

FREQUENTLY ASKED QUESTIONS

Native American Agriculture Fast Track Fund

1. Who is eligible to apply for NAAFTF Awards?

Organizations must have an approved non-profit status, which can be met in one of four ways:

- a. IRS §501(c)(3) tax-exempt status
- b. §7871 Designation as a non-profit organization chartered under the tribal law of a state or federally recognized tribe
- c. Educational institution described in §170(b)(1)(A)(ii)
- d. An instrumentality (a department or an established, ongoing program) of a state or federally recognized tribe, designated under §7701(a)(40)

Organizations must have provided business assistance, agricultural education, technical support, or advocacy services to Native American farmers or ranchers between January 1, 1981 and November 1, 2010.

Organizations must base their work in the United States.

Organizations must propose projects that will provide assistance designed to further Native American farming and/or ranching activities and will directly benefit Native American farmers and/or ranchers.

Organizations must use any award made exclusively for charitable and educational purposes described in Section 170(c)(2)(B) of the IRS Code.

2. What other factors will be used to select organizations to submit a Full Proposal?

The Advisory Committee will consider the following factors when deciding which organizations to invite to submit a Full Proposal:

- a) The scope and nature of services previously provided to Native American farmers or ranchers.
- b) The scope and nature of the services you plan to provide to Native American farmers or ranchers with award funds.
- c) How your requested award amount fits within the overall budget of your organization.
- d) How your work integrates community accountability and Native leadership.
- e) Steps you will take to ensure the funds will be used for the purposes stated in the award proposal.
- f) Whether your organization is based in the Native community and serving Native farmers or ranchers; or, if your organization is not Native-led, whether you have a dedicated Native program.
- g) Whether your organization has a strong set of leaders and board members who represent

and are accountable to the community that is served.

3. For what activities can an award be used?

Entities receiving funds will be required to use the funds to provide services to Native American farmers and/or ranchers, including those seeking to become farmers or ranchers, to support and promote their continued engagement in agriculture.

Funds may be used for: project support; capital expenditures; re grants; scholarships; and/or an endowment.

4. Can we request funding for a combination of the above (project support; capital expenditures; re grants; scholarships; and/or an endowment)?

Yes. A single application may include a mix of funds requested for project support, endowment, scholarships, re grants and capital expenditures. For example, an applicant may request funds for program staff and re grants together in one project budget.

5. Can we request funds for general support?

No, funds will not be provided for general support.

6. Do we need to create a new project in order to be eligible for NAAFTF funds?

No, if you already have a project that meets eligibility requirements, you may request funding for that project. NAAFTF does not require the development of a new project.

7. Are any organizations excluded from funding?

Yes. In addition to entities not meeting one of the non-profit, educational or tribal-specific designation requirements in the answer to Question #1, the following organizations are NOT eligible:

- a) Entities that did not provide business assistance, agricultural education, technical support or advocacy services to Native American farmers or ranchers between January 1, 1981 and November 1, 2010.
- b) Entities requiring the use of a fiscal agent to meet the eligibility guidelines.

8. Are any activities excluded from funding?

Yes. The following uses of funds are NOT eligible:

- a) Work based outside of the United States.
- b) Projects that are not designed to a) further Native American farming and/or ranching activities, and b) assist individual Native American farmers and/or ranchers.
- c) Projects that assist individual Native farmers and ranchers but the services are not agriculture-related.
- d) Uses of funds that are not restricted exclusively to charitable and educational purposes described in Section 170(c)(2)(B) of the Code.
- e) Emergency funding, such as for addressing natural disasters.

- f) Political activity or lobbying as defined by the IRS, which is influencing legislation (Other forms of advocacy are permitted).
- g) Litigation (See the next question for other legal services which are permitted).

9. What types of legal services may receive funding?

Non-litigation legal services that assist Native American farmers and ranchers are eligible for funding under NAAFTF. This includes, for example, legal services related to contract review and formation, property transactions, estate planning, credit repair, advice on farm programs, administrative appeals and policy work (other than policy work that influences legislation).

10. Can awards go to organizations that serve non-Native Americans?

Organizations that serve a broader population may be eligible. However, award funds would have to be directed toward Native American farmers and ranchers only. For example, a youth program that works to help the next generation of farmers and ranchers nationwide could be eligible for a program targeted to Native Americans, such as youth on a specific reservation, but not for other programs serving non-Native Americans.

