

**Instructions on submission of comment for USDA Food and Nutrition Service Food Distribution Programs: Improving Access and Parity proposed rules**

[FNS is requesting comments](#) to their proposed changes to regulations on food distribution programs. The deadline to submit comments is October 13, 2023. Those food distribution programs include:

- Commodity Supplemental Food Program (CSFP);
- Food Distribution Program on Indian Reservations (FDPIR);
- The Emergency Food Assistance Program (TEFAP);
- USDA Foods disaster response.

Comments can be made three ways:

- **Online comments can be submitted to [Regulations.gov](#):**
  - If not directed to the regulations.gov page specifically for this comment, search for the “Agency/Docket Number: FNS-2023-0026” and follow the prompts for submitting a comment.
  - When the portal asks ‘What is your comment about?’, choose the best option for the organization or role you are representing. For example, if you are submitting a comment on behalf of a Tribal government as an elected leader or their designated proxy, choose ‘Govt. – Other’.
- **U.S. Mail:** Food Distribution Policy Branch, Policy Division, Food and Nutrition Service, P.O. Box 2885, Fairfax, Virginia 22031–0885.
- **Overnight, Courier, or Hand Delivery:** Gregory Walton, Supplemental Nutrition and Safety Programs, Food Distribution Policy Branch, Food and Nutrition Service, 1320 Braddock Place, 3rd Floor, Alexandria, Virginia 22314.

All officially submitted comments are subject to public disclosure.

For any questions about these or other issues, contact Gregory Walton, Program Analyst, Food Distribution Policy Branch, Supplemental Nutrition and Safety Programs, U.S. Department of Agriculture's Food and Nutrition Service, 1320 Braddock Place, 3rd Floor, Alexandria, Virginia 22314 at 703–305–2746 or [Gregory.Walton@usda.gov](mailto:Gregory.Walton@usda.gov).

Below is a draft comment letter compiled using feedback from Indian Tribal Organization staff and Tribal leaders who utilize food distribution programs under the USDA Food and Nutrition Service. The comments and recommendations in the comment template are meant as a guide. They can be tailored to each individual Tribal nation’s unique circumstance as appropriate.

Place on appropriate letterhead [if applicable]

DATE

Gregory Walton,  
Program Analyst, Food Distribution Policy Branch, Supplemental Nutrition and Safety Programs  
U.S. Department of Agriculture's Food and Nutrition Service  
1320 Braddock Place, 3rd Floor  
Alexandria, Virginia 22314

**Re: Comment on USDA Food and Nutrition Service Food Distribution Programs: Improving Access and Parity**

Dear Mr. Walton,

On behalf of [INSERT NAME OF ORGANIZATION IF APPLICABLE], I am submitting the following comments on the U.S. Department of Agriculture's Food and Nutrition Service (FNS) proposed updates of regulations governing food distribution programs to improve access and parity. Included in the rule are changes to four programs: The Food Distribution on Indian Reservations Program (FDPIR), The Commodity Supplemental Food Program (CSFP), The Emergency Food Assistance Program (TEFAP), and The USDA Foods in Disaster Program.

Many of the proposed changes are welcome and reflect input from Tribal leaders and Indian Tribal Organizations (ITOs) through official Consultations with USDA. To best meet the update's stated goals of improving access and parity in these programs, we wish to offer further clarification and suggestions to improve the proposals. We will address each program separately.

**The Commodity Supplemental Food Program (CSFP)**

1. *USDA Proposal: Increase the maximum CSFP income eligibility standards at 150% of the federal poverty level while requesting public comment on a standard of 185%.*

While a limited number of Tribal organizations operate Commodity Supplemental Food Programs (CSFP), increasing eligibility guidelines to match the challenging socioeconomic circumstances in certain part of Indian Country is a positive adjustment. Similar to challenges in using national and regional data in determining eligibility for the Food Distribution Program on Indian Reservations (FDPIR), the current CSFP income guidelines of 130% of the federal poverty level often do not capture the economic situation on the ground in remote, geographically isolated Tribal jurisdictions.

These circumstances are why we also support FNS' approach at opening comment to raising the standard to 185% of the federal poverty level. Many Tribal jurisdictions remain some of the most economically challenged parts of the country, and elders there live in circumstances distinctly different from their counterparts in suburban and urban communities. We welcome this opportunity to comment and hopefully increase this income guideline in hopes of assisting more eligible participants.

2. *USDA Proposal: Requesting public comment about allowing CSFP applicants to be eligible via participation in other federal means-tested programs with income limits at or below CSFP's.*

As noted above, a limited number of Tribes and Indian Tribal Organizations (ITOs) operate CSFP. Many of those who do also manage other federal means-tested programs that mirror those of CSFP's. In

practicality, that means program staff working with these populations often face duplicative tasks in verifying eligibility. For many ITOs, staff and administrative capabilities are limited at the best of times. Simply put, they do not have the technical infrastructure, financial means and personnel pools to carry out overly burdensome and duplicative paperwork compared to their State counterparts.

