



August 9, 2024

The Honorable Tom Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

Cindy Long  
Deputy Under Secretary  
Food and Nutrition Service  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

**Re: Request for Information that USDA Provided to CBO for CBO's Preparation of a Cost Estimate for Making the 638 FDPIR Pilot Program Permanent in Section 4102 of H.R. 8467**

Secretary Vilsack and Deputy Under Secretary Long:

On behalf of the members of the Native Farm Bill Coalition (NFBC or the Coalition), a coalition of more than 170 Tribes, Tribal organizations, and allies, we are writing to express our complete shock concerning the Congressional Budget Office's (CBO) conclusion that making permanent the 638 Food Distribution on Indian Reservations (FDPIR) pilot program would cost \$380 million over the 2025-2033 period. We were even more appalled that CBO's rationale was based on data provided by the U.S. Department of Agriculture (USDA) that claimed the cost of food procured by Tribes would be 70 percent higher than that procured by USDA. This score strongly contradicts with the score for FDPIR, including the 638 FDPIR pilot program, as part of the 2018 Farm Bill where CBO reported a mere cost of \$34 million to accommodate for inflation. It is clear that costs presented to CBO are not premised on inflation, since inflation would equally burden both Tribal and federal procurement. As beneficiaries of a federal trust responsibility, the members of the NFBC are entitled to see the data that the USDA, our trustee, provided to CBO, which formed the basis of CBO's claim that FDPIR will cost \$380 million over the 2025-2033 period. As described in more detail below, the NFBC additionally requests a response from USDA on questions that help us better understand how it presented its data to CBO within 30 days.

For decades, Congress has increasingly expanded the ability of Tribal governments to administer federal programs pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA or 638). This expansion has been based on the demonstrated, evidence-based fact that Tribes and Tribal organizations are able to administer federal funds more efficiently and effectively than federal agencies. This is the foundational premise of 638. CBO has previously taken that same position. *See Attachment A for a summary of CBO reports finding that legislation promoting greater use of 638 self-determination contracting and self-governance compacting had no significant impact on the federal budget.*

But now, based on data supplied to it by USDA – which we reiterate is not publicly available – leaves CBO in the position of communicating to Congress that somehow, Tribal 638 operations



cost 170% of what federal operations cost. This USDA position represents a sea-change in the Biden-Harris Administration's policy on ISDEAA, and directly undermines the December 6, 2023 Executive Order encouraging greater Tribal assumptions under ISDEAA.<sup>1</sup> We want to believe that the information USDA provided to CBO was in error and that it came as a surprise to you as much as it did to us. But this distorted USDA data comes in the wake of continuing resistance, by some of your subordinates at the USDA, to expansion of 638.

It has become apparent that USDA, and now CBO based on USDA's misinformation, do not understand the cost efficiencies that result from expanded Tribal assumptions of federal programs, functions, services, and activities (PFSAs). 638 self-determination contracts and self-governance compacts are one of Indian Country's time-tested tools. 638 authorizes Tribal governments to enter into agreements with federal agencies like USDA (or in other words, to step in the shoes of the federal government) and uses federal dollars the government would otherwise use to carry out federal PSFAs that serve or benefit Tribal members. In context, this means that instead of the federal government purchasing and distributing food to Tribal members through FDPIR, Tribal governments can enter into agreements with FNS to procure and distribute food using the *same* dollars the federal government would otherwise use to carry out these activities. This tool does not change the *amount* of funding authorized and appropriated. It only changes *who* spends it. In addition to Tribes spending federal dollars more efficiently than the federal government, 638 results in Tribes procuring fresher and more culturally relevant food than the federal government, resulting in healthier Tribal communities. In the wake of the recent FDPIR and CSFP warehouse issues, the NFBC cannot underscore this point more.

For the reasons stated, we urge USDA to immediately provide us with the information USDA provided to CBO. Additionally, we request you provide written responses to the questions listed below within 30 days. This information is needed in order to correct the record and attempt to limit the damage USDA has caused in Congress.

1. What data and other information did USDA provide to CBO to justify an overall score of \$380 million?
2. What data and other information did USDA provide to CBO to justify the statement that Tribal procurement will cost 170% of what federal procurement will cost?
3. To the extent that USDA data is associated with inflation, what is the basis for any claim that Tribal administration of FDPIR would result in higher inflation costs than federal administration?
4. To what extent, if at all, did USDA provide information to CBO that took into account the impacts of increased Tribal agricultural production by way of Tribal farms, ranches, and processing facilities that increase access to locally sourced food options? Such operations significantly reduce transport costs and bolster regional food economies, and thus should be included as part of the analysis.
5. How did USDA determine that by 2033 about half of all FDPIR participants, or 40,000 people, would be served through self-determination agreements?
6. To what extent did the information USDA provided to CBO take into account situations where Tribes assume under 638 only the procurement of certain foods (e.g., traditional foods), leaving other foods (e.g., non-perishable foods) to be procured by USDA?

