

A PRIMER ON 638  
AUTHORITY:

# Extending Tribal Self- Determination to Food and Agriculture



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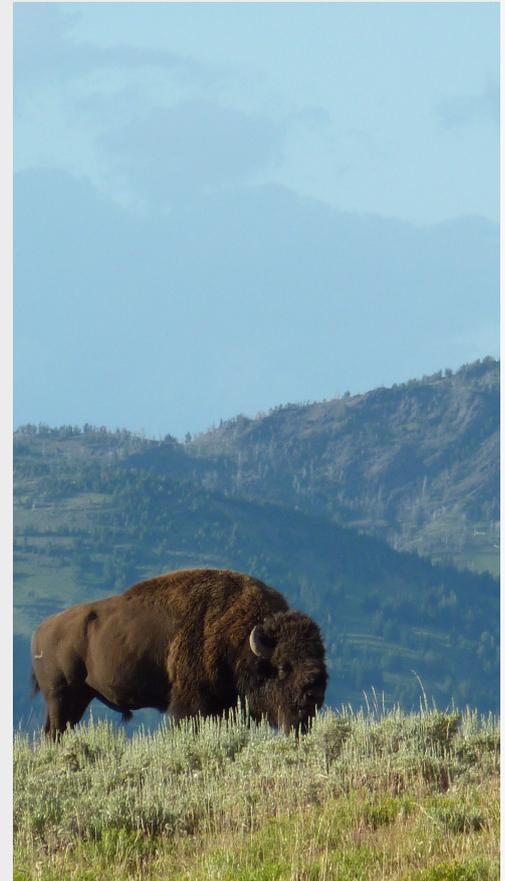
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# A Primer on 638 Authority

## Purpose

To educate federal regulators, legislators, and other allies outside the Native community on Tribal self-governance and self-determination, how 638 authorization operates in administering government programs, and how expanding this program could impact nutrition and agriculture in Indian Country.



## ACKNOWLEDGEMENTS

This report would not have been possible without the support of everyone on the Indigenous Food and Agriculture Initiative team. Thank you in particular to Colby Duren and Erin Parker for sharing their expertise and help throughout the field placement and during the writing and editing of this report.

Special thanks to Jon Wogman and the rest of the team at the Congressional Hunger Center for the opportunity to do this work, and for endlessly investing their time and energy into the Emerson Hunger Fellowship program. Janie Simms Hipp her leadership, expertise, and always refreshing candidness. As well as, Sarah Goldman and Corey Malone-Smolla for being fantastic predecessors and mentors.

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# Executive Summary

With hundreds of Native American Tribes across the United States, there is no one-size-fits-all strategy to address each Tribe's challenges or capitalize on their unique opportunities. This has led Native advocates and Tribal leaders to push for federal policies that enable Tribal control over programs and services within their own communities. 638 authority is one of the tools that has been successful for increasing Tribal control of programs and solutions being implemented in their communities.

Public Law No. 93-638, 88 Statute 2203 (often referred to as 638 authority) gives Tribes the ability to manage certain programs that federal governments had previously administered through contracts and compacts. There are multiple options for what this can look like based on specific Tribal or regional needs. Presently the Department of Health and Human Services (DHHS) and the Department of Interior (DOI) are the only federal departments with 638 authority, though recent legislation expanded pilot programs to the United State Department of Agriculture (USDA) as well.

The 2018 Farm Bill authorizes pilot programs to bring 638 contracts to the USDA. This has the potential to allow Tribes to not only address present problems in their communities, such as food access and unemployment, but also to capitalize on the under-tapped potential in Native agriculture and food production. Expanding 638 authority to the USDA marries the concepts of self-determination and food sovereignty, allowing Native communities to control their food systems, promote traditional foods, empower producers, and improve health.

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# Introduction

According to the 2017 Census, there are over 5.6 million American Indian and Alaskan Native (AIAN) individuals in the United States [1]. Native land held in trust accounts for 56 million acres of the country, and more land is privately owned by Tribes and individual Tribal members - nearly all of which is located in rural areas [2]. There are 573 federally recognized Tribes and even more that are not formally recognized (See Appendix A for further definitions).

While these numbers represent some general trends in the Native population of the United States, there is great variation between Tribes. Though the United States categorizes Native Americans together racially and Native Tribes share a common history of colonization and its resulting detrimental consequences, each Tribe is distinct. Each has a unique history, origin story, culture, language, traditional food and other facets that shape their identities, and subsequently the needs of their communities.

There are many challenges in Indian Country, from high rates of poverty and hunger to alarming health disparities. Many of these problems both impact and are impacted by food systems within Tribal communities. But while there

## A NOTE ON LANGUAGE

In this report, when appropriate, the specific name of the Tribe will be used to identify the group or individual being discussed. However, “Native” and “Indigenous” will be used interchangeably to collectively refer to the entire population potentially impacted by this policy. Additionally, the word Tribe(s) will be capitalized as a sign of respect and importance to these sovereign nations. For more information on the different terminology used in this report see Appendix A for a full glossary of terms.

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are challenges, there is also great strength and promise in a rapidly growing population with a long history of farming, resilience, and providing for themselves.

It's important to remember the diversity amongst Tribes when considering 638 authority. No two Tribes across Indian Country look exactly the same and Tribal control of federal programs enables Native communities to be responsive to these differences. When in control of their own programs, Tribal leaders are able to shape the programs to meet their distinct needs.

