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

Docket No. FNS-2018-0037

*Re: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance, 84 FR 35570*

Dear Brandon Lipps:

We take this opportunity to comment in opposition to the Food and Nutrition Service's (FNS) proposed rule (Docket No. FNS-2018-0037) on changes to the categorical eligibility provisions of the Supplemental Nutrition Assistance Program (SNAP).

The Farm Bill Law Enterprise brings together academic and clinical programs with expertise in agriculture, nutrition, and the environment. Our mission is to work toward a farm bill that reflects a thoughtful consideration of the long-term needs of our society, including economic opportunity and stability, public health and nutrition, public resources stewardship, and fair access and equal protection. We accomplish this mission through joint research, analysis, and advocacy and by drawing on the experience of our members, collaboratively building deeper knowledge, and equipping the next generation of legal practitioners to engage with the farm bill.

Through our research on the public health and nutrition programs in the farm bill, we have developed expertise in SNAP. With this background, FBLE writes to oppose the proposed changes to SNAP and categorical eligibility.

## **Background**

Reaching an average of 40 million people nationwide per month in 2018,<sup>1</sup> the Supplemental Nutrition Assistance Program (SNAP) plays a critical role in preventing hunger and food insecurity for millions of vulnerable low-income people across the nation. In 2018, the average monthly SNAP benefit per person was \$125, averaging roughly \$1.37 per person per meal.<sup>2</sup> This is already a dismally low rate, that is not enough to ensure even a basic level of food security or provide the economic power to purchase healthy choices.

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<sup>1</sup> FOOD & NUTRITION SERV., DEP'T OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM PARTICIPATION AND COSTS (Mar. 8, 2019), <https://fns-prod.azureedge.net/sites/default/files/pd/SNAPsummary.pdf>.

<sup>2</sup> *Id.*



SNAP has two pathways for qualifying for the program. One pathway is to meet certain income and asset tests, the criteria for which are generally set at the federal level.<sup>3</sup> The second pathway to receiving SNAP benefits is through meeting categorical eligibility criteria, which can be set by states up to certain federal limits.<sup>4</sup>

To qualify under the federal income and assets tests, applicant households must have both income and assets below certain thresholds. The income threshold for a household without a member living with disability or an elderly member requires that the household show a gross monthly income less than 130% of the poverty line after exclusions.<sup>5</sup> Further, applicant households without an elderly or disabled family member may not have over \$2,250 in assets or \$3,500 if one member of the household is elderly or has a disability.<sup>6</sup> Assets include liquid assets, such as savings accounts, or non-essential property.<sup>7</sup> The current poverty threshold for a family of four is \$2,092 monthly;<sup>8</sup> which would make the annual salary of a family on SNAP that qualifies under the income and assets criteria less than \$2,720. However, the average living wage in the United States is \$5,570.<sup>9</sup> A living wage is an estimate of the amount of money a family would have to make to meet minimum costs of food, childcare, health costs, housing, transportation, and other necessities.<sup>10</sup> As such, many American families already are living on incomes that do not provide basic necessities, but also do not have access to nutrition assistance.

Thus, many families receive relief through the second pathway for SNAP eligibility, categorical eligibility. Categorical eligibility allows for SNAP recipients to qualify for the program due to their enrollment in other programs, namely Temporary Assistance to Needy Families (TANF), Supplemental Security Income or various programs that assist elderly, disabled, or blind individuals.<sup>11</sup> TANF is a block grant from the federal government to states, implemented in the early 1990s, to provide support for state-based programs to: (1) assist families with children such that they may stay in their homes, (2) eliminate dependence on government programs through job training and marriage, (3) prevent out-of-wedlock pregnancies, and (4) encourage two parent

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<sup>3</sup> 7 U.S.C. § 2014(a) (2018).

<sup>4</sup> *Id.*

<sup>5</sup> 7 U.S.C. § 2014(c); *Supplemental Nutrition Assistance Program (SNAP) Fiscal Year (FY) 2019 Income Eligibility Standards*, U.S. DEP'T OF AGRIC. (Oct. 1, 2018), <https://fns-prod.azureedge.net/sites/default/files/media/file/FY19-Income-Eligibility-Standards.pdf>.

