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2018 Farm Bill Primer: Support for Indian Tribes

The 2018 farm bill (Agriculture Improvement Act of 2018, P.L. 115-334) expanded existing programs administered by the U.S. Department of Agriculture (USDA) to support production, economic and community development, and nutrition for Native American communities and producers.

The Native Farm Bill Coalition—representing 170 member tribes, Native organizations, and allies—asserts that there are more than 60 provisions in the 2018 farm bill relating to Native American communities and producers, resulting in “unprecedented” gains in farm policy compared to previous farm bills. According to the coalition, Native American farmers and ranchers have “been largely pushed to the margins of farm bill discussions for decades,” thus “missing out on major opportunities to protect and advance their interests.” These and related concerns are highlighted in a 2017 study (*Regaining Our Future*) by the Indigenous Food and Agriculture Initiative (IFAI) at the University of Arkansas School of Law. Some Native American farmers have also alleged discrimination by USDA. In 1999, some Native American farmers filed a class action lawsuit (*Keepseagle v. Vilsack*) seeking compensation for loan discrimination from 1981 to 1999, resulting in a \$760 million settlement with USDA in 2010, including \$80 million in debt relief.

American Indian or Alaska Native Farms

Most federal farm programs reference the definition of *Indian tribe* provided in the Indian Self-Determination and Education Assistance Act (ISDEAA, P.L. 93-638):

“Indian tribe” means 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 (25 U.S.C. §5304(e)).

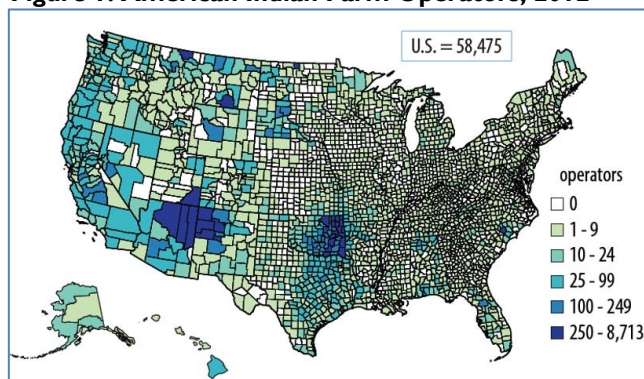
There are currently 573 federally recognized tribes (84 *Federal Register* 1200). In addition, Indian tribes or groups may also be recognized by state governments. Some USDA programs may be available to Indian tribes based solely upon such recognition.

The most recent USDA Census of Agriculture data for operators self-reporting their race only as “American Indian or Alaska Native” indicates there were 58,199 farms and ranches operated by American Indians or Alaska Natives in the United States in 2017, accounting for nearly 3% of all U.S. farms. This compared to 55,889 farms in 2007. About 80% of these farms are located in seven states: Arizona, Oklahoma, New Mexico, Texas, Montana, California, and South Dakota (**Figure 1**). Apache County, Arizona, had more American Indian farmers than any other county. By commodity specialization (according to more than 50% of a farm’s gross sales), farms with American Indian principal operators specialized in beef cattle (36% of all farms), combination of animals (17%), sheep and goats (16%),

combination of crops (15%), and vegetables (6%).

American Indian and Alaska Native farms and ranches tend to be smaller than the average U.S. farm/ranch in terms of sales, with an average market value of products sold of \$50,398 per farm/ranch, compared to \$187,097 per farm/ranch for all U.S. farms in 2012.

Figure 1. American Indian Farm Operators, 2012



Source: USDA, *Census of Agriculture*. 2017 mapping data not available.

Provisions in the 2018 Farm Bill

In general, Native American producers and ranchers are eligible for programs available to all farmers and ranchers, as well as those programs available to residents living in rural areas. Similarly, members of Native American communities that meet eligibility rules for nutrition assistance programs receive benefits and foods as other eligible citizens do. In some cases, state-recognized tribes or other Native American communities and producers might not be explicitly listed as eligible entities in the *United States Code* but might be eligible according to requirements for other listed eligible entities. They might also be eligible for other farm programs based on USDA’s interpretation of the statutory language or its internal priorities in providing service to Native American communities and producers, even if their eligibility is not explicitly specified in statute.

Prior to enactment of the 2018 farm bill, according to IFAI, there were “very few ‘Indian-only focused programs, [and] very few ‘set-asides’ for tribes.” The 2018 farm bill includes an array of provisions specifically aimed at supporting Indian tribes. For example, the enacted farm bill provides authority, pursuant to P.L. 93-638 (ISDEAA), for a federally recognized Indian tribe or tribal organization to enter into contracts and compacts with USDA to administer and transfer funding for specified programs that, in the absence of such contracts and compacts, would be administered by USDA for the tribe or tribal organization. Such contracts or compacts have been negotiated with other federal agencies, primarily the Bureau of Indian Affairs and Indian Health Service.

