

September 23, 2019

Submitted via www.regulations.gov

Program Design Branch
Program Development Division
Food and Nutrition Service
3101 Park Center Drive
Alexandria, VA 22302

Re: Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)

Dear SNAP Program Design Branch,

The Shriver Center on Poverty Law fights for economic and racial justice. Over our 51-year history, we have secured hundreds of victories with and for people living in poverty both in Illinois and across the country. We are writing in response to the Department of Agriculture Notice of Proposed Rulemaking published in the Federal Register on July 24, 2019. The Shriver Center strongly opposes proposed changes drastically narrowing the application of Supplemental Nutrition Assistance Program (SNAP) broad-based categorical eligibility (BBCE). USDA (“the Department”) would be acting beyond the scope of its legal authority by promulgating the changes contained in the proposed rule. Further, these changes would have immensely harmful ramifications for working families, seniors, and children who benefit from the broader SNAP eligibility offered through BBCE. If enacted, the proposed rule would cause grave food insecurity and hunger, and place substantial and unnecessary strain on the bureaucratic systems that administer this critical nutritional support. We urge you to withdraw the rule in its entirety and leave current, long-standing policies and guidance in effect.

The Shriver Center on Poverty Law has worked to ensure that all people have access to vital resources and programs that provide for their basic needs and advance their long-term well-being and opportunity. Through our decades of work on behalf of and in partnership with low-income Illinoisans, we have developed deep expertise in anti-hunger programs designed to mitigate suffering within impoverished communities, most notably the SNAP program. We play a leadership role in the state anti-hunger space and convene a statewide coalition of SNAP Advocates for the purpose of organizing around anti-hunger advocacy issues, information sharing, and identifying opportunities for collaboration and collective advocacy. Our expertise is enhanced through our leadership in the broader national anti-poverty space and work with organizations throughout the country on issues related to the proposed rule.

The purpose of the SNAP program is to provide vital nutritional support for those struggling to make ends meet. The proposed rule does not serve that purpose.

When Congress created the SNAP Program (formerly the Food Stamps program) in 1964, they declared the purpose of the program was to “safeguard the health and well-being of the Nation’s

population by raising levels of nutrition among low-income households.”¹ Congress sought to decrease hunger and malnutrition by developing a program to assist recipients in obtaining “a greater share of the Nation’s food abundance.”² Fifty-five years later, the SNAP program is as important as ever. In the richest and greatest food producing nation on Earth, an estimated 41 million people struggle with hunger, 12 million of whom are children.³ In recognition of this crisis, many states have exercised their legal authority to increase access to the critical nutrition assistance provided by the SNAP program. For decades, BBCE has been an extremely effective tool to: expand SNAP eligibility beyond woefully low federal standards, give states crucial flexibility to serve many working families and seniors with savings, streamline program administration, and promote asset-building.

The proposed rule drastically narrows the application of BBCE by severely limiting states ability to confer categorical eligibility through non-cash TANF funded benefits. The Department estimates that this change would cause 3.1 million people around the country to lose SNAP benefits.⁴ If enacted, these proposed changes would be a harmful departure from long-standing policy, that would cause greater food insecurity and increased administrative burdens on both states and recipients. These cruel changes would cause untold amounts of suffering and hunger in the communities we serve. As such, the Shriver Center stands in steadfast opposition to the proposed rule for the reasons set forth below, and we strongly encourage the administration to withdraw it.

The Department does not have statutory authority to enact the restrictions on BBCE contained in the proposed rule

Broad based categorical eligibility was created as a result of welfare “reform” in 1996. Prior to welfare reform, traditional categorical eligibility conveyed expanded SNAP eligibility based on household receipt of cash assistance from Supplemental Security Income (SSI), the Aid for Families with Dependent Children (AFDC) program, or state-run General Assistance (GA) programs. However, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created the TANF block grant to replace the Aid to Families with Dependent Children (AFDC) cash assistance program.⁵ The TANF program’s broad-purpose block grant gave states considerable flexibility to finance a wide range of social and human services designed to serve one of the four core purposes of the TANF program.⁶

¹ Food Stamp Act of 1964, Pub. L. No. 88-525, § 2, 78 Stat. 703 (1964).

² Id.

³ Feeding America, *Hunger in the United States*, <https://www.feedingamerica.org/hunger-in-america/the-united-states> (last visited Mar. 28, 2019).

⁴ Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program, 84 Fed. Reg. 35570 (proposed July 24, 2019) (to be codified at 7 C.F.R. pt. 273).

⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 104 Pub L. No. 193, § 103, 110 Stat. 2105, 2110 (1996).

⁶ (1) to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) to encourage the formation and maintenance of two-parent families. Id.

Congress recognized that this change also meant a broadening of categorical eligibility for SNAP. As such, Congress made a calculated amendment to the Food Stamp Act so that it would conform with PRWORA. This amendment eliminated the requirement that a benefit conferring SNAP categorical eligibility be subject to an approved state plan under Title IV of Social Security Act (SSA) and allowed the conferring benefit to merely be funded by Title IV of SSA.⁷ This amendment not only allowed the Food Stamp Act to be consistent with PRWORA, but meant that Congress intentionally retained the word “benefit” despite its now broader meaning.⁸ The substantial flexibility in the use of funds provided under title IV of SSA after PRWORA, resulted in a tremendous variation of benefits and services offered among the states including non-cash or in-kind benefits funded by TANF.⁹ Congress’ retention of the word “benefit” signaled intent that all of these new types of benefits continued to confer categorical eligibility for SNAP.

Post welfare reform, BBCE has allowed states to convey SNAP categorical eligibility based on receipt of a non-cash TANF “benefit,” as well as TANF cash assistance. TANF benefits other than cash assistance are typically available to a broader range of households and at higher levels of income.^{10 11} More than 40 states across the country, including Illinois, have used BBCE to expand SNAP eligibility to large portions of the state’s SNAP caseload.¹² Of these 40 politically and regionally diverse states, 38 of them – including Texas, California, Alabama, New York, Florida, and West Virginia - confer categorical eligibility using a TANF funded benefit available to all households.

