

EXAMINING THE USDA'S PROPOSED CUTS TO FREE SCHOOL MEALS

HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN
SERVICES

COMMITTEE ON EDUCATION
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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EXAMINING THE USDA'S PROPOSED CUTS TO FREE SCHOOL MEALS

**Wednesday, October 16, 2019
House of Representatives,
Subcommittee on Civil Rights and Human Services,
Committee on Education and Labor,
Washington, D.C.**

The subcommittees met, pursuant to call, at 2:53 p.m., in Room 2175, Rayburn House Office Building. Hon. Suzanne Bonamici [chairwoman of the subcommittee] presiding.

Present: Representatives Bonamici, Grijalva, Fudge, Schrier, Hayes, Trone, Lee, Comer, Thompson, and Johnson.

Also Present: Representatives Scott, Wild, Jayapal, Adams, Foxx and Keller.

Staff Present: Tylease Alli, Chief Clerk; Ilana Brunner, General Counsel; Carrie Hughes, Director of Health and Human Services; Ariel Jona, Staff Assistant; Stephanie Lalle, Deputy Communications Director; Jaria Martin, Clerk/Assistant to the Staff Director; Kevin McDermott, Senior Labor Policy Advisor; Richard Miller, Director of Labor Policy; Kota Mitzutani, Staff Writer; Max Moore, Office Aid; Janice Nsor, Oversight Counsel; Veronique Pluviose, Staff Director; Banyon Vassar, Deputy Director of Information Technology; Katelyn Walker, Counsel; Joshua Weisz, Communications Director; Rachel West, Senior Economic Policy Advisor; Courtney Butcher, Minority Director of Member Services and Coalitions; Dean Johnson, Minority Staff Assistant; Amy Raaf Jones, Director of Education and Human Resources Policy; Hannah Matesic, Minority Director of Operations; Audra McGeorge, Minority Communications Director; Jake Middlebrooks, Minority Professional Staff Member; Carlton Norwood, Minority Press Secretary; Chance Russell, Minority Legislative Assistant; and Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy.

Chairwoman BONAMICI. I note that a quorum is present. I note for the Subcommittee that Representative Davis of California, Representative Adams of North Carolina, Representative Jayapal of Washington, Representative Wild of Pennsylvania, Representative Omar of Minnesota, and Representative Keller of Pennsylvania are permitted to participate in today's hearing with the understanding that their questions will come only after all members of the Subcommittee on Civil Rights and Human Services on both sides of the aisle who are present have had an opportunity to question the witnesses.

The Subcommittee is meeting today in an oversight hearing to hear testimony on examining the USDA's proposed cuts to free school meals.

Pursuant to Committee Rule 7(c), opening statements are limited to the Chair and Ranking Member. This allows us to hear from our witness sooner and provides all members with adequate time to ask questions.

I recognize myself now for the purpose of making an opening statement.

Today we will examine a Department of Agriculture proposal that will eliminate automatic access to free school meals for close to one million children and threaten their food security.

On July 23, the USDA proposed a new rule that will restrict eligibility for the Supplemental Nutrition Assistance Program, or SNAP. On its own, the proposal will cut access to food assistance for about 3.1 million low income Americans, which will have significant consequences for individuals and families struggling to get by.

In my home state of Oregon, about 16 percent of households will lose access to SNAP benefits as a result of this proposed rule. But as we will discuss today, the proposal will have additional consequences for low income children, many of whom count on school meals as their most consistent source of nutrition.

Through a provision called categorical eligibility, children who are eligible for SNAP are automatically eligible for free school meals.

According to the department's own analysis released late yesterday afternoon, its proposed changes to SNAP will cut automatic access to free school meals for close to one million children.

Shockingly, the department failed to disclose this analysis when it originally published its proposal despite being required to do so.

In fact, the only reason we originally knew of the consequences of the proposed SNAP rule, is that a member of the Committee staff asked the department directly on a briefing call about the effect on school meals.

After waiting months for this analysis, we have now learned that the rule will be even worse for students and families than we originally understood and the department still has not fully accounted for the ripple effects of this proposal.

Under the Community Eligibility Provision, nearly 2,000 schools across the country provide free school meals to all of their students because more than 40 percent of their students participate in an anti-poverty program such as SNAP.

Schools participating in Community Eligibility appreciate the simplification of the program, the reduction of paperwork, and importantly, the elimination of stigma among students.

For schools currently just above the 40 percent threshold, the proposed rule very well could kick enough students off SNAP that the school would lose access to the Community Eligibility Provision.

As a result, these schools will be forced to go through the burdensome process of asking low income families to fill out individual applications for free or reduced price school meals.

We already know that without community eligibility, hungry children who would otherwise be eligible across the country are going without meals. And we now know that the department failed to account for the potential—this potential effect in its analysis.

Inevitably, if this rule is implemented, many more low income students who are eligible for free or reduced priced school meals will not receive the food assistance they desperately need. That is nothing short of a preventable tragedy.

To justify its proposed rule, the administration is pointing to a single case of one wealthy individual who intentionally manipulated the SNAP system and then the department argues that we must, quote, close loopholes.

To be clear, we are not talking about wealthy kids taking advantage of the system. According to USDA's own analysis, 93 percent of households that will lose eligibility for free school meals will still be eligible for reduced price school meals after filling out an individual application.

These are children from poor families living just above the poverty line. It is not easy for these families. In fact, just last week I met with Family Promise, an organization that helps homeless families get back on their feet and regain independence.

A tearful mother shared her story of trying to find employment that will cover rent which is already hard. This rule will only exacerbate the challenges for those who are struggling. The department is using a misleading claim to dismiss the real struggles of millions of families in dire need of food assistance.

The reality is that this administration is going to be making more hungry children go without breakfast or lunch to pay for its nearly \$2 trillion tax cut that overwhelmingly benefited corporations and the wealthy.

The Trump Administration's proposed rule not only denies children automatic access to school meals, it denies them the ability to reach their potential. A large body of scientific research and basic common sense show that hungry children can't learn.

The President himself recognized the importance of school lunch to our Nation's children when he declared this week National School Lunch Week. I note that it is hypocritical because at the same time the President acknowledges the critical role these meals play in the academic success of students, his administration is moving forward with a proposed rule that will limit access to these meals for almost a million children.

At a time when 1 in 7 children are already food insecure, we should be doing more to prevent, so much more to prevent children—childhood hunger.

Mr. Lipps, thank you again, Deputy Licks—Lipps, thank you again for being here for this important conversation. However, I do need to express my disappointment on two points.

First, Committee staff pointed out to the department that your written testimony directly addressed a different Committee than the one you are before today.

And it further does not address the effect of the proposed SNAP rule on school meals. Despite bringing that to your attention, you declined the opportunity to make changes to your written testimony and make it more responsive to the topic of today's hearing.

Second, your department waited until yesterday afternoon, the afternoon before this hearing to release an analysis that the Committee has been requesting for months, and, unfortunately, you only intend to reopen the comment period for an additional two weeks which is woefully insufficient in light of how many people will be affected by this rule.

I hope you will show respect to the Members of this Committee and the people we represent by addressing these concerns directly in your oral testimony and answers during today's hearing.

I now recognize the distinguished Ranking Member for the purpose of making an opening statement.

[The statement of Chairwoman Bonamici follows:]

**Prepared Statement of Hon. Suzanne Bonamici, Chairwoman,
Subcommittee on Civil Rights and Human Services**

Today we will examine a Department of Agriculture proposal that will eliminate automatic access to free school meals for close to one million children and threaten their food security.

On July 23rd, USDA proposed a new rule that will restrict eligibility for the Supplemental Nutrition Assistance Program, or SNAP. On its own, the proposal will cut access to food assistance for 3.1 million low-income Americans, which will have significant consequences for individuals and families struggling to get by. In my home state of Oregon, 16 percent of households will lose access to SNAP benefits as a result of this proposed rule.

But, as we will discuss today, the proposal will have additional consequences for low-income children, many of whom count on school meals as their most consistent source of nutrition.

Through a provision called categorical eligibility, children who are eligible for SNAP are automatically eligible for free school meals. According to the Department's own analysis released late yesterday afternoon, its proposed changes to SNAP will cut automatic access to free school meals for close to one million children.

Shockingly, the Department failed to disclose this analysis when it published its proposal, despite being required to do so. In fact, the only reason we originally knew the consequences of the proposed SNAP rule is that a member of the Committee staff asked the Department directly on a briefing call about the effect on school meals.

After waiting months for this analysis, we now have learned that the rule will be even worse for students and families than we originally understood, and the Department still has not fully accounted for the ripple effects of its proposal.

Under the Community Eligibility Provision, nearly 2,000 schools across the country provide free school meals to all their students because more than 40 percent of their students participate in an anti-poverty program, such as SNAP. Schools participating in Community Eligibility appreciate the simplification of the program, the reduction of paperwork, and, importantly, the elimination of stigma among students.

For schools currently just above the 40 percent threshold, the proposed rule very well could kick enough students off SNAP that the school would lose access to the Community Eligibility Provision. As a result, these schools will be forced to go through the burdensome process of asking low-income families to fill out individual applications for free or reduced price school meals. We already know that, without community eligibility, hungry children who would otherwise be eligible across the country are going without meals. And we now know that the Department failed to account for the potential effect in its analysis.

Inevitably, if this rule is implemented, many more low-income students who are eligible for free or reduced price school meals will not receive the food assistance they desperately need. That is nothing short of a preventable tragedy.

To justify its proposed rule, the Administration is pointing to a single case of one wealthy individual who intentionally manipulated the SNAP system, and arguing that we must, quote, "close loopholes."

To be clear, we are not talking about wealthy kids taking advantage of the system. According to USDA's own analysis, 93 percent of households that will lose eligibility for free school meals will still be eligible for reduced price school meals after filling out an individual application. These are children from poor families living just above the poverty line. It's not easy for these families. Just last week I met with Family Promise, an organization that helps homeless families get back on their

feet and regain independence. A tearful mother shared her story of trying to find employment that will cover rent; it's already hard and this rule will only exacerbate the challenges for those who are struggling.

The Department is using a misleading claim to dismiss the real struggles of millions of families in dire need of food assistance. The reality is that the Administration is going to be making more hungry children go without breakfast or lunch to pay for its nearly \$2 trillion tax cut that overwhelmingly benefited corporations and the wealthy.

The Trump Administration's proposed rule not only denies children automatic access to school meals, it denies them the ability to reach their potential. A large body of scientific research and basic commonsense shows that hungry children can't learn. The President himself recognized the importance of school lunch to our nation's children when he declared this week National School Lunch Week. I note that it is hypocritical; at the same time the President acknowledges the critical role these meals play in the academic success of students, his Administration is moving forward with a proposed rule that will limit access to these meals for almost a million children. At a time when one in seven children are already food insecure, we should be doing so much more to prevent child hunger.

Mr. Lipps, thank you again for being here for this important conversation; however, I also need to express my disappointment on two points. First, Committee staff pointed out to the Department that your written testimony directly addressed a different Committee than the one you are before today, and further it does not address the effect of the proposed SNAP rule on school meals. Despite bringing that to your attention, you declined the opportunity to make changes to your written testimony and make it more responsive to the topic of today's hearing.

Second, your Department waited until yesterday afternoon to release an analysis that the Committee has been requesting for months, and, unfortunately, you only intend to reopen the comment period for two weeks. This is woefully insufficient in light of how many people will be affected by this rule. I hope you will show respect to Members of this Committee and the people we represent by addressing these concerns directly in your oral testimony and answers during today's hearing.

Now, I will yield to the Ranking Member for the purpose of making an opening statement.

Mr. COMER. Thank you. Education is a critical part of student success later in life and we know there is a correlation between food and healthy nutrition and the capacity of children to develop and learn. That is why Federal funds have been used to provide free or reduced priced school meals to students for more than 70 years.

With this in mind, I think it is also appropriate to recognize that this week marks a celebration of national school lunch week. A week dedicated to acknowledging the benefits of the National School Lunch Program and promoting access to nutritionally-balanced meals for students across the country.

Everyone in this room wants what is best for our Nation's school children. Unfortunately, my colleagues on the other side of the aisle are intent on painting the picture that this administration is eager to put school age children in harm's way and that is simply not the case.

Today you will hear democrats wrongfully argue that the administrations rule will deny school children access to free meals. Their manipulation of the data may generate headlines and it certainly advances the Democrat's narrative but it is far from the truth.

I am afraid my colleagues have missed the point of the USDA's rules and I would like to take a moment to set the record straight.

All eligible children will continue to receive school meals. Let me repeat that. All eligible school children will continue to receive meals.

Currently, eligibility loopholes allow states to make families receiving minimal Temporary Assistance for Needy Families or TANF benefits automatically eligible to participate in USDA's Supplemental Nutrition Assistance Program or SNAP.

The purpose of TANF is to provide assistance to needy families to allow children to be cared for in their own homes and in parents' dependence on government benefits through work, promotion, and marriage.

Yet for years the Federal government has allowed states to utilize Federal loopholes to virtually eliminate the income and asset requirements for SNAP. The expanded eligibility has included families with incomes that far exceed eligibility requirements.

In fact, I am sure we have all heard by now the story of a millionaire living in Minnesota who was able to successfully enroll in the program. While this is likely not common, it is emblematic of a larger problem in these programs.

So the administration issued the rule we are discussing today which is aimed at curtailing states from exploiting eligibility loopholes.

The benefits offered to those in need should actually reach those in need. We have a responsibility to diligently and responsibly allocate taxpayer dollars.

Too many in Congress find it way too easy to spend hard earned taxpayer dollars without promising accountability. And that is an insult to every citizen who has entrusted us with their representation. Taxpayer dollars should be used effectively, efficiently, and in accordance with the law.

Committee Republicans believe that students who need free or reduced price lunches should be able to receive them. Period.

Nothing in the proposed rule will change income eligibility thresholds in the child nutrition laws.

USDA is taking comprehensive steps to ensure that benefits are provided effectively, efficiently and with integrity to those most in need, an effort that everyone on this Committee should be able to report. Thank you, Madam Chair.

[The statement of Mr. Comer follows:]

**Prepared Statement of Hon. James Comer, Ranking Member,
Subcommittee on Civil Rights and Human Services**

"Education is a critical part of students' success later in life and we know there is a correlation between food and healthy nutrition and the capacity of children to develop and learn. That is why federal funds have been used to provide free or reduced-price school meals to students for more than 70 years. With this in mind, I think it is also appropriate to recognize that this week marks the celebration of National School Lunch Week – a week dedicated to acknowledging the benefits of the National School Lunch Program and promoting access to nutritionally- balanced meals for students across the country.

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Today, you will hear Democrats wrongfully argue that the administration's rule will deny school children access to free school meals. Their manipulation of the data may generate headlines, and it certainly advances the Democrats' narrative, but it is far from the truth.

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All eligible children will continue to receive school meals. Let me repeat that. All eligible children will continue to receive school meals.

Currently, eligibility loopholes allow states to make families receiving minimal Temporary Assistance for Needy Families (TANF) benefits automatically eligible to participate in USDA's Supplemental Nutrition Assistance Program (SNAP). The purpose of TANF is to 'provide assistance to needy families to allow children to be cared for in their own homes, and end parents' dependence on government benefits through work promotion and marriage.'

Yet for years the federal government has allowed states to utilize federal loopholes to virtually eliminate the income and asset requirements for SNAP. The expanded eligibility has included families with incomes that far exceed eligibility requirements. In fact, I am sure we have all heard by now the story of a millionaire living in Minnesota was able to successfully enroll in the program. While this is likely not common, it is emblematic of a larger problem in these programs. So, the administration issued the rule we are discussing today, which is aimed at curtailing states from exploiting an eligibility loophole.

The benefits offered to those in need should actually reach those in need. We have a responsibility to diligently and responsibly allocate taxpayer dollars. Too many in Congress find it way too easy to spend hard-earned taxpayer dollars without promising accountability. That is an insult to every citizen who has entrusted us with their representation. Taxpayer dollars should be used effectively, efficiently, and in accordance with the law.

Committee Republicans believe that students who need free or reduced-priced lunches should be able to receive them. Period. Nothing in the proposed rule will change income eligibility thresholds in the child nutrition laws. USDA is taking comprehensive steps to ensure that benefits are provided effectively, efficiently, and with integrity to those most in need – an effort that everyone on this Committee should be able to support."

Chairwoman BONAMICI. Without objection, all other members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m. on October 29, 2019. I will now introduce our witness.

Brandon Lipps is the Deputy Undersecretary of the Food, Nutrition and Consumer Services, FNCS at the U.S. Department of Agriculture.

Previously Mr. Lipps served as administrator of the food and nutrition service and also acted—and also as Acting Deputy Undersecretary of the FNCS from July 2017 to August of 2019. Pursuant to Committee Rule 7(d), the witness will please stand and raise his right hand.

[Witness sworn.]

Chairwoman BONAMICI. Let the record show that the witness answered in the affirmative.

We appreciate the witness for being here today and we look forward to your testimony. Let me remind the witness that we have read your written statement and it will appear in full in the hearing record.

Pursuant to Committee Rule 7(d) and Committee practice, you are asked to limit your oral presentation to a 5 minute summary of your written statement.

Before you begin your testimony, please remember to press the button on the microphone in front of you so it will turn on and the Members can hear you. And as you begin to speak, the light in front of you will turn green. After 4 minutes, the light will turn yellow to signal that you have 1 minute remaining. When the light turns red, your 5 minutes have expired and we ask that you please wrap up.

We will let the witness make his presentation before we move to member questions and when answering a question, please remember to once again turn your microphone on.

I now recognize Deputy Undersecretary Lipps.

TESTIMONY OF BRANDON LIPPS, DEPUTY UNDER SECRETARY FOR FOOD, NUTRITION, AND CONSUMER SERVICES, U.S. DEPARTMENT OF AGRICULTURE

Mr. LIPPS. Thank you, Madam Chairwoman, Ranking Member Comer, and Members of the Committee for the opportunity to discuss the administration's priorities and answer any questions you may have with regard to child nutrition reauthorization.

I am Brandon Lipps, the Deputy Under Secretary for Food, Nutrition, and Consumer Services. FNS is responsible for administering America's nutrition assistance programs which leverage our Nation's agricultural abundance to ensure every American has access to wholesome, nutritious food, even when they face challenging circumstances.

This Committee, as noticed by the Chairwoman's opening statement has expressed interest in USDA's recent regulatory actions related to the Supplemental Nutrition Assistance Program. Yesterday, the Food and Nutrition Service released an informational analysis on the proposed rule to refine categorical eligibility requirements based on receipt of Temporary Assistance for Needy Families, commonly known as TANF benefits under SNAP.

The new informational analysis estimates that for children and households found to have income and asset above SNAP's statutory eligibility, an estimated 96 percent of those children will remain eligible for free or reduced priced meals if this proposed rule becomes final in its current form.

For the remaining estimated 40,000 children or one tenth of one percent of all children receiving school lunch, their family income exceeds the congressionally set NSLP statutory eligibility standard of 185 percent of the poverty line.

We have also submitted a Federal Register notice which will appear later this week indicating we will also be reopening the comment period for 14 days to provide the public an opportunity to review and provide comment on this document as part of the rule making record.

While I cannot discuss the content of the final rule or the comments we have received before they are published, I would like to take a moment to talk about the department's objectives in this area.

As you know, Americans are a generous people who believe in helping those who have fallen on hard times. But we all agree that those who can provide for themselves should.

SNAP and our other programs are critical to millions of Americans and we should be proud to have the abundance to come alongside them in hard times. But in order to do that, we have to be good stewards of every dollar.

For far too long, negative press has weakened American's confidence and important programs you have charged us with administering at the Food and Nutrition Service.

The stories are sometimes so egregious they appear surely to be only rumors but are unfortunately verified as factual, jeopardizing the future of these important programs for millions of families.

Let's first look at broad based categorical eligibility. There was recently a story about a millionaire and previously there have been stories about other millionaires who have accessed the Supplemental Nutrition Assistance Program through this loophole.

The loophole was first exposed by Congress own oversight authority, the General Accountability Office in a 2012 report as having quote a negative effect on SNAP program integrity. As some states are designating SNAP applicants as categorically eligible without providing them the service required to make that determination.

The loophole received greater scrutiny in a 2015 Office of Inspector General of USDA report that described how one state conferred eligibility by providing recipients with quote a brochure for social services. And the OIG went on to note that the state only mailed the brochure to applicants after it conferred the eligibility for SNAP.

Next let's look at families living across the state line from each other, just miles apart. We have learned that one family is receiving two and a half times less in SNAP benefits simply because one state uses an inflated and inaccurate utility deduction.

What began as a series of observations from front line staff at the Food and Nutrition Service about potential irregularities then became a full blown USDA study initiated in 2014.

We have since confirmed these irregularities because many states cannot cite the sources of their base calculation for the deduction or the year in which they were established. This not only creates an uneven patchwork for the administration of a Federal program but it is morally unfair to those receiving unequal benefits.

And finally, with the lowest unemployment rate in 50 years, we have employers across this country who cannot find enough workers. Yet states are continuing to wave congressionally mandated work requirements. We have states currently exempting counties with unemployment rates as low as 3.6 percent who were claiming lack of sufficient jobs in that county.

Egregious program abuses such as these leave a dark cloud over this important program risking future support and reflecting negatively on participants who need access to the programs. Families on these programs and the taxpayers who fund them expect better from their government.

We at USDA are dedicated to ensuring that these important programs are preserved for those in need and that they are administered equitably with integrity and within the eligibility standards that Congress has provided in the law. I remain committed to listening to and collaborating with all stakeholders, including each of you on this Committee. Working together, we can improve the lives of those who fall on hard times and come in contact with these programs.

Thank you for having me and I am happy to answer any questions.

[The statement of Mr. Lipps follows:]

FOOD, NUTRITION, AND CONSUMER SERVICES
Statement of Brandon Lipps, Deputy Under Secretary for
Food, Nutrition, and Consumer Services
Before the Subcommittee on Civil Rights and Human Services
House Committee on Education and Labor

October 16, 2019

Thank you Chairwoman Bonamici, Ranking Member Comer, and members of the Subcommittee for the opportunity to discuss the Administration's fiscal year (FY) 2020 Budget request for the U.S. Department of Agriculture's (USDA's) Food, Nutrition, and Consumer Services (FNCS) as well as our priorities and recent activities. I am Brandon Lipps, the Deputy Under Secretary for Food, Nutrition, and Consumer Services. FNS is responsible for administering America's nutrition assistance programs, which leverage the nation's agricultural abundance to ensure every American has access to wholesome, nutritious food, even when they face challenging circumstances.

As you know, the Appropriations Committees in both the House and Senate have already reported out FY 2020 appropriations legislation for the Department in advance of today's hearing. Though final action by Congress is still ahead, I am in the somewhat unusual position of already being able to thank you for your support of a number of specific initiatives in our request.

Let me underscore at the outset that the President's budget request for FY 2020 fully funds the major nutrition assistance programs to support projected participation for all those who are eligible and wish to participate. This reflects average monthly participation of 36.3

million in SNAP and 6.4 million in WIC, along with average daily participation of over 30 million in the National School Lunch Program and over 15 million in the School Breakfast Program during the school year.

At the same time, the request includes proposals and initiatives that are intended to advance this Administration's nutrition assistance priorities – to improve customer service for our partners and participants, to protect and enhance integrity, and to strengthen the bonds between FNS programs and self-sufficiency.

It has been my privilege over the last two years to lead our efforts to move these priorities forward. In my view, and in the view of Secretary Sonny Perdue, all three are fundamental to the ongoing effectiveness of all nutrition assistance programs. Good customer service is essential to efficient operations that achieve the programs' missions. Strong integrity safeguards for taxpayer investments in nutrition are fundamental to earning and keeping the public confidence that make these programs possible. And every government action ought to align with and support a self-sufficient future, because long-term reliance on government assistance has never been a part of the American dream.

Customer Service

Secretary Perdue has directed a robust focus on customer service at USDA. Given the number and diversity of nutrition assistance customers – those who receive benefits, and those on the front lines of delivering them – we are appropriately at the center of that effort.

Great customer service starts with listening to customers of our programs, to understand their needs, their challenges, and the choices available to address them within the existing program authorities.

One example of improving our customer service to those we serve is through the implementation of the online purchasing pilot authorized in the Farm Bill. The Secretary articulated the core principle behind this innovative effort, noting that “as technology advances, it is important for SNAP to advance too.” The pilot began this spring, and is already paying dividends to SNAP clients in areas where it is operating. Our budget request for FY 2020 included \$1 million to support online retailer technical readiness, and I appreciate that both this Committee and the Senate have included this funding in their legislation. These funds will help the Agency ensure that online retailers meet technical requirements regarding SNAP, such as split tenders and sales tax exemptions, just as brick-and-mortar stores do.

The budget also requests a legislative change to FNS’s Farm to School program authority – to increase the maximum amount of such a grant from \$100,000 to \$500,000 – that responds directly to customer feedback from States and other stakeholders. They have told us that \$100,000 is often not adequate to launch or expand Farm to School programming. We think this is a wise adjustment, and look forward to working with you to address this concern.

Program Integrity

Just as good customer service is critical to program effectiveness, strong integrity is essential to use taxpayer resources wisely, reach the right people with the right benefits, operate efficiently, and ensure the public's trust in our work. Without this public trust, we cannot sustain the multi-billion dollar investment in these programs for the future.

The FY 2020 budget request included a number of proposals to advance integrity. For Child Nutrition, we sought \$20 million in additional funding for technology grants to States. These grants will assist every State in developing, improving and maintaining information systems to operate and manage all these programs. Improved technologies will increase data accuracy, allow more robust performance measurement and build capacity to identify and target error prone aspects of CN operations. We are again grateful for the support of both House and Senate appropriations committees in providing funding for this initiative.

Turning to SNAP integrity, the request includes additional funds to increase the number of on-site store visits to ensure participating retailers meet eligibility requirements and to enhance FNS' ability to conduct undercover investigations. It seeks funds for grants to States to help them implement the SNAP Fraud Framework, which harnesses innovative analytics techniques and private-sector best practices to more effectively detect potential fraud and improve oversight. We request resources to evaluate available automated income data sources that may help States make rigorous SNAP eligibility determinations more efficiently. Finally, the budget requests funds for an evaluation of SNAP-authorized group homes and treatment centers to ensure that benefits are being utilized properly on behalf of the residents and that these facilities are not utilizing more than one source of Federal funding for the same

purpose. We are pleased that both the House and Senate Committee bills support each of these initiatives – clear evidence that integrity is a bipartisan and bicameral priority.

Supporting a Self-Sufficient Future

As I noted previously, this Administration's orientation, and my approach in administering the nutrition assistance programs, is that every government action should fully align the concept that the people we serve want and deserve an independent future that does not rely on government benefits. Secretary Perdue has stated it plainly: "The dignity of work and responsibility makes lives better." I frankly know few who would disagree. More often, differences emerge over *how* best to advance self-sufficiency.

At USDA, we view nutrition assistance programs as springboards for those facing difficult times to get back on their feet. Just recently the Department of Labor announced that the unemployment rate had reached a new 50 year low, and the number of job openings has exceeded the number of job seekers for 18 consecutive months. There is no time better than now to focus on the opportunities our families have to improve their lives and those of their children.

That is why Secretary Perdue has made SNAP Employment and Training (E&T) – perhaps our most direct effort to connect participants to work opportunities – an important USDA priority.

Expanding the reach and effectiveness of SNAP E&T has long been a focus of effort at USDA. In FY 2015, USDA launched the SNAP to Skills Project to bring new tools, resources and capacity to States to build stronger E&T programs. We have continued to build and enhance

this project. To date, USDA has provided enhanced technical assistance to over 21 State agencies to build employer-driven E&T programs and to develop tools and resources that are available to all States and stakeholders to support their efforts.

The FY 2020 Budget requests funds to improve SNAP E&T programs through national leadership activities that would take our efforts to the next level by providing States technical assistance and professional development in E&T. This in turn would ensure that they are using the most effective strategies to help SNAP participants achieve economic self-sufficiency. The request also proposes grant funds for States to strengthen their SNAP E&T data collection — which is so important when making policy decisions. We are grateful that both the House and Senate committees support these two initiatives, which will help SNAP E&T better meet the needs of participants, employers, and the community.

Achieving a Modern, Equitable SNAP Program

This Subcommittee has expressed interest in USDA's recent regulatory actions related to SNAP. While I cannot discuss the content of the final rules in development or the comments we have received on them before they are published, I would like to take a moment to talk about the Department's intended objectives in this area.

The first "food stamp" program was launched in the 1930's, and today's nationwide program was created in the 1970's. While it has a long record of effectiveness, even the most effective programs can benefit from reforms to correct problems or adapt to changing times. In SNAP, the law that authorizes the program provides USDA discretion to allow state agencies –

SNAP's front-line customer service organizations – flexibility in certain aspects of administration. While this continues to work well in many areas, in some it has compromised the consistency of operations over time, and even led to disparities in benefits for individuals and households simply because of the state where they live.

For this reason, and in recognition of our responsibility to ensure the program operates consistent with the law, a major portion of the Administration's SNAP agenda seeks is to strike a better balance between practical operational flexibility and the national standards that define the program's purpose and support its effectiveness. We have focused in three key areas.

First, the SNAP law sets a reasonable expectation for able-bodied adults without dependents – “ABAWDs” –to work, look for work, train for work, or volunteer to continue to receive benefits for more than three months over a 36-month period. States may waive these limits in areas with an unemployment rate above 10 percent or where there are “not sufficient jobs”. However, current rules are defined so loosely that time limits are waived for 40 percent of ABAWDs, in the midst of the strongest economy in a generation. This is unacceptable to most Americans and belies common sense. Earlier this year, we proposed a rule to limit the ability of states to waive these time limits, and to ensure that those that do so use a clear and consistent data-driven approach. We are working to finalize that rule now.

More recently, we proposed to eliminate a loophole called “broad-based categorical eligibility” that has been used to provide SNAP benefits to households who otherwise might not meet SNAP eligibility criteria. This would end the practice of allowing households to be eligible

for SNAP by simply being handed a brochure from another federal program. Limiting this eligibility rule to those receiving specific, concrete, and work-supporting benefits would retain categorical eligibility's advantage of streamlining program administration, but in a fiscally prudent way.

Earlier this month, we proposed changes to truly standardize state SNAP utility allowances across the country. For many years, SNAP rules have allowed states to establish a self-defined standard utility allowance (SUA) in lieu of documenting actual utility costs. It has been so long since state SUA methodologies were developed that some states cannot explain their original SUA or even provide the year it was set. USDA recently proposed a reform to replace the patchwork of outdated and inconsistent state allowances with a modernized, uniform approach based on up-to-date data on actual household utility costs in each state. The proposal would also replace an antiquated "telephone allowance" with a telecommunications allowance that includes the cost of basic internet service – no longer a luxury, but often a necessity for school, work, and job search.

Secretary Perdue and I see these changes as fully in line with USDA's discretion under the law, and our responsibility to work within that law to use modern and consistent standards that manage resources prudently. That said, the Department wants to hear from all those who care about SNAP about the changes we have proposed. USDA presented each proposal for public comment, and thousands have responded with their ideas. We remain committed to listening to and collaborating with all of our stakeholders, including this committee, to manage this critical program responsibly.

Let me turn finally to the forthcoming reauthorization of the Child Nutrition Programs and the Women, Infants and Children Program, which were last reauthorized over eight years ago. Reflecting the scope and significance of these programs to families and local communities across America, there is a long history of constructive bipartisan action to support and strengthen them. I am pleased to offer to you, as I have to the authorizing committees, our willingness to join the Congress in that spirit to contribute to a reauthorization process that builds on the programs' history of success, while also advancing the Administration's nutrition assistance priorities. We have been providing technical assistance to staff on request, and we will continue to do so in whatever way may be helpful.

In closing, I would like to thank the Committee for your continued support for the nutrition assistance programs. We at the Department stand ready to provide any technical assistance that you need in completing your appropriations deliberations. I am happy to answer any questions you may have.

Chairwoman BONAMICI. Thank you for your testimony. Under Committee Rule 8(a) we will now question witnesses under the 5 minute rule. As Chair I have decided to go first and then I will yield to the Ranking Member. We will then alternate between the parties.

I now recognize myself for 5 minutes for the purpose of questions.

Deputy Lipps, during a phone briefing with the House Committee on Education and Labor staff on July 22, days before the publication of the proposed rule, Pam Miller, the administrator of the USDA Food and Nutrition Service stated that the department estimated that more than 500,000 children would lose their automatic eligibility for free school meals as a result of the proposed rule.

Is it correct that Ms. Miller provided Committee staff with this estimate of more than 500,000 children losing their automatic access to free school meals? And this is a yes or no question.

Mr. LIPPS. Chairwoman, I was not on that call. Pam does not deny having that conversation. I can't tell you what the details of the conversation were.

Chairwoman BONAMICI. Is there any reason to believe that she did not tell Committee staff that the estimate of more than 500 children would lose their automatic access to school meals?

Mr. LIPPS. I do not know.

Chairwoman BONAMICI. Is it correct that the analysis that your department published on Regulations.gov late yesterday afternoon stated and I quote, as many as 982,000 children would no longer be directly certified for free school meals? Is that correct?

Mr. LIPPS. When, if their families no longer meet the income and asset standards provided under SNAP, they will not be directly certified for school meals but continue to be eligible under the standards set in the child nutrition statute.

Chairwoman BONAMICI. But does the analysis that you have published on Regulations.gov state as many as 982,000 children would no longer be directly certified for free school meals? Is that in the analysis that you published?

Mr. LIPPS. That's correct. They would not be directly certified if their families did not meet the asset income test for SNAP.

Chairwoman BONAMICI. So we have had a lot of conversations in this Committee about SNAP and school meals. The department also states in its analysis of households that will no longer be eligible for free school meals, 93 percent would only be eligible for reduced price meals if they applied. So they are actually losing access to free school meals, is that correct?

Mr. LIPPS. Chairwoman, the income test for school meals are set in statute by the jurisdiction of this Committee and students whose family meet those standards will qualify for the application process if they are not directly certified through SNAP.

Chairwoman BONAMICI. But is correct that 93 percent of those children would only be eligible for reduced priced meals if they apply? So they are losing access to free school meals, correct?

Mr. LIPPS. There are multiple ways for children to enter the school nutrition program so I can't talk about those specific families for sure. But certainly for those who meet the income stand-

ards provided in statute they will qualify through the application process.

Chairwoman BONAMICI. So we have—we have also had conversations in this Committee about the burden associated with filling out applications and it is not reasonable to assume that every child who is financially eligible will end up receiving the benefit they need to thrive, is that correct? There will be some children's whose parents or family members do not fill out an application, is that correct?

Mr. LIPPS. Chairwoman, that is correct and the Agency and a number of groups take a lot of actions to help make sure the families are aware of their access and that they have the opportunity to fill those out and ensure that their children have access to those meals.

Chairwoman BONAMICI. I understand. But there will be children whose parents do not fill out the forms or the application so there will be children who will not get—

Mr. LIPPS. That may be true.

Chairwoman BONAMICI. Yes. Section 6A3C of Executive Order 12866, the regulatory planning and review requires administration to include in the regulatory impact analysis of a proposed rule all costs anticipated from a regulatory action including adverse effects on health.

Why was the department's analysis of the effect of the proposed rule on school meals missing from the initial regulatory impact analysis?

Mr. LIPPS. Chairwoman, it was not missing. The Agency conducted a proper regulatory impact analysis on this rule which makes changes to the, refine the categorical, broad based categorical eligibility in the SNAP program and considers all relevant regulatory impacts with regard to that. Regulatory impact analysis went through all proper clearance channels and was cleared as a proper regulatory impact analysis related to this.

Chairwoman BONAMICI. But the original, just to clarify, the original regulatory impact analysis did not include the analysis that you revealed yesterday afternoon, is that correct?

Mr. LIPPS. That's correct.

Chairwoman BONAMICI. The Committee Chairman made multiple requests for that analysis since the rule was published in July. Why did the department wait until 5 p.m. the day before the hearing to provide the Committee and the American public with that analysis?

Mr. LIPPS. Chairwoman, we provided this analysis as soon as it was available and ready. The Chairman requested that. The agency conducted the analysis, went through the proper clearance channels and was provided as quickly as possible.

Chairwoman BONAMICI. Mr. Lipps, the department knows that nearly one million children will lose automatic access to free school meals as a result of this proposed rule. This information was not included in the initial RIA.

So how had—can the department determine that 14 days is enough time for the public to meaningfully comment on this proposed rule?

Mr. LIPPS. Chairwoman, we believe 14 days is sufficient time for the public to comment on this specific four page document. The record will be officially opened for 14 days.

The notice was given yesterday and it won't officially publish until Friday so there will be some extra days in that as well. But we do believe that is sufficient time for people to comment on this—

Chairwoman BONAMICI. Well, I know I share the concerns of many that is an insufficient time and the only reasonable conclusion I can draw is that the department left the information out to avoid public criticism. They know that this would be poorly received by the public.

And additionally releasing the analysis at 5 p.m. on the day before the hearing makes it appear that the USDA was trying to thwart oversight. That concerns me. The USDA can and should be better for Americans, children, and families. And I now recognize the Ranking Member for the purpose of questioning the witness.

Mr. COMER. Thank you. Secretary Lipps, I have a series of quick questions I want to ask so the record will be clear on this topic so please answer as briefly as possible. To begin with, the broad based categorical eligibility rule is a rule addressing a provision in the SNAP program, is that correct?

Mr. LIPPS. That's correct.

Mr. COMER. The impact analysis USDA completed on this SNAP rule was how the program impacted SNAP participation, is that correct?

Mr. LIPPS. That's correct.

Mr. COMER. Are the Child Nutrition Programs a part of the SNAP Program?

Mr. LIPPS. No, sir.

Mr. COMER. Because the Child Nutrition Programs are not part of the SNAP Program, USDA did not do an official analysis of any impact to those programs in the proposed rule, is that correct?

Mr. LIPPS. That's correct.

Mr. COMER. While no official analysis on the proposed rule was done in an off the record call to Congress your staff provided some back of the envelope calculations on that impact, is that correct?

Mr. LIPPS. Yes, sir, I believe that's the call the Chairwoman was referring to. Yes, sir.

Mr. COMER. But those calculations would not be included in any official analysis that would be published or put out by USDA at that, at this time, is that correct?

Mr. LIPPS. Right.

Mr. COMER. You have since published this information analysis, correct?

Mr. LIPPS. Yes, sir.

Mr. COMER. Can you please walk us through what the actual impact to child nutrition participation would likely be?

Mr. LIPPS. Yes, sir. The informational analysis that we released yesterday showed that families who would not qualify for direct certification through SNAP because they do not meet the asset income test in the SNAP statute, will come into the child nutrition program though the income test that this Committee provides in statute.

And of those children who are indirectly affected because their families no longer qualify for SNAP, 96 percent of them will continue to qualify for free or reduced price meals under the eligibility standards that you've set.

Mr. COMER. A few other questions. Under the child nutrition laws, what are the eligibility requirements to receive free or reduced price meals?

Mr. LIPPS. Free meals are provided to families whose income is under 130 percent of poverty level and reduced is provided for those between 130 and 185 percent of the poverty level.

Mr. COMER. Are there any requirements in SNAP either in the statute or regulations that govern eligibility for free or reduced priced meals under the Child Nutrition Program?

Mr. LIPPS. No, sir.

Mr. COMER. Does the proposed BBCE rule make any changes to the eligibility requirement under the child nutrition law?

Mr. LIPPS. It does not.

Mr. COMER. Back to the child nutrition laws and regs. Is it clear to parents and school food authorities on how students can apply to receive free or reduced priced meals and does that include through direct certification or a categorical eligibility?

Mr. LIPPS. Those standards are clear. The agency works with states and school districts and others to ensure that parents know the opportunities for their children to participate in those programs on a regular basis.

Mr. COMER. Does USDA have any policy or plan to try to prevent eligibility student's from receiving free or reduced price meals?

Mr. LIPPS. No, sir. We are trying to ensure that all of those do have access.

Mr. COMER. Does that answer change if the BBCE proposed rule is finalized?

Mr. LIPPS. It does not.

Mr. COMER. Has USDA put out guidance and answered question on implementation of the Child Nutrition Programs to help schools ensure eligible students receive free or reduced price meals?

Mr. LIPPS. Yes.

Mr. COMER. All right. Well, thank you very much and, Madam Chairwoman, I yield back the balance of my time.

Chairwoman BONAMICI. I now recognize Representative Fudge from Ohio for 5 minutes and, Mr. Lipps, will you please when you answer please make sure that your microphone is on and maybe get a little closer to the microphone. We are having trouble hearing you.

Mr. LIPPS. I think it's on. Is this better?

Chairwoman BONAMICI. Yes, that is better, thank you.

Mr. LIPPS. I'll pull it up.

Chairwoman BONAMICI. Ms. Fudge.

Ms. FUDGE. Thank you very much, Madam Chair. And if I might before I get into my questioning, Madam Chair, I would request unanimous consent to enter into the record three letters urging USDA to reconsider its proposed BBCE rule.

Chairwoman BONAMICI. Without objection.

Ms. FUDGE. Thank you very much. The first letter is dated October 2, 2019 and it is signed by all 55 members of the Congressional Black Caucus.

The second letter is dated September 23, 2019 and it is signed by 24 attorneys general from across the country.

And the third letter is dated today, from the Dairy Farmers of America. Thank you, Madam Chair.

Chairwoman BONAMICI. Without objection.

Ms. FUDGE. Thank you. I, you know, Mr. Lipps, I had the opportunity to watch part of your testimony this morning at Ag Approps and determined that you were really very, very good at evasion. I am certainly hopeful that you will be more forthcoming this afternoon.

And as I continue to hear this broken record about finding on person that scammed the system, I am so sick of it. So because one person scammed the system we are supposed to punish hungry kids.

That makes absolutely no sense to me. Okay, do something with the one person. Don't punish all of these hungry children in this country or senior citizens because one person broke a rule. It is just ridiculous. And I am sick of hearing it. It is just like a broken record.

I think that it is important for us to understand that this is not about scuff laws. This is about taking care of people in this country who are hungry.