11. Can awards be used to serve Native American communities that include, but are not limited to, farmers and ranchers?

There are many needs in the Native American community and many worthy organizations seeking to meet those needs. However, these funds must be expended in accordance with the terms of the Settlement Agreement which provides that awards must only be used for the benefit of Native American farmers and ranchers, and the purpose is to support involvement with agriculture. Thus, programs which address non-agricultural issues, such as housing, would not become eligible just because some of the individuals served happen to be farmers or ranchers. However, an organization that serves a broader population but will use award funds specifically for farmers and ranchers may be eligible. For example, a community development financial institution that makes low-interest loans to small businesses generally could receive an award if the funds were going to be used solely for making such loans to Native American farmers and ranchers, and not to support non-agricultural activity.

12. Who is included as “Native American” in the eligibility requirements regarding serving Native American farmers and ranchers? Are Alaskan Natives included? Are Native Hawaiians included?

A Native American includes any person who meets one or more of the requirements listed below:

- Is a member of a tribe, band, nation, or community, including any Alaska Native village or regional or village corporation (as established in the Alaska Native Claims Settlement Act) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, also known as a “federally recognized tribe,” or

- Is a member of any Indian group that has been formally recognized as an Indian tribe by a State legislature or other similar organization vested with State tribal recognition authority, also known as a “state recognized tribe,” or
- Is a member of any Indian tribe or “Native group” (according to 43 U.S.C. § 1602.(c) and (d)) that asked the United States government for Federal recognition, or
- Publicly represented himself or herself as a Native American before November 24, 1999.

Alaskan Native communities are expressly included as noted above. Native Hawaiians are not covered by the first three criteria listed above. It is not clear that Native Hawaiians would have publicly identified as Native Americans and thus qualified under the fourth criteria listed above. If an organization believes that services it has provided and will provide to Native Hawaiians served individuals who self-identify as Native American, an application can be submitted which will give us more time to research and evaluate whether such application does in fact meet the eligibility criteria.

13. What is meant by “agriculture”? Is it limited to the specific types of agricultural activities that the USDA will consider funding through the farm loan program?

No, the NAAFTF is not bound by USDA’s definition of covered agriculture for purposes of the farm loan program. We define agricultural activities more expansively to include all activities which involve cultivation, raising, or harvesting of plants or animals whether to provide food or other products. This includes, for example, not only raising crops or animals, but also fishing and foraging. It includes raising agricultural products used for purposes other than food (e.g., wool, cotton, wood).

14. I was a Keepseagle Class member. Can I receive an award from NAAFTF?

As described in question 1 above, only specific nonprofit or educational organizations and designated tribal entities can receive awards from NAAFTF. Individuals are not eligible to receive grants directly under NAAFTF. However, as described above, entities receiving funds will be required to use the funds to provide services to Native American farmers or ranchers, and those seeking to become farmers or ranchers. Information about the organizations that receive awards will be posted on <http://www.indianfarmclass.com/NAAFTF.aspx> once approved by the Court, and some of the organizations receiving funds may be able to provide assistance to you.

15. I was a Keepseagle class member. When will I receive the second payment?

If there is no appeal of the settlement agreement by the deadline of June 20, the second payment (\$21,275) to prevailing claimants will be made by mid-August. If there is an appeal, the court may bar us from making any supplemental payments prior to successful resolution of the appeal.

16. What happens if there is an appeal of the Keepseagle case?

The deadline for filing an appeal is June 20, 2016. The deadline for submitting a letter of inquiry – June 24, 2016 – will be observed whether or not there is an appeal. If there is an appeal, <http://www.indianfarmclass.com/NAAFTF.aspx> will be updated and all applicants who submitted an application by the June 24, 2016 deadline will be notified that there may be a delay before moving to the next stage of the process. If there is an appeal, the court may bar us from making any awards prior to successful resolution of the appeal. If there is an appeal and a subsequent stay on the distribution process, all applications received will be held pending resolution of the appeal. If the court's order is affirmed on appeal, then we will proceed to review the Letters of Inquiry and move on to the next stage in the process.

17. How much money will be awarded from the Fast Track Fund?

There is a total of \$38 million in the NAAFTF and the entire amount will be awarded. A portion of NAAFTF monies may be awarded to intermediary applicants having existing, relevant grant programs which can be expanded through awards.

18. How many applications can an organization submit?

Because of the relatively low amount of the award pool, the expected high volume of applicants and the short timeline of the process, each organization may only submit one application. Should an applicant submit more than one LOI, only the first LOI will be reviewed by the Advisory Committee.

