

Board of Directors
William L. Robinson, Chair
Carolyn Osolinik, Secretary/Treasurer
Mary Frances Berry
Deepak Bhargava
Elizabeth Birch
Michael D. Calhoun
Richard Cohen
Gara LaMarche
Judith L. Lichtman
John Relman

President & CEO
Vanita Gupta

September 23, 2019



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

RE: Notice of Proposed Rulemaking - Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) RIN 0584-AE62

Dear SNAP Program Design Branch:

The Leadership Conference Education Fund appreciates the opportunity to comment on the U.S. Department of Agriculture's (USDA) Notice of Proposed Rulemaking (NPRM) regarding the Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP). The Leadership Conference Education Fund is the research and education arm of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States. We are deeply concerned by attempts to further restrict food assistance to low-income individuals. This proposed rule would eradicate broad-based categorical eligibility (BBCE), an option that enables states to streamline SNAP eligibility by raising income eligibility limits and using less strict asset tests.¹ BBCE allows flexibility for low-income working families seeking food assistance who may have difficulty making ends meet due to expenses that consume a sizeable share of their income, such as housing or child care. The Leadership Conference Education Fund opposes this proposed rule, which would increase food insecurity and harm millions of low-income people who rely on SNAP to get food on the table.

The right to food, recognized in Article 25 of the 1948 Universal Declaration of Human Rights,² guarantees freedom from hunger and access to safe and nutritious food. SNAP plays a critical role in addressing hunger and food insecurity in the communities that we represent, and it is the first line of defense against hunger for many low-income individuals. In 2018, SNAP helped more than 38 million people in the United States put food on the table every month, on average.³ SNAP has also played a significant role in reducing poverty: the program has moved 8.4 million people out of poverty, reducing the poverty rate from 15.4 percent to 12.8 percent.⁴ USDA is effectively ignoring the challenges that working families face by

¹ Center on Budget and Policy Priorities. "SNAP's "Broad-Based Categorical Eligibility" Supports Working Families and Those Saving for the Future." <https://www.cbpp.org/research/food-assistance/snaps-broad-based-categorical-eligibility-supports-working-families-and>.

² United Nations. "Universal Declaration of Human Rights." <http://www.un.org/en/universal-declaration-human-rights/>.

³ SNAP Data Tables. *United States Department of Agriculture*. <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>.

⁴ Wheaton, Laura and Tran, Victoria. "The Antipoverty Effects of the Supplemental Nutrition Assistance Program." *The Urban Institute*. February 2018. <https://www.urban.org/research/publication/antipoverty-effects-supplemental-nutrition-assistance-program>.



proposing a rule that prevents states from allowing people with high child care, housing, and/or medical costs who are earning just above the income eligibility level to receive some food assistance.

The Leadership Conference Education Fund supports the goal of helping SNAP participants obtain and keep quality jobs that enable them to achieve self-sufficiency and economic security, however, we oppose any changes that would result in taking away nutrition assistance from some of the most vulnerable people in our country. USDA's proposed changes would make 3.1 million people ineligible for the SNAP program, stripping these individuals of their nutrition assistance benefits and taking away free school meals from the children in these households.⁵ By USDA's own estimates, the proposed rule would cut SNAP benefits over five years by approximately \$10 billion, while increasing administrative support costs by approximately \$2 billion.⁶ Further, in the preamble to the proposed rule, USDA goes so far as to concede that "the proposed rule may also negatively impact food security and reduce the savings rates among those individuals who do not meet the income and resource eligibility requirements for SNAP or the substantial and ongoing requirements for expanded categorical eligibility."⁷ Despite USDA's declared desire to "meaningfully move families to self-sufficiency," this acknowledgement reflects an unwillingness to protect policies that bolster the economic security of families that need it the most.

Broad-based categorical eligibility policies have long helped states support the economic security of low-income individuals. Since 1996, more than 40 states have implemented BBCE policies for households receiving some in-kind services funded through the Temporary Assistance for Needy Families (TANF) Program. While federal requirements restrict SNAP assistance to households with net incomes under 100 percent of the federal poverty level (FPL), gross incomes under 130 percent of the FPL, and in many cases liquid assets below \$2,250, the BBCE option gives states flexibility to adjust these thresholds.⁸ Most states have opted to eliminate the asset test and increase the gross income limit (up to 200 percent of the FPL) for SNAP. In this manner, states can: 1) extend SNAP eligibility to families with gross incomes working their way up the economic ladder but still struggling with high costs for basic needs and 2) incentivize families to save money by loosening restrictions on assets.

