

THE FARM BILL AND INDIAN COUNTRY: Assessing the Present and Looking Ahead

Policy Recommendations for the Federal Government



This Brief's Purpose

NCAI and its partners (see below) produced this concise brief to:

- (1) provide a cursory assessment of the state of implementation of the landmark tribal provisions contained in the 2018 Farm Bill;
- (2) share Indian Country's policy recommendations for Congress and the Administration about how to strengthen the implementation of those provisions; and
- (3) set forth an initial list of Indian Country's overarching policy priorities for the 2023 Farm Bill which can be expanded upon.

A mid-point status report about how the Farm Bill is working for Indian Country and how it could work better, this brief serves as an important education and advocacy tool for tribal leaders and key decision-makers as they deepen their dialogue with federal policymakers about: (1) how best they can strengthen implementation of the current Farm Bill provisions; and (2) what is needed in the next Farm Bill, slated for passage in 2023.

A Collaborative Production

This brief would not have been possible without the close partnership and invaluable input of the following organizations: [First Nations Development Institute](#), [Indigenous Food and Agriculture Initiative](#), [Intertribal Agriculture Council](#), [Intertribal Timber Council](#), and the [Native Farm Bill Coalition](#).

About the Native Farm Bill Coalition

The Native Farm Bill Coalition (NFBC) was established at the NCAI Annual Convention in October 2017 by the Shakopee Mdewakanton Sioux Community, Intertribal Agriculture Council, National Congress of American Indians, and Indigenous Food and Agriculture Initiative (research partner). The NFBC represents the first time that tribal nations have come together to speak with one voice on the importance of the Farm Bill to Indian Country. Currently, more than 170 tribal governments are represented in the NFBC, with 79 individual tribal nations passing resolutions/letters of support, as well as 15 national and regional tribal organizations/entities and several allied organizations, including MAZON: A Jewish Response to Hunger and the National Sustainable Agriculture Coalition. Starting in November 2020, the NFBC will be permanently housed at the Intertribal Agriculture Council, and will continue its strong collaboration and coordination with NFBC's partners and members to advocate for policy advancements that support strong food systems in Indian Country.

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THE FARM BILL AND INDIAN COUNTRY: AN OVERVIEW

Approximately every five years, the United States Congress enacts what is commonly called the Farm Bill, one of this country's most substantial and significant pieces of domestic legislation. Generally under the administrative purview of the United States Department of Agriculture (USDA), this legislation addresses nutrition programs, agricultural policies, food production, natural resource conservation, rural development, and insurance programs, among others.¹

On December 20, 2018, the Agriculture Improvement Act of 2018 (2018 Farm Bill) became law. The 2018 Farm Bill featured – for the first time – landmark provisions designed to provide tribal nations and their citizens with unprecedented opportunities to advance their food sovereignty and security efforts, agricultural production operations, economic and workforce development initiatives, and public health priorities. The result of close coordination between and relentless advocacy by NCAI, the Intertribal Agriculture Council, the Native Farm Bill Coalition, tribal nations and organizations, and other key partners, the 2018 Farm Bill featured a total of 63 Indian Country-specific provisions; today, this coalition continues to work in lockstep to ensure the 2018 Farm Bill is fully and properly implemented across tribal nations and communities.

2018 Farm Bill: Summary of Key Tribal Provisions

The following details the major Indian Country-specific provisions contained in the 2018 Farm Bill:

- Expands Indian Self-Determination and Education Assistance Act contracting authority (Public Law 93-638 authority) to USDA for the Food Distribution Program on Indian Reservations (FDPIR)
- Expands Public Law 93-638 authority for Tribal Forest Protection Act-related management activities at USDA and the U.S. Department of the Interior, and establishes eligibility for tribal nations to exercise Good Neighbor authority for forest management agreements with USDA and states (both measures are designed to enable tribal nations to prevent wildfires from spreading from federal lands to tribal forest lands)
- Requires the establishment of a Tribal Advisory Committee at USDA to identify issues and make recommendations to the Secretary
- Elevates the Office of Tribal Relations to live fully within the Office of the USDA Secretary
- Provides parity for tribal nations to regulate the production of industrial hemp

To Learn More about the Farm Bill

To learn more about the 2018 Farm Bill and access detailed overviews of its tribal provisions, please go to the Indigenous Food and Agriculture Initiative's website [here](#).

¹There are 12 titles in the Farm Bill. To view the full list of titles, visit the [2019 CRS Primer](#).

THE FARM BILL'S TRIBAL PROVISIONS: STATE OF IMPLEMENTATION

It has been two years since the 2018 Farm Bill became law. Once enacted, it became the job of USDA and other federal agencies to implement – in a timely yet methodical fashion – the legislation’s 63 Indian Country-specific provisions in accordance with the letter of the law and the spirit in which they were intended. Featured below and in the following pages are summaries and status reports on the 2018 Farm Bill’s major tribal provisions, as well as the other provisions in the act that touch upon Indian Country. For the latest updates on these provisions, check out the Indigenous Food and Agriculture Initiative’s 2018 Farm Bill Implementation Tracker [here](#).