In recent years, with full awareness of the extent to which BBCE can be used to broaden SNAP eligibility, Congress has consistently upheld BBCE on a bipartisan basis. A proposal to roll back, or even eliminate, BBCE was expressly considered and rejected in both the 2014 Farm Bill¹³ and the 2018 Farm Bill.¹⁴ In defending this option, legislators emphasized the importance of state flexibility to serve struggling families even where non-cash TANF programs are created for the sole purpose of conferring categorical eligibility.^{15 16} Crucially, these damaging proposals sought

⁷ Id. at § 109, 110 Stat. at 2169.

⁸ Id. See also, 7 U.S.C. 2014(j)

⁹ CONG. RESEARCH SERV., R42054, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility* (August 1, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R42054>

¹⁰ No state offers categorical eligibility to households with income above 200% FPL. Id.

¹¹ Id.

¹² U.S. DEP’T OF AGRIC., *Broad-Based Categorical Eligibility* (July 2019), available at <https://fns-prod.azureedge.net/sites/default/files/resource-files/BBCE2019.pdf>.

¹³ See Agriculture Act of 2014, Pub. L. No. 113-79; See also H.R. REP. NO. 113-333, at 436 (2014) (Conf. Rep.).

¹⁴ See Agriculture Improvement Act of 2018, Pub. L. No. 115-334; See also H.R. REP. 115-1072, at 631 (2018) (Conf. Rep.).

¹⁵ “We also rejected the House’s proposal to undo a long-standing state option called categorical eligibility. Under this option, states can import the gross income or asset tests from a TANF-funded program into SNAP. States can simplify and streamline SNAP eligibility and enrollment processes but easing these rules and they can expand who is eligible for the program including more working poor, recently unemployed with modest savings and more senior households with savings above the federal limits. This House proposal would have eliminated benefits for some 2 million people in nearly 1 million

to amend the clear language of the Food and Nutrition Act that prescribes the current contours of BBCE, because Congress recognized that a regulatory change would be inconsistent with the law.

Agencies may not regulate in a manner contrary to plain and unambiguous legislative language.¹⁷ The Food and Nutrition Act of 2008 states that: “[H]ouseholds in which each member receives benefits under a State program funded under part A of title IV of the Social Security Act shall be eligible to participate in the supplemental nutrition assistance program.¹⁸ Part A of title VI of the Social Security Act includes the TANF block grant, thus this mandatory language gives statutory authority to BBCE as it currently operates. The statute does not give the Department the discretion to use rulemaking to redefine BBCE and drastically narrow the types of TANF-funded benefits that can confer categorical eligibility.

Where Congress intended the Department to have such discretion, it took care to grant it explicitly. For instance, the Food and Nutrition Act *does* give the Department authority to define the limits of General Assistance (GA) benefits that can confer categorical eligibility for SNAP, saying:

“...[H]ouseholds in which each member receives benefits under a State or local general assistance program *that complies with standards established by the Secretary* for ensuring that the program is based on income criteria comparable to or more restrictive than those under subsection (c)(2), and not limited to one-time emergency payments that cannot be provided for more than one consecutive month, shall be eligible to participate in the supplemental nutrition assistance program.”¹⁹

However, comparable language is absent as it relates to TANF-funded benefits. “[W]here Congress includes particular language in one section of statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion.”²⁰ Here, Congress intended to grant the Department the power to define the limits of SNAP categorical eligibility conferred by GA benefits, but not TANF

households. I appreciate Senator Stabenow's leadership in fighting back against this proposal.” 164 CONG. REC. 10149 (2018). (statement of Rep. Marcia Fudge).

¹⁶ “In converting the Aid for Dependent Families entitlement program into a block grant, Congress understood the tremendous flexibility it was giving states to use funds for a wide range of purposes, including both assistance and benefit programs...[T]he legal flexibility conferred to states under the TANF block grant funding stream to create benefit programs and services with many different purposes and with less restrictive eligibility rules than SNAP also means that states can use these programs to confer categorical eligibility, and provide SNAP for all those determined eligible for such programs. This includes programs and services created solely to leverage this option. The Trump Administration would be wise not to attempt an unlawful rollback of this option. It would run counter to the law and harm families in need.” 164 CONG. REC. 10150 (2018). (statement of Rep. Richard Neal).

¹⁷ *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 844 (1984).

¹⁸ 7 U.S.C. 2014(a)

¹⁹ *Id.*

²⁰ *Dean v. United States*, 556 U.S. 568, 573 (2009) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983))

benefits – as the proposed rule seeks. The Department does not offer any explanation as to the legal authority to make the changes outlined in the proposed rule. This proposal is yet another example of this administration’s attempts to bypass the will of Congress, and exceed the Department’s regulatory authority - to advance changes that dismantle long-standing policy and harm people struggling to make ends meet.

BBCE helps working families with high costs meet their needs. The proposed rule would harm families that are already financially strained.

BBCE gives states the ability to raise income eligibility limits so that families who have higher incomes - but dedicate a significant portion of their income to housing and child care - can continue to access nutritional assistance. Of the 42 states and territories that use BBCE, 33 of them have chosen to raise the gross income limit of 130% of the federal poverty line, with 17 of those states choosing to raise the limit to the maximum allowable 200% of the federal poverty line.²¹ However, in order to receive benefits, virtually all SNAP participants - regardless of categorical eligibility - must still meet the SNAP net income test of 100% of the federal poverty line.²² In 2017, only 0.2% of SNAP benefits were allotted to households above the net income limit.^{23 24}

In 2010, Illinois adopted BBCE to waive asset limits for non-qualifying member households below 130% FPL and qualifying member households below 200% FPL.²⁵ Then, in 2016, Illinois legislatively expanded the application of BBCE and increased gross income limits to 165% FPL for non-qualifying member households and 200% for qualifying member households.^{26 27} At the time of the bill’s passage, the Shriver Center on Poverty Law, advocacy partners, and legislative leaders estimated enactment of expanded gross income eligibility through BBCE would allow 40,000 additional households to be eligible for SNAP with an average monthly allotment of \$125.²⁸ Further, it was estimated that 90% of these benefits would go to households who work

²¹ U.S. DEP’T OF AGRIC., *supra*. Note 12

²² 7 C.F.R. § 273.9(a)(2) 2017; See also CONG. RESEARCH SERV., R42054, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility* (August 1, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R42054>.

