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# THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS: PAST, PRESENT, AND FUTURE

Samantha Doss\*

## I. INTRODUCTION

In 2018, the United States Department of Agriculture (USDA) proposed replacing much of the Supplemental Nutrition Assistance Program (SNAP) with “America’s Harvest Box,” a program that would directly distribute a package of non-perishable food items to low-income families.<sup>1</sup> The proposal was met with intense controversy. Many hunger advocates, grocery retailers, and former government officials spurned the idea, citing logistics challenges, nutrition concerns, and stigmatization associated with a direct distribution system.<sup>2</sup> However, a few Indigenous advocates were quick to point out that a direct commodity distribution system has been in place in the United States for generations, often overlooked due to its singular audience: Native Americans living on reservations.<sup>3</sup>

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1. Helena Bottemiller Evich, *Trump Pitches Plan to Replace Food Stamps with Food Boxes*, POLITICO (Feb. 2, 2018, 9:32 PM), [<https://perma.cc/KZR8-F9P7>].

2. Catherine Boudreau & Helena Bottemiller Evich, *Trump’s ‘Harvest Box’ Plan Met with Boos*, POLITICO (Feb. 27, 2018, 8:00 AM), [<https://perma.cc/4RLT-APGQ>]; Glenn Thrush, *Trump’s ‘Harvest Box’ Isn’t Viable in SNAP Overhaul, Officials Say*, N.Y. TIMES (Feb. 13, 2018), [<https://perma.cc/P62V-4A9B>].

3. See Tristan Picotte, *SNAP/EBT or America’s Harvest Box?*, P’SHP WITH NATIVE AMS. (May 15, 2018), [<https://perma.cc/9H6E-6QAX>]. For this Comment, language and term usage follows the guidance outlined by the Native American Journalists Association, IllumiNative’s Reclaiming Native Truth Allies Guide, and the National Congress of American Indians. *Reporting and Indigenous Terminology*, NATIVE AM. JOURNALISTS ASS’N, [<https://perma.cc/X7HF-TVJ5>] (last visited Nov. 17, 2022); FIRST NATIONS DEV. INST. & ECHO HAWK CONSULTING, CHANGING THE NARRATIVE ABOUT NATIVE AMERICANS: A GUIDE FOR ALLIES (2018), [<https://perma.cc/UA3R-C9LJ>]; NAT’L CONG. OF AM. INDIANS, TRIBAL NATIONS AND THE UNITED STATES 11 (2020), [<https://perma.cc/H6L9-7PRC>]. Following this guidance, the term Native American is used

Often colloquially referred to as “commods,”<sup>4</sup> the Food Distribution Program on Indian Reservations (FDPIR) is a commodity food program that directly distributes monthly packages of food to low-income Native Americans.<sup>5</sup> FDPIR is unique because it is only available to people who live on or near a reservation.<sup>6</sup> Although at first glance this appears to be a narrow population, the Native American communities FDPIR serves are as diverse as they are numerous. There are currently 574 federally recognized Tribal entities in the United States.<sup>7</sup> The reservations and trust land areas that make up Indian Country are approximately 56.2 million acres.<sup>8</sup> The Navajo Nation alone would be the fortieth largest state in the country.<sup>9</sup> Indian Country is also growing rapidly. Between 2000 and 2010, the Native American population grew at almost twice the rate of the rest of the country.<sup>10</sup> It is critical to understand that Indian Country is not a monolith, however. Tribal nations are as sovereign and diverse as any other nation. Yet, the collective history of

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to refer to all Native people of the United States and its territories. The term Indian Country is used for both its legal definition under Title 18 and its popular definition to describe areas with Tribal jurisdiction and Native American populations. 18 U.S.C. § 1151. Any variance from this guidance will be out of respect for how individuals and groups refer to themselves.

4. Megan Mucioki et al., *Thinking Inside and Outside the Box: Local and National Considerations of the Food Distribution Program on Indian Reservations (FDPIR)*, 57 J. RURAL STUD. 88, 89 (2018).

5. U.S. DEP’T OF AGRIC., FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS 1 (2020), [<https://perma.cc/79FM-EMBN>].

6. KENNETH FINEGOLD ET AL., TRIBAL FOOD ASSISTANCE: A COMPARISON OF THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR) AND THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) 4 (2009), [<https://perma.cc/SW4M-U8EX>]. FDPIR is also available to approved service areas in Oklahoma, as traditionally reservation boundaries were not recognized in the state. *Id.* The recent Supreme Court decision in *McGirt v. Oklahoma*, recognizing Oklahoma reservation boundaries, could impact FDPIR, but this is beyond the scope of this Comment. 140 S. Ct. 2452, 2462 (2020).

7. Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554 (Jan. 29, 2021) (notice).

8. CRYSTAL ECHO HAWK, JANIE HIPPE & WILSON PIPESTEM, FEEDING OURSELVES: FOOD ACCESS, HEALTH DISPARITIES, AND THE PATHWAYS TO HEALTHY NATIVE AMERICAN COMMUNITIES 21 (2015), [<https://perma.cc/QX4Z-FXD4>].

9. NAT’L CONG. OF AM. INDIANS, *supra* note 3, at 10.

10. KATHRYN L.S. PETTIT ET AL., U.S. DEP’T OF HOUS. & URB. DEV., CONTINUITY AND CHANGE: DEMOGRAPHIC, SOCIOECONOMIC, AND HOUSING CONDITIONS OF AMERICAN INDIANS AND ALASKA NATIVES, at ix (2014), [<https://perma.cc/PST7-YG5D>].

colonialism and displacement creates contemporary challenges that many Tribal nations share.

Because of the unique scope of the program, FDPIR has potential as an effective tool to address health disparities, alleviate rural food deserts, and increase Tribal sovereignty. Largely a result of colonialism and the disruption of traditional foodways, nutrition-related health problems are twice as prevalent in Native American populations when compared to the rest of the country.<sup>11</sup> This challenge is now so severe that one social scientist from the Osage Nation considers diabetes the final genocide of Native Americans.<sup>12</sup> Perhaps unsurprisingly, the U.S. Commission on Civil Rights found that out of all of the groups in the United States, Native Americans have the most severe unmet health needs.<sup>13</sup>

High levels of food insecurity and lack of food access contribute to these unmet health needs.<sup>14</sup> For example, lack of a vehicle is a significant barrier to accessing healthy food in Indian Country, as only 25% of people living in Tribal areas in 2014 were within walking distance of a supermarket, compared to 58% of all Americans.<sup>15</sup> This is due in part to the low population density and low resident incomes of many reservations, which can be unattractive to large food retailers.<sup>16</sup> As a result, most, if not all, of Indian Country is a retail food desert.<sup>17</sup> This can lead to smaller convenience or fast-food retailers becoming the primary food source for many rural Native American communities.<sup>18</sup>

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11. PHILLIP KAUFMAN ET AL., U.S. DEP'T OF AGRIC., MEASURING ACCESS TO HEALTHFUL, AFFORDABLE FOOD IN AMERICAN INDIAN AND ALASKA NATIVE TRIBAL AREAS, at iii (2014), [<https://perma.cc/62ZV-4KGR>]; see also ECHO HAWK ET AL., *supra* note 8, at 18-20, 25, 30-31.

12. ECHO HAWK ET AL., *supra* note 8, at 31-32.

13. *Id.* at 25.

14. Food security and food access are closely linked. The USDA defines food security as everyone in a household always having enough food to maintain an active, healthy lifestyle. *Food Security in the U.S.*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (Oct. 17, 2022), [<https://perma.cc/37XX-MWDJ>]. In contrast to food security, food access is primarily a question of healthy food accessibility, including individual and neighborhood resources affecting accessibility. *Food Access Research Atlas*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (Oct. 20, 2022), [<https://perma.cc/VS56-WTG3>].

15. KAUFMAN ET AL., *supra* note 11, at i, 27.

16. *Id.* at 5.

17. ECHO HAWK ET AL., *supra* note 8, at 33.

18. KAUFMAN ET AL., *supra* note 11, at 27.

Reliance on these retailers in turn can lead to poorer health outcomes and greater food insecurity.<sup>19</sup> COVID-19 both exposed and exacerbated food insecurity and the presence of food deserts in Indian Country.<sup>20</sup>

Despite FDPIR's potential to address many of the challenges facing Indian Country, both the program and the communities it serves are often left out of larger discussions of nutrition services, food security, and agriculture.<sup>21</sup> This is in part due to the pervasive invisibility and underreporting that Indian Country continues to face across multiple sectors.<sup>22</sup> The 2018 Reclaiming Native Truth study, the largest public opinion research project undertaken in Indian Country to date, found invisibility to be both "the modern form of bias against Native Americans" and "one of the biggest barriers Native peoples face in advocating for [T]ribal sovereignty, equity[, and] social justice."<sup>23</sup> The invisibility Native American communities face extends to legal academia and, more critically, to Congress, as "most [Congress] members have little knowledge of Native issues and rely heavily on peers

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19. ECHO HAWK ET AL., *supra* note 8, at 36-37.