19. What is the maximum award that can be issued?

The maximum award size depends upon the size and type of the applying organization. If an organization is a "public charity" for IRS purposes, awarding too much money in comparison to its annual public support risks converting (tipping) the organization from a public charity into a private foundation, which subjects it to various restrictions and excise taxes. There are some exceptions; for example churches and schools retain their public charity status even if they receive more than 2/3 of their financial support from a single source.

As a general rule of thumb, an award amount that is greater than 2/3 of the public support an organization receives risks causing this tipping. Organizations are responsible for any tipping risk associated with accepting an award. Applications for sums that exceed the 2/3 rule of thumb will be viewed more skeptically. However the organization is ultimately responsible for complying with any legal requirements that arise due to its receipt of an award applied for. A Notice with additional details is available on <http://indianfarmclass.com/NAAFTF.aspx>.

The Advisory Committee will also take into consideration the size of the budget request in relation to the organization's annual operating budget and its existing expenditures on programs serving Native American farmers and ranchers. Another factor will be a demonstration of the applicant's ability to manage the funds awarded.

20. Are indirect expenses allowed to be covered in the application budget? If so, what is the percentage allowed?

Yes, some indirect expenses are allowed to be included in the budget. Indirect expenses are requested to be calculated as follows: up to 15% allowed on project expenses; up to 3% allowed on funds requested for regranting or scholarships; no indirect allowed on funds requested for endowment. For the purposes of calculating indirect expenses, capital line items will be considered as part of project expenses, and so therefore may be included in the calculation of 15% for indirect. Please note that requests reflecting a lower percentage of indirect fees are more likely to be granted.

21. Over what period of time must award funds be spent? May we apply now for an award that will fund future work?

Funding for specific, eligible programs may be requested for expenditures expected to be made within 24 months (2 years) of receipt of an award. Funding for capital expenditures may also be requested but funding for programs will be given higher priority. Funding for endowments, where the funds will not be spent over a two year period but will become a permanent investment where earnings will be used to support the organization, may also be requested. However, because of the relatively low amount of the award pool, endowments will be given even lower priority.

22. Can awards be renewed?

No, this is a one-time award-making program in connection with the settlement of the Keepseagle case. However, approximately \$265 million of additional funds from the settlement will be used to establish the Native American Agriculture Fund (NAAF). NAAF will be making grants for up to 20 years.

While we cannot predict exactly when NAAF will begin accepting applications for grants, we hope it will be within a year, and it should certainly be in operation before the awards made through NAAFTF expire in two years. However, if an appeal to the settlement agreement is filed by the June 20, 2016 deadline, it could take longer for NAAF to begin operations.

23. When will the Native American Agriculture Fund (NAAF) begin making grants?

While we cannot predict exactly when NAAF will begin accepting applications for grants, we hope it will be within a year, and it should certainly be in operation before the awards made through NAAFTF expire in two years. However, if an appeal to the settlement agreement is filed by the June 20, 2016 deadline, it could take longer for NAAF to begin operations.

24. What is an intermediary?

An intermediary is an organization that makes grants to support other, smaller organizations, or which provides funding to individuals, such as through scholarships or loans. However,

intermediary applicants must complete an additional application section and meet additional requirements.

25. What additional requirements are there for intermediaries?

Applicants for intermediary funding must demonstrate a record of successfully assisting nonprofits and communities, normally including experience in grantmaking, scholarships or loans, and that they have the ability to provide adequate due diligence for a re-granting, loan or scholarship program. An additional application section is required.

26. Does a CDFI apply as a regular applicant or an intermediary?

If a CDFI seeks funds specifically to make grants or low-interest loans, the intermediary section of the application should be included.

27. Are matching funds required?

No, matching funds are not required for NAAFTF funding. However, an application will be reviewed to see if the entity has the capacity to responsibly manage an award. Thus, an organization should seek funding commensurate with its capacity.

28. What reports are due at the end of the award period?

Award recipients are requested to provide a report each year (thus two reports for recipients receiving funding for two years). Each annual report must detail how the award money was spent and briefly summarize the results achieved. Reports should be emailed to Class Counsel at cwebber@cohenmilstein.com. Note: While NAAF will be an independent organization with its own board of trustees, because one time awards are being made through the NAAFTF process, Class Counsel will send NAAF copies of the reports and a list of any awards made for which no report was received, as such information may be useful to NAAF as they establish their grantmaking program.