Now, Mr. Lipps, your proposal just from your own information will take food out of the mouths of three, more than three million working families, children, seniors and persons with disabilities.

The proposal would impact elderly SNAP households, I am sure you are aware that approximately 13 percent of all SNAP households with elderly members will lose their benefits. I take hunger very, very seriously.

I represent one of the poorest districts in the United States. Half of the children in the city of Cleveland are living in poverty according to U.S. census data. These kids often live in SNAP households and rely on the free nutritious meals provided by their local schools to succeed in their classrooms.

Unfortunately for poor Americans, the administration's plan to cuts to SNAP do not end just with BBCE. To date, USDA has published a trio of cruel SNAP proposals that will strip critical food assistance away from millions of poor and working families.

Do you know how many participants or households will lose their benefits if all three of these rules were to be finalized in their current form?

Mr. LIPPS. Ms. Fudge, I don't know what the interaction on those is. You're correct about the 3.1 million on BBCE and there is an estimated 775 on the ABOD rule.

Ms. FUDGE. Well, the numbers I have shows its going to be about 4 million people. 4 million. Does that sound reasonable?

Mr. LIPPS. That's close.

Ms. FUDGE. Okay. So at least we are on the same page there. So you think it is okay to put in place rules that would put 4 million people off of SNAP?

Mr. LIPPS. Representative, I think it is important that the Agency carries out the asset and income standards that Congress prescribes.

There is a conversation to be had about whether those need to be changed to serve people differently, but they're provided in statute.

Ms. FUDGE. So wait, wait, wait, back up. These are rules we are talking about. This isn't something Congress prescribed.

Mr. LIPPS. That's correct.

Ms. FUDGE. This is something the USDA prescribed.

Mr. LIPPS. That's correct.

Ms. FUDGE. So let us be clear.

Mr. LIPPS. States have used this loophole to put people on the program who are outside the asset and income standards that Congress has prescribed.

Ms. FUDGE. So you want to throw out the baby with the bathwater. Is that what you want to do?

Mr. LIPPS. We are ensuring—

Ms. FUDGE. Well, you have no control over these states?

Mr. LIPPS. We are ensuring that there is integrity in the program by advancing this rule. Folks—

Ms. FUDGE. Who allows the states to make these decisions? Us, right?

Mr. LIPPS. You prescribe in statute what the asset and income—

Ms. FUDGE. So they are only doing what we are allowing them to do.

Mr. LIPPS. It's our job to ensure that the asset and income test that you prescribe are abided by in statute and that's what this rule does.

Ms. FUDGE. Well, once again I would say, sir, that you all believe in states' rights when it is to your advantage and you don't when it is not.

What is your position on states right?

Mr. LIPPS. This rule is about ensuring that laws that you have asked are complied with—

Ms. FUDGE. I didn't ask about the rules. I said what is your position on states' rights is my question.

Mr. LIPPS. We believe that state flexibilities and some—and how these programs are administered can test possibilities to serve people better and there are opportunities where we do that.

We do not believe that we should allow states to set separate income and asset standards other than what Congress has provided.

Ms. FUDGE. That is duplicitous. I mean, do you—did you support it or don't you?

Mr. LIPPS. You provide situations in which we can provide flexibility to states and you provided very clear income and asset standards and we are ensuring that those are complied with by refining how categorical eligibility is implemented in this program.

Ms. FUDGE. Well, since you believe in states' rights I think this is much ado about nothing. Madam Chair, I yield back.

Chairwoman BONAMICI. Thank you. I now recognize Mr. Thompson for 5 minutes.

Mr. THOMPSON. Secretary Lipps, good to see you. Great to work with you. I appreciate your service, appreciate the service of Secretary Purdue.

You know, this, despite the unfounded claims to the contrary by some of my friends, this is not about scam, those who are scamming. This is about program integrity. And food security should be the focus.

I, as someone who chaired the Nutrition Subcommittee in the Agricultural Committee and worked on these very issues, issues that actually passed out of the House of Representatives, you know, we should be focused on ensuring that those who are truly in need are well served.

Free for all despite not being eligible takes food from truly needy families and I would argue hungry children and that is just wrong.

There is a finite number of dollars but we do have an obligation, I believe, to serve those who are experiencing food insecurity.

But we are talking about using, taking money literally away from truly needy, financially needy families and perhaps and many of them hungry families and children, to make it free for all. That is just wrong.

I want to discuss the BBCE rule and the data we have available. In addition to this Committee as you know, I serve on the Agricultural Committee and was very involved in the farm bill.

As you know the House passed bill proposed more a robust data collection. I find it concerning that some of my colleagues opposed getting that information then but are now saying we should wait on this rule until we have more data.

Now I am afraid they can't have it both ways. The evidence is clear. Three million individuals do not meet the basic eligibility requirements of SNAP.

That is a textbook violation of program integrity regardless of how my colleagues spin it and have to be corrected to ensure that this program appropriately uses tax payer dollars and appropriately serves those who are truly in need.

We should do that, we should do that at our best and if we are misusing the program, we don't have program integrity, we are actually taking resources away from those who are truly in need.

Now, Mr. Lipps, is it correct in my understanding that this rule change will not impact individuals who are statutorily eligible for SNAP benefits?

Mr. LIPPS. That's correct.

Mr. THOMPSON. Am I further correct that if a family qualifies for SNAP, the children in that family will be directly certified to receive free meals in school?

Mr. LIPPS. That continues to be the case.

Mr. THOMPSON. And does anything in this proposed BBCE rule change the direct certification for school meals at all?

Mr. LIPPS. No, sir.

Mr. THOMPSON. Am I correct in saying that if we circulate and it would be an appropriate part of our packet here, as a Member of this Committee, and everyone got a SNAP application, SNAP brochure we will just say which will be the appropriate thing to do when we are talking about SNAP that because we have—that has been given to us and that would be in our pack, we would now—

every Member of this Committee would be eligible under broad based categorical eligibility for the SNAP program.

Mr. LIPPS. Mr. Thompson, that's precisely the issue that both the Government Accountability Office and the Office of Inspector General pointed out as the problem with broad based categorical eligibility.

Mr. THOMPSON. And I think our income well goes well beyond eligibility. But that is one of the things that there is a program integrity issue. This is not about going after the millionaire or the scam.

Yeah, we ought to do that, but this ought to be about really helping the kids and the families who are truly in need. Thank you, Mr. Lipps.

Now while you are here, I have got to take the opportunity to discuss something else nutrition, child nutrition.

As you may recall, the last time you were before our Committee, I discussed milk consumption in the Child Nutrition Programs and the importance of moving just to allow whole milk, not forcing it, not requiring it, but allowing whole milk in addition to other flexibilities recently enacted.

I am curious if you have looked into the research on the nutritional benefits of whole milk?

Mr. LIPPS. Mr. Thomson, the next time I come I'm going to bring a pint of milk instead of my water just for you.

Mr. THOMPSON. Make it chocolate if you would, that is my favorite.

Mr. LIPPS. I'm aware of the recent research in that area. As you know the dietary guidelines, Scientific Advisory Committee is currently operating and they will consider all of that evidence on the whole as they look to revise the dietary guidelines and advise if there is an update that should be made on the percentage of milk served in schools.

Mr. THOMPSON. Great. Let me just finally and also like to know if you have any preliminary data on milk consumption now that we are into the school year and kids can access more milk varieties including one percent and flavor?

Mr. LIPPS. We don't have any feedback on that immediately from a study, Mr. Thompson. But anecdotally certainly there are some children that enjoying milk with the new flexibilities.

Mr. THOMPSON. Thank you, Chairwoman.

Chairwoman LEE. Thank you. I now recognize Ms. Hayes for 5 minutes.

Ms. HAYES. Thank you, Madam Chair. And thank you, Mr. Lipps, for being here. The last time you were before this Committee, you said that you agreed that you did not like to see hungry children and you emphasized Secretary Purdue's pledge to do the right thing and feed everyone. Remember that?

Mr. LIPPS. I remember that.

Ms. HAYES. So I am just at a loss because without even reviewing the research that clearly demonstrates that good nutrition is vital to a child's development, any teacher can tell you that hungry kids don't learn.

And you started out your testimony by saying those who can provide for themselves should. Should I remind you that children can't provide for themselves?

Can I ask you if this is a program integrity issue, just to kind of switch gears, how many children did you say would remain protected if this rule is implemented?

Mr. LIPPS. How many would remain—

Ms. HAYES. I mean, the percentage.

Mr. LIPPS. Remain eligible, 96 percent would remain eligible.

Ms. HAYES. 96 percent. So this isn't a program where there was rampant misuse if you have already identified that 96 percent of the people who would have access to it would still continue to use the program.

So I am just curious as to why the U.S. Department of Agriculture would target children in this way? It is not like we are saying 4 percent of students are eligible and 96 percent are misusing it. It seems like the program is operating with integrity.

Mr. LIPPS. Well, I'll have to point back to the fact that the rule is about integrity in the SNAP program. It has an indirect effect on the school meals program based on the linkages provided in statute.

And that's why per the income test that Congress has provided in statute 96 percent of them will continue to be eligible.

Ms. HAYES. Hungry kids don't care about income tests. So we have a responsibility as the stewards of these programs, if you will, to ensure that we are fixing the things that are broken and maintaining the things that are working and not just getting rid of everything arbitrarily.

Because you keep telling the story about this millionaire who misused the system. I have a million stories about children with their heads on their desks who come in, who are packing lunches, friends are bringing in food, teachers are buying them things to take home over the weekend, who are staying after school because they have no home to go to.

So if we want to go story for story, I have so many stories to tell you about what that looks like in the classroom. So it is just deeply concerning to me that of all the areas where we need work that targeting children at this time where food insecurity is identified as such a critical problem in our communities, that this is the direction that the department would want to go.

Can you explain why the department—I am sorry. Did your department include potential effects on educators in your analysis of the proposed rules impact on school meal eligibility or consult any educators?

Mr. LIPPS. There is not an analysis with regard to educators in the informational analysis that we released. Educators likely have commented in the record and we will consider those and respond to them as a process of dealing with the comments in the record.

Ms. HAYES. I am just curious. I know you are extending the comment period. Why wasn't it opened initially for the full period so that you can get as much robust information as you could in order to make an informed decision?

Mr. LIPPS. Are you talking about specifically with regard to this informational analysis?

Ms. HAYES. Yes.

Mr. LIPPS. The Agency conducted a regulatory impact analysis as it was required for the statute. It went through all appropriate clearance channels and was provided for public input for 60 days.

The Chairman asked for this analysis and we have provided it and as such we are providing it to the public for the opportunity to comment.

Ms. HAYES. So it was opened for 60 days for public comment?

Mr. LIPPS. That is correct.

Ms. HAYES. So in the event this rule is finalized, does your department have any plans to notify the families of the nearly 1 million children that will now have to fill out a form?

Because in years past they would not have had to fill out a form so if they are unaware that now this is a requirement they may just miss it again just on a procedural standpoint.

Mr. LIPPS. We work with—sorry.

Ms. HAYES. Go ahead.

Mr. LIPPS. We work with states and school districts every year to ensure that families have those communications and we will continue to do that as we move forward.

Ms. HAYES. But all of your testimony kind of lends itself to the fact that you don't trust the states to be good stewards of these programs.

Mr. LIPPS. I have not—

Ms. HAYES. So would—my question is would the department, does the department have any plan to notify the families?

Mr. LIPPS. Not directly. The department does not administer the program. Local school districts administer the program under the supervision of their state and we provide them technical assistance. We will continue to do that to ensure that everybody—

Ms. HAYES. So the local school districts have the ability, the capacity, the autonomy to oversee the program?

Mr. LIPPS. That's correct.

Ms. HAYES. I am sorry?

Mr. LIPPS. That's correct.

Ms. HAYES. That is correct. That is what I thought you said. Thank you. Madam Chair, I yield back.

Chairwoman LEE. Thank you. I now recognize Mr. Grijalva for 5 minutes.

Mr. GRIJALVA. Thank you, Madam Chair. Mr. Lipps, you are arguing that you did not conduct the economic analysis of the rules impact on school needs and needs meals because you were not required to assess the impact on this population.

However, last night your department issued this analysis. At what point did you acknowledge that you were—that you actually needed to assess the impact on school meals?

Mr. LIPPS. Congressman, the regulatory impact analysis that accompanied the rule that was published in the Federal Register for comment was appropriately drafted and went through all appropriate clearance channels with regard to its effect on the program for which we were refining the integrity measures being the Supplemental Nutrition Assistance Program.

This informational analysis was requested by the Chairman of this Committee and we are providing it to him and as such also

providing it to the public in the record and opening the comment period on the specific issue for them to have an opportunity to comment.

Mr. GRIJALVA. But further in your testimony to my colleague and in response, you just said that Ms. Miller provided our staff with the back of the envelope analysis on a staff call about the rule.

So are you admitting that your department was aware that there would be a significant impact to the free school meals program but did not think it was necessary to do a more comprehensive analysis?

Mr. LIPPS. The analysis that was provided with the rule was accurate and met all requirements for that standard and the information was provided to the Committee upon request.

Mr. GRIJALVA. Well, you know, the administration proclaimed I believe this week to be national school lunch week and praising the success of the program that provides lunch to more than 29 million children nationwide, Mr. Lipps, each month.

My question is if the administration believes that the national school lunch program is so successful, why are you proposing a rule that would remove nearly a million children from that program that provides not only nutrition but provides the setting for learning as well? So how do you reconcile those two?

Mr. LIPPS. Congressman, it's important to reiterate that this Committee sets the eligibility standards for school meals. We do believe it is a wonderful program, has had great success. I enjoy getting to see that success when I am out on the ground.

The rule that you reference is a rule with regard to refining the categorical eligibility in the SNAP program which has provided a loophole to the asset and income test that a committee of another jurisdiction has provided in statute.

Mr. GRIJALVA. Okay. You know, Congress has in terms of the rule, Congress has repeatedly rejected efforts to eliminate the categorical eligibility option including as recently as the bipartisan 2018 Farm Bill was enacted last December.

That has been the will and the consensus and negotiations that Congress has been involved with regard to this program. Yet your rule attempts to pulmogate a policy that has already been rejected by this Congress in terms of what happened with the Farm Bill.

How do you reconcile that? That you are able to do what you want and regardless of what this Congress's opinion, feelings or will is?

Mr. LIPPS. Congressman, the rule was stated in the Agency's work plan prior to consideration of the 2018 Farm Bill. Congress did not make changes with regard to the Agency's ability to refine broad based categorical eligibility to deal with the issues brought up in the GAO and OIG report. Congress was aware of that—

Mr. GRIJALVA. You didn't think the rejection efforts to eliminate the categorical eligibility option was not a statement relative to your work plan?

Mr. LIPPS. Congressman, Congress did not put in statute requirements for us not to move forward with this rule and did not change the asset and income test in statute and therefore we are

moving forward with refining broad based categorical eligibility for those issues that we have talked about.

Mr. GRIJALVA. And in my district, Mr. Lipps, 4,000 kids, just on the back of the envelope analysis as you did are going to be affected and affected in a very real way in our schools.

And, you know, I don't know how we can reconcile telling these kids and I don't know whose families are struggling they should no longer have access to food while they're trying to learn each day.

I, it's a contradiction, a contradiction that this Congress has rejected as late as December and it's a contradiction that you seem comfortable with. I yield back.

Chairwoman LEE. Thank you. I now recognize Mr. Trone for 5 minutes.

Mr. TRONE. Thank you, Madam Chair. Your department estimates nearly one million children will lose automatic access to free school meals with your proposed rule.

But when SNAP participation rates go down, we also see a decrease in the Identified Student Percentage, the ISP, which is used to calculate the eligibility of the Community Eligibility Provision, CEP.

This provision lets low income students in school district provide free meals for all students. All students. The ISP also determines the reimbursement rate from the Federal government when they participate in CEP.

Decreasing those ISP rates therefore puts these schools at risk of losing their ability to participate in a CEP that is going to impact their financial bottom line.

Do you know how many schools nationwide have ISP's between 40 and 50 percent and therefore they are at risk of losing their ability to have free meals for all students because of this rule?

Mr. LIPPS. Congressman, I don't have that exact number. We can get back to you. I will note that as you say, as the economy continues to improve and SNAP enrollment goes down, that does make this ISP percentage more difficult.

When Congress put the CEP provision in the 2010 Act which is now expired, they tied the ISP percentage to direct certification on SNAP.

That is a problem for schools as the economy improves and people come off of SNAP and may be an issue. If you want to look at that as you move forward with child nutrition reauthorization, the Agency is certainly willing to provide technical assistance on resolving that issue.

Mr. TRONE. Well, we appreciate that. Well, the answer is roughly 2,000 schools. 2,000 schools are in that bracket when that ISP drops they are going to lose their ability to take care of all the students.

So it doesn't appear the department considered or analyzed the effects of those schools that are near the 40 percent threshold. That is the key. 2,000 schools. It is going to be harder to feed our kids.

Madam Chair, I would like to ask unanimous consent to enter into the record the Food Resource and Action Centers report entitled Community Eligibility: The Key to Hunger Free Schools. Madam Chair.

Chairwoman SCHRIER. [Presiding] Thank you. I would like to recommend—to recognize—

Mr. TRONE. Without objection.

Chairwoman SCHRIER. Oh, sorry. Without objection.

Mr. TRONE. That will work. Thank you, Madam Chair. Mr. Lipps, I don't know how many schools nationwide, you know, if you don't know how many schools nationwide have ISPs between 40 and 50 percent, does the department really know that there aren't more than a million students who would be affected when the entire school, whole school loses it, loses their CEP? Do you know those numbers?

Mr. LIPPS. Congressman, as noted in this informational analysis, particularly when you talk about these programs that are linked to each other, these are based on estimates.

The department has prepared a proper analysis which they believe to be accurate based on those estimates and put them out. It does also note that a number of those children affected may be in CEP schools and so the number may be significantly lower based on that as well.

Mr. TRONE. Okay. We agree. The CEP also reduces paperwork for the schools and parents so they can spend their time on serving the students versus pushing the paperwork for the Department of Education.

What was the administration doing to help parents of children who no longer receive free meals through CEP to apply for reduced price meals for their kids?

Mr. LIPPS. Congressman, we have about 6 to 7 million children who come onto the school meals program through applications every year and the agency working with states and local school districts takes a number of actions to help simplify that process as best we can and to ensure that parents and families have all of the information they need to know the availability for access and to ensure that their children have access to—

Mr. TRONE. Well, in my district, we have three schools who have lost their eligibility to implement CEP because the ISP changed. So we are going to be looking to see if you guys help those folks out with the paperwork burdens and if those kids can then quality for free school meals that they maybe won't ever get because of the paperwork that is overwhelming for the kids, their parents, and the teachers. Madam Chair, I would like to also ask unanimous consent to enter into the record three letters in opposition to the proposed rule from organizations that work to eliminate hunger in my district. Manna Food Center, Maryland Hunger Solutions and the Montgomery County Maryland Community Action Board.

Chairwoman SCHRIER. Without objection.

Mr. TRONE. Thank you. I simply can't understand why the administration would take in actions makes it harder for schools to be part of CEP. I can't support hungry kids and I am disappointed that you support hungry kids.

Chairwoman SCHRIER. I would like to recognize Ms. Lee from Nevada.

Ms. LEE. Thank you. Mr. Lipps, I would like to take a moment to clarify something for the record here. Committee—you and the

Republicans on this Committee have said that 96 percent of children impacted by the proposed rule will still be able to participate in free and reduced priced meal. However, according to the departments analysis that we got last night, of the nearly 1 million children who will lose their direct certification for free school meals, only 45 percent will continue to be eligible for free school meals after they fill out the individual application and there is all sorts of issues with that.

51 percent will only be eligible for reduced price meal. That is 30 cents for breakfast, 40 cents for lunch and 4 percent will be—will have to pay the full price.

Filling out individual applications as has been recognized earlier is a huge burden for schools and families that the department did not account for. And some eligible children undoubtedly will fall through the cracks. This is a preventable disaster.

For the 51 percent of impacted students who will only be eligible for a reduced priced meal, paying 40 cents for lunch, 30 cents for breakfast can be an enormous financial burden for families.

Children who qualify for reduced price meals are between 130 and 180 percent of the Federal poverty level. For a family of four, think about that. That is an income for a family of four between \$33,455 and \$51,000.

In my home State of Nevada, approximately 1,300 students will lose their access to school meals because of the community elimination of the CEP.

And, you know, this is at a time when we are wrestling with increasing, widening income disparities and we have so many families and children struggling with food insecurity.

In your written testimony, you stated that you have talked about the importance the USDA gives to good customer service and that comes from listening to customers. So I want to start off and ask you several yes and no questions.

First of all, did you consider any input from any of these families before the administration released this rule essentially eliminating their eligibility?

Mr. LIPPS. Congresswoman, its important to recall that this rule is about a refinement of SNAP broad based categorical elements—

Ms. LEE. I understand.

Mr. LIPPS.—not with regards to school meals.

Ms. LEE. Did you consider any input from these families?

Mr. LIPPS. We drafted this rule based on the needs of the SNAP programs and not child nutrition standards which this Committee sits in statute.

Ms. LEE. Okay. So that is a no. Does the department think that children of these families do not need free school meals?

Mr. LIPPS. Congresswoman, this Committee decides who should get free and reduced priced meals. It is our job to carry that out. There is a discussion to be had if you all want to change those as part of child nutrition reauthorization. This agency—

Ms. LEE. Well, your change—okay.

Mr. LIPPS.—is happy to prepare technical assistance to assist you with that.

Ms. LEE. But let me clarify. You are changing the rule because of a report of one person who qualified for SNAP that was wealthy thereby affecting millions of children across this country.

Does the department think that children in these families whose income are between this do not need free school meals?

Mr. LIPPS. Congresswoman, again, Congress makes that decision on who qualifies for free school meals and reduced price school meals and we carry that out.

Ms. LEE. Okay. With nearly 1 million, again this was just updated, losing access, do you think it is reasonable to conclude that child food insecurity will increase or decrease?

Mr. LIPPS. Congresswoman, 96 percent of those continue to qualify under the standards provided in statute and we don't know what those numbers are going to show.

Ms. LEE. Well, I understand but I think I want to—as I clarified earlier, 51 percent of impacted students now may have to pay. Other students will fall through the cracks because of not knowing about the application or not properly filling it out.

So my question, yes or no. Do you believe it will increase food insecurity for children?

Mr. LIPPS. I don't have an answer to that Congresswoman, at this time. We can certainly look at that as we move forward and if you think those standards need to be different, we will certainly be available to provide technical assistance on changing them.

Ms. LEE. Okay. Well, thank you. I am—before I end, I would like to enter into the record a letter from Abby Leibman, president of Mazon clarifying the impacts that this rule change will have on senior, veterans, Native Americans, and rural Americans.

Chairwoman SCHRIER. Without objection. I would like to recognize myself for 5 minutes.

So it turns out that today is world food day, a day meant to highlight the ongoing fight against hunger.

And it seems particularly ironic that today we are talking about a rule, a proposed rule, that would increase the number of hungry children across this country, rather than lower it. In my home State of Washington, there are 15,633 students who stand to lose access to free school meals as a result of the proposed rule about categorical eligibility. And in my district in central Washington, there are over 3,300 students that stand to lose their free lunch status.

There are many schools in my district with poverty rates over 40 percent. That is nearly two and a half times the National average of about 16 percent.

And according to the superintendent of the Manson School District, many of these students eat two meals a day at school which are often the only well-balanced, nutritious meals they get. Many also participate in the summer meal program. Further, the U.S. Census Bureau's Supplemental Poverty Measure shows that the school meals program and SNAP measurably reduce the rate of poverty.

Now, I know, Mr. Lipps, from your previous appearance before our committee, that you care about the wellbeing of children and so could you help me understand why the department is choosing

to move forward with a rule that will clearly reduce access to nutrition programs that have been shown to reduce poverty?

Mr. LIPPS. Sure. Congresswoman, I don't know if you were here earlier for all of my comments on the fact that this is a rule with regard to refining categorical eligibility in the SNAP program.

Congress sets the asset and income tests for that program. It's our job to ensure that they're abided by and that's what this rule does.

There is an indirect effect on the school meals program and those families have access to that school meals program via the income standards that this Committee sets in statute and by which 7 million other school children come under the program every year.

Chairwoman SCHRIER. So let us just be clear that by ridding of this categorical eligibility, people still qualify but they will have to go through a whole bunch more hurdles, lots more paperwork.

In fact, I don't have the numbers in front of me—well, maybe I do but we would need in Washington State to hire 165 additional personnel just in order to take care of the increased paperwork.

So this sounds like we are shifting our spending away from spending on food for children and towards spending on bureaucracy. That seems like the wrong direction to be going.

Mr. LIPPS. Do you have a question on that?

Chairwoman SCHRIER. I am contesting what you said. Do you have any comments about that? Because I will go on.

Mr. LIPPS. Congresswoman, again, I would say this Committee sets those asset and—those income tests for families to participate in school meals. There are 7 million who come in via this access point every year.

If Congress feels that is not the right way for kids to come on the meals, they should deal with that in child nutrition reauthorization and we will be at the table to provide technical assistance on helping move forward in that direction.

Chairwoman SCHRIER. I wanted to add as a pediatrician, I am concerned that taking away school meals and this is from a half a million kids nationwide and I talked about the numbers in my state, will also decrease their academic performance and result in probably worse behavior in school.

Research shows that children who participate in Federal nutrition programs do better in math and reading and are more likely to graduate and ultimately that means they will contribute to our economy.

Did you consider the impact of this rule on academic outcomes and the, and our economy later?

Mr. LIPPS. The SNAP rule considered impacts with regard to administration of the SNAP program and went through all proper clearance channels.

Chairwoman SCHRIER. Okay. And did you consider the administrative burden and the transfer of dollars to bureaucracy and to paperwork and hiring additional personnel instead of putting food into children's bodies?

Mr. LIPPS. I do believe there is a consideration of the administrative side of this issue in the recently released informational analysis.

Chairwoman SCHRIER. Okay. I am going to conclude because I have a few more seconds. Just with a general principle, that there seems to be an underlying effort to take people who are already on the edge in this country and make life just a little bit tougher for them.

SNAP costs \$1.40 per meal. We are a wealthy country. There are plenty of places that we could make cuts that would not so adversely affect people in this country who can least afford that kind of trauma and difficulty in their lives.

These are programs that pull families out of poverty and that make hungry people not hungry. I would like to thank you for your attendance today.

Mr. LIPPS. Thank you.

Chairwoman SCHRIER. And I would like to recognize Dr. Foxx for 5 minutes.

Mrs. FOXX. Thank you, Madam Chairwoman, and, Mr. Lipps, thank you so much for being here today. We really appreciate your coming back and being with the Subcommittee. I support efficiency in programs. I support improving program integrity. I support reducing the burden on grantees, states and others when participating in or implementing Federal programs. And with all that, I support ensuring the benefits offered to those in need actually reach those in need. Taxpayers give the Federal government their hard earned money and we owe it to them to help make sure the money is used effectively, efficiently and in accordance with the law.

I believe the proposed BBCE rule will ensure that hardworking tax payer dollars are spent in accordance with the law. Do you agree with that, Mr. Lipps?

Mr. LIPPS. Yes, ma'am.

Mrs. FOXX. I believe the proposed BBCE rule will impact categorical eligibility within programs because individuals not eligible, not eligible, will no longer be able to slide in to eligibility for all programs by subverting the income requirements and being considered a participant in another program.

With that said, any family that actually qualifies for SNAP will continue to do so when this rule becomes final. Is that correct, Mr. Lipps?

Mr. LIPPS. Absolutely.

Mrs. FOXX. And therefore, the families that are eligible for SNAP will be directly certified for free school meals when this rule is finalized. Is that correct?

Mr. LIPPS. That's correct.

Mrs. FOXX. So despite hearing that an outrageous number of students will lose access to free meals that is hardly close to the actual impact of this proposed rule—rule. Is that correct, Mr. Lipps?

Mr. LIPPS. That's correct.

Mrs. FOXX. Once the loophole in SNAP is closed, the families that qualify for free or reduced price meals will remain the same, correct?

Mr. LIPPS. Correct.

Mrs. FOXX. If your family earns 130 percent or below the Federal poverty limit, your children qualify for free meals. Nothing changes.

If your family earns between 130 percent and 185 percent of the Federal poverty limit, your children qualify for reduced price meals. Nothing changes. Is that correct, Mr. Lipps?

Mr. LIPPS. Yes. Yes, ma'am.

Mrs. FOXX. Thank you, Mr. Lipps. Mr. Lipps, several of my colleagues have implied or directly stated that the policy is targeted—targeting children and encouraging increased hungry children.

That does not seem to be the purpose of this rule to me based on your testimony, based on the rule, based on the clarifications you have made.

Is there anything that has been discussed today at this hearing that you'd like to clarify or reemphasize for the record?

Is there anything you feel is mischaracterized that you would suggest we look at more data to better understand how all of these programs interact?

Mr. LIPPS. Congresswoman, I appreciate that. Hunger is an important issue. We all agree on that. I know that that's important to you, and I have heard your statements on that with regard to your background and we all care about those issues.

Our job at USDA, you have tasked us to make, to ensure that there is integrity in all of these programs. Broad based categorical eligibility rule is an integrity rule dealing with loopholes in the SNAP program to ensure the asset income test and posed by the Committee of jurisdiction are complied with.

This Committee has jurisdiction over school meals programs. You set the income tests for these programs and we ensure that they are carried out in the best manner possible to ensure that all of those children have access.

We do that today. We will continue to do that tomorrow. And I appreciate the opportunity to clarify that.

I would also say with regard to interaction in the programs, there are a lot of programs that interact with the families that we serve at this point, particularly as families move from free to reduced priced meals.

There is always a conversation to be had about ways to better serve them and cause those programs to better interact to help those families along.

This agency is always willing to be at the table to help provide technical assistance on those discussions should this Committee choose to move forward in those.

Mrs. FOXX. Thank you, Mr. Lipps. I don't believe anybody in the Agriculture Department wants to put children in a position where they are, there are more children who are hungry in this country.

But I do think we want program integrity and we want the adults who are utilizing this program inappropriately to be held accountable. Thank you, Mr. Lipps. Thank you, Madam Chairwoman.

Mr. LIPPS. Thank you.

Chairwoman SCHRIER. I would like to recognize my colleague Mr. Johnson from South Dakota for 5 minutes.

Mr. JOHNSON. Thank you, Madam Chair. Mr. Lipps, thanks for being here today and I want to thank you for your passion toward

hunger and making sure we do what we can to reduce hunger in this country.

This is a personal topic for me. I, like a number of my colleagues on both sides of the aisle in Congress, utilized SNAP benefits as a part of my family when I was growing up. And we need a social safety net in this country for those people who truly need it.

So thank you for your efforts to make sure that safety net is intact and effective.

I want to—and I know you have been asked these questions before but I just want to make sure that logically I understand how this flows.

Mr. LIPPS. Sure.

Mr. JOHNSON. So the income and asset test for SNAP, that has been set by Congress, is that right?

Mr. LIPPS. That's correct.

Mr. JOHNSON. And at the time that those standards were set, Congress indicated I believe that their motivation, their intent was to make sure that these resources were targeted toward the most needy families. Is that right?

Mr. LIPPS. That is my understanding.

Mr. JOHNSON. So the law in search of administrative efficiency, did provide for some categorical eligibility that meant that people who qualified for some programs like TANF which is quite difficult to qualify for, that they would be considered eligible for programs that are a little easier to qualify for like SNAP. Is that right?

Mr. LIPPS. That's correct, yes, sir.

Mr. JOHNSON. And it is my understanding that a number of states have really strained that categorical eligibility in all likelihood beyond what Congress intended into what we are now calling broad based categorical eligibility.

And that it is not just possible but is happening today that people who otherwise wouldn't qualify under the Congressional established asset and income test are now receiving benefits that they have not, they are no, they don't legitimately are qualified for, right?

Mr. LIPPS. Yes, sir, that's correct. And as I have noted before, this—that's the exact issue that the Government Accountability Office and Office of Inspector General report pointed out that are occurring in masse in a number of states.

Mr. JOHNSON. So I want to make sure that I have the facts on this right because it was hard for me to believe the first time I heard it.

There can be at the state level, someone who is deemed qualified or receives—forget even substantial TANF benefits, but perhaps a TANF funded information that then because they have received quote a TANF benefit that there are some states who then are without any income or any asset test are allowing those individuals to be eligible for SNAP. Am I understating that right?

Mr. LIPPS. You're correct, yes, sir.

Mr. JOHNSON. Those families then are eligible for the school lunch program even though in some instances there has been no income and no asset test conducted?

Mr. LIPPS. That's correct.

Mr. JOHNSON. So then in that environment, we are doing a pretty poor job of targeting these important and scarce resources toward the families that need it the most, is that right?

Mr. LIPPS. Yes, sir.

Mr. JOHNSON. What is the—I know you have said it before, Mr. Lipps, but what is the goal for the agency, for the department with this proposed rule?

Mr. LIPPS. Congressman, the goal is to ensure that the eligibility standards that Congress sets for these programs are abided by and that the recipients on these programs know that there is integrity in this program and that there is not a dark cloud of new stories about these egregious behaviors that cover these programs.

Congress provides an asset and income test for SNAP. This Committee provides income tests for school meals. We are ensuring those are abided by and we are not changing those. We don't have the authority to change that at the agency.

Mr. JOHNSON. Okay. So I am going to provide a message to families, needy families, and I want you to, after I give that message, I want you to tell me in what ways it is flawed.

My message to those needy families would be sir, madam, if your family meets the income and asset test for food stamps, after this rule goes through, you will still be eligible?

Mr. LIPPS. Correct.

Mr. JOHNSON. For food stamps.

Mr. LIPPS. Correct.

Mr. JOHNSON. Sir, madam, if there are people who have made you scared that the government is going to take away your otherwise legitimately, eligible for benefits, you should not be scared. If you qualify you will be eligible for those benefits. Is that right?

Mr. LIPPS. That's correct.

Mr. JOHNSON. Mr. Lipps, thank you for making this very clear for me. I appreciate it.

Chairwoman SCHRIER. Thank you. I would now like to recognize our Chairman, Mr. Scott.

Mr. SCOTT. Thank you. Thank you, Mr. Lipps, for being here. Let me just follow through, follow up on a question that was just asked. There are a million people who would be not categorically eligible for free lunch. Is that right?

Mr. LIPPS. There are a million children who will no longer be directly certified for school lunch after the, if their families don't meet the asset and income test in SNAP.

Mr. SCOTT. Okay. Now as I understand, 45 percent would still be eligible for free lunch, for free meals, right?

Mr. LIPPS. Yes, sir.

Mr. SCOTT. If they apply.

Mr. LIPPS. Correct.

Mr. SCOTT. And what does the evidence show as to the percentage of those who are eligible that end up slipping through the cracks in the application process?

Mr. LIPPS. Mr. Chairman, I don't have data on that today. I can see what we have and get back to you on that. There are 7 million children in this country who come in through the application process every year based on the income test that this Committee has provided in statute.

Mr. SCOTT. Well, you recognize somebody slips through the cracks and this, this whole discussion doesn't make a lot of sense unless we know how many—because if all 450,000 get through the application process, we are just talking about a little inconvenience but nobody is denied nutrition.

But if a significant portion can't get through the process, then we have a problem, isn't that right?

Mr. LIPPS. Mr. Chairman, I would offer to you the same as I did earlier. If this Committee is interested at looking at other avenues to move children on to this program, other than the asset—than the income test provided in statute, that agency will stand ready to provide technical assistance on that as you—

Mr. SCOTT. Well, we thought we had—

Mr. LIPPS.—reauthorization.

Mr. SCOTT.—before you, before this rule popped up.

Mr. LIPPS. You—

Mr. SCOTT. 450,000 were categorically eligible.

Mr. LIPPS. Direct certification will continue to occur. Categorical eligibility between TANF and SNAP will continue to occur. They will occur—they will work in the manner that they were designed at the time of their—

Mr. SCOTT. Except that they are not categorically eligible. They have to go through the application process and we don't know how many we are going to lose in that process. 510,000 would be eligible for reduced price and if they apply is that right?

Mr. LIPPS. Yes, sir that is the method for their entrance in the program described in the—

Mr. SCOTT. And we don't—

Mr. LIPPS.—statute.

Mr. SCOTT.—know how many of those will lose eligibility—will lose the benefit because they don't get through the process, is that right?

Mr. LIPPS. I don't have an estimate on that.

Mr. SCOTT. Okay. And 40,000 will lose eligibility all together.

Mr. LIPPS. Families who do not meet the income test prescribed by this Committee in statute will not qualify for free or reduced priced meals.

Mr. SCOTT. Well, yeah, but, I mean, we are not talking about rich people. We are talking about people who would, who are eligible for, you know, between 185 and 200 percent of poverty. I mean, it is just a little, that is what we are talking about, right?

Mr. LIPPS. Well, its families anywhere over 195 percent to poverty level

Mr. SCOTT. Right.

Mr. LIPPS. And again, if Congress wants to change that we will participate in technical assistance to help make that happen.

Mr. SCOTT. And what is the asset level that will be imposed?

Mr. LIPPS. There is no asset test in school meals program.

Mr. SCOTT. What is the asset in SNAP?

Mr. LIPPS. The asset test in SNAP Congress has set a \$2,250 limit for assets in SNAP program.

Mr. SCOTT. Okay. Can you, in your written testimony you mentioned the online purchasing pilot program.

Mr. LIPPS. Yes, sir.

Mr. SCOTT. Can you explain what affect that has on customer service?

Mr. LIPPS. Sure. I think that program will provide a great opportunity to ensure that SNAP recipients have the same avenues to purchase their groceries as many of us others do. That pilot launched in New York and we are seeing great success there but we are being cautious to ensure that—

Mr. SCOTT. What does success mean?

Mr. LIPPS.—there is integrity both in the, on the SNAP side of the program but also for the recipients.

Success means that recipients are able to purchase food and have it delivered to their home with integrity and that we are on a path to expand that so that more individuals may participate in it.

Mr. SCOTT. And can you describe the SNAP employment and training program?

Mr. LIPPS. Sure. The SNAP employment and training program is a wonderful program that the Agriculture Committee has given to FNS and to states who administer the program to provide opportunities for SNAP recipients to train for jobs that will advance their economic mobility.

We have wonderful stories from around the country of individuals who participated in that program. I recently met with a formerly incarcerated individual who was estranged from his family who went through that program and is now running a moving company very successfully and has reunited with his program because of the time he spent in that employment and training opportunity.

States, some states are doing a great job on that. We are working to make sure that all states are doing a great job on that and expanding those opportunities.

Mr. SCOTT. Can you describe a little bit about what kind of training opportunities are available under that program?

Mr. LIPPS. Sure. There are lots of different opportunities out there. Everything from culinary to wood working, Women in non-traditional jobs, truck driving, met with some individuals who were learning to code. So they're all across the spectrum but we are ensuring that our providers are making—

Mr. SCOTT. And who runs the training programs?

Mr. LIPPS. The training programs are run by the states through partners and we are working to—with states to ensure that they're selecting partners who are providing people skills that will provide them success in long term employment.

Mr. SCOTT. Thank you, Madam Chair.

Chairwoman SCHRIER. Thank you. I would like to recognize my colleague, Ms. Jayapal from Washington. Oh, excuse me. Ms. Wild.

Ms. WILD. Thank you, Madam Chair. Mr. Lipps, first I want to ask you a question on behalf of one of my colleagues, Susan Davis who isn't here right now because she's at another committee hearing.

She is a member of the Armed Services Committee and has asked me to ask you about the effect or the potential effect of these cuts on military families.

I will tell you I was an Air Force brat myself, moved around from assignment to assignment with my family my entire childhood and I know full well the struggles of military families.

And often, they receive housing allowance adjustments that artificially increase their income which could very well put many members of the military in the category of people who will no longer qualify for SNAP benefits and correspondingly their children for free lunches.

Have any provisions been made by the agency or the administration to address these concerns of military families?

Mr. LIPPS. Congresswoman, we don't have statutory authority to treat them differently. I'm aware of the basic housing allowance issue and I know that Members of Congress are aware of that and should they want to work on that issue again the agency will be happy to provide technical assistance—

Ms. WILD. So the answer to that is no.

Mr. LIPPS.—to address that.

Ms. WILD. Okay. Mr. Lipps, it is estimated that 12 percent of households in Pennsylvania which is where I am from would lose their SNAP benefits as a result of this proposed rule.

In my home, the Lehigh Valley of Pennsylvania, 50 percent of the children are eligible to receive free school meals. Many children would lose their access to school meals as a result of this rule. It risks their health and their wellbeing and it is imperative the USDA is transparent with the public about how the rule will harm children and families.

And yet, on numerous occasions when Chairman Scott has sent letters to the department or had his staff request documentation of the department's analysis of the proposed rules impact on school meals, he was met with resistance.

We are talking about a single document in a phone call with Committee staff and USDA Assistant Secretary Ken Barbic on October 7th.

The Committee again requested that this document be made available to the Committee in advance of our hearing no later than October 11 and yet, we didn't get this information until late yesterday afternoon even though the information has been available since the rule was published in July. Can you account for that?

Mr. LIPPS. Yes, Congresswoman. I talked about this earlier. This informational analysis did not exist at the time of that phone call. We provided the best information that we had.

We have since produced the analysis and provided it both to the Chairman and to the public as quickly as we could.

Ms. WILD. When did the informational analysis become available?

Mr. LIPPS. It became analysis for publication yesterday when we released it.

Ms. WILD. That wasn't my question. When did the analysis become available?

Mr. LIPPS. It became available yesterday. I'm not sure I understand what your question is.

Ms. WILD. Well, you said for publication. Was there some sort of process?

Mr. LIPPS. We have a clearance process for all the documents that come out of the agency.

Ms. WILD. So when was the information made available to the agency? Not when was the process—

Mr. LIPPS. Well, the agency—

Ms. WILD.—gone through.

Mr. LIPPS. Sorry for interrupting. The agency created the document so the analysis was run after the request from the Chairman.