20. Kat Eschner, *COVID-19 is Exposing the Food Deserts Around Native American Reservations*, POPULAR SCI. (July 13, 2020, 2:00 PM), [<https://perma.cc/C9P2-EM8B>].

21. Native American populations are not regularly included in the USDA's annual food security analysis, which informs federal decision-making around food security. Valarie Blue Bird Jernigan et al., *Food Insecurity Among American Indians and Alaska Natives: A National Profile Using the Current Population Survey-Food Security Supplement*, 12 J. HUNGER & ENV'T NUTRITION 1, 7 (2017). *See generally* ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2020 (2021), [<https://perma.cc/CL6B-ZYPX>] (tracking food security for some racial and ethnic groups but not Native American populations); ECHO HAWK ET AL., *supra* note 8, at 38-39 (noting the lack of good data on food systems in Indian Country). This is particularly striking because food insecurity is also linked to the availability and effectiveness of federal programs. Jernigan et al., *supra*, at 1, 2, 5-7 (suggesting the lack of tribal-specific resources as a contributing factor to higher rates of urban Native American food insecurity).

22. *See, e.g.*, Lizzie Wade, *COVID-19 Data on Native Americans Is 'a National Disgrace.'* *This Scientist Is Fighting to Be Counted*, SCI. (Sept. 24, 2020), [<https://perma.cc/6CMM-RKHS>]; Graham Lee Brewer, *Native Americans Are Under-Reported in Opioid Overdose Data*, HIGH COUNTRY NEWS (Dec. 21, 2018), [<https://perma.cc/CEX8-C9EH>]; Cynthia-Lou Coleman & Jackleen de La Harpe, *It's Not Easy to Cover Indian Country. Here's Why You Must.*, POYNTER (Sept. 22, 2021), [<https://perma.cc/75LR-9VCQ>].

23. *United South and Eastern Tribes Celebrates Native American Heritage Month*, NAT'L INDIAN HEALTH BD., [<https://perma.cc/W6Z2-TK49>] (last visited Nov. 19, 2022); *see also* FIRST NATIONS DEV. INST. & ECHO HAWK CONSULTING, RECLAIMING NATIVE TRUTH: RESEARCH FINDINGS (2018), [<https://perma.cc/8A77-ZTS7>].

with greater interest and expertise when casting votes.”<sup>24</sup> This lack of knowledge has shaped federal policy responses in Indian Country for generations.

Many of the problems facing FDPIR today are rooted in the fraught history of government nutrition assistance and intervention in Indian Country over the last century. While FDPIR is the program’s modern name, the roots of this system, and many of the challenges the program continues to face, date back to colonization. This Comment traces these roots, looking at the history of commodity distribution in Indian Country to better understand its present, and perhaps create a better future for the thousands of participants who rely on it every day.

## II. PAST: FROM RATIONS TO REGULATION

The history of commodity foods in Indian Country is rooted in colonization. The violent displacement of Native communities not only disconnected people from their homelands, it disconnected people from traditional food systems.<sup>25</sup> This practice was intentional and violent.<sup>26</sup> Early writings from the foundational years of the United States, including from the first President, show the separation of Native American communities from their food systems was part of a broader plan of assimilation, if not outright eradication.<sup>27</sup> In the absence of traditional food systems, and often any food systems at all, people were forced to rely on rations from the federal government for survival.<sup>28</sup> In the mid-1800s, the new Office of Indian Affairs, no longer housed under the War Department, became responsible for distributing these rations to newly created reservations to prevent widespread starvation.<sup>29</sup> While these rations were originally intended to be temporary, the barren landscape of many relocation areas and lack of other governmental assistance led to their permanence in both

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24. FIRST NATIONS DEV. INST. & ECHO HAWK CONSULTING, *supra* note 23, at 8.

25. ECHO HAWK ET AL., *supra* note 8, at 30.

26. Andrea Freeman, *Unconstitutional Food Inequality*, 55 HARV. C.R.-C.L. L. REV. 840, 858-60 (2020).

27. *Id.* at 858 (noting President Washington’s plan to “ruin their crops on the ground and prevent them planting more”).

28. ECHO HAWK ET AL., *supra* note 8, at 30.

29. Freeman, *supra* note 26, at 859.

Native American policy and culture by the end of the nineteenth century.<sup>30</sup> Thus, although it was housed in different departments and underwent policy changes over the next two centuries, FDPIR is rooted in this bedrock of rations, violent colonization, and displacement.

In the early twentieth century, the United States began to experience agricultural surpluses, which the dramatic economic changes of the 1930s only increased.<sup>31</sup> In 1935, Congress amended the Agricultural Adjustment Act of 1933 to address this growing surplus.<sup>32</sup> Section 32 of the amendments appropriated 30% of customs receipts for the Secretary of Agriculture to use to “encourage the domestic consumption of such commodities or products . . . by the payment of benefits or indemnities or by other means.”<sup>33</sup> This amendment paved the way for commodity feeding programs to grow as part of the USDA, and grow they did. By 1938, more than \$54 million in surplus food was being distributed to low-income American families each year by the Federal Surplus Commodities Corporation, a non-profit organization charged with domestic distribution of surplus food purchased with Section 32 money.<sup>34</sup>

Already, commodity distribution was experiencing many of the logistical challenges that FDPIR still experiences today. In a 1939 overview of the program, then Secretary of Agriculture Henry Wallace noted that the Department “had complaints of waste because families suddenly received more food than could be kept without spoiling.”<sup>35</sup> Other difficulties included unpredictability, the creation of informal markets, producer complaints about buying prices, and concerns about “morale” and social harm to recipients.<sup>36</sup>

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30. Dana Vantrease, *Commod Bods and Frybread Power: Government Food Aid in American Indian Culture*, 126 J. AM. FOLKLORE 55, 56-57 (2013). See generally William Least Heat-Moon, *A Stark Reminder of How the U.S. Forced American Indians into a New Way of Life*, SMITHSONIAN MAG. (Nov. 2013), [<https://perma.cc/GT3A-GU74>] (providing an anecdote about a ration ticket in the Smithsonian collection).

31. H.R. REP. NO. 95-464, at 415 (1977).

32. Act of Aug. 24, 1935, Pub. L. No. 74-320, 48 Stat. 750.

33. § 32, 48 Stat. at 774.

34. H.R. REP. NO. 95-464, at 713-14.

35. *Id.* at 714-15.

36. *Id.* at 715.

Despite these difficulties, the commodity distribution program was formally extended to reservations through the Agricultural Act of 1949. Section 416 of the Act authorized the Secretary of Agriculture to make commodity foods available at no cost to select groups, prioritizing delivery to the Bureau of Indian Affairs and other “local public welfare organizations for the assistance of needy Indians and other needy persons.”<sup>37</sup> Section 416 paved the way for FDPIR. It was the first statutory authorization of a USDA commodity food program that explicitly targeted Native Americans.<sup>38</sup> Although far from acknowledging the history of colonization and targeted destruction of traditional foods, Section 416’s implicit acknowledgement of the unique challenges and needs of Indian Country set the stage for the creation of FDPIR in the coming decades.

Food stamps, the precursor to what is today known as SNAP, have been intricately connected to FDPIR since the mid-twentieth century. As part of President Johnson’s “war on poverty,” the Food Stamp Act of 1964 established food stamps as an official alternative to direct distribution.<sup>39</sup> Although the Act made no mention of Tribal nations or Tribal administration,<sup>40</sup> Native Americans could participate in the food stamp program if it was available to them, just like any other citizen.<sup>41</sup> However, disparities in Indian Country’s food stamp access dated back to the earliest pilots of the program. For example, a December 1941 map of Food Stamp Plan Areas produced by the USDA shows a marked absence of the food stamp program in Oklahoma when compared to its surrounding states.<sup>42</sup> Despite these disparities, the Agriculture and Consumer Protection Act of 1973 mandated every political jurisdiction in the country adopt the food stamp

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37. Agricultural Act of 1949, ch. 792, sec. 416, 63 Stat. 1051, 1058 (codified as amended at 7 U.S.C. § 1431(a)).

38. The term “Indian Country” appears to be absent from the era’s farm bills and formal food commodity laws.

39. H.R. REP. NO. 95-464, at 817.

40. Food Stamp Act of 1964, Pub. L. No. 88-525, § 3, 78 Stat. 703, 703 (defining “State” as “the fifty States and the District of Columbia”).

41. H.R. REP. NO. 95-464, at 130.

42. *Id.* at 745.



program, including Indian Country.<sup>43</sup> Because the food stamp program precluded direct distribution programs, this would have meant the end of commodities on reservations.

