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

[Submitted via <https://www.regulations.gov>]

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 National Women's Law Center (the "Center") takes this the opportunity to comment in opposition to USDA's Proposed Rulemaking on a Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) during the reopening of the comment period. The proposed changes would cause serious harm to low-income women, children and their families, as well as their communities and the nation.

The Center fights for gender justice — in the courts, in public policy, and in society — working across the issues that are central to the lives of women and girls. The Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm everyone — especially those who face multiple forms of discrimination. For more than 45 years, the Center has been on the leading edge of every major legal and policy victory for women.

The proposed rule would gut states' Broad-Based Categorical Eligibility (BBCE) options to eliminate SNAP asset tests and use a higher income test to serve more working households that have significant expenses for shelter and child care. According to USDA's initial Regulatory Impact Analysis (RIA), the proposed rule would eliminate SNAP benefits for 3.1 million households nationally.¹ USDA recently released analysis of the proposed rule's impact on access to the School Breakfast Program (SBP) and National School Lunch Program (NSLP), which further highlights the serious harm the

¹ U.S. DEP'T OF AGRIC., REGULATORY IMPACT ANALYSIS, REVISION OF CATEGORICAL ELIGIBILITY IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), RIN 0584-AE62 (Jul. 24, 2019).

proposed changes would cause to students in most states in the country and to our schools. It indicates that the proposed rule would jeopardize free school meals for nearly 1 million children (982,000).²

Because of the importance of SNAP and school meals to the economic security, health, and well-being of children,³ the Center strongly opposes any change in policy or regulation that further limits the receipt of SNAP and free school meals by low-income children. Furthermore, USDA has not provided sufficient analysis or time for assessing the full extent of the proposed rule's impact on access to school meals as well as develop comments. USDA also has not adequately explained why it omitted analysis of the impact on school meals from the RIA it posted during the initial 60-day comment period. The proposed rule would harm the health and well-being of many school children. Consequently, the Center urges USDA to withdraw this proposed rule.

I. SNAP and school meal programs work in tandem to reduce hunger, food insecurity, and poverty for children and their families.

SNAP and school meals play a critical role in reducing hunger, food insecurity, and poverty for millions of children and their families. SNAP serves over 18 million children.⁴ NSLP provided nutritious lunches to 29.7 million children each school day in FY 2018.⁵ SBP served breakfast to more than 14.7 million children each school day in FY 2018.⁶

² U.S. DEP'T OF AGRIC., 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 3 (Oct. 18, 2019), *available at* <https://www.regulations.gov/docket?D=FNS-2018-0037> [hereinafter "USDA SCHOOL MEALS IMPACTS ANALYSIS"].

³ HEATHER HARTLINE-GRAFTON, FOOD RES. & ACTION CTR., THE IMPACT OF FOOD INSECURITY ON WOMEN'S HEALTH, <http://frac.org/blog/impact-food-insecurity-womens-health>. See also STEVEN CARLSON & BRYNNE KEITH-JENNINGS, CTR. ON BUDGET AND POL'Y PRIORITIES, SNAP IS LINKED WITH IMPROVED NUTRITIONAL OUTCOMES AND LOWER HEALTH CARE COSTS, (Jan. 17, 2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>; FOOD RES. & ACTION CTR., THE ROLE OF THE FEDERAL CHILD NUTRITION PROGRAMS IN IMPROVING HEALTH AND WELL-BEING (Dec. 2017), *available at* <https://frac.org/wp-content/uploads/hunger-health-role-federal-child-nutrition-programs-improving-health-well-being.pdf> [hereinafter "THE ROLE OF THE FEDERAL CHILD NUTRITION PROGRAMS"].

⁴ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERVS., CHARACTERISTICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS: FISCAL YEAR 2017, at 22 (Feb. 2019), *available at* <https://fns-prod.azureedge.net/sites/default/files/ops/Characteristics2017.pdf> (Table 3.5).

⁵ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., NATIONAL SCHOOL LUNCH PROGRAM: PARTICIPATION AND LUNCHES SERVED, <https://www.fns.usda.gov/pd/child-nutrition-tables> (last visited June 17, 2019). FY 2018 data are preliminary.

