



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted via regulations.gov

April 2, 2019

Brandon Lipps
Administrator
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive
Alexandria, VA 22303

Re: Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents

Dear Administrator Lipps,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide comment to the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) on the proposed changes to the work requirement waiver process utilized by states for Able-Bodied Adults Without Dependents (ABAWDs) within the Supplemental Nutrition Assistance Program, or SNAP. SNAP is a critical nutrition assistance program that ensures millions of low-income families, including American Indian and Alaska Natives (AI/ANs), have access to food. As a federal program, it is also a critical mechanism by which the United States meets its trust responsibility and obligations to Tribal Nations. The imposition of work requirements on AI/AN SNAP recipients runs counter to this sacred duty. USET SPF urges the USDA to meaningfully consult with Tribal Nations on the proposed rule and ensure that AI/ANs are exempt from any work requirements within the SNAP program.

USET SPF is an intertribal organization comprised of twenty-seven federally recognized Tribal Nations, ranging from Maine to Florida to Texas¹. USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

Absence of Tribal Consultation

Neither FNS nor USDA engaged in meaningful consultation with Tribal Nations prior to publishing the proposed rule. In spite of this, FNS acknowledged within the proposed rule that the changes would have an impact on Tribal Nations and thus invoke its consultative duties:

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

and determined that this rule has tribal implications that require tribal consultation under E.O. 13175.

FNS further notes within the proposed rule that it has only held one consultation meeting with Tribal leaders in March 2018. This is inadequate and fails to meet standards for meaningful and timely input. Additionally, USET SPF is troubled by USDA's inconsistent approach regarding the implications that the proposed changes would have on Tribal Nations as well as the necessitation of consultation in both the Advanced Notice of Proposed Rulemaking and proposed rule change.

Before this rule is allowed to move forward, USDA, including the OTR, and FNS, must consult with Tribal Nations by providing substantial opportunities for meaningful dialogue between the agency and Tribal Nations. USET SPF further recommends the comment submission deadline and the implementation date of the proposed rule be extended to provide for meaningful consultation with Tribal Nations and ample response time.

Work Requirements for AI/AN Violate the Trust Responsibility and Will Not Function as Intended—USDA Must Provide an Exemption

The trust responsibility and obligations to Tribal Nations is a legal and moral imperative shared by all branches and agencies of the federal government stemming from the exchange of the millions of acres of land and natural resources ceded to the U.S., oftentimes by force. This includes the USDA, with the programs and services delivered to Indian Country by the agency serving as a cornerstone of this imperative. AI/AN SNAP beneficiaries are fundamentally different from other recipients of the program, as our citizens access SNAP as a part of our government-to-government relationship with the United States, rather than simply due to income eligibility. Conditioning access to SNAP upon work requirements is a violation of that relationship.

Furthermore, many areas in Indian Country face unemployment rates of over 80%. These include counties facing persistent poverty where poverty rates and overall unemployment have continued for nearly thirty years unchanged. According to the U.S. Census Bureau, two of the five poorest counties in the U.S. are located on reservations. Additionally, according to the Bureau of Labor Statistics, AI/ANs have the lowest employment rate of any group in the United States. This is not because AI/AN citizens are not seeking work, but simply because few employment opportunities exist—often due to action or inaction on the part of the federal government. Thus, rather than increasing employment for AI/ANs, work requirements will merely restrict access to food in Indian Country.

Ultimately, any changes or improvements to the SNAP program must move forward in a manner that respects Tribal sovereignty and upholds federal treaty and trust responsibilities. We continue to oppose, in the strongest possible terms, any action taken by the federal government that fails to recognize this sacred duty, including the approval of a final rule without an exemption for AI/AN from work requirements. Tribal Nations share a special and unique relationship with the federal government that has been established and grounded within the Constitution, as well as federal laws and policies. USDA must include an exemption for AI/ANs as a reflection of this special relationship.

Support for Tribal Self-Governance in SNAP

As a matter of fundamental policy, USET SPF and Tribal Nations and organizations across the country oppose state involvement in the administration of federal programs in Indian Country. As such, it is wholly inappropriate for states to impose eligibility requirements upon AI/ANs within SNAP, including through the waiver process. Waivers of the ABAWD's time limits for AI/ANs, for example, must not depend upon state action.

USDA and FNS must honor the government-to-government relationship between the federal government and Tribal Nations, and ensure this responsibility not to be delegated to the states. USET SPF reminds USDA that upholding Tribal sovereignty is a responsibility and obligation of the federal government that is rooted in the Constitution, ratified by numerous treaties, reaffirmed by the Supreme Court, and codified by federal law. With this in mind, USDA should support and work toward Tribal self-determination in SNAP through the application of full P.L. 93-638 authority to the program. Tribal control over SNAP would result in the improved food assistance for Tribal citizens and would more fully reflect USDA's responsibility and obligations.

Conclusion

USET SPF continues to underscore that services provided through SNAP are another mechanism that the federal government utilizes to deliver upon the federal trust obligation to Tribal Nations. Impeding the ability of Tribal communities to utilize this program would be a violation of that obligation. The urgency and overall lack of outreach from the agency is troubling, as the proposed rule would limit access to critical food resources for Tribal Nations. USDA, FNS, and OTR must immediately provide the necessary exemptions within the proposed rule that are reflective of the unique relationship between the federal government and Tribal Nations. Further, the agencies must work to engage meaningfully with Indian Country to ensure that the proposed rule with not significantly reduce access to basic nutrition services. We look forward to working with USDA to ensure the department's obligations are fully met. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 202-624-3550.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director