Ms. WILD. Now, Mr. Lipps, when my colleague Mrs. Lee asked you a question a little while ago, you responded that Congress sets the eligibility rules.

And yet Congress also established broad based categorical eligibility in the 2008 Farm Bill so that more children could be eligible for free school meals.

And yet the department is not implementing the broad based categorical eligibility as dictated by Congress, is it?

Mr. LIPPS. Congresswoman, I'm not sure that's accurate. Congress created categorical eligibility which will remain after our rule is implemented. Broad based categorical eligibility was implemented by the states and this agency and not by Congress.

We will continue to allow categorical eligibility which is prescribed in statute.

Ms. WILD. Well, during the 2018 Farm Bill reauthorization, House Republicans included a provision to gut SNAP broad based categorical eligibility in their bill. That proposal was stripped from the version of the bill signed into law.

But now the department is proposing changes to categorical eligibility that would be substantially more harmful than those changes that Congress rejected in the 2018 Farm Bill authorization. Isn't that true?

Mr. LIPPS. The department proposed these changes prior to consideration of the 2018 Farm Bill. Congress took no action with regard to the intent of the agency to move forward with that and the agency continues to move forward to address integrity issues that have been called out by the Government Accountability Office, the Office of Inspector General and continue to create negative news media reports on a very important program.

Ms. WILD. Thank you.

Chairwoman SCHRIER. I would like to recognize my colleague, Ms. Jayapal from Washington State for 5 minutes.

Ms. JAYAPAL. Thank you, Madam Chair, and, Mr. Lipps, thank you for being here. Let me just be clear. Last year Congress passed the 2018 Farm Bill which expressly preserved broad based categorical eligibility for SNAP benefits, rejecting the proposal that my colleague Ms. Wild talked about, a proposed cut.

And the bill received the most votes of any farm bill in the history. 369 votes, only 47 people voted against it. So I consider this rule with its lack of process and transparency a complete end run around Congress.

And here is what I can't figure out. I can't figure out why the administration is pushing forward a proposal that takes away nutrition assistance from extremely low-income families. I don't think that is what the vast majority of the American people want.

This Trump Administration rule is cruel to hungry kids who need our help for food. We are not talking about other things, we are talking about food. Basic nutrition assistance.

So, Mr. Lipps, can you tell me roughly what 130 percent of Federal poverty level is because that is the qualification here we are talking about?

Mr. LIPPS. Sure. It depends on the number of family members, Congresswoman.

Ms. JAYAPAL. Okay. So I am going to say it is about \$21,000.

Mr. LIPPS. Sounds right.

Ms. JAYAPAL. And I am using the generally accepted statistic. In my home State of Washington, our minimum wage is \$12 an hour because we have very strong worker protections and a great state legislature.

If you are working full time, that comes out to just under \$25,000 a year which is above the threshold for eligibility for SNAP benefits and thus for free school meals.

Your agency has acknowledged in the past that the typical family will spend more than half of that amount, \$13,000 on child-related costs alone.

Is it the goal of the administration to take away free school meals for families just over 130 percent of the poverty level?

Mr. LIPPS. Congresswoman, I'm not sure you were here earlier when we talked about the objection—

Ms. JAYAPAL. Actually I have been here for most of the hearing, Mr. Lipps. I think I have heard your answers. I am going to ask you the question again.

Is it the goal of your agency to take away free school meals for families just over 130 percent of the poverty level?

Mr. LIPPS. Let me tell you our objectives because that's not it. Congress sets that 130 percent level in statute. The agency does not set it. We do not have the ability to change that.

Ms. JAYAPAL. You are changing a rule that states have implemented, that will have impact on decisions that states have made across the country that Congress has made clear we want to preserve that ability for states to do this so that hungry kids can get food.

So I am just going to ask you one more time and it is a yes or no question. Is it the goal of the administration to take away free school meals for families just over 130 percent of the poverty line?

Mr. LIPPS. No.

Ms. JAYAPAL. Okay. Great. Well, then I would suggest pulling back on this rule. Since July this Committee has been asking for an analysis of how your proposed rule would impact school meals.

I have heard the arguments of when you released this. They don't really make sense to me frankly. 20, less than 24 hours before the hearing you provide us with this analysis.

Can you tell us by your own estimation how much money does the administration save by cutting off 1 million children from free school meals as you have proposed?

Mr. LIPPS. Congresswoman, as we noted, we—the estimate is that 96 percent of those students will continue to qualify for free or reduced priced meals—

Ms. JAYAPAL. How much does it cost? How much money—

Mr. LIPPS.—so there is not an estimate of—

Ms. JAYAPAL.—will the administration save?

Mr. LIPPS.—of savings.

Ms. JAYAPAL. How much?

Mr. LIPPS. The estimate suggests that 96 percent of those will continue to qualify so there would not be a savings associated with them not receiving it.

Ms. JAYAPAL. Let me tell you what the estimate is. It is \$270 million over five years based on the data. So you are right.

Now let us look at the costs. How much has USDA estimated administrative costs will rise as a result of your proposed rule?

Mr. LIPPS. I don't know that offhand, Congresswoman.

Ms. JAYAPAL. Well, let me tell you what it is, Deputy Undersecretary Lipps.

Mr. LIPPS. Sure.

Ms. JAYAPAL. I wish you did know this. It is your agency and your department and your rule.

The administration estimated \$2 billion over 5 years in the proposed rule. So the overhead costs of the program overall will go up by \$2 billion by your own estimation.

And as you write in the proposed rule released last night, this is a quote. Does not account for potential state and local administrative costs incurred due to collecting and processing household applications for children no longer categorically eligible.

Mr. Lipps, setting aside administrative costs, can you tell me how \$270 million over 5 years compares to the CBO's estimate of the total cost of the Republican tax bill that was passed in 2017?

Mr. LIPPS. Congresswoman, I would note that the costs that you noted earlier with regard to the regulatory impact analysis of the rule and not this informational analysis.

Ms. JAYAPAL. Do you know how the \$270 million over 5 years compares to the CBO's estimate of the total cost of the Republican tax bill passed in 2017?

Mr. LIPPS. I'm not an expert on that, Congresswoman.

Ms. JAYAPAL. Well, let me tell you, my time has expired. CBO estimated the cost of the tax bill to be \$1.9 trillion over 10 years, Mr. Lipps. Thank you very much. I yield back, Madam Chair.

Chairwoman SCHRIER. Thank you. I would like to recognize my colleague Mr. Keller from Pennsylvania for 5 minutes.

Mr. KELLER. Thank you, Madam Chair, and thank you, Deputy Secretary Lipps for being here. I know this has been asked many times so please bear with me but I just want to make sure that it is correct for the record.

And that is it is my understanding or let me just ask this to make the record clear. Is there any attempt by the USDA to limit access to benefits by qualified individuals in other—excuse me, in either the SNAP or school meal program?

Mr. LIPPS. No, sir.

Mr. KELLER. There is not. Because I look at the title here on the thing before I got the Subcommittee it says examining the USDA's proposed cuts to the free school meals. That is what it says on our paper.

So you don't currently or the rules will not change any eligibility for any SNAP or school meal program?

Mr. LIPPS. That's correct.

Mr. KELLER. That is set by Congress?

Mr. LIPPS. Yes, sir.

Mr. KELLER. Okay. So when I look at this, the WIC programs and we are in school nutrition, child nutrition and WIC program was last reauthorized in 2010, is that correct?

Mr. LIPPS. That's correct.

Mr. KELLER. That is correct. Okay. This is the thing that I want to say and this is coming from an individual, I am not going to tell a story about people I represent or anecdotal stories.

This is going to be a story about a kid that lived it. And I am going to tell you it is not fun to be hungry as a child. I had that childhood.

And, you know, when we look at that there is nobody that wants to make or have anybody be hungry. I can't imagine what my parents went through knowing that their children were hungry. So to say that the administration or anybody else wants to change those guidelines, I think is just outrageous.

So looking at this, you know, we are having a debate here on taking the Committee's valuable time on a proposed SNAP program which falls under the jurisdiction of the Agriculture Committees, is that correct?

Mr. LIPPS. Yes, sir.

Mr. KELLER. So our jurisdiction in this Committee would be for the school nutrition, the school lunch programs and so forth, correct?

Mr. LIPPS. Correct.

Mr. KELLER. So I would suggest to my colleagues rather than trying to prescribe motives or ascribe motive to what the administration is trying to do to make sure things are more equitable and the help is getting to where it needs to go, if we don't agree with the guidelines and think more people need help, then I would charge this Committee with looking into having hearings on what we should be doing to change those guidelines. Because if we were to change the guidelines, you would enforce those new guidelines?

Mr. LIPPS. Yes, sir, without a doubt.

Mr. KELLER. Okay. So again, the administration is not concerned with what the guidelines are or trying to eliminate anybody from getting help that needs help.

Mr. LIPPS. That's correct.

Mr. KELLER. Okay. So again I just want to say this one more time. If we are concerned about that, which we all should be making sure that people get the help they need, we as Americans want to do that.

So I would say to this Committee, let's spend our time having hearings on what we should be doing to make sure those guidelines are reviewed and the people that get the help get the help rather than trying to attribute some kind of negative motive to somebody that is just trying to do the job Congress gave them to do. So I yield back.

Mr. LIPPS. Thank you.

Chairwoman SCHRIER. As a point of privilege, I want to clarify that the impact on the school meal program is within the jurisdiction of this Committee.

And I recognize Dr. Adams from North Carolina for 5 minutes.

Ms. ADAMS. Thank you, Madam Chair. Thank you for—to the witness today for your testimony.

The administration is circumventing congressional intent which was made clear in the 2018 Farm Bill to roll back categorical eligibility and take food assistance away from children, families, veterans, disabled, and older Americans.

More than 98,000 North Carolinians, including 38—35,000 North Carolina children would lose food assistance and school meals if this flexibility is eliminated.

Mecklenburg County, my district, we have more than 10,000 people, almost half of which are children who would lose access to food assistance and that is without counting for the children at risk of losing lunch and breakfast due to the impact of this rule on the community eligibility provision. So, Mr. Lipps, the families and children that your proposal would take away, take food away from, are very low income, making ends meet on as little as \$28,000 for a family of three.

One of the best resources that a family could hope to rely on when their wages are so low is a little savings for an emergency like when the car breaks down or their child needs to go to the doctor, wouldn't you agree with that?

Mr. LIPPS. Yes, ma'am.

Ms. ADAMS. So but this rule wouldn't just penalize families if they receive a modest raise of \$1 per hour in a low wage job. It would penalize them for saving even a few dollars for that kind of emergency.

So my question, in fact the administration's own estimates show that about half of the households who would lose SNAP under this rule would do so as a result of the so called asset test not the income test. Isn't that right?

Mr. LIPPS. Yes, ma'am, that's correct.

Ms. ADAMS. Okay. So the 1.7 million households who would lose SNAP are nearly evenly split between those that failed the Federal SNAP income test and those that fail the Federal resource test.

So this would mean that most families wouldn't save more than \$2,250 without jeopardizing their children's access to school meals. So how does this rule then help families save for their children's future when they are forced to choose between saving for tomorrow or making sure that their kids have enough to eat today?

Mr. LIPPS. Congresswoman, I appreciate your passion for these programs and I assure you that we share that. I acknowledged the issues that you raise.

As we have talked about earlier, Congress sets those asset tests in the statute. It's an important discussion. I know that raising those was considered in the 2018 Farm Bill and not adopted.

But it is an important discussion and if the committee of jurisdiction wants to look at modifying those, the agency is certainly willing to provide technical assistance on doing that.

Ms. ADAMS. But you, would you make any recommendations without the Committee? I mean, we have passed the Farm Bill. I had the opportunity to sit on the Committee which I am Vice Chair of that Committee. But also in terms of settling that bill, so what would you say to that?

Mr. LIPPS. Congresswoman, I can't alone endorse new policy but I will say as a part of that process that the administration issued a statement of administrative policy in support of the bill that

made a number of changes including those that raised the asset test as noting that how these programs intersect with the individuals that you are talking about who often do struggle is very important to ensure that we give them the resources that they need to move forward.

Ms. ADAMS. Okay. Madam Chair, I would like to enter 2 letters into the record. One from the National Education Association and 23 faith based organizations. I would like to enter those for the record.

Chairwoman SCHRIER. Without objection.

Ms. ADAMS. Thank you. And, Madam Chair, I will yield back the balance of my time.

Mr. LIPPS. Thank you.

Chairwoman SCHRIER. Seeing as there are no more questions, I want to remind my colleagues that pursuant to, oh, excuse me.

I want to remind my colleagues that pursuant to Committee practice, materials for submission for the hearing record must be submitted to the Committee Clerk within 14 days following the last day of the hearing, preferably in Microsoft Word format.

The materials submitted must address the subject matter of the hearing. Only a Member of the Committee or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record via an internet link that you must provide to the Committee Clerk within the required timeframe but please recognize that years from now that link may no longer work.

Again, I want to thank Mr. Lipps for his participation today. What we have heard is very valuable. Members of this Committee may have additional questions for you and we ask you, Mr. Lipps, to please respond to those questions in writing. The hearing record will be held open for 14 days in order to receive those responses.

I remind my colleagues that pursuant to Committee practice, witness questions for the hearing must be submitted to the Majority Committee staff or Committee Clerk within 7 days. The questions submitted must address the subject of the hearing.

I now recognize the distinguished Ranking Member Mr. Comer for his closing statement.

Mr. COMER. Thank you. And thank you, Mr. Lipps, for coming here today. I understand it has been a very long day for you and I appreciate your time and patience in answering all of our questions.

Mr. LIPPS. Thank you.

Mr. COMER. I appreciate the opportunity to clarify the impact of this proposed rule and highlight its benefits to the tax payers and program participants even though the proposed BBCE rule falls under the Agriculture Committees jurisdiction.

I believe the rule will strengthen integrity in the SNAP program by closing an unintended loophole that has allowed some states to extend food stamp eligibility to millions of people who do not qualify while taking away resources meant for the truly needy.

My colleagues have criticized the rule and cited the impact on school meal programs as one reason they oppose. However, as many of my colleagues have discussed today and you have con-

firmed, under this rule no child who statutorily qualifies for a free or reduced price meal will lose access to their meal.

If my colleagues are interested in exploring who actually qualifies for a free or reduced price lunch, we are happy to engage in a conversation around the reauthorization of the child nutrition programs.

So the proposed changes in the rule will help prevent fraud and abuse within the SNAP program, fraud that cost tax payers nearly \$64 billion in 2019 and not prevent one eligible child from receiving a school meal. That sounds like a good policy to me and something we should all support.

Before I yield, I ask unanimous consent for two letters to be submitted to the record. They are both comments that were submitted to USDA on the proposed BBCE rule.

Chairwoman SCHRIER. Without objection.

Mr. COMER. Thank you. And I yield back.

Chairwoman SCHRIER. Thank you. I now recognize myself for the purpose of making my closing statement.

Mr. Lipps, thank you again for being here to discuss the USDA's proposed changes to SNAP eligibility and free school meals.

As we discussed, the departments proposed rule will have a—will have devastating consequences for millions of our Nation's children and families.

The departments own analysis found that the proposed rule will bar nearly a million children from qualifying automatically for free school meals that they need to be healthy.

When children are hungry, they cannot learn and grow and at a time when millions of children do not have reliable access to food, this proposed SNAP rule will only exacerbate our Nation's food insecurity crisis.

Mr. Lipps, as I did during your last appearance before this Committee, I urge you to recommit fulfilling the Food and Nutrition Services mission to increase food security and reduce hunger by providing children and low income people access to nutritious food.

The only sensible step forward is to rescind this proposal and preserve access to automatic free school meals for nearly a million children.

We owe it to the next generation to make sure they are prepared to learn and can reach their full potential.

If there is no further business, I would like to wish our counsel, Janice Nsor, a happy birthday.

And without objection the Subcommittee stands adjourned.

Mr. LIPPS. Thank you.

[Additional submissions by Chairwoman Bonamici follow:]



August 7, 2020

To Whom it May Concern:

As Chair of the Education and Labor Subcommittee on Civil Rights and Human Services, I would like to submit the attached letter from the National Education Association on behalf of Representative Alma Adams.

Sincerely,

Suzanne Bonamici
Member of Congress



1201 16th Street, NW | Washington, DC 20036 | Phone: 202-833-4000

Lily Eskelsen Garcia
President

Rebecca S. Pringle
Vice President

Princess R. Moss
Secretary-Treasurer

Kim A. Anderson
Executive Director

October 15, 2019

Education and Labor Committee
Civil Rights and Human Services Subcommittee
U.S. House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of the 3 million members of the National Education Association and the 50 million students they serve, we thank you for holding a hearing on "Examining the USDA's Proposed Cuts to Free School Meals." NEA members are teachers and education support professionals, including school food-service employees, in 14,000 communities across the nation.

School employees know that when students go hungry, they cannot focus on learning. The USDA's proposed revision of categorical eligibility in the Supplemental Nutrition Assistance Program would hurt students who rely on free- and reduced-price school meals. The NEA's concerns are:

- Revising categorical eligibility in SNAP, according to USDA's own estimates, would deny food assistance to 3.1 million individuals—mostly families with children, older people, and people with disabilities.
- An estimated 500,000 children who are automatically eligible for free school meals because they live in SNAP households could be denied those meals, potentially undermining their health and physical development and reducing their capacity for learning and engagement in school.
- Under the Community Eligibility Provision (CEP), high-poverty schools and school districts can offer free meals to all students, and receive federal reimbursement, if at least 40 percent of the students are categorically eligible for free- or reduced-price school meals. Losing access to free school meals not only affects the individual children who rely on them; it has the potential to jeopardize the free- and reduced-price meal program for entire schools and/or school districts.

The USDA is attempting to accomplish through rulemaking what Congress rejected in 2018, when Members approved a Farm Bill that did cut SNAP benefits because of the harm those cuts would have done to families. NEA strongly opposes revising categorical eligibility because it would diminish our nation's ability to achieve a top priority for us all: providing a healthy foundation for our children. Once again, thank you for this opportunity to submit our comments.

Sincerely,

Marc Egan
Director of Government Relations
National Education Association

[Additional submissions by Mr. Comer follow:]

Congress of the United States
Washington, DC 20515

September 20, 2019

Program Design Branch
Program Development Division
Food and Nutrition Service
United States Department of Agriculture
3101 Park Center Drive
Alexandria, VA 22302

To whom it may concern:

We write in strong support of the proposed rule published by the United States Department of Agriculture (USDA) on July 24, 2019 regarding the revision of categorical eligibility in the Supplemental Nutrition Assistance Program (SNAP). We absolutely agree that the proposed revisions are necessary to create a clearer and more consistent nationwide eligibility policy while addressing program integrity issues that have surfaced since the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Categorical eligibility originated from the practical notion that simplified state administration and coordinated efforts across low-income assistance programs should ease entry for SNAP-eligible households—households already receiving other safety net resources that require rigorous income and asset testing. Unfortunately, states expanded categorical eligibility in ways that now make most, if not all, households with low incomes categorically eligible for SNAP, regardless of asset levels.

As of July 2019, 42 jurisdictions have implemented "broad-based" categorical eligibility (BBCE). These states generally make all households with incomes below a state-determined income threshold eligible for SNAP. States do this by providing households with a low-cost Temporary Assistance for Needy Families (TANF)-funded benefit or service such as a brochure or referral to a telephone hotline. In all but six of these jurisdictions, there is no asset test required for SNAP eligibility; categorically-eligible families bypass the regular SNAP asset limits. This practice has resulted in a patchwork of different state policies and egregious abuses, far exceeding the bipartisan Congressional intent established in The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare reform).

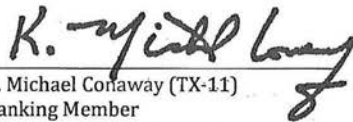
The current categorical eligibility regulations are so permissive that any TANF program providing a non-cash benefit or service—no matter how nominal—allows a household to be deemed automatically eligible for SNAP. For example, states like Nevada and Delaware provide a TANF-funded pregnancy prevention hotline number or brochure to all households, yet only some households would be eligible to utilize such a service. New York provides a nondescript brochure, mailed yearly. As per a 2015 Office of Inspector General

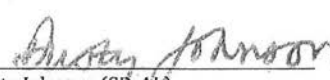
report, some households did not receive brochures or other nominal services unless they specifically asked their state to send it to them. Due to discrepancies like those mentioned, we also support USDA in its endeavor to review comments on the processes by which TANF-funded programs actually determine applicant financial and non-financial eligibility for the conferring programs, and at what point in the TANF enrollment process this determination and delivery of benefit(s) to the household may take place relative to the SNAP eligibility determination.


Beyond mitigating the (predictable) results of BBCE such as inflated participation, overspending, and fraud, the proposed rule also moves to incorporate economic mobility and increased self-reliance for households receiving ongoing and substantial TANF-funded benefits. The proposed rule limits the conferring of categorical eligibility to those non-cash benefits that provide subsidized employment, work supports, and child care benefits. These benefits have been proven to assist households in seeking meaningful opportunities for employment and financial stability.

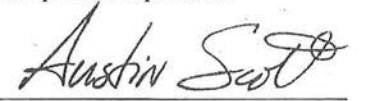
Extending categorical eligibility to participants who have not been screened compromises program integrity and reduces public confidence that benefits are being provided to eligible households. We applaud the Administration for taking this executive action to correct categorical eligibility, ensuring SNAP benefits are issued to applicable households.


Sincerely,

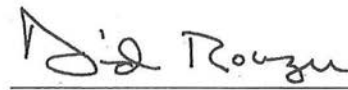

K. Michael Conaway (TX-11)
Ranking Member
Committee on Agriculture



Dusty Johnson (SD-AL)
Ranking Member
Subcommittee on Nutrition, Oversight,
& Department Operations


Glenn "GT" Thompson (PA-15)
Ranking Member
Subcommittee on General Farm
Commodities & Risk Management



Austin Scott (GA-08)
Ranking Member
Subcommittee on Commodity Exchanges,
Energy, and Credit


Doug LaMalfa (CA-01)
Ranking Member
Subcommittee on Conservation &
Forestry

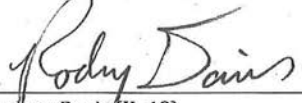

David Rouzer (NC-07)
Ranking Member
Subcommittee on Livestock &
Foreign Agriculture



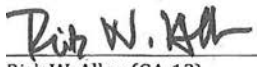
Neal Dunn, M.D. (FL-02)
Ranking Member
Subcommittee on Biotechnology,
Horticulture and Research




Scott Desjarlais, M.D. (TN-04)




Rodney Davis (IL-13)



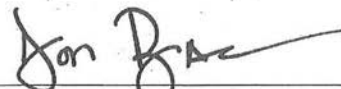
Rick W. Allen (GA-12)



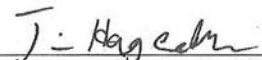
Ralph Abraham, M.D. (LA-0-5)




James Comer (KY-01)



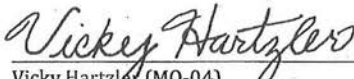
Don Bacon (NE-02)



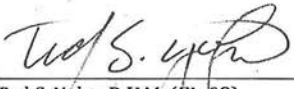
Jim Hagedorn (MN-01)



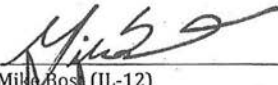
Eric A. "Rick" Crawford (AR-01)




Vicky Hartzler (MO-04)



Ted S. Yoho, D.V.M. (FL-03)



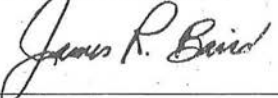
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The Honorable Sonny Perdue
Secretary
United States Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

Dear Secretary Perdue,

I write regarding the "Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program" to applaud your efforts to restore commonsense governance to Washington. If we intend to preserve the integrity of the Supplemental Nutrition Assistance Program (SNAP), then we must take care to ensure it is not abused. Proposed rule FNS-2019-15670 would make strides toward eliminating a loophole currently being abused by numerous states and return the law to the original intent of Congress.

The "categorical eligibility" outlined in Congress's 1996 language developed from a benign desire to streamline government and bureaucratic procedure. As with many good intentions, however, several unintended consequences passed unforeseen. By providing for the inclusion in SNAP of individuals and families already qualified under a more restrictive program, such as Temporary Assistance for Needy Families (TANF), the "categorical eligibility" stipulations would eliminate unnecessary overlap, or so the plan envisioned. What has come to fruition is a departure from the modest hopes of the law's intention. In effect, states have been able to erode the requirements for SNAP qualification by conveniently defining the particulars of the secondary qualifications covered by "categorical eligibility."

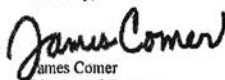
Though any abuse in government merits attention, the insidious nature of the abuse outlined above draws my sincerest concern. As a former State Agriculture Commissioner and a current member of the House Agriculture Committee, I cannot stand idly by. Today, 28 states and the District of Columbia use this loophole to raise the income limit beyond the thresholds established in federal law. Even more, (38) states have used the loophole to raise the asset limit or eliminate the asset test altogether. Not only are these states expanding the program beyond Congressional intent and the scope of federal statute—they are threatening resources for the truly needy.

More than 3.5 million people receive SNAP benefits that would otherwise not qualify but for the abuse conducted by many states. This equates to billions of taxpayer dollars going to individuals that could be used for programs that help those who truly need it.

The goal of welfare is dynamic, not static. It is to enable those in need of assistance to help themselves. With abuse, the goal drifts further from realization. This Rule moves our country forward toward this goal, and I look forward to seeing a strong rule finalized soon.

Thank you for your consideration.

Sincerely,


James Comer
Member of Congress

[Additional submissions by Ms. Fudge follow:]

**Attorneys General of the District of Columbia, New York, California,
Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine,
Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New
Mexico, North Carolina, Oregon, Pennsylvania, Vermont, Virginia,
Washington, and Wisconsin**

September 23, 2019

Via Federal eRulemaking Portal

Program Design Branch
Program Development Division
Food & Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive
Alexandria, Virginia 22302

Re: *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)*, Notice of Proposed Rulemaking, 84 Fed. Reg. 35,570, FNS–2018–0037 (July 24, 2019) (to be codified at 7 C.F.R. pt. 273).

We, the Attorneys General of the District of Columbia, New York, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Vermont, Virginia, Washington, and Wisconsin (the “States”) appreciate the opportunity to provide comments on the Department of Agriculture’s (the “Department”) Food & Nutrition Service (“FNS”) Proposed Rule: *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)*, Notice of Proposed Rulemaking, 84 Fed. Reg. 35,570, FNS–2018–0037 (July 24, 2019) (to be codified at 7 C.F.R. pt. 273) (“Proposed Rule”). As the chief legal officers for our respective States, the undersigned Attorneys General share a commitment to serving the public interest and promoting the rule of law. With those interests in mind, we are concerned that the Proposed Rule, if finalized, would violate federal law, cause millions of families and individuals, including the elderly, to lose critical nutrition assistance without basis, and cause extensive harm that is not detailed in the Proposed Rule or the accompanying Regulatory Impact Analysis (“RIA”).

The Proposed Rule is an impermissible attempt to use the rulemaking process to flout the legislative process and change how millions of people become eligible for food support provided by the Supplemental Nutrition Assistance Program (“SNAP”). These changes have been repeatedly rejected by Congress, including in the Agriculture Improvement Act of 2018, Pub. L.

No. 115-334, 132 Stat. 4490 (2018) (“2018 Farm Bill”). The Proposed Rule will harm the States, their residents, their local economies, and the public health. As the Department’s own analysis concludes, the Proposed Rule would leave millions of low-income individuals and families without the essential assistance that SNAP provides to ensure that they do not go hungry. This substantial loss of nutrition assistance will cause significant economic and social harms to the States, including greater poverty and hunger, reduced productivity, and a higher incidence of significant health problems. It will also impose far greater burdens on the States than the Department acknowledges, both in administrative costs and costs to other programs that extend benefits to SNAP participants. In addition, if finalized, the Proposed Rule would violate the Administrative Procedure Act. The proposal reverses decades of consistent agency practice without reasoned explanation; fails to adequately consider its impacts on states, cities, and nonprofit food banks; and is inconsistent with the text and purpose of the Food and Nutrition Act. The Proposed Rule also runs afoul of multiple executive orders. We therefore urge the Department to abandon this cruel and unlawful proposal.

I. Background

SNAP, formerly known as the Food Stamp Program,¹ is the country’s most significant anti-hunger program. SNAP provides crucial non-cash nutritional support for millions of low-income individuals and families. In May 2019, more than 36 million people in over 18 million households across all 50 states, the District of Columbia, Guam, and the U.S. Virgin Islands received SNAP benefits.² SNAP gives people with limited income the opportunity to access food, and specifically nutritious food, that they otherwise would not have. The program is intended to “alleviate . . . hunger and malnutrition” by “permit[ing] low-income households to obtain a more nutritious diet through normal channels of trade.” 7 U.S.C. § 2011. To do this, SNAP provides benefits redeemable for SNAP-eligible foods at SNAP-eligible retailers.

SNAP is a federal-state partnership.³ While the federal government pays the full cost of SNAP benefits, it shares the costs of administering the program on a 50-50 basis with the states⁴ and local governments, which operate the program. Each state designs its own process—based on federal guidelines—for how low-income people can apply for benefits, and states must track whether participants meet the requirements for the program on a monthly basis and adjust their benefits accordingly.

A. Eligibility for SNAP

Under federal law, households may be eligible for the program if they meet specific SNAP eligibility requirements. The Food & Nutrition Act (the “Act” or “FNA”) requires that income and

¹ The Food Stamp Program was authorized by the Food Stamp Act of 1977. The name of the program was changed to SNAP by the Food Conservation, and Energy Act of 2008, Pub. L. No. 110-246, which also changed the name of the Food Stamp Act to the Food and Nutrition Act. For ease of reference, all references to the program will use the SNAP title.

² USDA, FNS, *Supplemental Nutrition Assistance Program (Data as of Sept. 6, 2019)*, <https://fns-prod.azureedge.net/sites/default/files/resource-files/34SNAPmonthly-9.pdf>.

³ References to a “State” herein include all jurisdictions that operate SNAP programs under federal law, including the 50 states, the District of Columbia, Guam, and the Virgin Islands. 7 U.S.C. § 2012(r).

⁴ 7 U.S.C. §§ 2013(a), 2019, 2025(a); 7 C.F.R. §§ 277.1(b), 277.4.

resources not exceed certain limits delineated in the law. *See generally* 7 U.S.C. § 2014. Unless there is an elderly or disabled person in the household, gross income cannot exceed 130 percent of the Federal Poverty Level (“FPL”). For Fiscal Year 2019, for a household of three people in the contiguous 48 states and the District of Columbia, the *gross* monthly income limit is \$2,252.⁵ From this gross monthly income limit, deductions are made for dependent care costs, child support payments, a portion of earned income, medical expenses in some households, and housing expenses exceeding half of net income after all other deductions up to a maximum deduction set by statute. 7 U.S.C. § 2014(e). Net income cannot exceed 100 percent of the FPL (in 2019, \$25,104 for a family of four) to qualify for SNAP benefits. *See* 7 U.S.C. § 2014(c)(1). In addition, a household must have limited liquid assets—no more than \$2,250 (or \$3,500 if there is an elderly or disabled person in the household) in Fiscal Year 2019.⁶ Certain assets, such as a home, most retirement plans, and educational savings accounts, are not counted. 7 U.S.C. § 2014(g)(2)-(8).

Alternatively, households in which all members are either eligible for or receive benefits from other low-income assistance programs that were specified by Congress are automatically eligible for SNAP. *See* 7 U.S.C. § 2014(a). Each of these other low-income assistance programs is authorized by different federal statutes enacted at different times in response to differing circumstances. Each program is aimed at different target populations, has different eligibility requirements, and is administered by different federal or state agencies. Nonetheless, Congress decided that households that have already undergone eligibility determinations for these specific programs do not have to also undergo the income and resource tests for SNAP eligibility—they are categorically eligible for SNAP. The original intent of categorical eligibility was to reduce the administrative burden on state agencies by simplifying the certification process and eliminating the need for state employees to apply two different income eligibility tests for a household applying for cash assistance and SNAP. *Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185*, 65 Fed. Reg. 70,134, 70,160 (Nov. 21, 2000).

Categorical eligibility for SNAP does not mean automatic SNAP benefits. Every household that is deemed eligible for SNAP—whether by meeting the income and resource tests, or by being categorically eligible—must still meet all of the other SNAP rules, including applicable work requirements and reporting requirements, and have net incomes low enough to qualify for SNAP benefits. Each household’s SNAP benefits are based on their *net* income, which must not exceed 100 percent of the FPL, regardless of the method by which the household becomes eligible. *See* 7 U.S.C. § 2014(c)(1); *see also* USDA, FNS, “Categorical Eligibility Questions and Answers” 2 (Jan. 26, 2010). Households with lower net incomes receive greater SNAP benefits. A household may be eligible for SNAP but have a net income that is too high to receive SNAP benefits.⁷

⁵ USDA, FNS, *Income Eligibility and Benefits 2019*, <https://fns-prod.azureedge.net/sites/default/files/media/file/SNAP-Income-Eligibility-2019.pdf>.

⁶ USDA, FNS, *SNAP Fiscal Year 2019 Cost-of-Living Adjustments* (July 27, 2018), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-COLA-FY19.pdf>.

⁷ Households of one or two persons who are financially eligible will always receive a nominal monthly benefit, currently set at \$15 a month in the 48 contiguous states and the District of Columbia. But larger households that make up the overwhelming majority of SNAP recipients will not receive SNAP benefits if their net incomes are too high.

B. The Creation of TANF and the Expansion of Categorical Eligibility for SNAP

While categorical eligibility for SNAP in the 1970s, 1980s and early 1990s was based on the receipt of cash assistance, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) changed one federally-funded low-income assistance program in ways that changed categorical eligibility for SNAP. Previously, households that received cash assistance from the Aid to Families with Dependent Children (“AFDC”) program were categorically eligible for SNAP. PRWORA ended AFDC and replaced it with Temporary Assistance to Needy Families (“TANF”), which is a broad-purpose block grant program that gives states wide flexibility to use the funds to operate their own programs to provide benefits and services to address child poverty, including by addressing some of its root causes.⁸ PRWORA both created the TANF program and substituted the TANF program for AFDC in the list of low-income assistance programs that could convey categorical eligibility for SNAP.

In order to receive federal TANF funds, states must spend some of their own dollars—known as Maintenance of Effort (“MOE”) funds—on these state-run programs, and a significant percentage of state MOE funds must be spent on programs for needy families. The design of TANF-funded programs is up to the states, which define the eligibility for their programs, including the definition of “needy” families and individuals. As a result, eligibility for the state-run TANF-funded programs vary from state to state, and differ from the income and asset requirements for SNAP.⁹

TANF programs must accomplish one or more of the four TANF policy goals: (1) to provide assistance to needy families so that children can be cared for in their own homes or in the homes of their relatives; (2) to end dependence of needy parents on government benefits by promoting marriage, job preparation, and work; (3) to reduce the incidence of out-of-wedlock pregnancies; and (4) to promote the formation and maintenance of two-parent families. 42 U.S.C. § 601(a). States accomplish these goals in a variety of ways, including wage supplements for low-income working families with children, child care, education, job training, and transportation. TANF is administered by the U.S. Department of Health and Human Services (“HHS”).

By substituting TANF for AFDC in the federal law that conveys categorical eligibility, PRWORA expanded categorical eligibility for SNAP to households that receive or are eligible for non-cash TANF benefits. If states use TANF and MOE funds to provide non-cash services or benefits to a larger number of state residents who qualify for them, the number of households that are categorically eligible for SNAP also increases. Notably, those households must still meet all

Only a miniscule amount of SNAP benefits—approximately 0.2 percent—went to one- and two-person households with net income exceeding 100 percent of the FPL in 2017. Dorothy Rosenbaum, *SNAP’s “Broad-Based Categorical Eligibility” Supports Working Families and Those Saving for the Future*, 4 (July 30, 2019), Ctr. on Budget and Policy Priorities, <https://www.cbpp.org/sites/default/files/atoms/files/7-24-19fa.pdf>.

⁸ See Staff of H. Comm. of Ways & Means, 104th Cong., *SUMMARY OF WELFARE REFORMS MADE BY PUBLIC LAW 104-193, THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT AND ASSOCIATED LEGISLATION* (Comm. Print 1996) available at <https://www.govinfo.gov/content/pkg/CPRT-104WPRT27305/html/CPRT-104WPRT27305.htm>.

⁹ See U.S. Gov’t Accountability Office, GAO-17-558, *FEDERAL LOW-INCOME PROGRAMS: Eligibility and Benefits Differ for Selected Programs Due to Complex and Varied Rules* (June 2017).

SNAP requirements and must also have a net income that is low enough for them to receive SNAP benefits.

C. Expanded Categorical Eligibility: The Department's Regulations and Guidance

In response to questions from states about implementing categorical eligibility under PRWORA, on July 14, 1999 the Department clarified in guidance that categorical eligibility for SNAP applies to households receiving or eligible to receive non-cash services or benefits funded under a TANF program, as well as households receiving traditional cash assistance.¹⁰ In November 2000, the Department issued regulations further clarifying categorical eligibility for SNAP based on TANF- and MOE-funded programs. *Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185*, 65 Fed. Reg. 70,134 (Nov. 21, 2000).

Recognizing that Congress conferred categorical eligibility based on the receipt of TANF benefits and that TANF has four purposes, the regulations clarified categorical eligibility for SNAP depending on which TANF purposes were served by the TANF benefit. For TANF benefits serving purposes one and two, which by statute must be targeted to “needy families,” the regulations conferred categorical eligibility to all households authorized to receive TANF-funded benefits and services. With respect to TANF benefits serving purposes three and four, which are not limited to “needy families,” the Department instituted income eligibility criteria. Specifically, the Department conferred categorical eligibility to all households authorized to receive TANF-funded benefits and services designed to further TANF purposes three and four, as long as those services have income eligibility criteria of no more than 200 percent of the FPL. 65 Fed. Reg. at 70,160. States are not required to inform FNS about the TANF benefits or services that confer categorical eligibility unless those services are less than 50 percent funded by state MOE funds. 65 Fed. Reg. at 70,161. The regulations also gave states the option to convey categorical eligibility for SNAP to other households in which at least one member receives or is authorized to receive non-cash assistance, as long as the state agency determines that the whole household benefits. *Id.*

The Department referred to categorical eligibility based on non-cash TANF benefits as “expanded categorical eligibility.”¹¹ Since 2009, the Department has differentiated TANF- and MOE-funded non-cash benefits into two categories: narrow and broad-based categorical eligibility (“BBCE”).¹² Narrow categorical eligibility makes households eligible for SNAP if they receive a TANF- or MOE-funded non-cash benefit such as childcare or counseling, that is generally available to a small number of households. BBCE conveys eligibility to a larger number of households based on their eligibility for a TANF- or MOE-funded non-cash benefit such as an informational brochure about TANF-funded services.¹³ BBCE allows states to grant categorical

¹⁰ Elizabeth Laird & Carole Trippe, *Programs Conferring Categorical Eligibility for SNAP: State Policies and the Number and Characteristics of Households Affected: Final Report 3* (Washington, DC: Mathematica Policy Research, 2014).

¹¹ USDA, FNS, *Improving Access to SNAP through Broad-Based Categorical Eligibility*, (Sept. 30, 2009), <https://fns-prod.azureedge.net/sites/default/files/snap/Improving-SNAP-Access-through%20Broad-Based-Categorical-Eligibility.pdf> (“September 2009 Guidance”).

¹² *Id.* Prior to 2009, the Department used the terms “soft categorical eligibility,” and “hard categorical eligibility.” *Id.*

¹³ *Id.*

eligibility for SNAP to low-income households as long as at least one member of the household qualifies for a TANF- or MOE-funded non-cash benefit that serves TANF purposes three or four, and has an income-eligibility criteria of no more than 200 percent of the FPL. Once eligible, applicants must still meet all other SNAP requirements.

The regulations have not changed since they were issued in 2000. At various points since the regulations issued, the Department has issued written guidance on BBCE, and has actively encouraged states to adopt it.¹⁴ The Department promoted BBCE as a way to benefit states by simplifying policies, reducing the amount of time states must devote to verifying assets, and reducing errors.¹⁵ The Department also promoted BBCE as a way to benefit families by extending food assistance to families with slightly higher incomes and high expenses, and promoting asset-accumulation among low-income families.¹⁶

D. Broad-Based Categorical Eligibility is Used by Most States to Reduce Hunger and Food Insecurity in Low-Income Households and Ease Administration of Benefits

States are not required to operate their TANF- and MOE-funded programs in a way that expands categorical eligibility for SNAP, yet most states do.¹⁷ As of July 2019, 42 states, including the District of Columbia, Guam, and the U.S. Virgin Islands, have implemented BBCE.¹⁸ BBCE is used across urban and rural states in all regions of the country, and even in states with more conservative approaches to public assistance programs. States have found BBCE to be a useful way to meet the needs of their low-income residents while also streamlining administration of public benefits.

TANF permits states to define the eligibility criteria for their TANF programs to meet the needs of their communities, and BBCE recognizes that flexibility. The states thus vary widely in how they implement BBCE. For example, six states, including two of the signatories here, set limitations on assets in order to be eligible for the TANF program that conveys BBCE.¹⁹ Notably those limits are higher than SNAP resource limits. Most states have eliminated asset tests to prevent families from losing SNAP eligibility just because they have modest savings or a car that enables them to interview for jobs, attend training programs, get to work, or take children to child care. BBCE helps states encourage families to save for unexpected expenses without fear that they will lose their SNAP benefits, and it reduces the administrative burden on state agencies that comes with verifying assets.

¹⁴ See September 2009 Guidance (encouraging Regional Administrators to “continue promoting expanded categorical eligibility as a way to increase SNAP participation and reduce State workloads”); USDA, FNS, “Supplemental Nutrition Assistance Program: Using Broad-Based Categorical Eligibility to Exclude Refundable Tax Credits Permanently” (Mar. 18, 2010) (encouraging state agencies without BBCE to implement a BBCE program “to simplify administration of SNAP and help low-income households meet their nutritional needs.”) (“March 2010 Guidance”).

