



Food and
Nutrition
Service

1320 Braddock Place
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DATE: September 13, 2022

SUBJECT: Supplemental Nutrition Assistance Program (SNAP) – Tribal Consultation

TO: All SNAP State Agencies
All Regions

The U.S. Department of Agriculture’s Food and Nutrition Service (FNS), Tribes, and Supplemental Nutrition Assistance Program (SNAP) State agencies share goals to improve nutrition and health for American Indians/Alaskan Natives (AI/AN) through nutrition assistance and nutrition education.

Expectations for the Department of Agriculture

USDA Departmental Regulation (DR) 1350-002, entitled *Tribal Consultation, Coordination and Collaboration*, “directs the USDA and its agencies to provide Federally recognized Tribes the opportunity for government-to-government consultation and coordination in policy development and program activities which have direct and substantial effects on their Tribe.”

The DR, applicable to USDA and FNS, defines Tribal consultation as:

“the timely, meaningful, and substantive dialogue between USDA officials who have delegated authority to consult, and the official leadership of Federally recognized Indian Tribes, or their designated representative(s), pertaining to USDA policies that may have tribal implications.”

Furthermore, the DR says:

“Involving States. In some instances, the authority and appropriations for USDA programs and services that affect Tribes flow through the States for the benefit of Tribes, based on statute, regulation or USDA policy. It is important that USDA facilitate collaboration and communication between States and Tribes under appropriate circumstances as determined by all parties involved.”

Though the Tribal consultation described in the DR occurs at the Federal level between senior USDA officials and elected leaders of Tribes, some of the same elements of consultation pertain to State agencies and Tribes per statute and SNAP regulations.

SNAP State Plan Consultation Requirements

Section 11(d) of the Food and Nutrition Act of 2008, as amended, states the following:

“A State agency, as defined in section 3(s)(1), before it submits its plan of operation to the Secretary for the administration of the supplemental nutrition assistance program on all or part of an Indian reservation, shall consult in good faith with the tribal organization about that portion of the State’s plan of operation pertaining to the implementation of the program for members of the tribe, and shall implement the program in a manner that is responsive to the needs of the Indians on the reservation as determined by ongoing consultation with the tribal organization.”

Section 3(v) of the Food and Nutrition Act of 2008, as amended, also states the following:

““Tribal organization” means the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as the term “Indian tribe” is defined in the Indian Self-Determination Act (25 U.S.C. 450b(b)), as well as any Indian tribe, band, or community holding a treaty with a State government.”

Based on these statutory definitions, the terms “Tribe” and “State agency” are used throughout this document from this point forward for consistency purposes, unless it is a direct quote from a noted source.

FNS Expectations for SNAP State Agencies

The Food and Nutrition Act, as amended (the Act) and FNS regulations have specific requirements relating to State agency and Tribal consultations. State agencies are required to consult with Tribes about various aspects of SNAP administration. Specifically, SNAP State agencies must adhere to all relevant regulations regarding State Plans of Operation, SNAP Nutrition Education (SNAP-Ed) Plans, and SNAP Employment and Training (E&T) Plans regarding consulting with Tribes.¹

To meet these requirements, FNS expects SNAP State agency officials to engage in timely, meaningful, and substantive dialogue with the official leadership of Tribes, or their designated representatives, pertaining to elements of the SNAP State Plans of Operation, including SNAP-Ed Plans and SNAP E&T Plans, that have Tribal implications, as outlined in this memo.

An FNS representative may join consultations to observe and support meaningful consultation. The FNS representative could include Agency leadership, FNS Tribal Affairs staff, or other designated FNS staff.

As part of its regular review of State Plans of Operation, FNS will confirm that State agencies have consulted with Tribes before approving State Plans. During the plan review process, FNS will also obtain feedback from a sampling of Tribes on the effectiveness of the

¹ Information collection under the SNAP State Plans (WIMS) is covered under OMB approval #0584-0083.

consultation process. If FNS determines the State consultation process needs improvement, FNS will engage the State to provide technical assistance to make necessary changes. FNS may also request State agency records of the consultation as part of reviews as noted in 281.2(b).

Relevant regulations are:

- **7 CFR 272.2(b)(1)** (For States with Indian Reservations only). “Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with Tribal Organizations about that portion of the State’s Plan of Operation pertaining to the implementation of the Program for members of the Tribe on reservations.”
- **7 CFR 272.2(e)(7)** “Where applicable, State agencies shall consult (on an ongoing basis) with the Tribal Organization of an Indian reservation about those portions of the State Plan of Operation pertaining to the special needs of the members of the Tribe.”
- **7 CFR 281.2(b)** “In addition to the public comment requirements in 7 CFR 272.2, the State agency shall submit for comment its service plans, and all other portions of the State plan that directly pertains to the operation of the Program for residents on the reservation to the responsible ITO for reservations that qualify under paragraph (a)² of this section. The ITO shall have 30 days to provide comments in writing to the State agency. The State agency shall, if appropriate and to the extent practicable, incorporate into its plans any suggestions made by the ITO. Additionally, the State agency shall administer SNAP in a manner that is responsive to the needs of the Indians on the reservation, as determined by ongoing consultation with the ITO and by other means, regarding such areas of program operation as project area designation, operating procedures, locations and hours of certification and issuance, staffing and corrective action plans. The State agency shall maintain records of consultations on State plans and ongoing consultations held with ITO's for review by FNS. FNS shall study these records as part of reviews in accord with 7 CFR 281.3 and Management Evaluation Reviews of the State agency.”