<sup>6</sup> 7 U.S.C. § 2014(g); *SNAP Eligibility*, FOOD & NUTRITION SERV. USDA (Aug. 14, 2019), <https://www.fns.usda.gov/snap/recipient/eligibility#Am%20I%20eligible%20for%20SNAP?>.

<sup>7</sup> 7 U.S.C. § 2014(g)(2).

<sup>8</sup> *Supplemental Nutrition Assistance Program (SNAP) Fiscal Year (FY) 2019 Income Eligibility Standards*, U.S. DEP'T OF AGRIC. (Oct. 1, 2018), <https://fns-prod.azureedge.net/sites/default/files/media/file/FY19-Income-Eligibility-Standards.pdf>.

<sup>9</sup> Carey Nadeau & Amy Glasmeier, *Bare Facts About the Living Wage in America 2017-2018*, LIVING WAGE CALCULATOR, MASS. INST. TECH. (Aug. 30, 2018), <https://livingwage.mit.edu/articles/31-bare-facts-about-the-living-wage-in-america-2017-2018>.

<sup>10</sup> LIVING WAGE CALCULATOR, MASS. INST. TECH., <https://livingwage.mit.edu/pages/about> (last visited Sept. 23, 2019).

<sup>11</sup> 7 U.S.C. § 2014(a).



families.<sup>12</sup> The federal government gives states broad discretion to implement federally-funded or subsidized programs that achieve any of these goals.<sup>13</sup> States use this discretion to determine whether to offer cash assistance or other benefits.<sup>14</sup> TANF programs that are directed toward goals one and two must be needs tested, whereas states may direct programs advancing goals three and four to any individual in the state.<sup>15</sup>

Currently, USDA regulations require that households in which all members receive or qualify to receive *cash* benefits funded by TANF are eligible to receive SNAP through categorical eligibility.<sup>16</sup> In addition, under USDA regulations, states may opt-in to expand categorical eligibility for SNAP.<sup>17</sup> To receive categorical eligibility for non-cash benefits, at least half of the benefits program must be funded by TANF.<sup>18</sup> Further, if the TANF program is directed at goals three and four, recipients must have a gross monthly income at or below 200% of the federal poverty threshold for the program to convey categorical eligibility.<sup>19</sup> 42 jurisdictions—which includes 39 states, the District of Columbia, Guam, and the Virgin Islands-- have elected to adopt broad-based categorical eligibility.<sup>20</sup> Currently, states have broad authority to elect how robust their categorical eligibility is, including what programs convey SNAP eligibility and how stringent the income and asset tests are for those programs.<sup>21</sup>

USDA's proposed rule seeks to alter the longstanding structure of categorical eligibility by only permitting certain types of benefits to qualify applicants for SNAP, rather than allowing states to make these determinations.<sup>22</sup> The proposed rule does this by changing "benefit" for purposes of categorical eligibility to mean only cash benefit or a limited number of TANF benefits. Under the current regulatory system, "benefit" has a broad, plain language meaning of any program offered to a recipient under TANF.<sup>23</sup> Specifically, USDA's proposed rule would only permit SNAP categorical eligibility if the TANF recipient receives cash benefits for at least six months, with a minimum value of \$50.<sup>24</sup> Importantly, Cash benefit programs only accounted for 24% of the total TANF expenditure in FY 2016.<sup>25</sup> Beyond cash benefits, the proposed rule dramatically restricts the availability of SNAP categorical eligibility for non-cash TANF recipients. The proposed rule would require the recipient to receive non-cash benefits for at least six months, would require the value of the benefits to be at least \$50, and would mandate that the received benefit only include

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<sup>12</sup> 42 U.S.C. § 601 (2018).

<sup>13</sup> 42 U.S.C. § 602 (2018).

<sup>14</sup> Randy Aussenberg & Gene Falk, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility*, Cong. Research Serv. 8 (Aug. 1, 2019), <https://fas.org/sgp/crs/misc/R42054.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> 7 CFR § 273.2(j) (2000).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at (j)(2)(i).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 7 CFR § 273.2(j).

<sup>22</sup> 84 FR 35570.

<sup>23</sup> 7 CFR § 273.2(j).

<sup>24</sup> 84 FR 35581.