MAJOR PROVISIONS	SUMMARY	STATE OF IMPLEMENTATION
TITLE II CONSERVATION		
Sec. 2202 Conservation Reserve Enhancement Program	Enables cost-share agreements between the federal government and tribal nations and other partners to carry out the Conservation Reserve Enhancement Program (CREP).	IN PROCESS: Tribal nations added as potential partners. ² Through a restrictive interpretation of Executive Order 13175, USDA has been determining that tribal consultations are not required at this time.
Sec. 2204 Pilot Programs (Conservation Reserve Easements)	Creates pilot project for 30-year conservation easements called Clean Lakes Estuaries and Rivers (CLEAR 30) practices. Requires that the Secretary enter into one or more agreements with tribal nations under CLEAR 30.	IN PROCESS: The CLEAR 30 Pilot is a first-time opportunity to enroll in a 30-year CRP contract. The Pilot will be focused in the Great Lakes and Chesapeake Bay Priority Areas. The initial CLEAR 30 enrollment period ended in August 2020. CLEAR 30 contracts will be effective on October 1, 2020.
TITLE IV NUTRITION		
Sec. 4003(a) Food Distribution Program on Indian Reservations (FDPIR)	Requires USDA to pay 80 percent of administration costs for FDPIR. USDA must waive the match requirement if a tribal nation is financially unstable or substantially burdened. Adds “regionally grown” to the traditional foods provision purchase and requires USDA Secretary to purchase traditional foods “cost-effectively.”	IN PROCESS: USDA received multiple comments in the Federal Register and through consultation with tribal leaders suggesting the process USDA utilized, although operable, was too burdensome to tribal nations. Regionally grown products have been added to the traditional food products provision. Federal procurement of traditional food products remains a subject of debate in consultation meetings with tribal leaders and representatives.
Sec. 4003(b) FDPIR - Demonstration Project for Tribal Organizations	Authorizes \$5 million for demonstration projects for tribal organizations to enter 638 self-determination contracts to procure foods for FDPIR packages.	IN PROCESS: USDA used the lack of an appropriation to stall the entire process of rulemaking and development of the program. Tribal consultations continue after an initial request for information was published by USDA on December 15, 2019. Congress appropriated \$3 million for this demonstration project, which is available for use until September 30, 2021. USDA is still in the process of finalizing guidelines for applications and has not yet opened the application process.

² Final Rule: Community Credit Corporation and Farm Service Agency (FSA), USDA, published on December 6, 2019; the USDA-FSA website only lists state governments as eligible partners with the federal government under the CREP program.

³ USDA did release an Interim Final Rule in 2019 regarding the matching funds waiver process and received multiple comments in the Federal Register and in consultation with tribal leaders suggesting the process USDA utilized was too burdensome.

MAJOR PROVISIONS	SUMMARY	STATE OF IMPLEMENTATION
TITLE VI RURAL DEVELOPMENT		
Sec. 6201 Access to Broadband Telecommunications Services in Rural Areas	Codifies priority for tribal nations and other underserved communities for broadband grants, loans, and loan guarantees.	IN PROCESS: Interim Final Rule implementing this authority became effective on May 11, 2020.
Sec. 6204 Community Connect Grant Program	Amends the Community Connect program to make tribal nations and organizations eligible for grants, as well as other underserved communities.	IN PROCESS: Initial round of ReConnect grants included tribal priority points; however, that was not included in subsequent rounds. Funding application period remains open through the end of December 2020.
Sec. 6302 Establishment of Technical Assistance Program	Establishes a permanent Rural Development Tribal Technical Assistance Office to provide technical assistance across all areas.	NO PROGRESS: No public information regarding the Rural Development Tribal Technical Assistance Office is available.
TITLE VIII FORESTRY		
Sec. 8624 Good Neighbor Authority	Adds tribal nations as eligible for Good Neighbor Authority Agreements, including on land owned by a tribal nation. Good Neighbor Authority allows the USDA Forest Service to enter into agreements to do the critical management work to keep our forests healthy and productive.	IN PROCESS: The expansion now includes counties and tribal nations in addition to states as eligible partners. The Forest Service is updating manual and handbook directives to reflect these changes. However, as the three most recent decadal Indian Forest Management Assessments (IFMAT) have continually documented, tribal nations and BIA agencies are severely underfunded and understaffed. ⁴
Sec. 8703 Tribal Forest Management Demonstration Project	Permits the Secretaries of Interior and Agriculture to enter into 638 self-determination demonstration project agreements with tribal nations under the Tribal Forest Protection Act (TFPA) of 2004. ⁵	IN PROCESS: The Intertribal Timber Council (ITC) has worked with a USDA Forest Service Workgroup to develop a 638-contract template and best practices guide. Two webinars were held to share this information and engage interested tribal nations and National Forests in discussion. On September 16, 2020, the first 638 contract was signed between the Tulalip Tribes and Mt Baker/Snoqualmie National Forest. ⁶
TITLE X HORTICULTURE		
Sec. 10113 Hemp Production	Makes hemp farming legal and authorizes states and tribal nations to create and implement plans and regulations to develop and expand hemp production.	IN PROCESS: Updated information on the status of state and tribal hemp production plans can be found on the USDA website . As of November 2020, there are 38 approved tribal plans, with five under review and three tribal nations currently drafting plans. The interim final rule was released on October 31, 2019 (its end date is November 1, 2021). ⁷
Sec. 10114 Interstate Commerce Hemp	No state or tribal nation can prohibit the transportation or shipment through its territory of hemp or hemp products produced under an approved tribal or state plan.	ONGOING: The 2018 Farm Bill allows for interstate transportation and shipment of hemp in the United States. See above.

⁴ Except for a few tribal nations, the expectation to participate in cross-boundary collaboration and work while still accomplishing management targets on trust lands without additional workforce capacity is unrealistic. The BIA and tribal nations must develop workforce capacity to effectively manage their cultural and traditional use landscapes. However, a Good Neighbor Authority Agreement has been signed with Chugachmiut, an Alaska Native 501(c)(3) non-profit tribal consortium.

⁵ These projects allow federally recognized tribal nations to conduct forest management activities in accordance with TFPA through contracts under the Indian Self-Determination and Education Assistance Act (P.L. 93-638).

