

(Please place on letter for NAFDPIR upon final review completion and incorporation of all edits)

June 1, 2015

The Honorable Tom Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Ave., SW  
Washington, DC 20250

Under Secretary Kevin Concannon  
U.S. Department of Agriculture  
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Dear Secretary Vilsack:

The Board and membership of the national organization (NAFDPIR), serving Federally Recognized Tribal Nations (566), that have citizens participating in the Food Distribution Program on Indian Reservations (FDPIR) are reaching out to you to formally request an audience with you to discuss the current and long-standing situations affecting the administration and management of FDPIR. The NAFDPIR is comprised of Tribes who are served by the FDPIR program and a few State officials and their offices serving the Tribes and the 102,000 Tribal members who receive food packages under the FDPIR program.

On March 14, 2014 we requested an audience with Under Secretary Concannon to discuss a long list of concerns we had with regard to the FDPIR program. We

followed with another letter in early May 2014 reiterating that request when we received no response to our March letter. Finally, in June 2014 we were granted an audience with Under Secretary Concannon. The written response we received was inadequate and in most cases did not address our concerns.

Since that time (over a year ago) minimal action has been taken to address the ongoing concerns we have continually expressed to the FDPIR Director, the national warehouse personnel, as well as the Under Secretary's office. In the words of one of our longest serving one of our longest serving FDPIR Program Managers: "This is not okay...and our participants deserve better."

We are requesting an audience with you as soon as possible.

The concerns we have continually expressed in multiple venues and in writing via the 2014 correspondence we noted above, are as follows. We can provide all correspondence, resolutions, and minutes of meetings to date and we can provide additional documentation on the issues outlined below. These are not issues that need another study, as our participating tribes have conducted many surveys on our own and have records to support each issue; these issues need action. For purposes of this letter, we have outlined each issue identified in our 2014 correspondence with a brief discussion and update on status:

- **Inefficient Computer Interface Systems**
  - Our ITO offices have many challenges interfacing with the present system of ordering technology platform in use by the federal government. In most cases, the system will not allow real time communication between distribution locations even on the same reservation and there is an ongoing time lag in our ordering processes and in our communications with regional FNS offices. Some of our sites have to resort to pencil and paper to accomplish our work. Our offer in previous meetings and correspondence to dispatch tribal technology professionals (many of whom having ongoing relationships with Microsoft and Google) to begin the process of fixing these antiquated ordering and communications systems, still stands.  
✳**We are in dire need of modernization of the AIS, WBSCM and FFAVORS software systems to be replaced by a comprehensive software package.**
  
- **Appropriate Levels of Funding to Meet Present and Future Needs**
  - For many years (going back to the early days of your administration) we have expressed significant concerns, responded to Federal Register notices, and providing documentation to a funding methodology working group about the significant and growing needs for additional funding for the FDPIR program. **Administrative ✳ funding for ITO sites should not have to be competed for between programs.**

- o As FDPIR funding is a part of the SNAP budgetary authority, we believe there do not exist any meaningful reasons to NOT pursue additional funding for this program. We have also recently been advised that several new feeding sites with Alaska Native Villages were denied program participation. We find this denial egregious and dangerous to the tribal citizens located in these very remote locations who are experiencing significant declines in their subsistence food sources, live in communities without infrastructure, and have NO other resources for finding food. **We implore you to add any new additional Alaska feeding site that requests participation in the FDPIR program.** In addition, the lower 48 sites have shown significant new participation numbers and a budget (both for ITO administration support and for program client food purchases) simply must increase. Some of our sites have a sustained increase in participation at 100%, while others have seen sustained increase in the 50%+ range. **The budget for the program absolutely must increase in order for our participants to be fed and our administrative costs to be met.**

- \* ● **Food Availability**

- o In early 2014 the FDPIR food package had periods where up to 30% of the 80 items on the approved food package ordering menu have been **absolutely unavailable** for ordering [**“or unavailable”**] from the national warehouse. At one point all meat proteins except one were unavailable. In addition, many of our FDPIR feeding sites have experienced a sustained 30 – 50% and in some cases 100% increase in the number of participants utilizing the program.
- o When FNS personnel order based on bad information, or order without taking into consideration the present-day program needs, we will undoubtedly continue to have periods of food unavailability.
- o We are concerned about possible threats to the food supply that include the current 2015 avian flu outbreak in North America. This has already resulted in the cost to chicken and turkey producers of 45 Million birds and the increase in pricing of the meat and egg products.
- o All these problems lead to lack of food on the warehouse shelves that mean lack of foods at the program participant level. **This isn't something that should be taken lightly - - these are children and elders who literally exist ENTIRELY on the food package. The food package is not supplemental to many of our people; it is their entire food for each month.**
- o SNAP is not an alternative and is unworkable for our citizenry as Indian Country in its entirety is a “food desert” as defined by USDA - - meaning we have no grocery retail sites within any reasonable distance and our poorest citizens lack transportation to get to the closest available stores. In the event SNAP is block granted to the states as some propose, tribal governments and their people will be