¹⁵ September 2009 Guidance at 1; March 2010 Guidance at 2.

¹⁶ *Id.*

¹⁷ Very few states use only what the Department calls “narrow categorical eligibility,” which conveys categorical eligibility for non-cash TANF/MOE-funded services and benefits like subsidized child care or transportation.

¹⁸ USDA, *Broad-Based Categorical Eligibility*, (July 2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/BBCE2019.pdf>.

¹⁹ *Id.*

Many states have also adjusted the gross income eligibility criteria for their TANF programs within the limits set out for BBCE in the current regulations to reflect the cost of living in their communities. States thus also vary widely on the maximum gross income a household can make and still be eligible. While federal regulations require that non-cash TANF benefits serving TANF goals three and four that convey categorical eligibility have a gross income limit of no more than 200 percent of the FPL, many states use gross income limits much lower than that limit.²⁰ Iowa's TANF-funded service that conveys BBCE has an income limit of 160 percent of the FPL. New York permits households with dependent care expenses to receive a benefit if the monthly household gross income is not more than 200 percent of the FPL, but households with earned income and no dependents can make no more than 150 percent of the FPL in order to qualify for the TANF-funded program that confers BBCE. Being able to set a higher gross income limit helps states serve needy households by reducing SNAP benefits as their gross incomes rise, but their net incomes (after high expenses are deducted) still qualify them to receive SNAP benefits. With the higher gross income limits allowed under BBCE, states can help their residents avoid a "benefit cliff" where SNAP benefits are cut off when gross income exceeds 130 percent of the FPL, even though the household's net income still falls below 100 percent of the FPL. With BBCE, states can help families attain self-sufficiency by encouraging them to take higher-paying work without cutting off needed food assistance until their net income is sufficient to support their food needs.

BBCE also reduces program churn in SNAP. When households exit and re-enter back into SNAP within a short time—something that may occur because of changes in household income, assets, or other circumstances—states and families have to dedicate additional resources to reapply and obtain SNAP benefits again. By allowing states to align eligibility for SNAP with the asset and income eligibility criteria for TANF programs, BBCE helps states increase the financial stability of participating households while at the same time reducing SNAP program costs.

Before the economic crisis that began in 2007, only about half of the states expanded categorical eligibility for SNAP using BBCE.²¹ After the USDA issued its guidance in 2009, the majority of states expanded categorical eligibility—39 states implemented BBCE by Fiscal Year 2010, and 43 states implemented it by Fiscal Year 2013. While BBCE increased participation in SNAP, households eligible under BBCE generally received lower benefits from SNAP—an average of \$81 in benefits compared to the average of \$293 in benefits to households who qualified for SNAP directly in Fiscal Year 2010—resulting in a small increase in benefits costs. In Fiscal Year 2010, BBCE increased participation in SNAP by 2.6 percent, but this group of households only increased the SNAP benefits costs borne by the federal government by 0.7 percent.²² While

²⁰ As the Department has recognized, it would be unusual for a household with a gross income in excess of 200 percent of the FPL to meet the net income test of 100 percent of the FPL required to receive SNAP benefits, USDA, FNS, *Categorical Eligibility Questions and Answers*, (Jan. 26, 2010), <https://fns-prod.azureedge.net/sites/default/files/snap/Categorical-Eligibility-QandA-1-26-10.pdf>, and many households with gross incomes above 165 percent of the FPL may qualify for little or no benefits, USDA, FNS, *Categorical Eligibility Questions and Answers*, (Nov. 20, 2009), <https://fns-prod.azureedge.net/sites/default/files/snap/Categorical-Eligibility-QandA-11-20-09.pdf>.

²¹ September 2009 Guidance at 1.

²² U.S. Gov't Accountability Office, GAO-12-670, *SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: Improved Oversight of State Eligibility Expansions Needed*, 24, 25 (July 2012) ("2012 GAO Report").

participation in SNAP increased during the economic crisis and the Great Recession, participation has steadily declined for the past five years.²³

By most estimates, most households that become eligible for SNAP through BBCE would also have been eligible for SNAP under standard SNAP rules.²⁴ BBCE simply makes it easier for them to enroll, and easier for states to make SNAP available to them.

E. Efforts to Eliminate or Limit Non-Cash TANF Categorical Eligibility for SNAP

Both before and after the economic crisis that began in 2007, executive administrations and members of Congress have pushed to limit or eliminate categorical eligibility for SNAP based on non-cash TANF benefits and services. The George W. Bush Administration repeatedly proposed eliminating categorical eligibility for SNAP based on non-cash TANF benefits—both narrow categorical eligibility and BBCE—as part of its farm bill proposals in 2002 and 2007, as well as its budget proposals for Fiscal Year 2006 through Fiscal Year 2008.²⁵ Such a proposal passed the House in a budget reconciliation bill in 2005,²⁶ but the provision was not part of the final reconciliation package, the Deficit Reduction Act of 2005.²⁷

The 113th Congress debated eliminating categorical eligibility based on non-cash TANF benefits in the Agricultural Act of 2014 (“2014 Farm Bill”), Pub. L. No. 113-79. Section 4005 of the House proposal would have repealed categorical eligibility based on non-cash TANF benefits, and limited categorical eligibility to SNAP applicants that receive TANF cash assistance, Supplemental Security Income (“SSI”), or state-funded general assistance cash benefits.²⁸ Although the 113th Congress debated this policy, ultimately the new law did not include any changes to categorical eligibility.

The 115th Congress considered limiting categorical eligibility for SNAP based on non-cash TANF benefits in the 2018 Farm Bill. The version of the bill that passed the House would have extended categorical eligibility for SNAP only to households that receive cash assistance or “ongoing and substantial” non-cash benefits or services with an income eligibility limit of not more than 130 percent of the FPL, unless there is an elderly or disabled member of the household.

²³ USDA, FNS, *Supplemental Nutrition Assistance Program Participation and Costs (Data as of Sept. 6, 2019)*, <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-9.pdf>.

²⁴ See, e.g., Dorothy Rosenbaum, *SNAP’s “Broad Based Categorical Eligibility” Supports Working Families and Those Saving for the Future*, Ctr. on Budget and Policy Priorities, 2 (July 24, 2019); Cong. Research Serv., R42054, *The Supplemental Nutrition Assistance Program (SNAP) Categorical Eligibility*, 15 (Aug. 1, 2019), <https://fas.org/spp/crs/misc/R42054.pdf> (noting that in Fiscal Year 2016 only 4.2 percent of BBCE households without an elderly or disabled member had incomes above 130 percent of the FPL, and less than 6 percent of all households had income above that threshold).

²⁵ See Gene Falk & Randy Alison Aussenberg, Cong. Research Serv., R42054, *The Supplemental Nutritional Assistance Program (SNAP) Categorical Eligibility*, 12 (Oct. 21, 2011), https://digital.library.unt.edu/ark:/67531/metadc813187/m2/1/high_res_d/R42054_2011Oct21.pdf; U.S. Gov’t Accountability Office, GAO-07-465, *FOOD STAMP PROGRAM: FNS Could Improve Guidance and Monitoring to Help Ensure Appropriate Use of Noncash Categorical Eligibility* (Mar. 2007).

²⁶ H.R. 4241, 109th Cong.

²⁷ P.L. 109-171.

²⁸ H.R. 2642, 113th Cong., § 4005 (2013).

Under the bill, for households with an elderly or disabled household member, the TANF-funded program could have an income eligibility limit of not more than 200 percent of the FPL to convey categorical eligibility.²⁹ The Senate version of the bill contained no such provision, and the conference committee deleted the House provision from the final bill.³⁰ President Trump signed the 2018 Farm Bill on December 20, 2018, as Pub. L. No. 115-334.

F. The Proposed Rule and Its Purported Purpose

The Proposed Rule would require both cash and non-cash TANF benefits to be both “ongoing” and “substantial” in order to convey categorical eligibility for SNAP. 84 Fed. Reg. at 35,570. To be “ongoing,” eligible TANF households would have to receive or be authorized to receive benefits for a minimum of six months. 84 Fed. Reg. at 35,573. To be “substantial,” the TANF benefit would have to be \$50 or more per month. *Id.* Recognizing that TANF does not have a minimum benefit amount, the Proposed Rule would adopt a minimum benefit amount defined by HHS, should HHS ever adopt one that is more than \$50. *Id.* The Proposed Rule would only convey categorical eligibility to non-cash TANF programs that provide subsidized employment, work supports like transportation benefits, or child care subsidies—or what the Department has long called “narrow categorical eligibility,” but with additional requirements that the benefits be both “substantial” and “ongoing.” Under the Proposed Rule, states would be required to notify FNS of all non-cash TANF benefits that confer categorical eligibility, regardless of how much TANF funding pays for those benefits. 84 Fed. Reg. at 35,574-75. The Proposed Rule would completely eliminate BBCE.

The purported purpose of the Proposed Rule is to impose more “consistency across TANF-funded programs whose benefits confer categorical eligibility and to discourage the types of practices that States developed for conferring categorical eligibility with TANF non-cash benefits.” 84 Fed. Reg. at 35,572. But the Proposed Rule seeks to limit *both* TANF-funded cash assistance and TANF-funded non-cash benefits that may confer categorical eligibility. On July 22, 2019, in announcing the Proposed Rule, the Secretary of Agriculture stated that the rule is needed because states have “misused” the flexibility of TANF and BBCE, and “expanded SNAP recipients . . . to include people who receive assistance when they clearly don’t need it.”³¹ Citing a single example of a politically-motivated person who intentionally misused a program intended to help low-income families, Secretary Perdue asserted that the “specific flexibility” that permits BBCE “has become so egregious that a millionaire living in Minnesota successfully enrolled in the program simply to highlight the waste of taxpayer money.”³² The Secretary asserted, “Too often, states have misused this flexibility without restraint.”³³

²⁹ H.R. Rep. No. 115-661, at 66 (2018).

³⁰ H. R. Rep. No. 115-1072, at 631 (2018) (Conf. Rep.).

³¹ Press Release, “USDA Proposes to Close SNAP Automatic Eligibility Loophole,” USDA (July 23, 2019), <https://www.usda.gov/media/press-releases/2019/07/23/usda-proposes-close-snap-automatic-eligibility-loophole>.

³² *Id.* Secretary Perdue was referring to politically-motivated, self-described “millionaire,” Rob Undersander, who had substantial retirement savings, but little in the way of income, who applied for and received SNAP benefits purportedly to demonstrate that BBCE lets wealthy people collect SNAP benefits that they do not need. Helaine Olen, *Billionaires and Millionaires Against Food Stamps*, Wash. Post (July 24, 2019), <https://www.washingtonpost.com/opinions/2019/07/24/billionaires-millionaires-against-food-stamps/>.

³³ *Id.*

II. The Proposed Rule Will Harm the States

The Proposed Rule will harm the States, their residents, other food programs, and local retailers, among others. In addition to the obvious impact on millions of Americans who will lose access to SNAP and the healthy food that it helps to provide, the Proposed Rule reduces access to school nutrition programs, increases demand on other food providers, impairs public health, increases the administrative burden on the States, and decreases economic activity. The harmful consequences of the Proposed Rule are substantial in both the short- and long-term.

A. Harms to Schools and School Nutrition Programs

Subsidized school meals are essential to the well-being of children and families in the States. Children in households that receive SNAP are eligible for free meals at school. Categorical eligibility for SNAP enables and facilitates access to these meals. The Proposed Rule's limitations on categorical eligibility could result in 265,000 children losing their free lunch.³⁴ The Proposed Rule entirely fails to consider this harm.³⁵

The States use SNAP enrollment as an efficient, effective means to automatically certify a large number of children for school meal programs. The community eligibility provision of the school meals program allows all students in eligible schools or school districts to obtain free school meals without a showing of individual eligibility, as long as a certain percentage of students qualify for the meal program. Students often qualify through a process of direct certification, whereby if they are enrolled in another benefit program, such as SNAP or Medicaid, they are automatically enrolled in the school meals program. However, if the percentage of directly certified children dips below the applicable threshold, the entire community loses out. The program also helps to reduce stigma for students and administrative burdens for school districts. Changes to the provision of subsidized school meals will have wide ranging effects. In 2018, more than 74 percent of school lunches and 85 percent of school breakfasts were provided for free or at a reduced price.³⁶ Plus, the percentage of students receiving free or reduced-price lunch is used as a metric of student poverty and impacts eligibility or funding amounts for other programs such as the Fresh Fruit and Vegetable Program.³⁷

The loss of free or reduced-price meals will lead to food insecurity, malnourishment, and a decline in nutritional standards which in turn will have especially detrimental consequences for

³⁴ Dorothy Rosenbaum, *SNAP's "Broad Based Categorical Eligibility" Supports Working Families and Those Saving for the Future*, Ctr. on Budget and Policy Priorities, 8 (July 24, 2019).

³⁵ See Cong. Research Serv., R42054, *The Supplemental Nutritional Assistance Program (SNAP) Categorical Eligibility*, 18 (August 1, 2019), <https://fas.org/sgp/crs/misc/R42054.pdf>. ("While CBO analyses of past farm bill proposals have often included estimates of children who would lose free meals eligibility, USDA's RIA does not include such an estimate.")

³⁶ USDA, FNS, *National School Lunch Program: Participation and Lunches Served* (Data as of Sept. 6, 2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/slsunmar-9.pdf>; USDA, FNS, *School Breakfast Program Participation and Meals Served* (Data as of Sept. 6, 2019).

³⁷ USDA, FNS, *The Fresh Fruit and Vegetable Program Fact Sheet* (Dec. 2017) <https://fns-prod.azureedge.net/sites/default/files/resource-files/FFVPFactSheet.pdf> ("the FFVP prioritizes schools with the highest percentage of children certified as eligible for free and reduced price meals").

children. According to the existing studies, food-insecure children are almost twice as likely to report being in fair or poor physical and mental health compared to children in food-secure families. Food-insecure children are also more likely to have learning difficulties and reduced academic performance, stomachaches, frequent headaches and colds, iron deficiency anemia, asthma, and mental health problems.³⁸ On the other hand, SNAP helps alleviate the problem of food insecurity. “Researchers have shown that children receiving SNAP are less likely than low-income non-participants to be in fair or poor health or underweight, and their families are less likely to make tradeoffs between paying for health care and paying for other basic needs, like food, housing, heating, and electricity.”³⁹ In contrast, “children who lose some or all of their SNAP benefits are more likely to have poor health and be food insecure compared to children in families that maintain benefits, and families that lose benefits are more likely to forgo medical care or make health care tradeoffs than families who consistently receive SNAP benefits.”⁴⁰

Moreover, school meals are subject to nutritional standards from the USDA and the states. See 42 U.S.C. §§ 1753(b), 1758(a)(1), 1758(f)(1), and 1773(e)(1); 77 Fed. Reg. 4088 (Jan. 26, 2012). These standards ensure that students get the necessary nutrients and nourishment they need to grow and thrive. Without access to a nutritious school lunch, families in need will skip meals or turn to less nutritious options. Malnourishment and malnutrition harm not only individuals, but also the States and their communities through increased burdens on public resources and increased medical expenses for families. The interests of the States are ultimately harmed by poorer nutrition.

B. Harms to State- and Privately-Funded Hunger and Nutrition Programs

The loss of SNAP benefits for millions of low-income Americans will also impose a heavy burden on the States and non-profits to provide alternative sources of food and nutrition. For example, several states, including Illinois (“Link Up Illinois”), Massachusetts (“Healthy Incentive Program”), Michigan (“Double Up Food Bucks”), New Mexico (“Farmer’s Market Double-Up Bucks”), and Vermont (“Crop Cash”), operate programs that in part use state funding to supplement SNAP spending on fruits and vegetables in order to promote healthy eating and foster economic growth. Several cities in the States including New York City (“Health Bucks”), Philadelphia (“Philly Food Bucks”), and Las Vegas (“Vegas Roots”) also run similar programs. A loss of SNAP benefits would impair the mission of these programs, decrease individual purchasing power, and mean less people have access to nutritious local produce. This would force the States to step in to restore access to healthy foods or lead people to look to privately funded programs to fill the gap.

³⁸ See J. T. Cook, et al., *Child Food Insecurity Increases Risks Posed by Household Food Insecurity to Young Children’s Health*, J. Nutr. 136(4) 1073-1076 (2006); H.A. Eicher-Miller, et al., *Food Insecurity Is Associated with Iron Deficiency Anemia in US Adolescents*, Am. J. Clin. Nutr. 90(5), 1358-1371 (2009); D.L. Mangini, et al., *Household Food Insecurity Is Associated with Childhood Asthma*, J. NLJTR, 145(12), 2756-2764 (2015); K.A. McLaughlin, et al., *Food Insecurity and Mental Disorders in a National Sample of US Adolescents*, J Am Acad Child Adolesc. Psychiatry, 51(12), 1293-1303 (2012).

³⁹ Steven Carlson and Brynne Keith Jennings, *SNAP is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, Ctr. On Budget and Policy Priorities, (Jan. 17, 2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>

⁴⁰ *Id.*

Food pantries and the non-profit service providers from whom they receive referrals will also bear a substantial burden under the Proposed Rule. When families lose SNAP benefits, food pantries notice increased demand. For instance, during the recent government shutdown, food pantries saw a huge rise in customers during a traditionally quiet period due to delays in receiving SNAP benefits.⁴¹ As discussed *infra* in Section II.F., the States and their residents will lose millions of dollars in benefits and money spent at grocery stores and other retailers. In 2017, Kentucky food banks provided over 64 million meals and fed at least 1 in 7 residents.⁴² Food banks, food pantries, and other food programs do not have the funds or resources needed to compensate for additional demand due to the loss of SNAP benefits.⁴³ In addition, non-profit service providers that would normally refer people to SNAP will instead be required to direct people to the already overburdened food pantries. Non-profits are stretched thin and cannot handle the increased demand that will result from the Proposed Rule.

C. Harms to the Public Health and to State-Funded Medical Benefits

States' medical, disability, and other systems will be further burdened when individuals who lose SNAP benefits due to the Proposed Rule are malnourished.⁴⁴ Food insecurity is linked to some of the most common and potentially costly health conditions such as diabetes, obesity, and complications in pregnancy. Studies have shown that SNAP is associated with better health and, correspondingly, reduced health care costs. While food-insecure households spend 45 percent more on medical care compared to food-secure households, low-income adults enrolled in SNAP spent 25 percent less on medical care compared to those not enrolled. In addition, the use of SNAP benefits is associated with fewer sick days and outpatient visits among adults overall. As noted above in Section II.A., food insecurity among children is associated with learning difficulties and reduced academic performance, stomachaches, frequent headaches and colds, iron deficiency anemia, asthma, and mental health problems. Food insecurity increases the likelihood of chronic disease for all segments of the population. The costs of treating these maladies will be borne by the States and their medical providers in the form of increased treatment times and expenses.

Moreover, if finalized, the Proposed Rule would mire elderly individuals in food insecurity, which would leave them susceptible to detrimental health effects. The RIA itself acknowledges that approximately "13.2 percent of all SNAP households with elderly members will lose benefits (7.4 percent will fail the income test and 5.8 percent will fail the resource test)." RIA at 16. By losing their SNAP benefits, these low-income households with elderly individuals will likely have

⁴¹ See Jessica Allred, *Food Banks Warn They Will Not be Able to Meet Demand if Food Stamp Cuts Take Effect*, Talk Poverty (Mar. 26, 2019) <https://talkpoverty.org/2019/03/26/food-banks-warn-will-not-able-meet-demand-food-stamp-cuts-take-effect/>; Kristin Toussaint, *Government Shutdown will Cause 'SNAP Gap' Posing Challenge for NYC Food Pantries*, Metro (Feb. 5, 2019) <https://www.metro.us/news/local-news/new-york/government-shutdown-snap-gap-food-bank-for-nyc-report>

⁴² Tamara Sandberg, Op-Ed., *Food Banks in Kentucky Need More Federal Support, KAFB Director Says*, Courier Journal (Nov. 16, 2018) <https://www.courier-journal.com/story/opinion/contributors/2018/11/16/kentucky-association-food-banks-director-we-need-more-federal-support/2026181002/>.

⁴³ See *id.* (noting that 76 percent of New York City food pantries only have one month or less of cash on hand).

⁴⁴ See, e.g., S. Berkowitz, H. Seligman, J. Rigdon, et al., *Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults*, JAMA Internal Medicine (2017); 177(11):1642-49).

to cope with increased food insecurity, which in turn means they will have to cope with increased health problems. Studies have shown that food insecurity is significantly higher among low-income seniors than seniors with higher incomes.⁴⁵ Food-insecure seniors are more likely to experience health complications than food-secure seniors: food-insecure seniors are more than twice as likely to suffer from depression, “47 percent more likely to report congestive heart failure, almost 90 more likely to report asthma, and more than 65 percent likely to have had a heart attack.”⁴⁶

Not only do these elderly individuals face higher health risks as a result of food insecurity, but lack of food security often leads them to abandon their health care. Despite the higher health risks associated with decreased nutrition, food-insecure seniors must often choose between food and expensive medication. Rates of cost-related medication underuse⁴⁷ among low-income seniors increase as their food insecurity increases: the rates are “25 percent for those experiencing marginal food security (low level of food insecurity); 40 percent for those experiencing low food security; and 56 percent for those experiencing very low food security (most severe level of food insecurity).”⁴⁸ Receiving SNAP benefits prevents these low-income elderly individuals from facing food insecurity and provides them with sufficient resources to purchase food *and* medication. In fact, studies have shown that elderly SNAP recipients are “less likely to forgo needed medicine due to cost.”⁴⁹ Additionally, participation in SNAP by elderly individuals has been linked to “reduced hospital and nursing home admissions.”⁵⁰ However, the Proposed Rule’s elimination of BBCE would leave thousands of low-income elderly individuals without adequate nutrition to maintain their health and would deprive them of necessary financial resources to receive adequate medical treatment.

D. Administrative Burden on States in Administering SNAP

The Proposed Rule will harm the States by increasing administrative costs and burden on staff while forcing them to redirect resources away from essential program activities towards administrative tasks.⁵¹ In 2009, the Department urged the states to adopt BBCE in order to

⁴⁵ James P. Ziliak and Craig Gunderson, *The Consequences of Seniors Hunger in the United States: Evidence from the 1999-2014 NHANES*, Feeding America & Nat’l Foundation to End Senior Hunger, 8 (2017) (“29.8 percent of seniors with incomes below the poverty line are food insecure and 18.0 of seniors with incomes between the poverty line and 200% of the poverty line are food insecure. In contrast, the food insecurity rate for seniors with incomes above 200% of the poverty line is 3.6 percent.”).

⁴⁶ *Id.* at 5.

⁴⁷ Cost-related medication underuse is defined as “skipping medications, taking less medicine than prescribed, delaying filling a prescription, using lower cost medications, and not being able to afford medicine.” Food Research & Action Center, *Hunger & Health: Impact of Poverty, Food Insecurity, and Poor Nutrition*, 5 (2017).

⁴⁸ *Id.*

⁴⁹ Oliva Dean and Lynda Flowers, *Fact Sheet: Supplemental Nutrition Assistance Program (SNAP) Provides Benefits for Millions of Adults Ages 50 and Older*, AARP Public Policy Institute, 1 (Apr. 2018).

⁵⁰ *Id.*

⁵¹ The State of Washington predicts that it will spend over 6,000 hours working towards compliance with the Proposed Rule and that on an annual ongoing basis the Proposed Rule will require its employees to expend over 12,300 additional hours of administrative work.

“increase SNAP participation and reduce State workloads.”⁵² In addition, the GAO has consistently found that categorical eligibility policies can save state and federal resources while improving productivity.⁵³ The Proposed Rule will eliminate these efficiency gains and will increase administrative costs. In addition to the added cost of verifying and means testing more applications due to the imposition of an asset test, churn will rise as families would need to newly file or refile applications as their income and assets fluctuate around the proscribed amounts. Each instance where administrative churn requires filing a new application costs the States an average of \$80.⁵⁴ In addition, unlike the current regulations that only require states to inform FNS about the TANF benefits or services that confer categorical eligibility if those services are less than 50 percent funded by state MOE funds, 65 Fed. Reg. at 70,161, the Proposed Rule would require all states to notify FNS of all non-cash TANF benefits that confer categorical eligibility, regardless of how much TANF funding pays for those benefits. 84 Fed. Reg. at 35,574-75. This, too, will increase the administrative burden on states that wish to convey categorical eligibility to TANF beneficiaries.

The States estimate that overall administrative costs will spike drastically. First, according to the Department, adopting BBCE saves 7 percent in administrative costs per case. In addition, the States will have to educate and notify the public of the rule change, modify their currently existing administrative systems and processes, and retrain staff at significant expense. This includes both the public facing portals and the backend systems to verify assets. For example, Wisconsin estimates that it will cost over \$2.3 million to modify their client assistance portal and anticipates an increase of \$17.7 million in ongoing expenses related to their asset verification system. New Mexico predicts that it will cost \$230,000 to train agency staff on implementation of the new rule, and when Pennsylvania implemented an asset test in FY 2014, they paid approximately \$2.3 million more in administrative costs. Every dollar that the States spend on administrative costs as a result of the Proposed Rule is money taken away from needy families. Furthermore, the Proposed Rule shifts administrative costs and burdens onto the States for minimal savings as BBCE only accounts for 2 percent of SNAP costs.⁵⁵

E. Harms to Other State-Funded or Administered Programs That Depend on SNAP Eligibility

The States adopted BBCE policies at the insistence of the Department and have relied on it to harmonize their benefits administration and confer eligibility to a host of other state-funded or administered programs.⁵⁶ For example, in Hawaii, Illinois, New Jersey, Pennsylvania, Washington, and Wisconsin, the Low Income Housing Energy Assistance Program, which provides home energy assistance to low-income families, relies in part on SNAP BBCE. Under

⁵² September 2009 Guidance (“Please encourage your States to adopt broad-based categorical eligibility to improve SNAP operations in your States.”).

⁵³ 2012 GAO Report at 28.

⁵⁴ USDA, FNS Office of Policy Support, *Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP) Final Report*, xii, (Nov. 2014), <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf>.

⁵⁵ Dorothy Rosenbaum, SNAP’s “Broad Based Categorical Eligibility” Supports Working Families and Those Saving for the Future, Ctr. on Budget and Policy Priorities, 2 n.4 (July 24, 2019).

⁵⁶ September 2009 Guidance.

the Proposed Rule, impacted households would have to apply for and be enrolled in the program manually rather than relying on the automatic referral and enrollment process for SNAP recipients.⁵⁷ Another state program that utilizes automatic enrollment is the Lifeline Program, which offers affordable communication services to low-income families in Nevada, Vermont, and Wisconsin. Even in the absence of automatic enrollment, individuals will lose access to other state-funded programs whose eligibility requirements mirror the rules for SNAP. This would include the California Food Assistance Program, which provides nutrition benefits to lawfully present immigrants not yet eligible for SNAP, and its Supplemental Nutrition Benefit, which provides nutrition benefits to certain households that also receive SSI or State Supplementary Payment.

F. Harms to State and Local Economies

The Proposed Rule fails to account for the harm to the local and national economies that will occur when millions of people are no longer eligible for SNAP benefits. SNAP is a highly efficient program that produces benefits to businesses and individuals beyond the direct recipients. Because SNAP benefits are provided to low-income individuals with immediate spending needs, SNAP boosts local economies by increasing consumer demand, injecting money directly into the economy, creating jobs, and supporting national and local retailers and the food industry generally.⁵⁸ During strong economic times, \$1 in redeemed SNAP benefits means more than \$1.20 in the local economy.⁵⁹ During a recession, \$1 in redeemed SNAP benefits generates more than \$1.70 in economic activity.⁶⁰ Under the Proposed Rule, each State predicts they will have over 3,000 households lose benefits, with California, New York, and Pennsylvania estimating that over 100,000 households will be affected. In terms of individual recipients, most of the States including California, Connecticut, Illinois, Massachusetts, Michigan, New York, New Jersey, Nevada, Oregon, Pennsylvania, and Washington predict that over 40,000 of their residents will lose benefits. For instance, Michigan predicts that over 75,000 households and nearly 145,000 people will lose benefits, causing the state to miss out on over \$101 million in economic activity. Pennsylvania families could lose out on as much as \$100 million per year in benefits, and when the economic multiplier is included, Pennsylvania is losing nearly \$170 million in economic activity. About 68,000 New Jersey residents would lose SNAP benefits under the Proposed Rule,

⁵⁷ In Wisconsin the program is called Wisconsin Home Energy Assistance Program (WHEAP).

⁵⁸ See generally Mark M. Zandi, *Assessing the Macro Economic Impact of Fiscal Stimulus 2008*, (Jan. 2008) <https://www.economy.com/mark-zandi/documents/Stimulus-Impact-2008.pdf>; Kenneth Hanson, "The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP," US DA., (Oct. 2010), https://www.ers.usda.gov/webdocs/publications/44748/7996_err103_1.pdf?v=41056; *The Benefits of Increasing the Supplemental Nutrition Assistance Program Participation in Your State*, US DA., (Dec. 2011), https://www.fns.usda.gov/sites/default/files/bc_facts.pdf; *Chart Book: SNAP Helps Struggling Families Put Food on the Table*, Ctr. on Budget and Policy Priorities, (Mar. 2017), <https://www.cbpp.org/research/food-assistance/chart-book-snap-helps-struggling-families-put-food-on-the-table#part8>.

⁵⁹ Alan S. Blinder & Mark Zandi, *The Financial Crisis: Lessons for the Next One*, Ctr. on Budget and Policy Priorities (Oct. 15, 2015), <https://www.cbpp.org/research/economy/the-financial-crisis-lessons-for-the-next-one>.

⁶⁰ *Id.* (showing that at the height of the last recession, in 2009, \$50 billion in SNAP benefits translated into \$85 billion in local economies); Kenneth Hanson, *The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP: Executive Summary*, USDA., Economic Research Serv. (Oct. 2010), https://www.ers.usda.gov/webdocs/publications/44748/8003_err103_reportsummary_1.pdf?v=0 (finding that an additional \$1 billion in SNAP expenditures was estimated to increase economic activity (GDP) by \$1.79 billion. "In other words, every \$5 in new SNAP benefits generates as much as \$9 of economic activity.").

including 26,000 children, and the state would also lose more than \$33 million annually in benefits and money spent in grocery stores, farmer's markets, and other food retailers.⁶¹

SNAP generates revenue for grocery stores both large and small. SNAP expenditures make up about 10 percent of all grocery expenditures nationwide,⁶² and an even higher percentage in low-income areas where SNAP benefits are used for a greater portion of sales.⁶³ SNAP helps many food retailers operating on thin margins to remain in business, which improves food access for all residents. SNAP also supports employment in rural areas and small towns, where it created and bolstered about 567,000 jobs in 2017, including almost 50,000 in agriculture.⁶⁴ Non-grocery businesses also receive a boost from SNAP expenditures because individuals who use SNAP to purchase food then have greater purchasing power to buy other types of goods as well.⁶⁵ This greater purchasing power also benefits state governments, which see increased revenue from additional sales tax when more people are eligible for SNAP benefits.⁶⁶

The Proposed Rule also threatens to harm the national economy by terminating SNAP benefits for people who currently receive benefits in the 43 states that have expanded categorical eligibility under PRWORA. By the Administration's own calculations, the Proposed Rule would take food away from at least 3.1 million low-income Americans, resulting in a loss of at least \$10.5 billion in SNAP benefits over 4 years.⁶⁷ These cuts will have negative ripple effects throughout the nation's economy, and will be particularly harmful should the economy enter a recession, as many economists predict will occur in the next two years.⁶⁸ Historically, SNAP has helped to shorten recessions and dampen the effects of an economic downturn. Without the mitigating effects of the \$10.5 billion in SNAP benefits for millions of Americans, the impact of the next recession will escalate.

⁶¹ For estimates of the number of households and SNAP participants in each state affected by the Proposed Rule and the average amount benefits they stand to lose, see *New Research Analyzes State-Level Impact of USDA Proposal to End SNAP Broad-Based Categorical Eligibility*, <https://www.stateofobesity.org/new-research-analyzes-state-level-impact-of-usda-proposal-to-end-snap-broad-based-categorical-eligibility/> (last visited Sept. 19, 2019).

⁶² Elizabeth Wolkomir, *SNAP Boosts Retailers and Local Economies*, Ctr. on Budget and Policy Priorities (Apr. 6, 2018), <https://www.cbpp.org/research/food-assistance/snap-boosts-retailers-and-local-economies>.

⁶³ Sarah Reinhardt, *SNAP is a Boon to Urban and Rural Economies—and Small-Town Stores May Not Survive Cuts*, Union of Concerned Scientists (May 14, 2018), <https://blog.ucsusa.org/sarah-reinhardt/snap-is-a-boon-to-urban-and-rural-economies-and-small-town-stores-may-not-survive-cuts>.

⁶⁴ *Id.*

⁶⁵ Wolkomir, *supra* n.62.

⁶⁶ Scott Graves, *State Policymakers Could Be On the Verge of Boosting Basic Supports for Low-Income Seniors and People with Disabilities*, California Budget and Policy Center (May 23, 2018), <https://calbudgetcenter.org/blog/state-policymakers-could-be-on-the-verge-of-boosting-basic-support-for-low-income-seniors-and-people-with-disabilities/> (finding that a proposal to expand SNAP eligibility in California could boost the state's revenue with \$3.5 million in additional sales tax).

⁶⁷ The RIA purports to project costs for 2019, however, the Proposed Rule will not and cannot be in effect in 2019, and the RIA does not estimate the number of SNAP dollars that will be lost from the economy for five years, as it purports to. For that reason alone, the RIA is deeply flawed.

⁶⁸ See Marcy Gordon, *74% of Economists in Survey See US Recession by end of 2021*, Associated Press (Aug. 19, 2019), <https://apnews.com/3d77bbfda266497699554a754c124735>.

III. The Proposed Rule Would, if Finalized, Violate the Administrative Procedure Act.

The Administrative Procedure Act (“APA”) provides that agency action is unlawful and must be set aside if it is “not in accordance with law,” “in excess of statutory jurisdiction, authority, or limitations,” or “arbitrary, capricious, [or] an abuse of discretion.” 5 U.S.C. §§ 706(2)(A), (C). The Proposed Rule contravenes the clear intent of Congress set out in PRWORA and the FNA; it seeks to regulate TANF programs and exceeds the Department’s statutory authority; and is arbitrary and capricious for a number of reasons, including that it would change longstanding agency policy without a legitimate rationale and it fails to consider all of the costs of the proposed changes.

A. The Proposed Rule Conflicts with the Clear Intent of Congress.

The Proposed Rule is contrary to the purpose of the FNA and PRWORA, it limits categorical eligibility for SNAP in a way that Congress did not, and it implements changes that Congress has repeatedly rejected. When agency action contradicts the congressional intent of an underlying law, the action can be set aside as “not in accordance with law.” 5 U.S.C. § 706(2)(A); *see also FCC v. NextWave Pers. Comm. Inc.*, 537 U.S. 293, 300 (2003). Here, the Proposed Rule’s addition of limitations on eligibility that are not based on statute, that undermine the purpose of federal laws, and that have been repeatedly rejected by Congress are not in accordance with the underlying intent of the FNA, PRWORA, and subsequent amendments.

In the FNA, Congress declared that its policy is “to safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households.” 7 U.S.C. § 2011. Yet, by the Department’s own calculations, under the Proposed Rule more than 3 million people who struggle to make ends meet will lose their eligibility for SNAP because they do not meet SNAP’s gross income or asset limitations. RIA at 3. But even more people will lose benefits under the Proposed Rule. Despite the fact that most households that are currently categorically eligible for SNAP meet the gross income and asset requirements to be eligible for SNAP, the additional burden of verifying assets takes more time and requires more paperwork, which will cause more households to lose benefits on a short- or long-term basis. Some families may not apply at all, while other families may have their benefits delayed due to the verification process. All of these low-income families and individuals will go hungry. The Proposed Rule thus conflicts with the very purpose of the FNA.

The Proposed Rule also conflicts with the purpose of Congress when it enacted PRWORA. When Congress ended AFDC and replaced it with TANF, it could have limited the types of TANF benefits that would confer categorical eligibility for SNAP, but it did not. Rather, Congress substituted the receipt of benefits under TANF for AFDC in the statute listing the programs that convey categorical eligibility for SNAP without limitation. *See* 7 U.S.C. § 2014(a). TANF does not require states to use TANF/MOE funds to serve only TANF’s first two goals, or to provide any specific type of benefit to serve any of TANF’s goals. Rather, Congress permitted states the flexibility to address the causes of child poverty in ways that best serve the residents of their states. Congress permitted states to convey categorical eligibility for SNAP based on state-run TANF programs. Congress did not require that TANF benefits be “substantial” or “ongoing,” or that they only be of particular types in order to convey categorical eligibility. The Department expressly

disagrees with this congressional intent and asserts that new regulations are necessary “to ensure that TANF-funded programs conferring categorical eligibility align more closely with SNAP eligibility standards outlined in the [FNA].” 84 Fed. Reg. at 35,572. By proposing a rule that would effectively prevent states from conveying categorical eligibility to recipients of TANF- and MOE-funded benefits and services that serve the third and fourth goals of TANF or that do not meet the arbitrary new requirements that the benefits be “substantial” and “ongoing,” the Department is attempting to alter the statutory changes made by Congress with PRWORA. The Proposed Rule thus plainly conflicts with PRWORA.

Prior administrations and members of Congress understood that congressional action would be required to accomplish the changes to categorical eligibility for SNAP that the Department seeks to make in the Proposed Rule. Even though the George W. Bush Administration tried no fewer than five times to limit categorical eligibility for SNAP based on non-cash TANF benefits,⁶⁹ the administration never once proposed to limit categorical eligibility by regulation. The reason for this is clear: The FNA itself makes households that receive TANF benefits categorically eligible for SNAP. The breadth of the changes made to FNA by PRWORA did not and does not limit the types or amounts of TANF benefits that can trigger SNAP eligibility. Even an administration that was eager to limit categorical eligibility for SNAP understood that it did not have the authority to do so without a change in the statute. That statutory change could come to TANF itself, or it could be in the FNA, but it cannot be done by regulation alone without a change in statutory language.

Moreover, the Proposed Rule is contrary to the clear intent of Congress when it passed the 2018 Farm Bill. In the drafting and negotiations process of the 2018 Farm Bill, the House of Representatives included language regarding categorical eligibility based on non-cash TANF benefits, some of which is identical to the language that the Department now proposes. Congress removed the provisions from the final legislation and passed the 2018 Farm Bill on December 20, 2018, without the new restrictions on non-cash TANF benefits that can convey categorical eligibility for SNAP. While Congress explicitly chose not to limit categorical eligibility for SNAP in any way, the Department seeks to limit *both* the cash and non-cash TANF benefits that can convey categorical eligibility for SNAP. Dissatisfied with the perceived lack of statutory limitations on TANF benefits that can convey categorical eligibility for SNAP, the Department seeks to end-run the legislative process and implement requirements that Congress refused to adopt through legislation and go even further than has ever been considered by Congress by adding limitations on the TANF cash assistance that can convey categorical eligibility for SNAP.

Congress refused to make these statutory changes and intended for categorical eligibility for SNAP to continue to be granted to recipients of TANF benefits and services. The Proposed Rule plainly conflicts with the intent of Congress.

B. The Proposed Rule Exceeds the Authority of the USDA

While the Department is authorized to promulgate regulations to clarify definitions in the FNA, *see* 7 U.S.C. § 2013(c), it does not have the authority to regulate TANF programs; HHS is the agency authorized to regulate TANF. *See* 42 U.S.C. § 616. But with the Proposed Rule, the

⁶⁹ *See supra* n.25.

Department seeks to usurp HHS's authority and discourage states from designing and administering TANF-funded programs in ways the Department apparently believes to be less legitimate than other uses of TANF funds, and it seeks to incentivize states to design their TANF programs in ways that the Department thinks are somehow more legitimate. Not only is this contrary to congressional intent, it exceeds the authority Congress delegated to the Department. Agency actions that do not fall within the scope of a statutory delegation of authority are *ultra vires* and will be invalidated by reviewing courts. See, e.g., *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979); *SEC v. Sloan*, 436 U.S. 103, 118–19 (1978); *Civil Aeronautics Bd. v. Delta Air Lines, Inc.*, 367 U.S. 316, 334, (1961); *Aid Ass'n for Lutherans v. U.S. Postal Serv.*, 321 F.3d 1166, 1174 (D.C. Cir. 2003) (“An agency construction of a statute cannot survive judicial review if a contested regulation reflects an action that exceeds the agency's authority.”); 5 U.S.C. § 706(2)(C).

Congress purposefully granted states a significant amount of flexibility in their administration of their TANF block grants. The purpose of the block grant is “to *increase* the flexibility of States in operating a program designed to” fulfill one of the four purposes of TANF. 42 U.S.C. § 601(a) (emphasis added). Reflecting this increased flexibility, states are authorized to use their TANF block grants “in any manner reasonably calculated” to accomplish the statutorily defined goals of TANF. 42 U.S.C. § 604(a)(1). HHS itself recognized this increased flexibility mandated by PRWORA and its limiting effect on federal regulatory authority over this new welfare program. In the Final Rule on TANF promulgated on April 12, 1999, the agency explained the new relationship between the federal government and states under PRWORA. HHS acknowledged that PRWORA provides states “broad flexibility to set eligibility rules and decide what benefits are most appropriate...without getting the ‘approval’ of the Federal government.” *Temporary Assistance for Needy Families Program (TANF)*, 64 Fed. Reg. 17,720, 17,722 (Apr. 12, 1999). In turn, PRWORA “limits Federal regulatory and enforcement authority.” *Id.*⁷⁰

Since the enactment of TANF, HHS has continued to allow states a great degree of flexibility in their discretion to administer TANF benefits. HHS regulations of TANF have not created any minimum amount or timeframe for TANF benefits. The Department itself acknowledges that “[t]here is no minimum benefit amount currently required by TANF, in keeping with the flexibility afforded to States by that program.” 84 Fed. Reg. at 35,573. Further, even under current HHS regulations, states have maintained broad latitude to spend TANF and MOE funds “on benefits, services, or activities aimed to achieve *any* of the goals of TANF.”⁷¹ These non-cash benefits are not just limited to subsidized employment, work supports, and childcare supports. As the federal agency authorized with administering TANF, only HHS may promulgate rules regarding its implementation. The Department may not step in where HHS has declined to regulate. See *Dep’t of Treasury v. Fed. Labor Relations Auth.*, 837 F.2d 1163, 1167 (D.C. Cir.