<sup>25</sup> *Id.*



transportation, other work related expenses, or childcare.<sup>26</sup> The proposed rule also eliminates any state option of categorical eligibility for individuals or families receiving TANF benefits directed at TANF goals three and four.<sup>27</sup> Further, the proposed rule would require states to submit to USDA for approval a list of those non-cash benefits that would convey categorical eligibility.<sup>28</sup>

If this rule is enacted, nine percent of current SNAP recipients, which includes 1.7 million households and a total of 3.1 million individuals, will lose benefits in FY 2020 alone.<sup>29</sup> Further, 13.2% of households with elderly individuals who currently receive SNAP benefits will lose their benefits.<sup>30</sup> The proposed rule will also undermine jurisdictions' ability to meet the needs of their citizens by eliminating access to broad-based categorical eligibility.

FBLE strongly believes that altering categorical eligibility in SNAP will harm vulnerable persons and will undermine the American food system as a whole. This comment will describe our concerns with the proposed rule, including how the proposed rule will destabilize SNAP recipients, especially the elderly; how it will hinder economic growth; and how it runs counter to recent congressional intent in the 2018 Farm Bill and the legislative history of the TANF provisions.

We strongly oppose this proposed rule and urge USDA not to proceed with its implementation.

**A. The Proposed Rule will harm lives and disrupt vulnerable communities.**

USDA estimates that, under the proposed rule, approximately 1.7 million households or 3.1 million individuals would no longer receive SNAP benefits by FY 2020.<sup>31</sup> This represents 9 percent of total SNAP enrollment.<sup>32</sup> Without these valuable benefits, beneficiaries will experience food insecurity, which is linked to negative health outcomes. This section describes those likely negative health effects, as well as the disproportionate impact on an already vulnerable community, the elderly.

**1. Restricting categorical eligibility will result in increased food insecurity and related negative health outcomes.**

The statutorily defined purpose of food assistance in the United States is to “safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households.”<sup>33</sup> Instead of raising levels of nutrition among low-income households, the USDA proposed rule will force 3.1 million people deeper into food insecurity. Individuals deemed

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> 84 FR 35575.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 7 U.S.C. § 2011 (2018).



deserving of food assistance at the beginning of the year will suddenly lose access to this vital program based on arbitrary changes to longstanding program eligibility.

Without SNAP benefits conveyed through categorical eligibility, a significant contingency of the American public would be food insecure. Research has consistently found food insecurity to be negatively associated with health.<sup>34</sup> In particular, low income individuals facing food insecurity face a higher risk of diabetes,<sup>35</sup> depression,<sup>36</sup> pregnancy complications,<sup>37</sup> and chronic disease.<sup>38</sup> The already-strained U.S. healthcare system will have to bear the costs of the increased health burden associated with 3.1 million more individuals facing food insecurity. The additional costs of expensive emergency services and long-term care for chronic diseases from food insecurity more than outweigh the marginal costs of providing SNAP benefits to households through categorical eligibility.<sup>39</sup> SNAP participants spend an average of \$1,400 less on healthcare annually than similarly situated adults.<sup>40</sup> Healthcare savings were even more pronounced for SNAP beneficiaries relying on Medicare or other forms of public insurance, whose healthcare savings were, respectively, \$2,709 and \$2,544 annually per person more than non-participants.<sup>41</sup> In comparison, the average benefit paid to a SNAP recipient in 2018 was \$127 monthly or \$1,476 annually.<sup>42</sup> Therefore, cutting federal spending on SNAP beneficiaries who utilize Medicare or public insurance would thus lead to increased total federal spending each year, as the average annual increase in healthcare costs would exceed money saved on SNAP benefits.

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<sup>34</sup> Craig Gunderson and James P. Ziliak, *Food Insecurity and Health Outcomes*, 34 HEALTH AFFAIRS 1830 (2015).