## Historical Context

In order to understand the implementation of 638 authority, it is helpful to understand the unique nature of the relationship between Tribes and the US government. Tribes have similar dynamics to states when it comes to federal oversight - they are subject to federal laws, but have their own distinct constitutions, judicial systems, self-managed taxes, and other freedoms [3]. This dynamic, established through past court rulings and laws, creates a government-to-government relationship between Tribal leadership and the federal government.

However, unlike states, the US government has a trust obligation to Tribes as a result of past treaties. The US is legally bound as protector of the financial and natural resources of Tribes and individual Native Americans [3]. The treaties and laws that allowed Tribes to govern themselves without interference, in combination with the ability of Congress to modify powers of local self-government that Tribes otherwise possess, creates a conditional sovereignty [5].

Ideally, relationships between Tribes and the US government are based on autonomy and shared responsibility. However, historically this relationship was characterized more by

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dependency and paternalism. The history of policies such as allotment, assimilation, and termination have eroded Tribal sovereignty and contributed to the erasure of Native people [5]. Thankfully, these strategies of erasure were unsuccessful, but still have lasting consequences on the state of Tribes and Native people in the country today. More recently, the shift in federal policies supports a movement toward Tribal self-determination.

The Self-Determination Policy Era of the present is grounded in the history of treaties and federal laws that endorse the government-to-government relationship between Tribes and the US government. 638 authority is one of the policies that has come about during this policy era and is the focus of this paper.

## Understanding 638 Authority

The Indian Self-Determination and Education Assistance Act (also known as ISDEAA, or Public Law 93-638), gives Tribes the ability to assume responsibility and funding of certain federal departments to carry out “programs, functions, services and activities” (PSFAs) that the federal government would have provided otherwise. This transfer of control, also known as “638 authority,” works similarly to a block grant program and is currently only available for the DOI and the DHHS, though recent legislation in the 2018 Farm Bill has begun piloting programs for expansion to the USDA as well.

In 638 contracts and compacts, the US’s trust responsibility to Tribes moderates the contract rules, making these agreements less prescriptive than typical contracting [6]. These agreements focus on minimum standards of performance that have to be met with few other oversights [7]. The goal of granting 638 authority to Tribes is to help support self-determination efforts

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in Indian Country. It changes the relationship with the US from a dominating role to one of program advisor, advocate, or technical assistant [5; 8].

638 authority has a history of broad support since its beginnings in 1975. Policymakers have had different reasons for supporting this legislation - from advocating for civil rights of minority communities, compensating past wrongs, investing in solutions that emphasize self-reliance, or decreasing the size of the federal bureaucracy [5]. The continued support from a variety of diverse perspectives has led to its lasting impact and development over 40 years.

Ultimately, 638 authority aims to achieve a balance between Tribes' desire for self-determination and maintaining the trust responsibility of the federal government. There are legal intricacies and nuances to the law around 638 contracts that are outside the scope of this report. The proceeding sections take a deeper look at how 638 works in practice, the options available to Tribes, and differences between self-determination contracts and self-government compacts. For more information on the development of the legislation see Appendix B.

## Overview

Within 638 authority there are two different options available to Tribes - contracts and compacts. Contracts enable Tribes to take over specific PFSAs. Compacts enable Tribes to take over the entirety of federal agency programs, allowing even more flexibility to tailor programs to community needs and allows less oversight from the federal government. A side-by-side comparison of the differences can be seen on the following page, followed by a more in-depth description of the contract and compact options.

It's also important to note that Tribes are not required to enter into any 638 agreements. Some Tribes choose to remain "direct-

-service,” meaning they do not take over control of the available programs. In "direct-service" the federal government retains control, and no responsibility or funds are transferred to the Tribal level. Though most Tribes have entered into 638 agreements for at least one of the eligible programs or services - some opt to not take control of certain programs for a number of reasons, such as concerns about administrative capacity [9]. Additionally, within 638 authority, Tribes have the ability to come together and create a regional consortium. This creates the possibility for a Tribe to group with others in the region to do a contract or compact that serves multiple Tribes.

	<b>Self-Determination Contracts</b>	<b>Self-Government Compacts</b>
<b>Description</b>	Tribes take over specific PSFAs, not the entirety of departmental programs	Tribes takeover the entirety of the federal agency programs
<b>Authorizing Title in ISDEAA</b>	Title I	Title IV (DOI) and Title V (IHS)
<b>Eligibility</b>	Any federally recognized Tribe is eligible to apply	Tribes must demonstrate 3 years of success with contracts, and complete the necessary planning and negotiation steps.
<b>Availability</b>	Any PSFAs in all of DHHS and the DOI	All DOI (BIA and non-BIA) but only IHS within DHHS
<b>Oversight</b>	Annual audit required and program redesigns have to be approved by the Secretary (though there are few reasons for why they can be denied).	Annual renewed funding agreement, and the Secretary does not need to be informed of program redesigns.

## Self-Determination Contracts

Tribes can enter into a 638 Self-Determination Contract with DHHS and/or DOI. This means that the Tribe does not take over the entirety of federal programs, but rather specific control over PSFAs of their choosing. For example, a Tribe could choose to take over control of one of IHS’s programs serving those

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with diabetes in Native communities. Funding that would have otherwise gone to the federal government is diverted to the Tribe or Tribal Organization that is assuming control. This would then give that Tribe greater flexibility in how the diabetes program functioned.

Ultimately, it would allow Tribes to tailor the program to their specific community needs and have the flexibility to make changes as new needs arise. This could include - hiring staff, designing measurement for success, buying supplies, designing programs, consolidating different programs, and similar alterations to federal programs.