left at the mercy of state and local staff in delivering foods to the most vulnerable of our citizens. There are states now seeking new ways to challenge tribal sovereignty and jurisdiction.

- This insensitivity to the geographic and practical realities of our citizens (i.e., “there is “some food” available so that should be adequate” – a statement actually made by FNS employees to our tribal staff) is unacceptable.

- **Lean Warehouse Implementation**

- We were not consulted with prior to the imposition of what is termed a “lean warehouse policy” which in the private sector means a “just in time” ordering and fulfilling requirement along with the image that a centralized or decentralized warehouse will have very little on the shelves on a continuing basis.
- What this policy means in practice, when coupled with periods of lack of food availability, is that when the foods on the package list are gone, they are gone...and the ability to plan for the future needs of our citizens are thereby impacted adversely. A lean warehouse policy in FDPIR means that the risk of being unable to feed tribal citizens is more real than ever.
- This is further complicated by the new federal rules in 7 CFR Parts 250 and 251 limiting the program’s inventory on-hand and the provision for prosecution.
- **We do not understand how FNS can allocate resources to create more restrictive rules while ignoring the NAFDPIR and NCAI resolutions stating the needs of FDPIR and requesting positive changes.**

- **FDPIR Study**

- Our request for an immediate in-person meeting to discuss the FDPIR study and report was not granted. We were not provided a means to provide input in the conduct of the study nor a chance to review and provide input on any reports emerging from the study.
- To our knowledge the study still has not been released. We are also perplexed as to how an urban-based consulting group with no ongoing relationships in Indian Country can adequately study the FDPIR program in any aspect.
- We also question the validity of any such study that provides “incentives” to the participants.

- **Unusable Product and BIUB Dates**

- We requested FNS take immediate steps to ensure that deliveries of ordered product are made in a timely manner; that the companies delivering unusable (rotten fruits and vegetables) product to tribes were made to comply with their responsibilities under government

contracts; that the value of unusable product delivered to our sites was recaptured into each sites' budget; that product no longer be delivered to our sites one day or two days before the BIUB date prohibits our use of the produce; that when we have expired product on hand that we are required to donate that product to non-tribal feeding programs and not have the value of that product recouped into our FDPIR budget.

- For example, for a period of one and one-half years, the programs operating in the Midwest Region were given unusable fruits and vegetables. It is our belief that when companies operating under a federal contract deliver unusable product, they should be promptly corrected without any delay . Any omission otherwise results in participants doing without the fresh product.
- When we have product on hand that is within thirty (30) days of the Best If Used By Date, we are required to donate that product to non-tribal feeding programs and not have the value of that product recouped into the FDPIR budget.
- We requested a meeting to devise a plan to correct these ongoing failures in the management of this program, in addition to correction in the technological and federal management failures that make it an impossibility for tribes to file timely complaints into a functioning complaint system.
- Nothing has happened to implement a plan to correct these problems—and in fact, the most recent new directions and guidance and regulations of FNS have exacerbated all these problems, and in some cases make tribal government feeding sites legally liable for these rotting products.
- It is a longstanding tenet of federal Indian law that absent an act of Congress, nothing may change the nature of Tribes' sovereign immunity, yet these administrative requirements now threaten to do just that, when they purport to make Tribes legally liable for delivery of rotten products. Tribes are the intended *recipients* of these products, not those who are delivering them.
- The BIUB dates have been completely removed from some food products. This in contrary to resolutions passed by NAFDPIR and the National Congress of American Indians (NCAI). Action and clarification is needed from the federal level to ensure that FDPIR sites do not receive any items of questionable condition. Expiration dates are needed for the consumer of the food products, not date that merely suggests the product is unfit.
- The new rules published in 7 CFR parts 250 and 251 further require the distributing agency to obtain an inspection of donated foods by State or local health officials before transferring them, if there is a question of food safety.