⁷⁰ Federal law does impose a limited number of requirements on states’ use of TANF funds. These requirements almost exclusively apply to the use of TANF funds to provide “assistance.” Although federal law does not define “assistance,” HHS has defined it as “cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).” 45 C.F.R. § 260.31; see also Cong. Research Serv., “The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,” RL 32748 at 11-12 (Dec. 14, 2017).

⁷¹ Cong. Research Serv., “The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,” RL 32748 at 20 (Dec. 14, 2017) (emphasis added).

1988) (agency interpretation of a statute whose administration has been entrusted to another agency is not entitled deference).

If finalized, the Proposed Rule would discourage states' discretion in administering TANF in a far more severe manner than has any HHS regulation, which would undermine the flexibility that Congress sought to provide to the states in their administration of TANF block grants. To continue experiencing the same level of administrative streamlining that categorical eligibility provides to state agencies, states will likely adapt the manner in which they administer TANF to match the Department's new requirements for categorical eligibility. Rather than providing their residents with non-cash benefits tailored to meet their unique circumstances, states may limit non-cash benefits to those prioritized by the Department—subsidized employment, work supports, and childcare supports. To maximize the number of residents who would be categorically eligible for SNAP, states would be incentivized to restrict the types of non-cash benefits to those that have a more readily available market valuation and a more discernible time period to comply with the Proposed Rule's thresholds. This incentive improperly end-runs HHS's regulatory authority to govern state agencies' administration of TANF and undermines the flexibility that HHS regulations have preserved. As such, the Proposed Rule exceeds the Department's authority.

C. The Proposed Rule Fails to Provide a Legitimate Justification for Departing from the Longstanding Policy of the USDA.

The Proposed Rule fails to provide a reasoned explanation for its radical departure from the Department's longstanding policy recognizing states' authority to expand categorical eligibility for SNAP and encouraging them to do so. Indeed, the Proposed Rule abandons decades-old policy without any support whatsoever. This alone would make the Proposed Rule arbitrary and capricious if it were finalized. See *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (federal agency has a "duty to explain why it deemed it necessary to overrule its previous position" and when "the agency has failed to provide even that minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law."); *Massachusetts v. EPA*, 549 U.S. 497, 534 (2007); *Mfrs. Ry. Co. v. Surface Transp. Bd.*, 676 F.3d 1094, 1096 (D.C. Cir. 2012). Furthermore, agency changes to longstanding policies that have engendered reliance interests over time must "show that there are good reasons for the new policy," and provide a "detailed justification" for its new direction to survive arbitrary and capricious review. *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); see also *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1209 (2015). Because the Proposed Rule contradicts the USDA's own longstanding position that has engendered significant reliance interests by the States without reasoned support or detailed justification, it is arbitrary and capricious under the APA.

The Proposed Rule asserts that there are two "issues" with categorical eligibility for TANF benefits: (1) it permits states to convey categorical eligibility based on "nominal non-cash benefits or services, such as TANF-funded brochures or hotline numbers;" and (2) federal auditors "raised program integrity concerns about the wide adoption of categorical eligibility policies and the prevalence of TANF benefits with minimal value." 84 Fed. Reg. at 35,572. However, the Department fails to provide any evidence that the TANF benefits provided by the states do not comply with the TANF program itself, or with the Department's own guidance regarding categorical eligibility. Moreover, the Department's concern with whether states convey categorical

eligibility for SNAP based on TANF benefits seems entirely misplaced given that eligibility alone does not confer SNAP *benefits*. The Department's fixation on categorical eligibility as a "loophole" when there is no evidence of a problem with ineligible individuals who have high net incomes receiving SNAP benefits is an effort to articulate a problem where there is none. It does not justify such a drastic change in policy.

As support for changing its longstanding policies regarding categorical eligibility, the Department cites to a 2012 "audit" by the Government Accountability Office ("GAO") that cited some accounts of states conferring categorical eligibility to households "without actually providing the TANF-funded benefit or service" that conveys categorical eligibility. 84 Fed. Reg. at 35,572 (citing U.S. Gov't Accountability Office, GAO-12-670, *SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: Improved Oversight of State Eligibility Expansions Needed* 34-35 (July 2012) ("2012 GAO Report")). The Department also cites an audit by the USDA Office of Inspector General ("OIG") for the proposition that households who were determined categorically eligible based on the receipt of a TANF-funded brochure "did not actually receive the brochure unless they specifically requested it." *Id.* (citing USDA Office of Inspector General, "FNS Quality Control Process for SNAP Error Rate Audit Report 27601-0002-41," (Sept. 2015) *available at* <https://www.usda.gov/oig/webdocs/27601-0002-41.pdf> ("2015 OIG Report")). The Department cites absolutely no evidence of "issues" or "concerns" with other types of categorical eligibility, including categorical eligibility based on TANF cash assistance and TANF non-cash services and benefits that serve TANF's second goal of promoting work and job-preparedness.

Leaving aside that the Department's own regulations only require that households receive *or be authorized to receive* a TANF-funded benefit that conveys categorical eligibility, 7 C.F.R. § 273.2(j)(2)(i), neither the 2012 GAO Report nor the 2015 OIG Report supports or even suggests eliminating BBCE or changing any other type of categorical eligibility for SNAP. Rather, the GAO recommended only that the Secretary of Agriculture require FNS to improve oversight of BBCE by reviewing state procedures for implementing BBCE, disseminating guidance, and revisiting agency guidance. 2012 GAO Report at 40-41. The OIG Report stated that BBCE policies must "ensure that SNAP applicants received *or were authorized to receive* services" from a program that meets the regulatory requirements regarding funding percentages, program purposes, and gross monthly income levels. 2015 OIG Report at 37 (emphasis added). In other words, both reports emphasized communicating and ensuring compliance with BBCE requirements. As the Department notes, it did precisely that when it issued guidance in 2016. 84 Fed. Reg. at 35,572 (citing USDA, FNS, "Clarification on Characteristics of Broad-Based Categorical Eligibility Programs," (Dec. 27, 2016) *available at* fns-prod.azureedge.net/sites/default/files/snap/clarification-bbce-memo.pdf). Despite the lack of any evidence of current program integrity problems with categorical eligibility broadly, the Department now proposes to "narrow the scope of potential TANF benefits conferring categorical eligibility," including all cash and non-cash TANF benefits. There is simply no legitimate justification for drastically changing the Department's categorical eligibility policy now.

Because one of the key performance measures for SNAP is the rate of participation among eligible households, the Department has encouraged states to increase participation in the program among eligible households. 2012 GAO Report at 6. The States have relied on the current regulations and on agency guidance that encouraged states to adopt BBCE policies "to simplify

the administration of SNAP and help low-income households meet their nutritional needs.”⁷² If the Proposed Rule is finalized, the Department’s lack of reasoned explanation would be considered particularly egregious given that the Proposed Rule’s radical departure from long-established policy will upend strong reliance interests by the States. The States have designed their TANF programs, their application processes, and their internal training, staffing, and administrative systems based on the Department’s longstanding interpretation of the categorical eligibility statutory provision and its guidance to the states.

While the Department issued guidance in 1999 and regulations in 2000 permitting states to adopt BBCE policies, few states implemented them in the first ten years after PRWORA was enacted. 2012 GAO Report at 11-12. By Fiscal Year 2006, only seven states had implemented BBCE policies. *Id.* But when the economy took a downturn in 2007, the Department began encouraging states to adopt BBCE policies. *Id.* at 11. Indeed, an early GAO report noted that several states were *not* conferring categorical eligibility to households receiving or authorized to receive TANF non-cash services, as required by federal regulations, and recommended that FNS provide guidance and technical assistance to states so that households would get the categorical eligibility for SNAP to which they were entitled.⁷³ Even after more than half of the states implemented BBCE, the Department actively encouraged other states to implement BBCE “to increase SNAP participation and reduce State workloads.”⁷⁴ The Department issued guidance encouraging states to implement BBCE two more times in 2009, and twice in 2010.⁷⁵ At the Department’s urging, more than a dozen additional states took advantage of the BBCE option and expanded categorical eligibility for SNAP for their residents. 2012 GAO Report at 11-12. The majority of states now have BBCE policies—all of which would be eliminated by the Proposed Rule. The reliance interests of the States are overwhelming, and there is no justification for the Department’s sudden and drastic change. The 2012 GAO Report relied on by the Department as justification for the Proposed Rule cautioned that “any changes to BBCE should carefully weigh the potential . . . costs, which . . . include the increased burden on state and local staff.” *Id.* at 40.

The only other justification offered for the Proposed Rule—yet not in the Proposed Rule itself—is the Secretary of Agriculture’s assertion that states have “misused” the flexibility of TANF and BBCE, which he claims “has become so egregious that a millionaire living in Minnesota successfully enrolled in the program.”⁷⁶ The Secretary’s assertions—citing one bad actor as support for eliminating benefits for more than 3 million people and imposing substantial costs on the states—not only misrepresent the households that receive SNAP benefits, but also fail to acknowledge the Department’s own role in expanding BBCE for SNAP. Rather than citing to

⁷² March 2010 Guidance at 1.

⁷³ U.S. Gov’t Accountability Office, *FOOD STAMP PROGRAM: FNS Could Improve Guidance and Monitoring to Help Ensure Appropriate Use of Noncash Categorical Eligibility* (Mar. 2007).

⁷⁴ September 2009 Guidance at 1.

⁷⁵ USDA, FNS, “Categorical Eligibility Questions and Answers” (Nov. 20, 2009); USDA, FNS, “Categorical Eligibility Questions and Answers” (Dec. 15, 2009); USDA, FNS, “Categorical Eligibility Questions and Answers” (Jan. 26, 2010); USDA, FNS, “Supplemental Nutrition Assistance Program: Using Broad-Based Categorical Eligibility to Exclude Refundable Tax Credits Permanently” (Mar. 18, 2010).

⁷⁶ See *supra* nn. 31-32. Because this individual’s income was low enough to qualify for SNAP benefits, there is no evidence cited by Secretary Perdue that this individual would not otherwise be eligible for SNAP benefits, especially because his purported riches were reportedly part of a retirement account that would not be counted as an asset even under traditional SNAP eligibility requirements. 7 U.S.C. § 2014(g)(7).

any actual misuse or abuse by states, all the evidence available to the Department is that states have used BBCE at the Department's urging in the very ways that it intended—to permit states to meet the needs of their food-insecure communities while easing their own administrative burden. The adverse consequences of upending these reliance interests are substantial. *See supra* Section II. The Proposed Rule arbitrarily disregards these strong reliance interests of the states and their residents, and would be arbitrary and capricious, if finalized. *See Encino Motorcars*, 136 S. Ct. at 2126.

D. The Proposed Rule is Arbitrary and Capricious

Agency action can be arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43-44 (1983). The Department's stated reasons for the Proposed Rule are unsupported and inconsistent with the available evidence. The Proposed Rule fails entirely to consider the significant upheaval it would cause and grossly fails to appropriately assess its costs. There is no evidence cited to support the termination of SNAP eligibility for millions of people. Rather, all the available evidence shows that the group of people who will lose SNAP benefits under the Proposed Rule are low-income individuals and families struggling to make ends meet and saving for a brighter future or to cover emergency personal or medical expenses.

1. *The Department Provides No Grounds for Limiting Categorical Eligibility to “Ongoing” and “Substantial” Support from TANF.*

The Proposed Rule provides no legitimate justification for the creation of a threshold for TANF benefits to confer categorical eligibility for SNAP. The FNA does not contain the qualifiers “ongoing” or “substantial” when defining which TANF benefits may confer categorical eligibility. *See* 7 U.S.C. § 2014(a) With the exception of some limitations provided for income eligibility (e.g., 200 percent of the FPL for benefits provided for TANF categories three and four), the Department's regulations regarding categorical eligibility have purposefully allowed the states flexibility in administering TANF benefits in order to allow as many low-income families as possible to receive categorical eligibility while easing the administrative burden on states in determining eligibility for benefits.

The primary justification provided for creating the new limitations of “ongoing” and “substantial” support from TANF is the concern that some current state practices in administering qualifying TANF benefits “threaten[] the integrity of categorical eligibility.” 84 Fed. Reg. at 35,573. However, the Department provides very little data to uphold this assertion. Only a very small percentage of families are above the federal thresholds for SNAP but still benefit from categorical eligibility where they may not otherwise be able to receive benefits.⁷⁷ Additionally, these households have had very little impact on SNAP costs. In fact, a report from the Government

⁷⁷ The Regulatory Impact Analysis found that 4.9 percent of households would fail the Federal SNAP income test and 4.1 percent would fail the Federal resource test. 84 Fed. Reg. at 35,575.

Accountability Office found that SNAP benefit costs increased less than 1 percent as a result of BBCE in FY 2010.⁷⁸

Moreover, the Proposed Rule ignores a critical step in the administration of SNAP benefits – although a household may be eligible to receive SNAP benefits, the benefit must still be calculated based on the household’s net income. If a household of three or more people has a net income above 100 percent of the FPL, they will not receive any SNAP benefits even though they are categorically eligible.⁷⁹ Even categorically eligible households “must complete a SNAP application, have an interview with a state official, document their financial and other circumstances, report changes in their circumstances, and regularly reapply for SNAP.”⁸⁰ Only a minuscule amount of SNAP benefits – approximately 0.2 percent – went to households with net income of more than 100 percent of the FPL in 2017.⁸¹ A GAO report found that households that would not have been eligible for SNAP without BBCE received a monthly SNAP benefit of \$81, as compared to the \$293 monthly SNAP benefit received by all other SNAP households.⁸² As discussed below, however, most of this small group of SNAP recipients will benefit from the cushion that categorical eligibility provides to allow them to become more self-sufficient rather than endure the harms of the benefit cliff. The Department cannot, therefore, reasonably argue that without the thresholds created by the Proposed Rule, the integrity of categorical eligibility and SNAP is imperiled.

2. *The Proposed Rule Sets an Arbitrary Minimum TANF-Funded Benefit as the Basis for Categorical Eligibility.*

In setting the new limitations on which TANF-funded benefits can confer categorical eligibility, the Proposed Rule arbitrarily establishes that the minimum value of these benefits must be \$50 in order to be considered “substantial,” and the recipient must be qualified to receive the benefit for at least six months in order for it to be considered “ongoing.” However, the Proposed Rule provides no legitimate justification for these new minimums.

⁷⁸ U.S. Gov’t Accountability Office., *FEDERAL LOW-INCOME PROGRAMS: Eligibility and Benefits Differ for Selected Programs Due to Complex and Varied Rules*, 35 n.54 (June 2017), <https://www.gao.gov/assets/690/685551.pdf>.

⁷⁹ One and two-person households may receive a minimum SNAP benefit if their gross income is no higher than 200 percent of the FPL, but their net income exceeds 100 percent of the FPL. However, this minimum benefit is only \$15, far less than the average monthly benefit of \$134 for one-person households and \$247 for two-person households. See Ctr on Budget and Policy Priorities, *A Quick Guide to SNAP Eligibility and Benefits*, (Oct. 16, 2018), <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits>.

⁸⁰ Dorothy Rosenbaum, *SNAP’s “Broad-Based Categorical Eligibility” Supports Working Families and Those Saving for the Future*, Ctr. on Budget and Policy Priorities, 4 (July 30, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/7-24-19fa.pdf>.

⁸¹ *Id.*

⁸² 2012 GAO Report at 25, <https://www.gao.gov/assets/600/593070.pdf>; see also *The Potential Implications of Eliminating Broad-Based Categorical Eligibility for SNAP Household: Hearing Before the Subcomm. on Nutrition, Oversight, & Dep’t Operations of the H. Comm. on Agric.*, 116th Cong. 7 (2019) (statement of Lisa Davis, Senior Vice President, Share Our Strength’s No Kid Hungry Campaign), <https://agriculture.house.gov/uploadedfiles/hhrg-116-ag03-wstate-lisadavis-20190620.pdf> (hereinafter “Davis Testimony”).

The Proposed Rule establishes a minimum amount of \$50 as its threshold for a “substantial” TANF-funded benefit, but it provides no justification or calculation for why \$50 should be the minimum. As the Department itself recognizes, there is no minimum TANF benefit, 84 Fed. Reg. at 35,573, and some TANF benefits do not have “a ready market valuation,” *id.* at 35,574. The Department fails to provide a legitimate explanation for why \$50 should be the minimum amount for both cash *and* non-cash assistance. The only discernible explanation is that the amount was determined in consultation with HHS, but there is no explanation for how either agency reached the amount. *See id.* at 35,573. The Department provides no data in support of the proposed minimum amount, such as the average value of TANF benefits provided, or the percentages of benefits conferred of only nominal value as compared to benefits with a determinable monetary value. The only statistic provided in the RIA in support of the \$50 minimum is that less than 0.2 percent of all SNAP households receive less than \$50 in TANF *cash* assistance. RIA at 12. This statistic does not account for the value of non-cash TANF assistance provided to SNAP households.

After choosing this arbitrary \$50 minimum value despite acknowledging that there is no minimum TANF benefit, the Department notes that it is *possible* that HHS will, sometime in the future, set a minimum TANF benefit. 84 Fed. Reg. at 35,573. But rather than adopting any TANF limitations *in toto*, the Proposed Rule only incorporates an HHS-imposed minimum TANF benefit for categorical eligibility *if* that minimum TANF benefit exceeds the arbitrary \$50 amount set by the Proposed Rule. This only further demonstrates that the \$50 amount is completely arbitrary and is not a reasonable interpretation of 7 U.S.C. 2014(a).

Moreover, the Department acknowledges that there are TANF benefits provided that do not have an easily determinable market valuation, including “education and training, job search assistance, or work experience [that] are provided on an hourly or weekly basis to program participants.” 84 Fed. Reg. at 35,574. However, these benefits serve to increase employment and financial stability, serving the second goal of TANF. Under the Proposed Rule, these types of services cannot convey categorical eligibility because they do not have a ready market valuation of at least \$50. While the Department requests comment as to “whether and how the benefits from such hourly-based programs could be valued for the purposes of conferring categorical eligibility, or other ways to determine whether such benefits could be ongoing and substantial,” *id.*, it fails to provide a rationale for why market valuation is necessary and why only certain types of non-cash assistance may be used to confer categorical eligibility. This lack of rationale underscores the arbitrariness of the proposed standard for “substantial.”

In addition to the arbitrary standard set for the “substantial” TANF-funded benefits, the Proposed Rule seeks to limit the types of benefits that may confer categorical eligibility to those that are “ongoing,” which it defines as 6 months without providing any legitimate justification for doing so. The only explanation provided for how this number was reached is that “it is the certification period length for many SNAP households and a mid-point for the most common certification period length of 12 months.” 84 Fed. Reg. at 35,573. Despite the Department’s assertion that this six-month threshold would “maintain program alignment,” *id.*, it provides no information about average certification periods for TANF benefits or any other comparison to TANF benefit administration. Moreover, such rigid alignment ignores that TANF and SNAP serve different purposes and thus may require different certification periods, and that categorical

eligibility is meant to ease burdens for both households and state agencies by streamlining income eligibility determinations. In the RIA, the Department adds that “[i]f a shorter timeframe were used, States might need to shorten certification periods in order to ensure that households’ circumstances have not changed.” RIA at 12. This purported justification fails to account for the requirement under SNAP for households to report certain changed circumstances, such as an increase in income, that would affect eligibility for SNAP.⁸³ Some households are even required to report their circumstances on a monthly basis.⁸⁴ This failure to consider important aspects of benefit program administration highlights the arbitrary and capricious nature of the proposed “ongoing” threshold.

3. *The Proposed Rule Does Not Serve Its Purported Goal of Moving Families Toward Self-Sufficiency.*

Eliminating BBCE undermines multiple goals of SNAP, including to promote food security, to encourage self-sufficiency, and to incentivize increased earnings. In fact, by eliminating BBCE, the Proposed Rule would essentially guarantee that low-income households near the federal income limits will remain in poverty without receiving much-needed assistance and be disincentivized to seek increased income and to save that income. BBCE can provide these households with a leg up by (1) providing a buffer against a benefit cliff and (2) encouraging families to accrue savings.

States have used categorical eligibility in part to prevent certain low-income households from facing a “benefit cliff.” In households with gross incomes slightly below 130 percent of the FPL, even a small increase in gross income can push the household’s income beyond the federal income limit, causing them to lose their SNAP benefits. The benefit cliff occurs because some of these households have significant expenses, which severely limit money that can be spent on food. When calculating SNAP benefits, deductions are made to gross income for such expenses, which include childcare or other dependent care expenses, child support, medical expenses (for household members who are elderly or have a disability), and excess shelter costs.⁸⁵ These deductions result in a higher SNAP benefit amount. When these households lose their SNAP benefits, they still have to pay for their significant expenses, but may not be earning sufficient additional income to offset the loss of their SNAP benefits. Because a benefit cliff can leave households worse off financially even when earning slightly higher income, households may be forced to avoid higher-paying work to ensure that they have sufficient funds available for food. As such, the benefit cliff traps these households in a cycle of poverty.

With BBCE, states have been able to gradually phase SNAP recipients off their benefits, thus eliminating the benefit cliff. These households can accept higher-paying jobs and still receive SNAP benefits. Because these households must still undergo a benefit calculation, their SNAP benefits will be reduced, albeit at a gradual rate rather than cut off altogether. Reports have shown

⁸³ 7 C.F.R. § 273.12; USDA, FNS, *Facts About SNAP* (Aug. 14, 2019), <https://www.fns.usda.gov/snap/facts>.

⁸⁴ See 7 C.F.R. § 273.21.

⁸⁵ Excess shelter costs are the portion of housing costs that exceed half of net income after all other deductions. Ctr. on Budget and Policy Priorities, *A Quick Guide to SNAP Eligibility and Benefits*, (Oct. 16, 2018), <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits>.

that “[f]or every additional dollar a SNAP recipient earns, his or her benefits decline by only 24 to 36 cents, providing families with a strong incentive to work longer hours or to seek and accept higher paying employment.”⁸⁶ With BBCE, therefore, SNAP recipients can seek higher incomes without worrying that an increased income will leave them hungry or worse off financially.

Eliminating BBCE could also hinder SNAP households’ ability to achieve self-sufficiency by discouraging households from saving money, which can be used to offset unexpected expenses or to invest in resources that can lead to increased job stability. Federal SNAP asset limits restrict the amount of assets that a household may possess to qualify for SNAP. Currently, households without a member who is elderly or disabled cannot have assets of more than \$2,250, and households with a member who is elderly or disabled cannot have assets of more than \$3,500.⁸⁷ Assets that can contribute to food purchases, including savings accounts, count towards this asset limit.⁸⁸ In fact, a study conducted by the Urban Institute found that “if BBCE policies were eliminated, 16 percent of SNAP-eligible units with incomes below the SNAP federal eligibility limit would be ineligible because of the federal asset test.”⁸⁹ To avoid losing SNAP eligibility, then, many households would be discouraged from saving their money, or they may even spend down their savings to ensure that they qualify for SNAP.⁹⁰ This incentive to spend down savings could be particularly harmful for households with low-income retirees who can no longer rely on employment to replenish their lost savings.

States with BBCE can relax or even eliminate these asset limits, thereby permitting households to save extra income and preventing families from being trapped in a cycle of poverty. By saving money, these households can be prepared for an unforeseen expense – such as a medical emergency—without compromising their ability to pay for food.⁹¹ Another study conducted by the Urban Institute found that “being in a state with relaxed asset limits via BBCE increases the likelihood of living in a household that has a bank account” and “increases the likelihood that a person is in a household with at least \$500 in a bank account.”⁹² These savings can help a family obtain a car, which may allow them to find and maintain employment; pay for their children’s education, which can help them in turn seek higher paying employment; and to stave off debt that could tie up funds for years to come.⁹³ If allowed to go into effect, the Proposed Rule’s elimination

⁸⁶ Davis Testimony, *supra* n. 82 at 9.

⁸⁷ Ctr. on Budget and Policy Priorities, *A Quick Guide to SNAP Eligibility and Benefits*, (Oct. 16, 2018), <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits>.

⁸⁸ *Id.*

⁸⁹ Caroline Ratcliffe, et al., *Asset Limits, SNAP Participation, and Financial Stability*, Urban Institute, ix (June 2016), <https://www.urban.org/sites/default/files/publication/81966/2000843-Asset-Limits-SNAP-Participation-and-Financial-Stability.pdf>

⁹⁰ *Id.* at x-ix.

⁹¹ Dorothy Rosenbaum, *SNAP’s “Broad-Based Categorical Eligibility” Supports Working Families and Those Saving for the Future*, Ctr. on Budget and Policy Priorities, 9 (July 30, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/7-24-19fa.pdf>.

⁹² Caroline Ratcliffe, et al., *The Unintended Consequences of SNAP Asset Limits*, 2 (July 2016), Urban Institute, <https://www.urban.org/sites/default/files/publication/82886/2000872-The-Unintended-Consequences-of-SNAP-Asset-Limits.pdf>.

⁹³ Dorothy Rosenbaum, *SNAP’s “Broad-Based Categorical Eligibility” Supports Working Families and Those Saving for the Future*, Ctr. on Budget and Policy Priorities, 9 (July 30, 2019), <https://www.cbpp.org/sites/default/files/atoms/files/7-24-19fa.pdf>.

of BBCE would undercut households' ability to move towards self-sufficiency, thereby undermining one of the ultimate goals of SNAP.

E. The Department Failed to Consider the Costs of Terminating SNAP Benefits for Millions of People.

The Department's proposal relies on an inaccurate and arbitrary cost-benefit analysis. Executive Order 12866, Executive Order 13563, and guidance from the White House Office of Management and Budget require that agencies quantify the costs and benefits of their proposed regulations wherever possible. *See* Exec. Order 13,563, at § 1, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (Jan. 21, 2011) ("[E]ach agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible."); Exec. Order 12,866, at §§ 1(a), 1(b)(6), 6(a)(3)(C), *Regulatory Planning and Review*, 58 Fed. Reg. 51,735 (Oct. 4, 1993); White House Office of Mgmt. & Budget, Circular A-4, at 18-27 (Sept. 17, 2003). And "[a]gencies have long treated cost as a centrally relevant factor when deciding whether to regulate." *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015). When "an agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable." *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012).

As discussed above in Section II, the Proposed Rule fails to adequately account for its true costs, including increased harms to the States' economies; increased burden on State agencies through the added cost of verifying and means testing more applications; decreased State administrative efficiency as families newly file or refile applications for benefits; and harms to the public health and children's nutrition. Agency action is invalid where it "fail[s] to adequately account" for relevant costs and benefits. *Council of Parent Attorneys & Advocates, Inc. v. DeVos*, 365 F. Supp. 3d 28, 53-55 (D.D.C. 2019).

The Department admits that "there is a potential for civil rights impacts to result if the proposed action is implemented because more elderly individuals may not otherwise meet the SNAP eligibility requirements," *id.* at 35,576, yet the Department has neither published its Civil Rights Impact Analysis at all nor included it on the public docket of this rulemaking for examination and comment. The Administrative Procedure Act requires agencies to publish notice of all proposed rulemakings in a manner that "give[s] interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments . . ." 5 U.S.C. § 553(c); *see also id.* § 553(b); *Engine Mfrs. Ass'n v. EPA*, 20 F.3d 1177, 1181 (D.C. Cir. 1994) ("[T]he Administrative Procedure Act requires the agency to make available to the public, in a form that allows for meaningful comment, the data the agency used to develop the proposed rule."). The Proposed Rule fails even this basic procedural requirement.

Taken together, the Department's flawed cost-benefit analysis bears the characteristics of arbitrarily "put[ting] a thumb on the scale by [over]valuing the benefits and [under]valuing the costs," *Ctr. for Biological Diversity v. Nat'l Highway Safety Admin.*, 538 F.3d 1172, 1198 (9th Cir. 2008), which would render any final rule unreasonable in its entirety. *Nat'l Ass'n of Home Builders*, 682 F.3d at 1040.

IV. Conclusion

We urge you to reconsider the Proposed Rule as it is plainly contrary to the law and the intent of Congress. Moreover, the Department does not present any facts that justify the need to dramatically decrease participation in SNAP by households that are, by any measure, low-income and in need of nutrition assistance. At no point does the Department demonstrate that it considered all of the costs and harms that this rulemaking would cause to be imposed on the States. To the contrary, the evidence presented in the rule itself militates against its adoption. For all of the above reasons, we urge the Department to withdraw the Proposed Rule in its entirety.

Sincerely,



KARL A. RACINE
Attorney General for the District of Columbia



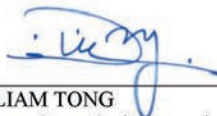
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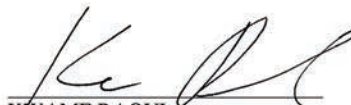
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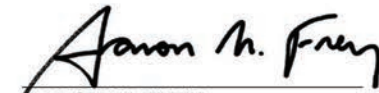
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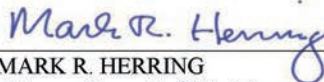
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October 2, 2019

The Honorable Sonny Perdue
Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Perdue:

We the members of the Congressional Black Caucus are vehemently opposed to the Notice of Proposed Rule Making (NPRM) published by the U.S. Department of Agriculture (USDA) titled, *Revision of the Categorical Eligibility in the Supplemental Nutrition Assistance Program*. The proposed rule will push struggling families and children further into poverty and we strongly urge USDA to rescind it immediately.

Since the Supplemental Nutrition Assistance Program (SNAP also formerly known as "food stamps") was first established under the Food Stamp Act of 1964, it has served as a critical nutritional lifeline for many Americans, helping to ensure that they can feed their families as they work toward financial stability. A majority of SNAP participants, nearly 70 percent, are families with children.¹ Research also demonstrates 74 percent of adult SNAP participants are working or have worked within a year of SNAP participation.²

According to the latest Census data, SNAP lifted 3.4 million individuals out of poverty in 2017, including 1.5 million children,³ helping them to grow up healthier and stronger. Today, 20 million children rely on SNAP as the program helps them reach their full potential by:

- Helping to end child hunger and improving child food insecurity rates;⁴
- Promoting stronger learning and academic performance;⁵ and

¹ Cronquist, Kathryn et al. 2019. *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2017*. United States Department of Agriculture and Mathematica. <https://fns-prod.azureedge.net/sites/default/files/resource-files/Characteristics2017.pdf>

² Keith-Jennings, Brynne et al. 2018. *Most Working-Age SNAP Participants Work, But Often in Unstable Jobs*. Center for Budget and Policy Priorities. <https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>

³ Fox, Liana. 2019. *Supplemental Poverty Measure: 2018*. U.S. Census Bureau. P60 - 268. <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-268.pdf>

⁴ Ratcliffe, Caroline and Signe-Mary McKernan. 2010. *How Much Does SNAP Reduce Food Insecurity? Urban Institute*. <https://www.ers.usda.gov/webdocs/publications/84336/ccr-60.pdf?v=0>

⁵ Carlson, Steven et al. 2016. *SNAP Works for America's Children*. Center on Budget and Policy Priorities. <https://www.cbpp.org/research/food-assistance/snap-works-for-americas-children>

- Reducing the likelihood of chronic conditions such as obesity, diabetes, and the risk of anemia resulting in fewer doctor visits and hospitalizations.⁶

SNAP is the largest and most effective nutrition program in the country, serving as the first line of defense against hunger and food insecurity for low-income families and children. Currently, over 40 states and U.S. territories successfully use BBCE to streamline and tailor the reach and effectiveness of SNAP to best serve the needs of struggling residents. Through BBCE, eligibility for SNAP is automatically extended to households receiving Temporary Assistance for Needy Families (TANF) benefits and services. This direct connection between SNAP and TANF helps participants mitigate the impact of often stagnant wages and high costs of living. BBCE efficiently increases access to, and participation in, the federal nutrition assistance programs.

BBCE allows states and territories to streamline SNAP administrative requirements through data matching and raise gross income eligibility requirements in SNAP up to 200 percent of the federal poverty line for families struggling with high costs of living associated with housing and childcare. BBCE also provides the flexibility to adjust the asset test, allowing families to accumulate modest savings and build wealth to help weather emergencies such as car repairs, illness or reduced working hours. USDA's proposed rule will most certainly widen existing pervasive wealth and income disparities and push poor people deeper into poverty.

USDA's Economic Research Service estimates 40 million people, including more than 12.5 million children, lived in food insecure households in the United States in 2017. That translates to 1 in 8 individuals and 1 in 6 children residing in households that lacked consistent access to adequate nutrition. For minority populations, the situation is much more dire. USDA's report also showed the food insecurity rate for African Americans (21.2%) was more than double that of non-Hispanic White households (8.1%) in 2018.⁷ The U.S. Census Bureau reported in 2018 nearly 10% of African Americans and 7 percent of Hispanics lived in deep poverty (less than 50% of the federal poverty threshold) or earned an annual income of less than \$12,732 for family of four.⁸

Additionally, a 2016 study prepared by the Urban Institute for USDA shows households in areas using BBCE to allow higher asset eligibility limits tend to have a bank account with modest savings.⁹ However, the proposed rule may prevent SNAP households from accumulating savings or having a bank account altogether. This is particularly troubling given evidence that having a bank account is a proven, effective way to build assets and escape the cycle of poverty.

Shockingly absent from the proposed rule's Regulatory Impact Analysis is USDA's own estimation that over 500,000 school-aged children would lose direct access to free school meals should the proposed rule go into effect. Ninety-three percent of children impacted by the proposed rule will reportedly no longer be eligible for free school meals.¹⁰ As a result, restricting the use of BBCE will result in a significant increase in classroom hunger.

Lastly, the Department's proposal is contrary to the result of the legislative process and flies in the face of the intent of Congress. During both the 2014 and 2018 bipartisan-led Farm Bill debates, Congress rejected similarly harmful proposals to restrict the use of BBCE. Passage of the 2018 Farm Bill affirmed the current program and benefit structure of SNAP and BBCE. Congress could not ignore the significant adverse impact such a policy change would have on already vulnerable working families and children—neither should USDA.

⁶ Hoynes, Hilary et al. 2016. *Long-Run Impacts of Childhood Access to Safety Net*. American Economic Review, 106(4).

<https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-Schanzenbach-Almond-AER-2016.pdf>

⁷ Coleman-Jensen, Alisha et al. 2019. *Household Food Insecurity in the United States in 2018*. United States Department of Agriculture. Table 2.

<https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=963.1>

⁸ Fox, Table B-3.

⁹ Ratcliffe, Caroline et al. 2016. *Asset Limits, SNAP Participation, and Financial Stability*. Urban Institute and Orlin Research.

<https://www.urban.org/sites/default/files/2000843-asset-limits-snap-participation-and-financial-stability.pdf>

¹⁰ Tatum, Sophie. 2019. *House Dem says 500,000 children could lose free school lunch under a new Trump administration proposal*. ABC News.

<https://abcnews.go.com/Politics/house-dem-500000-children-lose-free-school-lunch/story?id=64637759>

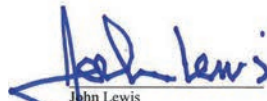
USDA's proposed rule is cruel and reflects the failure of the Department to thoroughly consider or acknowledge the range of negative consequences such a change will have on low-income families and children. Millions of struggling Americans will be harmed if USDA moves forward with this proposal.

We urge USDA to immediately rescind this proposed rule and finally make good on its promise to the American people to "Do Right and Feed Everyone".

Sincerely,


Karen Bass
CBC, Chair

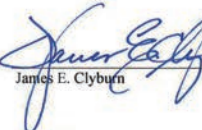

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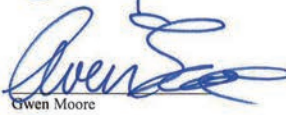

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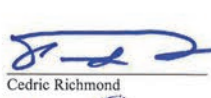

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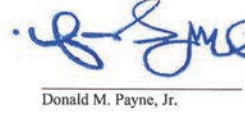

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Cedric Richmond

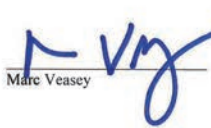

Terri Sewell

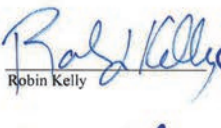

Frederica Wilson

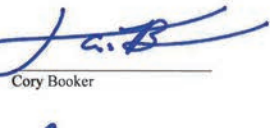

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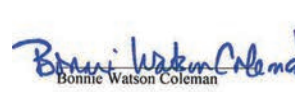

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Steven Horsford



Colin Allred



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Jarama Hayes


Lucy McBath


Joelle Legasse


Ilhan Omar


Ayanna Pressley


Lauren Underwood



October 16, 2019

The Honorable Suzanne Bonamici
Chair
Civil Rights and Human Services Subcommittee
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable James Comer
Ranking Member
Civil Rights and Human Services Subcommittee
House Education and Labor Committee
2101 Rayburn House Office Building
Washington, DC 20515

Re: Examining USDA's proposed cuts to free school meals

Dear Chairwoman Bonamici and Ranking Member Comer:

Thank you for holding today's hearing to examine the U.S. Department of Agriculture's (USDA) proposed cuts to free school meals. In a nation where one in seven children may not know where they will get their next meal, efforts to cut federal feeding programs are of concern.

Dairy Farmers of America (DFA) is the largest diversified milk marketing cooperative in the United States and is owned and governed by 14,000 dairy farmers across the country. Our community of family farmers and 6,000 employees are bound by our shared values — integrity, passion, quality and community. This connection inspires us to be an integral part of all the communities we touch, starting with the local towns where we live, work and raise our families. We know food insecurity impacts all of us — even those living where the food is grown. According to the USDA Economic Research Service, 12.7% of rural households are food insecure.

And while food insecurity impacts us all, our children are most vulnerable to its long-term impact. According to the American Psychological Association, hunger has negative effects on the physical, social, emotional and cognitive development of children. School-aged children need nutrient-dense food, like the milk the school meal program offers, in order to learn and grow.

The school meal program is just one tool we have as a nation to address hunger. Another tool, the Supplemental Nutrition Assistance Program (SNAP), benefits roughly 40 million low- and no-income people living in the United States. Program benefits are far-reaching and well-documented. According to USDA, the program ensures low-income families can put healthy food on the table, improves overall health and nutrition status and for many program participants, allows them to transition to self-sufficiency. SNAP benefits also contribute to the community in which program participants live. For example, members of the U.S. workforce who participate in SNAP may have higher productivity and take fewer sick days for themselves and their children because they can meet their family's nutritional needs at home.

Milk and other dairy products are available to participants of both the school meal as well as SNAP programs and are part of a healthy diet. Milk and dairy foods are nutrient-rich and serve as good sources of calcium and vitamin D as well as protein. Additionally, milk and dairy products provide phosphorus, potassium, magnesium and vitamins A, B12 and riboflavin — all at a reasonable cost. Ensuring that those eligible for SNAP have access to dairy products is critical.

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According to the 2015–2020 Dietary Guidelines for Americans, healthy eating patterns and regular physical activity can help people achieve and maintain good health and reduce the risk of chronic disease throughout all stages of the lifespan. Milk and dairy products are a critical component to overall good health, helping to ensure bone health and reducing the risk of Type 2 diabetes. Dairy food consumption is also associated with reduced risk of cardiovascular disease and lower blood pressure in adults.

Three servings of dairy foods like milk, cheese and yogurt are recommended for those 9 years and older as part of an overall balanced and healthy eating style. Reducing the eligibility of some to participate in these programs is counter to the federal nutrition guidance given.

Today is World Food Day, a day created by the United Nations to recognize that food is not a privilege, but a right. Proposed cuts to U.S. feeding and nutrition programs may negatively impact our communities. DFA appreciates the committee examining ways to expand access to these important programs and expand access to healthy, nutritious dairy products to those who need it most.

Sincerely,

Jackie Klippenstein
Senior Vice President, Government, Industry & Community Relations

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[Additional submissions by Ms. Hayes follow:]

The Interreligious
Human Needs
religious
traditions working



Working Group on Domestic
(DHN) is a broad coalition of
organizations and faith
together to advance federal
policies that will help eliminate the root causes of poverty and enable individuals to live
with dignity, ensuring secure future for themselves and their families.

In response to Chairman Conaway releasing the House Farm Bill, faith leaders of/from these organizations . . .

Rev. David Beckmann, President, Bread for the World: “We must oppose this bill as written because it proposes changes to SNAP that will put millions of women, children, and families at risk of hunger. Specifically, the bill imposes benefit and eligibility cuts in addition to stricter work requirements, in the name of getting SNAP recipients ‘back to work.’ It would require many people to attend job readiness programs, but the funding for these programs would not allow for job training that would actually get people into jobs. Congress must work toward a bipartisan farm bill that ensures any nationwide job training program is robust enough to be effective.”

Rebecca Linder Blachly, Director, Office of Government Relations, The Episcopal Church: “The Episcopal Church recognizes that employment is a powerful way for people to contribute to our society and to provide for themselves and their families; however, we cannot support the proposed reforms to the SNAP program that would reduce and restrict access to food assistance in order to pay for training. Our faith teaches that all children of God should be fed, and we do not believe this should be restricted so that people go hungry. While workforce development programs that address the growing skills gap and prepare Americans to succeed in careers with family supporting wages are critical, we urge the Agriculture Committee to ensure the SNAP program fulfills its mission of providing much-needed food assistance.”

Rev. Jennifer Butler, CEO, Faith in Public Life, and former chair of the White House Council on Faith and Neighborhood Partnerships: “The House Farm Bill represents a shameful and immoral attack on struggling families. SNAP is the first line of defense against hunger, especially for children, seniors and people with disabilities. Nearly two-thirds of people who rely on SNAP are under 18, over 60 or disabled. Furthermore, most SNAP recipients who can work, do work. These benefits are designed to provide crucial assistance for low-wage workers and already have work requirements for able-bodied adults without dependents. Jesus fed people. He recognized the immorality of hunger and always took action. Lawmakers who call themselves Christian should model Jesus’ behavior.”

