

December 2, 2019

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SNAP Certification Policy Branch,  
Program Development Division  
Food and Nutrition Services  
3101 Park Center Drive  
U.S. Department of Agriculture  
Alexandria, VA 22302

Re: Notice of Proposed Rule Making Regarding Supplemental Nutrition Assistance Program (SNAP) Standardization of State Heating and Cooling Standard Utility Allowances -- RIN 0584-AE69

Dear SNAP Certification Policy 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 Regarding Supplemental Nutrition Assistance Program (SNAP) Standardization of State Heating and Cooling Standard Utility Allowances (HCSUA). The proposed rule seeks to standardize and cap the HCSUA calculations applied by states across the country. This harmful proposed rule

represents an overall cut to the SNAP program done under the guise of equity. Further, this rulemaking is yet another attempt for USDA (“the Department”) to side step Congress and make cuts to SNAP benefits. Congress reviewed SNAP policy during the 2018 Farm Bill, and even though the President’s FY 2019 Budget included a request for a change similar to the proposed rule,<sup>1</sup> Congress did not include such a change in the 2018 Farm Bill. This cut to nutritional assistance disproportionately harms people of color and older adults, exacerbating food insecurity. The Shriver Center on Poverty law opposes this cut for the following reasons:

**The purpose of the SNAP program is to provide 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.”<sup>2</sup> 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.”<sup>3</sup> Fifty-five years later, the SNAP program is as important as ever. In the richest, and the greatest food producing nation on Earth, an estimated 41 million people struggle with hunger, 12 million of whom are children.<sup>4</sup>

The proposed rule would only exacerbate this troubling situation. This rule would result in a cut to nutritional assistance, reducing benefits for 1 in 5 SNAP households across the country and cutting benefits by 4.5 billion over the next five years.<sup>5</sup> By capping and proposing an arbitrary threshold for the calculation of SNAP standard utility allowances (SUAs), the Department seeks to “bring greater benefit equity across the States.”<sup>6</sup> However, evening out benefit amounts across states by lowering benefits for large numbers of participants and disproportionately impacting older adults and households of color does not promote equity and undermines SNAP’s statutory purpose. Accordingly, we urge the Department to withdraw the proposed rule.

**The standards adopted in the proposed rule are arbitrary and lack adequate explanation.**

The proposed rule would standardize and cap SUA calculations across the country based on survey data. The proposed rule does not adequately explain the Department’s rationale for capping the largest of the SUA components – the Heating and Cooling SUA (HCSUA) - by calibrating to utility expense for the 80th percentile of low-income households. The proposed rule merely states that “setting HCSUA values at the 80th percentile balances the need to create more accurate standards while still capturing households that have higher than average utility

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<sup>1</sup> 2019 President’s Budget, Food and Nutrition Service, pg. 32-84. Available at: <https://www.obpa.usda.gov/32fns2019notes.pdf>

<sup>2</sup> Food Stamp Act of 1964, 88 P.L. 525, § 2 (Aug. 31, 1964).

<sup>3</sup> Id.

<sup>4</sup> Feeding America, “Hunger in the United States,” Retrieved Mar. 28, 2019, <https://www.feedingamerica.org/hunger-in-america/the-united-states>.

<sup>5</sup> Standardization of State Heating and Cooling Standard Utility Allowances (HCSUA), 84 Fed. Reg. 52809 (proposed October 3, 2019) (to be codified at 7 C.F.R. pt. 273).

<sup>6</sup> Id. at 52811.

costs.”<sup>7</sup> However, it is not clear if the Department evaluated any other standards, which is concerning given that nearly half of states have adopted a higher standard than the one outlined in the proposed rule.<sup>8</sup> According to a 2017 SUA Study, 22 states set their HCSUA at or above the utility expenses of 85% of low-income households.<sup>9</sup> The Department does not explain whether it analyzed impacts calibrated to the 85th percentile, or any other standard adopted by states.