Any federally recognized Tribe or Tribal organization is eligible to apply for a 638 contract. There are only a few reasons as to why the federal government can decline a contract request, including unsatisfactory service, jeopardizing the Tribe's trust resources, inability to fulfill the contract, the proposed cost is more than permitted, or the proposed activity is outside the scope of the Act [10]. Contracts have a quick timeline for approval and if the Secretary of the department denies the request, the appeal process requires the Secretary to help the Tribe overcome the obstacles that lead to the refusal [6].

Once a contract has been awarded to a Tribe, the federal government only requires an annual audit as opposed to the more extensive administrative requirements in tracking and reporting that accompany typical federal contracts [6]. Additionally, Tribes can ask for a redesign of the contracted program after it is awarded, and the Secretary has to accept it unless it would violate other requirements [10].

638 contracts also are not subject to most federal contract laws unless explicitly stated. Additionally, the federal agency through which the 638 is being performed cannot add additional regulations the programs specific to the contract and encouraged to waive regulations when in the best interest

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of Tribal members. All of these features of 638 contracts serve to increase the flexibility of Tribes in designing and administering the contracted PSFAs.

## **Self-Governance Compacts**

While contracts are limited to certain programs that are specifically available to the Native population because of their status as “Indians,” 638 Self-Governance Compacts allow for control of all programs in the agency or department [10]. This is an option available for all of the DOI programs, but only for IHS programs within DHHS. Compacting allows for a single funding stream for the administration of all programs administered by the DOI and/or IHS. This enables increased flexibility and control, essentially permitting the Tribe or Tribal Organization to fully express Tribal sovereignty by consolidating, redesign, or expanding programs within the scope of the law and funding availability.

In order to be eligible for compacting Tribes must [11]:

- Demonstrate 3 years of financial stability/management of a self-determination contract
- Complete a planning phase for the compact
- Negotiate with the Secretary: both for a Self-Gov compact (one time agreement that applies to all bureaus in the department), and an Annual Funding Agreement (a yearly contract, with specific bureau in the department)

While a more difficult process is required to obtain a compact than a contract, once awarded it can seldom be revoked. The only reasons compacts are revoked is if there is extreme fund mismanagement or clear finding of imminent endangerment of public health caused by the Tribe because they failed to carry out the compact [6]. Once awarded, a compact has less oversight than a contract. For example, a Tribe does not have to notify the Secretary about program redesigns [6]. The terms of administration are also largely set by Tribes during negotiations for their annual funding [10].

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## 638 in Practice

Let's play out an example to see how this works in practice for IHS programs. Firstly, a Tribe could choose not to 638 contract or compact any of the available programs within IHS. This would mean that they would remain a direct-service recipient of all IHS programs. This would not have any relationship to their ability to enter into 638 agreements for programs outside of IHS.

If the Tribe does want to explore controlling programs from IHS they could apply for a 638 contract. This would allow the Tribe to control specific programs, such as the Special Diabetes Program for Indians within IHS. Once approved, they would be allowed to run the program as they wanted to within the law - hiring their own staff, determining their own metrics, etc. - and submit an annual audit to demonstrate compliance. The rest of IHS programs, however, would continue to be in control of the federal government.

If after 3 years after first beginning 638 contracting the Tribe wanted to consider expanding their control, they could look to compacting. This option enables Tribes to instead decide they want control of the entirety of IHS. They would have to go through a process to obtain a 638 self-government compact - including a planning phase and negotiations with the Secretary of IHS for the compacting agreement. Once being approved and completing an annual funding agreement, the Tribe assumes the entirety of all PSFAs within IHS. This gives the Tribe even more flexibility, enabling them to combine or eliminate programs and redesign programs without approval within the parameters set by the compact agreement.

“This policy has proven to be the only policy that has worked to make significant progress in reversing otherwise distressed social, cultural, and economic conditions in Native communities.”

- Cornell and Kalt 2010,  
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Additionally, within these options, if a Tribe were in a region with other Tribes that had similar priorities and needs it could enter into a regional consortium. This option allows multiple Tribes to enter into a 638 agreement to collectively take control of programs within the IHS or DOI. This is the case in Alaska, where the Alaskan Tribal Health Compact includes serves nearly all 228 Tribes in Alaska with a collectively established health care system [6].

## Funding

While compacting and contracting transfers administrative responsibility, financial responsibility remains with the federal government to provide the funds. The funding process begins when Congress provides a lump-sum appropriation to BIA and HHS. Each department then allocates those discretionary funds to all its programs, some of which are then contracted or compacted out. To get funds into the hands of the Tribes, the agencies then must obligate the funds to the contracting or compacting Tribes. These funds are supposed to cover both program costs and contract support costs (CSCs) [12]. The agencies determine this amount based on a formula that adds direct costs with indirect costs (based on a predetermined negotiated rate) and any startup costs [13].

Each program has a specific formula for funding determinations. Additionally, agencies use a Tribal Size Adjustment Formula (TSAF) to adjust funding to Tribes based on population. The base amounts were established in the 1990s and have remained constant, which means they do not need to be recalculated annually [12]. However, legislation can be passed to increase funding for inflation or other reasons. Tribal population size determines the TSAF, though Tribes with less than 2,500 members receive slightly more than their population size to compensate for the inefficiencies of serving such a small number [12].

