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ON LAW & POVERTY

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September 23, 2019

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

Re: RIN 0584-AE62, Proposed rule Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)

Dear SNAP Program Design Branch:

We are writing on behalf of the Western Center on Law and Poverty to comment on USDA's Notice of Proposed Rule Making (NPRM) on a "Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)." The Western Center on Law and Poverty is deeply concerned by attempts to restrict food assistance to the individuals whom we and our partners serve in California. We strongly support the twin goals of preventing hunger and supporting economic mobility, both of which are best achieved when states can account for high housing, child care and health care costs, and help SNAP participants save money to weather financial setbacks. We believe that the Administration's proposed changes to categorical eligibility will work in opposition to these goals. If the proposed rule goes into effect, it will cause an estimated 250,000 to 345,800 Californians,[1] who are already struggling to meet their basic needs, to lose their SNAP benefits. Hunger does not help anyone exit poverty and, in fact, has been proven to do the opposite: to leave children and adults alike to experience long and short-term consequences of poor nutrition that undermines their well-being and economic security. We respectfully request that the Administration consider the comments in our letter and the information in the attached appendices, and that the Administration withdrawal the proposed rule from consideration.

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[1] The California Department of Social Services has estimated 6% of the caseload to be impacted, currently approximately 250,000 people, based on the original analysis completed by the California State Legislature during their deliberation about the SNAP BBCE implementing legislation, Assembly Bill 191 (Fuentes, 2013). The number comes from the California State Assembly Appropriations Analysis found here: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB191. The higher number is from Mathematica Policy Inc. estimates as many as 345,800 people: https://www.mathematica-mpr.com/news/new-research-analyzes-state-level-impact-of-usda-proposal-to-end-snap-broad-based-categorical

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About the Western Center on Law and Poverty

For over five decades, the Western Center on Law and Poverty (Western Center) has advocated on behalf of individuals with low incomes in every branch of California government—from the courts to the Legislature. Through the lens of economic and racial justice, we litigate, educate and advocate around health care, housing, and public benefits policies and administration. Western Center staff have decades of experience in working with legislators and state policymakers to improve SNAP, known as CalFresh in California. We have published countless advocate guides, chaired advisory committees, supported federal and state legislation and, when necessary, filed litigation to protect the rights of SNAP recipients in California.

Background on Current Law and How California Is Using SNAP BBCE Option

Current law provides that any family that receives benefits under a state Temporary Aid to Needy Families (TANF) program "shall be eligible" for SNAP benefits. 7 U.S.C. § 2014(a). The purpose of this provision is to decrease administrative costs and more effectively address poverty by coordinating eligibility across public benefit programs. Based on this statutory language, long-standing regulations provide for a "broad-based categorical eligibility" state option. BBCE allows states to relax the SNAP gross income test and adjust the SNAP asset test for individuals and households eligible to receive a benefit or service funded by the TANF program. This allows states to extend SNAP benefits to individuals and households with gross incomes modestly above 130 percent of the Federal Poverty Level (FPL).[2] Despite these more generous eligibility standards, BBCE still targets low-income, needy households because to qualify the individual or family still must meet the net income test, meaning their net income (after expenses for shelter, childcare, or certain other basic expenses) is under 100% of the FPL. BBCE was established with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PROWRA),[3] and has continued uninterrupted in essentially the same form for more than 20 years. Today approximately 40 states have adopted this long-standing, statutorily-based eligibility option, including California.

On July 1, 2009, California implemented "Modified Categorical Eligibility" (MCE) for households with children under the age of 18 who would otherwise be eligible for CalFresh benefits, but they exceeded the resource limit. MCE is conferred by providing the household with a TANF/MOE-funded service. The TANF/MOE-funded service for MCE is the "Family Planning –PUB 275" brochure. MCE was expanded to all Non-Assistance CalFresh (NACF) households on February 1, 2011. As stated in California's Department of Social Services All County Letter 09-24 (dated May 27, 2009),[4] receipt of PUB 275 exempts all resources in the

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[2] 2018 Federal Poverty Level: https://www.federalregister.gov/documents/2018/01/18/2018-00814/annual-update-of-the-hhs-poverty-guidelines

[3] See: https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf

[4] Available online at: https://www.cdss.ca.gov/cdssweb/entres/forms/English/PUB275Eng.pdf

determination of eligibility for households who meet all other CalFresh eligibility requirements. However, receipt of the PUB 275 does not in itself make a household eligible for SNAP under MCE/BBCE.[5] A household also has to fall under the net income limit of 100% of the FPL in order to receive a benefit. And SNAP eligibility is not established until the county welfare department documents that the household's gross income is less than the 100% FPL maximum net income limit.