The prevailing justification for the proposed rule is that “that standardizing SUA methodology would make SUAs and the program more equitable.”<sup>10</sup> In this context, the Department uses the term “equity” to mean uniformity. However, if the Department is truly concerned about a more uniform application of SUAs across the country, it has not sufficiently demonstrated that this is the least harmful way to promote that ideal. Any new standard should hold harmless states that have made the rational policy decision to use higher SUA standards based on the state’s assessment of the needs of its SNAP caseload. Without adequate justification for the proposed standard, or a comparison to other frequently utilized standards, interested parties do not have enough information to meaningfully comment on the proposed rule. Therefore, the rule should be withdrawn.

### **Households of color have higher utility burdens, and will be disproportionately harmed by the proposed rule.**

All low-income households are not equally burdened by their utility costs. Residents of predominately white neighborhoods are less energy-cost burdened than people in neighborhoods of color that share a similar economic status. A recent study found that residents of neighborhoods of color who make less than 50% of area median income (AMI) are 27% more energy-cost burdened than people from the same wage bracket who live in white neighborhoods.<sup>11</sup> This trend was consistent across income brackets. For households whose incomes fell within 51% to 80% of AMI, as well as households within 81% to 120% of AMI, families in neighborhoods of color were still more energy cost burdened by an average of 24%, when compared to their counterparts in white neighborhoods.<sup>12</sup>

This disparity can be traced back through a history of racism and exclusion of people of color from opportunities to build wealth. In 1963, the average wealth of white families was \$121,000 higher than the average wealth of non-white families. This 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

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<sup>7</sup> Id. at 52810.

<sup>8</sup> Id.

<sup>9</sup> Holleyman, *et al.*, *Methods to Standardize State Standard Utility Allowances*. Prepared by Econometrica for the U.S. Department of Agriculture, Food and Nutrition Service, August 2017. Available at: <https://fns-prod.azureedge.net/sites/default/files/ops/methods-standardizes-uas.pdf>.

<sup>10</sup> *Supra* note 5 at 52810.

<sup>11</sup> Kontokosta, *et al.*, *Energy Cost Burdens for Low-Income and Minority Households*, Journal of the American Planning Association, 2019. Available at: <https://www.tandfonline.com/doi/full/10.1080/01944363.2019.1647446>

<sup>12</sup> Id.

(\$192,000).<sup>13</sup> 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.<sup>14</sup> 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 in wealth and home ownership, and has led to disproportionate reliance on government housing assistance for communities of color.<sup>15 16 17</sup> According to data published in 2012 by the National Low-Income Housing Coalition, households of color made up only 29% of all households in the U.S. and yet 51% of Project-Based Section 8 housing units were occupied by residents of color.<sup>18</sup> Further people of color made up 68% of all public housing residents and 65% of residents utilizing housing vouchers.<sup>19</sup>

Researchers believe this striking disparity in usage of housing assistance is part of the reason for the racial disparity in utility burden. Financing structures for affordable housing do not incentivize landlords or developers to make energy efficient decisions, and as a result, these units tend to use more energy.<sup>20</sup> In a study of 4,000 subsidized and market-rate units throughout New York City, researchers found that the low-income units had “statistically significant” higher “energy use intensity”<sup>21</sup> (EUI) levels than similar market-rate units.<sup>22</sup> They compiled energy data from several kinds of subsidized housing: government operated public housing, Section 8 or rental voucher units, and low-income housing tax credit (LIHTC) financed housing. Of these three categories, government owned and operated public housing had the highest EUI — 15% higher than similar market-rate homes.<sup>23</sup> Further, the EUI in Section 8 voucher housing units was 9% higher than market rate units, while EUI in LIHTC-funded housing was 7.6% higher.<sup>24</sup>

The combination of the history of housing discrimination and the lack of incentives to create energy efficient affordable housing units created a landscape where people of color bear a greater

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<sup>13</sup> Urban Institute, *Nine Charts about Wealth Inequality in America (Updated)* (October 5, 2017), <http://apps.urban.org/features/wealth-inequality-charts/>.

<sup>14</sup> Id.

<sup>15</sup> 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>.

<sup>16</sup> 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](http://www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf).

<sup>17</sup> 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>.