However, less than a year later, Congress amended the 1973 Act to continue Section 32 commodity distribution, including “the family commodity distribution program on Indian reservations not requesting a food stamp program.”<sup>44</sup> The amendment further allowed reservations that had already entered the food stamp program to reinstate commodity distribution and excused reservations as a political jurisdiction from the food stamp adoption mandate until 1977.<sup>45</sup> The 1973 Act marked the first congressional recognition of the challenges to food stamp access that many reservations faced, and it was an important precursor to the establishment of FDPIR.<sup>46</sup> By the end of the decade, out of 284 total reservations, 249 were participating in the food stamp program, while 35 chose to continue participating in a commodity distribution program.<sup>47</sup>

The 1977 Food and Agriculture Act finally resolved the food stamp commodity distribution conflict, making specific provisions for reservations. Under the Act, direct distribution was on the way out, permitted in only limited circumstances like disaster relief.<sup>48</sup> However, an exception was made for “[d]istribution of commodities, with or without the food stamp program,” when requested by a Tribal organization.<sup>49</sup> Thus, Tribes became the only political entity permitted to run food stamp and distribution programs concurrently. While the 1977 Food and Agriculture Act is often credited as the creation of FDPIR, in reality it only prevented the new food stamp program from eclipsing an existing commodity distribution system under

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43. *A Short History of SNAP*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., [https://perma.cc/NVU5-P26P] (last visited Nov. 22, 2022).

44. Act of July 12, 1974, Pub. L. No. 93-347, 88 Stat. 340, 340-41.

45. § 4, 88 Stat. at 341; H.R. REP. NO. 95-464, at 131.

46. U.S. DEP’T OF AGRIC., FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS 1 (2020), [https://perma.cc/7RAU-VTPK].

47. H.R. REP. NO. 95-464, at 131.

48. Food and Agriculture Act of 1977, Pub. L. No. 95-113, sec. 1301, § 4, 91 Stat. 913, 961.

49. § 4, 91 Stat. at 961.

the USDA, which in turn was a continuance of the rationing and colonization policies from the earliest days of the nation.

The legislative history of the Food and Agriculture Act of 1977 provides some insight into why Congress singled out Indian Country for the unique dual commodity distribution and food stamp model. According to the House Committee Report on the bill, the reservation amendments were intended to be part of the overall reform objective of “facilitat[ing] the participation of the needy so that those who do need stamps do get them.”<sup>50</sup> The Committee gave weight to hearing testimony stating that “the remote geographical location of many reservations” was the primary barrier to program participation.<sup>51</sup> Of sixty-two reservations surveyed for the Senate Select Committee on Nutrition and Human Needs, only twenty-two reported having a food store within fifty miles.<sup>52</sup> The Navajo Nation reported the estimated distance between food stores and the farthest homes on the reservation to be 300 to 400 miles.<sup>53</sup> While some reservations were closer to urban centers, the Senate Committee stated that it “believe[d] that the tribal organization [was] best equipped to make [the] decision” between food stamps, commodity distribution, or concurrent programs.<sup>54</sup>

Despite this stated belief in the ability of Tribes to decide which program is most appropriate for their citizens, the final language of the Act contained significant limits on Tribal sovereignty, the impacts of which are still felt today. First, individual reservation households were explicitly prevented from simultaneous participation in direct distribution and food stamps.<sup>55</sup> Second, there were explicit barriers to Tribal administration of both programs. Under the 1977 Act, administration of the commodity distribution program still rested with the state government, not with the Tribe, unless the Secretary of Agriculture made a “determin[ation] that the tribal

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50. H.R. REP. NO. 95-464, at 2.

51. *Id.* at 132.

52. S. REP. NO. 95-180, at 126 (1977); H.R. REP. NO. 95-464, at 133.

53. H.R. REP. NO. 95-464, at 132.

54. S. REP. NO. 95-180, at 129.

55. Food and Agriculture Act of 1977, Pub. L. No. 95-113, sec. 1301, § 4, 91 Stat. 913, 961.

organization [was] capable of effectively and efficiently administering such distribution.”<sup>56</sup> There were even more barriers to Tribal administration of the food stamp program. Under the Act, the Secretary of Agriculture had to both determine that the State failed to properly administer the program and that the Tribal organization was capable of doing so in the State’s place, “in light of the distance of the reservation from State . . . certification and issuance centers” and other factors like Tribal fiscal organization.<sup>57</sup> Thus, the presumption was strongly against Tribal administration of the food stamp program, although states were required to engage in good faith consultation and “implement the program in a manner that [was] responsive to the needs of the Indians on the reservation.”<sup>58</sup> These limits to dual participation and Tribal administration are still creating challenges more than four decades later.

The modern FDPIR program was officially established by federal regulation in 1979. A 1978 proposed rule suggested administering the Food Distribution Program as similarly to the food stamp program as possible, both to achieve uniformity and efficiency and because “the underlying purposes of [the programs] are closely related.”<sup>59</sup> However, the necessity of special rules regarding the unique dual nature of enrollment quickly became apparent. Under the 1977 Food and Agriculture Act, Indian Tribal Organizations (ITOs) could choose to operate a food stamp program, a food distribution program, or both programs within a reservation boundary.<sup>60</sup> There was concern that if an ITO administered FDPIR only, reservation residents who were not part of the Tribe would become ineligible for both programs.<sup>61</sup> To avoid this, the agency’s final rulemaking expanded baseline FDPIR eligibility to *all* households on a

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56. § 4, 91 Stat. at 961.

57. § 11, 91 Stat. at 970.

58. § 11, 91 Stat. at 970.

59. Food Stamp and Food Distribution Programs; Indian Reservations, 43 Fed. Reg. 57798, 57799 (proposed Dec. 8, 1978) (to be codified at 7 C.F.R. pts. 271, 281, 283).

60. Food and Agriculture Act of 1977, Pub. L. No. 95-113, sec. 1301, § 4, 91 Stat. 913, 961.

61. Food Stamp and Food Distribution Programs on Indian Reservations, 44 Fed. Reg. 35904, 35911 (June 19, 1979) (to be codified at 7 C.F.R. ch. II).

reservation, not just those who were part of the Tribe.<sup>62</sup> Non-Tribal residents were also permitted to enroll in an off-reservation food stamp program if available, while on-reservation Tribal citizens were not.<sup>63</sup> Conversely, Tribal citizens who resided off-reservation but nearby could still participate in FDPIR.<sup>64</sup> ITOs could also split reservations into smaller areas with individual program designations for FDPIR, food stamps, or concurrent areas.<sup>65</sup> These basic parameters still govern the program today.

While the structure and eligibility rules remain similar today, the stated goals of FDPIR have evolved. The original commodity distribution program's purpose was twofold: to provide an outlet for domestically produced agricultural products and to provide nutritious food to Native American households.<sup>66</sup> With the decrease in domestic surpluses and an increased national concern for hunger in the 1970s, this second purpose became dominant.<sup>67</sup> The Food and Agriculture Act of 1977 states that distribution programs to reservations "shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet."<sup>68</sup> The Act sought to meet this nutrition goal by aligning the type and quantity of commodity foods with the thrifty food plan used to calculate food stamp benefits.<sup>69</sup> However, the USDA avoided specificity on food quantity and quality and insisted the program was supplementary only.<sup>70</sup> In response, the Department received almost thirty comments on its proposed rule asking for greater specificity and guarantees related to the contents of the food

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62. *Id.*

63. *Id.* at 35912.

64. *Id.*

65. *Id.*

66. *See supra* text accompanying notes 31-35, 50.

67. Food and Agriculture Act of 1977, Pub. L. No. 95-113, sec. 1301, § 2, 91 Stat. 913, 958.

68. Sec. 1304, § 4(a).

69. H.R. REP. NO. 95-464, at 134 (1977).

70. The proposed regulation establishing FDPIR stated that the Department of Agriculture would offer "a variety and quantity of commodities for Indian households such that the commodity package represents an acceptable alternative" to food stamps only, further noting the joint conference committee report specifically stated that the commodity distribution program is not intended to provide a fully adequate nutritional diet alone. Food Stamp and Food Distribution Programs; Indian Reservations, 43 Fed. Reg. 57798, 57798 (proposed Dec. 8, 1978) (to be codified at 7 C.F.R. pts. 271, 281, 283).

package itself.<sup>71</sup> The USDA rebutted these requests, concluding “that a guarantee expressed in such literal measures would be impracticable and inappropriate.”<sup>72</sup> Beyond budget limits and logistic concerns, the Department’s primary reasoning was that it wanted the food packages to be responsive and “tailor[ed] . . . as closely as practicable to individual [T]ribal preferences.”<sup>73</sup> The modern implementation of FDPIR shows that the reality of the program would sharply diverge from this goal of responsiveness.

### III. PRESENT: CHALLENGES AND CHANGES

FDPIR today looks very different from its first iteration in 1979, due in large part to advocacy from Indian Country following the first decade of the program. After the Agriculture Act of 1977 was passed, thirty-seven people testified at USDA hearings in October 1977 about the reservation-specific provisions of the Act.<sup>74</sup> Comments from the Tohono O’odham Nation<sup>75</sup> in response to the 1978 proposed rule ensured that state agencies were required to submit FDPIR operation plans to the relevant ITO and incorporate ITO comments before submitting a final plan to the Food and Nutrition Service (FNS).<sup>76</sup> Comments from the Navajo Nation increased the level of administrative funding from 50% to 75% with the option of increasing the amount up to 100% based on “compelling justification.”<sup>77</sup> At the inception of the program in 1979, commenters were already asking for better labeling, a reduction in container size, and the addition of fresh and frozen foods.<sup>78</sup> Some of these requests were the same challenges that had been identified as early as 1939 in

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71. Food Stamp and Food Distribution Programs on Indian Reservations, 44 Fed. Reg. 35904, 35922 (June 19, 1979) (to be codified at 7 C.F.R. ch. II).