When Congress often under-appropriates this leads to budget

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shortfalls. This has historically lead to problems with fully funding Tribal CSCs. Congress initially passed legislation in 1994 that capped funds that a Secretary could allocate for ISDEAA CSCs [13]. This resulted in insufficient funds to cover the cost of all Tribes' contracts, which lead to a number of court cases to resolve the problem. In *Salazar v Ramah Navajo Chapter*, the court held that tribes could still recover the funds, despite a statutory cap on the allocation of CSCs because the government had limited only what agencies could do with funds but not the ultimate liability for underfunding contracts [14].

Funding determinations are complex and continually being refined. The calculations have to take into consideration Tribal size, costs to cover the inefficiency that comes from smaller scales of delivery, and which programs Tribes are contracting/compacting. It is important to note, agencies cannot award Tribes less money than it would have cost if the federal government retained control - and if there are projected cost savings from Tribal control, those savings are put back into the Tribe's program [10].

## Current Uses and Examples

Nearly all Tribes have entered into some type of 638 contract or compact agreement [5]. In 1970, Tribes administered less than 3% of programs in the BIA or IHS and today they administer more than half [10]. In 2017, there were 272 Tribes or Tribal Organizations using 638 authority in the DOI and 352 for IHS [8].

Not only are 638 contract and compact agreements widely used by Tribes, but they have been shown to be effective as well. Following the adoption of ISDEAA income in Indian Country rose and poverty fell from 57% to 43% [15]. 638 contracts and compacts have been shown to improve accountability and allow programs and policies to better reflect local values [4].

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Looking specifically at IHS, one study showed that using Tribal self-governance of the agency's programs led to increased community participation, a comprehensive approach, responsiveness to community needs, improved coordination and communication (such as increased efficiency, less service duplication), and innovation in health practices and services [12].

Tribes that engage in nation building strategies (such as 638 contracting and compacting) are also more prosperous. A 2010 study found that Tribes that had not adopted nation-building strategies of taking over federal programs had few signs of improvement [4]. Further, the study found self-determination policy to be the central factor causing developmental progress in Native communities [3]. For more specific examples of Tribal success with 638 authority and other utilization of self-determination policies, see the following page for Success Stories.

## Expanding Self-Determination to Agriculture and Nutrition Programs

There is a long history between Indigenous people and the land, but Tribes have been sidelined for centuries from controlling their traditional food systems and Native lands [7]. This has had an impact on Native farmers and ranchers, but also on the health and hunger of all Native people. Combining poverty, constrained autonomy over programs, high rates of chronic health problems, low access to grocery stores, limited employment, poor transportation, and infrastructure creates a very fragile food system in Native communities [19]. This makes the opportunity to expand self-determination to food and agriculture programs through 638 authority all the more exciting.

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## SUCCESS STORIES

- A study found that higher Tribal management leads to improvements in health systems - both in perceptions of quality of care and measure like waiting times, types of services offered, the number of people served [16].
- The Tohono O'odham Nation outside of Tucson, Arizona, funded, built, and now operates the first, of all Native or non-Native run, elder care facility to achieve the highest level of federal quality rating for health care provision [4].
- In the DOI when Tribes took control of programs through 638 authority, output rose as much as 40% and they had more effective marketing and higher prices for the timber, without increasing the number of workers [17].
- Alaskan Native Tribal Health Consortium (ANTHC) serves all 229 federally recognized Tribes across 586,412 square miles of Alaska. The ANTHC is the largest, most comprehensive Tribal health organization in the United States and the second-largest health employer in the state (with over 3,000 employees). ANTCH provides services including operating the Alaska Native Medical Center, wellness programs, disease research and prevention, rural provider training, and rural water and sanitation systems construction [18].

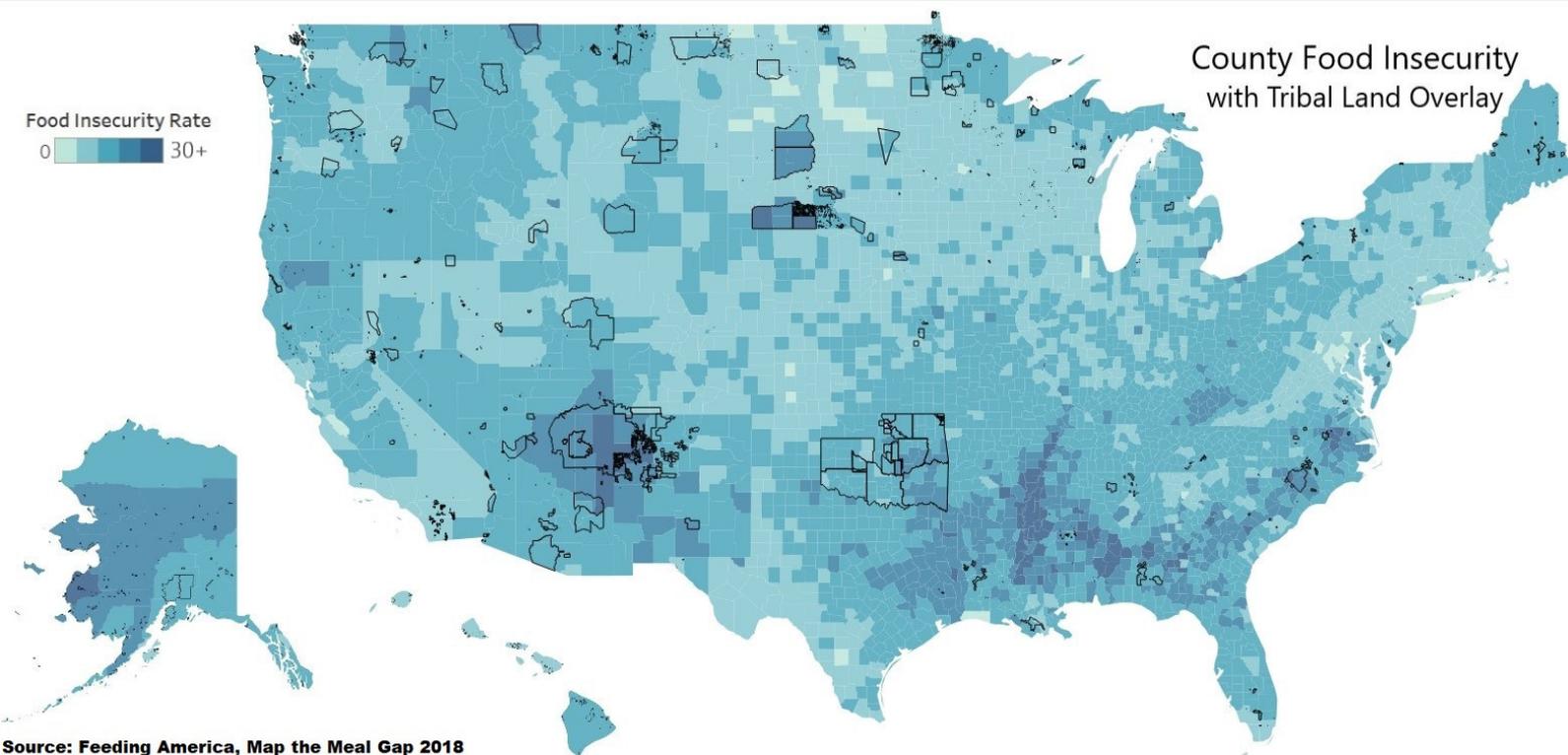
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## Hunger and Nutrition in Indian Country