<sup>18</sup> National Low-Income Housing Coalition, *Who Lives in Federally Assisted Housing?*, November 2012. Available at: <https://nlihc.org/sites/default/files/HousingSpotlight2-2.pdf>.

<sup>19</sup> Id.

<sup>20</sup> Vincent Reina, *Low hanging fruit? Energy Efficiency and the Split Incentive in Subsidized Multifamily Housing*, NYU Furman Center, June 2016. Available at: <https://furmancenter.org/research/publication/low-hanging-fruit-energy-efficiency-and-the-split-incentive-in-subsidized-m>

<sup>21</sup> A measure of the amount of energy a household uses per square foot. Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

energy cost burden than their white counterparts in the same income bracket. As such, it stands to reason that people of color will be overrepresented in the SNAP households with utility costs above the 80<sup>th</sup> percentile of low-income household's utility costs. For the 22 states that will be forced to lower their standard utility allowances under the proposed rule, the harm imposed will be disproportionately inflicted upon families of color. Conversely, in the fewer states that will raise their SUA's under the proposed rule, that benefit will disproportionately accrue to white households who tend to have lower utility costs. However, "after a careful review of the rule's objective and implementation" the Department did not determine this rule was likely to have an adverse or disproportionate impact on people of color. The Department has failed to consider this civil rights impact, and thus the proposed rule should be withdrawn. If the Department were to consider similar proposals in the future, it should re-evaluate impacts of these proposals on people of color. Without such an analysis interested parties would not have adequate information to meaningfully comment.

**The proposed rule will harm older adults, causing their benefits to fluctuate dramatically and worsening health outcomes.**

According to a 2017 report by Feeding America, 28.7% of older adults (people over 60 years old) below the poverty line were experiencing food insecurity and 17.6% of older adults between 100% - 200% of poverty were food insecure.<sup>25</sup> SNAP is critical for the 4.7 million<sup>26</sup> older adults participating in the program, not only because of the nutritional support it provides, but because of SNAP's positive impact on health outcomes for low-income older adults. A study by the National Council on Aging revealed that many low-income older adults make trade-offs that are dangerous to their health, such as skipping meals or reducing their medication. Access to critical supports like SNAP reduces food insecurity and can dramatically improve health outcomes and quality of life for older adults.<sup>27</sup> Another study of 60,000 low-income older adults in Maryland found that SNAP participants are 23% less likely to enter a nursing home and 4% less likely to be hospitalized in the year after receiving SNAP than non-participants.<sup>28</sup> SNAP participation was also linked to lower overall health care expenditures and Medicaid/Medicare costs.<sup>29</sup> Importantly this study also found that larger monthly benefits were associated with a further reduction in the

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<sup>25</sup> 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](https://www.feedingamerica.org/sites/default/files/2019-06/The%20State%20of%20Senior%20Hunger%20in%202017_F2.pdf)

<sup>26</sup> Erin Kee McGovern, *7 Facts About Older Adults and SNAP*, National Council on Aging Blog (July 6, 2018), <https://www.ncoa.org/blog/7-facts-about-older-adults-and-snap/>

<sup>27</sup> See. National Council on Aging, *Older Adults and Debt: Trends, Trade-offs, and Tools to Help*, 2018. Available at: <https://www.ncoa.org/economic-security/money-management/debt/senior-debt-facts/>

<sup>28</sup> See. Brynne Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, Center on Budget and Policy Priorities, January 2018. Available at: <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>

<sup>29</sup> Id.

odds of nursing home admissions and hospitalization.<sup>30 31</sup> For older adults, the reduction in SNAP that would result from the proposed rule will cost more than the difference in their benefits.

As the Department acknowledges, the proposed rule would have an acute impact on the SNAP benefits of older adults because households containing individuals over 60 years old do not have a cap on shelter costs when determining their net income for SNAP purposes.<sup>32</sup> The absence of this cap more frequently allows older adults to benefit from the entire SUA, on top of full consideration of their other housing costs, which often equates to more benefits. Because of this dynamic, older adults in states who will increase their SUAs under the proposed rule would see a more dramatic increase in benefits, while older adults in the 22 states with lower SUAs could be severely harmed by a significant decrease in benefits. Approximately 80% of older adults on SNAP receive more than the minimum SNAP benefit, and in FY 2017, the average SNAP allotment for older adults was \$105 month. Accordingly, in the 22 states that would see lower SUA's as a result of the proposed rule, most older adults would see a reduction in benefits threatening their food security, health, and independence.