Selected Provisions in the 2018 Farm Bill Supporting Indian Tribes

- **Tribal Promise Zones** (§12510). Provides federal agency resources and technical assistance to work with local leaders to boost economic activity and job growth, improve educational opportunities, reduce crime, and leverage private investment to improve the quality of life in these designated areas.
- **Tribal Advisory Committee** (§12303). Creates a new Tribal Advisory Committee to provide advice to USDA on tribal-related issues and policies throughout the department.
- **Equity in Educational Land-Grant Status Act of 1994** (§7502). Adds Nuetta Hidatsa Sahnish College and Red Lake Nation College to the list of 1994 institutions. Reauthorizes endowment, capacity funds, and grants for tribal colleges.
- **New Beginning for Tribal Students** (§7120). Creates a new Native American student scholarship fund for tribal students attending land-grant universities and colleges.
- **Supplemental Agricultural Disaster Assistance** (§1501). Adds tribes and tribal organizations as eligible for support.
- **Report on Farm Credit System** (§5415). Requires a study on the availability of farm credit to tribes and tribal producers.
- **Underserved Producers** (§11108). Includes tribal producers in definition of *underserved producers* and requires they receive adequate federal crop insurance coverage from USDA.
- **Loan Refinancing** (Title IV Joint Explanatory Statement). Expresses intention that an existing loan may be refinanced using the Substantially Underserved Trust Area program.
- **Technical Assistance Program** (§6302). Establishes a permanent Rural Development Tribal Technical Assistance Office across all areas of rural development funding.
- **Food Distribution Program on Indian Reservations (FDPIR)** (§4003). In addition to the law's reauthorization of the program, increases funding for tribes' FDPIR administrative costs and authorizes USDA to develop a demonstration project for one or more tribal organizations to procure foods for FDPIR packages under "638 contracts."
- **Tribal Forest Management Demonstration Project** (§8703). Authorizes USDA and the Department of the Interior to enter into "638 contracts" on a demonstration basis, whereby a tribe or tribal organization may perform the administrative and management functions of programs implementing the Tribal Forest Protection Act.
- **Prohibition on Slaughter of Dogs and Cats for Human Consumption** (§12515). Prohibits the slaughter/transportation of dogs and cats for the purpose of human consumption, with a religious ceremony exception provided for Indian tribes.
- **Tribal College and University Essential Community Facilities** (§6406). Reauthorizes at \$10 million annually.
- **Water Systems for Rural and Native Villages in Alaska** (§6408). Reauthorized at current funding level and includes eligibility for tribal consortia (with a 2% set-aside for the consortia) and Alaska Native villages.
- **Hemp Production; Interstate Commerce** (§10113, §10114). Authorizes states and tribal authorities to develop and regulate hemp production in compliance with USDA regulation.
- **Eligibility, Representation, and Participation of Indian Tribes in Various Titles:** Rural Development (§§6201, 6204, 6306, 6401, 6419, 6424, 6701), Research (§§7109, 7123, 7206, 7412, 7604, 7609), Nutrition (§§4203, 4205, 4206), Forestry (§§8102, 8401, 8404, 8405, 8407, 8624, 8643), Conservation (§§2202, 2204, 2308, 2402, 2503), Horticulture (§§10102, 10116), Trade (§§3312), and Miscellaneous (§§12101, 12203, 12301, 12302, 12406, 12409, 12502, 12511, 12608).

They are known as "638 contracts or compacts" or "self-determination contracts or compacts" and must conform to statutory and regulatory standards, including specific performance and recordkeeping requirements. According to IFAI, this authority gives tribes the ability to "engage more simply and efficiently with all USDA agencies and assure tribal administration and control of the delivery of the vast array of USDA programs."

The 2018 farm bill includes provisions that sharpen the federal focus on and investment in Native communities and producers across a number of farm programs related to agricultural production, rural infrastructure, economic development, conservation, forestry, and nutrition assistance. The law also established new programs and initiatives specifically aimed at Native American communities and producers within these and other farm bill titles, including in the Nutrition and Horticulture titles. (See **text box**.) Two of these provisions further provide "638" self-governance contract and compact authority. These include demonstration projects to increase a tribe's self-governance authority in the Food Distribution Program on Indian Reservations and forest management.

The 2018 farm bill also makes certain changes regarding tribal colleges under the Equity in Educational Land Grant Status Act of 1994 (§7502). The act gives 36 tribal colleges that enroll a large proportion of Native Americans land-grant status in accordance with the Morrill Act of 1862 (7 U.S.C. §301 *et seq.*) that established the 1862 land-grant universities. The 2018 farm bill provides funding to the 1994 agricultural colleges through the Institutions Endowment Fund established within the U.S. Treasury. The 2018 farm bill authorizes the New Beginnings for Tribal Students to offer competitive grants to the 1994 agricultural colleges to support recruiting, tuition, experiential learning, student services, counseling, and academic advising (§7120). The grants are aimed at improving the retention and graduation rates of the tribal colleges. The provision authorizes appropriations of \$5 million annually for FY2019-FY2023. A related provision permits tribal land-grant colleges offering associate or baccalaureate degrees in forestry to participate in research supported under the McIntire-Stennis Cooperative Forestry Act (§7604).

In addition, the Joint Explanatory Statement of the 2018 farm bill expresses the intent of the conferees on two topics. First, under the Rural Development title, the conferees intend that an existing loan may be refinanced using the Substantially Underserved Trust Area program. Second, under the Research title, the conferees recognize that the Office of Tribal Relations—USDA's primary point of contact for consultation and coordination with tribal governments—should be within the Office of the Secretary.

Considerations for Congress

USDA is currently implementing provisions in the 2018 farm bill. Congress could continue to track USDA's progress in implementing these provisions as part of its general oversight of the 2018 farm bill.

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