⁶ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., SCHOOL BREAKFAST PROGRAM: PARTICIPATION AND MEALS SERVED, <https://www.fns.usda.gov/pd/child-nutrition-tables> (last visited June 17, 2019). FY 2018 data are preliminary.

A. SNAP and school meal programs help reduce food insecurity for children and their families.

Nearly one in nine U.S. households experiences food insecurity⁷ during the year,⁸ and children are particularly impacted:

- In 2018, 11.2 million children lived in food-insecure households.⁹
- In 2018, nearly 28% of households with children headed by a single woman faced food insecurity.¹⁰
- Studies have consistently found that households that include children with disabilities face higher rates of food insecurity.¹¹

SNAP works effectively by providing families struggling to make ends meet with monthly funds specifically designated for food purchases. Research shows that, for example, households with children who participate in SNAP for six months have an 8.5 percentage point decrease in food insecurity.¹² Participation in school meal programs also reduces food insecurity,¹³ helping children not go hungry at school.

B. SNAP and school meal programs are critical health interventions and provides support for people struggling to make ends meet.

Food insecurity has negative health effects, making SNAP and school meal programs critical health interventions and supports for people struggling to make ends meet. For example, food insecurity increases the risk of negative physical and mental health outcomes.¹⁴ Food insecurity is also linked to an increase in the prevalence and severity

⁷ The U.S. Department of Agriculture defines food insecurity as a “lack of consistent access to enough food for an active, healthy life.” ECON. RES. SERV., U.S. DEP’T OF AGRIC., DEFINITIONS OF FOOD SECURITY (2018), *available at* <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx>.

⁸ ALISHA COLEMAN-JENSEN ET AL., U.S. DEP’T OF AGRIC., HOUSEHOLD FOOD INSECURITY IN THE UNITED STATES IN 2018, at 6 (2019), <https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=963>.

⁹ *Id.* at 9.

¹⁰ *Id.* at 14.

¹¹ SUSAN L. PARISH, ET AL., LURIE INST. FOR DISABILITY POL’Y, Presentation at the National Association for Welfare Research and Statistics Annual Workshop: FOOD INSECURITY AMONG U.S. CHILDREN WITH DISABILITIES (Aug. 2015), *available at* <http://nawrs.org/wp-content/uploads/2015/09/2C-Parish-Food-Insecurity.pdf>.

¹² JAMES MABLI ET AL., U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERVS., MEASURING THE EFFECT OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) PARTICIPATION ON FOOD SECURITY (Aug. 2013), <https://fns-prod.azureedge.net/sites/default/files/Measuring2013.pdf>.

¹³ THE ROLE OF THE FEDERAL CHILD NUTRITION PROGRAMS, *supra* note 3, at 3.

¹⁴ HARTLINE-GRAFTON, *supra* note 3; FOOD RES. & ACTION CTR., THE IMPACT OF POVERTY, FOOD INSECURITY, AND POOR NUTRITION ON HEALTH AND WELL-BEING 3-6 (Dec. 2017), *available at* <http://frac.org/wp-content/uploads/hunger-health-impact-poverty-food-insecurity-health-well-being.pdf>.

of diet-related disease, such as obesity and type 2 diabetes.¹⁵ Studies have also shown that food insecurity increases the risk of depressive symptoms or diagnosis.¹⁶ In addition, because of limited financial resources, those who are food insecure may attempt to stretch budgets by using strategies that can be harmful to their health, such as underusing or postponing medication because of cost, postponing or forgoing preventive or needed medical care, and forgoing the foods needed for special medical diets (e.g., diabetic diets).¹⁷ Not surprisingly, research shows that household food insecurity is a strong predictor of increased numbers of emergency department visits and hospitalizations and increased health care costs.¹⁸

SNAP improves health outcomes, including physical and mental health for children,¹⁹ and it reduces health care utilization and costs.²⁰ Access to school meal programs improve students' nutrition, protect against obesity, and improve mental health.²¹ However, the proposed rule threatens children's health by not only risking SNAP benefits but also jeopardizing access to for free school meals for about 982,000 children.