In order to justify the Administration's proposed change to BBCE, the Notice of Proposed Rule Making misrepresents how the eligibility process works. The Notice suggests that receipt of a TANF-funded benefit automatically confers SNAP eligibility regardless of income. This is not true. Anyone seeking SNAP must fill out an application and provide their financial information, and applicants will not qualify to receive SNAP benefits unless they meet SNAP's net income test, including documentation of their net income by the county welfare department. The only SNAP criteria affected by BBCE are the gross income and asset limits.

The Proposed Rule is Contrary to the Statute and in Excess of the Department's Authority
The proposal to limit the types of non-cash TANF benefits that confer categorical eligibility to just three (subsidized employment, work supports, and childcare) is inconsistent with the clear language of the statute and Congressional intent, and therefore beyond the scope of the Department's Authority. When defining categorical eligibility, 7 U.S.C. § 2014(a) uses the term "benefits under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)." The statute uses the word "benefits" without any qualification. The only requirement for categorical eligibility purposes is that the benefit be TANF-funded. As long as that requirement is met, the Department has no authority to limit the kinds of benefits that confer categorical eligibility.

When Congress enacted PRWORA in 1996, it amended 7 U.S.C. § 2014(a) to refer to benefits under a TANF funded "State program," rather than benefits under "a State plan approved under" AFDC. In the same Act where it made this change, Congress replaced AFDC, which was primarily a cash benefit, with TANF, a block grant program giving states broad flexibility in the types of cash and non-cash benefits they choose to provide, so long as the benefits are designed to further one of TANF's four purposes. Congress understood that states could provide diverse non-cash benefits under TANF, yet chose not to limit the types of non-cash

[5] Welfare and Institutions Code (WIC) Section 18901.5, All County Letter. 11-11- Available online at: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11-11.pdf, All County Letter No. 09-24- Available online at: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2009/09-24.pdf, All County Letter No. 12-62- Available online at: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2012/12-62.pdf, All County Letter 15-42- Available online at: https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-42.pdf

benefits through which categorical eligibility for SNAP can be established. By limiting those benefits to just three kinds, the proposed rule is contrary to Congressional intent as manifested in the language of the statute.

For the same reasons, the proposed rule's limitation of categorical eligibility to benefits that are "substantial" and "ongoing" exceeds the Department's authority. The statute does not place any qualifiers on "benefits." The language of the statute shows that Congress knew how to place limits on the types of benefits that confer categorical eligibility when it wanted to. Benefits under local general assistance programs are limited to a "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." 7 U.S.C. § 2014(a). Thus, benefits under general assistance programs only confer categorical eligibility if they meet criteria based on the value and duration of the benefit. This shows that Congress intentionally chose not to limit TANF-funded benefits that confer categorical eligibility by value or duration. The proposed rule's attempt to place value ("substantial" or having a "ready market valuation") and duration ("ongoing") limits on TANF benefits that confer categorical eligibility exceeds the Departments' authority under the statute.

Additionally, Congressional rejection of the very changes to categorical eligibility proposed by the Administration now confirms that the proposed rule is beyond the scope of the Department's authority. Over the past two years, there have been several proposals by the Administration and members of Congress to change or remove altogether the state BBCE option. These include proposals in the President's Budget[6] and the House of Representatives' version of the 2018 Farm Bill.[7] But neither of these proposals were adopted in either the budget appropriations legislation or the final Farm Bill, which passed with strong bi-partisan support. If Congress had meant to make changes to the current BBCE option available to states, it had ample opportunities to do that and, in fact, expressly rejected proposals to do so. Even those who supported changes to categorical eligibility understood that legislative change was necessary to accomplish them.

Despite this, the Department does not even address the language of the statute or explain why it believes the proposed rule is consistent with the statute. We can therefore only assume that the Department has issued the proposed rule without interpreting the relevant statutory

[6] 2018 Federal Budget Proposal, "A New Foundation For American Greatness Fiscal Year 2018," page 10 https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf

[7] H. Rept. 115-1072 - AGRICULTURE IMPROVEMENT ACT OF 2018 https://www.congress.gov/congressional-report/115th-congress/house-report/1072/1 H.R. 2 Sec. 4006 (the House of Representative's introduced version) also eliminated this option, anticipating it would result in $5 billion fewer anti-hunger benefits issued to low-income Americans.

language. If the Department did in fact engage in statutory interpretation, its failure to provide its analysis has denied us a meaningful opportunity to comment on its reasoning. Rather than the statute, the Department relies on an executive order as a basis to limit the types of TANF-funded benefits conferring categorical eligibility. But an executive order is not controlling, and Congressional intent is clear.

The Provided Rationale for the Proposed Rule is Inadequate, Confusing, and Arbitrary
The stated rationale for changing existing regulations is unclear, confusing, and poorly reasoned. It does not provide adequate justification for departing from long-standing regulations that are consistent with the statute and Congressional intent.

The Department's rationale is puzzling. While the Notice states that the rule is an attempt to address concerns regarding the conduct of eligibility determinations in states implementing BBCE, this supposed problem is vaguely and inconsistently described, making it impossible to understand why the Department believes the rule is necessary or fully comment on its rationale.