²³ Dottie Rosenbaum, *SNAP’s “Broad-Based Categorical Eligibility” Supports Working Families and Those Saving for the Future*, Center on Budget and Policy Priorities (updated July 30, 2019), <https://www.cbpp.org/research/food-assistance/snaps-broad-based-categorical-eligibility-supports-working-families-and>

²⁴ There is a limited exception to this rule for categorically eligible one or two-person households entitled to the minimum SNAP allotment of \$15 a month, even with net income above 100% FPL. See also CONG. RESEARCH SERV., R42054, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility* (August 1, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R42054>.

²⁵ Illinois Department of Human Services, Manual Release #10.07: Expansion of SNAP Categorical Eligibility (March 26, 2010), available at <http://www.dhs.state.il.us/page.aspx?item=49278>

²⁶ Qualifying member households are generally households containing at least one member that is elderly (over 60), blind, or disabled. Qualifying member households are further defined under “elderly or disabled” in 7 CFR § 271.2 and Ill. Reg. § 121.61(a)(1)(A-L).

²⁷ 305 ILCS 5/12-4.13a (2016).

²⁸ See State of Illinois 99th General Assembly Transcription Debate from May 29, 2015, pg. 86, available at <http://ilga.gov/house/transcripts/htrans99/09900058.pdf>

and 82% of the households would have children.²⁹ This boost has remained critical for families in Illinois who would fail to meet the 130% gross income limit for non-categorically eligible households, but who would easily meet the net income test. This is especially true in Chicago, where working families are often forced to spend exorbitant amounts on housing and child care. Housing expenses are a large factor in determining SNAP eligibility, and the combination of expanded gross income limits through BBCE and the high costs of housing, allows many struggling families with slightly higher gross incomes to meet the both the expanded gross and net income test. According the Board of Governors of the Federal Reserve, “the typical renter in the bottom quintile of income distribution spends more than half of monthly income on rent and has less than \$500 dollars left after paying rent.”³⁰ Further, if these families have children, they pay a median of three-fifths of their monthly income in rent and are left with under \$450 in residual income.³¹ The Department of Housing and Urban Development (HUD) defines households that are “cost burdened” by housing expenses as those that dedicate 30% or more of their income to housing expenses, while households that dedicate 50% or more of their income are “severely cost burdened.”³² Data from the Joint Center for Housing Studies from 2017 indicates that in the Chicago Metro area 48% of renters (597,537 people) were cost burdened and 27% of renters were severely cost burdened.³³ In Cook County and within the city limits of Chicago, the situation is exacerbated by the sharp decline in affordable housing supply coupled with the rise in average rents, leaving many renters in increasingly vulnerable positions and forcing them to dedicate greater shares of their income to housing.³⁴ In other parts of Illinois – such as Champaign-Urbana, Decatur, and Mattoon – over 50% of renters are cost-burdened.³⁵ By 2019 poverty standards, a working family of three earning a mere \$27,750 a year would be ineligible for SNAP without BBCE even if the household was severely cost burdened and would easily meet the net income test.³⁶ Without BBCE, working households with modest income above 130% FPL would not have an opportunity to benefit from SNAP earned income

²⁹ Id.

³⁰ Jeff Larrimore & Jenny Schuetz, *Assessing the Severity of Rent Burden on Low-Income Families*, FEDS NOTES, Bd. of Governors of the Fed. Reserve Sys. (December 22, 2017), <https://doi.org/10.17016/2380-7172.2111>.

³¹ Id.

³² See U.S. DEP’T OF HOUS. AND URBAN DEV, *Affordable Housing*, (July 2019), available at https://www.hud.gov/program_offices/comm_planning/affordablehousing/

³³ Joint Center for Housing Studies of Harvard University, *Many Households Burdened by Housing Costs in 2017*, <https://www.jchs.harvard.edu/son-2019-cost-burdens-map> (last visited September 17, 2019).

³⁴ Institute for Housing Studies at DePaul University, *2019 State of Rental Housing in Cook County* (April 23, 2019), <https://www.housingstudies.org/releases/state-rental-2019/>.

³⁵ Joint Center for Housing Studies of Harvard University, *supra* note 33.

³⁶ By 2019 standards, a non-qualifying member household of three with an annual gross income of \$27,750 (just above 130% FPL - \$27,729 or \$2,311 a month), would not be eligible for SNAP even if they were severely cost burdened by housing – devoting 50% of their monthly income (\$1,156) toward rent. Under current operation of BBCE in Illinois, such a family would be entitled to a standard deduction of \$164, a 20% earned income deduction of \$462 monthly, and an excess shelter deduction of \$312 monthly even if the family was not paying for utilities (which would likely entitle them to the max shelter deduction of \$552), for a monthly net income of \$1,375 or \$16,500 annually (well below the net income limit of 100% FPL - \$21,330 annually).

deductions,³⁷ standard deductions,³⁸ and excess shelter deductions³⁹ that in many cases would allow them to qualify.

Child care costs are also a significant expense that allow many working families to benefit from BBCE as it currently functions. Across the country, the cost of child care from a license provider is staggering. The average cost to provide center-based child care⁴⁰ for an infant in the United States is \$1,230 per month. In a family child care home⁴¹, the average cost is \$800 per month.⁴² Out of all 50 states and the District of Columbia, the Economic Policy Institute ranks Illinois 11th in highest childcare costs. The cost of infant care in Illinois can amount to just 1.2% less than in-state tuition at a 4-year public college.⁴³ For SNAP eligible working families, far below the state median income, these costs can be their greatest expense. A minimum wage worker in Illinois would need to dedicate as much as 80% of their income to child care costs.⁴⁴

TANF block grant funded child care assistance is available to low-income families, and in some cases, may continue to confer categorical eligibility under the proposed rule. However, these programs are insufficient to capture all the families that would be harmed. In Illinois, the former Governor enacted harsh eligibility restrictions for the Illinois Child Care Assistance Program (CCAP) in 2015. By January 2016, these cuts resulted in a reduction of almost 20,000 families participating in CCAP.⁴⁵ The restrictions have since been partially reversed, but caseloads are still recovering and take-up rates in CCAP remain low. By the end of 2017 only 43% of income eligible children under 5 and 46% of income eligible children between 6-12 were being served by CCAP in Cook County.⁴⁶ According to the most recent data from the Department of Health

³⁷ 7 C.F.R. § 273.9(d)(2).