C. SNAP and school meal programs help ensure that students are not going hungry in classrooms.

Food insecurity negatively impacts children and adolescents socially, emotionally, and behaviorally.²² For example, hunger impairs a child's ability to maintain self-control, be

¹⁵ BRANDI FRANKLIN ET AL., EXPLORING MEDIATORS OF FOOD INSECURITY AND OBESITY: A REVIEW OF RECENT LITERATURE, 37 J. CMTY. HEALTH 253-264 (2012); SETH A. BERKOWITZ ET AL., FOOD INSECURITY, FOOD "DESERTS," AND GLYCEMIC CONTROL IN PATIENTS WITH DIABETES: A LONGITUDINAL ANALYSIS, 41 DIABETES CARE 1188 (2018).

¹⁶ MERRYLYN MAYNARD ET AL., FOOD INSECURITY AND MENTAL HEALTH AMONG FEMALES IN HIGH-INCOME COUNTRIES, 15 INT'L. J. ENV'TL. RES. & PUB. HEALTH 1424 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6068629/>.

¹⁷ Nat'l Women's Law Ctr., Comment Letter on Proposed Rule on Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program 5 (Sept. 23, 2019), *available at* <https://www.regulations.gov/document?D=FNS-2018-0037-17689> and <https://nwlc.org/resources/nwlc-comments-to-the-u-s-department-of-agriculture-on-snap-categorical-eligibility/> [hereinafter "NWLC SNAP BBCE Comment Letter"].

¹⁸ VALERIE TARASUK ET AL., ASSOCIATION BETWEEN HOUSEHOLD FOOD INSECURITY AND ANNUAL HEALTH CARE COSTS, 187 CAN. MED. ASS'N J. E429 (2015); SETH BERKOWITZ ET AL., FOOD INSECURITY AND HEALTH EXPENDITURES IN THE UNITED STATES, 2011-2013, 53 HEALTH SERVS. RES. 1600 (2017).

¹⁹ HARTLINE-GRAFTON, *supra* note 3; CHRISTIAN A. GREGORY & PARTHA DEB, DOES SNAP IMPROVE YOUR HEALTH?, 50 FOOD POL'Y 11 (2015); VICTORIA L. MAYER ET AL., FOOD INSECURITY, COPING STRATEGIES AND GLUCOSE CONTROL IN LOW-INCOME PATIENTS WITH DIABETES, 19 PUB. HEALTH NUTRITION 1103 (2016); CINDY W. LEUNG ET AL., HOUSEHOLD FOOD INSECURITY IS POSITIVELY ASSOCIATED WITH DEPRESSION AMONG LOW-INCOME SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM PARTICIPANTS AND INCOME-ELIGIBLE NONPARTICIPANTS, 145 J. NUTRITION 622 (2015).

²⁰ CHRISTIAN A. GREGORY & PARTHA DEB, DOES SNAP IMPROVE YOUR HEALTH?, 50 FOOD POL'Y 11 (2015); HILARY K. SELIGMAN ET AL., EXHAUSTION OF FOOD BUDGETS AT MONTH'S END AND HOSPITAL ADMISSIONS FOR HYPERGLYCEMIA, 33 HEALTH AFFAIRS 116 (2014).

²¹ THE ROLE OF THE FEDERAL CHILD NUTRITION PROGRAMS, *supra* note 3, at 4-5.

²² QWAMEL HANKS ET AL., FOOD RES. & ACTION CTR., THE CONNECTIONS BETWEEN FOOD INSECURITY, THE FEDERAL NUTRITION PROGRAMS, AND STUDENT BEHAVIOR 1 (2018), *available at* <https://www.frac.org/wp-content/uploads/breakfast-for-behavior.pdf>.

attentive in class, and develop interpersonal relationships with teachers and peers.²³ Hungry children are seven times more likely than other children to engage in physical altercations,²⁴ likely due to negative changes in mood related to hunger.²⁵ Lower levels of self-control in early childhood resulting from hunger leads to higher levels of behavioral issues as they grow, compared to their food-secure peers.²⁶ This may explain why girls living in food-insecure families experience impaired social skills development, such as a reduced ability to get along with other children and increased loneliness.²⁷ These negative impacts interfere with students' ability to focus on learning and getting good grades²⁸ because food-insecure students are too preoccupied with meeting basic human needs—putting them at a heightened risk of experiencing mental health issues such as anxiety, depression, and suicidal thoughts.²⁹

SNAP and school meal programs work in tandem to support students' positive social, educational, emotional, and behavioral development.³⁰ Participating in the SBP helps students improve their attendance, behavior, academic performance, and mental health.³¹ NSLP participation helps improve test scores and long-term educational outcomes.³² Students participating in SNAP have lower rates of disciplinary issues in the early part of a month, compared to later in the month when SNAP benefits usually run out³³ (due to the already inadequate SNAP benefit, an average of \$127 per month in fiscal year 2018).³⁴

II. The connections between free school meals and SNAP reduce student hunger and reduce application burdens.

Students whose households participate in SNAP are directly certified to receive free school meals. Direct certification helps to ensure that children who need free school meals are certified to receive them, and it reduces administrative work for school districts around the country.