At times, the Notice claims that states with BBCE are foregoing eligibility determinations entirely. As noted above, this is not the case, and there are no facts in the Notice to support this claim. At other times, the Notice refers to a concern that eligibility determinations are not "meaningful" or not "robust." But the Notice does not describe what it means by these vague terms or provide examples that would help the reader understand them. The Notice also often engages in speculation when describing both the problem the rule is intended to target and the connection between that vaguely defined problem and the proposed "ongoing and substantial" standard. The Department has not articulated a reasoned explanation or empirically supported justification for the changes it proposes. These deficiencies in the rationale provided suggest that the Department has other reasons for the proposed rule that are not stated in the notice, but we can only comment on the reasons that have been given.

Other details of the rule are also arbitrary and inadequately explained. The only explanation for the six-month requirement is that the Department believes six months is "long enough" to be "ongoing." The Notice states that the $50.00 threshold for "substantial" benefits was based on consultation with HHS. But it does not offer any further explanation or describe the substance of that consultation, making it impossible to understand or comment on the Department's reasoning.

Not Enough Information about Impacted SNAP Recipients to Adequately Comment
Many states have implemented BBCE, including California. When California implemented the law, it was estimated that it would increase recipients by approximately 6.2 percent of the

existing caseload.[8] If we apply this rate to the current caseload, we can assume that the removal of categorical eligibility could impact approximately 120,000 California households below 200% of the poverty line.[9] However, with the increase in California's minimum wage, which puts more low-income families between 130% of FPL and 200% of FPL, the number of impacted California households could be even higher. The NPRM estimates suggest a much higher number of Californians could be impacted but provides insufficient information about this estimate to adequately comment on the proposal. The NPRM does not provide enough information about its estimate for us to understand who the Department thinks will be impacted. Additionally, the NPRM does not provide any information about the following ways in which SNAP recipients will be harmed if the rule were to become final:

No Information about the Impact on Children

When analyzing the impact of implementing categorical eligibility, the California legislature also estimated an increase of approximately 170,000 children benefiting from federally funded school meals as a result of the direct certification of children[10] in families who were eligible due to broad based categorical eligibility.[11] We believe that this number would be much higher in 2018-2019 because there are more children residing in CalFresh recipient homes than there were when categorical eligibility was implemented. The NPRM does not include information about the impact on families with children who will also lose school meal eligibility making it difficult to comment on the full impact of the proposal.

No Information about Impact on SNAP Recipients with Outstanding Overissuances

An overissuance (also sometimes casually called a "claim" or an "overpayment") occurs when a household gets more CalFresh benefits than it is eligible to receive. Federal law requires that all benefits overissued must be collected from current recipients once they are established (MPP § 63-801.1 and 7 C.F.R. § 273.18(a)(4)(i)), even if the overissuance was not the recipient's fault (except when determined to be the result of a major systemic error as defined in 7 USC § 2022(b)(5)). Repayments must be withdrawn from the recipient's monthly CalFresh benefit, but, pursuant to state law, withdrawals are capped at 5% of the benefit unless the recipient wishes to

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[8] Assembly Bill 191 (Fuentes, 2013) enacted categorical eligibility in our CalFresh Program by adding Section 18901.5 to the Welfare and Institutions Code. For the bill analysis, see: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB191

[9] We assert that most families will be working because income from public assistance alone is not enough to put a family over 100% of the federal poverty line. Supplemental Security Income maximum monthly benefit is approximately 70% of the FPL and the CalWORKs maximum benefit is 42% of the FPL.

[10] See FRAC's resource on the connection between SNAP and school meals: https://www.frac.org/blog/broad-based-categorical-eligibility-and-school-meals

[11] Assembly Bill 191 (Fuentes, 2013) California State Assembly Appropriations Analysis: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB191

pay it back more quickly. Federal law requires that overissued benefits must be collected from former recipients if the amount is over $125, unless a state establishes that the cost of collection is greater than $125 and is approved to set it higher in its annually submitted federal SNAP Plan. California has recently been approved to set its CalFresh overissuance collection threshold at $400 for people who are not current recipients of aid. The NPRM did not include in its Regulatory Impact Analysis any mention of what would happen to recipients who were paying back an overissuance by a reduction in their monthly SNAP allotment who will now be forced to pay back the entirety with cash payment because they are no longer a recipient in the Program. We do not know, for example, how many of the over 3 million people estimated to lose benefits will be in this situation and how many of them might find relief because their overissuance is over the collection threshold established in the state plan. We don't know how many people might incur an overissuance as a result of the transition to the new rule and the impact on people as a result of the overissuance payback. There is not a single mention of overissuances in the proposed rule or the impact analysis, so we don't have enough information to comment on the impact except to say that we would expect some Californians would be negatively impacted by having to pay back in cash an overissuance that they are currently paying back in a reduction of their SNAP benefits and that the administrators of the program and California's Franchise Tax Board would also be impacted by the additional burden of having to collect these overissuances.