<sup>35</sup> David H. Holben and Alfred M. Pheley, *Diabetes Risk and Obesity in Food-Insecure Households in Rural Appalachian Ohio*, 3 PREVENTING CHRONIC DISEASE 1 (2006); Hilary Seligman et al., *Food Insecurity is Associated with Diabetes Mellitus: Results from the National Health Examination and Nutrition Examination Survey (NHANES) 1999–2002*, 22 J. GEN INTERNAL MED. 1018 (2007); Hilary Seligman et al., *Food Insecurity Is Associated With Chronic Disease Among Low-Income NHANES Participants*, 140 J. NUTRITION 304 (2010); Nurgül Fitzgerald et al., *Food Insecurity is Related to Increased Risk of Type 2 Diabetes Among Latinas*, 21 ETHNICITY & DISEASE 328-334 (2011).

<sup>36</sup> Patrick Casey et al., *Maternal Depression, Changing Public Assistance, Food Security, and Child Health Status*, 113 PEDIATRICS 298 (2004); Robert C. Whitaker et al., *Food Insecurity and the Risks of Depression and Anxiety in Mothers and Behavior Problems in their Preschool-Aged Children*, 118 PEDIATRICS e859 (2006); Colleen M. Heflin et al., *Food Insufficiency and Women's Mental Health: Findings From a 3-Year Panel Of Welfare Recipients*, 61 SOC. SCI. & MED. 1971 (2005); Kristine Siefert et al., *Food Insufficiency and Physical and Mental Health In a Longitudinal Survey of Welfare Recipients*, 45 J. HEALTH & SOC. BEHAV., 171 (2004).

<sup>37</sup> Barbara A. Laraia et al., *Household Food Insecurity Is Associated With Self-Reported Pregravid Weight Status, Gestational Weight Gain, and Pregnancy Complications*, 110 J. AM. DIETETIC ASSOC., 692 (2010).

<sup>38</sup> DIETARY GUIDELINES ADVISORY COMM., REPORT OF THE DIETARY GUIDELINES ADVISORY COMMITTEE ON THE DIETARY GUIDELINES FOR AMERICANS, 2010, TO THE SECRETARY OF AGRICULTURE AND THE SECRETARY OF HEALTH AND HUMAN SERVICES (2010), [https://www.nutriwatch.org/05Guidelines/dga\\_advisory\\_2010.pdf](https://www.nutriwatch.org/05Guidelines/dga_advisory_2010.pdf).

<sup>39</sup> Seth Berkowitz, et al., *Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults*, 177 JAMA 1642 (2017)

<sup>40</sup> Seth Berkowitz, et al., *Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults*, 177 JAMA at 1645 (2017)

<sup>41</sup> Seth Berkowitz, et al., *Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults*, 177 JAMA at 1646 (2017)

<sup>42</sup> *Supplemental Nutrition Assistance Program Participation and Costs*, U.S. DEP'T OF AGRIC. (Sept. 6, 2019).



## **2. The Proposed Rule will disproportionately affect the elderly.**

By the Trump Administration's own estimations, 13.2% of households with elderly members currently receiving SNAP benefits would lose their benefits if this rule becomes final.<sup>43</sup> This is likely because more elderly individuals rely on categorical eligibility through TANF and without categorical eligibility these recipients would be at high risk for failing the income and assets tests for SNAP.<sup>44</sup> The changes under the proposed rule would destabilize elderly populations, thereby adversely affecting population health and straining the healthcare system, including Medicare. Among seniors who receive SNAP benefits, nearly four in ten are still food insecure.<sup>45</sup> As a result of this proposed rule, elderly individuals are likely to lose the little food assistance they receive, which often is not even enough to maintain food security. The elderly population is a vulnerable population that is particularly susceptible to poor health outcomes due to food insecurity.<sup>46</sup> Food insecure seniors are 65 percent more likely to be diabetic, 2.3 times more likely to suffer from depression, 66 percent more likely to suffer from a heart attack, and more at risk for many chronic diseases than food secure seniors.<sup>47</sup> The proposed rule will exacerbate these health impacts. Adverse senior health events could have significant negative impact on the healthcare system and be costly for Medicare and private insurers.

Further, food insecurity may exacerbate social isolation among seniors.<sup>48</sup> Social isolation was found to increase healthcare costs by an average of \$134 per month.<sup>49</sup> These added costs burden the healthcare system further. The proposed rule will likely exacerbate social isolation and other health impacts among elderly individuals.