²³ *Id.* at 1-3.

²⁴ *Id.* at 1.

²⁵ AM. PSYCHOL. ASS'N, HUNGER CAN LEAD TO ANGER, BUT IT'S MORE COMPLICATED THAN A DROP IN BLOOD SUGAR, STUDY SAYS, MEDICAL XPRESS (June 11, 2018), <https://medicalxpress.com/news/2018-06-hunger-anger-complicated-blood-sugar.html>.

²⁶ QWAMEL HANKS ET AL., *supra* note 22.

²⁷ *Id.*

²⁸ *Id.* at 3; See also MADELEINE LEVIN & HEATHER HARTLINE-GRAFTON, FOOD RES. & ACTION CTR., BREAKFAST FOR LEARNING 1 (2016), available at <http://frac.org/wp-content/uploads/breakfastforlearning-1.pdf> (stating children and adolescents experiencing hunger are more likely to have attention problems and poorer grades).

²⁹ QWAMEL HANKS ET AL., *supra* note 22.

³⁰ *Id.* at 2-3.

³¹ *Id.*

³² THE ROLE OF THE FEDERAL CHILD NUTRITION PROGRAMS, *supra* note 3, at 6.

³³ *Id.* at 3.

³⁴ CTR. ON BUDGET & POL'Y PRIORITIES, POLICY BASICS: THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) (June 25, 2019), available at <https://www.cbpp.org/research/food-assistance/policy-basics-the-supplemental-nutrition-assistance-program-snap>.

In addition, the Community Eligibility Provision (CEP) allows schools in high poverty communities to offer free breakfast and lunch to all students. CEP uses the number of children directly certified for free school meals, primarily due to participation in SNAP, to determine if a school is eligible to implement the provision and to set the federal funding for school breakfast and lunch that a school will receive. This not only reduces administrative burdens, but CEP also reduces stigma associated with receiving a free school meal, improves academic performance, reduces student suspension rates, and improves students' health.³⁵ CEP helps more students receive these benefits because students who need meal assistance because their families live paycheck-to-paycheck but struggle to afford enough food for the whole month also receive the meals, even if their families are above the eligibility threshold.³⁶

III. The proposed rule restricting BBCE would harm children and their families not only by taking SNAP away but also by jeopardizing access to free school meals for nearly 1 million children.

USDA estimates that the proposed rule would take SNAP away from about 1.7 million households (3.1 million individuals total).³⁷ As the Center stated in its September 23 comment, restricting BBCE would harm a diverse group of women, children, and families.³⁸ But this proposed rule would do more than take SNAP away from 3.1 million people. USDA's October 18 analysis states that this proposed rule would also jeopardize access to free school meals for 982,000 children.³⁹

About 445,000 children would still be income eligible for free meals,⁴⁰ but this assumes that all these children's families could navigate the school meals application process successfully. Numerous barriers – including literacy, language barriers, stigma, schools' unwillingness and inability to effectively solicit eligible families to apply, privacy concerns about sharing financial information on paper, and income verification processes that are unresponsive to the realities of low-wage working parents' lives – would inevitably keep some of the children that the proposed rule causes to lose direct certification from being certified for free or reduced-price school meals.⁴¹

³⁵ KRISTIN BLAGG, MACY RAINER & ELAINE WAXMAN, URBAN INST., HOW RESTRICTING CATEGORICAL ELIGIBILITY FOR SNAP AFFECTS ACCESS TO FREE SCHOOL MEALS 4 (Oct. 2019), *available at* https://www.urban.org/sites/default/files/publication/101280/how_restricting_categorical_eligibility_for_snap_affects_access_to_free_school_meals_0.pdf.