³⁸ 7 C.F.R. § 273.9(d)(1). See also U.S. DEP'T OF AGRIC., *Supplemental Nutrition Assistance Program (SNAP) Fiscal Year (FY) 2019 Maximum Allotments and Deductions* (September 2019), available at <https://fns-prod.azureedge.net/sites/default/files/snap/FY19-Maximum-Allotments-Deductions.pdf>

³⁹ 7 C.F.R. § 273(d)(6)(ii). See also U.S. DEP'T OF AGRIC., *supra* note 38.

⁴⁰ “[A] center-based program is defined as the set of all ECE [early care education] services to children birth through five years, not yet in kindergarten, provided by an organization at a single location. Center-based programs include Head Start facilities and preschools and pre-kindergarten classrooms in public schools, as well as private nursery schools, day care centers, and many other types of ECE.” See Administration for Children and Families, *Characteristics of Center-based Early Care and Education Programs* (2014), available at https://www.acf.hhs.gov/sites/default/files/opre/characteristics_of_cb_fact_sheet_final_111014.pdf.

⁴¹ “Individuals who care for other people’s children, age five and under, in home-based settings.” See Administration for Children and Families, *Who is Providing Home-based Early Care and Education?* (April 2015), available at https://www.acf.hhs.gov/sites/default/files/opre/hb_providers_fact_sheet_toopre_041715_508.pdf

⁴² Wimon Workman & Steven Jessen-Howard, *Understanding the True Cost of Child Care for Infants and Toddlers*, Center for American Progress (November 15, 2018), <https://www.americanprogress.org/issues/early-childhood/reports/2018/11/15/460970/understanding-true-cost-child-care-infants-toddlers/>.

⁴³ Economic Policy Institute, *The Cost of Child Care in the United States* (July 2019), <https://www.epi.org/child-care-costs-in-the-united-states/>.

⁴⁴ *Id.*

⁴⁵ Illinois Action for Children, *Report on Child Care in Cook County 2018* (April 2018), http://www.actforchildren.org/wp-content/uploads/2018/04/CookCountyReport_2018_April_Final.pdf

⁴⁶ *Id.*

and Human Services, in 2015 only 15% of eligible children in the United States received some form of child care assistance funded through the Child Care Development Fund, TANF, or the Social Services Block Grant.⁴⁷ The current reach of child care assistance programs is not sufficient to continue to confer categorical eligibility for families who would lose SNAP under the proposed rule. Without the support offered by SNAP, many families who aren't receiving CCAP may be forced to choose between food and vital child care that allows them to pursue employment.

The Department purports that the proposed rule is offered to “ensure SNAP benefits reach those most in need.”⁴⁸ However, SNAP is – and has always been – an entitlement program, meaning that anyone who is eligible is has a right to receive benefits.⁴⁹ This distinguishes SNAP from other programs where the number of eligible people who are able to participate is potentially limited by an appropriation of funds. Further, state agencies already go to great lengths to determine whether households have income low enough to demonstrate eligibility, and the Department has no authority to arbitrarily limit receipt of SNAP to people who it deems deserving, without a change in statute.

For many working families with gross income between 130% and 200% of the federal poverty line - who only qualify for SNAP through BBCE - high child care and housing costs impose tremendous financial strain. Having the extra support offered by the SNAP program can be meaningful, however, these massive costs are such that even the assistance from SNAP may ultimately be insufficient to meet their full nutritional needs. Roughly half of all households participating in SNAP, are still food insecure. With average benefits contributing less than \$1.40 per person per meal, many participants report needing \$10-\$20 more per person per week to buy enough food.⁵⁰ Further, researchers have estimated that SNAP benefits fall short of the weekly cost of a nutritious meal by \$11 per person.⁵¹ There is substantial research to demonstrate the inadequacy of current benefits^{52 53}, but removing even limited benefits would turn many households' situation from desperate to dire.

⁴⁷ Nina Chien, *Factsheet: Estimates of Child Care Eligibility & Receipt for Fiscal Year 2015*, U.S. DEP'T OF HEALTH & HUMAN SERV. OFF. OF THE ASSISTANT SEC'Y FOR PLANNING & EVALUATION (January 2019), available at <https://aspe.hhs.gov/system/files/pdf/260361/CY2015ChildCareSubsidyEligibility.pdf>

⁴⁸ *Supra* note 4 at 35573.

⁴⁹ Center on Budget and Policy Priorities, *The Supplemental Nutrition Assistance Program (SNAP)* (June 25, 2019), available at <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-foodstamps.pdf>

⁵⁰ Steven Carlson, *More Adequate SNAP Benefits Would Help Millions of Participants Better Afford Food*, Center on Budget and Policy Priorities (July 30, 2019), available at <https://www.cbpp.org/research/food-assistance/more-adequate-snap-benefits-would-help-millions-of-participants-better>

⁵¹ *Id.*

⁵² See Food Research & Action Center, *Initiatives to Make SNAP Benefits More Adequate Significantly Improve Food Security, Nutrition, and Health* (February 2019), available at <http://frac.org/wp-content/uploads/snap-initiatives-to-make-snap-benefits-more-adequate.pdf>

⁵³ See Kathryn Edin et al., *SNAP Food Security In-Depth Interview Study*. U.S. DEP'T OF AGRIC., FOOD AND NUTRITION SERV., OFF. OF RESEARCH AND ANALYSIS (2013), <https://fns-prod.azureedge.net/sites/default/files/SNAPFoodSec.pdf>.