² Describes how ITOs qualify for participation by demonstrating to FNS their governmental jurisdiction over reservation areas and the geographic boundaries of these areas. [https://www.ecfr.gov/current/title-7/section-281.2#p-281.2\(a\)](https://www.ecfr.gov/current/title-7/section-281.2#p-281.2(a))

If a State agency fails to follow program requirements with regard to Tribal consultation, FNS will follow its established protocols and engage with the State to ensure that appropriate corrective action is planned and executed per 7 CFR 275.16 and 275.17.

Record Keeping

Per these regulations, the State agency must maintain records of consultations on State plans and ongoing consultations held with Tribes and make them available for review by FNS. These records need not be submitted with the State Plan of Operations, but any portion of the Plan pertaining to Program implementation for citizens of the Tribe on reservations should reflect these consultations. State agencies must also provide Tribes with all portions of the State plan relevant to SNAP operations on Tribal lands and provide 30 days for written comment.

To meet State Plan requirements, State agencies **should explicitly** describe any consultation that occurred with Tribes in the annual SNAP State Plan of Operations, to include SNAP-Ed plans, SNAP E&T plans, and all portions of the plan that pertains to SNAP implementation on all or part of a reservation where Tribes exercise governmental jurisdiction. There should be at least one month's advance notice of the consultation provided to the Tribes involved. At a minimum, the SNAP State Plan of Operations should include:

- Name(s) of the Tribes participating in the consultation;
- Name(s) and title(s) of the individual(s) that participated;
- The invitation sent, as well as any accompanying documents;
- Brief description of the outcome of the consultation, the requests made during the consultation as well as the State agency's response to these requests, and how it will impact the State Plan of Operations; and
- Description of written comments received and outcome.

In the State Plan of Operations Checklist, State agencies should describe the consultations conducted with Tribes about general SNAP implementation since the last submission. FNS will review these descriptions as part of the annual review of the State Plan of Operations. If the information is missing or incomplete, FNS will require the State agency to provide additional information prior to approving that section(s) of the State Plan of Operations (7 CFR 281.2(b), 7 CFR 272.2(e)). State agencies must describe SNAP-Ed and SNAP E&T consultations and outcomes within those specific plans.

Requirements for Conducting SNAP-Ed Consultation and Needs Assessment

As noted above, State agencies are required to consult with Tribes as part of the SNAP-Ed State Plan. State agencies must include and consider the needs of AI/AN populations in

conducting a holistic needs assessment for SNAP-Ed and coordinate with State and local operators on how those needs assessments can be conducted.

Relevant regulations are:

- **7 CFR 272.2(d)(2)(iii)** “Describe methods the State agency will use to identify its target audience. FNS will consider for approval targeting strategies and supporting data sources included in SNAP-Ed Plan Guidance and alternate targeting strategies and supporting data sources proposed by State agencies;”
- **7 CFR 272.2(d)(2)(iv)** “Present a valid and data-driven needs assessment of the nutrition, physical activity, and obesity prevention needs of the target population, and their barriers to accessing healthy foods and physical activity. The needs assessment should consider the diverse characteristics of the target population, including race/ethnicity, gender, employment status, housing, language, transportation/mobility needs, and other factors;”

Additionally, in the needs assessment, State agencies should:

- Consider the needs of AI/AN living on and off reservations and make efforts to include a focus and devotion of resources to Native nutrition education; and
- Indicate why specific population segments were chosen for intervention(s), such as need, trends, readiness for change, availability of effective interventions with sufficient reach and expected impact, and likely partners.

Sources of data may include obesity and poverty rates, racial/ethnic differences, Tribal citizenship status, fruit and vegetable consumption, and [Behavioral Risk Factor Surveillance System](#) data. State agencies should ensure that the data is less than 5 years old. The results should capture information on whether services are already being delivered to the target audience. Plans should make an explicit connection between needs assessment findings, Plan objectives, the description of where and to whom activities are focused, and the consultation information addressed earlier. Specific instructions regarding the information the State agency should include in the SNAP-Ed State plan can be found in the [SNAP-Ed Plan Guidance and Templates | SNAP-Ed \(usda.gov\)](#)

Requirements for Conducting a Tribal Consultation for SNAP E&T

As noted above, State agencies are required to consult with Tribes as part of the E&T State Plan. The consultations must pertain to the unique needs of Tribal citizens. State agencies must implement SNAP in a manner that is responsive to the needs of AI/ANs on the

reservation, including providing E&T services for AI/ANs living on reservations to the maximum extent possible. State agencies are also required to document the availability of E&T programs for Tribal citizens living on reservations.

Relevant regulations are:

- **7 CFR 273.7(c)(13)** States must ensure, to the maximum extent practicable, that Employment and Training programs are provided for Indians living on reservations.
- **7 CFR 273.7(c)(6)(xiii)** State agency must prepare and submit an E&T Plan to its appropriate FNS Regional Office. The E&T Plan must be available for public inspection at the State agency headquarters. In its E&T Plan, the State agency will detail the following: The availability, if appropriate, of E&T programs for Indians living on reservations.

Specific instructions regarding the information the State agency should include in the E&T State plan can be found in the [E&T State Plan Handbook](#).

State agencies with questions about this information should contact their respective Regional Office representatives.

Sincerely,

Cindy Long
Administrator
Food and Nutrition Service

cc: Tribal nations