³⁶ *Id.*

³⁷ Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), 84 Fed. Reg. 35570, 35575 (proposed Jul. 24, 2019) (to be codified at 7 C.F.R. pt. 273).

³⁸ NWLC SNAP BBCE Comment Letter, *supra* note 17.

³⁹ USDA SCHOOL MEALS IMPACTS ANALYSIS, *supra* note 2.

⁴⁰ *Id.*

⁴¹ See, e.g., MADELEINE LEVIN & JESSIE HEWINS, UNIVERSAL FREE SCHOOL MEALS, SHRIVER CTR. ON POVERTY L. (2014), <https://www.povertylaw.org/clearinghouse/articles/meals>; JESSICA FU, LOTS OF AMERICAN FAMILIES ARE STRUGGLING WITH STUDENT LUNCH DEBT. WHAT'S THE SOLUTION?, CHALKBEAT (Apr. 24, 2019), <https://www.chalkbeat.org/posts/us/2019/04/25/lots-of-american-families-are-struggling-with-student-lunch-debt-whats-the-solution/>; FULL PLATES FULL POTENTIAL, OVERCOMING THE BARRIERS <https://www.fullplates.org/barriers/> (last accessed Oct. 31, 2019); NATE FRENTZ & ZOË NEUBERGER, CTR. ON BUDGET & POL'Y PRIORITIES, KEY STEPS TO IMPROVE ACCESS TO FREE AND REDUCED-PRICE SCHOOL

In addition, the majority of the impacted children could no longer qualify for free school meals: 497,000 children would qualify only for reduced-price school meals, and another 40,000 children could receive school meals only by paying regular price.⁴² If these children lose access to free school meals because they lose SNAP under this proposed rule, their parents and caregivers will have to pay for school meals—a cost some may not be able to bear, leading to more hungry children in schools.

Given the serious issues many school districts currently experience with low-income working families struggling to pay for school meals even at reduced prices, the proposed rule would likely exacerbate the incidences of “lunch shaming” (occurring when families accumulate school meal debt and children are not provided the regular school meal) and/or cause the children to forgo getting the school meal entirely. Already, three in four school districts are dealing with unpaid school meals fees.⁴³

Furthermore, community eligibility’s reliance on SNAP direct certification means that some high-needs schools may no longer be eligible or may not find it financially viable to adopt community eligibility. USDA’s original RIA of the proposed rule failed to determine the impact of the proposed rule on community eligibility. USDA’s October 18 analysis acknowledges this issue but does not actually provide an estimate of how many children could lose free school meals because their school can no longer participate in community eligibility. USDA states:

Of the 13.7 million children enrolled in schools participating in CEP, 9.9 million (or 72 percent) are in the States that have SNAP expanded categorical eligibility policies using a non-cash TANF program with a gross limit higher than 130%, and thus would be impacted by the proposal. These States also tend to use CEP at a higher rate than other States.⁴⁴

MEALS (Sept. 6, 2012), <https://www.cbpp.org/research/key-steps-to-improve-access-to-free-and-reduced-price-school-meals>.

⁴² USDA SCHOOL MEALS IMPACTS ANALYSIS, *supra* note 2.

⁴³ SCHOOL NUTRITION ASS’N, SCHOOL NUTRITION OPERATIONS REPORT (2018). For additional information on the seriousness of the school meal debt and attendant “lunch shaming” in the United States, see U.S. DEP’T OF AGRIC., FOOD AND NUTRITION SERV., REPORT TO CONGRESS: REVIEW OF LOCAL POLICIES ON MEAL CHARGES AND PROVISION OF ALTERNATE MEALS (Jun. 2016), *available at* <https://fns-prod.azureedge.net/sites/default/files/cn/unpaidmealcharges-report.pdf> (exploring unpaid school meal debt); FOOD RES. & ACTION CTR., UNPAID SCHOOL MEALS FEES: A REVIEW OF 50 LARGE SCHOOL DISTRICTS’ POLICIES (Sept. 2017), *available at* <http://www.frac.org/wp-content/uploads/unpaid-school-meal-fees-review-50-large-district-policies.pdf> (describing experiences many children whose school lunch accounts are in arrears have in cafeterias); SCHOOL NUTRITION ASS’N, 2019 SCHOOL NUTRITION TRENDS FULL REPORT (2019), *available at* <https://schoolnutrition.org/2019-school-nutrition-trends-summary-report/> (reporting on impact of unpaid school meal fees on school nutrition finances); U.S. DEP’T OF AGRIC., FOOD AND NUTRITION SERV., Special Nutrition Program Operations Study: State and School Food Authority Policies and Practices for School Meals Programs School Year 2011-12 (Mar. 2014), *available at* <https://fns-prod.azureedge.net/sites/default/files/SNOPSYear1.pdf> (exploring the various actions that school districts take when a family accrues debt, finding that 60 percent of districts provide an alternative meal and that 35 percent take an administrative action such as withholding grades).