⁶ An additional contract has been signed since that date, and two additional TFPA 638 proposals have been accepted.

⁷ The comment period reopened from September 7 through October 8, 2020, with USDA holding a tribal consultation on September 23, 2020.

2018 FARM BILL: OTHER TRIBAL PROVISIONS

Note: the following provisions authorize representation or eligibility for tribal nations.

Title I Commodities Sec. 1501 Supplemental Agricultural Disaster Assistance: Amends Agricultural Act of 2014 to add an “Indian tribe” or “tribal organization” as an eligible producer and to require reimbursement of 75 percent of the losses for beginning farmers, ranchers, and veterans under the Tree Assistance Program. **STATUS:** *Implementation status unclear as all publicly available information on USDA’s website still reflects authorities under the Agricultural Act of 2014.*

Title II Conservation Sec. 2701 Regional Conservation Partnership Program: Includes tribal nations who own or operate eligible land as eligible producers for the Regional Conservation Partnership Program. **STATUS:** *The Regional Conservation program now includes tribal nations as an eligible partner or the program.*

Title IV Nutrition Sec. 4203 Service of Traditional Foods in Public Facilities: Adds state, county, and local education programs as eligible for the donation of traditional foods provision into public and nonprofit facilities. **STATUS:** *Entities added as eligible for the donation of traditional foods provision.*

Title IV Nutrition Sec. 4205 Gus Schumacher Food Insecurity Incentives: The Gus Schumacher Nutrition Incentive Program (GusNIP) (formerly FINI) supports projects to increase the purchase of fruits and vegetables among low-income consumers participating in the Supplemental Nutrition Assistance Program (SNAP) by providing incentives at the point of purchase. **STATUS:** *Tribal agency grantees may use funds provided to the Indian Tribe or agency to satisfy all or part of the non-federal share described if such use is otherwise consistent with the purpose of such funds per an RFA issued on April 1, 2020.*

Title VI Rural Development Sec. 6306 Council on Rural Community Innovation and Economic Development: Creates a Council with representatives from 26 Executive Branch agencies to streamline, coordinate and leverage federal investments to rural areas, with stakeholders, including tribal governments. **STATUS:** *No information on creating this council is publicly available.*

Title VI Rural Development Sec. 6406 Tribal College and University, Essential Community Facilities: Reauthorized at current \$10 million funding level. **STATUS:** *Funding reauthorized.*

Title VI Rural Development Sec. 6408 Water Systems for Rural and Native Villages in Alaska: Reauthorized at current funding level and includes eligibility for tribal consortia and Alaska Native villages. **STATUS:** *Reauthorized at current funding level and includes eligibility for tribal consortia (with a 2 percent set-aside for the consortia) and Alaska Native villages.*

Title VI Rural Development Sec. 6419 Rural Business-Cooperative Service Programs Technical Assistance Training: Expressly authorizes tribal governments as eligible grantees for technical assistance/training programs under the Rural Business-Cooperative Service. **STATUS:** *Tribal governments expressly authorized as eligible grantees for technical assistance and training programs.*

Title VI Rural Development Sec. 6701 (a) (1) Corrections Relating to the Consolidated Farm and Rural Development Act: Technical amendment clarifying the eligibility of tribes. **STATUS:** *Eligibility of tribal nations clarified.*

Title VII Research Sec. 7109 Education Grants to Alaska Natives Serving Institutions and Native Hawaiian Serving institutions: Reauthorized at the current level. **STATUS:** *Current level of funding reauthorized.*

Title VII Research Sec. 7123 Partnership to Build Capacity in International Agricultural Research, Extension, and Teaching: Includes 1994 Tribal Colleges as eligible for the program to build the capacity and improve the performance. **STATUS:** *1994 Tribal Colleges are now eligible to participate in program.*

Title VII Research Sec. 7206 National Genetics Resources Program: Adds 1994 Tribal College representation. **STATUS:** *Of the total members of the National Genetics Resources Program, four (4) must also represent the 1862 land-grant colleges and universities, 1890 land-grant colleges and universities, Latinx-serving institutions, or 1994 Equity in Education Land-Grant Act institutions.*