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<sup>1</sup> E.O. 14112 of Dec 6, 2023

7. Anecdotal results of the 638 FDPIR pilot program show that Tribes are providing higher-quality, fresher, and more nutrient-rich food than USDA. In addition, the beneficiaries of the 638 FDPIR pilot program are more satisfied with foods procured by the Tribe than the USDA. Nutrition is directly related to healthcare. To what extent did the information provided by USDA to CBO consider the health benefits to our citizens and associated reduction of long-term healthcare costs?

Should you have any questions, please contact Kayla Gebeck Carroll at [kayla.gebeck@hklaw.com](mailto:kayla.gebeck@hklaw.com).

Sincerely,



Cole Miller  
Co-Chair, Native Farm Bill Coalition  
Chairman, Shakopee Mdewakanton Sioux  
Community



Kari Jo Lawrence  
Co-Chair, Native Farm Bill Coalition  
Executive Director, Intertribal Agriculture  
Council

CC

White House Council on Native American Affairs  
USDA Office of Tribal Relations  
Office of Management and Budget  
House Agriculture Committee  
Senate Agriculture Committee  
House Natural Resources Committee  
Senate Committee on Indian Affairs  
House Appropriations Committee  
Senate Appropriations Committee

## Attachment A Summary of CBO Scores for 638 Legislation

- [S. 209, PROGRESS for Indian Tribes Act](#) → **ENACTED (116<sup>th</sup> Congress)** (emphasis added): Under the bill, CBO expects, the number of tribes that enter into SG agreements with the federal government would increase by about 25 each year, beginning in 2021. (Currently, 285 tribes participate.) Using information from BIA, CBO estimates that the Office of Self Governance (OSG) would require additional employees over the 2020-2024 period to work on audits, contracts, and negotiations with tribes. At the same time, CBO expects that the workload under BIA's Self-determination (SD) program would result in a decrease of a comparable number of employees because tribes would exit SD agreements and enter into SG agreements. **On balance, CBO estimates, the increased personnel and benefits costs under the SG program would be offset by reduced costs to operate the SD program.**
- [S. 245, Indian Tribal Energy Development and Self-Determination Act Amendments of 2017](#) → **STATUS: INTRODUCED (115<sup>th</sup> Congress)** (emphasis added): S. 245 would make various amendments to existing federal energy programs on tribal lands. Under current law, a tribe may enter into a tribal energy resource agreement (TERA) with the federal government to allow the tribe to complete and manage business agreements with third parties for such purposes as rights-of-way for energy projects and oil and gas leases. Under a TERA a tribe manages activities that would otherwise be carried out by the Department of the Interior (DOI). S. 245 would allow that under most circumstances a TERA application would automatically be approved 270 days after submission to DOI. Under the act, DOI also would be required to pay a tribe operating under a TERA agreement for carrying out management activities. **CBO estimates that implementing that provision would have no net effect on the federal budget because any amounts paid to tribes would have been spent by DOI to conduct the same work**
- [S. 2515, PROGRESS for Indian Tribes Act](#) → **STATUS: PASSED THE SENATE (115<sup>th</sup> Congress)** (emphasis added): S. 2515 would amend certain provisions of the Indian Self-Determination and Education Assistance Act related to the Tribal Self-Governance Program. That program authorizes Indian tribes to assume responsibility for certain programs, functions, and services or activities that would otherwise be carried out by the federal government. The bill would change how contracts are negotiated between the tribes and the Department of the Interior (DOI) to establish self-governance programs and would establish new guidelines for administering the program. CBO expects that the changes in the bill would not significantly affect the workload associated with the negotiations between tribes and DOI. **Thus, CBO estimates that implementing the legislation would have no significant effect on the federal budget over the 2019-2023 period.** ... CBO estimates that enacting S. 2515 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.
- [S. 2132, Indian Tribal Energy Development and Self-Determination Act Amendments of 2014](#) → **STATUS: INTRODUCED (113<sup>th</sup> Congress)** (emphasis added): The bill also would modify the process tribes use to enter into energy resource agreements, which shift various management functions related to energy development on tribal lands from the federal government to tribes. Under the bill, if a tribe takes over the management of activities that would have been managed by the Department of the Interior, the Secretary would be required to pay the tribe an amount equal to the amount that the agency would have spent to carry out those activities. Because the bill would require the agency to make payments to the tribe only if the agency received appropriations to carry out those activities, **CBO estimates that implementing that provision would have no net effect on the federal budget.**