⁴⁴ USDA SCHOOL MEALS IMPACTS ANALYSIS, *supra* note 2.

Before this statement, USDA states, “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.”⁴⁵ This seems to assume that all schools currently using community eligibility could continue to do so, which, as stated above, may not prove true. Therefore, the proposed rule could also take free school meals away from additional children—not just the 982,000 children who are jeopardized in USDA’s estimate. According to the Urban Institute, about 142,000 students “attend schools that could lose community eligibility entirely.”⁴⁶ In addition, the proposed rule jeopardizes CEP access for about 1.05 million students because their schools could lose full reimbursement, creating a financial burden that their schools may not be able to bear to continue participating in CEP.⁴⁷

Losing SNAP and free school meals will have a harmful impact on a diverse group of school-age children:

- **Children of color** living in low-income, food-insecure households are more likely to be at risk of developmental delay than their counterparts living in low-income but food-secure households.⁴⁸ Due to the toll inadequate nutrition takes on early childhood development, food insecurity contributes to the achievement gap and may perpetuate the cycle of poverty into adulthood for low-income children of color.⁴⁹ Nutrition assistance programs mitigate the effects of poverty and food insecurity for low-income children of color,⁵⁰ and, conversely, jeopardizing access to SNAP and free school meals under the proposed rule could well exacerbate them.
- **Children in working families** are more likely to experience food insecurity and report poor health due to a reduction in or loss of SNAP benefits.⁵¹ The same is likely true by jeopardizing access to free school meals.
- **Children in the care of grandparents** may be living with their elders because their parents could not provide for them.⁵² The housing, health care, and child care costs that come with taking care of grandchildren can be significant.⁵³ Consequentially, assuming the role of caretaker—often times on short notice—places a financial strain on grandparents, especially those who are retired or semi-retired and have

⁴⁵ *Id.*

⁴⁶ BLAGG, RAINER & WAXMAN, *supra* note 35, at 1.

⁴⁷ *Id.* at 2, 8.

⁴⁸ JOINT CTR. FOR POL. & ECON. STUD. HEALTH POL’Y INST., THE IMPACT OF FOOD INSECURITY ON THE DEVELOPMENT OF YOUNG LOW-INCOME BLACK & LATINA CHILDREN 6 (MAY 2006), *available at* https://childrenshealthwatch.org/wp-content/uploads/children_of_color_5_06.pdf.

⁴⁹ *Id.*

⁵⁰ *Id.* at 8.

⁵¹ LAXMI HAIGH, NUTRITION INSIGHT, U.S. FAMILIES WITH REDUCTION AND LOSS OF SNAP BENEFITS HAVE A HIGHER RISK OF FOOD INSECURITY AND POOR HEALTH (May 8, 2019), *available at* <https://childrenshealthwatch.org/us-families-with-reduction-and-loss-of-snap-benefits-have-a-higher-risk-of-food-insecurity-and-poor-health/>.

⁵² CHRISTINE STANIK, ALTARUM CTR. FOR BEHAVIORAL HEALTH, COLLATERAL DAMAGE OF THE OPIOIDS CRISIS 2-3 (2018), *available at* <https://altarum.org/sites/default/files/uploaded-publication-files/Altarum-Research-Brief-Collateral-Damage-of-the-Opioid-Crisis-Dec1218.pdf>.

⁵³ *Id.* at 3.

downsized their homes and budgets.⁵⁴ Jeopardizing access to SNAP and free school meals would throw these households into further financial jeopardy.