A quarter of Native Americans receive some type of food assistance from the federal government - though in some Tribes this number is as high as 60-80 percent [19]. Additionally, though American Indian and Alaskan Natives constitute 2 percent of the US population, they make up 3 percent of SNAP participants nationwide, meaning they are overrepresented in food insecurity rates [20]. The average food-insecurity rate of the 26 majority-American Indian counties is above the average of all counties, at 20 percent in AIAN countries compared to 15.1 percent overall [21].

Additionally, because most of Indian Country has limited access to places to buy food, and therefore limited SNAP vendors available, the USDA has a Food Distribution Program on Indian Reservations (FDPIR) as an alternative to SNAP [22]. FDPIR is a commodity feeding program within the USDA's Food and Nutrition Service that serves nearly 276 Tribes through over 100 Indian-Tribal Organizations (ITOs) [19]. In 2017, there were over 90,000 low-income participants per month that received food packages [23]. These food packages are especially vital given that FDPIR participants are experiencing very low food insecurity at a rate four times higher than the national average [24]. See the map on the following page for a visual depiction of food insecurity prevalence in Indian Country.

Not only do American Indian and Alaskan Native people have the highest number of people dependent on federal feeding programs, but also some of the highest rates of health disparities [7]. In particular, a number of diet-related diseases, such as diabetes, are prevalent in Native communities. The mortality rates from diabetes among the American Indian and Alaskan Native is over three times as high as the general U.S. population [25]. This goes to show just how vital it is to strengthen the food systems and nutrition in Native communities.



The darker blue areas of the map represent counties with higher rates of food insecurity. The dark lines on the map are outlining Tribal Land. Many of the counties that contain Tribal Land have higher rates of food insecurity.