2018 FARM BILL: OTHER TRIBAL PROVISIONS

<p>Title VII Research Sec. 7412 Farm and Ranch Stress Assistance Network: Adds tribal nations as eligible for competitive USDA/Health Human Services Grants to support work with nonprofit organizations. STATUS: <i>Tribal nations added as eligible entities.</i></p>
<p>Title VII Research Sec. 7502 Equity in Educational Land-Grant Status Act of 1994: Adds Nueta Hidatsa Sahnish College and Red Lake Nation College to the 1994 Institutions list. STATUS: <i>Nueta Hidatsa Sahnish College and Red Lake Nation College added to the 1994 institutions list. Funding reauthorized.</i></p>
<p>Title VII Research Sec. 7604 Assistance for forestry research under the McIntire-Stennis Cooperative Forestry Act: Makes 1994 Tribal Colleges eligible for McIntire-Stennis Forestry program capacity funding. STATUS: <i>Effective FY 2019, eligibility extended to 1994 Institutions⁸ that offer an associate's degree or a bachelor's degree in forestry to receive assistance for forestry research under the McIntire-Stennis Cooperative Forestry Program. Two tribal colleges (TCUs) are now eligible.⁹</i></p>
<p>Title VII Research Sec. 7609 Smith-Lever Community Extension Program: Makes tribal colleges and universities (TCUs) eligible for funding for the Children, Youth, and Families at Risk (CYFAR) Program and the Federally Recognized Tribes Extension Program. STATUS: <i>TCUs are now eligible. No recent RFA has been posted.</i></p>
<p>Title VIII Forestry Sec. 8102 State and Private Forest Landscape-scale Restoration Projects: Includes forest land owned by tribal nations within the definition of "nonindustrial private forest land" as eligible for a competitive grant awarded by the USDA. STATUS: <i>Land owned by tribal nation is now featured in the definition of "nonindustrial private forest land."</i></p>
<p>Title VIII Forestry Sec. 8407 Healthy Forests Restoration Act of 2003 Amendments: Allows use of any combination of a 30-year contract, a 10-year cost-share agreement, or permanent easement to enroll tribal acreage into the plan. STATUS: <i>Allows use of the 30-year contract, ten-year cost-share, or permanent easement to enroll tribal acreage.</i></p>
<p>Title X Horticulture Sec. 10102 Local Agriculture Market Program: Establishes tribal eligibility in local food programs to grow, process, and market Native foods. STATUS: <i>Tribal eligibility established in the Local Agriculture Market Program.</i></p>
<p>Title XI Crop Insurance Sec. 11108 Underserved Producers: Includes tribal producers in the definition of underserved producers for review and report of whether crop insurance is providing adequate coverage. STATUS: <i>No Risk Management Agency report is publicly available.</i></p>
<p>Title XII Miscellaneous Sec. 12101(b) Animal Disease Preparedness and Response: Includes tribal nations as eligible entities for a new National Animal Disease Preparedness and Response Program. STATUS: <i>Tribal nations are listed as eligible entities.</i></p>
<p>Title XII Miscellaneous Sec. 12510 Tribal Promise Zones: Codifies the existence and access to federal agency resources and technical assistance for Tribal Promise Zones. STATUS: <i>Tribal Promise Zones now eligible for access to federal agency resources.</i></p>
<p>Title XII Miscellaneous Sec. 12515 Prohibition on Slaughter of Dogs and Cats for Human Consumption: Prohibits the slaughter and transportation of dogs and cats for human consumption, with a religious ceremony exception provided for Indians. STATUS: <i>Prohibition signed Exception for Indian tribes, reading "The prohibition in subsection (a) shall not apply to an Indian (as defined in section 5304 of title 25) carrying out any activity described in subsection (a) for the purpose of a religious ceremony."¹⁰</i></p>
<p>Title XII Miscellaneous Sec. 12608 Reauthorization of Rural Emergency Medical Services Training and Equipment Assistance Program: Included tribal government-operated emergency medical services (EMS) as eligible for grants for rural emergency medical equipment and training. STATUS: <i>Program reauthorized with tribal government-run EMS services eligible for grants.</i></p>

⁸ As defined in Section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 103-382).

⁹ These colleges are Salish Kootenai College and Leech Lake Tribal College. The McIntire-Stennis Program, as run through NIFA, has complex and arduous reporting portals and a high level of reporting requirements. TCUs or associated tribal nations should be treated as "states" and provided McIntire-Stennis funding without reliance on a state governor's negotiated portions of the state's allocation. TCUs need additional administrative capacity to fully participate in the McIntire-Stennis Program.

¹⁰ Section 5304 of Title 25 defines "Indian tribe" as any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

2018 FARM BILL: OTHER TRIBAL PROVISIONS

NOTE: The following provisions establish programs for which tribal nations/citizens are eligible for funding/technical assistance.

Title II Conservation Sec. 2304 [Establishment and Administration of Environmental Quality Incentive Program](#): Moved to section 2304(d) and replaces the “opt-out” language with an assurance of notification of producers. **STATUS:** *Information listed on the USDA website as part of updated payment eligibility. Criteria updated to match legislation.*

Title II Conservation Sec. 2501(a) [Funding of Conservation Reserve Program - Transition Incentives Program](#): Reauthorizes the Commodity Credit Corporation authority through FY 2023, authorizes in mandatory funding both \$11 million for the period of FY 2019-2023 for tree incentive payments; \$50 million for the transition incentives program under the conservation reserve program, including \$5 million for outreach and technical assistance; and provides mandatory funding for both the agricultural easement and environmental quality incentive programs. **STATUS:** *Reauthorization complete.*

Title II Conservation Section 2501 (e) [Assistance to Certain Farmers of Ranchers for Conservation Access](#): Set-asides for “beginning” and “socially disadvantaged” farmers or ranchers reauthorized at five percent. **STATUS:** *Reauthorizes the set-asides through FY 2023. Makes technical amendments regarding the re-pooling of CSP funds and preference for farmers or ranchers.*

Title II Conservation Sec. 2503(c) [Administrative Requirements for Conservation Programs](#): Requires the Secretary to enter into alternative funding for conservation programs under the Conservation Stewardship Program and Environmental Quality Incentives Program. **STATUS:** *Awaiting administrative guidance and/or regulation from USDA.*

Title IV Nutrition Sec. 4206 [Micro-grants for Food Security](#): Provides money to states to award grants to eligible entities, including tribal nations and organizations, for small-scale gardening, herding, and livestock operations directed to food-insecure communities. **STATUS:** *Money available to states to award micro-grants to tribal nations and organizations for provision’s specified purposes.*

Title VI Rural Development Secs. 6205, 6209, 6211, 6501, 6505 [Refinancing Authority for Rural Development Infrastructure Loans](#): Per Note # 26, Title VI Joint Explanatory Statement, the Managers intend that an existing loan may be refinanced using the Substantially Underserved Trust Area program, and the USDA must publish a notice detailing its implementation of this refinancing **STATUS:** *Interim final rule available.*

Title VI Rural Development Sec. 6424 [Rural Innovation Stronger Economy Program](#): Establishes a grant program to create job accelerators and programs in low-income rural areas, prioritizing entities/applications with a tribal government as the lead applicant. **STATUS:** *Grant program established but program is still being developed.*

