



Food and
Nutrition
Service

1320 Braddock Place
Alexandria, VA
22314

DATE: September 13, 2022

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

TO: All SNAP State Agencies
All Regions

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), Tribes, and Supplemental Nutrition Assistance Program (SNAP) State agencies share goals of improving nutrition and health through nutrition assistance and nutrition education. As partners, these stakeholders work cooperatively to ensure that American Indians/Alaskan Natives (AI/AN) have full access to SNAP. As outlined in the memo dated **September 13, 2022**, to achieve these goals, the State agency must consult with Tribes and engage in ongoing, timely, and meaningful dialogue with them.

Tribal consultation has specific meanings and obligations for the Federal government. It is a diplomatic conversation between senior-level Federal government officials and elected leaders of Tribes and requires robust pre-decisional engagement. The USDA is not delegating its own continuing responsibility for Tribal consultation. Rather, in SNAP, the State agency is implementing a Federally funded program, and Congress has legislatively required that SNAP State agencies also conduct their own Tribal consultations.

Based on the statutory definitions outlined in the **September 13, 2022**, memo, FNS uses the terms “Tribe” and “State agency” throughout this document for consistency purposes, unless it is a direct quote from a noted source.

The purpose of this memo is to provide guiding principles that assist State agencies in meeting regulatory requirements. Effective engagement by State agencies with Tribes is essential to meeting the nutrition needs of citizens of Tribal nations.

Commitment: State agencies should commit to consulting with Tribes on matters that affect Tribal governments, agencies, and members. Communication between Tribal governments and State agencies should be direct and involve two-way dialogue and feedback.

State agencies should engage with Tribal leaders to establish a consultation relationship, discussing Tribes’ preferences and needs regarding consultation including:

- Identification of information needs as it relates to the operation of SNAP for Tribal citizens;

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- Identification of the key individuals with whom the Tribes want the State to consult;
- Logistics, such as preferred notice timeframes to support Tribal preparation and response; and
- Identification of an in-person and/or virtual location for the Consultation that is convenient to the Tribe(s) and allows for maximum participation.

Incorporating opportunities throughout the planning cycle or as an annual set of actions helps ensure that annual State Plans of Operation represent the considerations of all involved.

Identify the Triggering Events: A range of actions or situations can serve as triggering events to initiate consultation. The State agency and Tribes should clearly identify what actions or situations constitute a triggering event. Generally, any decision or action which would directly impact or involve a Tribal government, its land base, its citizens, and/or operation of its programs should result in consultation with those Tribal governments. The following are some common triggering events. Additional events might also require consultation. At a minimum, triggering events include:

- Preparation of annual SNAP State Plan of Operations, including SNAP-Ed and SNAP E&T Plans;
- Development or revision of State or local Program policies, regulations, or laws that have a potential impact on the Tribe;
- Program budget planning – that part of the budget that impacts the Program being operated on reservations; and
- Other events as determined by the State agency and Tribe.

Ensuring sufficient time for input exists before final decisions are made and actions taken requires early involvement of all parties affected by those actions. State agencies should involve Tribes early in the process and identify issues requiring consultation during the initial meetings between the State agency and Tribes to develop the consultation agreement. Once in place, as soon as a triggering event occurs, consultation can be initiated by either the Tribal government or the State agency.

Elements of an Effective Consultation: The following suggestions will help State agencies ensure consultations are timely, meaningful, and substantive:

Planning

- Develop a clear consultation plan in coordination with each Tribe in advance of the need to consult. Recognize that Tribes are traditionally, culturally, and

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- administratively different from each other. Tribes have varying degrees of governmental infrastructure and managerial and financial resources.
- Provide advance notice to Tribes. With the significant number of demands faced by most leaders of Tribes on their time, and often very limited resources, invitations to consult should be provided no less than 30 days in advance and at least 60 days when possible.
- Seek input from the Tribes in advance. The State agency should always ensure that the Tribe is given sufficient time for input before decisions are made and actions taken. Providing a written copy of the proposed program changes along with the invitation letter to allow the Tribe time to review it and develop their response is highly recommended.