The Department’s suggestion that households with gross income above just 130% FPL are not “needy,” is not supported by research or data, fails to account for enormous housing and child care costs, and reveals a complete lack of understanding of both how BBCE operates and the often-perilous financial situations of low-wage workers. Regardless of categorical eligibility, virtually all households receiving SNAP must have net income below the poverty line. After certain qualifying expenses are deducted, these families have little income to develop an adequate food budget. Instead of cruel cuts to nutritional assistance like those in the proposed rule, the Department should focus on improving the sufficiency of benefits and reducing food insecurity.

SNAP and BBCE support work while the proposed rule punishes and disincentives work by creating a benefit cliff.

A Trump administration Executive Order signed on April 10, 2018 directed the Department to review all regulations to determine whether they are consistent with the principles of increasing self-sufficiency, well-being and economic mobility.⁵⁴ Stable employment and fair compensation are critically important to rising out of poverty and achieving financial stability. While a person’s ability to work should not determine whether they are deserving of food, the proposed rule is not well formulated to encourage work and self-sufficiency. Contrary to this administration’s expressed values, this proposed rule does not reward work, but rather disrupts a program that already effectively supports work. The proposed rule punishes families who achieve slightly higher gross incomes and savings through work, and may create incentives for households to work less in order to maintain eligibility to receive SNAP.

Receipt of SNAP makes it easier for people to work. Among adults participating in SNAP who did not receive disability benefits in a typical month in mid-2012, more than half worked in that month, and nearly three-quarters worked at some point in the year before or after receiving benefits.⁵⁵ SNAP contributes to high work rates, because it supplements the incomes of workers who often change jobs or are in between jobs due to the unreliable and volatile nature of the low-wage job market. This work support is especially important in Illinois, where workers relying on the program tend to be in low-wage industries. Illinois workers who participate in SNAP most frequently work in service occupations. In 2017, many of the most common occupations for Illinoisans participating in SNAP – such as cashiers, cooks, and home health care aides - had average hourly wages below \$13.00, far below the state average of \$25.20 in 2017. Workers in many of these jobs rely on SNAP to supplement their incomes, especially in communities with rising costs of living.⁵⁶

SNAP is currently designed to promote work, allowing some families to experience a net

⁵⁴ *Supra* note 4 at 35573-74.

⁵⁵ Brynne Keith-Jennings & Raheem Chaudhry, *Most Working-Age SNAP Participants Work, But Often in Unstable Jobs*, Center on Budget and Policy Priorities (March 15, 2018), <https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>

⁵⁶ Center on Budget and Policy Priorities, *SNAP Helps 1 in 10 Workers in Illinois put food on the Table*, https://www.cbpp.org/sites/default/files/atoms/files/factsheets_11-27-18fa_il.pdf (last visited Mar. 28, 2019).

increase in overall resources when they begin employment, while benefits slowly taper down as income increases. SNAP's structure rewards earnings over unearned income, incentivizing participants to work and to seek greater income through higher wages or more hours. The SNAP earned income deduction disregards 20% of participants' earned income when calculating their net income⁵⁷, and benefits phase out only gradually as income rises (by 24 to 36 cents per additional dollar of earnings; see Figure 2).⁵⁸ BBCE allows states to lift the federally set 130% gross income limit and phase benefits out even more gradually, which lets households close to that threshold take higher-paying work to cover often large expenses, while still maintaining some benefit from SNAP.⁶⁰

By limiting categorical eligibility to an extremely narrow set of TANF funded programing, the proposed rule grievously harms workers and disrupts a system that already effectively supports work. The proposed rule's severe restricting of BBCE will create a "benefit cliff" for many families, potentially causing a net loss in family income due to a minor increase in work income that is less than the amount the family loses in SNAP benefits.⁶¹ ⁶²Nationally, 90% of the benefits allotted as a result of expand gross income through BBCE go to working families with children.⁶³ These workers receive an average of \$100 a month in SNAP benefits, and without BBCE, those on the margin would be incentivized to structure their work schedule to maintain this benefit.⁶⁴ By creating a benefit cliff, the proposed rule is a malicious attack on low-wage workers, rather than a policy genuinely intended to promote work or self-sufficiency.

The proposed rule threatens to widen the racial wealth gap and fails to promote self-sufficiency by punishing prudent financial behaviors like saving and asset-building.

Asset-building and saving are difficult for low income families, but can be essential in helping people maintain financial security. Estimates suggest that one-quarter of families experience income disruptions annually.⁶⁵ Over the course of a year, almost 60% are hit by unforeseen expenses and financial shocks including job loss, illness, healthcare costs, or home / vehicle repair costs.⁶⁶ Savings can help low-income families weather these financial shocks, highlighting

⁵⁷ 7 C.F.R. § 273.9(d)(2).

⁵⁸ Rosenbaum, *supra* note 23.

⁵⁹ See Elizabeth Wolkomir, *Farm Bill Would Impose SNAP Benefit Cliff*, Center on Budget and Policy Priorities Blog (May 9, 2018, 5:30 PM), <https://www.cbpp.org/blog/farm-bill-would-impose-snap-benefit-cliff-taking-assistance-away-from-hundreds-of-thousands-of>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Brittany Birken et al., *Reducing the Cliff Effect to Support Working Families*, Ascend at the Aspen Institute (April 23, 2018), <https://ascend.aspeninstitute.org/reducing-the-cliff-effect-to-support-working-families/>

⁶³ Rosenbaum, *supra* note 23. See also Wolkomir, *supra* note 60

⁶⁴ *Id.*

⁶⁵ Signe-Mary McKernan et al., *Thriving Residents, Thriving Cities: Family Financial Security Matters for Cities*, Urban Institute (April 21, 2016), <https://www.urban.org/research/publication/thriving-residents-thriving-cities-family-financial-security-matters-cities>

⁶⁶ The Pew Charitable Trusts, *The Role of Emergency Savings in Family Financial Security: How do Families Cope with Financial Shocks?* (October 2015), <https://www-aws.pewtrusts.org/>

the important of advancing policies that encourage saving instead of punishing families with minimal money set aside. This is especially critical in a society where many Americans struggle to save, and where a history of racism has excluded many families of color from opportunities to build assets.