- **Teenagers** in food-insecure families often go hungry so their younger siblings can eat and look for ways to provide food and money for their households.⁵⁵ Food-insecure teenagers may also try to ease their hunger and make food last longer for their family by eating at friends' or relatives' homes and saving their school lunch for the weekend.⁵⁶ Jeopardizing SNAP and free school meals under this proposed rule would further harm teenagers, who are at a critical stage in their growth and development.
- **Runaway and homeless youth** experiencing food insecurity are more likely to have been neglected and abused by caretakers, spend a lot of time on the streets, be isolated, and experience substance abuse.⁵⁷ The inconsistent food sources distinct to homelessness, combined with teenagers' unpredictable eating habits, put homeless teens at a higher risk for malnutrition.⁵⁸ Runaway and homeless youth acquire food through means such as borrowing money, getting food or money from relatives, utilizing social welfare resources, begging for money, theft, and survival sex.⁵⁹ Jeopardizing access to SNAP and free school meals for these young people would further place their health and well-being at risk.
- **Children with disabilities** are more likely to be food insecure than children without disabilities.⁶⁰ Due to the special diets children with disabilities often require, food insecurity puts these children at risk for health and developmental problems when families cannot afford the food their children need.⁶¹ Increasing SNAP benefits for families with children who have disabilities would decrease the risk of food insecurity,⁶² while cutting their SNAP benefits, as this proposed rule would do, would have the opposite effect. Jeopardizing access to free school meals likewise could increase food insecurity for children with disabilities.

For all these reasons, the Center urges USDA to withdraw this proposed rule and return to a focus on feeding hungry children.

⁵⁴ *Id.*

⁵⁵ SUSAN J. POPKIN ET AL., URBAN INST., IMPOSSIBLE CHOICES: TEENS AND FOOD INSECURITY IN AMERICA v (Sept. 2016), *available at* https://www.urban.org/sites/default/files/publication/83971/impossible-choices-teens-and-food-insecurity-in-america_1.pdf.

⁵⁶ *Id.*

⁵⁷ LES B WHITBECK ET AL., NAT'L INSTS. OF HEALTH, FOOD INSECURITY AMONG HOMELESS AND RUNAWAY ADOLESCENTS 6 (Feb. 2006), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2575688/pdf/nihms-73315.pdf>.

⁵⁸ *Id.* at 1.

⁵⁹ *Id.* at 6.

⁶⁰ KATHLEEN ROMIG, CTR. ON BUDGET & POL'Y PRIORITIES, YOUNG PEOPLE WITH DISABILITIES VULNERABLE TO FOOD INSECURITY (Sept. 26, 2016), <https://www.cbpp.org/blog/young-people-with-disabilities-vulnerable-to-food-insecurity>.

⁶¹ *Id.*

⁶² *Id.*

IV. The proposed rule will increase administrative costs.

Under BBCE, families do not have to perform duplicative application processes to receive SNAP, saving both states and families time and administrative burdens. In addition, the shift from direct certification to individual school meal application processing would force schools to process many more school meal applications. The proposed rule creates a significant administrative cost for schools, which the October 18 analysis fails to adequately address. Consequently, the Center urges the USDA to withdraw this proposed rule.

V. This proposed rule aims to unlawfully and arbitrarily narrow SNAP BBCE and threatens free school meals for nearly 1 million children.

A. Congress has not granted USDA authority to make these changes to SNAP BBCE and free school meals and has rejected such changes.

In the Center's September 23 comment, the Center argued that Congress has not granted USDA authority to unilaterally change SNAP BBCE based on the receipt of TANF-funded benefits and in fact has itself rejected such changes.⁶³ As part of Congress's rejection of this type of BBCE change, Congress rejected these harmful impacts on free school meals. The Congressional Budget Office (CBO) has included analyses of impacts on access when it has provided cost estimates to Congress regarding proposed legislative changes to SNAP BBCE. Indeed, such CBO estimates were before Members of Congress when they were considering (and ultimately rejected) changes to BBCE in the 2018 Farm Bill.⁶⁴

Because Congress did not delegate authority to the Secretary to decide which types of TANF-funded benefits can be included in SNAP BBCE (and which cannot), and because Congress has rejected opportunities to roll back BBCE legislatively, this proposed rule is beyond the scope of USDA's authority and is directly counter to congressional intent.