Sister Simone Campbell, SSS, Executive Director, NETWORK Lobby for Catholic Social Justice: “The Republican House Farm Bill is aptly named H.R.2. When paired with H.R.1 (the Tax Cuts and Jobs Act), the priorities of the House

GOP couldn't be clearer. This attempt to take food off families' tables comes directly on the heels of passing \$1.9 trillion of tax breaks for corporations and the ultra-rich. This partisan bill is outrageous, stigmatizes people living in poverty, and flies in the face of Gospel values. It must be stopped before further harm is done to our nation and its people."

Rev. Jimmie Hawkins, Director, Office of Public Witness, Presbyterian Church (U.S.A.): "Our mandate as Presbyterians is to care for the least of these; Imposing work requirements on the SNAP program violates this mandate. Regardless of an individuals' ability to work, we insist that in the wealthiest country world there is food enough for everybody. "

Rev. Dr. Susan Henry-Crowe, General Secretary, The United Methodist Church - General Board of Church and Society: "Providing food for those suffering from hunger is central to our Christian faith. The United Methodist Church understands this call "not simply as a matter of charity, but of responsibility, righteousness, and justice." We recognize that hunger is rooted in human-created systems and requires a collective response by individuals, faith communities, organizations and governments. The Farm Bill introduced in the House would undercut a cornerstone of the federal response by creating barriers to access and eroding the effectiveness of the Supplemental Nutrition Assistance Program (SNAP)—ending or cutting benefits for millions of our neighbors. In a country as wealthy as the United States and coming on the heels of tax cuts that showered benefits on the wealthiest among us, efforts to further stigmatize and penalize those struggling in poverty are unconscionable and immoral."

Nancy K. Kaufman, CEO, National Council of Jewish Women: "President Trump's new executive order (EO) has the completely misleading title of 'Reducing Poverty in America by Promoting Opportunity and Economic Mobility.' It is apparently based on the presumption that poor people could find jobs, that their disabilities will magically melt away, and that any mental illness will cease to be a barrier to gainful employment when they are deprived of food because they can't work. Existing barriers to work such as disability, lack of jobs, skills, education, child care, transportation, or other real handicaps are ignored by the president. And in fact 44 percent of households getting help from SNAP (the federal Supplemental Nutrition Assistance Program run by the Department of Agriculture) already have a member earning money, just not enough to feed everyone. Those affected will disproportionately women and people of color. Studies show the work requirements will end up pushing people off federal food assistance and deeper into poverty. What's worse, Trump's order instructs all federal departments to look for ways to impose work requirements on low-income Americans who benefit from federal programs he calls 'welfare.' It is an order designed not to end poverty, but to end aid to those most in need. Adding to this cruel EO is House Agriculture Committee Chairman Michael Conaway's (R-TX) draft farm bill that seeks to erode the effectiveness of SNAP. SNAP is the nation's most critical anti-hunger program, supporting 41 million working families, seniors, children, and individuals with disabilities. NCJW will continue to resist such punitive measures, instead working to ensure the promise of the American dream is a reality for those in greatest need."

Abby Leibman, President & CEO of MAZON: A Jewish Response to Hunger:

"The Agriculture and Nutrition Act of 2018, otherwise known as the Farm Bill, is cruel and reinforces the vitriolic partisan rhetoric from 'leaders' in Washington D.C. who play politics with the lives of real people. Jewish text and tradition compel us to honor the dignity of every person, especially those who are struggling to feed themselves and their families. We urge Congress to ensure a 2018 Farm Bill that honors its bipartisan history and to cease efforts to undermine SNAP by rejecting proposals that will bring real harm to real people who struggle."

Rabbi Jonah Dov Pesner, Director, Religious Action Center of Reform

Judaism: "The House version of the farm bill undermines the Supplemental Nutrition Assistance Program (SNAP), one of the nation's most effective anti-poverty programs. Simply put, the harsh work requirements in the farm bill will leave more Americans hungry. The people who will be the most negatively impacted are those who are already the most vulnerable, including those who have unpredictable work schedules, live in areas with major obstacles to employment, and don't earn a living wage. We are guided by the injunction recited at the Passover Seder, the centuries-old traditional Jewish meal that Jews across the world observed just last week: 'Let all who are hungry come and eat.' These words inspire our modern commitment to protecting programs that reduce hunger and provide all those who suffer from hunger an opportunity to sustain themselves and their families. We urge members of the House to reject the farm bill's harmful attack on SNAP. In addition, as the Senate drafts its version of the farm bill, we urge Senators to commit to reducing hunger, to protect and strengthen SNAP, and to support all Americans who struggle with food insecurity."

Afif Rahman, Executive Director, Poligon Education Fund: "House Agriculture Committee Chairman Michael Conaway's draft Farm Bill harms the health and lives of millions of struggling Americans who depend on the Supplemental Nutrition Assistance Program (SNAP) to put food on the table. SNAP has proven to be an extremely important program and effective against hunger and food insecurity. Drowning it in excessive work requirements that will needlessly harm those who depend on the program to be contributing members of society and the workforce is counterproductive to promoting workforce development and economic growth. In Islam, we are taught that to save one life is to save all of humanity, and holding food ransom from millions of hungry people threatens millions of lives. Congress needs to shape up fast and draft a Farm Bill that protects and increases funding for SNAP and does not force Americans to decide between working and staying alive."

Diane Randall, Executive Secretary, Friends Committee on National

Legislation: "The House farm bill undermines fundamental Quaker values of equity and justice. This bill will increase the risk of hunger for individuals and families across America. It will force at least a million people off SNAP under the guise of strengthening work. SNAP is not a jobs program. It is an incredibly effective anti-hunger program. Threatening to take food away from people will not boost employment. Indeed, it will do the opposite. If Congress is serious about getting more people into the workforce, raising wages, and creating jobs, it should invest new funding in workforce development programs, instead of cutting federal funds for these programs. By tying food benefits to

job requirements, this farm bill imposes barriers on people struggling to live with dignity. These barriers fall hardest on people with disabilities, people struggling to overcome addiction, people who are formerly incarcerated, people who lack reliable transportation or have caregiving responsibilities. This action lacks compassion and common sense. I urge all members of Congress to speak up and oppose such irresponsible and immoral policy."

Sandy Sorensen, Director, United Church of Christ, Washington DC Office:

The supplemental nutrition assistance program (SNAP) provides access to food for millions of Americans. The House introduced Farm Bill includes onerous work requirements that will potentially limit access to these essential services to many in need. The most vulnerable need our compassion, not contempt and they need access to nutrition services without unreasonable requirements. Essentially the House farm bill is a poorly disguised effort to kick millions off of the SNAP rolls. Following the justice witness of our United Church of Christ General Synod, we are committed to ensuring that our sisters and brothers, neighbors and children, have access to the food they need to pursue a life of dignity and purpose. We are reminded of our sacred scripture that says, "What good is it, my brothers, if someone says he has faith but does not have works? Can that faith save him? If a brother or sister is poorly clothed and lacking in daily food, and one of you says to them, "Go in peace, be warmed and filled," without giving them the things needed for the body, what good is that? So also faith by itself, if it does not have works, is dead. But someone will say, "You have faith and I have works." Show me your faith apart from your works, and I will show you my faith by my works."(James 2:14-18.)

September 23, 2019

SNAP Program Design Branch
Program Development Division
Food and Nutrition Service
3101 Park Center Drive
U.S. Department of Agriculture
Alexandria, VA 22302

RE: Notice of Proposed Rule Making -- Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) RIN 0584-AE62

Dear SNAP Program Design Branch:

We—the undersigned faith-based organizations representing various religious organizations, denominations, and faith traditions—are united in our commitment to reduce hunger and improve nutrition in the U.S. Our diverse values and holy scriptures instruct us to ensure that everyone may live with dignity and the opportunity to recognize their full potential. We join together to care for those who are poor and vulnerable, including the millions of Americans facing hunger.

We have serious concerns about the Trump Administration’s notice for proposed rulemaking to “revise” Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP).

Categorical Eligibility is an important state flexibility option for SNAP, allowing states to simplify the application process for both applicants and program administrators. It has been utilized by over 40 states over the past two decades, enabling states to slightly raise income eligibility limits and relax restrictive asset tests so that low-income working families with modest savings can still receive SNAP. States must still review every household’s income to determine the SNAP benefit level—Categorical Eligibility simply allows states to align SNAP’s eligibility limits with other government assistance programs like Temporary Assistance for Needy Families (TANF).

By USDA’s own estimate, the proposed rule change would result in over 3.1 million people losing access to life-saving nutrition benefits. The people hurt most would be SNAP recipients who are working hard to break the cycle of poverty and put food on the table. It will particularly impact households with seniors and people with disabilities. Furthermore, since children in households that receive SNAP are automatically eligible for free school meals, over 500,000 children would lose access to free school meals.

This new attack against SNAP is an attempt to circumvent congressional intent as laid out in the bipartisan 2018 Farm Bill reauthorization. Instead of rulemaking that jeopardizes food assistance for struggling Americans, USDA should focus on implementing the 2018 Farm Bill and strengthening critical nutrition assistance programs like SNAP.

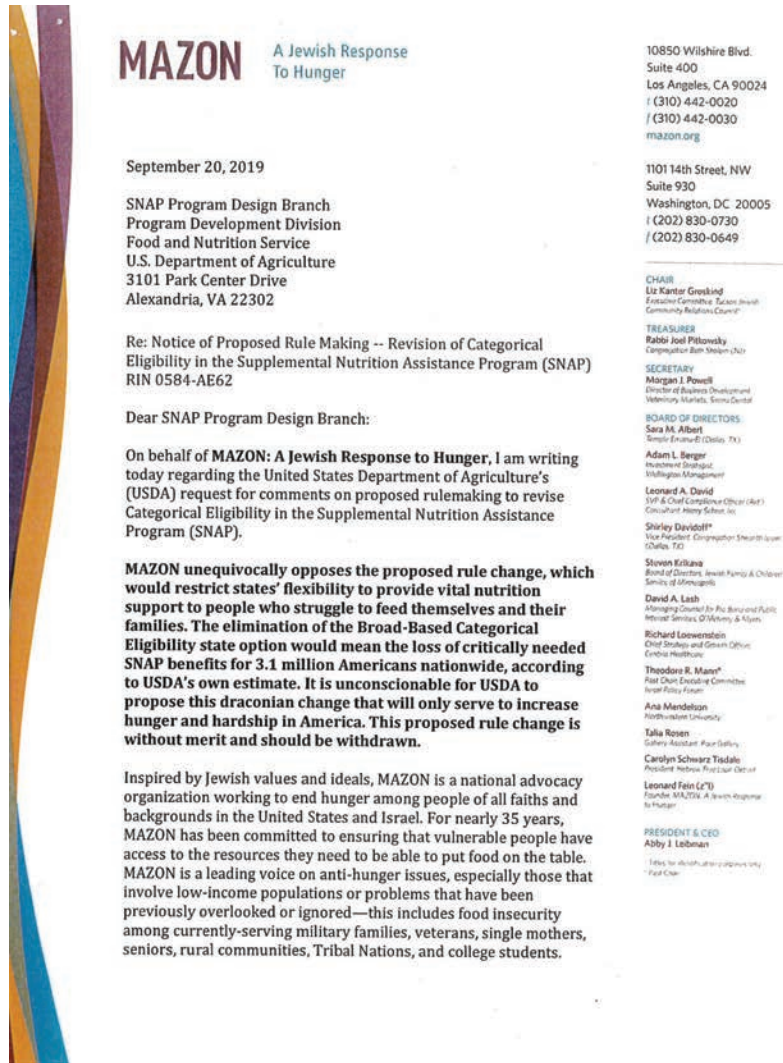
Many of our organizations, congregations, and leaders work to feed, clothe, house, and serve our friends and neighbors who are struggling, but we know that we cannot do this work alone. More than 40 million American men, women, and children struggle to put food on the table on a regular basis. While charitable organizations play a vital role in addressing hunger, we know that the overwhelming majority of food assistance in this country has historically come from—and must continue to come from—federal programs. Simply put: the charitable food sector is in no way equipped to respond to the scope of food insecurity in America.

Our values and traditions compel us to honor the dignity of every person, especially those who are struggling. No matter a person's circumstance, no one deserves to be hungry.

Signed,

American Muslim Health Professionals
 Bread for the World
 Church World Service
 The Episcopal Church
 Evangelical Lutheran Church of America
 Friends Committee on National Legislation
 Islamic Relief USA
 Jesuit Conference - Office of Justice and Ecology
 Jewish Council for Public Affairs
 Jewish Federations of North America
 MAZON: A Jewish Response to Hunger
 National Council of Jewish Women
 NETWORK Lobby for Catholic Social Justice
 Network of Jewish Human Service Agencies
 Presbyterian Church (U.S.A.)
 Rabbinical Assembly
 Sojourners
 The Episcopal Church
 The United Methodist Church - General Board of Church and Society
 T'ruah: The Rabbinic Call for Human Rights
 Union for Reform Judaism
 United Church of Christ
 Women of Reform Judaism

[Additional submissions by Mrs. Lee follow:]



MAZON A Jewish Response To Hunger

September 20, 2019

SNAP Program Design Branch
Program Development Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive
Alexandria, VA 22302

Re: Notice of Proposed Rule Making -- Revision of Categorical
Eligibility in the Supplemental Nutrition Assistance Program (SNAP)
RIN 0584-AE62

Dear SNAP Program Design Branch:

On behalf of **MAZON: A Jewish Response to Hunger**, I am writing today regarding the United States Department of Agriculture's (USDA) request for comments on proposed rulemaking to revise Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP).

MAZON unequivocally opposes the proposed rule change, which would restrict states' flexibility to provide vital nutrition support to people who struggle to feed themselves and their families. The elimination of the Broad-Based Categorical Eligibility state option would mean the loss of critically needed SNAP benefits for 3.1 million Americans nationwide, according to USDA's own estimate. It is unconscionable for USDA to propose this draconian change that will only serve to increase hunger and hardship in America. This proposed rule change is without merit and should be withdrawn.

Inspired by Jewish values and ideals, MAZON is a national advocacy organization working to end hunger among people of all faiths and backgrounds in the United States and Israel. For nearly 35 years, MAZON has been committed to ensuring that vulnerable people have access to the resources they need to be able to put food on the table. MAZON is a leading voice on anti-hunger issues, especially those that involve low-income populations or problems that have been previously overlooked or ignored—this includes food insecurity among currently-serving military families, veterans, single mothers, seniors, rural communities, Tribal Nations, and college students.

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Leonard Fein (C'D)
Founder, MAZON: A Jewish Response
to Hunger

PRESIDENT & CEO
Abby J. Leibman

*Listed for advisory purposes only.
*Past Chair

Jewish values underlie not only our faith tradition but the values on which the United States was founded. Those values teach us that all human beings are made in God's image, that we must never turn away from those in need, particularly the hungry, and that those in leadership must use wisdom and compassion to govern. We are disappointed to note that this proposed rule change is contrary to all of these values.

The proposed rule change is in direct opposition to the purpose of the Supplemental Nutrition Assistance Program, causing irreparable harm to the Program

The proposed rule change both complicates and weakens Categorical Eligibility, which has been and continues to be an important flexibility option utilized by the vast majority of states. It enables states to simplify the SNAP application process, but still requires states to review every household's income to determine the SNAP benefit level. Categorical Eligibility is a vital cost-saving approach that simply allows states to align SNAP's eligibility limits with other government assistance programs like TANF, so that low-income working families with modest savings can still receive needed assistance from SNAP.

Restricting Categorical Eligibility threatens the very people that SNAP is intended to help—those who are trying to lift themselves out of poverty. We find it deeply worrisome that this regulatory proposal runs contrary to the purpose of SNAP, which is to reduce food insecurity.¹ The proposal is also inconsistent with the intent of Congress², and USDA's own policy.

According to USDA, "SNAP provides nutrition benefits to supplement the food budget of needy families, so they can purchase healthy food and move towards self-sufficiency." Severely restricting Categorical Eligibility undermines the purpose of SNAP in two notable ways. First, USDA's own estimate is that this proposed rule change would result in 3.1 million people losing critically needed SNAP benefits resulting in a worrisome and unacceptable increase in hunger and hardship.³ There is no evidence, beyond a political stunt where a millionaire purposefully defrauded the government, to suggest that any significant number of these 3.1 million people are not in need of assistance to purchase healthy food. Second, among the people most likely to be hurt by this proposed change are low-wage workers who are doing the best they can to strive for self-sufficiency. This proposed rule change to Categorical Eligibility would exacerbate a "benefit cliff" where individuals who have some income or modest savings but still rely on SNAP would instantly lose that vital assistance—they would be forced to choose between feeding their family and putting gas in the car to go to work. Faced with a cruel choice between earning less money and spending down assets to avoid losing benefits that are still necessary to

¹ "How Much Does SNAP Reduce Food Insecurity?" August 2010. By Caroline Ratcliffe and Signe-Mary McKernan, United States Department of Agriculture, Economic Research Service. <https://www.ers.usda.gov/publications/pub-details/?pubid=84335>.

² 7 U.S. Code § 2011. <https://www.law.cornell.edu/uscode/text/7/2011>

³ "Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)." *Federal Register*. Publication Date: July 24, 2019. <https://www.federalregister.gov/documents/2019/07/24/2019-15670/revision-of-categorical-eligibility-in-the-supplemental-nutrition-assistance-program-snap>.

make ends meet during difficult times, low-income Americans will be forced out of the workforce rather than encouraged to participate in it. A proposal that increases food insecurity and undermines self-sufficiency is certainly contrary to the purpose of SNAP.

The proposed rule is contrary to its authorizing legislation and the intent of Congress

When Congress passed the Agriculture Improvement Act of 2018 (known as the "Farm Bill") with bipartisan support, Categorical Eligibility was expressly preserved. While this alone is enough to establish clear Congressional intent, the process by which the law was passed offers further confirmation. Changes to Categorical Eligibility were included in the House version of the 2018 Farm Bill that initially failed but eventually passed the House by a very narrow margin, while the Senate Farm Bill preserved the program with broad, bipartisan support. It was the Senate version of Categorical Eligibility that prevailed in the final bill, which passed both chambers of Congress with broad bipartisan support by unprecedented margins. Regulations are meant to support the laws enacted by a Democratically elected Congress. Proposals that do otherwise are an improper exercise of rulemaking as they exceed the authority granted by the authorizing legislation.

The proposed rule conflicts with USDA goals and other agency programs

On December 5, 2017, USDA committed to "increased cooperation with states in the operation of the Supplemental Nutrition Assistance Program (SNAP) to promote self-sufficiency, integrity in the program, and better customer service."⁴ The press release noted that, "[t]o make these improvements, USDA intends to offer state agencies greater local control over SNAP, the safety net program that serves millions of eligible, low-income individuals and families. Specifics on such flexibilities will be communicated to state agencies in the coming weeks." A proposal that restricts a state-flexibility option used by over three-quarters of all states cannot be considered to be increasing cooperation with those states.

In addition to contradicting USDA's stated goals, this proposed rule change runs afoul of another administrative bureau: the Consumer Financial Protection Bureau (CFPB). By penalizing low-income Americans who have modest savings, the proposed restrictions to Categorical Eligibility directly contradict CFPB's "Start Small, Save Up" initiative, which encourages consumers to "create, maintain, and grow emergency savings accounts as part of their overall financial well-being."⁵ While one bureau promotes the importance of saving among Americans, another is undermining this effort.

⁴ "USDA Promises New SNAP Flexibilities to Promote Self-Sufficiency," *U.S. Department of Agriculture*, December 5, 2017. <https://www.usda.gov/media/press-releases/2017/12/05/usda-promises-new-snap-flexibilities-promote-self-sufficiency>.

⁵ CFPB Announces Start Small, Save Up Initiative," *Consumer Finance Protection Bureau*, February 25, 2019. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-start-small-save-initiative/>.

With no data or explanation as to why it is appropriate to undertake a large-scale policy change that is directly adverse to the purpose of SNAP, Congressional intent, and USDA's own policy guidance, this proposed rule change is as arbitrary as it is cruel.

Large groups of Americans who are already vulnerable will be particularly damaged by the proposed rule

The proposed rule is likely to cause serious harm to school children across America

One of the most egregious aspects of this proposal is the impact it would have on children in SNAP households. Since these children are automatically eligible for free school meals, eliminating their household's eligibility for SNAP benefits could mean loss of vital nutrition for over 500,000 children. Although called upon by the U.S. House of Representatives' Committee on Education & Labor, USDA has not provided full information about the estimated impact of this proposed rule change, including calculations to determine how many children will lose free school meals as a result of its implementation.

MAZON's decades of advocacy on behalf of vulnerable populations has given us the expertise to know that many other groups already facing unique barriers to accessing food would be most adversely affected by this unsupported change. This includes:

Seniors

This proposed rule will add to existing barriers facing poor seniors and make already vulnerable seniors even more vulnerable. We know that nearly 5 million seniors currently struggle with hunger, and SNAP is a lifeline for many of these individuals. However, many older Americans are not receiving this vital assistance due to common barriers like stigma, limited transportation, lack of awareness, and administrative burdens. Categorical Eligibility has been a particular lifeline for seniors who are too frail or too overwhelmed to apply through multiple agencies, multiple times to secure the life-saving benefits provided to them by law.

With 10,000 Americans turning 65 every day, we know that many people are aging into poverty, and therefore this proposed rule change would have an outsized effect on older Americans. According to USDA, households with one or more elderly members will be disproportionately impacted by the proposed rule. Nearly 13.2 percent of all SNAP households with elderly members will lose benefits as 7.4 percent will fail the income test and 5.8 percent will fail the resource test.⁶

Currently-Serving Military Families

⁶ "Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)." *Federal Register*. Publication Date: July 24, 2019. <https://www.federalregister.gov/documents/2019/07/24/2019-15670/revision-of-categorical-eligibility-in-the-supplemental-nutrition-assistance-program-snap>.

The proposed rule change threatens to increase need for military families who qualify for SNAP through Categorical Eligibility and would no longer be able to receive nutrition assistance.

Food pantries operate on or near every military base in the U.S., serving active-duty military families who struggle with hunger. In the 2018 Blue Star Families Military Family Lifestyle Survey, military family respondents identified “financial issues/stress” as the top lifestyle stressor, with 13 percent reporting difficulty making ends meet.⁷ This survey offers clear evidence of economic hardship experienced by military families who often face unique costs associated with the military lifestyle including frequent moves, staggering rates of spousal unemployment and underemployment, high childcare costs with limited availability, and lack of family support. With this proposal, USDA is making an administrative change that would exacerbate the challenges already faced by struggling military families.

In particular, this proposed rule change would impact the households of junior enlisted service members with multiple dependent children. NBC News recently reported that 1 in 3 children at DoD-run schools on military bases across the country were eligible for free or reduced-price lunches.⁸ This proposal limits access to free school meals for children whose parents are current service members facing difficulty making ends meet.

Veterans

The proposed rule change threatens to cut off access to SNAP for struggling veterans who need help. Though an estimated 1.4 million veterans live in households that participate in SNAP, we know that many more veterans are eligible for SNAP but do not participate in the program. A recent study by Impaq International found that of veterans who were eligible for SNAP benefits, only 1 in 3 are current recipients.⁹ Additional research noted rates of food insecurity among veterans of the wars in Iraq and Afghanistan nearly double the rates for the general population.¹⁰ USDA has provided no exact details regarding the number of veterans who will be adversely impacted, which gives the appearance that USDA has not fully considered these impacts of the proposed rule.

This proposal takes our country in exactly the wrong direction in terms of caring for America’s veterans. USDA should be doing more to increase SNAP participation for

⁷ “2018 Blue Star Families Military Family Lifestyle Survey: Comprehensive Report,” *Blue Star Families*. February 2018. <https://bluestarfam.org/wp-content/uploads/2019/03/2018MFLS-ComprehensiveReport-DIGITAL-FINAL.pdf>.

⁸ “Why Are Many of America’s Military Families Going Hungry?” *NBC News*. July 12, 2019.

<https://www.nbcnews.com/news/military/why-are-many-america-s-military-families-going-hungry-n1028886>.

⁹ “Issue Brief: Veterans and Food Insecurity,” *Impaq International*. November 2018.

https://www.impaqint.com/sites/default/files/issue-briefs/VeteransFoodInsecurity_IssueBrief_V1.3.pdf.

¹⁰ “Food Insecurity Among Veterans of the Wars in Iraq and Afghanistan,” *Public Health Nutrition*. By Rachel Widome, Agnes Jensen, Ann Bangerter, and Steven Fu. May 8, 2014. <https://www.ncbi.nlm.nih.gov/pubmed/24806818>.

veterans who experience food insecurity, not increasing barriers for the brave men and women who have sacrificed for our country.

Native Americans

With nearly one in four American Indians and Alaska Natives participating in SNAP, this proposed rule change will have a substantial negative and disparate impact on Native American individuals and families who experience food insecurity and rely on this federal food program to meet their nutritional needs. Not only will this proposal have devastating effects on Native American communities, it will also imperil another important federal program.

The Food Distribution Program on Indian Reservations (FDPIR) is a critically important federal program, run by USDA, which allows Indian Tribal Organizations (ITOs) to operate food distribution as an alternative to SNAP. Since no individual can participate in both FDPIR and SNAP in the same month, it is inevitable that increasing restrictions for SNAP access will undoubtedly result in a spike in enrollment in FDPIR by tribal citizens who are cut off from SNAP. FDPIR currently serves an average of 90,000 Native Americans. This includes many tribal elders, with 42% of FDPIR households having a member over age 60. Furthermore, because FDPIR's funding is capped and not an entitlement program like SNAP, there is a serious concern about the exhaustion of FDPIR funds in the event of a spike in participation caused by this proposed rule change.

Finally, USDA has not provided adequate consultation with tribal leadership on this proposed rule change. Despite the claim that USDA's Food and Nutrition Service (FNS) briefed tribes on this proposed rule change at a listening session held during the National Congress of American Indians Executive Council Winter Session in Washington, DC on February 14, 2019, USDA did not uphold its federal trust responsibilities under Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" and engage in meaningful consultation with tribal governments on this issue. A listening session is not the same as a tribal consultation. This meeting was held with little notice to tribal leadership or tribal organizations, nor was it noticed out properly as a consultation. In fact, it was held at the same time and in direct conflict with an earlier scheduled USDA-FNS consultation with tribal leadership on FDPIR, making it extremely difficult for tribal leadership, program managers, nutrition experts, and allies like MAZON to attend both of the meetings scheduled at the same time. The lack of notice and consideration of scheduling the listening session did not provide adequate time or place for tribal leaders to voice their concerns regarding the proposed categorical eligibility revisions to SNAP.

As the first non-Native ally member of the Native Farm Bill Coalition, MAZON is deeply concerned about the profound harm this proposed rule change will have on vulnerable American Indian and Alaska Native individuals and families, especially

tribal elders, as well as the proposal's flagrant and unconstitutional disregard for tribal sovereignty.

Rural Americans

This proposed rule change would be devastating for rural households who are struggling with food insecurity while working to save money, avoid debt, and build assets.

Rural areas often face unique barriers to achieving food security including a lack of public transportation, scarcity of childcare services, lower educational attainment, fewer economic opportunities, and higher unemployment rates than urban areas. With the largest proportion of SNAP participants, rural counties and small metropolitan areas are more dependent on SNAP than urban counties making low-income rural residents much more vulnerable to this proposed rule.

All of the above populations already face heightened barriers to nutrition assistance, and many who are eligible for benefits are not enrolled due to numerous hurdles and barriers. Limiting a program designed to allow qualified applicants to more easily access benefits is particularly misguided given the many communities already struggling to receive the assistance provided to them by law.

This proposed change to Categorical Eligibility has no basis in legislation, evidence, or policy, and causes harm to the ideals of states' rights, separation of powers, and helping those in need.

USDA's own research found that almost one third of families below 185 percent of the Federal Poverty Level experienced difficulty affording food¹¹, even though the cut off for receiving SNAP without Categorical Eligibility is 130 percent of the Federal Poverty Level. This data demonstrates that Categorical Eligibility is a much-needed option to allow working families to lift themselves out of poverty without facing a cut in vital benefits that would force them back into it. This proposal would so greatly complicate and weaken Categorical Eligibility that it is disingenuous to defend it as merely "closing a loophole."

The modest decline in food insecurity in the last year¹² is clearly due to the effectiveness and flexibility of programs like SNAP—programs that must retain their integrity and flexibility is such a trend is to continue. The fact remains that millions of Americans struggle to feed themselves and their families. This proposed rule change will reverse this trend by increasing hunger and hardship for millions of Americans.

¹¹ Household Food Security in the United States in 2018." *USDA Economic Research Service*. September 2019. www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=963.1.

¹² Household Food Security in the United States in 2018." *USDA Economic Research Service*. September 2019. www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=963.1.

Removing state flexibility and denying benefits to Americans in need is contrary to Congressional intent and the national interest, and it is certainly contrary to the values and ideals on which our country was founded. Our government cannot effectively provide for the wellbeing of its citizens by attacking programs that are working to lift people out of poverty. USDA must not proceed with this ill-considered proposed change.

Sincerely,

A handwritten signature in black ink, reading "Abby J. Leibman". The signature is written in a cursive, flowing style.

Abby J. Leibman
President and CEO
MAZON: A Jewish Response to Hunger

[Additional submissions by Mr. Thompson follow:]

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AGRICULTURE
Ranking Member, General Farm
Commodities & Risk Management
EDUCATION & LABOR

Congress of the United States
House of Representatives
October 23, 2019

The Honorable Bobby Scott
Chairman
House Committee on Education and Labor
2176 Rayburn House Office Building
Washington, DC 20515

Chairman Scott:

I am writing to request that the 2015 Department of Agriculture's Office of Inspector General's report on FNS Quality Control Process for SNAP Error Rate report be submitted for the record for the October 16, 2019, Civil Rights and Human Services Subcommittee hearing titled, "Examining the USDA's Proposed Cuts to Free School Meals."

Specifically, I would like to highlight the following claims from the report:

- On page 3, the report states that there is a false assumption that another program would have already assessed the SNAP recipient's eligibility for SNAP benefits.
- On page 36, the report found that households, who were determined categorically eligible based on the receipt of a family planning brochure, did not actually receive the brochure unless they specifically asked the State to send it to them.

If you need any additional information regarding this report, please feel free to contact my office.

Sincerely,

Glenn "GT" Thompson
Member of Congress

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[Additional submissions by Mr. Trone follow:]



Maryland Hunger Solutions

Ending hunger and promoting well-being

Re: Notice of Proposed Rule Making -- Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) RIN 0584-AE62

Dear SNAP Program Design Branch:

I am writing on behalf of Maryland Hunger Solutions, a non-partisan, non-profit, statewide organization working to address hunger and food insecurity in our state. We do this through a combination of outreach, collaboration, public education and advocacy. An important part of the outreach is our work with the state of Maryland's Department of Human Services in assisting in SNAP outreach and enrollment assistance.

It is through that lens that we view the proposal to revise the categorical eligibility process by which low-income Marylanders may also access SNAP. We are strongly opposed to the proposal because we know that it may delay -- or even deny -- food assistance to many of our neighbors who are eligible, it will be a step backward from a more efficient and effective method of approving SNAP assistance. Essentially, it takes a tool away from states like Maryland and from outreach assistance organizations for no reason other to force people who are experiencing poverty to prove that they are experiencing poverty. It encourages us to be less thoughtful, more cruel, and more inefficient -- at a greater cost to the state and to state taxpayers.

It has been projected that more than 3.1 million current SNAP recipients might lose their benefits. Similarly, more than 50,000 Marylanders may also leave their benefits. While we know that the majority of SNAP participants are seniors, children and disabled, it is disconcerting that USDA did not acknowledge that millions of children would -- because of this proposal -- lose access to free school meals. So, their families would take a double hit -- losing access to being able to feed their families at home and losing access to school breakfast, lunch and after school suppers.

Maryland is one of more than 40 states currently implementing categorical eligibility, which allows it to streamline the SNAP application process, eliminate archaic asset tests, and assess the circumstances of more working households to determine what, if any, SNAP benefit their low net incomes qualify them to receive. Gutting this streamlining option would mean increased government spending on processing and red tape. As the USDA's own estimates make clear, the proposed rule will increase government administrative costs by over \$2.3 billion. The current Cat EI option has been thoroughly vetted for more than twenty years through several Presidential administrations of both major political parties. It is the product of formal rule making and Congress has rejected proposals to alter it, most recently in the 2018 Farm Bill. This proposal is yet another example of the Trump administration sidestepping Congress through unnecessary and harmful regulatory changes. Sadly, it is Maryland's most vulnerable community members, children, seniors, and people with disabilities who would suffer the painful consequences of unnecessary and preventable hunger.

SNAP acts as a direct economic stimulus plan for communities across America including Baltimore, western Maryland, the D.C. suburbs and Maryland's eastern shore. The USDA's own research corroborates that every \$5.00 invested in SNAP generates as much as \$9.20 in economic activity. Unlike tax cuts for the rich, low income people suffering from food insecurity are extremely likely to spend this food supplement funding on basic nutritional needs in the short term within local small businesses. This same spending results in increased profits for those local small businesses while supporting regional job development and job maintenance for other low to moderate income workers. Everybody wins with SNAP and BBCE is the tool that helps maximize participation for the very folks who need it.

On behalf of Maryland Hunger Solutions and the thousands of Marylanders who depend upon SNAP, I oppose this rule and urge its withdrawal. Short of a regulatory process which leads to the nullification of this proposal, it is my hope that litigation will find that it has been improperly proposed and promulgated.

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An Initiative of the Food Research and Action Center



ID: FNS-2018-0037-11157
Tracking Number: 1k3-9bfs-et4l

Comment on FR Doc # 2019-15670

This is a Comment on the Food and Nutrition Service (FNS) Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program

For related information, Open Docket Folder

Comment

August 5, 2019

SNAP Program Design Branch,
Program Development Division
Food and Nutrition Service
3101 Park Center Drive
U.S. Department of Agriculture
Alexandria, VA 22302

Re: Notice of Proposed Rule Making -- Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) RIN 0584-AE62

Dear SNAP Program Design Branch:

On behalf of the Montgomery County, Maryland Community Action Board, I am submitting this comment in opposition to the USDAs Notice of Proposed Rule Making on a Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP). Our Board believes that this proposed change will have a lasting negative impact on the most vulnerable residents, including many children.

The Community Action Board is charged with advocating for policies and programs that will help lower-income County residents move towards self-sufficiency. One of our historic advocacy

issues is support for programs that increase food security, including school meals, senior nutrition programs, and SNAP.

Under the current rules, many states, including Maryland, have the option to eliminate SNAP asset tests and use a higher income test to serve more working households. This Broad-Based Categorical Eligibility increases food security by allowing eligibility for SNAP based on a households eligibility for other programs.

Here in Montgomery County, food insecurity remains a serious problem, impacting 6.1% of all residents and 12.9% of children. In our public schools, 33.4% of students qualify for the Free and Reduced Meals Program. Food insecurity is exacerbated by the high cost of living in Montgomery County. In 2016, the Self-Sufficiency Standard for a family of four with two adults, one preschooler, and one school-age child was \$103,322 more than four times the Federal Poverty Level.

As the first line of defense against hunger for low-income residents, SNAP plays a critical role in addressing hunger and food insecurity. According to a food security survey conducted in our county, 59% of food-insecure households receive assistance from one of the three largest federal food programs and 43.1% of these households reported receiving SNAP. Since many of these households qualify for SNAP through Categorical Eligibility, elimination of this option would have a drastic impact of food security in Montgomery County.

Nationwide, eliminating the Categorical Eligibility option would cut SNAP benefits for 3.1 million individuals, take free school meals away from the children in those families, and punish people with even a small amount of savings. The USDAs own estimates indicate that the proposed rule would cut SNAP benefits over five years by \$10.543 billion, while increasing SNAP administrative costs by \$2.314 billion.

Categorical Eligibility policies have been in place for more than two decades, receiving support from Congress. The USDAs attempt to change the rules side steps Congress and is outside the USDAs authority.

The Community Action Board is strongly opposed to this proposed rule change and recommends that Categorical Eligibility remain an option for states working to reduce food security.

Sincerely,

Laura E. Irwin

Chair

Montgomery County, Maryland Community Action Board

Montgomery County Food Security Plan Update

https://gallery.mailchimp.com/94db16f73c96fb3b92c6494f0/files/147eacba-59de-4e28-a7a7-15de04237baa/FSP_Update_Handout_June_2019.pdf

MD State Dept of Education <http://marylandpublicschools.org/programs/pages/school-community-nutrition/freereducedpricemealstatistics.aspx>

MD Self-Sufficiency Standard <http://www.selfsufficiencystandard.org/>

Montgomery County FoodStat

<https://countystat.maps.arcgis.com/apps/MapJournal/index.html?appid=5ca98ecc52ba42ae83fcb24496c7bcc>

<https://www.regulations.gov/document?D=FNS-2018-0037-11157>

Comment on FR Doc # 2019-15670

This is a Comment on the **Food and Nutrition Service (FNS)** Proposed Rule: [Revision of Categorical Eligibility \(Cat EI\) Option](#)
For related information, [Open Docket Folder](#)

ID: FNS-2018-0037-10993
Tracking Number: 1k3-9bgd-tl9q

Comment

To Whom It May Concern,

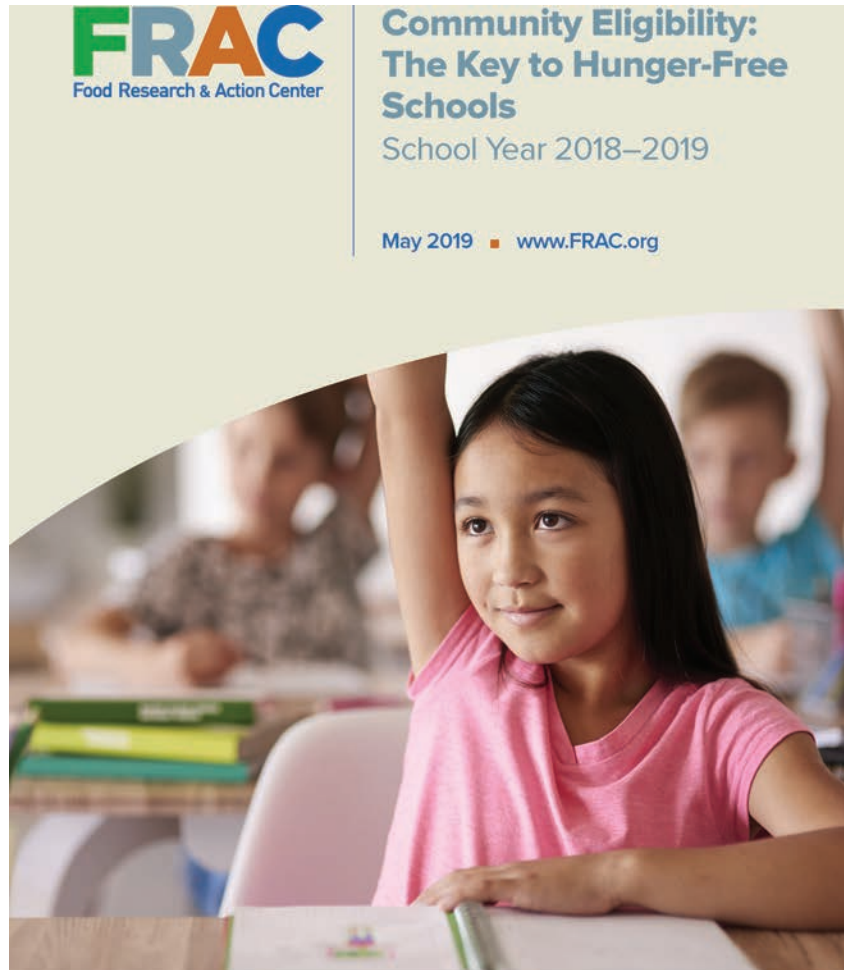
I am writing as the CEO of a community-based food assistance organization in Maryland. As your agency is aware, Maryland is one of more than 40 states that currently implement the broad-based categorical eligibility (Cat EI) option. This allows our state to streamline the SNAP application process, eliminate outdated asset tests, and assess the circumstances of working households to determine what, if any, SNAP benefit their low net incomes qualify them to receive.

As a long-standing leader in achieving food security for our neighbors, the leadership of Manna Food Center knows first hand that the proposed rule to revise Cat EI could cut off SNAP benefits for many people in need and take away free school meals for children in those households. It also means increased government spending on processing and red tape.

In a community where one in three public school students receive free and reduced priced meals, we are particularly alarmed that the proposed rule rolls back an option for states that has been thoroughly vetted for more than two decades. It is also the product of formal rulemaking that subverts the will of Congress. In the 2018 Farm Bill proposals to alter Cat EI were rejected.

On behalf of the tens of thousands of Marylanders, we serve, Manna Food Center opposes these unnecessary and harmful regulatory changes.

<https://www.regulations.gov/document?D=FNS-2018-0037-10993>



Community Eligibility: The Key to Hunger-Free Schools

School Year 2018–2019

Acknowledgments

The Food Research & Action Center (FRAC) gratefully acknowledges dedicated support of its work to expand and improve the school meals programs from the following:

- Anonymous;
- Annie E. Casey Foundation;
- Eos Foundation;
- General Mills Foundation;
- Hunger Is, a program of Albertsons Companies;
- The JPB Foundation;
- Kellogg Company Fund;
- Menemsha Family Fund;
- National Dairy Council/Dairy Management, Inc.; and
- Walmart Foundation.

This report was written by Alison Maurice; Randy Rosso; Crystal FitzSimons; and Kathryn Furtado. The findings and conclusions presented in this report are those of FRAC alone.

About FRAC

The Food Research & Action Center (FRAC) is the leading national organization working for more effective public and private policies to eradicate domestic hunger and undernutrition. For more information about FRAC, or to sign up for FRAC's *Weekly News Digest* and monthly *Meals Matter: School Breakfast Newsletter*, visit frac.org.