29. Why are tribal or board resolutions required as part of the LOI process?

The Settlement Agreement, as modified, and as approved by District Court, includes various requirements for the eligibility of applicants that will be allowed to apply for NAAFTF funding. It needs to be ensured early in the application process that applicants meet all the eligibility requirements and assume accountability for proper expenditure of the funds.

30. Who are the parties involved in the NAAFTF process and what are their roles?

The U.S. District Court for the District of Columbia approved the modified Settlement Agreement and has the ultimate approval over all awards.

Class Counsel includes several lawyers who have been representing the Plaintiff Class throughout this litigation. Lead counsel is the law firm [Cohen Milstein Sellers & Toll PLLC](#). They are overseeing the NAAFTF process, assuring its compliance with the settlement

agreement and the court's rulings and will make a recommendation to the court regarding the awards.

The NAAFTF Advisory Committee is comprised of six individuals with experience and expertise in the fields of Native American farming, ranching and philanthropy. Five are Native American and the sixth has an extensive background in supporting Native American nonprofits. They will review all eligible Letter of Inquiry applications and Full Proposals, and will make recommendations for funding to Class Counsel.

[Echo Hawk Consulting](#) is the technical consultant for the process and an advisor to Class Counsel and the advisory committee. They are responsible for collecting and processing all applications and proposals, communications with and providing technical assistance to applicants and invitees, and recordkeeping.

31. Do you have a conflict of interest policy?

Yes. A copy is available on <http://indianfarmclass.com/NAAFTF.aspx>. Anyone involved in evaluating the applications will recuse themselves from evaluating any applications of organizations with which they or a spouse are affiliated.

32. When are Letter of Inquiry applications due?

Friday, June 24, 2016 at 4pm PDT/5pmMDT/6pm CDT/7pm EDT is the deadline for eligible entities, as described above, to fully complete the electronic Letter of Inquiry application process.

33. Why is there such a short turnaround between the release of the LOI and its due date?

The modified Settlement Agreement requires Class Counsel to submit their recommendations to the Court by October 17, 2016. The short time line was set because of a desire to ensure that funds are put to use for the benefit of the class as a whole as quickly as possible; other funds will be available on a much longer timeline through a separate process.

We hope that a month will be enough time for applicants to develop and submit their Letter of Inquiry. If it is not sufficient, applicants may wait for operations of the Native American Agriculture Fund (NAAF) to begin. Established pursuant to the settlement agreement, the NAAF will ultimately distribute more than \$265 million to benefit Native farmers and ranchers.

34. Can I submit a paper application?

Because of the volume of applications expected and the short timeframe established by the District Court, the application must be completed online and cannot be submitted on paper.

35. What will happen after I submit an application?

Applications will be screened for eligibility under the organizational requirements, program criteria, required documentation and all other requirements. Completed applications meeting all requirements will be forwarded to the Advisory Committee for review and selection.

The Advisory Committee will consider the following factors when deciding which organizations to invite to submit a Full Proposal:

- a) The scope and nature of services previously provided to Native American farmers or ranchers.
- b) The scope and nature of the services you plan to provide to Native American farmers or ranchers with award funds.
- c) How your requested award amount fits within the overall budget of your organization.
- d) How your work integrates community accountability and Native leadership.
- e) Steps you will take to ensure the funds will be used for the purposes stated in the award proposal.
- f) Whether your organization is based in the Native community and serving Native farmers or ranchers; or if your organization is not Native-led, whether you have a dedicated Native program.
- g) Whether your organization has a strong set of leaders and board members who represent and are accountable to the community that is served.

36. When will applicants know if they are approved to submit a full proposal?

Full Proposal invitations (RFPs) will be issued by email on Thursday, July 28, to those Letter of Inquiry applicants meeting eligibility and program criteria requirements established by the Settlement Agreement, and which the advisory committee and class counsel believe will further Native American farming or ranching activities.

37. When are Full Proposal Applications due?

Friday, September 2, 2016 at 4pm PDT/5pmMDT/6pm CDT/7pm EDT is the deadline for invited entities to fully complete the electronic Full Proposal application process at a link to be provided in the invitation email.

38. What will happen after I submit a full proposal?

Full Proposals will be screened to assure they match all elements of the approved applications. Completed, eligible Full Proposals meeting all requirements of the RFP will be forwarded to the advisory committee and Class Counsel for review. The advisory committee will recommend those proposals it feels best meet the terms of the *Keepseagle v. Vilsack* settlement agreement and will recommend those proposals to the Class Counsel.