B. USDA's rationale for its proposed rule continues to be arbitrary and fails to adequately consider the harms.

Even if the USDA had the authority to rule make on this issue, USDA's proposed rule is arbitrary and capricious because its purported rationale for these changes is pretextual and has no basis in fact, as the Center stated in its September 23 comment.⁶⁵ This

⁶³ NWLC SNAP BBCE Comment Letter, *supra* note 17, at 31-32.

⁶⁴ See, e.g., 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 BBCE, "There 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.")

⁶⁵ NWLC SNAP BBCE Comment Letter, *supra* note 17, at 33-34.

proposed rule continues to be arbitrary because the analysis on school meals was not provided until more than 75 days after USDA published the proposed rule and 16 days after the initial 60-day comment period had closed. USDA then provided the public only 14 days to review and assess USDA's analysis. Furthermore, as stated previously, the school meals analysis does not contain sufficient analysis of how these proposed changes will impact community eligibility.

Moreover, in its October 18 analysis, USDA failed to explain why the 982,000 figure differs so greatly from its previous estimate that Congress obtained (that about 500,000 children would lose eligibility for free and reduced-price meals).⁶⁶ It could reasonably be asked whether the new and significantly higher 982,000 figure is trustworthy—or whether it still underestimates the impacts of the proposed rule (for example, because it fails to include the impact on community eligibility). In the absence of such an explanation, nothing assuages the concern that USDA is arbitrarily rushing a harmful proposed rule without undertaking thorough analysis of its harmful impacts on diverse low-income women, children, and families across the nation.

The NPRM, original RIA, and the October 18 school meals analysis, also fail to fully analyze the impact of the proposed rule on households with people with disabilities and different types of households with or without children. USDA's proffered analysis lacks the deep analysis that is needed to fully assess the impact of the proposed rule on women, mothers, people of color, LGBTQ people, survivors, and other marginalized populations who rely on SNAP. In addition, USDA's proffered analysis fails to discuss how other state and federal programs will be impacted by the changes to SNAP, how state economies will be impacted by the creation of a new benefit cliff, how the loss of SNAP benefits will impact rural communities specifically, or how the loss of school meals will likewise impact these areas. Furthermore, none of USDA's proffered analysis analyzes the impact on the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). These estimates are all necessary components of any assessment of the impact of the proposal.

It is incumbent upon USDA to do a full and complete impact analysis, especially when it is proposing a rule that will cause *a minimum* of 3.1 million people to lose access to SNAP, 982,000 children (or potentially more) to lose direct access to free school meals, and is directly counter to the purposes of food assistance programs. This lack of thorough analysis and consideration of the harms of this proposed rule is irresponsible, appalling, and against the mission of SNAP, free school meals, and WIC.

It is clear that the USDA has issued a deeply flawed proposed rule, which should be withdrawn.

⁶⁶ Press Release, Congressman Bobby Scott, Chairman Scott to Secretary Purdue: Release Internal Estimates Showing Impact of Proposed SNAP Changes on Free School Meals (July 29, 2019) (on file with author), *available at* <https://bobbyscott.house.gov/media-center/press-releases/chairman-scott-to-secretary-perdue-release-internal-estimates-showing>.

VI. USDA should withdraw this harmful proposed rule restricting BBCE.

By USDA's own estimates, the proposed rule would cut SNAP benefits over five years by \$10.543 billion, while increasing SNAP administrative costs by \$2.314 billion.⁶⁷ In its October 18 analysis, USDA estimated that the impact on free school meals could cut \$90 million annually from these programs.⁶⁸ Furthermore, USDA concedes that the proposed rule "may...negatively impact food security."⁶⁹

States have been using BBCE for more than 20 years to effectively provide food assistance to low-income women, children, and families at home. Free school meals provide additional food assistance so school-age children do not go hungry at school. The Center strongly opposes the proposed rule that would cut food benefits, increase food insecurity, and harm our community.

Thank you for the opportunity to submit comments on the proposed rule. Please do not hesitate to contact Sarah Hassmer at shassmer@nwlc.org to provide further information.

Sincerely,



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⁶⁷ Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), 84 Fed. Reg. at 35575.

⁶⁸ USDA SCHOOL MEALS IMPACTS ANALYSIS, *supra* note 2, at 4.

⁶⁹ Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), 84 Fed. Reg. at 35575.