Title VII Research Sec. 7120 [New Beginning for Tribal Students](#): Creates a new scholarship fund for Native students attending land-grant universities and colleges. **STATUS:** *The New Beginning for Tribal Students program authorizes the USDA to match state funding for programs at land-grant colleges or universities that support Native students. The authorization is capped at \$5 million per year and \$500,000 per state.*

Title VII Forestry Sec. 8401 [Promoting Cross-Boundary Wildlife Mitigation](#): Authorizes \$20 million in grants for cross-boundary hazardous fuels reduction projects, and includes tribal land within the definition of non-federal land. **STATUS:** *\$20 million authorized but No RFA/RFP or project update publicly available on DOI or USDA-FS website.*

Title VII Forestry Sec. 8404 [Water Source Protection Program](#): To carry out watershed restoration projects on National Forest System land and coordinate/partner with end water users, including tribal nations, to develop water source management plans. **STATUS:** *Currently under development based on the latest information from USDA Forest Service.*

Title VII Forestry Sec. 8643 [Wood Innovation Grant Program](#): New program available to tribal, state, and local governments for advancing the innovative use of wood products. **STATUS:** *Program established with tribal governments deemed eligible.*

Title XII Miscellaneous Sec. 12301 [Farming Opportunities Training and Outreach](#): Creates permanent baseline funding for outreach, education, and training for beginning and socially disadvantaged farmers and ranchers, including tribal farmers and ranchers. **STATUS:** *Programming and funding established to encourage ownership and operation of farms and ranches through education and training and equitable participation in all USDA agricultural programs.*

Title XII Miscellaneous Sec. 12502 [Emergency Housing for Domestic Violence Victims with Support Animals and Pets](#): In coordination with the Departments of Justice and Housing and Urban Development and HHS, provides funding and grants to tribal nations to provide emergency and transitional shelter and housing assistance to domestic violence victims with support animals and pets. **STATUS:** *Tribal nations and other tribal entities are currently eligible.*

2018 FARM BILL: OTHER TRIBAL PROVISIONS

NOTE: The following provisions require greater inclusion and consultation of tribal nations as well as establishing or changing office names, boards, or councils.

Title III Trade Sec. 3312 Foreign Trade Missions: Requires USDA Secretary to support greater inclusion and participation of Native farmers, ranchers, and producers on international trade missions. A report to Congress is required within two years regarding these efforts. **STATUS:** *No report for this provision is publicly available, thus likely necessitating further administrative action.*

Title V Credit Sec. 5415 GAO Report on Availability of the Farm Credit System to Meet the Agriculture Needs of Indian Tribes: Requires the U.S. Government Accountability Office (GAO) to study the availability of agriculture credit to tribal nations and Native producers within the Farm Credit System (FCS). **STATUS:** *GAO published the ‘Agricultural Credit Needs and Barriers to Lending on Tribal Lands’ report in May 2019. One relevant finding in the report is that the FCS alleges a legal prohibition on solicitation of information about tribal producers, and the GAO clarifies their obfuscation of the truth. The Intertribal Agriculture Council offered a response objecting to many of the report’s findings, and the hasty approach taken by GAO.*

Title VI Rural Development Sec. 6401 Strategic Economic and Community Development: Requires USDA Secretary to coordinate with tribal nations and provide priority to Strategic Community Investment Plans that improve broadband. **STATUS:** *USDA Secretary required to coordinate with tribal nations and provide priority to strategic community investment plans that improve broadband.*

Title VII Forestry Sec. 8405 Watershed Condition Framework: Requires the Secretary to create a Watershed Condition Framework for National Forest System land in coordination with tribal nations within watershed areas. **STATUS:** *No information publicly available on the USDA website.*

Title X Horticulture Sec 10116 Study on Methyl Bromide Use in Response to an Emergency Event: Requires USDA and EPA to complete a study on the use of methyl bromide in response to an emergency, including a risk benefit analysis of authorizing use by state, local, or tribal authorities. **STATUS:** *No information publicly available.*

Title XII Miscellaneous Sec. 12101 (c) National Animal Vaccine and Veterinary Countermeasures Bank: The Secretary can enter into cooperative agreements with tribal nations regarding the prevention, detection, and rapid response to animal pests and diseases. **STATUS:** *Tribal nations added as eligible to enter into cooperative agreements with the Secretary of Agriculture.*

Title XII Miscellaneous Sec. 12203 Agriculture and Food Defense: State and regional strategic response plans must include the appropriate roles and interactions with tribal governments. **STATUS:** *No information publicly available.*

Title XII Miscellaneous Sec. 12302 Urban Agriculture: Establishes a new Office of Urban Agriculture and Innovative Production and Advisory Committee; tribal governments are eligible for urban agriculture grants. **STATUS:** *Office of Urban Agriculture launched.*

Title XII Miscellaneous Sec. 12303 Tribal Advisory Committee: Creates a new Tribal Advisory Committee to provide advice to the Secretary on tribal-related issues and policies throughout the Department. **STATUS:** *Presidential signing statement accompanying the 2018 Farm Bill states that this provision was viewed by the President as unconstitutional as it violated the separation of powers doctrine. A recent update from the USDA Office of Tribal Relations suggests action on this item being alternatively implemented as a Secretarial advisory committee will be forthcoming.*

Title XII Miscellaneous Sec. 12406 Office of Partnerships and Public Engagement: Changes the name of the Office of Advocacy and Outreach; makes specific reference to tribal producers in “socially disadvantaged” group definition. **STATUS:** *Name change of office complete. Tribal producers added as a socially disadvantaged group.*