Any opportunity to streamline this process for CSFP ITO program staff by using eligibility data that matches CSFP's to keep elders fed is a welcome one. We support this change.

3. *USDA Proposal: CSFP state and local agencies may establish other methods of verifying the identity of participants when receiving a food package.*

While CSFP is a federal program, Tribes operate in a distinctly different legal and jurisdictional environment than their state and local counterparts. Allowing Tribes to use their own, culturally relative methods of identity verification, such as through Tribal identification cards or Certificate of Degree of Indian Blood (CDIB) if they choose, respects their sovereignty and efficient management of the program.

4. *USDA Proposal: CSFP State agencies are required to annually post a list of all local agencies and recipient agencies on a public webpage, as well as making the current state plan available on a public webpage.*

This reflects current practices and potentially increases awareness of the program, and we have no problem with this being added as a requirement. Many ITOs already have webpages or social media accounts where this information is listed, so the requirement of listing local and recipient agencies online should not be an undue burden on ITOs. However, we offer an additional recommendation: states should be required to include ITOs offering CSFP in their annual online listings or promotional materials, so that any Tribal citizen who sees the state website also sees that a Tribe is offering the program as well. Tribal citizens may feel more comfortable connecting with a Tribal CSFP, which would support the goal of increasing access to this critical program.

Additionally, although we know the regulatory definition of "State agency" includes ITOs, when dialoguing about these programs or writing prefatory language to proposed regulations, as here, we urge USDA to always explicitly include a call-out for Tribal Nations or ITOs. For example, here, USDA has written: "The Department proposes adding a new provision at § 247.5(b)(16), which would require State agencies to make publicly available a list of all CSFP distribution sites, including both local agencies and agencies operating under an agreement with a local agency." Small changes here can make a big difference in Tribes and Tribal citizens seeing themselves as eligible to access or operate this program: *The Department proposes adding a new provision at § 247.5(b)(16), which would require State agencies, **including Indian Tribal Organizations**, to make publicly available a list of all CSFP distribution sites, including both local agencies and agencies operating under an agreement with a local agency.*

This is a small change in language that increases awareness that Tribes can and do operate this program, not only to potential Tribal elders in need of services and support, but also to Tribal Nations that do not currently operate the program. It is challenging for Tribes to see themselves as eligible to administer these critical programs when the language used to describe administrators is entirely state-based. Again, we understand that the regulatory definition of State agency does include Tribes and that it would likely take an act of Congress to separate the two for the purposes of the regulation, but where there are opportunities for Tribes to be called out as well, we urge USDA to take that step in

communications.

5. *USDA Proposal: Where applicable, local agencies must share written information and referrals to the Senior Farmers' Market Nutrition Program (SFMNP) to expand awareness and access to the program.*

Many ITOs already manage or partner with SFMNP in their areas, and this proposal would not be considered overly burdensome on their existing work. However, there remain instances of non-Tribal local and State agencies who operate in the general vicinity of ITOs not knowing the former exist. We suggest that the FNS regional Tribal liaisons in each region support their Tribal Nations by providing periodic updates on other CSFP or SFMNP program operators in the area.

6. *USDA Proposal: Technical corrections in language, titles and other items.*

Finally, we welcome the proposed changes that replace outdated terminology, such as “commodities” and “elderly” in regulatory language. In those, and other suggested proposals removing cross-citations to the Women, Infant, Children Program in the technical corrections, we see no additional need for input.

### **The Food Distribution Program on Indian Reservations (FDPIR)**

1. *USDA Proposal: Remove the current definition of ‘urban place’ and allowing ITOs to service urban places outside of reservations without submitting a request and justification.*

This proposal comes from input by Tribal leaders during Nation to Nation Consultations with FNS leadership and it is good to see this proposal here, as it reflects nearly a decade of dialogue between FNS and Tribal leaders. As a result of historic federal policies, enrolled citizens and descendants of Tribes across the country may live in urban areas outside the reservation. Yet they still face challenges in securing stable, nutritious foods, and have difficulty in obtaining FDPIR services despite living in a Tribe’s FNS service area. The proposed change allows ITOs to serve Tribal citizens in urban areas without the administrative burden of requesting and justifying the need. Removing this barrier reflects the contemporary living situations of Tribal members and descendants and is necessary to meet their needs.

We do offer one cautionary recommendation, which was also offered by some Tribal leaders during consultation on this issue. USDA must include language in this updated regulation that makes it clear an ITO has the *option* to serve these urban places if the ITO so chooses, but that it is not a requirement. It should not be a mandatory requirement on any ITO to offer FDPIR to these areas given the limitations many have in personnel, administrative, and transportation capabilities. This small change preserves Tribal sovereignty in offering this program and eliminates a burdensome and needless administrative requirement at the same time.