- [S. 919 Department of the Interior Tribal Self-Governance Act of 2014](#) → **STATUS: INTRODUCED (113<sup>th</sup> Congress)** (emphasis added): S. 919 would amend certain provisions of the Indian Self-Determination and Education Assistance Act related to the Tribal Self-Governance Program. That program authorizes Indian tribes to assume responsibility for certain programs, functions, and services or activities that would otherwise be carried out by the federal government. The bill would amend how contracts are negotiated between the tribes and the Department of the Interior (DOI) and would establish new guidelines for administering the program. **Based on information provided by DOI, CBO estimates that implementing the legislation would have no significant effect on the federal budget over the 2015-2019 period.** Enacting S. 919 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.
- [S. 1312, Reducing Conflicts of Interests in the Representation of Indian Tribes Act of 2005](#) → **STATUS: PASSED THE SENATE (109<sup>th</sup> Congress)** (emphasis added): S. 1312 would amend the Indian Self-Determination and Education Assistant Act which currently provides an exemption from federal conflict-of-interest laws for former employees when they are acting on behalf an Indian tribe, as long as proper notification is provided to the agency. S. 1312 would limit the exemption to former federal employees who work for tribes pursuant to self-government contracts or compacts that they formerly performed for the federal government. **CBO estimates that implementing this legislation would have no significant cost and would not affect direct spending or revenues.**
- [S. 1715, Department of the Interior Tribal Self-Governance Act of 2004](#) → **STATUS: INTRODUCED (108<sup>th</sup> Congress)** (emphasis added): S. 1715 would amend title IV of the Indian Self-Determination and Education Assistance Act (ISDEA) to make it more consistent with the provisions of title V of the act. **Based on information from the Bureau of Indian Affairs (BIA), CBO expects that implementing most provisions of the bill would have no significant budgetary impact.** One provision, however, would require that funds retained by BIA for project management and oversight of highway construction projects that are carried out by tribes under self-governance agreements be used for project costs. Based on information from BIA, CBO estimates that the agency would need about \$15 million a year to continue its management responsibilities for the highway program. Assuming appropriation of the necessary funds, CBO estimates that implementing the bill would cost \$73 million over the 2005-2009 period.
- [H.R. 1167, Tribal Self-Governance Amendments of 2000](#) → **STATUS: ENACTED (106<sup>th</sup> Congress)** (emphasis added): **H.R. 1167 would amend the Indian Self-Determination and Education Assistance Act to establish a permanent tribal self-governance program within the Indian Health Service (IHS).** Under existing demonstration authority, the IHS and tribes enter into funding agreements whereby a tribe assumes administrative and programmatic duties that were previously performed by the federal government. Because the current demonstration authority does not end until 2006, and because the provisions of the new permanent program would not be significantly different from current law, **CBO estimates that establishing a permanent program would have no federal budgetary impact over fiscal years 1999 to 2004.** Under the existing demonstration program, IHS may select 30 new tribes each year to participate. Under the bill, the number would be raised to 50. Because in recent years fewer than 10 new tribes each year have become eligible to participate, CBO assumes that this change in law would have no effect.
- [H.R. 1833, The Tribal Self-Governance Amendments of 1998](#) → **STATUS: INTRODUCED (105<sup>th</sup> Congress)** (emphasis added): **H.R. 1833 would amend the Indian Self-Determination and Education Assistance Act to establish a permanent tribal self-governance program within the Indian Health Service (IHS).** Under existing demonstration authority, the IHS and tribes enter into funding agreements whereby the tribe assumes administrative and programmatic duties

that were previously performed by the federal government. Because the current demonstration authority does not end until 2006, and because the provisions of the new permanent program would not be significantly different from current law, **CBO estimates that establishing a permanent program would have no federal budgetary impact over fiscal years 1998 to 2003.** Under the existing demonstration program, IHS may select 30 new tribes each year to participate. Under the bill, the number would be raised to 50. Because in recent years fewer than 10 new tribes each year have become eligible to participate, CBO assumes that this change in law would have no effect.