



December 27, 2021

Cindy Long  
Director of USDA Food and Nutrition Service  
Braddock Metro Center II  
1320 Braddock Place  
Alexandria, VA 22314

Re: USDA Tribal Consultation on Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Rules

Dear Ms. Long:

The American Indian Health Commission for Washington State (Commission) advocates on behalf of the twenty-nine tribes and two urban Indian health programs (UIHPs) to improve the health of American Indian/Alaska Native people in Washington State through Tribal-State Collaboration. On November 30, 2021, the USDA held a Tribal consultation to seek Tribal input on the agency's development of a proposed rule to amend regulations governing the WIC food packages to incorporate recommendations from NASEM's 2017 report and the latest DGA. The purpose of this letter is to document the key comments and requests made by Tribes in Washington State and the Commission.

### 1. ONLINE ORDERING

We strongly support the implementation of online ordering and delivery, curbside, and in-person pick-up options. Online ordering allows WIC participants to continue to access food benefits when there is not access to a nearby store. SNAP (Basic Food Program) already has this option, and it resulted in providing important health and safety protections during COVID-19 restrictions. Online ordering will provide more equitable access for Tribal communities that are located in remote areas without WIC authorized vendors.

In developing this rule, USDA must focus on significant equity issues for Tribal nations and their members accessing WIC services. These issues include the ability to access online ordering platforms, having vendors available to deliver to all Tribal and Urban Indian communities and addresses, and supporting small, local and/or Tribal vendors to offer these services.

Large national chains have 75% of the WIC business. This is a serious inequity. Supporting Tribally operated businesses and relying on locally sourced and managed food vendors is a more nutritious, stronger, and sustainable model. Creating opportunities for small Tribally operated businesses will provide access in areas that are food deserts and places where roads get washed out or closed due to harsh weather conditions. In addition, support of online ordering from small local vendors for locally harvested and raised foods can help address the recent supply chain issues.

**Chair**  
Stephen Kutz  
*Cowlitz Tribe*

**Vice-Chair**  
Dylan Dressler  
*NATIVE Project*

**Treasurer**  
Cheryl Rasar  
*Swinomish Indian Community*

**Secretary**  
Debbie Jones  
*Samish Tribe*

**UIHP Member**  
Vacant

**Executive Director**  
Vicki Lowe

**Member Tribes:**  
Chehalis  
Colville  
Cowlitz  
Jamestown S'Klallam  
Kalispel  
Lower Elwha Klallam  
Lummi  
Makah  
Muckleshoot  
Nisqually  
Nooksack  
Port Gamble S'Klallam  
Puyallup  
Quileute  
Quinault  
Samish  
Sauk-Suiattle  
Shoalwater Bay  
Skokomish  
Snoqualmie  
Spokane  
Squaxin Island  
Stillaguamish  
Suquamish  
Swinomish  
Tulalip  
Upper Skagit  
Yakama

**Member Organizations:**  
Seattle Indian Health Board  
N.A.T.I.V.E. Project of Spokane  
American Indian Community Center



We encourage USDA Food and Nutrition Service (FNS) to prioritize equity over equality by also supporting the success of small, local, and Tribal vendors. Equality is when everyone gets the same thing; equity is when people get what they need. The forthcoming rule should reflect an understanding that each region and each Tribe is different in what is culturally and traditionally appropriate and provide flexibility for states to create options that reflect the region or Tribe.

**Requests:**

- Ensure opportunities for local and/or Tribal businesses and vendors to offer WIC services and develop the rule in a way that is inclusive of small, local, and Tribal vendors to ensure the opportunity for economic development in small and rural Tribal communities;
- Add rule language that provides that participants shall not be responsible for any fees such as bag or delivery fees. WIC participants do not have the financial resources to pay additional fees. Providing more local vendor options may reduce the necessity for delivery fees;
- Coordinate plug-and-play models that can be readily adapted for different point-of-sale systems. Small business may need support to develop or integrate new online shopping platforms and/or have the option of utilizing other formats of modified shopping (e.g., telephonic ordering, proxy shopping, direct distribution, etc.); and
- Ensure that the online ordering platforms will include business that support Tribal Food Sovereignty such as farmer's market programs or Tribal food stands, and not exclude opportunities for small businesses.

**2. WIC FOOD PACKAGES**

We support the permanent increase of the cash value benefit (CVB) of fruit and vegetables. It is important to establish the habit of eating nutrient-dense foods such as fruit and vegetables at a young age. Healthy nutrition habits can prevent or delay the onset of many chronic diseases which are current disparities in Indian country. In addition, poverty rates for AI/AN clearly demonstrate that increased value benefits for nutritious food are needed.

Special considerations must be given to the nutritional needs of the AI/AN population. These considerations must include the adverse consequences of long-term exposure to poor nutrition as a result of historical and persistent inequities. These inequities stem from forced relocation to reservations where traditional food and medicine gathering practices were not possible. As AI/AN faced starvation this led to eating the high calorie, nutrient-poor commodity foods provided by the federal government. AI/AN also faced serious impacts from extremely poor nutrition experienced by generations of boarding school survivors.

We believe building local AI/AN economic capacity and options will assist in strengthening Tribal Food Sovereignty, mitigate the long-term exposure of poor nutrition of AI/AN by the federal government and other institutions, and address the social determinants of health disparities which also adversely impact the health of our people.