Title XII Miscellaneous Sec. 12409 Rural Health Liaison: Establishes a new Rural Health Liaison position to work in consultation with HHS regarding the integration of USDA and HHA programs to support rural health. **STATUS:** *On February 14, 2020, USDA announced Betty-Ann Bryce was designated to serve as USDA’s Rural Health Liaison.*

Title XII Miscellaneous Sec. 12511 Precision Agriculture Connectivity: Creates a new task force with a position for representing tribal agriculture to look at gaps in broadband connectivity for precision agriculture. **STATUS:** *FCC in process of forming the Task force.*



STRENGTHENING IMPLEMENTATION OF THE 2018 FARM BILL: KEY INDIAN COUNTRY RECOMMENDATIONS

As detailed in the preceding pages, the pace and effectiveness of the federal government's implementation of the Farm Bill's tribal provisions is uneven; meanwhile, the COVID-19 pandemic and its impacts on tribal food security, food production, and economic security has dramatically transformed the Indian Country landscape and how the 2018 Farm Bill's tribal provisions can and should be (1) administratively strengthened, and (2) technically amended to ensure they can best serve Indian Country's current needs and priorities.



Key Recommendations for the Administration

Below are key recommendations developed by this brief's partners detailing how the Administration can and should strengthen its implementation of the Farm Bill's major tribal provisions:

- **Elevate the Office of Tribal Relations (OTR) to Live Fully within USDA's Office of the Secretary in Accordance with the Law without Further Delay:** The 2018 Farm Bill reaffirmed Congress's mandate that USDA take this step, but USDA has yet to do so. USDA needs to take this long-overdue step immediately, and ensure that OTR: (1) is led by a Director who reports directly to and advises the Secretary on all matters relating to Indian Country, (2) is fully staffed with experienced professionals with particular expertise working in and with Indian Country, and (3) is integrated into the central functions of the Department as the primary Indian Country point of contact for all federal agriculture programs.
- **Create a Senior Advisor for Tribal Affairs in USDA-Rural Development (RD):** The majority of tribal nations are located in rural areas, and American Indians and Alaska Natives live in rural areas and have the highest poverty rate of any group in the country. Creating a Senior Advisor for Tribal Affairs that reports directly to the Under Secretary of Rural Development will greatly enhance USDA-RD's ability to fulfill its responsibilities to tribal nations and American Indians and Alaska Natives.
- **Ensure Tribal Expertise throughout USDA:** USDA is accountable for fulfilling trust and treaty obligations that are unique to the federal government's relationship with tribal nations and individual American Indians and Alaska Natives, obligations that do not extend to other food producers or rural Americans. As such, USDA must possess and enact a working knowledge of these obligations at the highest levels of the Department. Specifically, USDA's Office of General Counsel must maintain an Indian law expert on staff, and political appointments of qualified Native candidates must be considered a top priority for every senior office within USDA, including USDA Secretary, Deputy Secretary, and Under Secretary for Rural Development.



Key Recommendations for Congress

Below are key recommendations developed by this brief's partners for Congress to address tribal nations' growing and evolving food security and production needs in the wake of the COVID-19 pandemic, and better enable them to take full advantage of the 2018 Farm Bill's tribal provisions:

- **Provide Relief to FSA Borrowers:** Many tribal and individual Native food producers have been severely impacted by negative market conditions caused by the pandemic. Amend the 2014 Farm Bill (P.L. 113-79, Section 1614) to help Farm Service Agency (FSA) borrowers in Indian Country weather the economic storm by:
 - deferring all FSA loan principal due for the 2020 and 2021 production years;
 - extending all loans for two years;
 - appropriating funding and allowing the Secretary to offer payments to lenders if they reduce the interest rate of current loans by 2 percent;
 - offering the same reduced loan payments and extensions to their borrowers; and
 - using FSA Farm Ownership loans to refinance real estate and other debt to aid in recovery.
- **Extend Purchasing Partnership for Farmers to Families Food Box Program to Include Native Producers:** Amend Section 1101 of Public Law 116-127 (the Families First Coronavirus Response Act) to extend the purchasing partnership that exists in the Farmers to Families Food Box program to the network of tribal producers in the communities that FDPIR serves.
- **Allow FDPIR sites to procure food locally and regionally using CARES Act FDPIR funding, waive the non-federal cost share requirement, and allow for administrative flexibility for verifications, certifications, and service in FDPIR:** Pass legislation to provide additional flexibility for FDPIR program sites to receive the CARES Act funds directly to procure food locally and regionally, waive the non-federal cost share requirement, and provide the administrative flexibility for verifications, certifications, and service, which will alleviate unnecessary burdens on FDPIR programs.
- **Institute Temporary Waiver of Prohibition on SNAP/FDPIR Dual Use:** Amend Public Law 110-234 Section 4211 Assessing the Nutritional Value of the FDPIR Food Package to temporarily waive the prohibition on dual use of the Supplemental Nutrition Assistance Program (SNAP) and FDPIR during the same month. The waiver would remain in effect until tribal consultation takes place and a systematic analysis of available data is conducted to assess the breadth and gravity of the impacts of the pandemic on tribal communities and economies.
- **Mandate the Inclusion of Native Food Products in the FDPIR Program:** Allow the products of Native producers to enter the Food Distribution Program on Indian Reservations (FDPIR) by amending Title IV, Section 4003(b) of the 2018 Farm Bill.

For the most up-to-date information on key recommendations regarding the 2018 Farm Bill, please visit the Native Farm Coalition's website [here](#).