### **B. The Proposed Rule Would Hinder Economic Vitality.**

The proposed rule estimates that restricting categorical eligibility would eliminate nine percent of currently-participating households from the SNAP rosters.<sup>50</sup> SNAP stimulates both the national

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<sup>43</sup> 84 F.R. 35575.

<sup>44</sup> *Id.*

<sup>45</sup> James Ziliak, et al., THE CAUSES, CONSEQUENCES, AND FUTURE OF SENIOR HUNGER IN AMERICA 15 (Mar. 2008), [https://www.researchgate.net/profile/James\\_Ziliak/publication/228641199\\_The\\_Causes\\_Consequences\\_and\\_Future\\_of\\_Senior\\_Hunger\\_in\\_America/links/00b49526fa37a67c3c000000/The-Causes-Consequences-and-Future-of-Senior-Hunger-in-America.pdf](https://www.researchgate.net/profile/James_Ziliak/publication/228641199_The_Causes_Consequences_and_Future_of_Senior_Hunger_in_America/links/00b49526fa37a67c3c000000/The-Causes-Consequences-and-Future-of-Senior-Hunger-in-America.pdf).

<sup>46</sup> *Id.*

<sup>47</sup> James Ziliak & Craig Gundersen, *The Health Consequences of Senior Hunger in the United States: Evidence from 1999-2014 NHANES*, FEEDING AMERICA (Aug. 2017), <https://www.feedingamerica.org/sites/default/files/research/senior-hunger-research/senior-health-consequences-2014.pdf>.

<sup>48</sup> James Ziliak, et al., THE CAUSES, CONSEQUENCES, AND FUTURE OF SENIOR HUNGER IN AMERICA 40 (Mar. 2008), [https://www.researchgate.net/profile/James\\_Ziliak/publication/228641199\\_The\\_Causes\\_Consequences\\_and\\_Future\\_of\\_Senior\\_Hunger\\_in\\_America/links/00b49526fa37a67c3c000000/The-Causes-Consequences-and-Future-of-Senior-Hunger-in-America.pdf](https://www.researchgate.net/profile/James_Ziliak/publication/228641199_The_Causes_Consequences_and_Future_of_Senior_Hunger_in_America/links/00b49526fa37a67c3c000000/The-Causes-Consequences-and-Future-of-Senior-Hunger-in-America.pdf)

<sup>49</sup> Lynda Flowers, et al., Medicare Spends More on Socially Isolated Older Adults, AARP (Nov. 2017), <https://www.aarp.org/content/dam/aarp/ppi/2017/10/medicare-spends-more-on-socially-isolated-older-adults.pdf>.

<sup>50</sup> 84 F.R. 35575 (Jul. 24, 2019).



economy at large and communities where SNAP dollars are spent. USDA’s Economic Research Service (ERS) estimates the multiplier of this stimulus at about \$1.79 of economic activity from every \$1 of SNAP benefits.<sup>51</sup> By implementing its proposed rule, USDA would be stripping a total \$3 billion in benefits and, therefore, \$5.3 billion in economic activity from communities each year. Moreover, the communities most affected would be the low income communities in which many individuals who rely on SNAP reside.

The proposed rule specifically notes the change to categorical eligibility would burden small authorized retailers with \$183 loss of revenue per month from reduced SNAP redemption, or five percent of the total redemption for small business owners.<sup>52</sup> These small retailers comprise 76 percent of all authorized SNAP retailers.<sup>53</sup> This is particularly damaging in an industry, the grocery industry, that only has profit margins of about 1.1 percent.<sup>54</sup>

Additionally, SNAP is a tool for job creation. ERS estimates an increase of at least 9,000 full-time equivalent (FTE) positions for each additional \$1 billion of SNAP benefits.<sup>55</sup> While the exact numbers of job loss are not certain, reducing SNAP enrollment and benefits will reduce the number of FTE’s employed in administering SNAP, and increase unemployment rates in these communities. When unemployment increases, there will be a greater need for food assistance. However, emergency feeding organizations are likely to be ill-equipped to handle the influx in need.

This feedback loop creates a threefold economic impact – loss of benefits for SNAP recipients and needy individuals, loss of economic multiplier in communities, and loss of jobs.