No Information about Impact on SNAP Recipients Who Will Lose SNAP E&T Services

For many SNAP recipients, receipt of hunger-fighting food benefits makes them eligible for the SNAP Employment and Training (E&T) program. SNAP E&T can help recipients reduce barriers to work, find employment and even provides several months of post-employment services to help workers be successful in a new job.

In California, counties that wish to participate in SNAP E&T must submit an annual SNAP E&T Plan to CDSS for approval. This non-competitive proposal contains key elements of a proposed SNAP E&T program. DSS aggregates information from county SNAP E&T Plans into a California SNAP E&T Plan, which in turn is submitted to the USDA FNS for approval each year. Amendments to the plan may be submitted at the discretion of CDSS. Changes to the SNAP E&T Program made in 2013 (SB 1321, Chaptered laws of 2012) led County Human Services Agencies to improve their SNAP E&T Programs and, today, 33 Counties now participate in the SNAP E&T program. The United States Department of Agriculture Food and Nutrition Service has approved the DSS SNAP E&T plan for Federal Fiscal Year (FFY) 2019.[12] This allocation includes 100 percent federal funds totaling $12,452,601 in administrative federal "match" reimbursement funds totaling $56,876,854 and Participant Reimbursement Transportation/Ancillary funds totaling $18,662,896 and a total budget of $126,207,309 Some of these federal "match" reimbursement funds are for third-parties (i.e. community colleges, non-profit E&T centers, etc.). To the extent that any of the people made ineligible as a result of this rule being made final would lose access to SNAP E&T, we could expect that they would have reduced options to exit poverty. If this determination of eligibility came after a semester or quarter, the student, the college, the employment and training provider, or the program administrators may also incur unexpected costs that could add additional hardship (on top of increased hunger) to the recipient or administrative burden to the college administrators or SNAP program administrators. Because the NPRM says nothing about E&T and the impact of the proposed rule on program recipients, we do not have enough information to fully consider the impact.

No Information About the Impact on Connected Work Incentives

California policy makers, recognizing the importance of CalFresh as a work support program, established the Work Incentive Nutritional Supplement (WINS) program in California Welfare and Institutions Code (WIC) Section 15525 in 2014.[13] The law and annual budget provides payment of a $10 per month additional food benefit per month for working families with children who are eligible for TANF but are not participating in TANF. This benefit is issued through the SNAP EBT card and may be used to purchase food at any SNAP EBT authorized retailer using the SNAP EBT network and rules. If a family with an income between 130% and 200% of the FPL loses benefits as a result of the proposed rule, they will also lose the $10 per month WINS benefit intended to support work by preventing hunger and reducing dependence on the TANF program. In order for the benefit to be made available to recipients made ineligible under the proposed rule, state lawmakers would need to change the law, establishing an entirely new process for determining eligibility (not based on SNAP eligibility) and a new delivery mechanism (other than SNAP issued EBT Card), which would be cost-prohibitive. The NPRM did not consider the impact of this important work incentive for the large number of SNAP recipients who are working and have children, so we are unable to fully comment on the proposed rule's impact on these families.

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[12] CDSS E&T Plan Found at: https://www.cdss.ca.gov/Portals/9/CalFresh/FFY%202019%20CalFresh%20ET%20State%20Plan%20FINAL%20REV.1.pdf?ver=2019-01-30-144004-143

[13] The implementing All County Letter (ACL) can be found online, here: https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2013/13-71.pdf

No Information About the Impact on Connected Utility Supports

Several important utility supports are provided to people based on their eligibility for SNAP. These include the State Utility Assistance Subsidy (SUAS) program which provides SNAP recipients with an annual $20.01 cash benefit to help pay for utility costs, the California LifeLine Program (California LifeLine), a state program that provides discounted home phone and cell phone services to eligible households, and The California Low Income Home Energy Assistance Program (LIHEAP), which helps low-income households with their home energy bills. Both California LIHEAP and California Lifeline are benefits issued separately and apart from SNAP, but the state uses SNAP eligibility to confer eligibility for those benefits. SUAS, however, is only available to SNAP recipients and uses the EBT system to deliver the benefit. Because "purchasing food and gasoline and paying utility bills compete for the same limited resources of low-income households,"[14] it makes sense that these utility assistance programs are connected to the country's largest anti-hunger program and that they work together. What is more, keeping low-income Californians connected to phone, electricity and broadband can help reduce the administrative costs to SNAP applicants, recipients and administrators by allowing online or phone communication to facilitate the application and prevent churn.[15] Here is a summary of how we believe current SNAP benefit recipients who currently have BBCE conferred eligibility could be impacted as a result of the proposed changes to SNAP:

- ***All Will Lose SUAS Benefit:*** The SUAS payment of $20.01 is provided only to specified CalFresh households.[16] The SUAS benefit is distributed on the EBT Card. A household that loses SNAP as a result of the proposed changes to the SNAP BBCE rule would not otherwise be eligible for the SUAS benefit. The NPRM provided no information about this potential impact so we are unable to comment fully on how the rule would impact people who lose it as a result of losing SNAP should the rule become final.