The proposed rule is an overreach in its attempts to dismantle BBCE, and blatantly disregards the will of Congress. For more than two decades, BBCE policies have allowed states the flexibility to ensure that individuals who are struggling to make ends meet can put food on the table. Congress has consistently upheld BBCE since its inception and has repeatedly rejected efforts to gut these policies, most recently during consideration of the 2018 Farm Bill.⁹ This rulemaking is an attempt to ignore congressional intent and is outside the scope of USDA's authority. USDA seeks to undercut BBCE with proposed changes that would: 1) "define 'benefits' for categorical eligibility to mean ongoing and substantial benefits" and 2) "limit the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports and childcare."¹⁰ By altering the parameters of BBCE, these

⁵ United States Department of Agriculture. "Proposed Rule - Revision of Categorical Eligibility in the SNAP." July 24 2019. www.fns.usda.gov/snap/fr-072419.

⁶ Ibid.

⁷ Ibid.

⁸ The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility. Congressional Research Service, 4 January 4, 2019, <https://fas.org/sgp/crs/misc/R42054.pdf>.

⁹ Ibid.

¹⁰ United States Department of Agriculture. "Proposed Rule - Revision of Categorical Eligibility in the SNAP." July 24 2019. www.fns.usda.gov/snap/fr-072419.

regulations would primarily impact near-poverty households with incomes or assets marginally above the federal eligibility limits.

Currently, when SNAP recipients move to slightly sounder financial footing, their nutrition benefit gradually decreases rather than disappearing all at once. Gradual phase-outs of benefits are important for individuals who rely on SNAP and who are simultaneously working to build savings and achieve economic security. The proposed rule would create a benefit cliff that causes a person whose income increases – even by as little as 50 cents per hour – to lose their benefit all at once, stripping these individuals of their access to food assistance. The changes that USDA suggest will make it more difficult for people who need food assistance the most to access it. This has harmful implications for communities that already experience high rates of food insecurity across the country:

- **People with Disabilities:** Having a disability can raise expenses and make it harder to work, put food on the table, and afford adequate health care. If this rule is enacted, more than 150,000 people with disabilities would lose their SNAP benefits. People with disabilities are disproportionately likely to experience food insecurity and to face discrimination in employment,¹¹ with approximately 20 percent of people with disabilities living in poverty. These factors are compounded by the fact that people with disabilities are subjected to being paid a subminimum wage,¹² leaving them struggling to make ends meet. BBCE provides people with disabilities the flexibility to save for unexpected medical costs and prepare for future emergencies – expenses that can be devastating to a person working to achieve economic security.

Because the SNAP program interprets disability very narrowly,¹³ a person is only considered as disabled if they receive disability benefits, which excludes individuals whose disabilities might not be severe enough to qualify them for disability benefit programs but do impact their lives in meaningful ways. This narrow reading has resulted in vast disparities in data about how many people with disabilities truly rely on SNAP, and subsequently, about how many people with disabilities will be harmed by a rulemaking like this. While administrative data show that 5.3 million people with disabilities receive SNAP, the National Health Interview Survey estimates that the number is closer to 8.1 million people.¹⁴ Implementing USDA’s proposal would only take food away from more people with disabilities and increase food insecurity for this community.

- **Women and Children:** SNAP serves a diverse group of women and families, with 24 percent of nonelderly women and 35 percent of women of color relying on the program to access nutritious food.¹⁵ Restricting BBCE will subject these women, many of whom are part of the low-wage workforce, and their families to increased economic hardship. Nearly 22.6 million people make

¹¹ Rehabilitation Research and Training Center on Disability Statistics and Demographics. “2017 Disability Statistics Annual Report.”

¹² U.S. Department of Labor. “Subminimum Wage.” <https://www.dol.gov/general/topic/wages/subminimumwage>

¹³ Center on Budget and Policy Priorities. “SNAP Provides Needed Food Assistance to Millions of People with Disabilities.” June 14, 2017.

¹⁴ Kraus, L., Lauer, E., Coleman, R., and Houtenville, A. *2017 Disability Statistics Annual Report*. University of New Hampshire. 2018.

