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September 20, 2019

The Honorable Sonny Perdue, Secretary
The Honorable Brandon Lipps, Deputy Under Secretary
Program Design Branch, Program Development Division
Food and Nutrition Services, United States Department of Agriculture
3101 Park Center Drive
Alexandria, Virginia 22302

**SUBJECT: COMMENTS ON PROPOSED RULE: FNS DOCKET ID: FNS-2018-0037;
*REVISION OF CATEGORICAL ELIGIBILITY IN THE SUPPLEMENTAL NUTRITION
ASSISTANCE PROGRAM*; 84 FED. REG. 35570 (JULY 24, 2019), RIN 0584-AE62**

Dear Secretary Perdue and Deputy Under Secretary Lipps:

The California Department of Social Services (CDSS) submits the following comments for your consideration on the Proposed Rule entitled *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program*, (84 Fed. Reg. 35570 (July 24, 2019)), RIN 0584-AE62 (Proposed Rule).

The Proposed Rule of the U.S. Department of Agriculture (USDA) is intended to drastically alter long-standing eligibility criteria for the federal Supplemental Nutrition Assistance Program (SNAP). The rules the USDA seeks to alter have been relied upon by states to develop policies, automate procedures, and administer SNAP in accordance with the congressional intent of providing essential food assistance to low-income and vulnerable populations. The Proposed Rule is arbitrary, capricious, an abuse of discretion, and exceeds the statutory jurisdiction and authority of the USDA in violation of the Administrative Procedures Act (APA). Specifically, the USDA:

- establishes a clear error of judgment by imposing eligibility criteria which Congress rejected and exceeds the USDA's authority;
- fails to identify any facts or good reasons to support the need for regulatory changes;
- fails to identify a logical and rational connection between any facts and the eligibility criteria chosen;
- fails to provide and adequately explain its decision-making;
- fails to consider the unnecessary and significant administrative costs of the proposed rule and the foreseeable negative impacts on the population SNAP is intended to serve;

- fails to consider less restrictive alternatives to address the unsubstantiated problem; and
- fails to put forth a regulation proposal that meets the USDA's obligation to serve the public interest.

For these reasons, supported by the comments below, CDSS strongly opposes the Proposed Rule and requests that the USDA withdraw it.

Pursuant to current federal SNAP eligibility laws and regulations, certain SNAP applicant and recipient households are determined to be categorically eligible based on their receipt of a qualifying type of non-SNAP benefit (ex. Temporary Assistance for Needy Families (TANF) or Supplemental Security Income cash aid). Once determined to be categorically eligible, a household is subject to a streamlined SNAP eligibility determination. The Proposed Rule seeks to alter the rules for categorical eligibility (hereafter, CE) based on receipt of TANF funded cash aid and Broad-Based Categorical Eligibility (hereafter, BBCE) based on receipt of non-cash TANF benefits. The purpose of CE and BBCE is to provide states with the ability to reduce duplicative financial eligibility determinations, reduce administrative costs, ensure people in need receive necessary nutrition assistance, and increase eventual self-sufficiency.

In California, SNAP is known as CalFresh. CDSS oversees the administration of CalFresh by the 58 county, health and human services agencies (county agencies). CalFresh provides approximately 4 million Californians, including 2 million children, with essential nutrition assistance each month. These benefits are used by individuals and families to purchase food at grocery stores, grocery outlets and farmers' markets across the state, generating more than \$11 billion in economic activity annually.

For approximately 20 years, California has relied upon CE and BBCE, developed and adopted policies and procedures to implement CE and BBCE, and spent significant funds to automate and facilitate CE and BBCE eligibility criteria to ensure delivery of nutrition assistance to the State's most vulnerable populations. In accordance with the statutory purpose of SNAP, CDSS prioritizes efforts to eradicate malnutrition and hunger and increase employment opportunities.¹ Food security is key to an individual's ability to gain adequate employment, achieve and retain self-sufficiency, and to enhancing the health and well-being of children and families. CE and BBCE allow CDSS to achieve these goals with minimal administrative costs.