### **C. The Proposed Rule Violates Congressional Intent of both the Architects of the 2018 Farm Bill and the Personal Responsibility and Work Opportunity Reconciliation Act.**

#### **1. The 2018 Farm Bill Conference Committee was presented with very similar provisions as the proposed bill and rejected them in the final bill.**

Approximately every five years, with the passage of the farm bill, Congress has the opportunity to address USDA’s administration of SNAP. The partisan House version of the Bill sought to change the benefits that would qualify individuals for categorical eligibility.<sup>56</sup> Specifically, the House Bill deleted the word “benefit” and replaced it with “cash assistance or ongoing and substantial

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<sup>51</sup> Kenneth Hanson, ECON. RESEARCH SERV., DEP’T OF AGRIC., THE FOOD ASSISTANCE NATIONAL INPUT-OUTPUT MULTIPLIER (FANIOM) MODEL AND STIMULUS EFFECTS OF SNAP 29 (Dec. 2010).

<sup>52</sup> 84 FR 35575.

<sup>53</sup> *Id.*

<sup>54</sup> *Super Market Facts*, FOOD MARKETING INST., <https://www.fmi.org/our-research/supermarket-facts> (last visited Sep. 23, 2019).

<sup>55</sup> Kenneth Hanson, ECON. RESEARCH SERV., DEP’T OF AGRIC., THE FOOD ASSISTANCE NATIONAL INPUT-OUTPUT MULTIPLIER (FANIOM) MODEL AND STIMULUS EFFECTS OF SNAP 29 (Dec. 2010).

<sup>56</sup> H.R. 2, 115th Cong., § 4006 (as passed by House, Jun. 21, 2018).



services.”<sup>57</sup> This change is almost identical to the changes USDA is now attempting to impose through this proposed rule.

Ultimately, the House Farm Bill did not become law. The language regarding categorical eligibility from the House version of the Farm Bill was not present in the Senate version of the Bill, and was removed from the Conference Report and ultimate statutory language.<sup>58</sup> The Conference Committee communicated their congressional intent by excluding the categorical eligibility provisions. The Conference Report was passed by both houses in mid-December 2018 and signed into law on December 20, 2018. Congress, thus, explicitly rejected the changes to categorical eligibility that USDA now attempts to impose via rulemaking.

At President Trump’s signing of the 2018 Farm Bill, Secretary Perdue ensured: “we’re going to do our best to implement the bill as [Congress has] intended.”<sup>59</sup> USDA’s proposed rule does not show USDA to be implementing the bill as Congress intended. If USDA were to promulgate its final rule as this proposed rule is written, USDA would be acting counter to the expressed intent of Congress.

## **2. The 104<sup>th</sup> Congress rejected such a strict construction of categorical eligibility in drafting the Personal Responsibility and Work Opportunity Reconciliation Act and the 1996 Farm Bill.**

With the change from categorical eligibility applying to all benefits to only including some benefits, families who receive many non-cash or in-kind benefits or services from state-funded TANF programs will no longer automatically be enrolled in SNAP. This new definition would be inconsistent with the 1985 farm bill, which created categorical eligibility and used “benefit” to grant automatic eligibility to any household composed of Supplemental Security Income (SSI) or AFDC recipients (Aid to Families with Dependent Children, the precursor to TANF).<sup>60</sup> USDA’s new interpretation eliminates this automatic eligibility.

In its proposed rule, USDA fails to acknowledge Congress’ understanding of categorical eligibility at the time it passed the 1996 reform. It is significant to note the political climate of great scrutiny toward welfare programs at the time Congress created TANF. There was broad support for welfare reform in the Republican controlled House of Representatives and Senate and the Democrat

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<sup>57</sup> *Id.*

<sup>58</sup> H.R. 2, 115th Cong. (as passed by Senate, Jun. 21, 2018); H.R. 2, 115th Cong. (Conf. Report).

<sup>59</sup> Secretary Sonny Perdue, Remarks at Signing of H.R. 2, the Agricultural Improvement Act of 2018 (Dec. 20, 2018).