72. *Id.*

73. *Id.*

74. Food Stamp and Food Distribution Programs; Indian Reservations, 43 Fed. Reg. at 57798.

75. The Tohono O’odham Nation was known as the Papago Tribe in 1977. *Tohono O’odham History*, TOHONO O’ODHAM NATION, [<https://perma.cc/UQQ8-RUJA>] (last visited Nov. 22, 2022).

76. Food Stamp and Food Distribution Programs on Indian Reservations, 44 Fed. Reg. at 35906, 35907.

77. *Id.* at 35921.

78. *Id.* at 35924.

the reports that led to the creation of the food stamp program.<sup>79</sup> Advocates continued to flag problems and push for solutions for FDPIR over the first decade of the program, leading to a series of dramatic changes in the 1990s and early 2000s.

In 1987, Congress passed the Commodity Distribution Reform Act requiring FNS and FDPIR administrators to collect information about commodity foods and participant feedback, which up until that point had been largely unaddressed due to the FNS's policy of reducing the administrative burden for the FDPIR program.<sup>80</sup> Partially in response to this call for information, the first national study of FDPIR was conducted in 1990.<sup>81</sup> While some of the study's conclusions on participant satisfaction with the food package conflict with other reports,<sup>82</sup> the study highlighted several issues with administration, particularly distribution, selection, and availability.<sup>83</sup> Some of the key challenges facing FDPIR today include the quality and cultural responsiveness of the food package, distribution and procurement at the local level, and tensions between federal paternalism and Tribal sovereignty.

### A. Food Package Content: Quality and Selection

The actual content and quality of the food packages themselves have been one of the key challenges to successful implementation of FDPIR. In 1990, these problems came to a head at a hearing of the of the House Select Committee on Hunger at the Standing Rock Reservation in North Dakota, with

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79. See *supra* notes 35-36 and accompanying text.

80. Commodity Distribution Reform Act and WIC Amendments of 1987, Pub. L. No. 100-237, 101 Stat. 1733 (1988).

81. CHARLES L. USHER ET AL., U.S. DEP'T OF AGRIC., EVALUATION OF THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR) ES-1 (1990), [<https://perma.cc/4QDG-FLRN>].

82. One of the report's conclusions is that "[p]rogram participants express strong positive preferences for almost all commodity food items." *Id.* at ES-12. However, this conflicts with other reports of widespread community dissatisfaction during this time and uses consumer preference to gloss over the nutritional deficiencies of commodity foods. See *Standing Rock Sioux Reservation: A Case Study of Food Security Among Native Americans: Hearing Before the H. Select Comm. on Hunger*, 101st Cong. 22-23 (1990) (statement of Charles "Red" Gates, FDPIR Program Dir., Standing Rock Sioux Tribe); Mucioki et al., *supra* note 4, at 89; see also ECHO HAWK ET AL., *supra* note 8, at 45.

83. USHER ET AL., *supra* note 81, at ES-6, ES-7.

Congressmen Byron Dorgan (North Dakota), Chairman Tony P. Hall (Ohio), and Eni Faleomavaega (American Samoa).<sup>84</sup> In his role as FDPIR program director for the Standing Rock Sioux Tribe, Charles “Red” Gates gave memorable testimony about the quality of the FDPIR foods:

Mr. GATES. At this time, I would like to open a couple of these cans, and show you what some of the people are forced to eat because that is all they have.

Mr. HALL. Now, what is this? Is this canned meat?

Mr. GATES. This is canned beef, supposedly. We get reports saying that it is supposed to be real good for us.

Mr. FALEOMAVAEGA. Is this USDA-approved?

Mr. GATES. Yes.

Mr. DORGAN. This is sent through the commodities program from USDA; is that correct?

Mr. GATES. Right. You can see the top of the can here, with the fat on it.

Mr. HALL. Why don't you bring it up here? Why don't you take it up and show it to us? It does not look too good.

Mr. GATES. No, it does not. If you dump it out in a plate, you will see blood vessels.

Mr. DORGAN. Do you have a plate? Let us take a look at it. Do you have a stronger scooper?

Mr. FALEOMAVAEGA. If the chairman will yield, I will wager the chairman that dog and cat food probably have more nutritional value than what this is offering.<sup>85</sup>

Congressman Dorgan went on to note the particular impact of the presented food given the health disparities of Indian Country, noting “it really is a disgrace to be providing that as representing nutritional commodities for people who are suffering from diabetes at the rate of 50 percent of the general population.”<sup>86</sup> In response to questions about whether the Standing Rock Sioux Nation could ask for better quality items,

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84. *Standing Rock Sioux Reservation: A Case Study of Food Security Among Native Americans: Hearing Before the H. Select Comm. on Hunger*, 101st Cong. 1 (1990).

85. *Id.* at 22.

86. *Id.* at 23.

Gates testified that the Tribe's suggestions had "fall[en] on deaf ears" despite listing complaints on the required twice annual food acceptability report for over eight years.<sup>87</sup> Gates also touched on the importance of traditional foods, noting that although higher quality protein like albacore tuna is available, "the Indians on Standing Rock are not partial to fish."<sup>88</sup> Beyond the visceral example of the canned meat, Gates also highlighted the high sodium contents of canned vegetables, lack of labeling, and lack of nutritional education.<sup>89</sup> Gates continues to be interviewed to this day about this impactful testimony, as well as his contributions as a FDPIR program director for more than thirty years.<sup>90</sup>

In large part due to advocates like Gates, the quality and selection of the FDPIR food package has slowly improved, primarily in the last decade. In 1989, the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR) was formed.<sup>91</sup> This group of Tribal representatives works with the USDA's FNS to promote advocacy, policy, and legislative changes relating to FDPIR.<sup>92</sup> In 2002, NAFDPIR passed a resolution requesting that FNS convene a group to regularly review the contents of the FDPIR food package.<sup>93</sup> The resulting FDPIR Food Package Review Work Group has eighteen voting members and multiple non-voting members, made up of NAFDPIR members, ITO representatives (including Charles "Red" Gates), federal and Tribal health professionals, and USDA

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87. *Id.*

88. *Id.*

89. *Standing Rock Sioux Reservation: A Case Study of Food Security Among Native Americans: Hearing Before the H. Select Comm. on Hunger*, 101st Cong. 22-23 (1990).

90. Jennifer Churchill, *A 30-Year Journey to Bring Back Bison*, INDIAN GIVER (Nov. 29, 2019), [<https://perma.cc/8YQW-MGX6>].

91. Andi Murphy, *After a Fraught History, Some Tribes Finally Have the Power to Rethink 'Commodity Foods,'* CIV. EATS (Nov. 1, 2021), [<https://perma.cc/TLA8-6CLC>].

92. *Id.*

93. *FDPIR Food Package Review Work Group*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Sept. 19, 2022), [<https://perma.cc/FL6M-LWKY>].



and FNS staff.<sup>94</sup> Since 2002, the group regularly meets to review and revise the food package.<sup>95</sup>

One of the biggest changes to the program in recent years was the advent of fresh produce. As of 2017, almost all ITOs participate in the Fresh Fruits and Vegetable Program operated through the Department of Defense.<sup>96</sup> Despite this, some FDPIR participants find the proportion of pasta and grains is still too large, leading to stockpiling.<sup>97</sup> The Food Package Review Workgroup has acknowledged this complaint and advocated for reduced grains and increased protein and vegetables in their November 2021 meeting.<sup>98</sup>

The second big change has been the introduction of culturally relevant foods. Traditional foods have been requested as part of the FDPIR food package since the program's inception in 1979.<sup>99</sup> It took almost forty years to make this request a reality. A 1996 pilot introduced ground bison to the food package, but it was not a permanent addition.<sup>100</sup> The creation of the Food Package Review Work Group in the early 2000s helped lead to congressional authorization for traditional and locally grown foods in the 2008 Farm Bill.<sup>101</sup> Despite this authorization, it took almost a decade of further advocacy for foods like blue cornmeal

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94. *The Food Distribution Program on Indian Reservations: FDPIR Food Package Review Workgroup Members*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Sept. 2022), [<https://perma.cc/UYG4-AMH2>]; *The Food Distribution Program on Indian Reservations: Food Package Review Work Group—Goals, Structure, and Review Process*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Sept. 25, 2015), [<https://perma.cc/4TYG-YDM7>].

95. *Food Package Review Work Group—Goals, Structure, and Review Process*, *supra* note 94.

96. *USDA DOD Fresh Fruit and Vegetable Program: The Basics for FDPIR*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (June 26, 2017), [<https://perma.cc/3UZA-JMJ3>]; *see also* discussion *infra* Part IV.

97. Mucioki et al., *supra* note 4, at 92.

98. FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., FDPIR FOOD PACKAGE REVIEW WORKGROUP STRATEGIC PLANNING MEETING MINUTES 2 (2021), [<https://perma.cc/M6VS-SPG3>].