Thus, the Proposed Rule - if implemented - will directly harm Californians by thwarting the stated purposes of SNAP, leaving thousands of children without free school meals, being the catalyst for significant financial losses to the state's retail and agricultural

¹ 7 U.S.C. §§ 2011, 2025.

industries that contribute to the California economy, and imposing unreasonable, unnecessary and costly administrative burdens on the state and county agencies.

Current SNAP Rules on CE and BBCE Maintain Program Integrity, Better Provide for Families in Need, and Reduce Administrative Costs

In violation of the APA, the USDA has failed to complete a sufficient assessment of the societal and administrative impacts of the Proposed Rule. The USDA has relied on minimal to no fact-based evidence to support the proposed changes. The USDA has drawn conclusions that ignore how current CE and BBCE rules efficiently enable states to provide nutrition assistance in alignment with the purposes and procedures of the Food and Nutrition Act (FNA) without negatively impacting low-income working families or wasting taxpayer dollars.

Current Rules Maintain Program Integrity

The Proposed Rule suggests, without evidence, that current BBCE rules compromise program integrity and allow households who are not in need of nutrition assistance to receive SNAP benefits. This is incorrect. Households found eligible for nutrition assistance under BBCE must still meet strict income requirements. This ensures that SNAP benefits are being provided in a manner aligned with the purpose of the FNA and provided to those most in need.

Under current law, in order to be found eligible for SNAP, households (with no members who are age 60 or older or disabled) must have a gross income of less than 130% of the Federal Poverty Level (FPL), a net income less than 100% of the FPL, and have less than \$2,250 in resources. Households that are determined eligible under current BBCE rules are permitted to have a gross income up to 200% of the FPL, net income up to 100% of the FPL, and are not subject to a resource test. In either case, the same net income standard applies. With BBCE, however, families have the ability to earn additional income and account for essential deductible expenses, such as housing and childcare, more accurately reflecting the family's true need for nutrition assistance, and better assisting them on the path to self-sufficiency.

Current Rules Help Low-Income Working Families with Children

For households in California, the eligibility standards under the current BBCE rules are aligned with the FNA's statutory purpose of eradicating malnutrition and hunger and increasing employment opportunities. The BBCE eligibility criteria encourage recipients to work and to save money for emergencies, thus promoting self-sufficiency and lessening the need for public assistance. Also, the BBCE eligibility criteria allow greater access to food among households with seniors or individuals with disabilities. Without BBCE, households are subject to a gross income limit of 130% FPL. Broad application of the 130% FPL gross income limit creates a "benefit cliff" and discourages families from earning enough to cover their essential living costs. Generally, as a

household's earned income increases, their SNAP benefit amount will decrease, but at a slower rate. As a result, most households see an overall increase in their combined income (earned income + SNAP benefit) as they earn more. However, as households approach the 130% gross income "benefit cliff", they will be disincentivized to earn more money for fear that it will cause them to lose their entire SNAP benefit. By applying BBCE, California can raise the gross income limit to 200% FPL and continue to support low-income families in transitioning to desired self-sufficiency with increased earnings, avoiding the "benefit cliff."

Similarly, without BBCE, California households are subject to a strict and economically unrealistic resource test. This strict resource test discourages low-income families from saving money to facilitate desired self-sufficiency and upward mobility. BBCE encourages families to develop a modest savings that can help them prepare for emergencies, such as unforeseen health care costs or automobile repairs. Without a minimal or modest savings to cover unexpected costs, the household members' ability to remain employed or perhaps attend school is at risk. Additionally, the resource standard of \$2,250 does not remotely reflect costs of living in California—where one month's rent and/or childcare costs could easily take a family, who minimally exceeds the resource test, to having zero countable resources due to one essential expense. Application of the strict resource test will require households to engage in an unnecessary and administratively inefficient process of having to continually reapply for essential nutrition assistance when their minimal resources fluctuate, even in small increments, above the resource limit. By applying BBCE, California can encourage and support the development of households' modest savings and enable income-eligible families to receive essential nutrition assistance on the path to self-sufficiency.