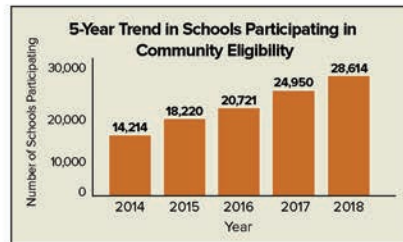
Introduction

From the 2017–2018 school year to the 2018–2019 school year — the fifth year of nationwide availability — school participation in the Community Eligibility Provision grew by 14 percent since the 2017–2018 school year. Over 13.6 million children in 28,614 schools and 4,698 school districts are participating and have access to breakfast and lunch at no charge each school day through community eligibility.¹

Community eligibility allows high-poverty schools and school districts to offer free meals to all students, and it eliminates the need for household school meal applications. A key piece of the Healthy, Hunger-Free Kids Act of 2010, community eligibility was phased in a few states at a time before it was made available to schools nationwide in the 2014–2015 school year.

Schools that participate in community eligibility often see increased participation in school meals and a reduced paperwork burden, allowing school nutrition staff to focus more directly on offering healthy, appealing meals.² Moreover, offering meals at no charge to all students eliminates the stigma from the perception that school meals are only for low-income children, and facilitates the implementation of “breakfast after the bell” service models, such as breakfast in the classroom, which further boosts participation.

Since its introduction, community eligibility has been a popular option for high-needs schools, due to the many benefits for the school nutrition program and the entire school community. In the first year that community eligibility became available nationwide, 14,214 schools opted in, an impressively high take-up rate for a new school meals option. In the subsequent five years, participation has doubled to 28,614 schools, with 64.6 percent of all eligible schools participating. As more schools experience and share the academic, health, and administrative benefits of community eligibility, more school districts have chosen to adopt the provision or to expand its implementation each school year.



Still, there are many eligible schools that are not participating, even though they stand to benefit from community eligibility. Take-up rates vary substantially across the states. Several factors, including challenges associated with the loss of traditional school meal application data and low rates of direct certification (the latter being the foundation of community eligibility), have hindered widespread adoption in some states and school districts. However, barriers can be overcome with strong state, district, and school-level leadership, hands-on technical assistance from national, state, and local stakeholders, and peer-to-peer learning among districts.

This report provides an analysis of community eligibility implementation — nationally and for each state and the District of Columbia — in the 2018–2019 school year, and is based on three measures:

- the number of eligible and participating school districts and schools;
- the share of eligible districts and schools that have adopted community eligibility; and
- the number and share of eligible schools that are participating, based on the school's poverty level.

As a companion to this report, the Food Research & Action Center has compiled all data collected in a [database of eligible and participating schools](#) that can be searched by state and school district.

¹ This report uses the term “school district” to refer to a Local Education Agency (LEA). LEAs include large school districts with hundreds of schools, as well as LEAs with charter schools where the school is often the only one in that LEA.

² Logan, C. W., Connor, P., Harvill, E. L., Harkness, J., Nisat, H., Checkoway, A., Peck, L. R., Shivi, A., Bein, E., Levin, M., & Enver, A. (2014). *Community Eligibility Provision Evaluation*. Available at: <http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf>. Accessed on March 22, 2019.

How Community Eligibility Works

Community eligibility schools are high-needs schools that offer breakfast and lunch to all students at no charge and use significant administrative savings to offset any additional costs, over and above federal reimbursements, of serving free meals to all. Instead of collecting school meal applications, community eligibility schools are reimbursed for a percentage of the meals served, using a formula based on the percentage of students participating in specific means-tested programs, such as the Supplemental Nutrition Assistance Program (SNAP).

There are many benefits that community eligibility provides to schools and families:

- Schools no longer collect, process, or verify school meals applications, saving significant time and administrative burdens.
- Schools do not need to track each meal served by fee category (free, reduced-price, paid), and instead report total meal counts.
- School nutrition staff do not need to collect fees from students who are eligible for reduced-price or paid school meals, allowing students to move through the cafeteria line faster and ensuring that more children can be served.
- Offering meals at no charge to all students eliminates stigma from any perception that the school meals programs are just for the low-income children, thus increasing participation among all students.
- Schools no longer have to deal with unpaid school meal debt for reduced-price and paid students at the end of the school year or follow up with families when students do not have money to pay for meals.

How Schools can Participate

Any district, group of schools in a district, or a school with 40 percent or more “identified students” is eligible to participate. Identified students are comprised of students certified for free school meals without an application. This includes

- children directly certified for free school meals through data matching because their households receive SNAP, Temporary Assistance for Needy Families (TANF), or Food Distribution Program on

Indian Reservations (FDPIR) benefits, and in some states, Medicaid benefits; and

- children who are certified for free school meals without an application because they are homeless, migrant, runaway, enrolled in Head Start, or in foster care.

School districts may choose to participate school-by-school, districtwide, or group schools at their discretion if the school, school district, or group has an overall identified student percentage of 40 percent or higher.

Identified students whose poverty is shown by participation in other programs, are a subset of those eligible for free and reduced-price school meals. This is a smaller group than the total number of children who would be certified to receive free or reduced-price school meals if school meal applications were collected. For that reason, a multiplier (discussed below) is applied to the identified student percentage. Schools that qualify for community eligibility typically have free and reduced-price percentages of 65–70 percent or higher if traditional school meal applications were collected from student households.

How Schools are Reimbursed

Although all meals are offered at no charge to all students in schools that participate in community eligibility, federal reimbursements are based on the proportion of low-income children in the school. The identified student percentage is multiplied by 1.6 to calculate the percentage of meals reimbursed at the federal free rate, and the remainder are reimbursed at the lower paid rate. The 1.6 multiplier was determined by Congress to reflect the ratio of six students certified for free or reduced-price meals with an application for every 10 students certified for free meals without an application. This serves as a proxy for the percentage of students that would be eligible for free and reduced-price meals if the school districts had collected school meal applications. For example, a school with 50 percent identified students would be reimbursed for 80 percent of the meals eaten at the free reimbursement rate ($50 \times 1.6 = 80$), and 20 percent at the paid rate.

Key Findings for the 2018–2019 School Year

School District Participation

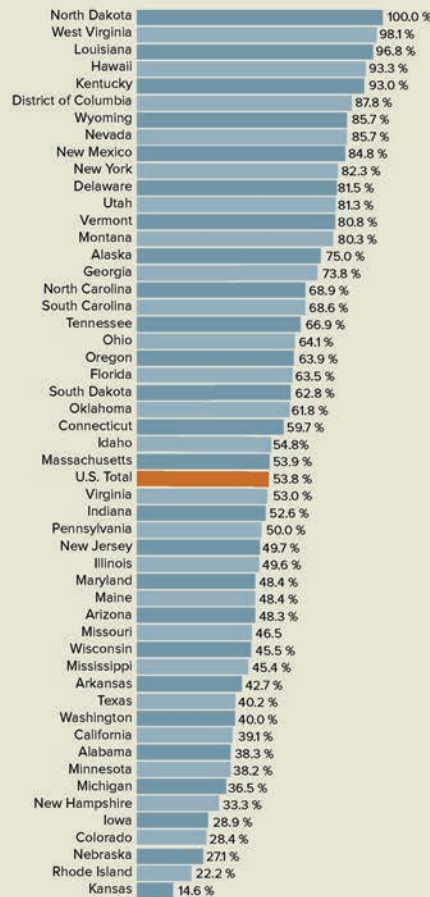
Nationally, 4,698 school districts — 53.8 percent of those eligible — are now participating in the Community Eligibility Provision in one or more schools.³ This is an increase of 696 school districts since the 2017–2018 school year, when 4,002 school districts participated.

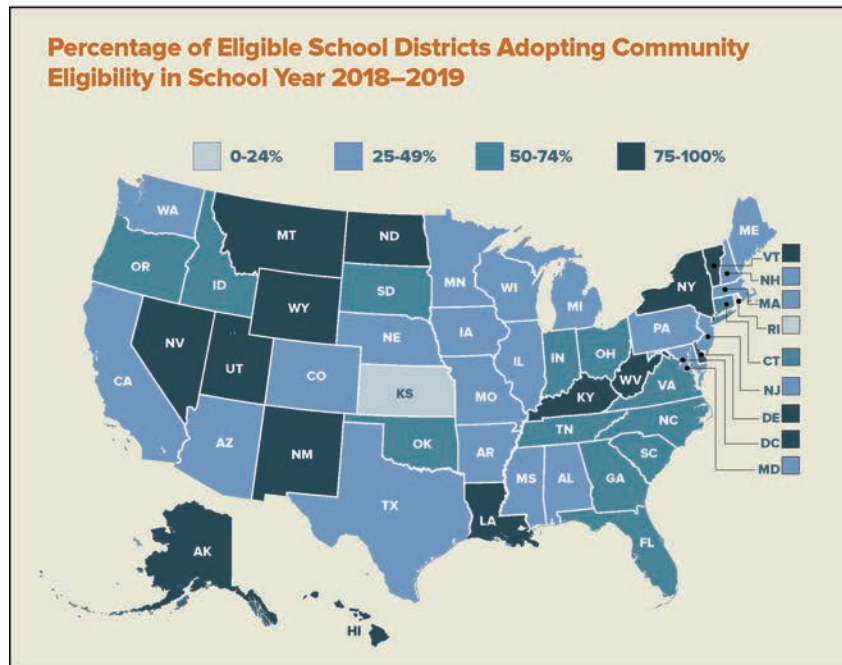
The median state's take-up rate in school year 2018–2019 for eligible school districts is 54.8 percent; however, school district take-up rates across the states vary significantly, from 30 percent or lower in Colorado, Iowa, Kansas, Nebraska, and Rhode Island, to over 90 percent in Hawaii, Kentucky, Louisiana, North Dakota, and West Virginia.

Several states have seen significant increases in the 2018–2019 school year. California experienced the largest growth in the number of school districts participating, increasing by 188 school districts. New York and Texas followed in school district participation growth by adding 87 and 88 school districts, respectively. In fact, all but five states and the District of Columbia have increased or maintained the number of school districts implementing community eligibility in the 2018–2019 school year. Of those that have decreased the number of school districts participating in community eligibility, Ohio has had the largest decrease — 10 school districts. Tennessee decreased by nine school districts, and the District of Columbia, Mississippi, and Missouri all decreased by four or fewer school districts in the 2018–2019 school year compared to the 2017–2018 school year.

³ Under federal law, states are required to publish a list of school districts that are eligible for the Community Eligibility Provision districtwide, as well as a list of individual schools that are eligible, by May 1 annually. For more information on requirements related to the published lists, see <https://fns-prod.azureedge.net/sites/default/files/cn/SP11-20180s.pdf>.

Percentage of Eligible School Districts Adopting Community Eligibility School Year 2018–2019





One factor in the continued growth in participation is the ability of school districts to observe the benefits of community eligibility in other school districts. As more school districts overcome the perceived barrier that community eligibility will change Title I funding allocations dramatically, and those in states that require alternative income applications for state education funding and other purposes work through the challenges of collecting alternative income applications, more school districts have been adopting this provision. (See page 13 for best practices for navigating the loss of school meal applications.)

Despite the growth in the 2018–2019 school year, states need to continue to invest in improving their direct

certification systems to ensure that school districts can maintain the identified student percentages necessary to become and remain eligible for community eligibility, and to ensure that it continues to be a viable financial option for school districts. In the U.S. Department of Agriculture's latest [report on state direct certification rates of children](#), 23 states did not meet the required benchmark of directly certifying 95 percent of children living in households that participated in the Supplemental Nutrition Assistance Program for free school meals, pointing to missed opportunities for school districts to increase their identified student percentages to facilitate easier community eligibility implementation. (See page 11 for best practices for directly certifying children.)

School Participation

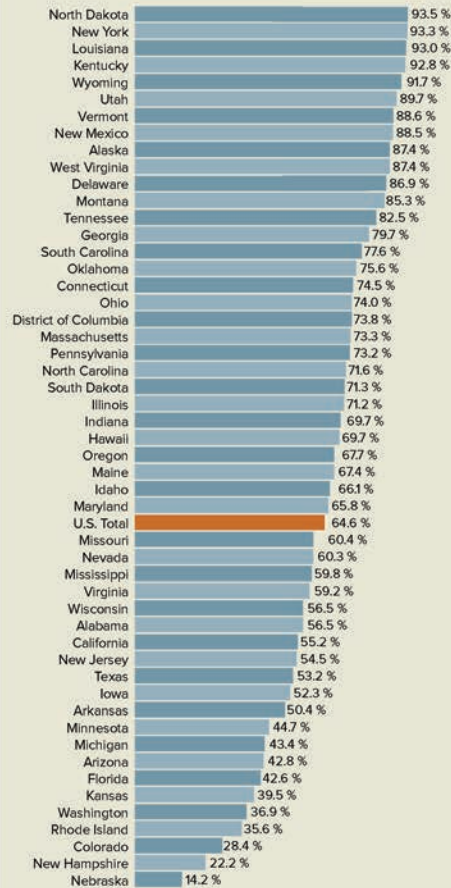
In the 2018–2019 school year, there are 28,614 schools participating in community eligibility, including schools from all 50 states and the District of Columbia. Overall school participation in community eligibility increased by 3,664 schools since the 2017–2018 school year. In the 2018–2019 school year, 64.6 percent of all eligible schools are participating in community eligibility nationally, with a median state take-up rate of 68.3 percent.

Among the states, the percentage of eligible and participating schools varies significantly. Thirteen states have 80 percent or more of their eligible schools participating, and 9 more states and the District of Columbia had take-up rates of over 70 percent.

Forty-one states have seen an increase in the number of schools participating in community eligibility, and three states — Maryland, Nebraska, and Ohio — maintained the same number of community eligibility schools during the 2018–2019 school year. Twenty-five of these states have strong direct certification systems and are meeting the required direct certification benchmark.

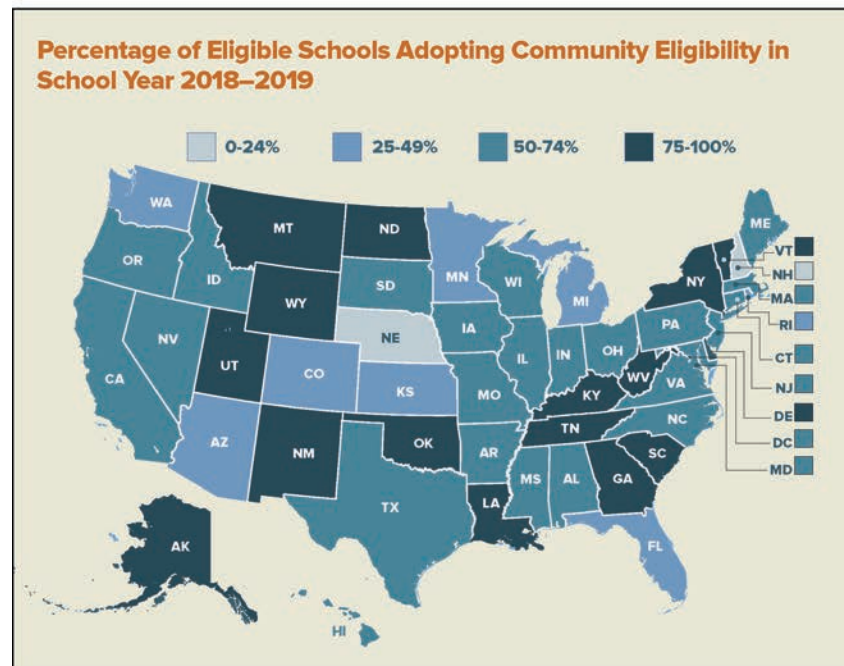
All but seven states — Alaska, Idaho, Montana, North Carolina, Oregon, Tennessee, and Vermont — have seen growth or maintained the number of participating schools in the 2018–2019 school year. California has had the largest increase, with 1,522 more schools implementing community eligibility since the 2017–2018 school year. Florida, Michigan, New York, and Texas added 214, 173, 184 and 646 more schools, respectively. Smaller states with fewer eligible schools also have made strong progress, including Maine, which increased by 16 schools, and Utah, which added 17 schools.

Percentage of Eligible Schools Adopting Community Eligibility School Year 2018–2019



Despite significant growth nationally and across many states, some states still have very low take-up rates compared to the national average. In 10 states, less than 45 percent of all eligible schools are participating in community eligibility. In particular, Colorado, Nebraska, and New Hampshire have the lowest take-up rates for eligible schools, with less than 1 in 3 eligible

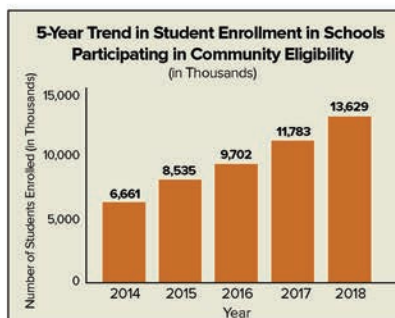
schools participating. For some states with low school participation rates, improvement to direct certification systems at the state and school district level can help increase the number of schools eligible for the provision by more accurately identifying the number of students automatically eligible to receive free school meals without a school meals application.



Student Enrollment

The true impact of community eligibility is most evident in the number of students impacted — in the 2018–2019 school year, over 13.6 million students are offered free breakfast and lunch at school through the Community Eligibility Provision. This is up from more than 11.8 million in the 2017–2018 school year and 9.7 million in the 2016–2017 school year. California is the state with the most children — nearly 1.7 million — attending community eligibility schools. Nationally, approximately 1 in 8 students attending a community eligibility school lives in California.

All but nine states have seen increases in the number of students in community eligibility schools. As would be expected, the states that have seen the biggest increases in the number of participating schools this



year also have seen the largest enrollment increases. In addition to California, which added more than 891,000 students, Texas had a significant increase in the number of children in community eligibility schools, adding nearly 382,000 students. Florida also added more than 150,000 additional students in participating schools, and nine other states have increased enrollment in community eligibility schools by over 20,000 students.

Community Eligibility and Breakfast After the Bell

School breakfast serves just 57 low-income students for every 100 that participate in school lunch.⁴ One reason that this participation rate is lower than it should be is that most schools offer school breakfast in the cafeteria before the school day starts. Implementing an innovative school breakfast model, like breakfast in the classroom or “grab and go” breakfast, makes the meal more accessible to students, and has been shown to increase school breakfast participation significantly. Participation also increases when breakfast is offered at no charge to all students. Combining the two approaches yields the largest increase in participation. Under community eligibility, offering breakfast for free and reducing administrative requirements by no longer requiring schools to collect fees or count each meal served by fee category makes it easier to start a breakfast in the classroom or “grab and go” program.

⁴Food Research & Action Center. (2019). *School Breakfast Scorecard School Year 2017–2018*. Available at: <http://frac.org/wp-content/uploads/school-breakfast-scorecard-sy-2017-2018.pdf>. Accessed on March 26, 2019.

School Participation by Poverty Level

While all schools that qualify for community eligibility are considered to be high needs, a school’s ability to implement community eligibility successfully — and maintain financial viability — typically improves when its identified student percentage is higher. For this report, the Food Research & Action Center examined the number of schools participating in each state, based on their identified student percentages as a proxy for the school’s poverty level.

Schools with higher identified student percentages receive the free reimbursement rate for more meals, which makes community eligibility a more financially viable option. As a result, schools with identified student percentages of 60 percent and above — those that receive the free reimbursement rate for 100 percent or nearly 100 percent of their meals — are more likely to participate in community eligibility than schools with lower identified student percentages; that has been the case since the program became available

nationwide. This year, the participation rate among schools with identified student percentages of 60 percent or more is significantly higher than the overall eligible school participation rate of 64.4 percent. Nationally, 80.4 percent of all schools with identified student percentages of 60 percent and above are participating in community eligibility. In 19 states, more than 90 percent of such schools are participating and nine additional states have more than 80 percent participating. This category of eligible schools with identified student percentages of 60 percent and above represents 17,540 schools or 61 percent of the 28,614 participating schools.

Still, many schools are participating at lower identified student percentages and this number has grown each year as schools gain a better understanding of the financial savings and educational and health benefits of community eligibility. In the 2018–2019 school year, 2,114 community eligibility schools, which is almost 7 percent of all schools participating in community eligibility, have an identified student percentage between 40 and 50 percent, and 7,797 schools — or 27 percent — have an identified student percentage between 50 and 60 percent.

Community Eligibility Provision (CEP) Take-Up Rate by Schools' Identified Student Percentage for School Year 2018–2019*

Identified Student Percentage	Eligible Schools	Adopting Schools	Percent Adopting CEP
40 to less than 50 percent	9,480	2,114	22.3 %
50 to less than 60 percent	11,909	7,797	65.5 %
60 percent and above	21,806	17,540	80.4 %

*Some states reported ISPs for adopting schools that are below the 40 percent eligibility threshold. These participating schools are not included in the total number of adopting schools by each ISP category. This accounts for the difference between the U.S. total number of adopting schools and the total number of adopting schools by ISP category. For more information, see Table 3.

Strategies to Make Community Eligibility Work at Lower Identified Student Percentages

Schools can increase the financial viability of implementing community eligibility at lower identified student percentages by maximizing federal child nutrition funding through strong participation in school breakfast and lunch and other federal child nutrition programs.

Strategies include

- implementing breakfast in the classroom or another innovative school breakfast model to increase participation;
- participating in the [Afterschool Meal Program](#), through the Child and Adult Care Food Program, which provides the free reimbursement rate combined with commodities or cash in lieu of commodities for all suppers and lunches served;
- providing appealing and high-quality meals that offer a variety of options that include items prepared in-house, reflect students' cultural tastes, and incorporate locally sourced products;
- tracking daily participation to identify unpopular items and avoid menu fatigue, allowing districts to adjust menus quickly to ensure strong participation;
- engaging students through taste tests, student surveys, and student-run school gardens to encourage participation; and
- promoting school meals to students, parents, and the community-at-large by distributing information through social media about the availability of school meals at no charge, placing banners about the program throughout the school, running contests, and working with local media to highlight the program.

Factors Impacting Adoption of Community Eligibility

Five years into nationwide availability, numerous best practices and lessons have emerged that can benefit schools and school districts that are considering community eligibility, as well as states interested in increasing take-up rates in the coming school year. In most states, implementation of community eligibility has been relatively smooth, with participation growing each year as more districts and schools learn about its many benefits. Several factors have driven the expansion in successful states: effective outreach efforts and comprehensive technical support from state agency staff and advocacy organizations, often in partnership with each other; effective and efficient direct certification systems that have allowed schools to maximize the financial viability of community eligibility; and having clear policies for community eligibility schools on data to be used in place of school meal applications for purposes of allocating state education funding and other programs.

Strong State Leadership

Many child nutrition agencies in states with high take-up rates of community eligibility have embraced the provision as a new opportunity to support students and schools. Kentucky, Montana, Oregon, and West Virginia are examples of states that have carried out robust outreach and education efforts to ensure that eligible schools are aware of community eligibility and that districts would not miss out on its benefits. Additionally, New York has taken recent steps to update the technology that is used for directly certifying students across the state, which helps school districts increase their identified student percentages, and Texas has developed state-specific tools to assist school districts with community eligibility implementation.

Since a number of state and federal education and other programs have traditionally relied upon schools' free and reduced-price meal eligibility data to allocate funding, state leadership can be beneficial in resolving issues that may arise as a result of schools no longer collecting this data through school meal applications. To address these challenges, leadership from the state superintendent of education or other public officials can be beneficial in helping overcome barriers and

encouraging cooperation among all stakeholders. Otherwise, schools in the state will remain uncertain of the implications of moving to community eligibility, resulting in fewer schools participating in the program.

Direct Certification Rates

Community eligibility bases school breakfast and lunch reimbursements on the percentage of enrolled students who are certified for free school meals without an application, and direct certification is the key component of that, making direct certification the backbone of community eligibility. Direct certification allows school districts to certify automatically children who are enrolled in certain other public benefits programs as eligible for school meals through a data-matching process. The vast majority of "identified students" in community eligibility schools are students who are living in households that are participating in the Supplemental Nutrition Assistance Program (SNAP) and who have been directly certified through data matching at the state or local level. Under current federal law, school districts must perform at least three direct certification data matches each school year, and states must achieve a benchmark of directly certifying 95 percent of children who are living in SNAP households for free school meals.

In the latest [direct certification state implementation report](#), focused on the 2016–2017 school year, only 28 states achieved the benchmark. Ten states directly certified less than 90 percent of all children in SNAP households, with California, the lowest-performing state, certifying just 74 percent.⁵

Identified student counts also can include children who are directly certified because their household participates in Temporary Assistance for Needy Families (TANF) or the Food Distribution Program on Indian Reservations (FDPIR), or because they are in foster

⁵U.S. Department of Agriculture. (2018). *Direct Certification in the National School Lunch Program: State Implementation Progress Report to Congress — School Year 2015–2016 and School Year 2016–2017*. Available at: <https://www.fns.usda.gov/direct-certification-national-school-lunch-program-report-congress-state-implementation-progress-1>. Accessed on March 25, 2019.

care or Head Start or receive homeless, runaway, or migrant education services. States that can directly certify virtually all children in SNAP households, as well as expand their direct certification systems to include a variety of other data sources that can help school districts maximize their identified student percentage, help make community eligibility financially viable for more school districts and schools. Conversely, in states and school districts where direct certification rates are low and their data sources are less robust, a school's poverty likely is underrepresented by the identified student percentage. As a result, in these states, there will be fewer schools and districts that are eligible for community eligibility, resulting in fewer high-poverty schools adopting the provision, and some schools that do use community eligibility will receive less reimbursement than they should.

States can improve direct certification systems and support community eligibility schools by

- working with appropriate state agency counterparts to incorporate TANF, FDPIR, foster care, homeless, runaway, and migrant student data into state direct certification systems;
- increasing the frequency that school enrollment and program enrollment data are updated and matched against each other (weekly or in real time);
- improving algorithms to incorporate tiered or probabilistic matching to account for nicknames and common mistakes, such as inverted numbers in dates of birth or misspelled words;
- developing functionalities to provide partial matches that can be resolved at the local level, including search functions that allow schools to look for new students; and
- conducting SNAP education and offering SNAP application assistance to schools.

For more information on strategies to improve direct certification, read the Food Research & Action Center's [Direct Certification Improves Low-Income Student Access to School Meals](#).

Medicaid Direct Certification

The Healthy, Hunger-Free Kids Act of 2010 authorized demonstration projects to use Medicaid data for direct certification. The statute requires that students be enrolled in Medicaid and belong to a family whose income, as defined by Medicaid, is below 133 percent of the Federal Poverty Level⁶ in order to use Medicaid data to directly certify a student to receive free school meals. In 2016, the U.S. Department of Agriculture issued a request for proposals for states to be included in a demonstration project that allowed direct certification for free and reduced-price school meals using Medicaid income data. All states participating in one of the Medicaid direct certification demonstrations continued to increase the number of schools participating in community eligibility or maintained the number of schools using the provision in the 2018–2019 school year.⁷

It is important to note that if a child can be directly certified for free school meals through the Supplemental Nutrition Assistance Program, the Temporary Assistance for Needy Families program, Food Distribution Program on Indian Reservations, or through foster care, Head Start, or through being migrant or homeless, that certification always will take precedence over Medicaid direct certification.

⁶ As defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

⁷ The following states use Medicaid data, along with an income test, to determine categorical eligibility for free school meals: Illinois, Kentucky, New York, and Pennsylvania. The following states use Medicaid data to determine categorical eligibility for both free and reduced-price school meals: California, Connecticut, Florida, Indiana, Iowa, Massachusetts, Michigan, Nebraska, Nevada, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

Measuring Student Poverty Without School Meal Applications

School meal application data (determining eligibility for free or reduced-price meals) has traditionally been used for a variety of purposes in education, as it has been a readily available proxy for poverty. When switching to community eligibility, schools no longer have individual student data because they no longer collect school meal applications. A school district's ability to navigate switching to new poverty measures for broader education funding purposes is often important in the school district being willing to implement community eligibility.

Title I Funding

Title I Part A of the Elementary and Secondary Education Act provides supplemental federal funding to school districts with high percentages of low-income students. Adopting community eligibility does not impact the amount of Title I funding a school district receives, but many districts allocate Title I funds to individual schools based on National School Lunch Program data (free and reduced-price certified students). In response to confusion regarding how school districts would measure poverty for the purposes of allocating Title I funding among schools, the U.S. Department of Agriculture and the U.S. Department of Education worked closely together to establish policies for community eligibility schools to access federal programs without the need for individual student free and reduced-price eligibility data. The U.S. Department of Education policy guidance offers school districts numerous options for determining school-by-school Title I allocations, which allow districts to use the measure that works best for them.⁸ For more information, read the Food Research & Action Center's [Understanding the Relationship Between Community Eligibility and Title I Funding](#).

State Education Funding

Many state education funding formulas provide additional support to low-income students and their schools based on the student's eligibility for free or

reduced-price school meals. Since community eligibility schools no longer collect school meal applications, a number of these states have allowed community eligibility schools to use other data to determine state education funding. Nine states allow community eligibility school districts to measure poverty based on alternative data sources, such as the Supplemental Nutrition Assistance Program, the Temporary Assistance for Needy Families program, Medicaid, or Head Start. Eight states allow school districts to multiply their identified student percentage by 1.6, known as the "free claiming percentage" under community eligibility, as a proxy for free and reduced-price percentages in community eligibility schools.⁹

Eighteen states that use free and reduced-price school meal eligibility in their state education funding formulas have established a policy requiring school districts to collect household income data outside of the school meals program, either annually or every four school years. Collecting these alternative forms is a cost to the school district and also deters some schools from adopting community eligibility. These states can consider following the lead of the 16 states and the District of Columbia that have allowed other data to be used to determine state education funding and do not require the alternative form. Additionally, four states allow community eligibility schools to use its most recent free and reduced-price data. Twelve states do not use school meal data for the purposes of state education funding and therefore community eligibility implementation does not impact state funding in these states.

States that are unable to eliminate the use of the alternative income form can implement best practices to ease the burden of collecting the forms. These include collecting forms less frequently, such as once every four years; allowing school districts to incorporate income questions into school forms that are already collected; simplifying the state-required form to include only the information required for state funding purposes; and allowing school districts to collect the forms throughout the school year, as data are often used for the following school year.

⁸ U.S. Department of Agriculture. (2016). Updated Title I Guidance for Schools Electing Community Eligibility (memo). Available at: <https://www.fns.usda.gov/updated-title-i-guidance-schools-electing-community-eligibility>. Accessed on March 25, 2019.

⁹ For additional state approaches, refer to [State Approaches in the Absence of Meal Applications](#), a chart by the Food Research & Action Center and the Center on Budget and Policy Priorities.

Conclusion

Community eligibility offers an important opportunity for high-needs schools and districts to meet the needs of the many low-income families they serve. The option creates hunger-free schools by ensuring that students are well-nourished and ready to learn, and it allows school nutrition departments to use their resources to provide nutritious meals by streamlining administrative requirements. The more than 28,000 participating schools understand the countless benefits that community eligibility provides to students and schools. Community eligibility can help improve school nutrition programs; this is demonstrated by the reach

it has achieved in just five years. Still, there remain significant opportunities for growth in the coming school years — particularly in states and districts currently underutilizing the option. States and school districts need to work through remaining barriers, improve direct certification systems, offer opportunities for successful school districts to keep sharing their experiences with their peers, and assist school districts in expanding community eligibility to new schools as they become more comfortable with the provision and fully understand its social, health, and financial benefits.

Technical Notes

The Food Research & Action Center (FRAC) obtained information on schools that have adopted community eligibility from state education agencies or entities at the state level that administer the federal school nutrition programs. Between September 2018 and March 2019, FRAC collected these data:

- school name,
- school district name,
- identified student percentage (ISP),
- participation in community eligibility as an individual school, part of a group, or a whole district, and
- enrollment.

FRAC followed up with state education agencies for data clarifications and, when necessary, to obtain missing data.

Under federal law, states are required to publish, by May 1 of each year, a list of schools and districts with ISPs of at least 40 percent and those with ISPs between 30 and just under 40 percent (near-eligible schools and districts). FRAC compared these published lists to the lists of adopting schools, and compiled a universe of eligible and participating schools and districts in the 2017–2018 and 2018–2019 school years. When compiling the universe of eligible schools, FRAC treated a district as eligible if it contained at least one eligible school. FRAC treated a school as eligible if it appeared on a state's published list of eligible schools. In addition, schools that were missing from a state's list of eligible schools, but appeared on its list of adopting schools were treated as eligible.

There are two circumstances under which a school might be able to adopt community eligibility even if it did not appear on a state's list of eligible schools:

1. The U.S. Department of Agriculture permitted states to base their May published lists on proxy data readily

available to them. Proxy data are merely an indicator of potential eligibility, not the basis for eligibility. Districts must submit more accurate information, which may be more complete, more recent, or both, when applying to adopt community eligibility.

2. A school can participate as a member of an adopting group (part or all of a district). A group's eligibility is based on the ISP for the group as a whole.

The lists obtained from state education agencies indicated whether schools have elected to adopt community eligibility, the identified student percentage the schools use to determine the federal reimbursement for meals served, and the total number of students attending each adopting school. For most schools adopting community eligibility during the 2018–2019 school year, states provided group-level ISP data (except for one school in California, 42 schools in Maine, eight schools in Michigan, two schools in Minnesota, one school in Mississippi, two schools in Missouri, four schools in Montana, four schools in New Jersey, 36 schools in North Carolina, 998 schools in Ohio, six schools in Oregon, one school in South Carolina, three schools in Vermont, one school in Washington, two schools in West Virginia, and four schools in Wisconsin) and student enrollment numbers (except for four schools in Hawaii, 182 schools in Louisiana, seven schools in Michigan, 25 schools in Mississippi, 14 schools in South Carolina, and three schools in Utah).

For most schools adopting community eligibility in the 2017–2018 school year, states provided group-level ISP data for adopting schools (except for three schools in Georgia, 13 schools in Maine, 998 schools in Ohio, one school in Oklahoma, and 68 schools in Vermont) and student enrollment numbers (except for 12 schools in Alaska, 19 schools in Louisiana, four schools in Mississippi, five schools in Oklahoma, one school in South Carolina, and two schools in Vermont).

TABLE 1: Community Eligibility Provision (CEP) Take-Up Rate in School Districts¹ for School Years 2017–2018 and 2018–2019

State	School Year 2017–2018			School Year 2018–2019		
	Eligible for CEP	Adopting CEP	Percentage Adopting CEP of Total Eligible	Eligible for CEP	Adopting CEP	Percentage Adopting CEP of Total Eligible
Alabama	120	42	35.0 %	120	46	38.3 %
Alaska	38	29	76.3 %	40	30	75.0 %
Arizona	316	127	40.2 %	317	153	48.3 %
Arkansas	169	58	34.3 %	150	64	42.7 %
California	411	103	25.1 %	744	291	39.1 %
Colorado	71	18	25.4 %	74	21	28.4 %
Connecticut	41	28	68.3 %	62	37	59.7 %
Delaware	27	18	66.7 %	27	22	81.5 %
District of Columbia	43	40	93.0 %	41	36	87.8 %
Florida	247	160	64.8 %	296	188	63.5 %
Georgia	157	104	66.2 %	145	107	73.8 %
Hawaii	21	17	81.0 %	60	56	93.3 %
Idaho	36	22	61.1 %	42	23	54.8 %
Illinois	379	239	63.1 %	498	247	49.6 %
Indiana	166	60	36.1 %	137	72	52.6 %
Iowa	49	19	38.8 %	76	22	28.9 %
Kansas	53	7	13.2 %	48	7	14.6 %
Kentucky	173	156	90.2 %	172	160	93.0 %
Louisiana	97	82	84.5 %	121	125	96.8 %
Maine	67	19	28.4 %	62	30	48.4 %
Maryland	29	14	48.3 %	31	15	48.4 %
Massachusetts	192	79	41.1 %	154	83	53.9 %
Michigan	341	192	56.3 %	712	260	36.5 %
Minnesota	179	65	36.3 %	170	65	38.2 %
Mississippi	121	60	49.6 %	130	59	45.4 %
Missouri	223	101	45.3 %	213	99	46.5 %
Montana	78	55	70.5 %	71	57	80.3 %
Nebraska	56	12	21.4 %	48	13	27.1 %
Nevada	14	10	71.4 %	14	56	85.7 %
New Hampshire	14	3	21.4 %	12	4	33.3 %
New Jersey	171	81	47.4 %	169	84	49.7 %
New Mexico	147	121	82.3 %	145	123	84.8 %
New York	450	293	65.1 %	462	380	82.3 %
North Carolina	153	102	66.7 %	148	102	68.9 %

TABLE 1: Community Eligibility Provision (CEP) Take-Up Rate in School Districts¹ for School Years 2017–2018 and 2018–2019

State	School Year 2017–2018			School Year 2018–2019		
	Eligible for CEP	Adopting CEP	Percentage Adopting CEP of Total Eligible	Eligible for CEP	Adopting CEP	Percentage Adopting CEP of Total Eligible
North Dakota	24	19	79.2 %	21	21	100.0 %
Ohio	474	335	70.7 %	507	325	64.1 %
Oklahoma	329	126	38.3 %	204	126	61.8 %
Oregon	116	74	63.8 %	122	78	63.9 %
Pennsylvania	368	181	49.2 %	410	205	50.0 %
Rhode Island	24	5	20.8 %	27	6	22.2 %
South Carolina	84	55	65.5 %	86	59	68.6 %
South Dakota	58	26	44.8 %	43	27	62.8 %
Tennessee	154	102	66.2 %	139	93	66.9 %
Texas	680	241	35.4 %	818	329	40.2 %
Utah	15	9	60.0 %	16	13	81.3 %
Vermont	31	19	61.3 %	26	21	80.8 %
Virginia	87	50	57.5 %	117	62	53.0 %
Washington	153	66	43.1 %	180	72	40.0 %
West Virginia	55	50	90.9 %	53	52	98.1 %
Wisconsin	174	102	58.6 %	242	110	45.5 %
Wyoming	9	6	66.7 %	7	6	85.7 %
U.S. Total	7,684	4,002	52.1 %	8,729	4,698	53.8 %

¹For the 2017–2018 school year data, school districts are defined as eligible if they include at least one school with an identified student percentage (ISP) of 40 percent or higher, or at least one school has already adopted community eligibility. For the 2018–2019 data, school districts are defined as eligible if they include at least one school with an ISP of 40 percent or higher, or at least one school has already adopted community eligibility.

**TABLE 2: Community Eligibility Provision (CEP) Take-Up Rate in Schools¹
for School Years 2017–2018 and 2018–2019**

State	School Year 2017–2018			School Year 2018–2019		
	Eligible for CEP	Adopting CEP	Percentage Adopting CEP of Total Eligible	Eligible for CEP	Adopting CEP	Percentage Adopting CEP of Total Eligible
Alabama	793	425	53.6 %	786	444	56.5 %
Alaska	246	213	86.6 %	238	208	87.4 %
Arizona	870	296	34.0 %	870	372	42.8 %
Arkansas	437	178	40.7 %	399	201	50.4 %
California	2,409	1,311	54.4 %	5,136	2,833	55.2 %
Colorado	389	101	26.0 %	370	105	28.4 %
Connecticut	278	241	86.7 %	412	307	74.5 %
Delaware	137	116	84.7 %	137	119	86.9 %
District of Columbia	255	166	65.1 %	317	234	73.8 %
Florida	2,983	1,142	38.3 %	3,184	1,356	42.6 %
Georgia	1,102	787	71.4 %	1,026	818	79.7 %
Hawaii	105	65	61.9 %	101	69	68.3 %
Idaho	126	92	73.0 %	124	82	66.1 %
Illinois	1,793	1,499	83.6 %	2,163	1,541	71.2 %
Indiana	554	287	51.8 %	519	362	69.7 %
Iowa	215	123	57.2 %	298	156	52.3 %
Kansas	208	72	34.6 %	190	75	39.5 %
Kentucky	1,066	948	88.9 %	1,060	984	92.8 %
Louisiana	1,143	968	84.7 %	1,092	1,016	93.0 %
Maine	151	71	47.0 %	129	87	67.4 %
Maryland	367	242	65.9 %	368	242	65.8 %
Massachusetts	938	574	61.2 %	836	613	73.3 %
Michigan	1,044	715	68.5 %	2,046	888	43.4 %
Minnesota	380	154	40.5 %	365	163	44.7 %
Mississippi	515	342	66.4 %	686	410	59.8 %
Missouri	712	402	56.5 %	695	420	60.4 %
Montana	190	158	83.2 %	184	157	85.3 %
Nebraska	219	26	11.9 %	183	26	14.2 %
Nevada	258	153	59.3 %	277	167	60.3 %
New Hampshire	23	3	13.0 %	18	4	22.2 %
New Jersey	633	306	48.3 %	607	331	54.5 %
New Mexico	633	535	84.5 %	617	546	88.5 %
New York	3,806	3,381	88.8 %	3,822	3,565	93.3 %
North Carolina	1,401	914	65.2 %	1,232	882	71.6 %

**TABLE 2: Community Eligibility Provision (CEP) Take-Up Rate in Schools¹
for School Years 2017–2018 and 2018–2019**

State	School Year 2017–2018			School Year 2018–2019		
	Eligible for CEP	Adopting CEP	Percentage Adopting CEP of Total Eligible	Eligible for CEP	Adopting CEP	Percentage Adopting CEP of Total Eligible
North Dakota	35	26	74.3 %	31	29	93.5 %
Ohio	1,313	998	76.0 %	1,348	998	74.0 %
Oklahoma	840	413	49.2 %	565	427	75.6 %
Oregon	463	344	74.3 %	504	341	67.7 %
Pennsylvania	1,328	959	72.2 %	1,408	1,031	73.2 %
Rhode Island	91	34	37.4 %	104	37	35.6 %
South Carolina	685	471	68.8 %	664	515	77.6 %
South Dakota	237	89	37.6 %	136	97	71.3 %
Tennessee	1,112	914	82.2 %	1,013	836	82.5 %
Texas	4,082	2,070	50.7 %	5,103	2,716	53.2 %
Utah	51	35	68.6 %	58	52	89.7 %
Vermont	87	68	78.2 %	70	62	88.6 %
Virginia	458	341	74.5 %	723	428	59.2 %
Washington	547	232	42.4 %	739	273	36.9 %
West Virginia	566	518	91.5 %	618	540	87.4 %
Wisconsin	577	422	73.1 %	775	438	56.5 %
Wyoming	15	10	66.7 %	12	11	91.7 %
U.S. Total	38,866	24,950	64.2 %	44,358	28,614	64.6 %

¹ For the 2017–2018 school year data, schools are defined as eligible for community eligibility if their identified student percentage (ISP) is 40 percent or higher, or if they adopted community eligibility. For the 2018–2019 school year data, schools are defined as eligible if they have an ISP of 40 percent or higher, or if they adopted community eligibility.