In 2013, half of adults indicated that they would struggle to cover an unexpected \$400 cost, or might be forced to borrow money or sell something to pay it.⁶⁷ A 2017 report by the Federal Reserve Board of Governors revealed 40% of adults still said they would be ill-prepared for a surprise \$400 expense.⁶⁸ Troublingly, the same report found that one in five adults was unable to pay all of their current bills, and one in four adults had forgone necessary medical treatment because of the cost.⁶⁹ Many Americans live in extremely precarious financial positions, with families of color at even greater risk.

In 1963, the average wealth of white families was \$121,000 higher than the average wealth of nonwhite families. The racial wealth gap has continued its precipitous increase, and by 2016, the average wealth of white families (\$919,000) was over \$700,000 higher than the average wealth of black families (\$140,000) and of Hispanic families (\$192,000).⁷⁰ One of the biggest factors in this racial wealth gap is the disparity in homeownership. In 1976, 68% of white families owned their home, compared with 44% of black families and 43% of Hispanic families. In 40 years, those percentages have not meaningfully changed.⁷¹ From the continuing impact of Black people's exclusion from the GI Bill, redlining, and the retreat from desegregation in public education, racist public policy has shaped these disparities, leaving them impossible to overcome without racially-aware policy change.^{72 73 74} Rolling back BBCE would be one more negative policy decision impacting the accumulation of wealth for poor families of color.

Allowing states to eliminate or raise asset limits through BBCE can help incentivize saving and financial stability. Researchers from the Urban Institute found that SNAP households in states that have raised the asset limit using BBCE are more likely to have at least \$500 in assets and to

[/media/assets/2015/10/emergency-savings-report-1_artfinal.pdf?la=en&hash=3A4DB4B9651C8DFDF77D0A8D5704CB87C6A4D8D7](#)

⁶⁷ Board of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2017* (May 2018), <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Urban Institute, *Nine Charts about Wealth Inequality in America (Updated)* (October 5, 2017), <http://apps.urban.org/features/wealth-inequality-charts/>

⁷¹ Id.

⁷² David Callahan, *How the GI Bill Left Out African Americans*, Demos.org Blog (November 11, 2013), <https://www.demos.org/blog/how-gi-bill-left-out-african-americans>

⁷³ Laura Sullivan et al., *The Racial Wealth Gap*, Demos and Institute for Assets & Social Policy at Brandeis University (2015),

http://www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf

⁷⁴ Shapiro et al., *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Institute for Assets & Social Policy at Brandeis University (2013)

<https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/roots-widening-racial-wealth-gap.pdf>

have a bank account, compared to similar households in states that maintain the federal asset limit. The study found that policies – such as the proposed rule – that seek to reinstate the federal SNAP asset limits for many SNAP households “will harm family financial stability and security.”⁷⁵ Other research showed a similar phenomenon in the TANF program, finding that higher TANF asset limits encouraged higher liquid assets and was connected to higher rates of families with a bank account.⁷⁶ Additionally, an earlier, pre-welfare-reform study found a strong association between higher asset limits and higher savings among current and potential AFDC recipients.⁷⁷

Injection of an asset test will also be particularly harmful to seniors. Seniors are considered qualifying members for SNAP purposes, and are not subject to a gross income test.⁷⁸ However, because the proposed rule will inject an asset limit into the vast majority of SNAP eligibility determinations, many seniors will be barred from continued receipt of SNAP because of the accumulation of even minimal assets. According to a 2017 report by Feeding America, 28.7% of seniors below the poverty line were experiencing food insecurity with 17.6% of seniors between 100% - 200% of poverty were food insecure.⁷⁹ Many seniors, who may have been fortunate enough to set aside several thousand dollars over the course of their work history, still maintain a useful connection to the SNAP program because of BBCE, allowing them to eat. For seniors, who often face staggering medical costs,⁸⁰ SNAP can be an important supplement to their food budget, the loss of which could mean even greater financial pressure and food insecurity.

A proposed rule that may “reduce the savings rates among those individuals who do not meet the income and resource eligibility requirements for SNAP,” does not sincerely intend to increase self-sufficiency. The proposed rules punishment of asset building is illogical, will harm seniors, and continue to contribute to the racial wealth gap by dis-incentivizing saving for families who have historically been cut out of asset building opportunities.

⁷⁵ The study found that living in a state that adopted BBCE increases the likelihood that a low-income household has savings of at least \$500 (by 8 percent) and has a bank account (by 5 percent). Caroline Ratcliffe et al., *The Unintended Consequences of SNAP Asset Limits*, Urban Institute (July 26, 2016), <https://www.urban.org/research/publication/unintended-consequences-snap-asset-limits>.

⁷⁶ See Yunju Nam, “Welfare Reform and Asset Accumulation: Asset Limit Changes, Financial Assets, and Vehicle Ownership,” 89 *SOCIAL SCIENCE QUARTERLY*, 134, (March 2008).

⁷⁷ See Elizabeth T. Powers, “Does means-testing welfare discourage saving? Evidence from a Change in AFDC Policy in the United States,” 68 *JOURNAL OF PUBLIC ECONOMICS*, 33, (1998).

⁷⁸ 7 C.F.R. § 273.9(a)

⁷⁹ James P. Ziliak and Craig Gundersen, *The State of Senior Hunger in America in 2017*, Feeding America (May 14, 2019), https://www.feedingamerica.org/sites/default/files/2019-06/The%20State%20of%20Senior%20Hunger%20in%202017_F2.pdf

⁸⁰ Lance Stevens & Lawrence Mallory, *U.S. Seniors Pay Billions, yet Many Cannot Afford Healthcare*, Gallup Blog (April 15, 2019), https://news.gallup.com/opinion/gallup/248741/seniors-pay-billions-yet-cannot-afford-healthcare.aspx?g_source=link_NEWSV9&g_medium=TOPIC&g_campaign=item &g_content=U.S.%20520Seniors%2520Pay%2520Billions%2c%2520yet%2520Many%2520Cannot%2520Afford%2520Healthcare

Injecting an asset test into an already rigorous SNAP eligibility determination will be administratively burdensome for both state agencies and SNAP participants.