- ***Some Will Lose Lifeline:*** California Lifeline beneficiaries can be determined eligible in two ways: Either they have their eligibility determined by a Lifeline Verifier Database which determines that they already receive a specified

[14] Source: The Effects of Energy Price Shocks on Household Food Security in Low-Income Households, by Charlotte Tuttle and Timothy K. M. Beatty, ERS, July 2017

[15] "Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP): Final Report," Nutrition Assistance Program Report, November 2014, USDA Food and Nutrition Service, Office of Policy Support. Located online at: https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf

[16] The implementing All County Letter can be found at: https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/coletters/StateUtilityAssistanceSubsidyHeatAndEat.pdf

needs-tested-benefit, including SNAP, or they must complete the income verification process to determine that they have a household income below 135% of the FPL.[17] We do not know how many SNAP recipients receive LifeLine services in California and the NPRM provided no information about this potential impact so we are unable to comment fully on how the rule would impact people with incomes between 135% (LifeLine cut off) and 200% of FPL, who would have been eligible and receiving Lifeline due to their participation in SNAP. The impact on the small, medium and large LifeLine providers or on the agencies that administer them, like the California Public Utility Commission (PUC), were also not considered and so we are unable to comment on those impacts either.

- ***Some Will Need to Complete Extra Lifeline Paperwork:*** For people who receive SNAP-connected LifeLine service and have incomes between 130% of poverty and 135% of the poverty line and do not receive another federal qualifying benefit, they will need to complete the additional paperwork verifying their income. This will represent extra paperwork on behalf of the recipient and on behalf of small, medium and large LifeLine providers. The impact on these people and the business entities who serve them were not considered in the NPRM and so we are unable to fully comment.

- ***Some California LIHEAP Participants Will Need to Complete Extra Paperwork:*** The Low Income Home Energy Assistance Program (LIHEAP) Block Grant is funded by the Federal Department of Health and Human Services (DHHS) and provides two basic types of services. Eligible low-income persons, via local governmental and nonprofit organizations, can receive financial assistance to offset the costs of heating and/or cooling dwellings, and/or have their dwellings weatherized to make them more energy efficient. In order to qualify, a person must also have an annual household income (before taxes) that is below 60 percent of the State Median Income. However, a person can be determined automatically eligible if they receive SNAP. If the final rule makes a person ineligible for SNAP, they will not become automatically eligible for LIHEAP, but they will need verify their income, which will increase the administrative burden of the program for both program administrators and for applicants and recipients of the program. The NPRM did not include any mention of the impact of this additional application and recertification burden, how many people would be impacted and what the

[17] See Federal Communication Commission (FCC) website: https://www.fcc.gov/lifeline-program-update

consequences for those people would be so we don't have enough information to comment.

No Information About Loss of Free Grocery Bags: In 2014, California banned the use of single-use plastic bags and allowed grocers and food retailers to charge $0.10 per reusable or non-plastic bag at the point of sale. With the knowledge that low-income people face barriers to maintaining and using their own supply of reusable bags, due to the precariousness of their income and housing, and in order to prevent harm to low-income Californians that might be caused by an increase in their grocery bill as a result of the new law, legislators included a provision requiring that grocers and food retailers provide for free bags to people who pay for their groceries with an EBT Card.[18] The NPRM included no information about the impact that the proposed rule might have on people who are made ineligible as a result and would now be required to pay $0.10 per bag when they purchase their groceries so we cannot comment further.

Removing State Flexibility Works Against the Purpose of SNAP & Undermines Economic Mobility

The current law and regulation for SNAP BBCE supports the purpose of the program, to prevent hunger, and supports economic mobility for low-income Americans. Removing this option works contrary to these purposes.

While the use of asset tests in SNAP has not been demonstrated to directly discourage savings, because low-income families generally have too little funds to meet their basic needs and also to save, asset tests discourage savings for people who have fallen into poverty but have yet to spend down their savings in order to qualify for help. Making them do so lengthens the time they will spend in poverty and reduces the likelihood that they will choose to save money when they do.[19] Simply put, removing the flexibility of states to waive the asset test makes people less economically mobile and more dependent on public benefits, not less, as presupposed by the Administration in the NPRM.