39. When will award recipients be announced?

Class Counsel is obliged to file award recommendations with the U.S. District Court for the District of Columbia on October 17, 2016. However, until the District Court approves the recommendations, they are not final. The District Court is expected to rule no later than mid-December 2016. Recipients will be notified as soon as District Court has ruled, and the awards will also be posted on www.indianfarmclass.com.

40. When will funds be distributed to the award recipients?

The funding date is yet to be determined and will depend on when the District Court rules on Class Counsel's recommendations.

41. Will all eligible applicants receive funding?

No. There is a limited amount of money available and applications could exceed the total available to distribute. More significantly, with no grantmaking entity to provide ongoing oversight of how the award funds are used, Class Counsel is obliged to identify organizations with a sufficiently well-established track record. Class Counsel must represent with confidence to the Court that, if approved by the Court, the award funds will be expended in the proposed manner, for the ultimate benefit of the Class as a whole.

42. Is there a cap on management fees an intermediary may receive from an award?

Yes. We understand that effective grantmaking programs, particularly those that help smaller organizations develop their capacity, require some overhead for grant officers, auditors, etc. However, we also must ensure that as much of these funds as possible is put to work directly benefitting Native American farmers and ranchers. Thus, we have adopted a cap of 3% for indirect expenses that may be calculated on top of funds sought for regranteeing or scholarships. Applicants who request a lower percentage of the award for indirect expenses will be viewed favorably.

43. Is there a cap on overhead a non-intermediary may receive from an award?

Yes. We understand that effective programs require some overhead for staff and other expenses. However, we also must ensure that as much of these funds as possible is put to work directly benefitting Native American farmers and ranchers. Please see the response to question #20 above providing information about calculating indirect expenses.

44. Can grants include food processing activities?

In order for food processing activities to be covered, there would have to be a direct involvement of Native American farmers or ranchers, not simply supporting a food processing business that might buy its inputs from Native American farmers or ranchers. Thus, if a farmer wanted to expand into processing some of his or her own produce for higher market value items, or if ranchers wanted to organize a cooperatively owned slaughtering and processing facility, then such activities could be supported with NAAFTF funds. All other eligibility requirements must also be met.

45. Can grants include research, for instance, on the health value of traditional Native foods?

While grants for research will not be a high priority for NAAFTF funds, they will be considered if all other aspects of the requirements are met. Please be advised that all other types of grants will receive a higher priority than those for research.

46. Can NAAFTF provide assistance with writing an application or, if I am invited, a full proposal?

No, Class Counsel, its advisory committee and consultants must remain completely unbiased in their work, which will ultimately lead to funding recommendations to the District Court. Therefore, the only assistance NAAFTF can provide is to a) help organizations determine whether or not they and their programs are eligible, and b) how to use the website to submit an application.

47. If I have questions about eligibility, the application process or the application website, how can I get answers?

There are three forms of technical assistance available as listed below. Please be advised that Echo Hawk Consulting can only answer questions pertaining to the application and application process. We cannot advise you on your application scope, budget, application responses, etc.:

- a) A webinar on the Letter of Inquiry application process will be conducted June 1, 2016 at 1:00 p.m. EDT and can be accessed live at <https://attendee.gotowebinar.com/register/2559046618240052738>. After the webinar, a recording can be accessed at <http://www.indianfarmclass.com/NAAFTF.aspx>. (A similar webinar and recording will be available later for applicants invited to submit a Full Proposal.)
- b) Assistance by email is available by sending your question(s) to keepseaglefasttrack@echohawkconsulting.com.
- c) Assistance by phone is available by calling [\(877\) 544-9145](tel:8775449145) toll-free between 1:00 p.m. and 3:00 p.m. CDT, Monday through Friday except on holidays. Calls going to voicemail will be handled in the order in which they were received. We are expecting a high volume of calls so please expect 24-48 hours for your technical assistance request to be answered.

48. What will happen to the information and documents I submit during the NAAFTF process?

All information and documents will become part of the *Keepseagle v. Vilsack* case records. As such, it is likely that they will eventually become public records.

49. Where can I get more information regarding the *Keepseagle v. Vilsack* Settlement Agreement?

The information website for the *Keepseagle v. Vilsack* Settlement is at this link: <http://www.indianfarmclass.com/>

50. Is there a way I can contact someone to ask questions not covered in this FAQ document?

Yes. Our toll-free number is: (877) 544-9145. Technical assistance will be available by phone Monday-Friday between 10 am and noon and between 1 pm and 3pm CDT. In addition, you may contact us at keepseaglefasttrack@echohawkconsulting.com.