The USDA fails to address or consider the important fact that hard-working families with children will be directly hurt by the Proposed Rule. Under the current BBCE rules, low-income working families with children have the ability to work, save money, and still remain under the SNAP net income limit, allowing many families to afford the high cost for essential childcare. School children in families that receive SNAP benefits are also deemed automatically eligible for free school meals. Forcing states to broadly apply a lower gross income standard, pursuant to the Proposed Rule, would result in many of these families losing access to food both at home and, for the children, at school too, negatively impacting the health and well-being of individuals, especially children who need food for proper physical and mental development.

Current Rules Are Administratively Efficient and Reduce Costs

The USDA and CDSS both have statutory duties to expend taxpayer funds in a fiscally responsible manner. Current rules on CE and BBCE are administratively efficient and lower administrative costs for the county, state, and federal governments. However, if the Proposed Rule is implemented, it will result in higher administrative costs, costly

automation changes, and a likely increase in processing delays and CalFresh case “churn”.²

The USDA fails to fully consider the significant administrative costs associated with eligibility workers’ implementation of the Proposed Rule. The Proposed Rule estimates the increases in eligibility work staff hours by assessing time spent on applying the resource test in eight states that do not implement BBCE. This estimate is woefully inadequate as none of those states are comparable to the population, caseload, or administrative systems of California. The estimate of administrative cost fails to account for the fact that eligibility workers across California will require training to accurately apply the resource test and learn the changes in automation made necessary by the Proposed Rule. Therefore, the time estimates from states with no experience applying these standards are not applicable. Additionally, the estimated time does not consider the time eligibility workers will need to expend ensuring that a household has received a qualifying BBCE benefit set forth in the Proposed Rule. Eligibility workers will need to spend additional time identifying a qualifying BBCE benefit, attaching a value to the benefit, and confirming that the benefit was received, resulting in unnecessary and inefficient administration as well as additional administrative costs.

The Proposed Rule also fails to include any assessment or consideration of the significant cost of changes in automation required by the proposal. Since the great majority of CalFresh households are currently deemed eligible under either CE or BBCE, the automation systems used by eligibility workers will need to be re-programmed to facilitate the lower gross income test and the resource test. We would note that California is currently migrating from three systems to one, pursuant to federal direction, and cannot feasibly make timely changes that would be required by the Proposed Rule.

Similarly, the USDA fails to consider the ways in which the Proposed Rule’s administrative inefficiency and verification requirements will lead to case processing delays, which will result in parents and children not having access to necessary food for longer periods of time. If households are subject to a resource test, they will be significantly burdened to find documentation, if available, to provide to the county agencies for the necessary verifications.

As discussed above, many working households have fluctuating income and resources, so applying the stricter gross income and resource tests will lead low-income working families to be determined ineligible for SNAP for short periods of time before being able to return to the program shortly thereafter when their income drops by a small amount

² FOOD AND NUTRITION SERVICE, UNDERSTANDING THE RATES, CAUSES, AND COSTS OF CHURNING IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), (2019), <https://www.fns.usda.gov/snap/understanding-rates-causes-and-costs-churning-supplemental-nutrition-assistance-program-snap>, explaining that churn in SNAP is defined as the act of a household exiting SNAP and returning to the program within 4 months.

or when they pay their bills and their resources are depleted. This will lead families to fall off and re-apply and fall off and re-apply in very short time periods. This churn is administratively inefficient and wastes taxpayer funds.

The USDA Seeks to Inappropriately Influence State TANF Block Grant Policies and Procedures

TANF, administered by the U.S. Health and Human Services Agency (HHS),³ intentionally authorizes states to design their TANF programs in a way best suited to achieve the block grant's purposes in each state.⁴ The USDA does not administer or oversee TANF. But, under the Proposed Rule, the USDA is attempting to force states to prioritize the types of TANF benefits and services included in the Proposed Rule to maintain efficient administration and continue provide nutrition assistance, even if those TANF benefits or services do not best serve the communities' needs within each state.