What's more, California's use of BBCE also supports economic mobility because it helps low-income Californians prevent hunger when their income is between 130% of the FPL and under 200% of the FPL but it is not enough to meet their basic needs, especially in a high cost state like ours. The NPRM Impact Analysis states on page 18 that this rule will impact

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[18] Senate Bill 270 (Padilla) text and analysis can be found here: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB270

[19] Leslie Parrish, To Save, or Not to Save? Reforming Asset Limits in Public Assistance Programs to Encourage Low-income Americans to Save and Build Assets, (Washington, DC: New America Foundation, 2005), p.9 This report is available online at: https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/paper-parish.pdf

households with income from work more than other households in the program. In 2015, nearly 80% of poor Californians had earnings from work.[20] Most SNAP participants who can work do. In households with at least one working-age, non-disabled adult, 58 percent were employed while on SNAP, and 82 percent were employed prior to or after receiving SNAP. In California, if someone is working, unless self-employed, they earn at least the state minimum wage of $11 per hour. Some Californians also work in municipal districts that have higher minimum wage. For example, San Francisco County has a minimum wage of $15.59[21] and Los Angeles has a minimum wage of $14.25.[22] California's policy makers have made the decisions for higher wages based on the fact that the cost of living is high in the state and it is well documented that the higher-than-national-average minimum wage does not cover a family's basic needs. They have also made decisions based on the knowledge that SNAP could serve these families up to 200% of the FPL.

While two million new jobs have been created and unemployment has dropped in half since 2011, many Californians still struggle with unemployment, underemployment and low-wages and, as a result, experience hunger or are forced to rely on social safety net programs. What's more, unemployment and under-employment is uneven in California, disproportionately impacting ethnic minorities, women, people with disabilities, people who are homeless, people fleeing domestic abuse, former foster youth and people who are re-entering the community after a period of incarceration. Without the ability to prevent hunger and meet their basic needs while also affording education and training to improve their skills and work opportunity, low-income working Californians will remain in poverty.

Simply put, the SNAP program has been shown to support work[23], stimulate economic growth,[24] improve academic outcomes for children[25], and improve health outcomes for recipients.[26] All of these outcomes contribute to an increased likelihood of exiting poverty

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[20] Appendix 3: According to the Public Policy Institute of California. http://www.ppic.org/main/publication_show.asp?i=261
[21] See: https://sfgov.org/olse/minimum-wage-ordinance-mwo
[22] See: https://www.lacounty.gov/minimum-wage/
[23] Appendix 4: Dottie Rosenbaum, "The Facts on SNAP, Part 2: SNAP Supports Work," *Center on Budget and Policy Priorities*, May 2013, https://www.cbpp.org/blog/the-facts-on-snap-part-2-snap-supports-work.
[24] Appendix 5: Nune Phillips, *SNAP Contributes to a Strong Economy*, Center for Law and Social Policy, August 2017, https://www.clasp.org/sites/default/files/SNAP-Contributes-to-a-Strong-Economy.pdf.
[25] Appendix 6: Nisha Beharie, Micaela Mercado, and Mary McKay, "A Protective Association between SNAP Participation and Educational Outcomes Among Children of Economically Strained Households," *Journal of hunger & environmental nutrition* vol. 12,2 (2016): 181-192, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5513186/.
[26] Appendix 7: Steven Carlson and Brynne Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, Center on Budget and Policy Priorities, January 2018,

and becoming economically self-sufficient. By reducing access to SNAP, the proposed rules will undermine the economic mobility of low-income workers. The NPRM did not provide any evidence that would refute this well-researched position or offer any evidence that cutting a low-income working person off of federal food assistance will improve their likelihood of economic mobility.

Not only will the proposed change increase food insecurity and incidences of hunger among low-income working people with children, it will exacerbate the "cliff effect" that forces low-income people off of aid when they secure a job or improve their earnings even before they are able to meet their basic needs from their work earnings alone. In a study published in Health Report in May 2019, researchers concluded that families with children younger than age four who experienced a SNAP benefit reduction or cutoff resulting from increased income were more likely to experience economic hardships, including food insecurity or hunger, and to have reduced caregiver and child health.[27] The NPRM provides too little information about the impact of losing benefits on newly employed SNAP recipients, making it difficult to understand and comment on the impact of people who are made ineligible for the rule as they begin to work.

The Proposed Rule Harms the Food Economy

California's food system economy is one of our most important. According to the California Employment Development Department, food retail workers account for 2.6% of our state's total employment, and about 3.2% of California's private sector employment. On page 6, Table 2, the NPRM[28] assumes that the "The indirect impact on participants in the food supply chain will be minimal because the likelihood that those who no longer qualify for SNAP benefits due to their income or their assets will simply substitute their SNAP benefits with other resources for food purchases." This statement is contrary to what we know about people who receive SNAP.[29] It is also contrary to recent evidence that small retailers lose

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https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care.