- Individual FDPIR sites are receiving a negative stereotype as a result of these two issues. The perception suggests that the products we diligently provide are below commonly acceptable standards.
- **Matching Funds Requirements & Carry Forward**
  - Each tribal feeding site must provide a 25% match in order to participate in the FDPIR program and that if a site requests a waiver of that requirement, they are punished by the lowering of their full budget allocations by the 25% match for which they sought a waiver.
  - Pursuant to FDPIR program regulations, we understand that to the extent Congressional funding levels permit, FNS may provide administrative funds to cover 75% of the total approved budget (Federal share), while each FDPIR administering agency must contribute 25% of its total approved administrative costs. This matching requirement may be met by cash or non-cash (in-kind contributions). There is also a waiver provision that, with compelling justification, an ITO may be approved to lower matching requirements to 25%. The appropriations and budgeting process for all of FDPIR needs to be addressed and 100% administrative funding with no matching funds needs to be the goal of USDA. In addition, the national budget process needs to be undertaken immediately and become the new standard for FDPIR.
  - We requested FNS begin the process to amend its carry forward policy to allow unused funds - - which are unused because of the delays in federal management processes and through no fault of the tribes - to be either carried forward or placed in a reallocation formula so that those unused funds stay purposed towards the needs of Tribal citizens served by this program (additional educational funding, additional infrastructure, technology, warehouses at the tribal level, or other pressing needs of the program).
  - At present those funds are captured and reused elsewhere by the federal government when there are long lists of outstanding needs for such unused funds within FDPIR.
- **Support for Tribal Nutrition Education**
  - We sought support from FNS to secure access to funding streams that would allow the tribes operating FDPIR serving members of 566 federally recognized sovereign nations to have access to more than the extremely low annual amounts of less than \$1m to spread among half of all federally recognized tribes in the US to perform necessary nutrition education.
  - We are excluded from eligibility from important nutrition education funding streams found elsewhere in the department and not enough is being allocated to providing nutrition education to those citizens in

the US - - our citizens - - that are established in all data as being at greatest risk of obesity, diabetes, and significant health impacts such as heart disease, strokes, amputations, and other health-related and nutrition-connected diseases of any other population group in the country.

- It is unconscionable that Tribal governments are provided such little support for education of our citizenry in important nutritional and health concepts.

- **Traditional Foods**

- We have requested time and time again that traditional foods be regularly incorporated into the food package. We are met with the response that supplemental/special appropriations are needed to do so. That is simply not the case, from a legal standpoint. We have asked our legal counsel to research this issue and they report to us that supplemental/special appropriations is solely a decision internal to the department and that the funds used to purchase foods for the food package could be used at any time to purchase traditional foods.
- The FDPIR program managers have conducted surveys of our tribes and there is a very high rate of request (over 80%) for traditional foods to be made available on a regular basis, and our survey has even provided information to FNS that would reflect exact ordering patterns that could be used to establish regularity in procurement schedules for these culturally important and nutritionally equivalent foods.
- We have provided proof to your staff that these foods are nutritionally equivalent or superior to similar foods in the package; and we have provided proof of the safety of those foods and aligned Native-owned traditional food businesses that have impeccable food safety track records. To no avail.
- FNS persists in the fiction of saying that special appropriations are required; they make no efforts to work to ensure more traditional foods are made available and procured; and **they have recently revealed their true intentions by telling a researcher from outside Indian Country that they have no intention of providing traditional foods for a “national program that must meet national tastes”**. That statement tells us that FNS staff has no intention of regularly offering traditional foods for this program.
- Congress has instructed FNS for three (3) consecutive Farm Bills that **traditional foods are authorized to be in the food package**. They still are not. We no longer believe USDA is willing to follow the law.

- **Most Recent Study of Tribal Management of all Feeding Programs**

- As mandated in the 2014 Farm Bill, FNS is to undertake a separate study (which is currently underway) to determine the feasibility of Tribal management of all feeding programs.

