



Submitted via regulations.gov

September 23, 2019

Program Design Branch
Program Development Division
Food and Nutrition Service, USDA
3101 Park Center Dr.
Alexandria, VA 22302

RE: Proposed Rule (FNS-2018-0037): Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program, RIN 0584-AE62

Dear Program Design Branch:

On behalf of the National Congress of American Indians (NCAI)¹, the National Indian Health Board (NIHB),² and the National Council of Urban Indian Health (NCUIH),³ we write to submit the following comments regarding the U.S. Department of Agriculture (USDA) – Food and Nutrition Service’s (FNS) proposed revision to the categorical eligibility in the Supplemental Nutrition Assistance Program (SNAP), which will have a substantial negative impact on American Indian and Alaska Native (AI/AN) individuals participating in the SNAP program.

I. Background

With nearly 25 percent of AI/ANs relying on federal food assistance through SNAP, we do not support this proposed rule in its current form because it will have widespread harmful impacts, including the loss of benefits, across Indian Country. Data shows that an estimated 500,000 children are in families slated to lose their SNAP benefits would also lose automatic eligibility for free and reduced-price school meals.⁴ Additionally, the proposed rule would have negative impacts on other programs with a significant number of AI/AN participants, such as the Food Distribution Program on Indian Reservations (FDPIR) and the Temporary Assistance for Needy Families (TANF) program.

The proposed restriction of Broad-Based Categorical Eligibility (BBCE) for SNAP would lead to a loss of benefits for AI/AN households that are above 130 percent of the poverty line but still have low net incomes due to high levels of deductions from their earnings, high housing costs, and high child or dependent care expenses. More than 90 percent of benefits paid to households under BBCE go to households with housing costs greater than half of their net income, 50 percent go to households with dependent care costs, and 75 percent go to households with gross incomes between 131 and 150 percent of the federal poverty rate.⁵ Under BBCE, when a wage earner in a household experiences a small increase in earnings, the SNAP benefits are partially reduced to offset those earnings; however, without BBCE, that household would potentially fall off the ‘benefits cliff’ and lose their SNAP benefit altogether. Not only would this disincentivize

taking extra hours or another job, but it would leave already vulnerable AI/AN households without much-needed food support.

Likewise, according to the USDA's own impact analysis, removing BBCE and applying a low asset test would lead to the loss of SNAP benefits for the more than 13 percent of households with elderly members and reduce the population eligible for SNAP by 14 percent.⁶ Thus, a low asset test would leave AI/AN households that are not able to save money without losing their SNAP benefit vulnerable to financial emergencies. It would be a violation of the federal government's treaty and trust obligations to put AI/AN elders at risk of going hungry and to keep AI/AN families in a position of food and financial insecurity.

II. USDA Must Engage in Initial and Ongoing Consultation with Tribal Nations

Pursuant to Executive Order 13175, USDA is required to consult and coordinate with tribal nations on a government-to-government basis regarding any proposed changes to regulations, policies, or programs that could have substantial impacts on Indian Country. While the proposed rule acknowledges that compliance with Executive Order 13175 applies, the USDA did not engage in full and meaningful tribal consultation as required by law. Such consultation would entail understanding the impacts the proposed rule will have on tribal citizens who rely on SNAP as an essential program providing necessary food assistance.

On February 14, 2019, USDA-FNS held a listening session, *not* a consultation, during NCAI's Executive Council Winter Session meeting in Washington, D.C. This meeting was held with little advance notice to tribal leadership, and it was not noticed properly as a consultation. Additionally, it was held at the same exact time and in direct conflict with an earlier scheduled USDA-FNS tribal consultation with tribal leadership on FDPIR,⁷ making it extremely difficult for tribal leadership, tribal program managers, and tribal nutrition program experts to attend both of the meetings at the same time. Holding a "listening session" with little advance notice and during the same time as a different USDA consultation demonstrates that USDA has not complied with its consultation requirements in proposing significant amendments to SNAP.