[27] "Loss of SNAP Is Associated with Food Insecurity and Poor Health in Working Families with Young Children," Stephanie Ettinger de Cuba, Mariana Chilton, Allison Bovell-Ammon, Molly Knowles, et.al., (Health Affairs, Vol. 38, No. 5). Found online at: https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2018.05265

[28] Regulatory Impact Analysis (7 CFR Part 273) Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) available at: https://www.regulations.gov/document?D=FNS-2018-0037-0002

[29] "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 and "Initiatives to Make SNAP Benefits More Adequate Significantly Improve Food Security, Nutrition, and Health," Food Research and Action Center, available at: https://frac.org/wp-content/uploads/snap-initiatives-to-make-snap-benefits-more-adequate.pdf

revenue when there are changes to SNAP eligibility.[30] Even if SNAP recipients can reallocate other resources toward the purchase of food, they do so by reducing purchases of other non-food items. These non-food items contribute greatly to the small revenue margin of California's retailer community, so the impact would not be minimal.

According to the California Legislative Analyst's Office (LAO), CalFresh benefits help "generate revenue for the state and local governments"[31] Receiving CalFresh benefits can allow households to redistribute income that would normally be allocated to purchasing food. A portion of this redistributed income can be spent on taxable goods, which generates sales tax revenue for the state and counties. This revenue generating effect occurs soon after CalFresh benefits are issued, as eligible households are, by necessity, more likely to spend (rather than save) any additional income within weeks of it being received.[32] In fact, this analysis was used during the analysis of the SNAP BBCE implementing legislation which determined that increased federal funding resulting from the change in the law would result to an increase in CalFresh benefits in the range of $50 million to $60 million and that would, in turn, generate $0.9 million to $1.1 million in increased sales tax revenue. California's Legislature has made decisions based on BBCE generating new taxable income.[33] The NPRM did not consider that these non-food item purchases, which would be foregone in order to shift resources to food purchase, generate income tax, which is an important driver of our state government's general fund.[34]

What's more, a decline in gross sales will not only harm one of our most important industries, but the workers in that industry will face increased job insecurity. Research shows that food retail workers at California companies rely on the SNAP program.[35] In fact, it was reported in 2014 that, 1 in 3 grocery workers receives some form of public assistance and that nearly 1

[30] "Lower grocery prices, food stamp cuts hit Dollar General results," Reuters, Business News (12/1/2016): https://www.reuters.com/article/us-dollar-general-results-idUSKBN13Q4CG
[31] Legislative Analyst's Office, Analysis of the 2004-05 Budget Bill- Food Stamps Program, February 2004 https://lao.ca.gov/analysis_2004/health_ss/hss_20_foodstamps_anl04.htm
[32] Mark Zandi, Assessing the Macro Economic Impact of Fiscal Stimulus 2008, Moody's Analytics, Inc., January 2008. Available at: https://www.economy.com/mark-zandi/documents/Stimulus-Impact-2008.pdf
[33] See: "Statement on Trump Administration's Proposed Rule to Cut SNAP Food Benefits," Western Center or Law & Poverty, et. al. (July 23, 2019). Accessible at: http://www.cafoodbanks.org/sites/default/files/CA%20Joint%20Statement%20on%20Cat%20El%20Proposed%20Rule%20072319.pdf
[34] Legislative Analyst Office, Understanding California's Sales Tax (2015) https://lao.ca.gov/reports/2015/finance/sales-tax/understanding-sales-tax-050615.aspx
[35] Appendix 8: "The High Public Cost of Low Wages," UC Berkeley Labor Center: http://laborcenter.berkeley.edu/the-high-public-cost-of-low-wages/

in 5 workers has cut back on meals because he or she couldn't afford to buy food.[36] Because 43.4% of grocery store workers are Latino, a policy change that negatively impacts this workforce will also increase racial wealth gaps in our state.[37]

Proposed Rule Will Increase Food and Housing Insecurity for Cost-Burdened Households

Food insecurity and lack of stable affordable housing are strongly associated. As housing becomes less affordable for families with limited resources, the likelihood that they will experience food insecurity increases. As explained by the USDA in a 2006 publication, "Local costs of housing and other basic necessities affect the amounts households can spend for food."[38] Broad-based categorical eligibility gives states the flexibility to prevent hunger for families burdened by lack of affordable housing. It allows them to aid families with modestly higher incomes who face food insecurity due to high housing costs. The proposed rule would eliminate this flexibility and harm these families, as an estimated 3.1 million households would lose benefits. The proposed rule will further expose children and families to food insecurity and housing instability, further forcing them to choose between putting food on the table and paying the rent.