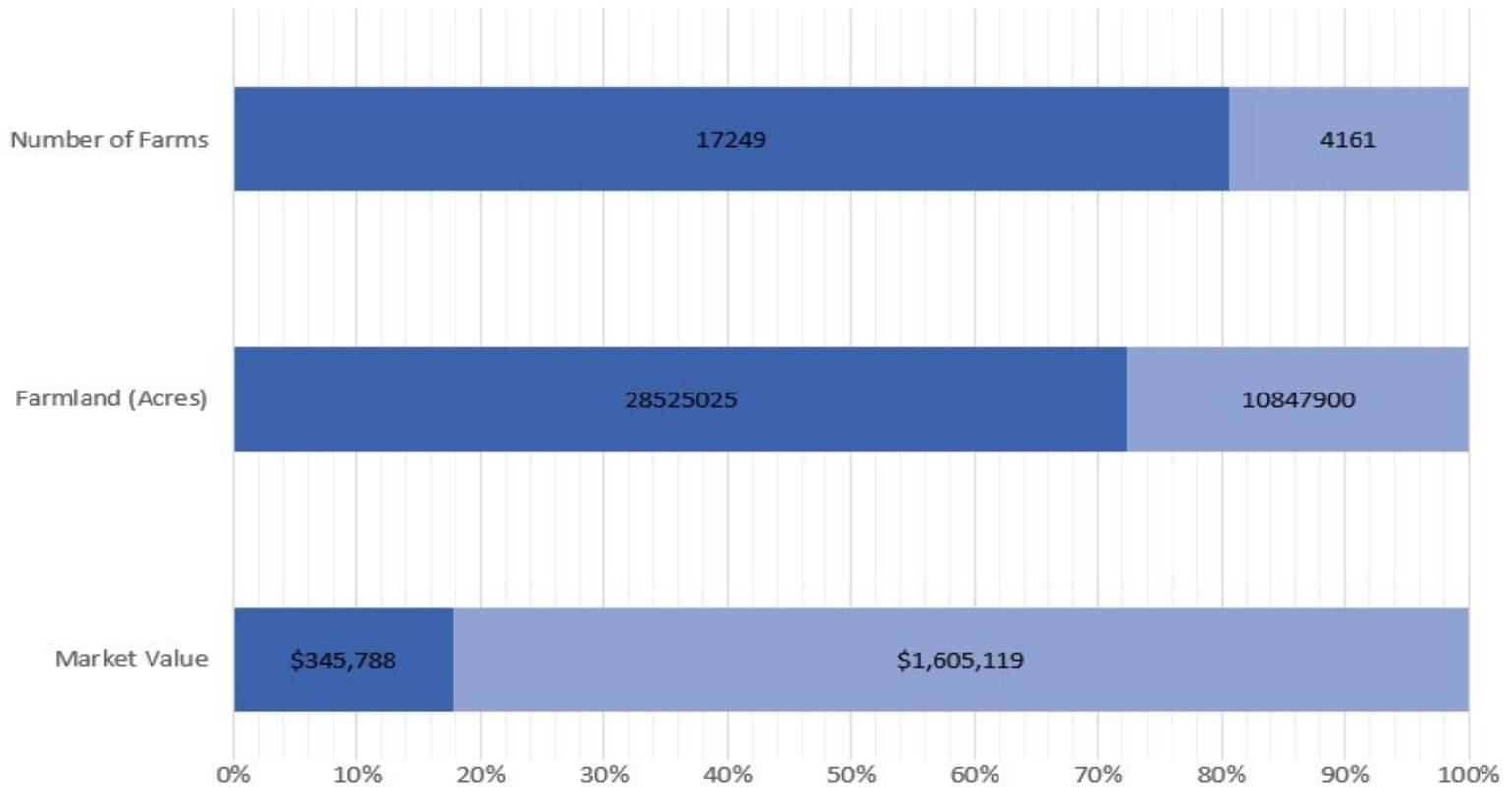
## Native Farming and Ranching

When looking at the production side of the food system, Native communities are also ripe for investment and restructuring. Though Native farmers control about 2% of all farms in the US, they own 6% of all the farmland - the average Native farm is twice the size of the average American farm [26]. While there is an abundance of farmland in Indian Country, much of the produced food is leaving the community and Native producers' revenues are not as high as they could be - 78% of Native farmers had less than \$10,000 in sales in 2012 [26].

Comparatively, Tribal land rented to non-Native farmers is significantly more lucrative - while non-Native farmers control less than 30% of the acres of farmland their market value is over five times that of Native farms (see chart on the following page).

## Comparison of Farms on Reservation Land \*

■ American Indian and Alaskan Native Farms    ■ Non-AIAN Farms



\*Includes only Reservations that did not have withheld data for privacy purposes

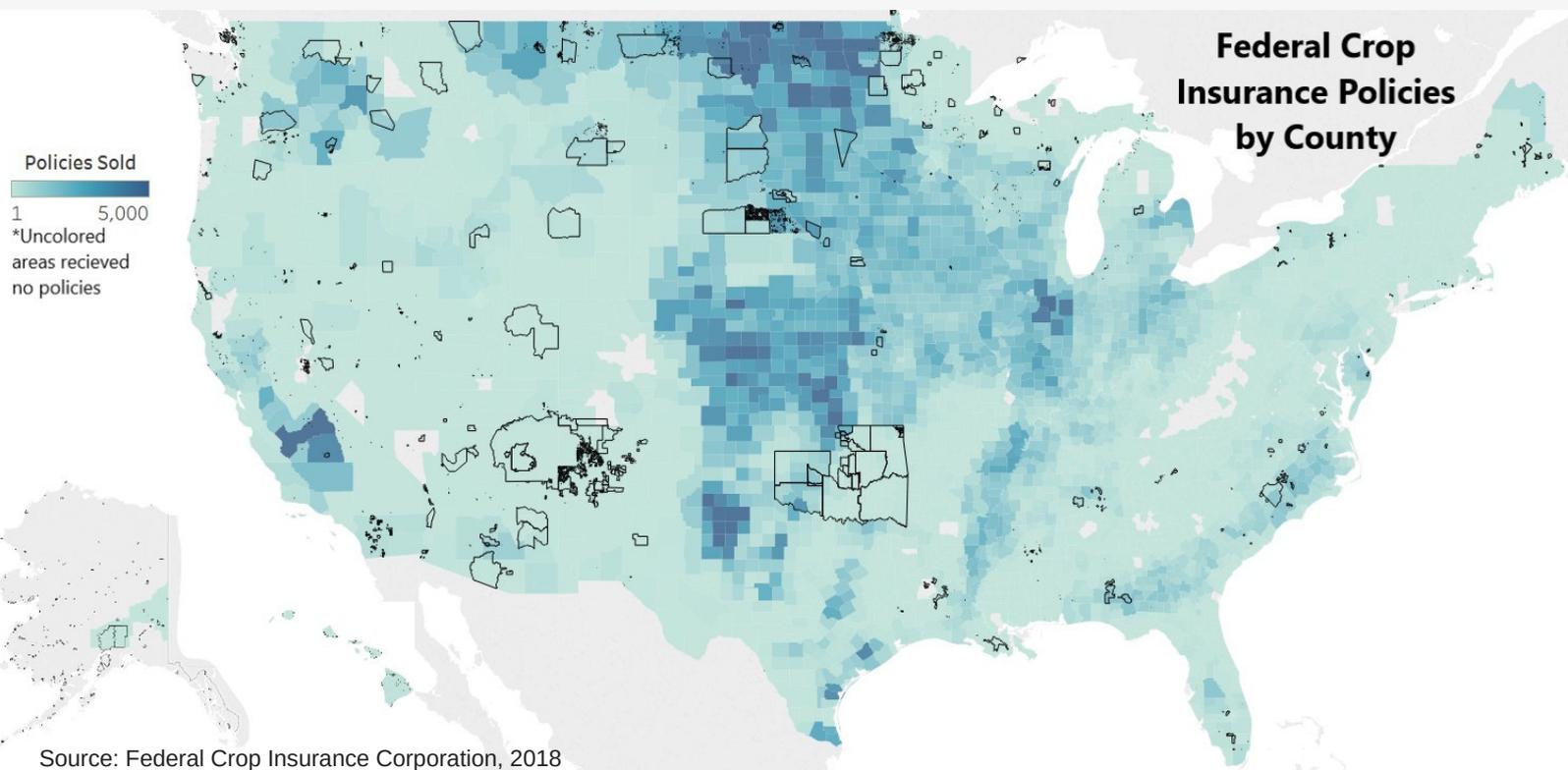
Source: USDA Census of Agriculture, 2012

