September [INSERT DAY], 2019

Program Design Branch

Program Development Division

Food and Nutrition Service, USDA

3101 Park Center Dr.

Alexandria, VA 22302

Re: Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) RIN 0584-AE62

Dear Program Design 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 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 individuals participating in the SNAP program.

With nearly 25 percent of American Indian and Alaska Native peoples relying on federal food assistance through SNAP, we do not support this proposed rule in its current form, particularly as it applies to Indian Country, as it could potentially have widespread impacts including loss of benefits. Despite the claim in the proposed rule, USDA did not uphold its federal trust responsibilities under Executive Order 13175 and engage in meaningful consultation with tribal leadership on this issue.

Under Executive Order 13175, USDA is required to consult and coordinate with tribal governments on a government-to-government basis regarding any proposed changes to regulations, policies, or programs that could have substantial impacts to Indian Country. While the proposed rule correctly asserts that the Executive Order 13175 applies to this proposed rule, USDA did not engage in adequate consultation with tribes. USDA must engage in direct, specific, and adequate consultation with tribal governments on this proposed rule before it takes any additional steps in order to fully understand 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, the USDA-FNS held a listening session, not a consultation, during the National Congress of American Indians Executive Council Winter Session meeting in Washington, DC. This meeting was held with little notice to tribal leadership or tribal organizations, nor was it noticed out 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 the Food Distribution Program on Indian Reservations (FDPIR), 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. The lack of notice and consideration of scheduling the listening session should be taken as not providing adequate time or place for tribal leaders to voice their concerns regarding the proposed categorical eligibility revisions to SNAP.

Further, at the listening session, attendees were not provided an adequate forum nor opportunity to voice their concerns over the proposal, but still many did voice their concerns, especially the need for tribal consultation as well as the fact that this meeting was being held in direct conflict with another USDA consultation on FDPIR. USDA’s claim that tribes were provided an opportunity for consultation is unfounded and inaccurate, especially considering the nature in how the agency attempted to disguise a poorly noticed and inappropriately scheduled listening session as adequate for the purposes of Executive Order 13175. We strongly disapprove of the way that the department has continued to circumvent tribal consultation, as it tried to do with the Advance Notice of Proposed Rulemaking on the SNAP Requirement for Able-Bodied Adults Without Dependents, and as it tried to do during the most recent 2018 Farm Bill tribal consultation by consulting on Child Nutrition Programs during that consultation, which were both outside of the scope of the consultation and never properly noticed. This trend of subverting proper consultation with tribal leaderships on USDA nutrition programs is disturbing and must cease. With this proposed rule change impacting nearly 25 percent of the American Indian and Alaska Native population, we now fully and unequivocally request that USDA engage in adequate, direct, and meaningful government-to-government tribal consultation on the proposed rule on categorical eligibility in the SNAP program with tribal governments.

Additionally, the proposed rule changes to SNAP will negatively impact USDA’s customer service and effectiveness in delivery of the Food Distribution Program on Indian Reservations (FDPIR).

The FDPIR serves approximately 90,000 people each month, including many of our tribal elders, with 42 percent of FDPIR households having 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 and no one can participate in both programs in the same month. Because of this interrelationship between the programs, we know from the over 100 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 proposed rule change will place an additional and undue burden on FDPIR sites, which must seek to serve more people without any overall increase in funding. At minimum, the proposed rule will create an undue burden on FDPIR when SNAP recipients unable to access that necessary program must turn to their tribal governments and FDPIR for 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 consultation on this proposed rule, the department has not properly considered any additional impacts to FDPIR, including how the proposal may impact or limit the certification of individuals and families in FDPIR.

We strongly encourage the department to not only schedule consultation without delay but also to investigate the potential impact to FDPIR certification because of the proposed change in categorical eligibility, and we specifically request that the department issue a notice explaining how this proposed rule will impact FDPIR and how the department plans to address those impacts.

Further, the Temporary Assistance for Needy Families program (TANF), is another essential food assistance program in Indian Country, as many tribes across the country receive funding to administer the tribal TANF programs for their citizens in need of assistance. Almost 300 federally recognized tribes 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.

Based on the lack of any and adequate tribal consultation, the proposed rule’s negative and disparate impact on Indian Country, the 25 percent of all American Indian and Alaska Native people relying on SNAP each month, the impacts to the FDPIR program, and potential impacts to TANF participants, 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 SNAP categorical eligibility until the full impacts of the change are explored with tribal leaders in direct, adequate, meaningful, and in-person regional tribal consultations.