99. Food Stamp and Food Distribution Programs on Indian Reservations, 44 Fed. Reg. 35904, 35912 (June 19, 1979) (to be codified at 7 C.F.R. ch. II) (noting FNS received three comments to the proposed FDPIR rule suggesting that “FNS make money available to Indian tribes so they can purchase native and cultural foods raised in their area for distribution under the program”).

100. Murphy, *supra* note 91.

101. Mucioki et al., *supra* note 4, at 89-91; Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 4211, 122 Stat. 1651, 1884.

and bison to become regular parts of the food package.<sup>102</sup> While this has been a significant victory, these foods are provided on a national scale to every ITO in the country. This inappropriately large scale creates cultural disconnect, as what is traditional for one Tribe is not necessarily traditional for another.

### **B. Distribution: National Systems and Contingency Plans**

The national system of distribution is another challenge FDPIR faces today. Like other USDA feeding programs, FDPIR is treated as a nationwide, homogenous service despite the unique scope, history, and focus of the program.<sup>103</sup> To address the challenges of distributing commodities to remote and rural locations, many FDPIR programs, especially smaller programs, adopted “tailgate” distribution systems, where food packages were delivered via truck to individual communities, as opposed to having participants travel to a centralized warehouse.<sup>104</sup> However, this system came with its own set of issues. A 1990 study of FDPIR noted that tailgating led to reduced selection, with some “commodity items only [available] every two or three months.”<sup>105</sup> Problems with distribution have continued to plague the program to this day.<sup>106</sup> Today, there are only two distribution centers, centrally located in Boise, Idaho, and Kansas City, Missouri, which service every reservation in the United States.<sup>107</sup> As it currently stands, by using such a national distribution and food sourcing system, the USDA ends up treating the Native American populations it serves as a monolith, despite the diverse reality of Tribal food traditions, geographies, and needs.<sup>108</sup>

The system of distribution also does not allow for adequate emergency preparedness. In the face of disaster, FDPIR does not

102. Mucioki et al., *supra* note 4, at 89-90.

103. ANDREW FISHER, *BIG HUNGER: THE UNHOLY ALLIANCE BETWEEN CORPORATE AMERICA AND ANTI-HUNGER GROUPS* 144 (Robert Gottlieb ed., 2017).

104. USHER ET AL., *supra* note 81, at ES-6.

105. *Id.* at ES-7.

106. See ECHO HAWK ET AL., *supra* note 8, at 45; Mucioki et al., *supra* note 4, at 95.

107. KARLI A. MOORE ET AL., UNIV. OF ARK. INDIGENOUS FOOD & AGRIC. INITIATIVE, *OPTIMIZING DISTRIBUTION CENTER LOCATION AND DELIVERY SCHEMES FOR THE USDA’S FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR)* 3 (2018), [<https://perma.cc/S4VX-STHQ>].

108. FISHER, *supra* note 103, at 144.

have a contingency plan in place to ensure that those highly dependent on the program continue to receive service. The danger of this gap was made clear following the “nightmarish scenario” of the 2013 government shutdown, which led to extensive food spoilage and program failure.<sup>109</sup> As a result, Tribal leaders have been asking the USDA for a FDPIR contingency plan to continue program administration in the face of such unforeseen challenges.<sup>110</sup> NAFDPIR President Mary Greene Trottier again called for contingency planning in front of the House Committee on Natural Resources following the 2019 government shutdown.<sup>111</sup> With eerie foresight, Trottier noted, “shutdowns are not the only catastrophes that imperil our program and impact our nation’s food system: so do natural disasters and commodity food shortages.”<sup>112</sup> Just one year later, COVID-19 did just that, exposing the frailties of the U.S. food supply chain and their disproportionate impact on Native Americans and programs like FDPIR.<sup>113</sup> During a crisis, the current system of national distribution, as opposed to a regional system, limits both program efficiency and potential economic support for local, Native American producers.<sup>114</sup> Paired with the lack of contingency planning, the challenges facing the present distribution system are clear.

### C. Paternalism: Administration and Consultation

Another significant challenge to FDPIR is addressing the historic pattern of paternalism associated with federal Indian Country policies. This dates back to the original 1977 Food and

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109. *Oversight Hearing on “Shutdown Impacts in Indian Country” Before the H. Comm. on Nat. Res.*, 116th Cong. (2019) (written testimony of Mary Greene Trottier, President, Nat’l Ass’n of Food Distrib. Programs on Indian Rsrvs.).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Buying Native American: Federal Support for Native Business Capacity Building and Success: Oversight Hearing Before the S. Comm. on Indian Affs.*, 117th Cong. (2022) (written testimony of Janie Simms Hipp, Gen. Couns., U.S. Dep’t of Agric.); JOEL ANDERSON & OLIVIA CHAN, CULTIVATING RESILIENCE IN INDIAN COUNTRY: AN ASSESSMENT OF COVID-19’S IMPACT ON TRIBAL FOOD SYSTEMS 1-4 (2021), [<https://perma.cc/YRF8-WM4N>].

114. ANDERSON & CHAN, *supra* note 113, at 32.

Agriculture Act. While the House Committee noted that the barriers to Tribal administration of commodity distribution were intentionally lower than Tribal administration of the food stamp program,<sup>115</sup> Tribal organizations still had to be found “effective and efficient managers” at the discretion of the Secretary of Agriculture before they could administer the program themselves.<sup>116</sup> After the initial FDPIR rule was proposed, several states protested their new responsibilities of administering FDPIR.<sup>117</sup> As a result, the USDA shifted the burden of administration to ITOs, changing the rule to be that only upon “a finding of *incapability* on the part of the ITO, would the state government be required to administer the program on behalf of the Indian tribe.”<sup>118</sup> By 1990, the program was administered almost entirely by ITOs.<sup>119</sup>

While FDPIR is largely ITO-administered, other nutrition programs that are closely connected to FDPIR, such as SNAP, face more barriers to Tribal control. Section 4004 of the Agricultural Act of 2014 required a feasibility study of ITO administration of all federal nutrition assistance programs.<sup>120</sup> The resulting study found that “[n]early all Tribes that participated . . . expressed interest in administering [f]ederal nutrition assistance programs,” as long as there was sufficient federal funding and technical assistance.<sup>121</sup> However, administration of a program is not the same as control of the program. For FDPIR, ITOs are limited to roles like food ordering and delivery, while most program decisions rest with the federal government.<sup>122</sup>

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115. H.R. REP. NO. 95-464, at 133-35 (1977) (“The Committee was not as willing to permit [T]ribal organizations to administer the food stamp program . . . . It should be emphasized that the Secretary’s designation of a [T]ribal organization as administrator of the food stamp program . . . should not be construed or interpreted in any way as an official recognition of [T]ribal sovereignty.”)

116. *Id.* at 134.

117. Food Stamp and Food Distribution Programs on Indian Reservations, 44 Fed. Reg. 35904, 35913 (June 19, 1979) (to be codified at 7 C.F.R. ch. II).

118. *Id.* (emphasis added).

119. USHER ET AL., *supra* note 81, at I-2.

120. Agricultural Act of 2014, Pub. L. No. 113-79, § 4004, 128 Stat. 649, 785.

121. STEVEN GARASKY ET AL., U.S. DEP’T OF AGRIC., FEASIBILITY OF TRIBAL ADMINISTRATION OF FEDERAL NUTRITION ASSISTANCE PROGRAMS 39, 42 (2016), [<https://perma.cc/YDH4-5YG9>].

122. *Id.* at 166-68.

In practice, federal paternalism has led to abrupt, often unpopular, changes that catch many participants by surprise. Towards the end of the Bush administration, a workgroup of representatives from the FNS, Centers for Disease Control, and Indian Health Services unilaterally removed butter from the FDPIR food package over health concerns.<sup>123</sup> No Tribe was consulted, and no replacement was initially provided.<sup>124</sup> Participants were outraged. In a 2009 study of FDPIR, each of the seven reservations, nations, and rancherias participating in the study independently listed the removal of butter as a top complaint.<sup>125</sup> Gloria Goodwin of Minnesota's White Earth Indian Reservation brought the issue to the attention of the U.S. House Committee on Agriculture in a 2010 hearing to review FDPIR.<sup>126</sup> Despite the uproar, it took the USDA's senior advisor for Tribal relations, Janie Simms Hipp, more than a year and half to reintroduce butter into the food package.<sup>127</sup> This incident showcases how paternalistic federal policy in Indian Country can be disastrous when Tribal nations are not given a voice.

One solution that Indian Country advocates have pushed hard for is better use of consultation. Consultation is a recognition of the government-to-government relationship between Tribes and the federal government.<sup>128</sup> President Clinton's 2000 Executive Order 13175 required all agencies, including the USDA, to engage in "regular and meaningful consultation" with Tribal nations for all federal policies with Tribal implications.<sup>129</sup> Under President Obama,<sup>130</sup> as reaffirmed

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123. *Detailed Information on the Food Distribution Program on Indian Reservations Assessment*, EXPECTMORE.GOV (Sept. 6, 2008), [<https://perma.cc/8W44-MVS8>]; FISHER, *supra* note 103, at 143.