Rent burdens are particularly high in California. A study from the National Low Income Housing Coalition found that a worker in California would need to make $34.69 per hour in order to afford a two bedroom rental unit.[39] At the current minimum hourly wage of $12.00, a worker would need to work 116 hours a week to afford a two bedroom unit, or 91 hours to afford a modest one bedroom. Housing cost-burdened families are more likely to forego healthcare and to experience food insecurity.[40] Lack of affordable housing is also one of the leading causes of homelessness.[41]

SNAP helps improve financial stability for these families. Nationally, SNAP helped lift 48 million people above the poverty line in 2012, including 12 million children.[42] SNAP helps

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[36] Appendix 9: San Francisco Chronicle: https://www.sfgate.com/politics/joegarofoli/article/Grocery-workers-in-California-see-wages-shrink-5536515.php

[37] Appendix 10: http://laborcenter.berkeley.edu/pdf/2014/Food-Retail-Report.pdf

[38] "What Factors Account for State-to-State Differences in Food Security?" By Judi Bartfeld, University of Wisconsin-Madison, Rachel Dunifon, Cornell University, Mark Nord, Economic Research Service, U.S. Department of Agriculture, and Steven Carlson, Food and Nutrition Service, U.S. Department of Agriculture. Economic Information Bulletin No. 20. Found at: https://idph.iowa.gov/Portals/1/Files/WIC/state_to_state_fs.pdf

[39] https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf

[40] Source: https://nlihc.org/resource/nlihc-gap-2019-report-calls-significant-investments-address-shortage-7-million-affordable

[41] https://nlchp.org/wp-content/uploads/2018/10/Homeless_Stats_Fact_Sheet.pdf

[42] Sherman, A. & Trisi, Danilo. (2015). "Safety Net More Effective Against Poverty Than Previously Thought: Correcting for Underreporting of Benefits Reveals Stronger Reductions in Poverty and Deep

over 4 million Californians,[43] 51% of whom are children,[44] afford adequate healthy food, leaving them more money to pay their housing costs. But the proposed rule would prevent states like California from providing this crucial aid to families burdened by high housing costs with gross incomes modestly above 130% of the poverty line, making it more likely they will experience hunger and risk losing their homes.

The Proposed Rule Increases the Burden and Cost to State Administrators

The proposed limitations to categorical eligibility will also increase states' administrative costs and burden. These increased costs would result, in part, from states having to restore the asset test for SNAP. Most states had removed the test because they found that it cost them more to implement than it saved. SNAP asset tests are estimated to affect the eligibility of only 1 percent of applicants, but county administrators must apply the test to 100 percent of the applicants and recipients.[45] There is some evidence that eliminating the SNAP asset test has helped these states reduce "churn," where they have to process multiple repeat applications for a single household. The asset test and churn rates are believed to be related because frequent asset fluctuations resulting from paycheck deposits can render participants temporarily ineligible.[46]

The USDA did not provide an estimate of the increase in administrative costs that will be incurred by state and local governments relating to the Administration's proposed change in eligibility standards. It is our understanding that the proposed rule will not result in increased funding for administration of the SNAP program. We ask that FNS provide an estimate of costs to state and county administrators, and the assumptions, data and analysis relied on. The NPRM also did not offer any information about the costs of implementing the proposed rule or cost savings alternatives. Our clients rely on the economic health of SNAP, which is funded at the state level by the state's general fund, which also funds other important safety net programs. Accordingly, it is important to know what cost-saving

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Poverty in All States," Retrieved from: https://www.cbpp.org/research/poverty-and-inequality/safety-net-more-effective-against-poverty-than-previously-thought

[43] California Budget and Policy Center. (2018). "CalFresh Reaches Millions of Californians and Reduces Poverty." Retrieved from: https://calbudgetcenter.org/resources/calfresh-reaches-millions-californians-reduces-poverty/

[44] Sarah Lauffer, Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2016 (US Department of Agriculture: November 2017), Table B.14. The 7.2% figure was provided by Center on Budget and Policy Priorities analysis of the underlying US Department of Agriculture Supplemental Nutrition Assistance Program Quality Control administrative data (Federal Fiscal Year 2016). "People with disabilities" does not include children or adults age 60 or older.

[45] States Rethink Asset Tests for People on Food Stamps (May, 2016): http://www.governing.com/topics/health-human-services/gov-states-rethink-asset-test-people-food-stamps.html

[46] Asset Limits, SNAP Participation, and Financial Stability (June 2016), Ratcliffe, C. et. al. https://fns-prod.azureedge.net/sites/default/files/ops/SNAPAssets.pdf

alternatives are available and we request that FNS provide this information so that we can comment.

Western Center Strongly Opposes the Proposed Rule & Calls on the Department to Withdraw It

Because Californians are burdened with some of the highest cost of living in the country, categorical eligibility is essential to helping fight hunger in the state. The proposed rule exceeds the Department's authority under the statute, and if implemented, would severely limit California's SNAP program's ability to help low-income individuals and families, especially households with earnings from work and people with high housing costs. The proposed rule would cost these families not only their SNAP benefits, but also result in a loss of free school meals and access to a wide variety of benefits connected to SNAP eligibility, impacts not considered in the NPRM. The stated rationale for changing existing regulations is unclear, confusing, and poorly reasoned. It does not provide adequate justification for departing from long-standing regulations that are consistent with the statute and Congressional intent. What's more, the Department does not have the authority to make the proposed change. For all of the reasons stated above, we oppose the proposed rule and call on the Department to withdraw it from consideration.

Sincerely,

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