The darker blue section represents AIAN owned farms on reservation land, and the lighter color represents Non-AIAN farms on reservation land. The first two bars show that most of the farms and the farmland on reservations are predominantly owned by Native farmers. However, the third bar demonstrates that while they may own more land and farms, they are generating significantly less profit.

One of the many reasons Native farmers and ranchers may be less lucrative is because of the lack of capital flowing into Native communities. Across the United States, Native American producers receive less monetary government assistance per farm than the average of all farms in those same areas [26]. Additionally, many Tribes are located in “credit deserts” wherein they have limited access to private capital and loans as well [7]. This is compounded by the fact that Indian Country is located in areas with fewer crop insurance policies, this can make farming even more financial risky [27]. See the map on the following page for a visualization of this disparity.

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With greater access to capital and control of their own land, Native farmers and ranchers could increase production of traditional foods that could stay in their communities. Traditional foods vary between Tribes and regions but include foods such as bison, salmon, wild rice, and traditional corn. Growing these foods would not only benefit the producers but also their communities as consuming traditional foods have been shown to have positive health and cultural outcomes for Native Americans [28].



The darker areas of the map represent counties with more crop insurance policies. The black outline represents Tribal land. Most of this land is in areas with low numbers of policies.

## Food Sovereignty

Food sovereignty is a policy approach to addressing long-term food insecurity through local control of food systems and is “informed by a vision of democratized engagement in the food system” [29]. Ultimately, the food sovereignty movement calls for the right of people to define their own food systems [30]. This framework values producers, localization, intergenerational knowledge building, and sustainability.

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The idea of food sovereignty is one that has been adopted by various food movements across the world as advocates push to bring food production, choice, and consumption back to the local level. However, the idea of food sovereignty holds particular weight in Native communities where Tribal sovereignty has a legal and historical precedent. Control of food systems is an important aspect of strengthening Native communities as, “Native people consider the restoration of traditional subsistence foods and practices essential to regain their health, traditional economy, and culture for generations to come” [31]. Colonization and the following repressive federal policies eroded food sovereignty in Native communities, as Tribes were removed from their lands and forced to rely on commodity foods.

Food sovereignty is interrelated to ideas around self-determination and self-governance but encompasses all aspects of the food system - not just legislation. Food sovereignty in Indian Country would allow communities to take environmental, human, cultural, and health concerns into consideration in the creation of a holistic food system that focuses on the needs of the local community first. 638 authority is one tool for Tribes to continue this path towards sovereignty in their food systems. Expanding 638 authority to the USDA marries the concepts of self-determination and food sovereignty.

## **Expanding 638 to the USDA**

While there is no single entity that governs all of food and agriculture programs at the federal level, the USDA houses the majority of programs and policies that impact food systems in the US, and subsequently within Indian Country. The 2018 Farm Bill begins piloting certain USDA programs to utilize 638 contracts. The Bill authorizes demonstration projects for both the FDPIR and Forestry programs to test 638 contracts [32]. This means that, dependent on the appropriations of

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funding, a limited number of Tribes will have the opportunity to contract out these two specific USDA programs. These projects do not allow for compacting.

The intention of these pilot projects is that after being appropriated for, the Secretary will conduct consultation with Tribes to determine how eligibility and other specifications would operate for the two programs. Additionally, a report is due to Congress annually on the activities carried out under the demonstration projects [33]. The purpose of demonstration projects like these is to evaluate the feasibility and effectiveness of transferring control of these programs to Tribes and to allow for any troubleshooting that might be necessary through changes in program administration [8]. While there may be some challenges in transferring 638 authority - such as state competition for funds or difficulty in coordinating funds across the entire department - the pilot programs allow some challenges with the current state of these programs to be addressed [34; 7].

“638 authority would give 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 program”  
- Hipp and Duren 2017

The FDPIR program, for example, has had historical challenges incorporating traditional foods, keeping foods fresh, and has had a limited number of warehouses to store food, among other challenges [22]. Having Tribes control feeding their own people, through FDPIR 638 contracting, would allow for culturally appropriate foods to be more readily available to Native citizens, Tribally produced food procurement and regional coordination.