124. FISHER, *supra* note 103, at 143; FINEGOLD ET AL., *supra* note 6, at 80, 126.

125. FINEGOLD ET AL., *supra* note 6, at 80, 96, 105, 113, 126, 146, 155.

126. *Hearing to Review the Food Distribution Program on Indian Reservations Before the Subcomm. on Dep't Operations, Oversight, Nutrition, and Forestry of the H. Comm. on Agric.*, 111th Cong. 42-43 (2010) (statement of Gloria Goodwin, Sec'y, Nat'l & Reg'l Bd. of Dirs., NAFDPIR).

127. FISHER, *supra* note 103, at 143.

128. Exec. Order No. 13175, 65 Fed. Reg. 67249 (Nov. 6, 2000).

129. *Id.*

130. Memorandum on Tribal Consultation, 2009 DAILY COMP. PRES. DOC. 1 (Nov. 5, 2009).

in January 2021 by the Biden administration,<sup>131</sup> agencies are further required to create and regularly update a plan to implement Executive Order 13175. The USDA's Tribal Consultation directive requires every agency within the USDA to "provide an opportunity for Tribes to participate in policy development to the greatest extent practicable and permitted by law."<sup>132</sup> Since at least 2015, Tribal citizens have called for regular consultations with the FNS solely about FDPIR.<sup>133</sup> After a lack of federal response, the National Congress of American Indians issued a resolution in the winter of 2016, again calling for regular FDPIR consultation.<sup>134</sup>

As a result of these requests, the FDPIR Tribal Leaders Consultation Working Group (TLCWG) was created to establish regular consultations with the USDA about issues related solely to FDPIR.<sup>135</sup> Composed of Tribal leaders, USDA deputy secretaries, the FNS Undersecretary, and the Director of Tribal Relations, the TLCWG is the only standing consultation body between the USDA and Tribal leadership.<sup>136</sup> The TLCWG has consulted on every aspect of FDPIR, including funding, nutrition education, distribution and delivery problems, emergency contingency planning, and demonstration projects.<sup>137</sup> In just a

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131. Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 2021 DAILY COMP. PRES. DOC. 1 (Jan. 26, 2021).

132. U.S. DEP'T OF AGRIC., DR 1350-002, TRIBAL CONSULTATION, COORDINATION, AND COLLABORATION (2013), [<https://perma.cc/U4QS-5WDK>].

133. U.S. DEP'T OF AGRIC., CONSULTATION REPORT-OUT: FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS TRIBAL LEADER CONSULTATION WORKING GROUP (Dec. 12, 2017) [hereinafter TLCWG Dec. 2017 REPORT-OUT], [<https://perma.cc/9XS9-3E2B>]; NAT'L CONG. OF AM. INDIANS, RES. #SPO-16-058, CALLING ON THE USDA TO INITIATE TRIBAL CONSULTATION ON ISSUES RELATED TO THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (2016), [<https://perma.cc/GB52-AUVK>].

134. CALLING ON THE USDA TO INITIATE TRIBAL CONSULTATION ON ISSUES RELATED TO THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS, *supra* note 133.

135. See TLCWG Dec. 2017 REPORT-OUT, *supra* note 133, at 1.

136. *Breaking New Ground in Agribusiness Opportunities in Indian Country: Hearing Before the S. Comm. on Indian Affs.*, 115th Cong. 17 (2018) (prepared statement of Janie Simms Hipp, Dir., Indigenous Food & Agric. Initiative, Univ. of Ark. Sch. of L.).

137. See U.S. DEP'T OF AGRIC., CONSULTATION REPORT-OUT: USDA FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR) TRIBAL LEADERS CONSULTATION WORK GROUP (Feb. 13, 2020) [hereinafter TLCWG Feb. 2020 REPORT-OUT], [<https://perma.cc/VZP2-96Q7>]; U.S. DEP'T OF AGRIC., CONSULTATION REPORT-OUT: FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR): DEMONSTRATION PROJECT FOR TRIBAL ORGANIZATIONS TRIBAL CONSULTATION

few short years, the TLCWG has made significant progress in making FDPIR more responsive to participant needs. In addition to providing significant oversight for a critical FDPIR self-determination demonstration project,<sup>138</sup> the TLCWG continued consultation through the COVID-19 pandemic, addressing issues surrounding CARES Act benefits, parity with SNAP, personal protective equipment procurement, and justification for budget changes.<sup>139</sup>

Janie Simms Hipp highlighted the significance of the TLCWG in a 2018 hearing before the U.S. Senate Committee on Indian Affairs, explaining, “We know the importance of consultation because we have seen it. It has solved longstanding problems in the FDPIR but [has] also shown USDA the power of actually getting Tribal governments in the room to problem-solve in a deeper and more meaningful way.”<sup>140</sup> Regular consultation highlights the importance of a government-to-government relationship in the FDPIR program. It is also a critical first step towards a future of robust Tribal sovereignty.

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MEETING (July 15, 2020) [hereinafter TLCWG July 2020 REPORT-OUT], [https://perma.cc/S2M8-2S9Q]; U.S. DEP’T OF AGRIC., CONSULTATION REPORT-OUT: FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR): DEMONSTRATION PROJECT FOR TRIBAL ORGANIZATIONS TRIBAL CONSULTATION MEETING (Oct. 28, 2020) [hereinafter TLCWG Oct. 2020 REPORT-OUT], [https://perma.cc/5D7A-LR86]; U.S. DEP’T OF AGRIC., CONSULTATION REPORT-OUT: TRIBAL LEADERS CONSULTATION WORKING GROUP FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR) (July 6, 2021) [hereinafter TLCWG July 2021 REPORT-OUT], [https://perma.cc/GCT8-8GPW]; U.S. DEP’T OF AGRIC., CONSULTATION REPORT-OUT: TRIBAL LEADERS CONSULTATION WORKING GROUP FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR) (Aug. 11, 2021) [hereinafter TLCWG Aug. 2021 REPORT-OUT], [https://perma.cc/MKU4-LNCD]; U.S. DEP’T OF AGRIC., CONSULTATION REPORT-OUT: TRIBAL LEADERS CONSULTATION WORKING GROUP FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR) (Dec. 7, 2021) [hereinafter TLCWG Dec. 2021 REPORT-OUT], [https://perma.cc/U9PY-S7BB].

138. See discussion *infra* Section IV.A.

139. See TLCWG July 2020 REPORT-OUT, *supra* note 137; TLCWG Oct. 2020 REPORT-OUT, *supra* note 137; TLCWG July 2021 REPORT-OUT, *supra* note 137.

140. *Breaking New Ground in Agribusiness Opportunities in Indian Country: Hearing Before the S. Comm. on Indian Affs.*, 115th Cong. 17 (2018) (prepared statement of Janie Simms Hipp, Dir., Indigenous Food & Agric. Initiative, Univ. of Ark. Sch. of L.).

#### IV. FUTURE: FDPIR AND TRIBAL SOVEREIGNTY

Tribal sovereignty predates the founding of the United States. In its most basic form, it represents the right of Tribal nations to be governed by their own laws, recognizing their sovereignty over Tribal land and citizens.<sup>141</sup> Tribal sovereignty also implicates a complex and often violent history of legal precedent.<sup>142</sup> Given this legal background, food sovereignty in the context of Indian Country is closely related to Tribal sovereignty. The First Nations Development Institute defines food sovereignty as “the legal ability of a tribal community to define their own food system and laws and regulations that may affect their food system.”<sup>143</sup> For FDPIR, a more robust expression of both Tribal sovereignty and food sovereignty must include the expansion of Tribal self-governance to all federal feeding programs, elimination of the prohibition on dual enrollment of FDPIR and SNAP, and improvements in the procurement system to allow for more Tribally produced and procured foods on a smaller geographic scale.

##### A. Expanding 638 Authority

In 1975, just three years before the creation of FDPIR, Congress passed the Indian Self-Determination and Education Assistance Act, Public Law 93-638, which created what is commonly called “638 authority” for Tribes.<sup>144</sup> In its simplest terms, 638 authority allows Tribal nations to enter into contracts or compacts with certain federal agencies for responsibility over authorized programs, functions, services and activities.<sup>145</sup> Under a 638 contract or compact, a Tribal nation gains full control of the relevant program, while the federal government occupies a role

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141. See *Tribal Sovereignty*, PAUMA BAND OF LUISEÑO INDIANS, [<https://perma.cc/VNJ3-EBH6>] (last visited Nov. 23, 2022); ECHO HAWK ET AL., *supra* note 8, at 20.

142. *Tribal Sovereignty*, *supra* note 141.

143. FIRST NATIONS DEV. INST., FOOD SOVEREIGNTY (2015), [<https://perma.cc/5Y2Y-27Z4>].

144. Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975).

145. *Id.*



more akin to technical assistance.<sup>146</sup> Currently, 638 contracting and compacting is only permitted with the Department of the Interior and the Department of Health and Human Services.<sup>147</sup> While some scholars argue that 638 authority should not be conflated with absolute Tribal sovereignty, as it still relies on government contracts within the American legal system,<sup>148</sup> this legal mechanism provides an important practical tool for more robust self-determination. It also has a long track record of success, with almost every Tribal entity using some form of 638 authority today.<sup>149</sup> This authority is also an important recognition of the diversity of Tribal nations in the United States, as each contract or compact can be specifically tailored to fit a particular Tribe's needs.