TABLE 3: Community Eligibility Provision (CEP) Take-Up Rate by Schools' ISP for School Year 2018–2019

State	Total Schools Adopting CEP	Eligible Schools 40–<50% ISP	Adopting Schools 40–<50% ISP	Percent Adopting 40–<50% ISP	Eligible Schools 50–<60% ISP	Adopting Schools 50–<60% ISP	Percent Adopting 50–<60% ISP	Eligible Schools 60%+ ISP	Adopting Schools 60%+ ISP	Percent Adopting 60%+ ISP
Alabama	444	224	30	13.4 %	249	165	66.3 %	313	249	79.6 %
Alaska	208	12	2	16.7 %	46	35	76.1 %	180	171	95.0 %
Arizona	372	285	62	21.8 %	306	138	45.1 %	279	172	61.6 %
Arkansas	201	179	66	36.9 %	142	83	58.5 %	78	52	66.7 %
California	2,833	1,238	168	13.6 %	1,629	850	52.2 %	2,268	1,814	80.0 %
Colorado	105	182	18	9.9 %	134	69	51.5 %	54	18	33.3 %
Connecticut	307	108	39	36.1 %	72	56	77.8 %	232	212	91.4 %
Delaware	119	51	38	74.5 %	67	66	98.5 %	19	15	78.9 %
District of Columbia	234	55	30	54.5 %	174	158	90.8 %	88	46	52.3 %
Florida	1,356	326	15	4.6 %	393	53	13.5 %	2,465	1,288	52.3 %
Georgia	818	173	55	31.8 %	395	343	86.8 %	458	420	91.7 %
Hawaii	69	27	1	3.7 %	58	54	93.1 %	16	14	87.5 %
Idaho	82	78	46	59.0 %	34	27	79.4 %	12	9	75.0 %
Illinois	1,541	375	51	13.6 %	389	209	53.7 %	1,399	1,281	91.6 %
Indiana	362	93	15	16.1 %	269	227	84.4 %	157	120	76.4 %
Iowa	156	114	12	10.5 %	77	46	59.7 %	107	98	91.6 %
Kansas	75	62	4	6.5 %	105	67	63.8 %	23	4	17.4 %
Kentucky	984	91	52	57.1 %	273	258	94.5 %	696	674	96.8 %
Louisiana	1,016	93	45	48.4 %	332	310	93.4 %	667	661	99.1 %
Maine ¹	87	31	N/A	N/A	10	N/A	N/A	1	N/A	N/A
Maryland	242	76	4	5.3 %	235	210	89.4 %	57	28	49.1 %
Massachusetts	613	164	46	28.0 %	232	180	77.6 %	440	387	88.0 %
Michigan	888	486	34	7.0 %	514	224	43.6 %	1,039	623	60.0 %
Minnesota	163	102	11	10.8 %	61	13	21.3 %	200	137	68.5 %
Mississippi ²	410	143	4	2.8 %	180	102	56.7 %	362	303	83.7 %
Missouri	420	241	69	28.6 %	145	88	60.7 %	307	261	85.0 %
Montana	157	51	36	70.6 %	47	38	80.9 %	82	79	96.3 %
Nebraska	26	62	1	1.6 %	54	0	0.0 %	67	25	37.3 %
Nevada	167	59	7	11.9 %	189	151	79.9 %	29	9	31.0 %
New Hampshire	4	11	2	18.2 %	5	0	0.0 %	2	2	100.0 %
New Jersey	331	220	52	23.6 %	173	101	58.4 %	210	174	82.9 %
New Mexico	546	119	62	52.1 %	320	311	97.2 %	178	173	97.2 %
New York	3,565	241	143	59.3 %	312	275	88.1 %	3,269	3,147	96.3 %

TABLE 3: Community Eligibility Provision (CEP) Take-Up Rate by Schools' ISP for School Year 2018–2019

State	Total Schools Adopting CEP	Eligible Schools 40–<50% ISP	Adopting Schools 40–<50% ISP	Percent Adopting 40–<50% ISP	Eligible Schools 50–<60% ISP	Adopting Schools 50–<60% ISP	Percent Adopting 50–<60% ISP	Eligible Schools 60%+ ISP	Adopting Schools 60%+ ISP	Percent Adopting 60%+ ISP
North Carolina	882	373	119	31.9 %	289	221	76.5 %	532	504	94.7 %
North Dakota	29	1	0	0.0 %	2	1	50.0 %	28	28	100.0 %
Ohio ³	998	183	N/A	N/A	76	N/A	N/A	91	N/A	N/A
Oklahoma	427	200	99	49.5 %	272	255	93.8 %	93	73	78.5 %
Oregon	341	182	97	53.3 %	237	192	81.0 %	79	46	58.2 %
Pennsylvania	1,031	314	72	22.9 %	329	255	77.5 %	765	704	92.2 %
Rhode Island	37	38	7	18.4 %	26	9	34.6 %	40	21	52.5 %
South Carolina	515	141	37	26.2 %	197	167	84.8 %	325	310	95.4 %
South Dakota	97	30	12	40.0 %	39	25	64.1 %	67	60	89.6 %
Tennessee	836	272	140	51.5 %	370	341	92.2 %	369	353	95.7 %
Texas	2,716	1,033	66	6.4 %	1,362	635	46.6 %	2,708	2,015	74.4 %
Utah	52	7	6	85.7 %	30	30	100.0 %	21	16	76.2 %
Vermont	62	27	22	81.5 %	29	27	93.1 %	11	10	90.9 %
Virginia	428	246	20	8.1 %	299	239	79.9 %	178	169	94.9 %
Washington	273	266	55	20.7 %	227	96	42.3 %	245	121	49.4 %
West Virginia	540	167	123	73.7 %	346	325	93.9 %	103	90	87.4 %
Wisconsin	438	226	17	7.5 %	156	71	45.5 %	389	346	88.9 %
Wyoming	11	2	2	100.0 %	2	1	50.0 %	8	8	100.0 %
U.S. Total ⁴	28,614	9,480	2,114	22.3 %	11,909	7,797	65.5 %	21,806	17,540	80.4 %

¹Maine did not report the identified student percentages (ISP) that community eligibility schools use to claim federal reimbursements for meals served for 42 schools.

²Mississippi did not report the ISPs that community eligibility schools use to claim federal reimbursements for meals served for one school.

³Ohio did not report the ISPs that community eligibility schools use to claim federal reimbursements for meals served.

⁴In addition to the states that did not report the identified student percentage (ISP) that community eligibility schools use for federal reimbursements for all adopting schools, some states reported ISPs for adopting schools that are below the 40 percent eligibility threshold (one school in California, eight schools in Michigan, two schools in Minnesota, two schools in Missouri, four schools in Montana, four schools in New Jersey, 36 schools in North Carolina, six schools in Oregon, one school in South Carolina, two schools in Tennessee, three schools in Vermont, one school in Washington, two schools in West Virginia, and four schools in Wisconsin). These participating schools in the states referenced above are not included in the total number of adopting schools by each ISP category. This accounts for the difference between the U.S. total number of adopting schools and the total number of adopting schools by ISP category.

TABLE 4: Student Enrollment for School Years 2014–2015,¹ 2015–2016,^{2,3} 2016–2017,⁴ 2017–2018,⁵ and 2018–2019⁶

State	Total Student Enrollment					Change SY 2016–2017 to SY 2017–2018	Change SY 2017–2018 to SY 2018–2019
	SY 2014–2015	SY 2015–2016	SY 2016–2017	SY 2017–2018	SY 2018–2019		
Alabama	180,789	196,802	195,853	208,748	208,929	12,895	181
Alaska	27,666	29,234	34,106	36,575	37,244	2,469	669
Arizona	30,763	55,048	94,229	116,488	145,273	22,259	28,785
Arkansas	791	20,060	55,605	71,475	80,732	15,870	9,257
California	113,513	435,900	748,533	799,646	1,690,225	51,113	890,579
Colorado	12,455	34,920	36,198	39,244	39,950	3,046	706
Connecticut	66,524	105,547	110,322	118,067	151,552	7,745	33,485
Delaware	47,013	51,524	56,143	58,085	62,424	1,942	4,339
District of Columbia	44,485	54,061	56,774	60,548	83,028	3,774	22,480
Florida	274,071	474,006	579,138	705,602	858,135	126,464	152,533
Georgia	354,038	420,383	467,411	472,296	490,319	4,885	18,023
Hawaii	2,640	4,650	20,150	28,750	28,994	8,600	244
Idaho	18,828	32,299	33,058	33,898	28,876	840	-5,022
Illinois	552,751	672,831	685,101	725,241	731,062	40,140	5,821
Indiana	96,604	117,187	127,405	136,855	172,969	9,450	36,114
Iowa	32,103	46,021	50,589	53,880	67,192	3,291	13,312
Kansas	5,992	19,641	22,661	25,722	26,338	3,061	616
Kentucky	279,144	385,043	436,419	479,450	501,059	43,031	21,609
Louisiana	146,141	217,496	341,492	455,318	399,190	113,826	-56,128
Maine	5,284	17,977	20,411	20,435	23,733	24	3,298
Maryland	7,624	94,496	99,484	103,814	106,218	4,330	2,404
Massachusetts	134,071	200,948	238,872	260,364	282,030	21,492	21,666
Michigan	266,249	275,579	273,071	287,801	349,448	14,730	61,647
Minnesota	20,688	49,944	57,003	57,957	63,057	954	5,100
Mississippi	136,095	148,781	151,815	147,677	164,297	-4,138	16,620
Missouri	106,126	111,319	121,962	134,996	139,884	13,034	4,888
Montana	15,802	21,161	23,290	26,180	24,777	2,890	-1,403
Nebraska	180	2,425	4,277	7,411	7,276	3,134	-135
Nevada	7,917	15,970	71,345	95,001	100,957	23,656	5,956
New Hampshire	0	644	1,125	1,082	1,100	-43	18
New Jersey	99,840	107,277	127,108	140,199	153,533	13,091	13,334
New Mexico	119,300	149,057	164,569	177,388	175,756	12,819	-1,632

TABLE 4: Student Enrollment for School Years 2014–2015,¹ 2015–2016,^{2,3} 2016–2017,⁴ 2017–2018,⁵ and 2018–2019⁶

State	Total Student Enrollment					Change SY 2016–2017 to SY 2017–2018	Change SY 2017–2018 to SY 2018–2019
	SY 2014–2015	SY 2015–2016	SY 2016–2017	SY 2017–2018	SY 2018–2019		
New York	505,859	528,748	603,795	1,586,981	1,646,409	983,186	59,428
North Carolina	310,850	357,307	367,705	433,204	418,820	65,499	-14,384
North Dakota	5,284	5,661	5,698	6,039	6,525	341	486
Ohio	305,451	354,727	363,860	397,594	409,467	33,734	11,873
Oklahoma	43,433	66,323	104,162	148,994	152,695	44,832	3,701
Oregon	103,601	129,635	130,336	129,766	122,553	-570	-7,213
Pennsylvania	327,573	394,630	426,984	470,275	509,073	43,291	38,798
Rhode Island	838	6,531	10,350	16,675	18,043	6,325	1,368
South Carolina	111,453	173,364	201,587	235,711	249,036	34,124	13,325
South Dakota	13,056	14,626	15,981	15,499	19,409	-482	3,910
Tennessee	417,165	436,821	428,424	437,641	389,163	9,217	-48,478
Texas	941,262	1,015,384	984,976	1,184,559	1,566,088	199,583	381,529
Utah	7,019	8,565	8,880	12,353	20,148	3,473	7,795
Vermont	7,386	12,751	13,508	13,946	13,768	438	-178
Virginia	42,911	99,404	119,051	156,687	204,610	37,636	47,923
Washington	53,369	69,432	75,357	95,514	110,815	20,157	15,301
West Virginia	124,978	145,057	177,875	195,075	208,960	17,200	13,885
Wisconsin	133,232	146,330	156,519	158,325	165,513	1,806	7,188
Wyoming	1,255	1,255	1,370	1,500	1,886	130	386
U.S. Total	6,661,462	8,534,782	9,701,937	11,782,531	13,628,538	2,080,594	1,846,007

¹ Data for the 2014–2015 school year is from *Take Up of Community Eligibility This School Year* (Center on Budget and Policy Priorities, February 2015).

² Data for the 2015–2016 school year is from *Community Eligibility Adoption Rises in the 2015–2016 School Year, Increasing Access to School Meals* (Food Research & Action Center and Center on Budget and Policy Priorities, April 2016).

³ The 2015–2016 school year report contained data on enrollment in community eligibility schools in Guam. The 2016–2017 school year report excludes Guam; therefore, the U.S. totals for the 2015–2016 school year have been adjusted.

⁴ Some schools did not provide student enrollment information for the 2016–2017 school year: one school in California, two schools in Georgia, four schools in Idaho, three schools in Maine, 26 schools in Tennessee, and four schools in South Carolina.

⁵ Some schools did not provide student enrollment information for the 2017–2018 school year: 12 schools in Alaska, 19 schools in Louisiana, four schools in Mississippi, five schools in Oklahoma, one school in South Carolina, and two schools in Vermont.

⁶ Some schools did not provide student enrollment information for the 2018–2019 school year: four schools in Hawaii, 182 schools in Louisiana, seven schools in Michigan, 25 schools in Mississippi, 14 schools in South Carolina, and three schools in Utah.

TABLE 5: Number of Schools Adopting the Community Eligibility Provision (CEP) for School Years 2014–2015,¹ 2015–2016,² 2016–2017,³ 2017–2018,⁴ and 2018–2019⁴

State	Total School Adoption of CEP					Change SY 2016–2017 to SY 2017–2018	Change SY 2017–2018 to SY 2018–2019
	SY 2014–2015	SY 2015–2016	SY 2016–2017	SY 2017–2018	SY 2018–2019		
Alabama	347	392	391	425	444	34	19
Alaska	123	137	174	213	208	39	-5
Arizona	73	133	227	296	372	69	76
Arkansas	4	57	139	178	201	39	23
California	208	651	1,070	1,311	2,833	241	1,522
Colorado	34	82	91	101	105	10	4
Connecticut	133	212	228	241	307	13	66
Delaware	96	107	115	116	119	1	3
District of Columbia	125	155	160	166	234	6	68
Florida	548	831	1,001	1,142	1,356	141	214
Georgia	589	700	768	787	818	19	31
Hawaii	6	25	43	65	69	22	4
Idaho	50	88	92	92	82	0	-10
Illinois	1,041	1,322	1,363	1,499	1,541	136	42
Indiana	214	253	283	287	362	4	75
Iowa	78	110	119	123	156	4	33
Kansas	18	64	69	72	75	3	3
Kentucky	611	804	888	948	984	60	36
Louisiana	335	484	741	968	1,016	227	48
Maine	21	59	72	71	87	-1	16
Maryland	25	227	228	242	242	14	0
Massachusetts	294	462	525	574	613	49	39
Michigan	625	662	652	715	888	63	173
Minnesota	56	125	153	154	163	1	9
Mississippi	257	298	333	342	410	9	68
Missouri	298	330	367	402	420	35	18
Montana	93	127	138	158	157	20	-1
Nebraska	2	9	15	26	26	11	0
Nevada	13	36	122	153	167	31	14
New Hampshire	0	2	3	3	4	0	1
New Jersey	197	227	270	306	331	36	25
New Mexico	343	429	487	535	546	48	11

TABLE 5: Number of Schools Adopting the Community Eligibility Provision (CEP) for School Years 2014–2015,¹ 2015–2016,² 2016–2017,³ 2017–2018,⁴ and 2018–2019⁴

State	Total School Adoption of CEP					Change SY 2016–2017 to SY 2017–2018	Change SY 2017–2018 to SY 2018–2019
	SY 2014–2015	SY 2015–2016	SY 2016–2017	SY 2017–2018	SY 2018–2019		
New York	1,246	1,351	1,561	3,381	3,565	1,820	184
North Carolina	648	752	787	914	882	127	-32
North Dakota	23	24	25	26	29	1	3
Ohio	739	842	918	998	998	80	0
Oklahoma	100	184	301	413	427	112	14
Oregon	262	340	346	344	341	-2	-3
Pennsylvania	646	795	861	959	1,031	98	72
Rhode Island	1	10	21	34	37	13	3
South Carolina	226	348	412	471	515	59	44
South Dakota	142	109	124	89	97	-35	8
Tennessee	862	924	909	914	836	5	-78
Texas	1,477	1,665	1,678	2,070	2,716	392	646
Utah	22	28	29	35	52	6	17
Vermont	32	56	60	68	62	8	-6
Virginia	87	206	255	341	428	86	87
Washington	122	172	193	232	273	39	41
West Virginia	369	428	492	518	540	26	22
Wisconsin	348	381	415	422	438	7	16
Wyoming	5	5	7	10	11	3	1
U.S. Total	14,214	18,220	20,721	24,950	28,614	4,229	3,664

¹ Data for the 2014–2015 school year is from [Take Up of Community Eligibility This School Year](#) (Center on Budget and Policy Priorities, February 2015).

² Data for the 2015–2016 school year is from [Community Eligibility Adoption Rises in the 2015–2016 School Year, Increasing Access to School Meals](#) (Food Research & Action Center and Center on Budget and Policy Priorities, April 2016).

³ Data for the 2016–2017 school year is from [Community Eligibility Continues to Grow in the 2016–2017 School Year](#) (Food Research & Action Center, March 2017).

⁴ For the 2017–2018 school year data, schools are defined as eligible for community eligibility if their identified student percentage (ISP) is 40 percent or higher, or if they adopted community eligibility. For the 2018–2019 school year data, schools are defined as eligible if they have an ISP of 40 percent or higher, or if they adopted community eligibility.



[Questions submitted for the record and their responses follow:]

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Mr. Brandon Lipps
Deputy Under Secretary
Food, Nutrition, and Consumer Services
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, D.C. 20250

Dear Deputy Under Secretary Lipps:

I would like to thank you for testifying at the October 16, 2019, Subcommittee on Civil, Rights and Human Services hearing entitled *"Examining the USDA's Proposed Cuts to Free School Meals."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Monday, December 16, 2019, for inclusion in the official hearing record. Your responses should be sent to Janice Nsor of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Civil Rights and Human Services Subcommittee Hearing
“Examining the USDA’s Proposed Cuts to Free School Meals”
 Wednesday, October 16, 2019
 2:00 p.m.

Chairman Robert C. “Bobby” Scott (D-VA)

- Deputy Under Secretary Brandon Lipps. How many children do you estimate will no longer receive free school meals because their families were unable to fill out an individual application?

Representative Marcia Fudge (D-OH)

- **Deputy Under Secretary Brandon Lipps.** During the October 16th hearing, you stated USDA provided the analysis of the impact of the proposed BBCE rule on school meal eligibility as soon as it was ready. Does this mean that USDA finalized its proposed categorical eligibility rule prior to running an analysis to fully understand the proposal’s impact on direct certification for free school meals through the National School Lunch Program, a program your agency administers in addition to SNAP?
- **Deputy Under Secretary Brandon Lipps.** As part of an ongoing effort in the National Defense Authorization Act (NDAA) to address food insecurity among military families, a FOIA request revealed that 1 in 3 children at Department of Defense-run schools are eligible for free or reduced-price school meals. At one base—Georgia’s Fort Stewart—65 percent were eligible. We know that children in military families are statistically more likely to enlist in the Armed Services, so it seems important to know that these children are receiving regular nutritious meals to ensure that they are physically fit to serve. Has USDA examined the impact the proposed SNAP cuts will have on military families?
- **Deputy Under Secretary Brandon Lipps.** I am deeply concerned about staggering rates of food insecurity among Native American children, as well as the impact this proposed rule change would have on another important nutrition assistance program, the Food Distribution Program on Indian Reservations (FDPPIR). FDPPIR serves an average of 90,000 Native Americans, and the program is not structured to handle the inevitable spike in participation by tribal citizens who would be cut from SNAP. Furthermore, I am troubled by reports USDA did not provide adequate consultation with tribal leadership on this proposed rule change. USDA held a “listening session” with tribes in February, but this is not the same as a meaningful consultation. I was informed that tribes were provided little notice and the session was held at the same time and in direct conflict with an earlier scheduled USDA-FNS consultation with tribal leadership on FDPPIR, which made it extremely difficult for tribal leadership, program managers, nutrition experts, and non-Native allies to attend. Why didn’t USDA hold a proper consultation with tribes, as required by law? Has USDA analyzed the potential impact of the proposed BBCE rule on FDPPIR participation? What is the estimated impact of this proposed rule change on native children and families and what is USDA doing to address the needs of these children?

- **Deputy Under Secretary Brandon Lipps.** There has been recent press about the issue of “lunch shaming,” whereby children are stigmatized and sometimes publicly shamed when they are unable to pay for school meals. My sense is USDA’s proposal to restrict use of BBCE will push more students from free to reduced-price meal eligibility and potentially exacerbate the problem of lunch shaming. How is USDA examining the issue of lunch shaming as it relates to the proposed rule to cut BBCE in SNAP? What data can you provide about how the proposed rule would potentially increase the chances of lunch shaming? How will you address the fact that this proposal will put more pressure on schools to collect payment for reduced-price meals, and how will you ensure that schools communicate with families without shaming students who have outstanding debt?
- **Deputy Under Secretary Brandon Lipps.** A large number of SNAP beneficiaries use secure, free third-party apps to manage their benefits. These third-party informational apps allow SNAP beneficiaries to check their SNAP balance and track their spending, find retailers that accept SNAP, access grocery store coupons, and apply for jobs that can help them earn additional income. To my knowledge, USDA has not provided guidance to states, state SNAP agencies or SNAP recipients regarding the use of appropriate third-party apps. Does USDA have existing guidelines or plan to craft guidelines for third party mobile applications, in particular third-party informational apps?

Representative Ilhan Omar (D-MN)

- **Deputy Under Secretary Brandon Lipps.** According to the School Nutrition Association, 75 percent of school districts are grappling with unpaid student meal debt issues as of school year 2016-2017. This proposed rule will exacerbate this problem by both decreasing the number of children eligible for free meals and undermining the Community Eligibility Provision. How is USDA planning to address these negative consequences of worsened unpaid meal debt on families and school districts across the country?
- **Deputy Under Secretary Brandon Lipps.** Congress made the decision to make ALL children from households receiving SNAP eligible for free school meals, and Congress reaffirmed its commitment to including those children who qualify for SNAP through Broad-Based Categorical Eligibility (BBCE) when passing the 2018 Farm Bill. Why is the Department proposing to take away free school meals from these children when Congress has decided that they should be eligible?

Representative Susie Lee (D-NV)

- **Deputy Under Secretary Brandon Lipps.** Knowing that good customer service is important to your department, were beneficiaries of SNAP and free school meals spoken with when drafting this new rule, for the purpose of considering their input?
- **Deputy Under Secretary Brandon Lipps.** Does the Department think that implementing this new rule would decrease food insecurity for children? If so, how?
- **Deputy Under Secretary Brandon Lipps.** The proposed rule largely impacts families who make between 130 to 200 percent of the federal poverty level. For a family of four

that translates to an annual income between \$33,475 to \$51,500. Congress allows children in these households to be eligible for free school meals through Broad-Based Categorical Eligibility. Does your department believe that families whose income is between 130 and 200 percent above the poverty level do not need free school meals? How will the Department ensure that all families whose incomes are between 130 and 200 percent above the poverty level receive the food assistance they need?

Questions for the Record

Deputy Under Secretary Brandon Lipps, USDA FNS

Committee on Education and Labor Subcommittee on Civil Rights and Human Services at the hearing entitled, “*Examining the USDA’s Proposed Cuts to Free School Meals*.” held on October 16, 2019

Chairman Robert C. “Bobby” Scott (D-VA)

Mr. Scott: How many children do you estimate will no longer receive free school meals because their families were unable to fill out an individual application?

Response: All households have the opportunity to fill out an individual application for free and reduced priced meals as schools are required to make the applications available. This opportunity is available at any point throughout the entire school year and only needs to be done once per school year, typically at the start when parents are filling out other school forms. USDA anticipates school districts will work with all impacted households to ensure eligible students apply and receive school meals. Most schools are already processing applications for students applying for free or reduced price school meals who are not directly certified. Over 6 million income applications were submitted and processed last school year. In addition, to the extent the impacted students are enrolled in Community Eligibility Provision (CEP) schools and the school continues to participate in CEP, there will be no additional burden.

Representative Marcia Fudge (D-OH)

Ms. Fudge: During the October 16th hearing, you stated USDA provided the analysis of the impact of the proposed BBCE rule on school meal eligibility as soon as it was ready. Does this mean that USDA finalized its proposed categorical eligibility rule prior to running an analysis to fully understand the proposal’s impact on direct certification for free school meals through the National School Lunch Program, a program your agency administers in addition to SNAP?

Response: The proposed rule directly affects SNAP, which is reflected in the Regulatory Impact Analysis released with the proposed rule and does not change eligibility standards for the National School Lunch Program or the School Breakfast Program. Every family continues to have an opportunity to apply for meal benefits.

After the proposed rule was published, the Department received a request from Chairman Scott and others for a specific analysis of the rule’s impact on school meals. We prepared the analysis and provided it to the Chairman as soon as it was cleared for distribution.

Ms. Fudge: As part of an ongoing effort in the National Defense Authorization Act (NDAA) to address food insecurity among military families, a FOIA request revealed that 1 in 3

children at Department of Defense-run schools are eligible for free or reduced-price school meals. At one base—Georgia’s Fort Stewart—65 percent were eligible. We know that children in military families are statistically more likely to enlist in the Armed Services, so it seems important to know that these children are receiving regular nutritious meals to ensure that they are physically fit to serve. Has USDA examined the impact the proposed SNAP cuts will have on military families?

Response: Data from a Census Bureau survey suggests that about 16,000 active-duty military members participated in SNAP in 2017 – less than one-tenth of one percent of all SNAP participants. Because military service is not a condition of eligibility, we do not have detailed data to assess the specific impact of the rule on this group. However, USDA anticipates school districts will work with all impacted households to ensure eligible students apply for and receive school meals. Most schools are already processing applications for students applying for free or reduced price school meals who are not directly certified. Over 6 million income applications were submitted and processed last school year. In addition, to the extent the impacted students are enrolled in Community Eligibility Provision schools and the school continues to participate in CEP, there will be no additional burden.

Ms. Fudge: I am deeply concerned about staggering rates of food insecurity among Native American children, as well as the impact this proposed rule change would have on another important nutrition assistance program, the Food Distribution Program on Indian Reservations (FDPIR). FDPIR serves an average of 90,000 Native Americans, and the program is not structured to handle the inevitable spike in participation by tribal citizens who would be cut from SNAP. Furthermore, I am troubled by reports USDA did not provide adequate consultation with tribal leadership on this proposed rule change. USDA held a “listening session” with tribes in February, but this is not the same as a meaningful consultation. I was informed that tribes were provided little notice and the session was held at the same time and in direct conflict with an earlier scheduled USDA-FNS consultation with tribal leadership on FDPIR, which made it extremely difficult for tribal leadership, program managers, nutrition experts, and non- Native allies to attend. Why didn’t USDA hold a proper consultation with tribes, as required by law? Has USDA analyzed the potential impact of the proposed BBCE rule on FDPIR participation? What is the estimated impact of this proposed rule change on native children and families and what is USDA doing to address the needs of these children?

Response: A formal consultation on the proposed rule entitled *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)* was conducted on August 15, 2018. The participating Tribes provided no feedback on the rule. Households with Native Americans represent about 1.2 percent of all SNAP households. About 9 percent of households with Native Americans are expected to be impacted by this rule, similar to the impact on all SNAP households. This equates to roughly 20,500 households in FY 2018.

FDPIR, like SNAP, is designed to provide household food assistance in a way that may provide better service for some Native American households, such as those without adequate access to retail food stores. Households that are eligible for both FDPIR and SNAP may participate in one program or the other at their option. Simultaneous participation in both programs is prohibited.

FDPIR eligibility rules are similar to, but not exactly the same as, SNAP. If the rule impacts a family's SNAP eligibility, but they retain FDPIR eligibility, they may shift to participate in FDPIR. USDA will closely monitor participation and use our authorities, as well as work with Congress, to ensure funding is available to support participation in FDPIR for all eligible households.

Ms. Fudge: There has been recent press about the issue of “lunch shaming,” whereby children are stigmatized and sometimes publicly shamed when they are unable to pay for school meals. My sense is USDA’s proposal to restrict use of BBCE will push more students from free to reduced-price meal eligibility and potentially exacerbate the problem of lunch shaming. How is USDA examining the issue of lunch shaming as it relates to the proposed rule to cut BBCE in SNAP? What data can you provide about how the proposed rule would potentially increase the chances of lunch shaming? How will you address the fact that this proposal will put more pressure on schools to collect payment for reduced-price meals, and how will you ensure that schools communicate with families without shaming students who have outstanding debt?

Response: Of the estimated 982,000 children in households that would need to submit a household application to apply for free or reduced price meals, about 445,000 (or 45 percent) would be eligible for free meals, about 497,000 (or 51 percent) would be eligible for reduced price school meals, and another 40,000 (or 4 percent) would be eligible only for paid school meals because their household income exceeds the statutory limit of 185 percent of the Federal poverty level.

Under current policy, USDA requires all school food authorities operating the Federal school meal programs to have in place a written and clearly communicated system to address unpaid meal charges. Schools are also required to inform families how to apply for free or reduced price meals school meals every school year and are strongly encouraged to provide assistance to families who may struggle to complete the application independently.

Further, USDA provides extensive guidance and best practices to improve the school meal application process so that eligible children are promptly certified for free or reduced price meals. These resources are available on our unpaid meal charges webpage: <https://www.fns.usda.gov/school-meals/unpaid-meal-charges>. The webpage also highlights strategies schools may use to prevent and manage unpaid meal charges, including policy guidance, presentations, checklists, and best practice materials.

Ms. Fudge: A large number of SNAP beneficiaries use secure, free third-party apps to manage their benefits. These third-party informational apps allow SNAP beneficiaries to check their SNAP balance and track their spending, find retailers that accept SNAP, access grocery store coupons, and apply for jobs that can help them earn additional income. To my knowledge, USDA has not provided guidance to states, state SNAP agencies, or SNAP recipients regarding the use of appropriate third-party apps. Does USDA have existing guidelines or plan to craft guidelines for third party mobile applications, in particular third-party informational apps?

Response: Third party apps (i.e. those provided by companies or entities that are not generally contracted with States for this service) offer benefits to SNAP clients but also present challenges in regards to data sharing, privacy, and security. FNS continues to provide technical assistance to States that wish to incorporate access to third party apps into their systems or Electronic Benefit Transfer (EBT) contracts in order to reconcile and balance these issues. For apps that do not involve a formal, contractual arrangement, FNS tries to stay apprised of their offerings to SNAP participants. FNS continues to monitor this area and review the need for further guidance.

Representative Ilhan Omar (D-MN)

Ms. Omar: According to the School Nutrition Association, 75 percent of school districts are grappling with unpaid student meal debt issues as of school year 2016-2017. This proposed rule will exacerbate this problem by both decreasing the number of children eligible for free meals and undermining the Community Eligibility Provision. How is USDA planning to address these negative consequences of worsened unpaid meal debt on families and school districts across the country?

Response: USDA has developed numerous resources to support schools in their efforts to prevent and manage unpaid meal charges, including policy guidance, webinars, handbooks, and trainings. These resources provide a variety of strategies school nutrition professionals may use to address this issue in a way that meets the needs of schools, families, and children. You can find these resources on our unpaid meal charges webpage: <https://www.fns.usda.gov/school-meals/unpaid-meal-charges>.

At the beginning of a new school year, children's eligibility for free or reduced price meals from the previous school year carries over for 30 operating days or until a new eligibility determination is made, whichever comes first. Ensuring eligible children are promptly certified for free or reduced price meals by the end of the carryover period is an important step in preventing unpaid meal charges. Children who are not directly certified for free meals may establish eligibility for free or reduced price meals through the application process. Our guidance highlights best practices to ensure families are aware of the application and the benefits of completing it. For example, we recommend sharing information about school meals during fall registration and school conferences, and strongly encourage schools to provide assistance to families who may struggle to complete the application independently.

Additionally, proactively reminding families of their child's low account balance before it goes negative is consistently cited as a best practice to prevent unpaid meal charges. We recommend communicating payment reminders respectfully, privately, and directly with parents or guardians via phone, text, and email, rather than notifying children of their meal debt in front of their peers. Using a variety of communication strategies will help to ensure the message reaches the family in a timely manner.

Taking steps to make payment more convenient for families may also prevent unpaid meal charges. For example, we encourage schools to allow families to add money to their child's

account from a computer or mobile device, while also maintaining the required in-person payment option. If a family accrues unpaid meal charges, schools should assess the situation to determine if a repayment plan would be helpful. This approach can make the process more manageable for a family facing a temporary financial setback. These and other ideas are described in our fact sheet, “Preventing Lunch Shaming: Payment Methods,” which is available on our website.

Ms. Omar: Congress made the decision to make ALL children from households receiving SNAP eligible for free school meals, and Congress reaffirmed its commitment to including those children who qualify for SNAP through Broad-Based Categorical Eligibility (BBCE) when passing the 2018 Farm Bill. Why is the Department proposing to take away free school meals from these children when Congress has decided that they should be eligible?

Response: USDA administers the National School Lunch and School Breakfast Programs according to statute, as enacted by Congress. Generally, under current law, children from families with income at or below 130 percent of poverty are eligible for free school meals, and children from families with income between 130 percent and 185 percent of poverty are eligible for school meals at reduced price. According to the laws set by Congress, those households exceeding 185 percent of poverty do not qualify for free or reduced price meals. USDA stands ready to assist should Congress be interested in addressing income eligibility for school meals through reauthorization.

USDA is also tasked with regulating items that are contained within the Food and Nutrition Act of 2008 (the Act). Section 4(c) of the Act gives USDA general authority to promulgate regulations, consistent with the Act that “the Secretary deems necessary or appropriate for the effective and efficient administration of the Supplemental Nutrition Assistance Program.” It is important to note that the Administration’s proposed rule does not eliminate Categorical Eligibility. All children who live in households that receive SNAP will continue to be categorically eligible for free school meals.

Section 5(a) of the Act and current regulations allow households in which all members receive benefits under a State program funded through Temporary Assistance for Needy Families (TANF) to be categorically eligible for SNAP. Currently, in some cases, the TANF-funded benefit is as minimal as a brochure or application printed with TANF funds, which is often provided without a robust eligibility determination by TANF. Once these “benefits” are received, households may be categorically eligible for SNAP, even if they exceed the statutory eligibility established by Congress. The Department believes the proposed BBCE rulemaking will maintain categorical eligibility’s dual purpose of streamlining program administration while ensuring that SNAP benefits are targeted to the appropriate households, as required by the law.

Representative Susie Lee (D-NV)

Ms. Lee: Knowing that good customer service is important to your department, were beneficiaries of SNAP and free school meals spoken with when drafting this new rule, for the purpose of considering their input?

Response: Public comment is a critical part of the rulemaking process. The proposed rule provided for a 60 day comment period from July 24 to September 23, 2019. USDA received over 157,000 responses, including input from beneficiaries of SNAP and free school meals. In addition, the comment period was reopened for two weeks upon the release of the additional analysis on the interaction with school meals, allowing additional opportunities for feedback. USDA then received more than 25,000 additional comments. The Department is considering these comments as we finalize the BBCE rule. We remain committed to listening to and collaborating with all of our stakeholders regarding this critical program.

Ms. Lee: Does the Department think that implementing this new rule would decrease food insecurity for children? If so, how?

Response: As USDA explained in the regulatory impact analysis for the proposed rule, this rule may negatively impact food security among those individuals who do not meet the income and resource eligibility requirements for SNAP. This includes households with children, but to a lesser extent than to the SNAP population overall. Approximately 7.4 percent of SNAP households with children would lose eligibility for SNAP under the proposed rule, compared with 9.0 percent of households overall. A 2013 study on the effects of SNAP on food security found that participating in SNAP for 6 months was associated with a decrease in food insecurity by about 5 to 10 percentage points. The effect was even greater for households in which children were food insecure with a 9 to 10 percentage point decrease in food insecurity. The two groups most affected by this rule are households with elderly members or households with income over 130 percent of poverty. The study found that receiving SNAP did not reduce the prevalence of food insecurity among households with elderly members. For households with monthly gross income over 130 percent of poverty, the study showed mixed results with a 13 percent reduction in the prevalence of food insecurity in the longitudinal sample but no significant impacts in the cross-sectional sample. See Mabli, James, Jim Ohls, Lisa Dragoset, Laura Castner, and Betsy Santos, "Measuring the Effect of Supplemental Nutrition Assistance Program (SNAP) Participation on Food Security", prepared by Mathematica Policy Research for the U.S. Department of Agriculture, Food and Nutrition Service, August 2013, pp. 31, 33.

The rule to limit broad based categorical eligibility will increase the number of states that apply the specific income and resource standards in statute in determining eligibility for SNAP benefits. This will reduce the number of households that do not meet these standards and still receive benefits and, in turn, reduce the number of children directly certified for free school meals based on SNAP certification. An estimated 982,000 children are in households that would need to submit a household application to apply for free or reduced price meals. The majority of these children (about 942,000 or 96 percent) would still be eligible for free or reduced price school meals. The remaining 40,000 would be not be eligible for free or reduced price meals because their household income exceeds 185 percent of the Federal poverty level.

USDA expects that the rate of food insecurity for these children would be comparable to those of other similarly situated children in households with income at or above 185 percent of the federal poverty level in which the rate of food insecurity among children was 2.9 percent in 2018.

Ms. Lee: The proposed rule largely impacts families who make between 130 to 200 percent of the federal poverty level. For a family of four that translates to an annual income between \$33,475 to \$51,500. Congress allows children in these households to be eligible for free school meals through Broad-Based Categorical Eligibility. Does your department believe that families whose income is between 130 and 200 percent above the poverty level do not need free school meals? How will the Department ensure that all families whose incomes are between 130 and 200 percent above the poverty level receive the food assistance they need?

Response: USDA administers the National School Lunch and School Breakfast Programs according to statute, as enacted by Congress. Generally, under current law, children from families with income at or below 130 percent of poverty are eligible for free school meals and children from families with income between 130 percent and 185 percent of poverty are eligible for school meals at reduced price. The income eligibility guidelines used in determining eligibility for free or reduced priced meals are intended to direct benefits to those children most in need and are adjusted annually to account for changes in the Consumer Price Index. According to the laws set by Congress, those households exceeding 185 percent of poverty do not qualify for free or reduced price meals. USDA stands ready to assist should Congress be interested in addressing income eligibility for school meals through reauthorization.

Likewise, the Food and Nutrition Act of 2008 is clear with respect to the income and eligibility criteria that SNAP households must meet. Generally, households without an elderly or disabled member must have a monthly gross income equal to or lower than 130 percent of the Federal Poverty Level (FPL) and a net income less than or equal to 100 percent of the FPL in order to be eligible for SNAP. Households with an elderly or disabled member do not have to meet the gross income test and must only meet the net income test.

Section 5(a) of the Act and current regulations allow households in which all members receive benefits under a State program funded by Temporary Assistance for Needy Families (TANF) to be categorically eligible for SNAP. When using non-cash TANF benefits to confer categorical eligibility, many States use income thresholds and resource limits that are higher than the Federal standards for SNAP. This has resulted in many households receiving SNAP benefits when they would not otherwise be eligible under regular program rules. FNS has an obligation to expend taxpayer funds in a fiscally responsible manner and in alignment with the intent of the Food and Nutrition Act to reduce food insecurity among low-income households. The proposed rulemaking will target benefits to those most in need while also ensuring program integrity within SNAP.

In regards to school meals, households with children who are not directly certified for free meals can establish eligibility for free or reduced price meals by submitting a household application for meal benefits, as 6 million children did last school year. USDA works with its State partners to

make the application easy for households to complete accurately and to ensure that all interested and eligible households have access to the application. At the beginning of each school year, schools are required to distribute a school meals application to families with information on how to apply for benefits. The same information must also be shared with local media, the local unemployment office, and any major employers contemplating large layoffs in the area from which the school draws its attendance.

Schools have developed a variety of strategies to ensure families are aware of the school meal application and the benefits of completing it. USDA promotes the following best practices to reach *all* eligible children:

- Summer Outreach: encouraging households to submit applications as early as possible in the school year, so children are certified for benefits the first time they walk through the lunch line. Schools that operate the Summer Food Service Program or the Seamless Summer Option are also encouraged to distribute school meal applications to participating children.
- School Year Outreach: encouraging schools to incorporate application outreach into fall registration or encouraging families to apply during open house events or school conferences. USDA also encourages schools to offer application assistance at school events, which helps to ensure families complete the application correctly. Schools can host a “School Meals Booth” during back-to-school night and other school events, or choose to provide assistance during student conferences.
- Community Outreach: encouraging schools to incorporate application outreach into other efforts to reach low-income families (such as outreach for SNAP or Medicaid) can help schools identify eligible families and ensure those families submit an application for school meal benefits. Some schools post fliers and distribute applications in job offices, WIC clinics, public libraries, and food pantries to encourage eligible families to apply.

[Whereupon, at 4:36 p.m., the subcommittee was adjourned.]

