribal members are interested in reintroducing traditional foods into communities using federal dollars through food and nutrition programs, whether it is mutton, salmon, or bison. Thanks to tribal advocacy, the \$2M pilot project was the result of this important effort.
  - USDA clarified the comment about school meals not being reimbursable without milk being on the tray and noted that lactose-free milks are available. FNS will do more to ensure Tribal communities are available, while also noting that the cost of those products is higher. The commenter clarified that the rate referred to was free breakfast and lunch. In some cases, students only get meals at schools. They may therefore also offer dinner, which has different rates.
- A commenter noted that the statement that USDA is willing to reimagine food and nutrition programs from an indigenous perspective is important and appreciated. For example, disbursing funds should be quick and efficient. It is important for the working group to be thoughtful, consider how to get money out carefully and not just push money out the door. The Tribes recommend establishing a working timeline and give that to Tribal leaders on the committee. The question is now whether Tribes would partner with or through the states with USDA guiding this process. It is vital to ensure strong communication, particularly in states that do not have good state-Tribal relations.
  - USDA responded that the pilot program is to take on state agency responsibilities, not to reimagine the child nutrition program. It would be monitoring paperwork, providing leadership on menu planning. Want to align expectations about what this would mean. USDA staff are just getting started and do not have an exact timeline. USDA would like to implement this program as soon as possible while also getting input. It needs to convene internal offices to launch this new concept, such as discussing a selection process, and would like to launch by the end of the calendar year if possible.
  - One commenter noted that allowing the Tribal organizations to act as states could remove states from the middle of the process by giving the funds to the Tribes. The organization of school districts overlapping with Indian school leaves a lot of questions and Tribes expect to involve some state agency leaders on the working group.
  - Tribal members noted that pooling a smaller number of Tribes in a pilot project to demonstrate models for success could be a successful first step to then later share benefits more broadly, with a concept such as focusing on a specific State or region.
- Commenters noted that the USDA Tribal Advisory Committee could weigh in on this comment.

*Supplemental Nutritional Assistance Program (SNAP)*

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- In recent years, some states partnered with Tribes to administer certain SNAP functions, specifically those that interface directly with recipients to help them fill out enrollment paperwork. USDA has also done a feasibility study to gauge Tribes interest and capacity in administering SNAP.
- In the framing paper, USDA outlined the logistical and funding challenges that would be involved in such a transition to seek input on how to overcome those challenges. States, rather than USDA, administer USDA funds; USDA therefore has no direct experience of running the program, nor the assets and resources to transfer. This means thinking about self-determination in SNAP requires different models.
- No Tribal leaders or other stakeholders offered comments on SNAP.

### **III. Listening Session**

- Tribal members commented that expanding 638 programs to USDA would be beneficial to Indian Country.
- Multiple members discussed fish, including the cultural relevancy of fish, utilizing the whole fish for cultural practices, the dangers of bycatch, and the importance of seafood in schools and of teaching the cultural relevance of fishing.
- Funding cliffs jeopardize these important programs, where both producers and Tribal members have come to depend on them. The FDPIR program has been extremely beneficial in providing products that people want.
- Funding resources for food infrastructure are available through USDA Rural Development, and commenters asked that FNS ensure that they provide those resources in response to Tribal inquiries.
- A commenter noted that their Tribe was using the Local Food Purchase Assistance Cooperative Agreement Program (LFPA) to purchase and distribute meat during the wintertime, saying it was one of the better programs they had seen come around. They hoped, even though it is temporary, that it would continue.
- A Tribe that received funding for a large food building encouraged thinking about how to keep these funding programs sustained since the transport of foods across long distances is a barrier. The Tribe commented that it is great to see food hubs including traditional foods, benefiting everyone from children to elders, commenting that it is how reminiscent of how they grew up by providing food for family by working in gardens.
- Tribes are more familiar with the BIA process but experienced challenges with the LFPA process.
- Sustainability in funding programs is key to maintain staff at the Tribal level.
- Buffalo is a key source of foods since time immemorial. Creation stories based on buffalo. Seeking certified locker system, places to be able to process buffalo. Seeking ability to maintain cultural field harvest while also serving buffalo in schools.
- USDA noted the broad support for the FDPIR pilot and LFPA. LFPA program does not have an ongoing funding source but rather was created through one-time funds. USDA seeks to synthesize lessons learned in both of those efforts as the agency moves forward in furthering self-determination in food and nutrition programs.
- USDA also noted that it had commenced an exploration of native fish topics and highlighted the buffalo pilot project, where it bought buffalo from Tribal herd to

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incorporate into the FDPIR program. USDA has also offered resources for transitioning from cattle to buffalo, with an eye toward resource conservation.

### **IV. Closing comments**

- Deputy Undersecretary Dean offered closing remarks, expressing gratitude to USDA staff and Tribal leaders for their support in making the consultation possible. Tribal leaders can provide comments for the record for the next 30 days.
- For FDPIR, USDA heard universal support and enthusiasm for more self-determination, such as expanding funding for the program and making it permanent through legislative changes. There was a shared sense of success from the pilot and enthusiasm for its benefits to local economies. Tribal leaders wanted to see more self-determination in this program and that Tribal leaders hope Congress will consider that.
- For TEFAP, USDA heard interest from those with a strong relationship with their food bank already and highlighted that infrastructure resources exist outside of FNS to expand Tribal capacity in this program.
- For child nutrition, USDA heard from leaders who helped to create this concept and shepherd it through Congress. USDA is still early in this process but looks forward to collaborative development of this new pilot, working collaboratively. USDA heard concerns about overhead costs cutting into Tribal reimbursements for school meals, and USDA is committed to looking into that issue. There is a goodwill and support for what USDA is trying to do.
- There are numerous efforts through LFPA, the bison pilot, and examinations of native fish to lift up Tribal food systems. Those complement the work of FDPIR and other nutrition programs.