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The 638 demonstrations within the USDA's forestry programs have great potential, as Tribes have already shown their ability to manage their forests. Through the BIA 638 contracts and compacts, Tribes have had the opportunity to take control of timber operations, and these operations proved to be better managed than those that did not enter into 638 agreements. Without increasing the number of workers, 638 authority operations output rose as much as 40% and had more effective marketing and higher prices for the timber when Tribes took over [17].

Ultimately, piloting 638 authority within the USDA has the potential to increase efficiency, decrease burdens associated with regulations, and support Tribal food sovereignty [19]. Rather than creating more programs or diverting funding from existing programs, the introduction of this tool to the USDA through the 2018 Farm Bill changes the way that Tribes have control over money flowing into their communities.

## Conclusion

The expansion of 638 authority to the USDA with the passage of the 2018 Farm Bill allows Tribes to not only address present problems in their communities but also capitalize on the under-tapped potential in Native agriculture and food production. As highlighted in this report, studies have shown that increasing Tribal self-determination through Native control of federal programs works.

Expanding 638 authority to the USDA marries the concepts of self-determination and food sovereignty, allowing Native communities to control their food systems, promote traditional foods, empower producers, and improve health. These 638 demonstration projects in the USDA create the opportunity for the federal government and Tribes to work together to invigorate the food and agricultural systems in Indian Country.

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What could Native food systems look like if Tribes could have more control? How would economic development be impacted if Native farmers and ranchers were more easily able to start and expand their operations and fill some of the gaps in food deserts? What would food access look like if commodity food programs were responsive to the needs of each Tribe and include their individual traditional foods produced right within their community? What would happen to the health of Native communities if traditional foods were more readily accessible for Indigenous people and filled their school cafeterias, recreation centers, and hospitals? The newly established 638 pilot USDA programs are just the beginning of answering some of these questions.

# Appendix A: Overview of Terminology

- American Indian - Specifically refers to Indigenous people of mid-North America.
- American Indian and Alaskan Native (AIAN) - Predominantly the group who is focused on in federal policy and data collection, often shortened to AIAN.
- Federally Recognized Tribe - A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation [35].
  - Federally-recognized Tribes have inherent rights to self-government and sovereignty, are entitled to certain benefits and services, and protections due to the special relationships between Tribes and the United States government established by original treaties and legal and judicial.
  - There are also some Tribes that are state-recognized but not federally, and others that are not officially recognized at all.
  - The process of obtaining federal recognition through the Bureau of Indian Affairs requires extensive proof, such as historical data and evidence of distinct autonomy. Tribes can also obtain federal recognized through legislation [36].
- Indian - Original categorization by colonizers, also a term commonly used in federal laws and administration (Bureau of Indian Affairs, Indian Health Services, etc) so has an important legal connotation.
  - This is also the preferred label of certain members of the Native community, while others have found it to be politically incorrect -- again, everyone has their preference as to what labels they identify with, find offense to, and favor.
  - The legal definition of Indian is important in determining who is and isn't an Indian, and therefore who can and cannot access certain federal programs. This definition requires individuals to be members of federally recognized Tribes or meet federal blood quantum requirements [37].
  - Indians are the ONLY people in the US whose proof of identity is based on meeting blood quantum standards [37].

# Appendix A: Overview of Terminology

- Indian Country - The totality of all tribal land holdings, including reservations and other lands.
- Indigenous - Originating from a place (in this case land on which the United States is now located), used interchangeably in this paper with Native.
- Native American- Customarily used in academic literature, and encompasses Indigenous people in the lower 48 states and Alaska.
- Native Hawaiians - Indigenous people of the Hawaiian islands, not included in most of the federal programs designed for Native Americans.
- Tribal Nation - Indigenous communities whose categorization pre-dates European colonization, “Nation” is used to emphasize the sovereign status of these groups. Also known as First Nations. Some of these groups are federally recognized and some are not - though only federally recognized Tribal Nations are eligible for 638 authorization and other federal programs and policies designed for Indigenous people by the US gov. [37].
  - Each tribe has criteria for determining who is a part of their Tribal Nation - such as blood, relation to someone on original federal registers, etc.

# Appendix B: The Legislative Evolution of ISDEAA

1975

## ISDEAA PASSAGE

The ISDEAA was initially passed, Title I allowed only for self-determination contracts that operated similarly to federal procurement contracts. It did not include the option for compacting.

1991

## TITLE III EXTENDED

Congress extended Title III for 3 additional years, added more Tribes that were eligible to enter into compacts with BIA. Legislation also authorized a study to include IHS in self-governance.

1994

## TITLE IV

Congress enacted Title IV making self-governance compacts permanent for all bureaus in DOI, Title III still applied to IHS. Amendments were also made to Title I, to strengthen Tribal control over contracts.

2003

## DHHS COMPACT STUDY

DHHS reported to Congress on the study authorized in Title VI, concluding that it was feasible to extend compacts to eleven additional non-IHS programs. Draft legislation was created based on these findings, though this legislation never made it into law.

1988

## TITLE III

Congress added Title III which enabled Tribal-Self Governance demonstration projects in the BIA for 5 years for 20 Tribes. Additionally, the legislation amended Title I to add contract support costs to funding, and Tribes came to be protected under the Federal Torts Claims Act.

1992

## TITLE III TO IHS

Following the promising findings on the 1991 study, Title III Self-governance compacts demonstrations were extended to IHS in DHHS.

2000

## TITLES V AND VI

Congress repealed Title III, replacing it with Title V that made self-governance permanent in IHS. Additionally, Title VI was passed which authorized a study of future inclusion of DHHS non-IHS agencies in self-governance compacts.

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