

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); Reopening of Comment Period RIN 0584-AE62

Dear SNAP Program Design Branch:

The Shriver Center on Poverty Law fights for economic and racial justice. Over the past 51 years, we have secured hundreds of law and policy victories with and for people experiencing economic instability in Illinois and across the country. Everything we do is powered by communities most affected by poverty. We litigate, shape local policy, and train and convene multi-state networks of lawyers, community leaders, and activists to advance opportunity for all—not just the few. Our country is rife with laws and policies that systematically disadvantage certain groups while advantaging others based on their race, gender, and other facets of their identities. We strongly believe laws and policies—and the institutions that apply them—should be designed to support people.

Throughout our history, the Shriver Center on Poverty Law has fought to protect critical nutritional assistance for low-income families. Through 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.

We are writing in response to USDA's Notice of Proposed Rule Making on a Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) during the reopened comment period. As discussed in the previous comment submitted by the Shriver Center on Poverty Law¹, the proposed rule exceeds the Department's authority, severely harms working households, and dramatically increases administrative burdens for both state agencies and benefit recipients. According to USDA's initial Regulatory Impact Analysis, the proposed rule would eliminate SNAP benefits for 3.1 million households nationally.

¹ Submitted via regulations.gov on September 23, 2019. See attached.

However, the initial Regulatory Impact Analysis inexplicably omitted any reference to the proposed rule's impact on access to the School Breakfast and National School Lunch Program. On October 18, nearly 4 weeks after closing the initial comment period, the Department released a revised Regulatory Impact Analysis - showing nearly 1 million children face the loss of school meals under the proposed rule² - and reopened the comment period for a mere 14 days for interested parties to comment. Given the gravity of this new information, the Department has not provided sufficient analysis or time for assessing the full extent of the proposed rule's impact on access to school meals. Those submitting comments during the reopened comment period do not have adequate time to meaningfully assess the impact on their community and submit thorough and constructive comments. Further, well over 100,000 people have already submitted a comment and did not have the benefit of this analysis. The proposed rule will inflict tremendous damage on communities across the country, threatening children's nutrition, health, and education. For all these reasons, and the reasons outlined in the Shriver Center on Poverty Law's previous comment, we urge you to withdraw the rule.

The revised regulatory impact analysis ignores the proposed rule's effect on community eligibility for free school lunches.

Children in SNAP households are directly certified to receive free school meals, thus, millions of children across the country can receive free breakfasts and lunches at school without completing an additional application. Because the proposed rule drastically narrows SNAP broad-based categorical eligibility (BBCE) and will result in termination from SNAP for many working families with children, the Department now estimates that 982,000 children could lose direct certification for free school meals because of the proposed rule.³ Given the severity of this impact, it is unreasonable that the Department omitted analysis of the impact on school meals from the Regulatory Impact Analysis posted during the initial 60-day comment period, especially where this exact impact was raised when Congress considered legislative changes to BBCE similar to those outlined in the proposed rule.⁴

² U.S. Department of Agriculture, Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (RIN 0584-AE62) – Potential impacts on Participants in the National School Lunch Program and School Breakfast Program, available at: <https://www.regulations.gov/document?D=FNS-2018-0037-16046>

³ Id.

⁴ See Cost Estimate of H.R. 2, Agriculture and Nutrition Act of 2018 As Ordered Reported by the House Committee on Agriculture on April 18, 2018, Congressional Budget Office, May 2, 2018, available at https://www.cbo.gov/system/files/2018-07/hr2_1.pdf (in analyzing a proposal to change to SNAP categorical eligibility the CBO estimated, “[t]here would be an additional effect on children who are categorically eligible for free meals at school because of their eligibility for SNAP. If their households lost SNAP eligibility because of the revised threshold and their families were not otherwise eligible for free meals, those children would be eligible only for reduced-price or paid meals. Those meals have smaller reimbursement rates to the meal providers and thus the federal costs of the child nutrition program would decline.”)

Additionally, even the revised Regulatory Impact Analysis is incomplete, as it does not include an analysis of schools potentially losing universal free school lunches offered through 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 school lunches.⁵

The revised regulatory impact analysis only mentions the community eligibility provision as a mitigating factor to the damage caused by loss of the direct certification for free school lunches, saying:

“It is possible that some of these potentially impacted children are enrolled in schools participating in a special provision such as the Community Eligibility Provision (CEP) where all students are offered meals at no charge. Due to the process in which meals are claimed in these schools, annual eligibility determinations are not made and these students would continue to be offered meals at no charge through the school’s operation of the special provision.”

