

March [INSERT DAY], 2019

Certification Policy Branch  
SNAP Program Development Division  
Food and Nutrition Service, USDA  
3101 Park Center Drive  
Alexandria, VA 22303

Re: Proposed Rule: Supplemental Nutrition Assistance Program (SNAP): Requirement for Able-Bodied Adults Without Dependents RIN 0584-AE57

Dear Certification Policy Branch:

On behalf of the [INSERT NAME OF TRIBE/ORG], I submit the following comments regarding the U.S. Department of Agriculture – Food and Nutrition Service (FNS) proposed changes to the Able-Bodied Adults Without Dependents (ABAWDs) requirements which will have a disproportionately negative impact on American Indian and Alaska Native individuals participating in the Supplemental Nutrition Assistance Program (SNAP).

The Proposed Rule will negatively impact the ability of American Indian and Alaska Native people, 25 percent of whom rely on federal food assistance through SNAP, to put food on the table each month. We do not support this Proposed Rule in its current form, particularly as it applies to Indian Country, on the following basis:

1. The USDA did not uphold its federal trust responsibilities under Executive Order 13175 and engage in *meaningful* consultation with Tribal leadership on this issue.
  - a. In February 2018, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) on this issue. The Department solicited feedback on a wide variety of issues pertaining to SNAP waivers and received comments from individuals in Indian Country on those issues. One of the key arguments from Indian Country was that the Department did not consider the ANPRM to have Tribal implications necessitating consultation. We disagreed, and continue to disagree, with that position. While the Department recognizes in the Proposed Rule that Tribal consultation was necessary, we disapprove strongly in the way that the Department has purported to handle Tribal consultation on the Proposed Rule. Despite the ANPRM's denial of the need for consultation, the Proposed Rule claims that consultation was accomplished on March 4, 2018, only one month after the Department claimed in the published ANPRM that no consultation was necessary. The Department's position currently in the Proposed Rule is that the March 4, 2018 consultation yielded no comments from Tribal leaders.
  - b. However, the March 4, 2018 "consultation" the Department points at as justifying its position that consultation occurred was part of a series of teleconference calls that USDA-FNS holds quarterly. These calls concern the

entirety of USDA's food assistance programs in Indian Country, not just SNAP, and the consulting official on that particular call was a regional FNS career staffer rather than someone from national headquarters—not someone with the delegated authority of the Secretary of Agriculture. The manner in how the “consultation” was announced, handled, and attempted to carry out what is supposed to be a government-to-government conversation regarding a program that impacts 25 percent of Tribal citizens is entirely deficient and does not live up to USDA's federal trust responsibility.

- c. Additionally, for the Department to try and backdoor a consultation now, when the Department's original position was that none was even required, is a gross violation of the foundational principle of Executive Order 13175 as well as the Department's own internal regulation on appropriate Tribal consultation. Both of those documents require that consultation must be meaningful and Tribal leaders must be given notice appropriate to the circumstances. This Proposed Rule represents a significant shift away from a regulation that has been in existence since 1996 and will absolutely have Tribal implications. On that basis alone, meaningful consultation between sovereign governments should have involved more than a few minutes on a teleconference call dedicated to discussing *all* federal feeding program issues, not even solely the issue at hand.
  - d. Without the opportunity to meaningfully dialogue with the Department in consultation on this Proposed Rule, we cannot support its implementation. There are further Tribal implications outlined below that we would have discussed in consultation had it been appropriate and properly advertised. Unfortunately, now that the rule has been published, we will not have that opportunity, and can only recommend that the Proposed Rule be amended as we outline below in points 2-4 and delayed in implementation by at least one calendar year as we discuss in point 5.
2. The Proposed Rule will negatively impact USDA's customer service and effectiveness in delivery of the Food Distribution Program on Indian Reservations (FDPIR).
    - a. The FDPIR serves approximately 90,000 people each month. The program serves many of our Tribal elders, and 42 percent of FDPIR households have a member over the age of 60. Over half of FDPIR participants report income each month but it is still not always enough to ensure their dietary needs are met, making FDPIR a critical stopgap in the food security network for our Tribal communities where access to grocery stores or SNAP vendors may be inadequate. FDPIR is an alternative to SNAP; no one can participate in both programs in the same month. Because of this interrelationship between the programs, we know from the 103 Indian Tribal Organizations (ITOs) who administer FDPIR for 276 Tribes across Indian Country that when policy changes are made to SNAP that impact the ability of SNAP recipients to access that program, they turn in the next month to their Tribal governments for assistance and seek certification for FDPIR. This places an undue burden on FDPIR sites, which must seek to serve more people without any overall increase in funding. We believe this necessitates an

exemption from the Proposed Rule's waiver approval process for Tribal statistical areas.