The 2018 Farm Bill expanded 638 authority to the USDA for the first time through a pilot project specifically aimed at FDPIR.<sup>150</sup> In late 2021, the USDA awarded initial demonstration projects to eight eligible nations, allowing them to select food for the FDPIR packages and purchase directly from commercial vendors, including local Native vendors, for the first time.<sup>151</sup> The TLCWG was instrumental in guiding the project criteria and application process. For example, the USDA initially proposed capping the awards to only five projects, but after pushback from the TLCWG, this cap was removed.<sup>152</sup> The TLCWG also ensured that traditional foods would be eligible for purchase and reduced potential barriers for Native American vendors.<sup>153</sup>

The Intertribal Agriculture Council emphasized the relationship between the USDA 638 demonstration and

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146. RICHELLE GROGG, CONG. HUNGER CTR., A PRIMER ON 638 AUTHORITY: EXTENDING TRIBAL SELF-DETERMINATION TO FOOD AND AGRICULTURE 5-6 (2019), [<https://perma.cc/9MN8-DEUU>].

147. *Id.* at 2.

148. See Danielle A. Delaney, *The Master's Tools: Tribal Sovereignty and Tribal Self-Governance Contracting/Compacting*, 5 AM. INDIAN L.J. 308, 309-10 (2017).

149. See GROGG, *supra* note 146, at 7.

150. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4003, 132 Stat. 4490, 4624-27.

151. *USDA Invests \$3.5 Million to Provide Food Purchasing Options to Tribal Communities*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Nov. 1, 2021), [<https://perma.cc/Z8GF-VZZW>].

152. TLCWG Oct. 2020 REPORT-OUT, *supra* note 137.

153. *Id.*

self-determination, stating the project was “an important acknowledgement of Tribal sovereignty that opens the door to food purchasing decisions that allow for more traditional, Tribally grown, local and regionally produced foods.”<sup>154</sup> Overall, the demonstration project has been a success on this front. Every participating Tribe made a purchase from a Native American producer.<sup>155</sup> For example, as a result of the project, the Oneida Nation and Menominee Indian Tribe were able to offer traditional foods sourced from the Oneida Tribe, the Fond du Lac Reservation, and the Red Cliff Band of Lake Superior Chippewa.<sup>156</sup>

Despite this success, participating ITOs are already finding that producer growth is being limited by the project being viewed as a temporary “pilot.”<sup>157</sup> Responding to this limitation, in a December 2021 consultation, the TLCWG recommended making the demonstration project permanent and providing full funding, as well as moving “from self-determination to self-governance with [the] ability to decide unique needs going beyond supplanting current food items.”<sup>158</sup> The 2023 Farm Bill provides a perfect opportunity to confer 638 authority to the USDA in full.

While Tribes have administered some federal programs for decades, Indian Country advocates and scholars have argued that Tribal control of decision-making at all levels, such as the control provided by 638 authority, provides a more complete expression of Tribal sovereignty.<sup>159</sup> This is especially clear for FDPIR, which has been long administered by ITOs but still has a decades-long history of challenges stemming from ultimate federal control of the program.<sup>160</sup> With the 2023 Farm Bill just around the corner, expanding sovereignty-centered policies like the 638 demonstration project will be essential to the continued growth

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154. *Exploring the Possibilities: FDPIR 638 Self-Determination Demonstration Project*, INTERTRIBAL AGRIC. COUNCIL (Jan. 29, 2021), [<https://perma.cc/UCA6-YZUS>].

155. *Buying Native American: Federal Support for Native Business Capacity Building and Success: Oversight Hearing Before the S. Comm. on Indian Affs.*, 117th Cong. (2022) (written testimony of Janie Simms Hipp, Gen. Couns., U.S. Dep’t of Agric.).

156. *Id.*

157. TLCWG Dec. 2021 REPORT-OUT, *supra* note 137.

158. *Id.*

159. *See, e.g.*, Mucioki et al., *supra* note 4, at 89, 96; GROGG, *supra* note 146, at 2.

160. *See* discussion *infra* Section III.C.

and success of FDPIR. Tribes have been calling for a full amendment to the Indian Self-Determination and Education Assistance Act to allow 638 contracting for all federal nutrition programs.<sup>161</sup> Pairing this legal authority with federal funding for administrative costs will be critical.<sup>162</sup> Opportunities should also be explored for smaller Tribes, for whom full 638 contracts may be administratively infeasible.<sup>163</sup>

### **B. Allowing Dual Enrollment and Tribal Administration of SNAP**

SNAP and FDPIR are intricately connected. Because the modern version of FDPIR was created as an alternative to SNAP, it is intended to mirror the program in terms of benefits provided.<sup>164</sup> However, there is not always parity between the two programs. During the COVID-19 pandemic, emergency benefits for SNAP increased, but this increase was not automatically reflected for FDPIR participants, causing some FDPIR participants to switch over to SNAP out of necessity.<sup>165</sup> The TLCWG is still investigating this parity gap.<sup>166</sup>

Allowing enrollment in both programs could also improve food access for Native Americans who need support the most. The 1977 Act establishing FDPIR mandated that “there shall be no distribution of federally donated foods to households under the authority of any law” in food stamp jurisdictions, except for temporary emergency situations and the commodity supplemental food program, which is distinct from FDPIR.<sup>167</sup> The Act goes on to carve out a separate exception specifically for

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161. GARASKY ET AL., *supra* note 121, at 74.

162. *Id.* at 39; *see also* NAT’L CONG. OF AM. INDIANS, TRIBAL FOOD SOVEREIGNTY: INDIAN COUNTRY’S POLICY RECOMMENDATIONS FOR THE FEDERAL GOVERNMENT (2021), [<https://perma.cc/W6YM-YYZ7>].

163. GARASKY ET AL., *supra* note 121, at 39-40.

164. *See supra* note 59 and accompanying text.

165. TLCWG Dec. 2021 REPORT-OUT, *supra* note 137, at 4.

166. *Id.*

167. Food and Agriculture Act of 1977, Pub. L. No. 95-113, sec. 1301, § 4, 91 Stat. 913, 961.

Tribal organizations,<sup>168</sup> the foundation for FDPIR, but notes that the Secretary of Agriculture “shall not approve any plan for such distribution which permits any household on any Indian reservation to participate simultaneously in the food stamp program and the distribution of federally donated foods.”<sup>169</sup> Today, although eligible households can switch between the two programs, they cannot participate in both programs within the same month.

The reason for this prohibition is unclear, but the challenges it has created today are obvious, including the parity gap and difficulties navigating administration of two separate systems.<sup>170</sup> Even though FDPIR is intended to be supplemental only, more than 38% of participants rely on the program for all of their food needs.<sup>171</sup> For a person facing food insecurity, deciding whether to enroll in SNAP or FDPIR presents a difficult, confusing, and perhaps unnecessary challenge. Advocates have called for eliminating the barrier to dual enrollment of SNAP and FDPIR, especially given the food insecurity challenges revealed by the COVID-19 pandemic.<sup>172</sup> Ending this prohibition can put the decision in the hands of individual Native Americans, allowing for more effective administration of federal nutrition programs, reduced food insecurity among the most vulnerable, and increased self-determination and Tribal sovereignty.

Expanding Tribal administration of SNAP and other federal feeding programs can also help improve FDPIR by allowing more streamlined administration specific to each Tribe’s needs.

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168. § 4, 91 Stat. at 961 (“Distribution of commodities, with or without the food stamp program, shall also be made whenever a request for concurrent or separate food program operations, respectively, is made by a [T]ribal organization.”).

169. *Id.*

170. TLCWG Dec. 2021 REPORT-OUT, *supra* note 137, at 4.

171. NANCY M. PINDUS ET AL., U.S. DEP’T OF AGRIC., STUDY OF THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR), at xviii (2016), [<https://perma.cc/46FA-Q42J>].

172. NATIVE FARM BILL COAL., COVID-19 CRISIS RESPONSE: PROPOSED LEGISLATIVE TEXT (2020), [<https://perma.cc/3YTQ-M4AK>] (calling for temporary waiver of the dual SNAP/FDPIR prohibition due to COVID-19 food insecurity); Mucioki et al., *supra* note 4, at 96 (suggesting that policy makers “[r]econsider policy restrictions that inhibit vulnerable populations from accessing FDPIR when enrolled in other welfare assistance programs”); NAT’L CONG. OF AM. INDIANS, *supra* note 162 (including waiver of the dual SNAP/FDPIR prohibition as a top-line policy priority).