LOOKING AHEAD TO THE 2023 FARM BILL: INDIAN COUNTRY'S EMERGING PRIORITIES

As mentioned, the 2018 Farm Bill with its 63 tribal provisions represented a landmark victory for Indian Country. It is important to note, however, that many key Indian Country priorities were left out of this landmark legislation; these remain vitally important to the ability of tribal nations and individual Native food producers to advance their food sovereignty, production, and security initiatives. In addition, implementation of the 2018 Farm Bill's tribal provisions have given rise to additional consensus-based policy priorities that tribal nations, organizations, and individual food producers feel should be included in the next Farm Bill, slated for passage in 2023. Last but not least, new priorities have arisen as tribal nations work to address food system challenges exacerbated by the COVID-19 pandemic. Below is an *initial* list of these priorities, which tribal nations, leader, and individual Native food producers will be working to build upon and share in the lead-up to and during the 2023 Farm Bill legislative process:

- ▶ **Extend Tribal Self-Governance under the Indian Self-Determination and Education Assistance Act of 1975 (“638 authority”) to the Supplemental Nutrition Assistance Program (SNAP).** *Specifically:*
 - Enable tribal nations to administer the Supplemental Nutrition Assistance Program (SNAP) along with other federal food assistance programs.
 - Eliminate asset tests that do not align with SNAP requirements.
- ▶ **Expand Existing Tribal Self-Determination Opportunities and Establish Tribal Self-Governance Authority under the Indian Self-Determination and Education Assistance Act of 1975 (“638 authority”) in the Food Distribution Program on Indian Reservations (FDPIR) and other Food Assistance Programs at USDA.** *Specifically:*
 - Include the Temporary Emergency Food Assistance Program.
 - Exercise current authorities enabling tribal management of existing Food Assistance Programs through Self-Determination contracts and pursue authority for tribal management of Food Assistance Programs through Self-Governance compacts.
 - Support additional flexibilities and Tribal Self-Determination/Self-Governance in FDPIR to improve tribal capacity for local purchasing.
 - Reform FDPIR to permanently include traditional Native foods.
- ▶ **Extend and Expand Tribal Self-Governance under the Indian Self-Determination and Education Assistance Act of 1975 (“638 authority”) in the Forest Service.** *Specifically:*
 - Allow for greater tribal participation in Tribal Forest Protection Act (TFPA) projects through the application of “638” contracting authority to TFPA projects on Forest Service or Bureau of Land Management (BLM) lands.
 - Make these “638” authorities permanent and dedicate funding to TFPA 638 contracts. Use of 638 authority provides a funding mechanism through the Forest Service to cover the cost of tribal staff and resources (prior to the 2018 Farm Bill, those costs would have to be covered by the tribal nation in question). However, no funding for this purpose was allocated in the 2018 Farm Bill, so USFS is limited by available funding at the individual National Forest level.
 - Codify tribal participation in early planning efforts to integrate tribal management priorities in Forest Service five-year work plans.
- ▶ **Extend the Buy Indian Act (25 USC 47) and Indian Employment Preference Hiring (25 USC 44) to all USDA Programs.** *Specifically:*
 - Pursuant to the specific treaty and related promises – including through employment and “promise to purchase” provisions¹¹ – that the United States made to support Native agricultural efforts in perpetuity, amend these two laws to mandate USDA's adherence to the Buy Indian Act and giving preference to Native people in hiring.

¹¹ For example, according to the Act of 1877 regarding the Sioux Nation, Northern Arapaho, and Cheyenne, “The Government will aid said Indians as far as possible in finding a market for their surplus productions, and in finding employment, and will purchase such surplus...for supplying food to those Indians... and will also employ Indians, so far as practicable, in the performance of Government work upon their reservation” (Article 5 of the Act of February 28, 1877 (19 Stat. 254, An act to ratify an agreement with certain bands of the Sioux Nation of Indians, and also with the Northern Arapaho and Cheyenne Indians).

- ▶ **Amend Title VIII, Section 8624 of the 2018 Farm Bill to Include Tribal Nations and Counties.** *Specifically:*
 - Assuming the Treating Tribes and Counties as Good Neighbors Act ([S. 4127/H.R. 4754](#)) or similar legislation does not pass in the next two years, amend the necessary language in the 2018 Farm Bill to give full authority to tribal nations and counties to retain and utilize revenue generated from Good Neighbors Agreement projects.
 - Expand language in Subsection (2)(C)(i)(I) to include tribal land as authorized to carry out restoration services under Good Neighbor Agreements.

- ▶ **Create Effective Guidance and Support Programs to Promote Traditional Native Food Sources and Related Tribal Nutrition and Distribution Programs.** *Specifically:*
 - Allocate federal funding to increase the number of Federally Recognized Tribal Extension Program (FRTEP) extension agents from the current number of 30 on Indian reservations to at least 100 over the next four years.
 - Adequately fund FRTEP at \$30 million to account for the additional 1994 Land Grant Institutions that have been eligible to participate since the passage of the 2018 Farm Bill.
 - Mandate additional training on the federal food and agriculture programs available to tribal and individual Native food producers (including training on their application processes) and empower Indian Country technical service providers to design and conduct those trainings.
 - Mandate equitable participation in Land-Grant programs for the 1994 Land-Grant Institutions (Tribal Colleges and Universities) in all Smith-Lever (3)(d) administered programs, including grants for Children, Youth, and Families at Risk (CYFAR) and in the McIntire-Stennis (forestry) program.

- ▶ **Establish a Tribal Set-Aside for the Local Access Market Program (LAMP).** *Specifically:*
 - Create a tribal set-aside within LAMP, which would enhance the growth of robust local and regional tribal food economies. LAMP works to support enterprise and market development along the entire length of local or regional food system value chains, including farmers, value-added food businesses, and aggregation/distribution enterprises.