As the proposed rule states, “categorical eligibility simplifies the SNAP application process for both SNAP State agencies and households by reducing the amount of information that must be verified if a household already qualifies and has been determined eligible to receive benefits from another assistance program.” BBCE helps makes state’s eligibility process more efficient, even causing a 26% reduction in administrative churn.⁸¹ Churn is a phenomenon that can take place during the case recertification process, occurring when households loss eligibility, experience a short period without benefits, and then reapply – prompting the state to process a whole new application.⁸²

However, the administration is incorrect as to the level of information that must be verified in order to receive SNAP benefits. The proposed rule suggests that households qualifying for SNAP through BBCE are subject to a mere “cursory or nonexistent eligibility determination,”⁸³ and thus, “extending categorical eligibility to participants who have not been screened for eligibility compromises program integrity and reduces public confidence that benefits are being provided to eligible households.”⁸⁴ This portrayal of the SNAP eligibility determination as a result of BBCE is inaccurate. In Illinois, as in every other state, households that receive SNAP are still subject to a rigorous eligibility determination requiring state agencies to verify 1) citizenship or USCIS status; 2) state residence; 3) qualifying member status; 4) income; 5) qualifying expenses; and in some cases 6) compliance with work requirements.⁸⁵

The proposed rule will force states to inject an asset test into the SNAP eligibility determination for nearly all applicants. As indicated in the analysis above, an asset test would exclude many low-income households that rely on SNAP as a crucial part of their food budget. In addition, the proposed rule states that “households that remain eligible for SNAP and new SNAP applicants will face additional burden associated with the application process.”⁸⁶ Drastically narrowing BBCE will require all households to produce documents verifying assets. Further, forcing SNAP applicants and state agencies to verify assets will needlessly harm many households who have no assets or assets far below the asset limit, and will increase denials or terminations of eligible households for purely procedural reasons such as a “failure to produce documents.” Only 48% of SNAP households have *any* liquid assets, and the median value among those who do have assets is just \$450.⁸⁷ Just over half of SNAP households have a bank account, and the median amount

⁸¹ Caroline Ratcliffe et al., *Asset Limits, SNAP Participation, and Financial Stability*, Urban Institute and Orlin Research (June 2016), <https://www.urban.org/sites/default/files/publication/81966/2000843-Asset-Limits-SNAP-Participation-and-Financial-Stability.pdf>

⁸² Dottie Rosenbaum, *Lessons Churned: Measuring the Impact of Churn in Health and Human Services Programs on Participants and State and Local Agencies*, Center on Budget & Policy Priorities (March 20, 2015), <https://www.cbpp.org/research/lessons-churned-measuring-the-impact-of-churn-in-health-and-human-services-programs-on>

⁸³ *Supra* note 4 at 35573.

⁸⁴ *Supra* note 4 at 35570.

⁸⁵ See PM 02-07-03-a.

⁸⁶ *Supra* note 4 at 35575.

⁸⁷ Ratcliffe, *supra* note 81.

in the account is just \$150.⁸⁸ However, these households risk being unnecessarily entangled in an eligibility determination that the proposed rule seeks to further complicate, increasing churn and costing billions.

The proposed rule estimates an increase \$1.157 billion in Federal administrative costs, and an additional \$1.157 billion in Federal reimbursement of administrative costs to State agencies (for a total of \$2.314 billion in additional administrative costs).⁸⁹ Further the proposed rule estimates an additional cost to states of \$5 million annually, for the additional burdens associated with the resulting application process.⁹⁰ However, the administration does not provide any basis for these estimates, and the testimony of state leaders suggests they are too low. Any changes to BBCE would require states to alter their SNAP eligibility rules, modify their computer systems, retrain staff, and revise applications and program manuals. Such changes also would make SNAP rules considerably more complicated — and inconsistent with the rules in states’ TANF and Medicaid programs. In a hearing before the House Agriculture Committee in June 2019, Mississippi Executive Director of Human Services John Davis testified that reinstating the asset test would cost the state at least \$1.5 million in Mississippi alone because “automation would be very expensive.”⁹¹ Similarly, Wisconsin Lieutenant Governor Mandela Barnes testified that “eliminating categorical eligibility could cost taxpayers 2 million dollars and likely would take about 18 months to implement. . . . Income maintenance agencies and counties across Wisconsin would also see increased costs if this option was eliminated, because it would take them longer to complete member interviews, request verifications, and process those verifications.”⁹²

Costs may be even greater in Illinois, where the state continues to combat a calamitous rollout of Phase II of the state’s Integrated Eligibility System (IES). The previous state administration implemented IES Phase II in October 2017. The system was plagued by technical glitches, caused statewide system shutdowns, mass terminated benefits for almost 40,000 recipients,⁹³ and has contributed to substantial backlogs in SNAP and Medicaid processing that the state continues to struggle with today. Poor timeliness in application processing has caused the federal government to threaten sanctions,⁹⁴ and subjected the state to corrective action plans for both SNAP and Medicaid. At its worst, in December 2018, the state was processing SNAP

⁸⁸ Id.

⁸⁹ *Supra* note 4 at 35575

⁹⁰ Id.

⁹¹ The Potential Implications of Eliminating Broad-Based Categorical Eligibility for SNAP Households: Hearing Before the Subcomm. on Nutrition, Oversight, and Dep’t Operations of the H. Comm. on Agric., 116th Cong. 5 (2019) (statement of John Davis, Executive Director, Mississippi Department of Human Services).

⁹² The Potential Implications of Eliminating Broad-Based Categorical Eligibility for SNAP Households: Hearing Before the Subcomm. on Nutrition, Oversight, and Dep’t Operations of the H. Comm. on Agric., 116th Cong. 7 (2019) (statement of Mandela Barnes, Lieutenant Governor of Wisconsin).