3. There is no exemption or exception in the Proposed Rule for Tribal statistical areas, which suffer disproportionately from high unemployment and chronic poverty even when the nation as a whole is experiencing economic growth.
  - a. Tribes frequently experience higher rates of unemployment and chronic poverty levels than the rest of the country. In some places, unemployment is in excess of 80 percent.
  - b. This, in combination with the Department's acknowledgement in the Proposed Rule that reliable data are not always available for the labor force on all reservations, necessitates a wholesale exemption from the newly proposed waiver process for Tribal statistical areas.
4. The Proposed Rule grossly limits States' ability to respond quickly to sudden changes in the economy, which will have a disproportionate impact on Tribal Nations.
  - a. By limiting the number of waivers—including rollover waivers—that States are allowed to issue, the Department is setting Tribal Nations up for disparate treatment. State Agencies are currently under no legal obligation to prioritize waivers for areas within Tribal boundaries. If a State has limited options when it comes to issuance of waivers, many State Agencies will likely prioritize non-Tribal areas first. The disparate impact of this Proposed Rule necessitates an exemption for Tribal areas from the proposed waiver process. If the Department proceeds with this rule despite the objections outlined here, we urge the Department in the strongest possible way to allow State Agencies to waive the rule for Tribal areas without this waiver counting against the State's overall waiver allowance. This is not an ideal scenario, and perhaps meaningful consultation could have led to a better way, but is one possible way to ensure that Tribes do not suffer disparate impacts from this Proposed Rule. We urge the Department to consider creating such an exemption for Tribal areas.
5. Finally, the Department's promulgation of this rule is untimely given current market conditions for many commodity food and agriculture products, of which American Indian and Alaska Native people typically produce annually at an actual market value of \$3.2 billion. Ancillary effects from the recent government shutdown, which Tribes continue to recover from, have also impacted our nation's economy. We urge the Department to delay further movement on this Proposed Rule for at least one calendar year to better assess the accuracy of the economic arguments upon which the Department has predicated its position.
  - a. The Department's rationale for amending the waiver process is largely predicated upon claims that unemployment is down overall and our nation's economy is thriving. Unfortunately, for many of the rural and reservation communities that comprise Indian Country, this is simply untrue. Many places in Indian Country see unemployment rates over 80 percent, and of the several persistent poverty counties in the country where poverty rates and overall

unemployment have continued unabated for nearly thirty years, we see significant overlap with Tribal Nations.

- b. Although recent legislation such as the 2018 Farm Bill increases Tribal parity and access to critical, infrastructure building programs that will create jobs and support renewed economic growth in rural and remote reservation communities as well as rural America as a whole, those legislative investments have yet to bear fruit. It will take time to see the full benefit of those opportunities, and in the interim we cannot support a proposed rule that will take food away from vulnerable people in our communities as well as our Tribal members who live in urban centers.
- c. Further, many Tribes and rural places are still suffering lingering effects of our nation's longest government shutdown, which had an unfortunate impact on our country's economy that is still felt in rural places. According to the President's senior economist, our country was to experience no economic growth at all in the first quarter of 2019, due to the shutdown and lack of federal spending. Further, the nonpartisan Congressional Budget Office (CBO) has reported a total impact of \$11 billion in lost revenue, with \$3 billion of that amount going entirely unrecouped. Indian Country felt that loss deeply as our Tribal Nations sought to divert funds from Tribal budgets to maintain essential services like healthcare while the federal government was closed. Those funds will not be reimbursed. CBO has also estimated that our overall economic growth declined by 0.4 percent during this first quarter of 2019 as a result of the funding crisis. While CBO reported it is likely that some of the overall \$11 billion loss during this quarter will be regained over the coming months, it is anticipated that this spending will be allocated differently than predicted in an attempt to compensate for the shutdown's impact, leaving the ripple effects of the shutdown largely unknown at the present time for many sectors of the American economy. This is troubling to Indian Country in particular, because Tribal leaders know from experience that when the American economy suffers, our rural and remote places take much longer to recover than our metro counties, and many people in rural places increasingly rely on SNAP for critical stopgap food assistance. Given this financial uncertainty, which continues to impact Indian Country and our rural places and will for some time, we feel the implementation of the proposed rule is premature for the entire country at this time. We therefore urge the delay of this Proposed Rule's implementation for at least one calendar year beyond the initial proposed implementation date of October 1, 2019, in order to allow the Department enough time to more properly and accurately address the economic ramifications of the shutdown and conduct real, meaningful consultation with Tribal leaders on this issue.

Based on the above discussion of this Proposed Rule's negative and disparate impact on Indian Country and 25 percent of all American Indian and Alaska Native people relying on SNAP each month, we cannot recommend implementation of the Proposed Rule as it is currently written. The Department must completely understand how this rule will affect Indian Country and delay

implementation of any changes to the ABAWD policy until the full impacts of the change are explored with Tribal leaders in direct, in-person regional Tribal consultations.