- ▶ **Increase Funding for Tribal-Specific Projects under All USDA Water and Environmental Grant Programs by \$210 million.** *Specifically:*
 - \$200 million in tribally set-aside grant funding within USDA Rural Development for:
 - Rural and Native Alaskan Villages
 - Water and Waste Disposal Grants and Loans to alleviate health risks on tribal lands
 - Emergency Community Water Assistance Grants
 - \$10 million to support tribal assessments on aging drinking water and wastewater infrastructure.

- ▶ **Expand USDA-Rural Development Program's Substantially Underserved Trust Area (SUTA) Designation to all Programs at RD to Support Tribal Priority.** *Specifically:*
 - Allow all USDA-Rural Development programs to enable tribal priority through their exercise of SUTA, allowing:
 - low-interest rates on utility loans;
 - waivers of non-duplication, matching, and credit support requirements;
 - extension of loan repayment terms; and
 - funding priority to utility infrastructure programs within SUTA.

- ▶ **Establish a Tribal Set-Aside Fund for Essential Infrastructure across USDA-Rural Development’s Community Facilities Programs.** *Specifically:*
 - Tribal specific funding increase and additional support for building essential infrastructure such as:
 - agricultural value-added infrastructure;
 - quick-build medical and food storage facilities; and
 - tribal College and University building and technological resources.
- ▶ **Enhance Natural Resources Conservation Service (NCRS) Programming for Tribal Producers.** *Specifically:*
 - Provide full advance payments for socially disadvantaged producers.
 - Remove/waive requirements of one-year prior control, the need for a Conservation Stewardship Program technical service provider, and compensation to former lessees of tribal lands for the installation of existing conservation practices.
- ▶ **Create a 15 Percent Tribal Set Aside in the USDA ReConnect Broadband Program and Distance Learning and Telemedicine Grant Program to Enhance Broadband Access.** *Specifically:*
 - Require 15 percent of funding to be made available as a set-aside for tribal lands.
- ▶ **Codify “Tribal Owned Corporations” and “Local Tribal Governments” Are “Eligible Entities” for USDA Programs.** *Specifically:* State and local USDA programs are wildly inconsistent in how they categorize and treat “Tribal Owned Corporations” and local “Tribal Governments,” a situation that demands a legislative fix to provide uniform treatment and certainty for tribal nations. For example:
 - “Local Tribal Governments”: Many large tribal nations like Navajo, Oglala Sioux, and Rosebud Sioux have sub-tribal governments as well, not unlike cities and counties within a state government structure. In such instances, tribal nations have delegated to these sub-tribal governments at the district or chapter level certain powers of self-governance and authorities to foster economic development. They should be deemed eligible entities for USDA programs.
 - “Tribal Owned Corporations”: Tribal governments have limited ability to tax, and thus rely on corporations that they own and operate to generate critical revenue. These corporations are essentially hybrids in that they are revenue-generating entities (like a private company) and thus should be eligible for business programs, but they are also tribal government-owned and thus should also be eligible for government programs.
- ▶ **Eliminate Subsidies for USDA-Rural Utility Service (RUS) Recipients that Refuse to Follow Tribal Laws and Regulations.** *Specifically:*
 - Loan and contract documents with RUS recipients need to be strengthened to clearly state compliance with local laws and regulations includes compliance with tribal laws and regulations. Currently, most RUS recipients refuse to follow the law of the tribal nations where they operate, yet still are allowed to maintain their monopoly due to USDA’s non-duplication policy.
 - RUS needs to enforce these provisions up to and including loss of RUS financing, otherwise they are meaningless. As it stands now, local rural utilities are not following tribal regulations and rules, yet USDA-RUS continues to subsidize their monopoly on tribal lands through USDA’s non-duplication policies.
- ▶ **Establish a “First Right of Refusal” for Tribal Nations to Purchase Available USDA Lands in Their Ancestral Territories.** *Specifically:*
 - USDA owns and manages many lands which were once part of the ancestral territories tribal nations. Anytime those lands are made available for sale, tribal nations who claim them as their ancestral territories should be accorded the first right to purchase.

For updated information on these and other Indian Country recommendations for the 2023 Farm Bill, please visit the Native Farm Bill Coalition’s website [here](#).

ABOUT NCAI'S TRIBAL FOOD SOVEREIGNTY ADVANCEMENT INITIATIVE

NCAI's Tribal Food Sovereignty Advancement Initiative (TFSAI) works to inform and support the development and strengthening of tribal nations' efforts to rebuild, protect, and sustain the Indigenous food systems that have long nourished their citizens, communities, and cultures.

Among other activities, TFSAI empowers tribal food sovereignty, food production, and food security by: creating a forum for tribal leaders to share best practices for advancing food sovereignty; assisting tribal governments with developing food sovereignty and related policies; advocating for federal policies and funding needed to improve the quality and accessibility of food assistance and cultivation programs; protecting and sustaining tribal lands, waters, and natural resources integral to tribal food systems; and providing information and materials to help build the knowledge base and skills of existing and aspiring individual Native farmers, ranchers, and other food producers.

About This Publication

This policy brief was produced by NCAI's Tribal Food Sovereignty Initiative in collaboration with its partners. It was developed by Marlene Wakefield (Research and Resource Coordinator, NCAI Tribal Food Sovereignty Advancement Initiative) and Ian Record (NCAI Vice President of Tribal Governance and Special Projects).

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Joining the TFSAI Listserv

For more information about TFSAI, please email foodsovereignty@ncai.org. To join NCAI's Food Sovereignty email listserv, email foodsovereignty@ncai.org and place "SUBSCRIBE" in the subject line.

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