Also, NCAI Resolution MOH-17-001, *A Call on Congress to Enact Legislation That Will Ensure Uniform, Effective, and Meaningful Consultation with Indian Nations and Tribes Whenever Federal Activities Have Tribal Impacts*, states that "government-to-government consultation should occur with representatives of federal agencies that are both informed about the tribal government's requests or critiques of a proposed federal action and empowered to make decisions about the scope of the proposed action" and agencies engaged in tribal consultation should "review written and oral comments, and provide meaningful responses to the comments in writing, in a timely manner."⁸

Proceeding with the proposed rule without tribal consultation is inconsistent with Executive Order 13175, the USDA Consultation Policy, and the federal government's treaty and trust obligations to tribal nations. We urge USDA to engage in consultation consistent with the standards outlined in Executive Order 13175, the USDA Consultation Policy, and NCAI Resolution MOH-17-001. With this proposed rule change impacting nearly 25 percent of the AI/AN population, we emphatically request that USDA engage in full and meaningful

government-to-government tribal consultation with tribal governments regarding the proposed rule on categorical eligibility in the SNAP program.

III. The Proposed Rule Will Have Negative Impacts on FDPIR

Additionally, the proposed rule changes to SNAP will negatively impact USDA's customer service and effectiveness in delivery of FDPIR.

FDPIR serves approximately 90,000 people each month, including many tribal elders, with 42 percent of FDPIR households having a family member over the age of 60. While more than 50 percent of FDPIR participants report some income each month, it is insufficient to ensure their dietary needs are met. As a result, FDPIR is a critical stopgap in the food security network for our tribal communities, and it is also critical on tribal lands where access to grocery stores or SNAP vendors may be inadequate.

FDPIR is an alternative to SNAP, and no one can participate in both programs in the same month. Because of this interrelationship between the programs, we know from the more than 100 Indian Tribal Organizations (ITOs) who administer FDPIR for 276 tribal nations across Indian Country that when policy changes are made that restrict SNAP access, previously eligible SNAP recipients turn in the next month to their tribal governments for assistance and seek certification for FDPIR.

This proposed rule change will place an additional, undue burden on FDPIR sites, which will need to serve more people without any overall increase in funding. At a minimum, the proposed rule will burden FDPIR when individuals suddenly ineligible to access SNAP now turn to FDPIR for essential food assistance. At worst, it will lead to gaps in food assistance if families in Indian Country lose their SNAP eligibility based on the proposed rule and have to get re-certified under the FDPIR program.

We are also concerned that because of the lack of tribal consultation in developing this proposed rule, USDA has not properly considered any additional impacts to FDPIR, including how the proposal may impact or limit the certification of individuals and families who utilize FDPIR.

In summary, we request that USDA assess the potential impact to FDPIR certification because of the proposed change in SNAP categorical eligibility, and we specifically request that USDA issue a notice addressing how it plans to address those impacts. We also request consultation on this issue in compliance with Executive Order 13175.

IV. The Proposed Rule Will Have Negative Impacts on the TANF Program

The TANF program is another essential food assistance program in Indian Country because many tribal nations receive funding to administer the tribal TANF programs for their citizens in need of assistance. Almost 300 federally recognized tribal nations and Alaska Native villages through 70 approved tribal TANF programs have been served by TANF since 1997. Any changes to the SNAP categorical exemption based on TANF will have a substantial impact on families throughout Indian Country by taking away vital food access.

V. The Proposed Rule Will Have Negative Impacts on Urban AI/ANs

Eliminating BBCE for SNAP will negatively impact urban AI/ANs because applying the gross income test and asset tests will disproportionately lead to a loss of benefits for the 25 percent of AI/AN households that have earnings; have child, elderly, or disabled members; or both. Furthermore, many Urban Indian Organizations participate in the SNAP program, and reduced eligibility will require them to stretch their limited funding even further. Additionally, access to healthy food is the foundation of health, and the loss of SNAP benefits will exacerbate the health disparities that AI/AN communities experience. The federal government has treaty and trust obligations to provide for the health and wellbeing of AI/AN people both on and off-reservation. Reducing access to SNAP benefits that affect AI/ANs violates that responsibility.