⁹³ WGN Web Desk & Meghan Dwyer, *Thousands Without Food Stamps Thanks to Computer Glitch*, WGN (December 19, 2017, 6:52 PM), <https://wgntv.com/2017/12/19/thousands-without-food-stamps-thanks-to-computer-glitch/>

⁹⁴ See Letter, Trish Solis, Food and Nutrition Service Acting Midwest Regional Administrator, to Illinois Department of Human Services Sec’y Grace Hou on Illinois SNAP application processing timeliness (March 22, 2019).

applications at a timeliness rate of only 63%.⁹⁵ If Illinois were forced to re-implement an asset test into every SNAP eligibility determination, it would have far-reaching effects for every program administered using IES, and would place substantial strain on already heavily burdened state agencies creating costs for which the proposed rule has not accounted.

The proposed rule would cause tens of thousands of Illinoisans to lose critical assistance from SNAP and threaten free school lunches for hundreds of thousands of children.

Feeding America estimates that 1 in 9 people in Illinois struggle with hunger, including 1 in 6 children.⁹⁶ If enacted, the proposed rule would remove SNAP benefits from working families and low-income households with savings. “The Department estimates that approximately 9 percent of currently- participating SNAP households (an estimated 1.7 million households in FY 2020, containing 3.1 million individuals) will not otherwise meet SNAP’s income and asset eligibility prerequisites under the proposed rule.”⁹⁷ If that estimate is accurate, approximately 82,200 households in Illinois will lose SNAP.⁹⁸ Even worse, this estimate does not account for the tremendous harm caused by further complicating the SNAP eligibility determination, straining state agencies, and causing millions to face greater administrative burdens in trying to access these vital systems of support. Further, the proposed rule completely neglects the effect it will have on children.

Children in SNAP households are directly certified to receive free school meals, thus, hundreds of thousands of children across the country can receive free lunches and breakfasts at school without completing an additional application. Because the proposed rule drastically narrows BBCE and will result in termination from SNAP for many working families with children, an estimated 265,000 children could lose free school meals because of the proposed rule.^{99 100}

Importantly even children who are not in households that directly receive SNAP can benefit from universal free school lunches offered by a “high-poverty school” that benefits from the “community eligibility provision.” The community eligibility provision was created as part of the Healthy, Hunger-Free Kids Act of 2010, and allows schools to offer universal free breakfast and lunch if at least 40% of the student body live in households that are certified to receive free

⁹⁵ Id.

⁹⁶ Feeding America, *Hunger in Illinois*, <https://www.feedingamerica.org/hunger-in-america/illinois> (last visited Mar. 28, 2019).

⁹⁷ *Supra* note 4 at 35575

⁹⁸ U.S. DEP’T OF AGRIC., *Supplemental Nutrition Assistance Program: Number of Households Participating* (data as of September 6, 2019) <https://fns-prod.azureedge.net/sites/default/files/resource-files/30SNAPcurrHH-9.pdf>

⁹⁹ Cong. Budget Off., *Cost Estimate: H.R. 2, Agriculture and Nutrition Act of 2018* (2018), https://www.cbo.gov/system/files/2018-07/hr2_1.pdf

¹⁰⁰ However, some, like Representative Bobby Scott feel this estimate is too low, and as many as 500,000 children could be effected. See Letter, Rep. Bobby Scott, Chairman, H. Comm. on Education and Labor, to Agric. Sec’y Sonny Perdue on estimates showing impact of proposed SNAP changes on free school meals (July 26, 2019), available at <https://edlabor.house.gov/imo/media/doc/2019-07-26%20Chairman%20Scott%20to%20Secretary%20Perdue%20SNAP%20Cat%20E1%20Proposed%20Rule%5b1%5d.pdf>

school lunches.¹⁰¹ In Illinois, 1541 schools provide universal free lunches to their student body because of the community eligibility provision, and 51 of them have an identified student percentage between 40-49%.¹⁰² If droves of working families are removed from the SNAP and direct certification for free school lunches, these schools may fall below the requisite 40% threshold for community eligibility, and lose the ability to provide universal free lunch.

Further, this is another area of the proposed rule that will have a disproportionate impact on children of color. Over a third of the community eligible schools in Illinois (540) are in one community - the City of Chicago School District #299 (CPS).¹⁰³ Of the over 360,000 CPS students, 89.2% are students of color, with 76.6% of them labelled by the district as “economically disadvantaged.”¹⁰⁴ If enough of those students lose their connection to the SNAP program, and thus their automatic enrollment in free school lunches, the universal free lunches offered to all CPS students could be threatened. While nearly all children whose families would lose SNAP if BBCE were rolled back would qualify for reduced-price meals, they would have to file an application, which not all would do. As a result, many would either pay the reduced price (about \$15 per month per child), or lose school meals altogether.¹⁰⁵

Conclusion

The proposed rule would cause tens of thousands of Illinoisans to lose the critical assistance they receive from SNAP. Across the state, local charities and emergency systems will be strained as hungry individuals turn to food banks for help, or emergency rooms due to the severe negative health impacts of hunger. The long-term harm of inadequate nutrition will tax our health care system, and elimination of this work support will decrease the earning potential of untold thousands of people both in Illinois and across the nation. The widespread hunger and malnutrition that will be caused by the proposed rule is the exact harm Congress sought to prevent with creation of the SNAP program. This proposal betrays both the intent of the program and the positive and historically lauded behaviors encouraged by BBCE, is without sound reasoning, and will arbitrarily harm hundreds of thousands of people.

The Shriver Center stands in opposition to these proposed rules. The foundations and justifications for this proposal are not supported by data or reason, and if implemented they would be tremendously damaging to our state, our clients, and our communities.

Respectfully Submitted,

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¹⁰¹ Healthy, Hunger-Free Kids Act of 2010, Pub L. No. 111-296.

¹⁰² Food Research & Action Center, *Eligibility for Community Eligibility Provision*, <http://frac.org/community-eligibility-database/> (last visited Sept. 20, 2019).

¹⁰³ Id.

¹⁰⁴ Chicago Public Schools, *CPS Stats and Facts*, https://cps.edu/About_CPS/At-a-glance/Pages/Stats_and_facts.aspx (last visited September 20, 2019).

¹⁰⁵ Rosenbaum, *supra* note 23.