<sup>60</sup> THE COMMITTEE OF CONFERENCE, U.S. HOUSE OF REPRESENTATIVES, REPORT 99-447, CONFERENCE REPORT TO ACCOMPANY H.R. 2100 FOOD SECURITY ACT OF 1985, 521 (1985), <https://naldc.nal.usda.gov/download/5257779/PDF>.





controlled executive branch.<sup>61</sup> Despite this context, Congress chose not to alter the language granting categorical eligibility for SNAP to many vulnerable populations.

Further, the proposed rule would infringe on the 104<sup>th</sup> Congress's intent to provide space for states to administer welfare programs as they find appropriate. In its restriction of categorical eligibility to only those receiving "ongoing" and "substantial" benefits, USDA contradicts this aim of TANF. Specifically, the legislative history of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 reveals Congress's intention to "restor[e] the States' fundamental role in assisting needy families."<sup>62</sup> USDA's proposed rule would eliminate the ability of states to opt-in to broad-based categorical eligibility and, further, require states to seek approval for any TANF programs related to transportation, childcare, or other approved types of programs that convey SNAP eligibility. This is inconsistent with the intent to restore the state's fundamental role in these programs.

#### **D. The Proposed Rule will make SNAP less efficient.**

While the proposed rule would ostensibly save the federal government funds in SNAP benefit expenditure, as it cuts millions of people from the program, it would create new administrative costs for the states administering SNAP by requiring states to certify more recipients through income and assets testing and to submit for approval TANF programs that convey SNAP eligibility.<sup>63</sup> The proposed rule would have an estimated \$2.314 billion added administrative cost in its pursuit to save \$10.543 billion in program benefits.<sup>64</sup> SNAP is in on par relative to other income assistance programs with regard to administrative costs.<sup>65</sup> SNAP's administrative costs are about 16 cents for each dollar of benefit disbursed.<sup>66</sup> By dramatically decreasing the benefits distributed and increasing administrative costs, SNAP will become much less efficient. In addition to costs associated with inefficiency, USDA estimates a significant increase in burden hours for both state agencies and households in responding to new applications and verifying eligibility with the proposed rule's more stringent requirements.<sup>67</sup> The proposed rule would make a program that was quite efficient, significantly less so.

## **Conclusion**

The proposed rule would disrupt lives, communities, and state agencies. USDA should not implement this rule. Instead, USDA should maintain a strong safety net that can help vulnerable

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<sup>61</sup> Newt Gingrich, *A CONTRACT WITH AMERICA* (1994), <http://www.rialto.k12.ca.us/rhs/planetwhited/AP%20PDF%20Docs/Unit%2014/CONTRAC7.PDF>; Barbara Vobejda, *Clinton Signs Welfare Bill Amid Division*, WASHINGTON POST (Aug. 23, 1996).

<sup>62</sup> H.R. 3734, 104th Cong. (Conf. Report), p. 261, <https://www.congress.gov/104/crpt/hrpt725/CRPT-104hrpt725.pdf>.

<sup>63</sup> 84 FR 35578.

<sup>64</sup> 84 FR 35575.

<sup>65</sup> Julia Isaacs, *The Costs of Benefit Delivery in the Food Stamp Program: Lessons from a Cross-Program Analysis*, U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV. IX (Mar. 2008), [https://www.brookings.edu/wp-content/uploads/2016/06/03\\_food\\_stamp\\_isaacs.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/03_food_stamp_isaacs.pdf).

<sup>66</sup> *Id.*



citizens in times when they most need it and that is flexible to serve vulnerable populations and those in areas with the greatest need. Categorical eligibility has been in place for over 20 years. In that time, categorical eligibility has proven to be effective and efficient for states to operationalize, and it helps increase food security for millions of Americans in need. The proposed rule stands to implement an approach to food assistance that will increase rates of food insecurity and harm vulnerable populations.

The Farm Bill Law Enterprise strongly opposes the proposed rule, and we urge the USDA not to proceed with its enactment.

Sincerely,

The Farm Bill Law Enterprise  
[farmbilllaw.org](http://farmbilllaw.org)

Food Law and Policy Clinic, Emmett Environmental Law and Policy Clinic, Health Law and Policy Clinic | Harvard Law School  
Environmental Law and Policy Clinic | Duke University School of Law  
Food Law Initiative | Elisabeth Haub School of Law at Pace University  
Resnick Center for Food Law and Policy | University of California, Los Angeles School of Law  
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