This proposed SNAP rule change will roll back advances to healthy food access and contribute to the health disparities that urban AI/AN communities face. Research has found that receipt of SNAP in early childhood improved high school graduation rates, adult earnings, and adult health and that regular access to healthy and affordable meals is one of the strongest predictors of improved school performance, better health, and sound childhood development.⁹ As part of the federal government's treaty and trust obligation to provide for the health and wellbeing of AI/ANs both on and off reservation, SNAP benefits must not be reduced through the elimination of BBCE.

VI. Conclusion

Based on the lack of full and meaningful tribal consultation, the proposed rule's negative and disparate impacts on Indian Country, the impacts to the FDPIR program, and potential impacts to TANF participants, we cannot recommend implementation of the proposed rule as currently written. USDA must completely understand how this rule will affect Indian Country and delay implementation of any changes to SNAP categorical eligibility until the full impacts of the changes are assessed and understood as required by law. If USDA moves forward with the proposed rule without meeting its consultation obligations, it must provide an exemption for Indian Country.

We appreciate the opportunity to provide comments and look forward to working with USDA to ensure that AI/AN people continue to have access to these and other vital programs and services. Should you have any questions regarding these comments, please contact NCAI Vice President of Government Relations Jacob Schellinger (jschellinger@ncai.org), NIHB Policy Director Devin Delrow at (ddelrow@nihb.org), or NCUIH Director of Federal Relations Julia Dreyer (JDreyer@ncuih.org).

Best regards,



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¹ Founded in 1944, the National Congress of American Indians is the oldest, largest, and most representative American Indian and Alaska Native organization in the country. NCAI advocates on behalf of tribal governments and communities, promoting strong tribal-federal government-to-government policies, and promoting a better understanding among the general public regarding American Indian and Alaska Native governments, people and rights.

² Established in 1972, the National Indian Health Board (“NIHB”) is an inter-tribal organization that advocates on behalf of tribal governments for the provision of quality health care to all American Indians and Alaska Natives (“AI/ANs”). The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (“IHS”) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with the NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (“ISDEAA”), or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

³ The National Council of Urban Indian Health (NCUIH) is the only national 501(c)(3) organization devoted to the support and development of quality, accessible, and culturally-competent health services for American Indians and Alaska Natives (AI/ANs) living in urban settings. NCUIH envisions a nation where comprehensive, culturally competent personal and public health services are available and accessible to AI/ANs living in urban communities throughout the United States. NCUIH represents 42 Urban Indian Health Programs (UIHPs) in the United States.

⁴ Press Statement of Representatives Richard Neal, Bobby Scott, and Collin Peterson, July 23, 2019, <https://neal.house.gov/press-releases/chairmen-neal-scott-and-peterson-oppose-administrations-unilateral-proposal-kick>, and Suzy Khimm, “Trump plan failed to note that it could jeopardize free school lunches for 500,000 children, Democrats say,” NBC News, July 29, 2019, <https://www.nbcnews.com/politics/white-house/trump-plan-failed-note-it-could-jeopardize-free-school-lunches-n1035281>.

⁵ Center on Budget and Policy Priorities, *SNAP’s “Broad-Based Categorical Eligibility” Supports Working Families and Those Saving for the Future* (2019), <https://www.cbpp.org/sites/default/files/atoms/files/7-24-19fa.pdf>.

⁶ USDA Food and Nutrition Service, *Asset Limits, Supplemental Nutrition Assistance Program Participation, and Financial Stability*, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPAssets-Summary.pdf>.

⁷ United States Department of Agriculture, *Dear Tribal Leader Letter, January 31, 2019*, <https://www.usda.gov/sites/default/files/documents/otr-february-fdpir-consultation-packet.pdf>.

⁸ National Congress of American Indians, Resolution #MOH-17-001, *A Call on Congress to Enact Legislation that Will Ensure Uniform, Effective and Meaningful Consultation with Indian Nations and Tribes whenever Federal Activities have Tribal Impacts*, http://www.ncai.org/attachments/Resolution_tNWJMibVBsWNXwnaUYCgwjpsJImEmxzkuQZYPcJxjDIxJpMrqJR_MOH-17-001.pdf

⁹ United States Conference of Mayors letter in opposition to the proposed rule change (August 21, 2019) <https://www.usmayors.org/wp-content/uploads/2019/08/Mayors-SNAP-Letter-Final.pdf>.