In California, TANF and State General Fund Maintenance of Effort (MOE) funded benefits primarily are provided under the California Work Opportunity and Responsibility to Kids (CalWORKs) program. CalWORKs is also overseen by CDSS and administered by the State's 58 county agencies. CalWORKs provides cash aid and a variety of other assistance and services including subsidized employment, education and training, job search, homeless assistance, and subsidized supportive services such as transportation, ancillary expenses, diaper assistance, and childcare. CalWORKs was developed in accordance with TANF regulations, providing county agencies with significant discretion to best identify and provide relevant and effective services to support families in need within each county. For example, the CalWORKs Housing Support Program is a county-optional program that assists county agencies in addressing homelessness and housing volatility that may be applicable to a specific county. Families may receive one or more of a variety of supports, depending on their specific housing issue(s). Ignoring the value in this flexibility, the Proposed Rule seeks to impose the same TANF priorities on all counties and across-the-board to all states, which have vastly different issues and needs. For example, the barriers to employment and well-being that families face in large cities such as Los Angeles often do not mirror those in rural communities.

In identifying which non-cash benefits would confer BBCE, the Proposed Rule discusses President Trump's Executive Order (EO) on Reducing Poverty in America by Promoting Opportunity and Economic Mobility (April 10, 2018). The Proposed Rule states that this EO requires the USDA to determine whether its regulations "are consistent with the principles of increasing self-sufficiency, well-being and economic mobility." The Proposed Rule then claims it would restrict which non-cash benefits

³ 42 U.S.C. § 616.

⁴ See 42 U.S.C. §§ 604(a)(1), 601.

would confer BBCE in an effort to “[encourage] self-sufficiency”. In doing so, the USDA is actively attempting to encourage participation in and receipt of certain TANF-funded benefits over others. Instead of reviewing the SNAP regulations to determine if they “increase self-sufficiency, well-being and economic mobility”, the USDA seeks to inappropriately influence state TANF policies. In addition to working against the stated goals of the EO by limiting access to nutrition assistance, which supports self-sufficiency, upward economic mobility, and the well-being of individuals and families, this proposal exceeds the USDA’s rulemaking authority by influencing a program that it does not oversee or administer.

The Proposed Rule’s Required Monetization of Benefits and a \$50 Value Threshold Are Arbitrary and Misguided

The Proposed Rule does not identify any facts or a reasoned basis for establishing a minimum cash aid threshold of \$50 for CE. The USDA claims that this standard is meant to deter unmeaningful eligibility determinations for TANF benefits. However, it fails to provide any evidence of a state awarding TANF funded cash aid without first making a meaningful eligibility determination. The Proposed Rule also states that the \$50 minimum benefit standard should be applied to the cash aid to align the policies for cash and non-cash TANF benefits. However, this proposed alignment is unnecessary and will increase the complexity of implementation for states. TANF regulations do not establish nor require a \$50 minimum cash aid award. Therefore, establishment of this minimum cash aid value is illogical, unnecessary, a gross abuse of the USDA’s discretion, and will lead to duplicate eligibility reviews when households are approved for less than \$50 per month in TANF cash aid.

In seeking to establish a \$50 value threshold for non-cash benefits for BBCE, the USDA fails to identify a logical and rational connection between any facts and the need for a specific cash value for a non-cash benefit. According to the Proposed Rule, the purpose of CE and BBCE is to streamline program administration while ensuring SNAP benefits are targeted to appropriate families. The Proposed Rule fails to explain why the value of the benefit is demonstrative of the family’s eligibility or need for nutrition assistance. The USDA provides no data to suggest such a correlation, but simply assumes that such a correlation exists. Similarly, the USDA fails to provide any evidence to support its random and arbitrary choice of a \$50 non-cash benefit threshold asserting, without evidence or data, that it is a good indicator to establish a need for nutrition assistance.

This proposal to arbitrarily require the monetization of non-cash benefits ignores how TANF-funded non-cash benefits are currently administered. In California, the administration of non-cash CalWORKs benefits and services varies by county agency. Some county agencies provide transportation and childcare supports as a reimbursement, so an individual may not be able to provide required documentation, in

advance, of the cash value of the benefit to be received. The USDA's insistence on monetization of non-cash benefits, which does not align with TANF program policies or SNAP goals, is extremely problematic and unreasonable.