Communication

- Consultation should always be between the appropriate Tribal and State agency leadership (State agency Secretary/Commissioner or officially designated proxy) and include policy or technical level staff as needed to increase understanding of any proposed actions and enhance the development of effective outcomes and solutions.
- Respond to and participate in the consultation process. State agencies should strive to ensure that sufficient communication and response is provided to any request for consultation by a Tribe. The State agency should not assume that the Tribe has no interest in participating in the process if the Tribe does not immediately respond to the State's request for communication. Tribal governments and organizational structures will vary. State agencies should make good faith efforts to involve affected governments.
- Maintain honesty and integrity in the consultation process. Mutual respect and trust are fundamental elements in establishing a good consultative relationship. State agency leadership and staff should be open with information that may be beneficial or critical to decision making or developing a position.

Appropriate Venue

- Discuss with the Tribes involved if they would prefer a face-to-face meeting or one on a digital meeting platform (e.g., Zoom, Teams, etc.), phone call, correspondence, or other methods of communication.

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Seek Consensus

- Similar to Tribal consultation at the Federal level, strive to reach consensus on issues. While consensus may not always be fully achieved, State agency officials should make every effort to involve Tribes in the decision-making process so that all views are heard and considered.

Document Meetings and Report Outcomes: The parties should agree on procedures to formally document consultation meetings and report outcomes. The documentation should include, at a minimum, agreements, disagreements, and final recommendations even if the parties were unable to reach consensus. The documentation should include the requests made during the consultation as well as the State agency's response to these requests. State agencies should record meetings with proper permissions of attending stakeholders. State agencies should implement and monitor all recommended follow-up actions and provide Tribal officials with reports on the status of the implementation of recommended items.

Furthermore, to meet State Plan requirements, State agencies should **explicitly** describe any consultation that occurred with Tribal organizations in the annual SNAP State Plan of Operations, to include SNAP-Ed, SNAP E&T plans, and all portions of the plan that pertain to SNAP implementation on all or part of a reservation where Tribes exercise governmental jurisdiction. At a minimum, this information should include:

- Name(s) of the Tribe participating in the consultation;
- Name(s) and title(s) of the individual(s) contacted;
- Brief description of the outcome of the consultation and how it will impact the State Plan of Operations; and
- Description of written comments received and outcome.

Record keeping is especially important since State agencies are required by regulations to maintain records of consultations on State Plans and ongoing consultations held with Tribes and make them available for review by FNS.

Summary

Improving nutrition and health through nutrition assistance and nutrition education and ensuring full access to SNAP requires ongoing, timely, and meaningful dialogue between State agencies and Tribes. State SNAP agencies should ensure State agency procedures are in place that respect Tribal sovereignty. Such practices enable the State agency to achieve prior and informed consultation before initiating a project or program that directly and tangibly affects Tribes, their rights, tribal lands, and citizens. Consultation also ensures that Tribes have a complete understanding of potential actions and the opportunity to identify and address Tribal concerns regarding actions that directly affect Tribal citizens.

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

Sincerely,

CYNTHIA
LONG



Digitally signed by
CYNTHIA LONG
Date: 2022.09.09
14:23:17 -04'00'

Cindy Long
Administrator
Food and Nutrition Service

Attachment: Resources

- *Tribal Leaders Directory*: A current directory of Tribal Leaders, including contact information: <https://www.bia.gov/tribal-leaders-directory>. This page also contains an interactive map that provides additional information about the Federally recognized Tribes in each State.
- *State-Tribal Consultation Guide: An Introduction for Colorado State Agencies to Conducting Formal Consultations with Federally Recognized American Indian Tribes*. The guide is intended to be flexible and dynamic to adapt to the changing partnerships between the State of Colorado and American Indian Tribal governments. It provides suggestions about how to conduct meaningful State-Tribal Consultations.
- *Federal Government to Tribal Government Consultation Resources*
[USDA Departmental Regulation on Tribal Consultation, Coordination and Collaboration \(US DR 1350-002\)](#)
[Executive Order 13175 of November 6, 2000](#)
[2021 Presidential Memorandum of Tribal Consultation and Strengthening Nation-to-Nation Relationships](#)
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