- The full membership of NCAI has already expressed Tribal governments' interest in managing all feeding programs affecting our citizens - - precisely as we choose to exercise self-governance in managing health care, construction, housing, roads, and other related infrastructure and inherently governmental services for our lands and people.
  - However, the approach FNS has set in motion will likely return a result from a significantly flawed study that lacked any tribal consultation in the conduct of same, that will reflect poorly on tribes' interest in managing these programs. The study pursues input on issues that are irrelevant to the actual question. The study seeks knowledge of whether the tribes are prepared today to manage the programs that they do NOT and never have had statutory authority to manage. **It is like asking if people are ready to live in a house that no one has had the legal authority to build.**
  - In addition, we were asked to provide extremely limited input on this study and when we did, we drew FNS' attention to the flaws in the study, to no avail. The study is proceeding exactly as FNS and their contractors chose to pursue.
  - It is our intention to advise Congress, when the study report is released, the true nature of Indian Country's desires and capacities in this matter – not what a flawed study process will likely emerge.
  - We honor all that you have done for Indian Country and will provide you a draft of our “minority report” to Congress on this issue before we deliver same to Congress.
- **Premature Cessation of the Regional Pilot Program**
    - The 2008 Farm Bill provided funds and instructed FNS to engage in a regional vendor pilot study to explore the ability of detaching from a national warehouse infrastructure and move to a regional system of ordering and fulfilling orders for package foods. **Such a move would have had the benefit of aligning perfectly with your administration's focus on supporting local and regional foods production and building regional rural economic development.**
    - A fully realized regional-based vendor system for FDPIR would have allowed, if aligned with our growing number of Tribal food producers, the ability to use the market (procurement of traditional and tribally-grown foods) to actually feed our own people. It would have fulfilled the mandate of Congress to buy traditional and more local foods for the package and it would have provided a reliable government contract to groups of producers at the local/regional level and could have - - if approached well - - allowed a very unique way to move our remote and ag-based communities into a paradigm of feeding themselves and strengthening their communities and not forever being tied to feeding programs. And it would have injected millions of



dollars in food purchasing power into our agriculture-dependent communities.

- FNS waited years to begin the program and then stopped it abruptly. They stopped it after making promises to tribal headquarters that a second and third tier of regional locations would be brought into the pilot. In other words, the pilot was stopped prematurely with no reason.
- **There was no Tribal consultation prior to FNS ending the pilot.**
- Months after the pilot was stopped prematurely, we received a letter from FNS that “costs” caused the stoppage; but later in the letter FNS stated they would continue to “study” the costs. Which is it? Do they already have data (that they failed to share with us) about costs? Or don’t they? Or is the reason they stopped the regional vendor pilot tied to lean warehouse policies, national “tastes” or something else?
- In addition, for the locations in Oklahoma that were involved in the first and only pilot phase, they reported **vastly increased numbers of participants who shifted to more fruits and vegetable choices** in the package. Why? Because the regional vendors allowed the recipients the dignity of having access to product that looked like products other people have access to - - and those products, because they were regionally managed - - arrived on our shelves much fresher and therefore more acceptable to our clients. The ordering system for the regional pilot was modern and efficient, while the system in use for the entire FDPIR program is antiquated, inefficient, and non-functional.

Mr. Secretary, we respectfully request your support moving forward during the remaining months of your administration to work with tribes to fix these issues.

**We are now preparing a comprehensive “Food, Nutrition and Agriculture Self-Determination Platform” document.** We will share that document with you and seek your support. Tribal governments support you fully, but this program - - which meets the food needs of the poorest and most vulnerable of our citizens - - cannot be allowed to languish and die on your watch. We believe that you must not fully be aware of the depth of these problems or you surely would not stand for this.

We request a meeting with you personally as soon as one can be arranged. We will provide our NAFDPIR board and senior experts, who together have a combined knowledge and management of this program of over 150 years, to more fully brief you in person. We will also have senior elected Tribal government officials who are championing these changes available for the meeting. But we do not believe the Under Secretary nor his staff at FNS is committed to making the changes we respectfully ask you to help us make in this program.

Tribes have a special relationship to the federal government that is not bound up in our status as a minority or ethnic group; it is bound up in our political status in relation to the federal government. We have innumerable treaties and other federal laws and court rulings that define that relationship, many of which specifically identify the responsibility of the federal government to provide food and access to food for our people in response to the lands and resources our ancestors provided to the early United States. Those legal relationships have been continually reaffirmed by the courts and Congress. We need your help.

Thank you so much for your kind attention to this lengthy letter. We felt it best to fully outline the current status of our concerns and not leave anything to chance or interpretation. We will contact your office within the week to seek a date certain for a meeting with you.

Sincerely,

(Signature).

CC: Congressman Tom Cole; Senator Heidi Heitkamp; Senator Jon Tester; Senate Committee on Indian Affairs; National Congress of American Indians; Leslie Wheelock OTR USDA