**Requests:** The proposed rule should:

- Be passed as soon as possible, with no interruptions of the increased benefit for our young families who are relying on and have utilized this benefit;
- Establish a separate seafood category in addition to the separate protein options of legumes and nut butter;
- Provide an option of fresh and frozen local fish;
- Not provide an option of farmed or imported fish options;



- Respect and support the Tribal Food Sovereignty which includes the authority to make decisions about food package choices to include a Tribe's nutrient dense traditional foods on a local level. In other words, Tribes must have the ability to have choices that are (1) available locally; (2) not required to be available regionally or nationally; and (3) best addresses our traditional and cultural nutritional practices;
- Recognize and utilize Tribal and local vendors in order to support more nutritious and fresher foods and building local economic capacity and sustainability; and
- Include alternate grain options such as corn meal, corn masa flour and wild rice. We support these additions being locally sourced and available.

### **3. AI/AN INCOME EXCLUSIONS**

Several Tribes in Washington State have reported that their Tribal members are being denied WIC services as a result of failure to exclude certain AI/AN income that are exempt under federal law. For the reasons explained above, AI/AN experience significant disparities as a result of lack of access to nutrition. Unnecessarily denying AI/AN access to WIC is an urgent issue that contributes further to these disparities and the going inequities in AI/AN nutrition.

#### **Requests:**

- Amend 7 C.F.R. § 246.7(d)(2) to include AI/AN income exclusions listed under (1) 42 CFR 435.603(e)(3); and (2) IRC and IRS notices and rulings. Amending 7 C.F.R. § 246.7(d)(2) to be consistent with the Medicaid MAGI determinations for income will reduce confusion among WIC office staff in making determination for AI/AN income and ensure that AI/AN individuals are not wrongly excluded from the WIC program.
- 7 C.F.R. § 246.7(d)(2) should include the following exclusions provided under IRS Rev. Proc. 2014-35 (general welfare); IRC Section 7873 (treaty fishing) and IRC Section 139D (qualified health benefits); IRS Notice 2013-1; IRS Notice 2013-36. (See attached list of AI/AN income exclusions with legal authorities<sup>1</sup>):
  - a. Distributions from Alaska Native corporations and settlement trusts;
  - b. Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the Secretary of the Interior;
  - c. Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:
    - (i) Rights of ownership or possession in any lands described in (b) of this subsection; or
    - (ii) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources.
  - d. Distributions resulting from real property ownership interests related to natural resources and improvements that are:
    - (i) Located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

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<sup>1</sup> For a full list of AI/AN income exclusions to be added see the [American Indian Health Commission for Washington State Guidance for American Indian & Alaska Native Income Exemptions for Modified Adjusted Gross Income-Based Washington Apple Health \(Medicaid\)](#)



- (ii) Resulting from the exercise of federally protected rights relating to such real property ownership interests.
- e. Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom;
- f. Student financial assistance provided under the Bureau of Indian Affairs education programs;
- g. Certain payments made to or on behalf of individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not included in a recipient's gross income. This exclusion includes payments to tribal members by Indian tribal governments qualify for the general welfare exclusion if the payments are:
  - (i) made pursuant to a governmental program of the Tribe;
  - (ii) for the promotion of general welfare (that is, based on individual or family need, and, uniquely in the case of programs of Indian tribal governments, to help establish Indian-owned businesses on or near the reservation); and
  - (iii) not compensation for services. These Tribal government programs include: (a) Housing program assistance; (b) Educational programs; (c) Elder and disabled programs; (d) Other qualifying assistance programs; and (e) Cultural and religious programs; and
- h. Any other applicable income exclusion as provided by federal law, regulation, or rule, including the Internal Revenue Code, treasury regulations, and Internal Revenue Service revenue rulings, revenue procedures, notices, and other official tax guidance.

#### **4. BURDENSOME ADMINISTRATION AND UNDERFUNDING OF WIC PROGRAMS**

Many Tribes have had to let go of WIC contracting because of the administrative burden of providing the services and the difficulties for a small program to maintain the required percentage of active participants. Smaller WIC contracts do not fully fund the staff to operate the program, requiring Tribes to use other funds to supplement program. The reporting requirements are overly burdensome. Staff are required to do a hourly reporting of their time, included what is not even funded through the contract. WIC budget runs on the Federal Fiscal Year, program runs on Calendar Year. These are systemic barriers that keep smaller Tribes and Urban Programs from contracting with WIC. Tribes that can't maintain caseload requirements or supplement funding generally stop contracting for services, leaving their community members without local access to this important program.

#### **Request:**

- Increase funding to cover cost of providing WIC Program staffing.
- Change reporting to percent of time paid for under the grant.
- Chose one year to operate under.

We appreciate the opportunity to work in partnership to improve AI/AN health disparities and improve access to nutritious foods for Tribal communities. Should you have any questions, please contact Vicki Lowe, Executive Director for the American Indian Health Commission at [vicki.lowe.aihc@outlook.com](mailto:vicki.lowe.aihc@outlook.com).

Sincerely,

Stephen Kutz, BSN, MPH  
Chair, American Indian Health Commission



Attachments: American Indian Health Commission for Washington State Guidance for American Indian & Alaska Native Income Exemptions for Modified Adjusted Gross Income Based Washington Apple Health (Medicaid)

cc: Tribal Chairs in Washington State  
AIHC Delegates  
Marisa Cheung, Special Nutrition Programs, USDA  
Chad Montgomery, Branch Chief, Supplemental Food Programs, USDA  
Michael Ladd, Tribal Liaison, Western Regional Office, USDA  
Umair Shah, Secretary, Washington State Department of Health  
Tamara Fife, Tribal Relations Director, Washington State Department of Health  
Paul Throne, Director, Office of Nutrition Services, Washington State Department of Health  
Sheryl Pickering, WIC Tribal Liaison, Washington State Department of Health