Even if the proposed monetization of non-cash benefits and a threshold value of \$50 was properly supported by evidence or data, the USDA's proposal would still be unnecessarily restrictive and vague. The USDA asserts that non-cash benefits not listed in the proposed regulation are too difficult to monetize. However, the county agency paying for those services is in the best position to inform FNS of their monetized value. Additionally, the use of the term "work supports" is overly vague. While used in TANF regulations, this is not a defined TANF or SNAP term. As such, it would result in inconsistent application of the rule.

The Proposed Rule's Establishment of an "Ongoing" and a 6-Month Standard is Irrational and Unnecessary

The USDA fails to engage in reasoned decision making as it does not adequately explain its decision to require a cash or non-cash benefit to be received on an ongoing basis for CE and BBCE. The USDA unfoundedly claims that benefits only provided once do not properly demonstrate a need for nutrition assistance. This claim directly contradicts the USDA's assertion that the value of a benefit is indicative of need. One month of childcare benefits may be worth significantly more than a year of transportation vouchers. The assumption that the length of time over which a benefit is provided indicates the need or eligibility of the recipient is unfounded and illogical.

The USDA argues that a 6-month standard is appropriate as it best aligns with a common certification or mid-period report timeline for SNAP households. This suggests that SNAP eligibility policy requires households to prove that they will remain eligible for the next six months in order to receive nutrition assistance. It also assumes that the receipt of the qualifying non-cash TANF benefit would align with the 6-month certification or semi-annual reporting period for SNAP. Both of these assumptions are incorrect and illogical. Households applying for SNAP benefits are not required to prove that they will remain eligible for SNAP for any period of time, let alone 6 months into the future. Eligibility instead is focused on current circumstances and reasonably anticipated future income. It is illogical to require the household to prove that they will continue receiving a TANF benefit in the future if they are not required to prove anything else about their future circumstances. Similarly, while many households apply for TANF and SNAP at the same time, this is not always the case, especially for non-cash benefits. Given the discrepancies between the proposal and existing policies, the USDA has failed to provide a good reason for this proposed 6-month requirement.

Again, this restrictive standard will be administratively burdensome and confusing to implement given the flexibility of the CalWORKs program. For example, some county

agencies provide transportation vouchers on a month-to-month basis. This does not indicate that the family is not eligible for the vouchers in future months but reflects and responds to the volatility of low-income families' financial and employment circumstances. Existing SNAP policies acknowledge this volatility and balance it with the need for administrative efficiency by allowing for longer certification periods. The Proposed Rule would unduly limit the county agencies' discretion by pressuring them to change their policies and provide all TANF benefits on a 6-month basis even when it is not necessary or practical for the county agencies or the families served. And again, this would be an example of the USDA regulating TANF, a program over which it has no rulemaking authority.

The Proposed Rule Fails to Sufficiently Complete the Required Analyses

Executive Orders 12866 and 13563 require federal agencies to “assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).”⁵ As explained above, the USDA's attempt to estimate administrative costs is based on uninformative data and fails to acknowledge or understand many of the county agency staffing and automation costs. Similarly, in its required financial impact analysis, the Proposed Rule focuses on the Office of Management and Budget's estimated savings in federal spending and the number of individuals who will no longer be eligible to receive SNAP benefits – a purported benefit at the expense of public health, safety, economic impacts, and equity– but fails to consider the true “net” costs.

The USDA fails to consider the impact on public health and increased health care costs when individuals no longer have access to proper nutrition. This concern is especially relevant given the disparate impact the Proposed Rule would have on seniors and individuals with disabilities. California estimates that, of the approximately 115,000 CalFresh households that would no longer be eligible under the Proposed Rule, 27.6% include at least one “elderly” member and 18% include at least one member with a disability. While the Proposed Rule acknowledges a potential disparate impact on “elderly” individuals, it does not acknowledge the potential disparate impact on individuals with disabilities. The USDA also fails to conduct a sufficient review of the Proposed Rule's negative consequences for these disparately impacted groups.