2. *USDA Proposal: Adding a waiver capability allowing FNS to waive or modify specific regulatory requirements for ITOs in certain situations.*

The need for more programmatic flexibility that respects Tribal sovereignty in offering these programs has also been a repeated topic at Nation to Nation consultation between FNS and Tribal leaders. As Tribal leaders have pointed out in consultation, when these programs were originally designed, it was often without robust input—or indeed, any input—from Tribal Nations, and offering

them today in the Nation to Nation era often poses challenges as a result. Waiver authority has been used across numerous federal departments to break through bureaucratic and regulatory barriers in order to help Tribes and their federal partners be more responsive to the unique needs of Tribal citizens on a Tribe-by-Tribe basis. Tribal leaders have previously proposed that FNS honor the broad waiver language of Executive Order 13175, which applies to all federal departments and would enable waiver of discretionary provisions in programs. So far, Tribal requests to apply that existing waiver language to specific FDPIR programmatic circumstances has not been met with approval. FNS has been reluctant to utilize this language. It seems that the waiver language proposed here is an attempt at compromise.

To the extent that this waiver language offers more flexibility than exists currently and establishes a process for providing that flexibility, this is a positive proposal. This waiver language also brings FDPIR waiver circumstances in line with SNAP, which has also been a goal of Tribal leaders' as expressed in Nation to Nation consultation with USDA. However, the proposed language here is much less broad than Tribal leaders have requested. We also have concerns about the nature of the documentation USDA would expect a Tribe to provide when making a request and providing a "compelling reason" for a proposed change. For Tribal Nations, the exercise of our sovereignty is the only compelling reason needed; reasons beyond that are merely creating burdensome paperwork and administrative processes for both Tribes and USDA alike.

More dialogue is likely needed in consultation on this issue with USDA, especially around the conditions under which a Tribe might be granted a waiver. Broad waiver authority like that already existing in EO 13175 both honors sovereignty and enables quick adaptation to unknown future needs. Before 2020, no one envisioned the circumstances brought on by the COVID pandemic. Programs without flexibility were greatly disadvantaged and the most vulnerable populations suffered. We must build flexibility into programs so that they may continue to operate effectively, even during times of unforeseen circumstances.

3. *USDA Proposal: Increasing FDPIR shelter and utility standard deductions to SNAP maximum deduction levels and allowing FDPIR households to use actual expenses to calculate the deductions.*

This is a much-needed change, and another that comes directly from the Tribal Leaders Consultation Work Group that sits in Consultation with FNS three times a year to address challenges within the Food Distribution Program on Indian Reservations. As mentioned above, too often regional and state-focused program calculations fail to consider the distinct conditions present on Tribal reservations and Alaska Native village jurisdictions. State SNAP calculations often fail to incorporate the increased costs of living and transportation in geographically remote reservations, the lack of available vendors to service these areas and the challenge for participants to reach distribution points without reliable transportation.

Tribal leaders most recently noted that FDPIR participants have essentially been punished with lower support compared to their SNAP counterparts because inflation adjustments to the Standard Utility Allowance were not given to FDPIR participants.<sup>1</sup> This change to the deduction calculation will increase FDPIR access for Tribal citizens and begins to acknowledge and take into account the varying circumstances in many Tribal communities. This sentiment has been echoed by many ITO staff and it is

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<sup>1</sup> Meeting Minutes From Tribal Leaders Consultation Working Group Food Distribution Program on Indian Reservations, (Aug. 2, 2022)(on file with IFAI).

good to see USDA listening to what Tribal leaders raise in consultation in affirmation of the Nation to Nation relationship that we share.

4. *USDA Proposal: Mirroring SNAP regulations by granting separated spouses living apart the 'separated household status' and matching SNAP requirements determining parental control of minor children.*

This is another much needed change that has come from consultations. This will allow for greater flexibility for Tribal families who – for whatever circumstances – live in separate households and who have previously been denied the 'separated household status' because one is a FDPIR participant. In other instances, only heads of households could make a request to have a child removed from SNAP participation, essentially barring enrollment in FDPIR even if they were no longer in the SNAP-receiving household.<sup>2</sup> By again keeping SNAP and FDPIR requirements in parity, participants have a more seamless opportunity to migrate from either program through commonly held verification standards.