The Department continues to ignore the much broader potential negative impact of the proposed rule – that community eligible schools across the country may eventually lose community eligibility status if enough families are disconnected from SNAP. This jeopardizes school lunches for all children in community eligible schools, not just children in current SNAP households. If droves of working families lose SNAP and the corresponding 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. There are 28,615 schools across the country that use the community eligibility provision to provide universal free school lunches to their student body.⁶ According to the community eligibility database maintained by the Food Research & Action Center, 2,329 of these schools have an eligible student population between 40% and 50%. Further, approximately 152,176 students attend 325 schools around the country with eligible student populations between 42% and 40%, where even a slight reduction in students connected to SNAP could threaten school meals for the whole school.⁷ In Illinois, 1,541 schools provide universal free lunches to their student body because of the community eligibility provision, and 51 schools containing a total of approximately 23,000 students have an identified student percentage between 40-49%.⁸ Under the proposed rule, all of these students could face the loss of free school lunches.

The proposed rule threatens the health and educational attainment of children.

The impacts of this rule are deeply concerning given the relationship between SNAP participation and adequate nutrition to child health and educational attainment. There is substantial research showing that food insecurity is associated with a range of adverse health,

⁵ Healthy, Hunger-Free Kids Act of 2010, Pub L. No. 111-296.

⁶ Food Research & Action Center, Eligibility for Community Eligibility Provision, <http://frac.org/community-eligibility-database/> (last visited Oct. 30, 2019).

⁷ Id.

⁸ Id.

growth, and development outcomes in school-aged children.⁹ The severity of these outcomes ranges from increases in stomachaches, headaches and colds to greater instances of chronic illness, depression, anxiety, and suicidal thoughts.¹⁰ Eliminating access to SNAP and free school lunches will only worsen health outcomes for children in low-income families.

Additionally, children in SNAP households perform better in school. SNAP is one of the leading sources of nutrition for low-income families. Many of these same families also rely on schools to provide breakfast and lunch during the school year. Families losing access to SNAP and free and reduced school lunches due to the proposed rule will undoubtedly experience greater food insecurity, threatening the educational attainment of their children. Children in food insecure households have lower test scores, are more likely to repeat a grade or be suspended from school, and are less likely to graduate high school.¹¹ Research suggests that SNAP participation can lead to improvements in reading and mathematics skills among elementary children, especially young girls, and increase the chances of graduating from high school by as much as 18 percent.¹²

Conclusion

The proposed rule threatens SNAP and free school lunches for tens of thousands of children in Illinois. Those concerned about the devastating impacts of the proposed rule must be given adequate time and information to meaningfully assess the harm imposed and submit a comment. It is unacceptable that an analysis on the impacts to free school lunches was not included in the original analysis. Submitting an updated – but still inadequate analysis – and allowing only 14 additional days to comment does not cure this glaring omission.

The Shriver Center on Poverty Law continues to stand in opposition to this proposed rule to drastically narrow SNAP categorical eligibility. The foundations and justifications for this proposal are not supported by data or reason, the administrative process has been objectionable, and if implemented this rule would be tremendously damaging to our state, our clients, and our communities.

Respectfully Submitted,

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⁹ John T. Cook and Deborah A. Frank, “Food Security, Poverty, and Human Development in the United States,” *Annals of the New York Academy of Sciences*, 1136(1), 193-209, 2008, <http://onlinelibrary.wiley.com/doi/10.1196/annals.1425.001/epdf>.

¹⁰ Id.

¹¹ Meredith Hickson et al., “Too Hungry to Learn: Food Insecurity and School Readiness”
www.childrenshealthwatch.org/publication/too-hungry-to-learn/

¹² Id. See also. Edward Frongillo, Diana F. Jyoti, and Sonya J. Jones, “Food Stamp Program Participation is Associated with Better Academic Learning among School Children,” *Journal of Nutrition*, 136(4): 2006, 1077-80, <http://jn.nutrition.org/content/136/4/1077.full>