Similarly, the USDA fails to acknowledge or analyze the negative impact of fewer students receiving free school meals as a result of their families losing SNAP eligibility. Of the CalFresh households estimated to lose eligibility, over 21% have at least one child. As discussed earlier, households receiving SNAP nutrition assistance provides children with automatic eligibility for free school meals. School meals are key to proper

⁵ 84 Fed. Reg. at 35575.

physical and cognitive development as well as supporting the success of students. The failure to articulate a meaningful and relevant analysis of this impact is unacceptable.

While the Proposed Rule presents decreased SNAP payments as a “savings”, CDSS adamantly disagrees. In creating SNAP, Congress found “that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods.”⁶ Not only does SNAP improve educational outcomes, increase self-sufficiency, help individuals out of poverty, and improve the health of recipients and their families, SNAP funding supports the Nation’s agricultural, food, and retail industries. Each year, SNAP benefits lead to tens of thousands of jobs in California alone.⁷ From farmers’ market vendors to large-scale agricultural producers, businesses in the agricultural industry benefit from the use of SNAP benefits.⁸ If eligible individuals do not receive SNAP, then each dollar “saved” as a result of this Proposed Rule, is \$1.54 kept from our Nation’s food and farm industries.⁹ Given these negative “net” impacts, the USDA must conduct and provide further analysis that complies with the requirements of the referenced Executive Orders.

As explained earlier in this letter, the USDA considered the Presidential EO on Reducing Poverty in America by Promoting Opportunity and Economic Mobility, which encourages departments to review their regulations to ensure that they are consistent with the principles of self-sufficiency, well-being, and economic mobility. We encourage the USDA to review its Proposed Rule based upon the explicit factors outlined in that EO, if the Proposed Rule is not withdrawn, and acknowledge and provide substantiated justification for imposing a rule that: discourages work; discourages saving for an emergency; limits access to nutrition assistance by low-income families, seniors, and individuals with disabilities; and de-prioritizes services specifically designed to meet the unique needs of local families and help them to overcome regional- and household-specific barriers to employment.

In enacting the Farm Bill, Congress chose which of the SNAP eligibility policies to keep and which to change. The Proposed Rule contravenes congressional intent and fails to

⁶ 7 U.S.C. § 2011.

⁷ CALIFORNIA ASSOCIATION OF FOOD BANKS, THE ECONOMIC AND ANTI-HUNGER VALUE OF SNAP (CALFRESH) (2016),

http://www.cafoodbanks.org/sites/default/files/factsheet_econantihungersnap_hyperlinks_121916.pdf.

⁸ CALIFORNIA FOOD POLICY ADVOCATES, LOST DOLLARS, EMPTY PLATES, THE IMPACT OF CALFRESH ON STATE AND LOCAL ECONOMIES (2016), <https://cfpa.net/CalFresh/CFPAPublications/LDEP-FullReport-2016.pdf>.

⁹ THE UNITED STATES DEPARTMENT OF AGRICULTURE, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) LINKAGES WITH THE GENERAL ECONOMY (August 20, 2019), <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/economic-linkages/>.

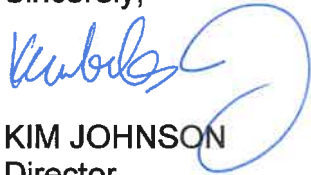
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comply with APA requirements of providing satisfactory and substantiated reasons for these changes. The Proposed Rule is unnecessary, burdensome, and negatively impacts some of the most vulnerable and disadvantaged populations in the nation. CDSS strongly opposes the Proposed Rule entitled *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program* and requests that the Department withdraw it.

California is committed to efficiently and accurately providing CalFresh benefits to those who are eligible and in need and encourages the USDA to focus on expanded and improved ways to better administer the SNAP program to deliver essential nutrition assistance to individuals and families with legitimate need, rather than imposing arbitrary and capricious restrictions, in violation of the law and congressional intent, that penalize the population to be served and impose duplicative, burdensome, and costly administrative processes.

Thank you for your consideration of these points.

Sincerely,



KIM JOHNSON
Director