¹⁵ National Women’s Law Center, calculations based on U.S. Census Bureau, 2018 Current Population Survey using Sarah Flood et al., Integrated Public Use Microdata Series (IPUMS): Version 6.0 [Machine-readable database] (Minneapolis: University of Minnesota, 2018) (hereinafter “IPUMS 2018”).

up the low-wage workforce, two thirds of whom are women.¹⁶ Of these women, approximately 19 percent in the low-wage workforce have incomes between 130 percent and 200 percent of the FPL.¹⁷ Many women in this income range who currently receive SNAP are trying to improve their economic security through modest savings for future financial emergencies and have hefty child care, housing, and/or medical expenses that leave them with little left over to purchase food for their families. BBCE helps these women who rely on SNAP for food assistance to build savings, care for their children, and work towards better long-term outcomes for themselves and their families.

Children in households that rely on SNAP stand to be doubly harmed if this rule is enacted. As a result of this rule, an estimated 1.9 million children will no longer have access to SNAP benefits, representing 61 percent of the projected 3.1 million people who will lose their SNAP benefits.¹⁸ Currently, children who qualify for SNAP, thanks to BBCE, also receive direct certification for free school meals, saving their families the cost of paying the reduced or full price at a time when school meals remain unaffordable for many.¹⁹ Eliminating BBCE would jeopardize more than 500,000 children's access to free school meals²⁰ – a point that USDA fails to include in its regulatory impact analysis. This rule would eliminate the ability of low-income students to receive the nutrition they need both at home as well as in the school setting. Children who are distracted by hunger cannot focus on learning and thus, are not set up for success in their studies. Furthermore, if children lose access to free school meals because they lose SNAP under this proposed rule, their parents and caregivers will be forced to find a way to pay for school meals or may face harmful tradeoffs such as not paying for an essential medicine or falling late on rent – a cost that some of these families may not be able to bear.

- **LGBTQ Community:** LGBTQ households are substantially more likely to experience poverty and food insecurity than non-LGBTQ households. In fact, LGBTQ people are 2.3 times more likely to participate in SNAP than are non-LGBTQ people.²¹ SNAP participation rates are even higher among LGBTQ people of color, LGBTQ women, and LGBTQ people with disabilities.²² In light of these statistics, it is clear that these proposed regulations will inflict serious and extensive harms on the LGBTQ community.

For SNAP recipients in the LGBTQ community, BBCE simplifies the application process and promotes equal treatment of SNAP beneficiaries by reducing interaction with agency staff, which minimizes the opportunity for discrimination against members of this community. The National Center for Transgender Equality's 2015 U.S. Transgender Survey found that 17 percent of respondents whose identity was known by staff at a public assistance or government benefit

¹⁶ NWLC calculations based on U.S. Census Bureau, 2017 American Community Survey using IPUMS.

¹⁷ Ibid.

¹⁸ Estimate based on Regulatory Impact Analysis supplement to Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program, (see footnote 1), Table 4. Administration estimates assume 2020 caseload will represent roughly 87 percent of 2016 caseload.

¹⁹ Rachel Merker, "Stories of 'Lunch Shaming' Highlight Need for Free School Meals," First Focus on Children, May 24 2019.

²⁰ Representative Bobby Scott, "Chairman Scott to Secretary Perdue: Release Internal Estimates Showing Impact of Proposed SNAP Changes on Free School Meals," United States House of Representatives Committee on Education and Labor, July 2019.

²¹ Rooney, Caitlin, et al. "Protecting Basic Living Standards for LGBTQ People." Center For American Progress, August 2018. <https://cdn.americanprogress.org/content/uploads/2018/08/10095627/LGBT-BenefitCuts-report.pdf>.

²² Ibid.



office reported being “[d]enied equal treatment or service, verbally harassed, or physically attacked” in the office in the past year.²³ By unnecessarily complicating the application process for many TANF-assisted families, these regulations would require that LGBTQ individuals have more interaction with agency staff members and, consequently, place them at additional risk of discrimination.

For more than two decades, states have used BBCE to effectively provide food assistance to individuals who need it to live. The Leadership Conference Education Fund strongly opposes this proposed rule that would cut food benefits, decrease food security, and harm the communities that we represent. We urge USDA to withdraw this proposed rule and instead focus on increasing access to SNAP for the individuals who rely on this critical program to survive. If you have any questions, please contact Arielle Atherley, policy analyst, at atherley@civilrights.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta". The signature is fluid and cursive, with a large initial "V" and a long, sweeping tail.

Vanita Gupta
President & CEO

²³ James, S.E.. 2015 U.S. Transgender Survey. National Center for Transgender Equality, Dec. 2016. www.transequality.org/sites/default/files/docs/usts/Executive%20Summary%20-%20FINAL%201.6.17.pdf.