[Letterhead]

[Date]

Certification Policy Branch, Program Development Division

Food and Nutrition Services, FNS

3101 Park Center Drive, Room 812

Alexandria, Virginia 22302

Re: FNS Docket No. FNS-2019-0009 – Comments in Response to Proposed Rule on SNAP Standardization of State Heating and Cooling Standard Utility Allowances

Dear Certification Policy Branch:

On behalf of [Name of tribe or tribal-Serving Organization], I am writing to submit comment on FNS Docket No. FNS-2019-0009 regarding the proposed *Supplemental Nutrition Assistance Program: Standardization of State Heating and Cooling Standard Utility Allowances.*

[Insert information about known utility costs and SNAP participation rates in geographic area, if known]

Based on data provided by the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS), approximately 25 percent of American Indians and Alaska Native (AI/AN) people rely on the Supplemental Nutrition Assistance Program (SNAP) to provide food for themselves and their families. American Indians and Alaska Natives, as tribal citizens, are a politically protected class, and as Trustee for Indian Country, USDA and FNS maintain a legal responsibility to act in the best interest of tribal citizens. Given the rural proximity for most tribal lands, the Department must also be mindful to mitigate disparate treatment and impacts of any agency rulemaking.

**Standardizing HCSUA Methodology**

While we are encouraged by USDA FNS intent to promote consistency in Heating and Cooling Standard Utility Allowances (HCSUA) across state lines, national data at state-by-state levels does not properly account for the variances of tribal lands within those states. The average household costs for electricity in counties with tribal lands often far exceed state averages for limited- and middle-income households.

Where tribal lands reside within county geographic boundaries (tribal counties), approximately 87 percent of these counties see average monthly electricity expenditures for limited- and middle-income households exceed 80 percent the state mean for like costs.[[1]](#endnote-2) Of this number, nearly half—46 percent—of counties with tribal lands experience costs above their respective 100 percent state average. While we recognize that HCSUA and subsequent Limited or Single Utility Allowances consider other utility costs, the rurality of many tribal lands increases tribal household costs of other utilities in a similar manner.

To accommodate these differences, we strongly encourage FNS withdraw this rule or, at minimum, release the formula and quantifiable data associated with its annual calculation of state HCSUA and allow tribes to request their own data on utility expenditures be referenced in lieu of nationally compiled state data. FNS’ recognition of these requests complies with Departmental Regulation 1350-001 Sec. 11 where USDA shall consider a waiver insofar as it is consistent with applicable Federal policy objectives and is a discretionary regulatory requirement. In identifying a selection of best available data in the “2017 SUA Study,” data utilized to develop HCSUA standards establishes a discretionary requirement. FNS authorizes other flexibilities for the state issuance of SNAP benefits to households on tribal lands, *see* 7 CFR 274.2(d)(2).

Allowing tribes to supply FNS with requisite utility data also addresses potential differences that may arise in FNS’ annual adjustment to American Community Survey (ACS) and Residential Energy Consumption (REC) data based on the Consumer Price Index (CPI). Standard calculations for CPI or a basket of consumer goods relies on urban population data. For example, tribes in Washington State see a 7 percent higher costs of a Thrifty Food Plan food basket in supermarkets near reservations than the national average.[[2]](#endnote-3) Recognizing tribal variance in available data allows FNS to mitigate potentially adverse impacts against American Indian and Alaska Native citizens.

**Changes to Current SUA Options**

While only two states currently recognize geographic diversity in calculating HCSUA, FNS’ intent to revoke a geographic variance fails to assess utility cost differences across these states. Of the current 573 federally recognized tribes, 229 are located in Alaska. As a state, Alaska itself falls within five (5) different climate zones,[[3]](#endnote-4) which—when also considering Alaska’s topographical landscape—only increases variations in utility costs. Based on the Tribal Energy Atlas, we determined the average “Limited- and Middle-Income Household Monthly Electricity Expenditures” in dollars per month for all counties in Alaska as $119.89. At least four counties exceeded 130 percent of this average, with Bethel county almost doubling it at 199.4 percent. Geographic variance must be an allowed for households in counties to receive equitable SNAP benefits.

Due to housing shortages on tribal lands, Native households also face disproportionate rates of overcrowding. According to a statement by Sen. Murkowski, American Indian and Alaska Native households faced rates of overcrowding at 16 percent for tribal lands and 10 percent for urban areas.[[4]](#endnote-5) She compared this data to 2 percent of all households nationwide experiencing overcrowding. Despite only six states pursuing this option when considering HCSUA calculations, it must continue to be an allowable option when assessing eligible household SNAP benefits. This issue should not be referenced in terms of an administrative burden to State agencies and must be referenced in terms of providing HCUSA calculations which reflect the actual costs and realities facing tribal citizens on tribal lands.

Considering FNS’ intent to revoke heating and cooling costs in the electricity allowance where cooling expenses are minimal, FNS has not adequately clarified the threshold for “minimal” cost. Households with limited income may not be able to adequately off-set this difference as a percentage of their earnings in feeding their families and children.

**LUAs and Single Utility Allowances**

As discussed above, FNS must allow of maximum flexibility to consider publicly available tribal data on utility rates in order to calculate state HCSUAs. Capping the Limited Utility Allowances (LUA) and Single Utility Allowances (SUA) disallows the ability of households to adequately assess their utility expenditures and offset these costs in purchasing foods and standardizing these rates does not consider differences in actual utility expenditures based on household differences.

Not accounting for the differences referenced in this comment by deeming them “minimal” or otherwise marginal, as stated by this proposed rule, is counter to the congressional intent of SNAP:

“. . . to promote the general welfare, to safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households. Congress finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation’s agricultural abundance and will strengthen the Nation’s agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a supplemental nutrition assistance program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.”[[5]](#endnote-6)

**Updating the Telephone SUA**

We appreciate FNS for recognizing the necessity of basic internet access in finding and maintaining employment, applying for college and other higher education, and other necessary functions. While internet and broadband access continues to be a challenge on tribal lands, FNS’ willingness to incorporate basic internet services in a broader telecommunication standard may allow more households to both feed their families and access essential internet services.

Again, we appreciate FNS willingness to support greater program integrity for SNAP. We welcome the opportunity to speak with FNS about effectively implementing HCSUA standards on tribal lands.

Sincerely,

[Signature]

1. U.S. Department of Energy Office of Indian Energy. “Tribal Energy Atlas.” *Tribal Energy Atlas*. National Renewable Energy Laboratory, n.d. https://maps.nrel.gov/tribal-energy-atlas/. [↑](#endnote-ref-2)
2. Meghan O’Connell M.D., Debra S Buchwald M.D., and Glen E Duncan Ph.D. “Food Access and Cost in American Indian Communities in Washington State.” Journal of the American Dietetic Association 111, no. 9 (September 1, 2012): 1375–79. https://doi.org/https://doi.org/10.1016/j.jada.2011.06.002. [↑](#endnote-ref-3)
3. Western Regional Climate Center. “Climate of Alaska.” Desert Research Institute, n.d. https://wrcc.dri.edu/narratives/ALASKA.htm. [↑](#endnote-ref-4)
4. United States. Cong. Senate. Committee on Indian Affairs. Field Hearing on Overcrowded Housing and the Impacts on American Indians and Alaska Natives. August 25, 2018. 115th Cong. 2nd sess. Washington: GPO, 2018 (statement Sen. Lisa Murkowski). [↑](#endnote-ref-5)
5. 7 U.S.C. § 2011. [↑](#endnote-ref-6)