

Food and Nutrition
Service

1320 Braddock
Place
Alexandria, VA
22314

DATE: May 10, 2023

SUBJECT: Food Distribution Program on Indian Reservations (FDPIR)
Administrative Match Waiver for Substantial Burden

TO: Regional Directors
Supplemental Nutrition Division
MWRO, MPRO, NERO,
SERO, SWRO, and WRO

Food Distribution Directors
All FDPIR Indian Tribal Organizations (ITOs) and State agencies

Introduction

On December 20, 2018, the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) was signed into law. Section 4003 of the 2018 Farm Bill modified Section 4(b) of the Food and Nutrition Act to increase the Federal share of Food Distribution Program on Indian Reservations (FDPIR) administrative costs to no less than 80 percent, thereby decreasing the required Indian Tribal Organizations (ITO)/State agency administrative match from 25 percent to 20 percent. Section 4003 also codified an existing regulation to allow State agencies and ITOs to submit an administrative match waiver request based on financial burden, and added a new provision to allow State agencies and ITOs to qualify for the administrative match waiver if funding their share of the costs would be a substantial burden for the ITO/State agency. These changes effectively streamlined the process and requirements for ITOs to request administrative match waivers with the goal of making this relief more easily accessible.

The purpose of this memorandum is to provide guidance on submitting an administrative match waiver request for substantial burden [substantial burden waiver]. The Food and Nutrition Service (FNS) recognizes that not all ITOs/State agencies have been fully utilizing the substantial burden waiver and there may be unmet needs that the waiver could help address. This memo seeks to clarify the streamlined waiver process and outline reasons a substantial burden waiver may be needed. ITOs/State agencies are encouraged to carefully consider their need for a substantial burden waiver when constructing their FDPIR annual budgets and should consult with their respective FNS Regional Office as needed for support in developing their waiver request.

FNS stands ready to provide technical assistance to ensure ITOs/State agencies can efficiently request and receive approval for substantial burden waivers, as appropriate, to ensure they can continue providing critical FDPIR nutrition assistance for their communities.

Overview of Administrative Match Waivers

Per 7 CFR 253.11(c)(1), unless Federal administrative funding is approved at a rate higher than 80 percent of approved administrative costs in accordance with 7 CFR 253.11(c)(3), each ITO/State agency must contribute 20 percent of its total approved administrative costs.

Furthermore, per 7 CFR 253.11(c)(2), the FNS Regional Office may approve a waiver reducing an ITO/State agency's matching requirement below 20 percent. An ITO/State agency may request a waiver based on either financial inability or based on substantial burden. The waiver may be of the entire 20 percent match, or some portion of it.

FNS supports ITOs/State agencies requesting a full waiver if it would best serve the needs of their communities and allow for greater investment in FDPIR than would otherwise be possible. The information in this memorandum provides information on waivers submitted based on substantial burden.

Definition of a Substantial Burden

A substantial burden means the ITO/State agency would be substantially negatively impacted if it is required to provide the full or partial share of administrative funds.

The Process for Submitting a Substantial Burden Waiver

The ITO/State agency may request a waiver to reduce the matching requirement below 20 percent in accordance with 7 CFR 253.11(c)(2). All requests for a substantial burden waiver must be submitted in writing. The following information must be included in the substantial burden waiver request:

The ITO/State agency must submit a signed letter from the leadership of the Tribal agency or the leadership of the State agency that oversees the FDPIR.

The letter must describe why providing the match would be a substantial burden for the ITO/State agency. Additionally, the substantial burden waiver letter must include compelling justification of why the match requirement is imposing a substantial burden.

On the following page are examples of compelling justification for a substantial burden waiver. This list is not exhaustive and other justifications are acceptable.

Examples of Justifications for a Substantial Burden Waiver

1. Providing the 20 percent FDPIR administrative match would deplete funding reserves to a level that would have a substantial negative impact on the ITO/State agency.
2. Funds allocated to the FDPIR match had to be redirected because the ITO/State agency received a new grant that requires a match for which no waiver is allowed.
3. The ITO/State agency would miss an opportunity to attend nutrition education training and/or conduct a nutrition education project.
4. The ITO/State agency experienced a decline in revenue that would necessitate a reduction in Tribal services to meet the match requirement.
5. The ITO/State agency needed to divert funding planned for the FDPIR match to other emergency or unplanned needs of the ITO/State agency, or to complete a much-needed project.
6. Additional funding has been requested by the ITO/State agency for allowable program expenses, but they do not have additional funding to put towards the 20 percent match.

Additionally, please see Attachment A for a letter template that could be submitted for a substantial burden waiver. Use of this template is not required; it is an optional tool to simplify the waiver request process.

Conclusion

FNS Regional Offices must approve all waivers that meet the requirements per 7 CFR 253.11(c)(2). ITOs/State agencies who have questions about the match waiver process, including the substantial burden waiver, should reach out to their FNS Regional Office.

/s/ Original Signature on File

Mary Rose Conroy
Director
Funding and Technology Division
Supplemental Nutrition and Safety Programs

Attachments

Attachment A

Letter Template for Substantial Burden Waiver

Date

Name
Supplemental Nutrition Division Director
XX Regional Office

Dear Name,

[Insert ITO name] is requesting a waiver of the 20 percent match for FDPIR administrative funds for [insert fiscal year]. The 20 percent match for FDPIR administrative funds would be a substantial burden to our ability to provide general welfare and support services to our Tribal members.

[Describe compelling justification for why the ITO/State agency is unable to meet the match, including how the funds that would be used for matching are being used instead and how the community would be negatively impacted if the waiver was not granted, such as a need to cut other services, spend down reserves, or decrease investment in FDPIR]. As a result of these competing needs, the funding that would otherwise have been used to meet the FDPIR match is no longer available.

Please consider this our formal request for the required FDPIR match to be waived so we can continue to operate the essential and critical Food Distribution Program, and so we can also provide our community with [other goods or services being provided with funds that would otherwise be used for matching].

If you have any questions, please contact [insert contact name and contact information].

Sincerely,

[Leadership from Tribal Agency overseeing FDPIR]