Although Indian Country is incredibly diverse and each nation has its own goals, many ITOs surveyed in the FNS's 2014 Tribal administration feasibility study cited "the ability to exercise their sovereignty . . . [and] offer culturally appropriate programming and services" as key reasons for wanting to administer federal nutrition assistance programs.<sup>173</sup> Most Tribes already have experience with administration of federal programs, although the study emphasized that one of the key remaining barriers to Tribal administration is a lack of federal funding for administrative costs.<sup>174</sup> Recent bipartisan legislation has been introduced to allow Tribal administration of SNAP.<sup>175</sup> This solution, when paired with ending the dual prohibition on enrollment, would reduce FDPIR participation barriers while also allowing for a more robust expression of Tribal sovereignty.

### C. Changing the Procurement System

In order to enable more culturally relevant food, especially food that is Tribally produced and culturally appropriate at the granular Tribal level, significant changes need to be made to the current food procurement system for FDPIR. Currently, the USDA's Agriculture Marketing Service (AMS) is responsible for sourcing all USDA food items included in the FDPIR package.<sup>176</sup> Producers must undergo a lengthy USDA vendor certification process before they can be selected as AMS vendors.<sup>177</sup> In addition, producers must be able to provide a particular product on a national scale—for all FDPIR participants—in order to be accepted as an AMS vendor.<sup>178</sup> The high quantity can be a

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173. GARASKY ET AL., *supra* note 121, at vii.

174. *Id.* at ix.

175. Press Release, Mike Rounds, U.S. Sen., Rounds, Smith Introduce Bipartisan Legislation to Promote Tribal Self-Governance for Federal Food Assistance Programs (Sept. 22, 2021), [<https://perma.cc/ECH4-3Y2D>].

176. *Food Distribution Program on Indian Reservations: Vendor*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (July 8, 2019), [<https://perma.cc/TC3R-HA38>].

177. INDIGENOUS FOOD & AGRIC. INITIATIVE, FDPIR 638 FOOD SOURCING APPLICATIONS (Jan. 22, 2021), [<https://perma.cc/574D-PXUZ>].

178. *Id.*; *see also* AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., SUPPLEMENT 603 TO THE AMS MASTER SOLICITATION FOR THE PURCHASE OF FROZEN BISON PRODUCTS FOR DISTRIBUTION TO FEDERAL FOOD AND NUTRITION ASSISTANCE PROGRAMS 8 (2021),

significant barrier for smaller Tribal producers, especially those who produce culturally relevant foods, such as bison, which traditionally have much lower yields.<sup>179</sup>

To make matters worse, this process is further complicated when it comes to fresh fruit and vegetables, a highly sought and highly fought for addition to the food package. Fresh produce is sourced by the Department of Defense through their Fresh Fruits and Vegetables Program (USDA DOD Fresh), which is administered by the Defense Logistics Agency (DLA).<sup>180</sup> The DLA system is entirely separate and distinct from the AMS system. Therefore, a Tribal producer who wants to provide fresh produce for FDPIR must go through multiple channels, agencies, and certification processes before they can be accepted as a vendor.

Tribal leaders have proposed multiple solutions to this procurement challenge. First, advocates have sought regional sourcing with lower production thresholds to make it easier for smaller producers, including Tribal producers, to be selected as vendors, especially when harvests are low.<sup>181</sup> This could also allow for culturally relevant foods to be truly relevant to a specific Tribe instead of considering Indian Country as a monolith. With changes in the centralized warehousing and distribution system, this change could also lead to improved food quality and availability.<sup>182</sup> However, the USDA has been reluctant to implement this change, perhaps due in part to fear of litigation based on the geographic differentiation of the food package.

Second, advocates have called for the sourcing of fresh fruits and vegetables to all be housed under one roof with the AMS.<sup>183</sup> This would significantly ease the certification process and lower

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[<https://perma.cc/BK9F-DFYZ>] (requiring the purchase unit size for bison to be 40,000 pounds net weight, or 1,000 shipping containers).

179. *Bison Production*, PENNSTATE EXTENSION (Oct. 10, 2005), [<https://perma.cc/59VW-8KAN>] (noting that bison are mostly appropriate for small-scale operations and that the average herd size in Pennsylvania is sixteen bison).

180. *USDA DOD Fresh Fruit and Vegetable Program*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (July 12, 2022), [<https://perma.cc/VMT7-9VD3>].

181. JANIE SIMMS HIPPIE & COLBY D. DUREN, SEEDS OF NATIVE HEALTH, REGAINING OUR FUTURE: AN ASSESSMENT OF RISKS AND OPPORTUNITIES FOR NATIVE COMMUNITIES IN THE 2018 FARM BILL 55-56, 58 (2017), [<https://perma.cc/FD6J-VDX9>].

182. MOORE ET AL., *supra* note 107, at 13-14.

183. HIPPIE & DUREN, *supra* note 181, at 55-56.

the administrative burden of potential producers.<sup>184</sup> Requests of this nature made during formal consultation have had little to no success, in part due to the fact that the DOD has not been part of the consultation process, limiting what the USDA can do on its own.<sup>185</sup> Tribal requests to change the procurement system have been denied.<sup>186</sup>

However, during the COVID-19 pandemic, the USDA created a new emergency program, the Farmers to Families Food Box.<sup>187</sup> This program was intended to alleviate both hunger and the economic stresses on farmers.<sup>188</sup> Similar to FDPIR, the Farmers to Families Food Box provided a direct distribution food package that included both shelf-stable products and fresh produce.<sup>189</sup> However, under the new program, AMS procurement included direct purchase of fresh produce, and the food was procured using a regional vendor system.<sup>190</sup> These are enhancements that FDPIR advocates, including the TLCWG, have previously been denied. Now that the AMS has demonstrated that these changes are possible, it is critical that they be applied to FDPIR. These changes would increase Tribal sovereignty by increasing the participation of Native American producers in FDPIR, allowing Tribes the opportunity to reconnect to traditional foodways and feed themselves.

The challenges to procurement could also be easily alleviated by the expansion of 638 authority to the USDA. Under 638 authority, Tribes would become responsible for procurement; the AMS would be no longer involved. Thus, this tool for expanding Tribal sovereignty could serve a dual purpose by eliminating the procurement challenge. USDA 638 authority

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184. *Id.*

185. See TLCWG Feb. 2020 REPORT-OUT, *supra* note 137 (noting that the USDA provided updates on behalf of the DOD, and that the DOD and the FNS meet regularly, but giving no indication that the DOD would join any future consultations); TLCWG Dec. 2021 REPORT-OUT, *supra* note 137, at 6-7 (noting that the AMS stated that taking over produce procurement from the DOD would “not be conducive” under the current system).

186. See TLCWG Dec. 2021 REPORT-OUT, *supra* note 137, at 6-7.

187. *USDA Farmers to Families Food Box*, U.S. DEP’T OF AGRIC. AGRIC. MKTG. SERV. (May 28, 2021), [<https://perma.cc/RZ6L-N8TZ>].

188. *USDA Announces Coronavirus Food Assistance Program*, U.S. DEP’T OF AGRIC. (Apr. 17, 2020), [<https://perma.cc/26WY-X2WH>].

189. *USDA Farmers to Families Food Box*, *supra* note 187.

190. *Id.*

would also make it easier for Native American and local producers to become vendors, as they would not have to jump through the dual hoops of both the AMS and DOD Fresh.<sup>191</sup> While this is an excellent solution for Tribes that can take on 638 authority, the broader issues with the AMS and procurement still need to be addressed, as 638 authority is not always a viable option for smaller Tribes. The future of FDPIR procurement requires a multifaceted solution that includes expanding 638 authority, adopting regional distribution, and transferring all fresh produce sourcing to either the AMS or to Tribes through 638.

## V. CONCLUSION

For the first time in a long time, FDPIR enrollment is showing potential for growth.<sup>192</sup> This is in part due to the recent wins Indian Country advocates have long fought for. Although rooted in the colonizing practice of rations and a long history of federal neglect, FDPIR has become an integral part of many Tribal food systems. The program's unique scope as the only federal nutrition program provided specifically for Native Americans makes it a critical tool for addressing the current challenges to food security and health in Indian Country.

While recent advocacy from Tribal leaders and allies has led to significant improvements in the last two decades, the persistence of centuries-old challenges is telling. Many of the challenges that have persisted the most, such as the lack of healthy or culturally specific foods, distribution challenges, and administrative uncertainty, can be traced to a lack of Tribal sovereignty. In contrast, the most effective solutions have come from participants and Tribal nations themselves. As a result, the advancement of Tribal sovereignty will be critical for the advancement of FDPIR.

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191. See INDIGENOUS FOOD AND AGRIC. INITIATIVE, *supra* note 177.

192. *Food Distribution Program Tables*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Nov. 10, 2022), [<https://perma.cc/E7MY-WQ73>] (selecting most recent data titled "Participation or Meals Served Participation (FDPIR and CSFP), Meals Served (NSIP)") (showing peak participation of roughly 140,000 participants in 1989, down to 75,600 in 2013, and back up to 87,200 in 2018).



FDPIR provides a clear mechanism for Tribal nations to secure culturally essential and nutritious foods for their people, but the history of the program in federal control has fallen well short of this goal. Recent successes like the USDA 638 demonstration project are a step in the right direction, and policy makers should expand on this success in the 2023 Farm Bill and beyond. Only by addressing FDPIR's fraught history can we ensure the program's future.