5. *USDA Proposal: Institution of periodic assessments of USDA Foods in FDPIR packages to Dietary Guidelines for Americans (DGA) and adjustment of its contents consistent with basic dietary needs.*

FNS' cooperation with the FDPIR Food Package Work Group is another example of successful collaboration between the agency, its partners and ITO staff distributing these packages to participants. By hearing from ITO staff on the frontlines of this work, the Department has made progress in incorporating more nutritious, and on occasion, culturally-appropriate foods for American Indian and Alaska Native participants. Tribal leaders from the FDPIR Working group encourage FNS and its federal partners to streamline the process of adding new food package items in a timely manner when responding to requests arising from Tribal dietary needs and preferences.<sup>3</sup> We applaud FNS' clear statement in the proposed rule language noting these periodic assessments will not be used to reduce or to eliminate items or quantities without ITO support.

Finally, echoing requests from Tribal leaders, we call on FNS to extend parity provisions from SNAP to FDPIR when the latter is increased. During the pandemic, food package quantities failed to keep pace with the expansion of SNAP benefits.<sup>4</sup> This cannot be allowed to take place in the future, especially in times of national emergencies. USDA could require any increase or decrease in SNAP benefits to immediately trigger FDPIR package review. Tribal leaders have asked for this before, and it would support greater parity between the programs

6. *USDA Proposal: Exploring other income guidelines and data sources for FDPIR participation outside of information from U.S. Department of Health and Human Services (HHS) and FNS resources.*

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<sup>2</sup> Meeting Minutes From Tribal Leaders Consultation Working Group Food Distribution Program on Indian Reservations, (Aug. 11, 2021)(on file with IFAI).

<sup>3</sup>Meeting Minutes From Tribal Leaders Consultation Working Group Food Distribution Program on Indian Reservations, (June 27, 2023)(on file with IFAI).

<sup>4</sup>Meeting Minutes From Tribal Leaders Consultation Working Group Food Distribution Program on Indian Reservations, (Dec. 6, 2023)(on file with IFAI).

HHS and FNS income guidelines based in national and regional standards do not always accurately reflect the situations of those living in Indian Country. FNS should simplify this process by providing for an alternate calculation for determining eligibility. USDA should allow applicants to qualify using either of the following formulas to determine FDPIR eligibility: (1) increased gross income guidelines, without deductions, or (2) current guidelines that include increased shelter and utility cost deductions.

7. *USDA Proposal: Exploring making FNS use gross income guidelines without deductions in income eligibility determinations.*

As repeated through the years of Consultations, one of the main challenges in securing full program participation is staff and administrative time in appropriately navigating federal participation guidelines in these programs. Many ITOs operate on razor thin margins, having minimal administrative staff capabilities compared to the needs of eligible participants. Using eligibility criteria that accepts gross income guidelines without deductions would simplify the process for many ITOs. Staff these have noted that localized guidelines – down to the Tribal level, or at least, county level – will better reflect the income eligibility situation for program participants.

8. *USDA Proposal: Requesting public comment from ITOs on if administrative funding methodology meets their needs to run the programs, how it can be improved, and how effective the regional allocation and budget negotiation process is. Also requesting comment on whether another model would better serve ITOs.*

Tribal leaders and ITOs staff who operate programs in the food and nutrition space always welcome the opportunity to comment on programmatic updates that may improve their delivery. As mentioned above, ITO staff are often limited in time and resources. Regional allocation and budget negotiations simply do not capture the full scope of challenges ITOs deal with compared to state counterparts operating SNAP.

NAFDPIR recently conducted a membership survey of ITOs on this issue. Responses were varied, with some ITOs indicating that the current structure meets needs, while many others shared that the current administrative funding methodology is lacking and needs to be adjusted. Proposals for how to do so varied but included calls for increased flexibility with administrative funds used to operate the programs. Given the varied responses and unique needs of each Tribe, USDA should work with NAFDPIR to seat a working group on this issue, following a similar process to that used in 2008.

Additionally, we share the sentiments of Tribal leaders' longtime calls for better overall Tribal inclusion into the USDA annual budget negotiation process, a framework that has long existed at other federal departments. This would not just support better, more harmonious partnerships between ITOs and USDA, but would support Tribes as a whole in accessing USDA authorities and helping to ensure that USDA upholds its federal trust responsibility. Giving Tribes the ability to help shape these programs in partnership with USDA would go a long way to supporting their success before agency appropriations requests begin for each fiscal year.

9. *USDA Proposal: Technical corrections in language, titles and other items.*

Finally, we welcome the proposed changes that replace outdated terminology, such as “commodities” and “food stamps” in regulatory language. In those, and other suggested proposals in the technical correction, we see no additional need for input.

In summary, the FNS’ proposals contain some positive changes, not just for FDPIR. They show thoughtfulness of considering the processes that challenges that impact ITOs using these programs that have been the basis of feedback from Tribal leaders at Consultations for several years now. By furthering incorporating the suggestions above, we believe progress in program delivery can only improve.

Thank you again for the opportunity to offer comment on these proposed regulations.

Sincerely,  
[insert signature]