The negative impacts of the proposed rule on older adults extends far beyond their potential loss of SNAP. The Department has failed to fully grasp the impact of the proposed rule on older adults, and thus the proposed rule should be withdrawn. If the Department were to consider similar proposals in the future, instead of risking severe harm to older adults on SNAP in nearly half the country, the Department should develop policy alternatives to better meet the needs of older adults in states with lower SUAs.

### **Cutting SNAP harms everyone, not just SNAP recipients.**

SNAP plays a critical role in addressing hunger and food insecurity in our community. It is the first line of defense against hunger for low-income residents, and is designed to respond quickly and effectively to changes in need, whether due to economic downturns or natural disasters. In 2017, SNAP lifted 3.4 million people out of poverty, including 1.5 million children.<sup>33</sup> A recent study showed that SNAP can stimulate the economy, and it is estimated that \$1 of SNAP benefits leads to between \$1.50 and \$1.80 in total economic activity during a recession.<sup>34</sup> Further, SNAP is a work support, and increases the economic stability of participating households. Among SNAP households with at least one working-age, non-disabled adult, 58%

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<sup>30</sup> See. Szanton *et al.*, *Food assistance is associated with decreased nursing home admissions for Maryland's dually eligible older adults*, BMC Geriatrics, 17(1), 162, 2017. Available at: <https://bmcgeriatr.biomedcentral.com/articles/10.1186/s12877-017-0553-x>.

<sup>31</sup> See. Samuel *et al.*, *Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization Among Older Adults? The Case of Maryland*, Population Health Management, 2017. Available at: [http://www.bdtrust.org/wp-content/uploads/2017/07/Pop-Health-Mgmt\\_Hospitalizations\\_linked.pdf](http://www.bdtrust.org/wp-content/uploads/2017/07/Pop-Health-Mgmt_Hospitalizations_linked.pdf).

<sup>32</sup> 7 CFR §273.9(d)(6)(ii).

<sup>33</sup> Liana Fox and Laryssa Mykta, *Supplemental Poverty Measure Shows Who Benefits From Government Programs*, U.S. Census Bureau, September 2018. Available at: <https://www.census.gov/library/stories/2018/09/supplemental-nutrition-assistance-program-lifts-millions-out-of-poverty.html>

<sup>34</sup> See. USDA Economic Research Services, *The Supplemental Nutrition Assistance Program (SNAP) and the Economy: New Estimates of the SNAP Multiplier*, July 2019. Available at: <https://www.ers.usda.gov/webdocs/publications/93529/err-265.pdf?v=8010.7>

earn income from employment while enrolled in SNAP. Moreover, 82% have employment income in the year prior to or following SNAP enrollment.<sup>35</sup> SNAP is a strong positive force in our society, and the Department should be invested in strengthening this nutritional assistance to better support low-income households instead of imposing cruel cuts.

Whenever SNAP is cut, local charities and emergency systems are strained as hungry individuals turn to food banks for help. Health outcomes are threatened and emergency room visits increase due to the severe negative health impacts of hunger. The long-term harm of inadequate nutrition will tax our health care system, and the reduction of this work support will decrease the earning potential of impacted households across the nation. The increased food insecurity caused by the proposed rule is the exact harm Congress sought to prevent with creation of the SNAP program.

The Shriver Center on Poverty Law stands in opposition to the proposed rule. This rule represents a cut to critical nutritional support under the guise of equity, and if implemented it would be tremendously damaging to communities across the country who rely on SNAP to help meet their nutritional needs.

Respectfully Submitted,

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<sup>35</sup> See. Center on Budget and Policy Priorities, Chart Book: SNAP Helps Struggling Families Put Food on the Table, November 2019. Available at: <https://www.cbpp.org/research/food-assistance/chart-book-snap-helps-struggling-families-put-food-on-the-table#part5>