



Program Design Branch
Program Development Division
Food and Nutrition Service (FNS)
U.S Department of Agriculture
3101 Park Center Dr.
Alexandria, VA 22302

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Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)¹

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The Institute for Agriculture and Trade Policy (IATP)² appreciates this opportunity to comment on the Proposed Rule. FNS decided not to issue an Advanced Notice of Proposed Rulemaking (ANPR) to request comments and research to inform the drafting of this major rule. As a result, it is difficult to discern sources that inform the Proposed Rule, other than USDA Office of the Inspector General (OIG) and General Accountability Office performance auditing of SNAP implementation. IATP has anticipated a Proposed Rule that would cut SNAP benefits by reducing eligibility criteria since the beginning of the Trump administration, given the unsuccessful attempts of its officials, particularly the Director of the Office of Management and Budget, to cut these benefits through the congressional appropriations process³ and through the White House budgetary proposals.⁴

As FNS knows, if the Proposed Rule is finalized, the Secretary of Agriculture estimates that 3.1 million people of 40.3 million current SNAP beneficiaries will lose their benefits.⁵ Additionally, USDA would deprive 500,000 children of free school lunches and increase the paperwork burden for about 17.2 million households, many of whom might also lose SNAP benefits, according to a Congressional Research Service report.⁶ The Proposed Rule

IATP.ORG

2105 FIRST AVENUE SOUTH
SUITE 307
MINNEAPOLIS, MINNESOTA 55404
(612) 870-0453

110 MARYLAND AVE NE,
WASHINGTON, D.C. 20002
(202) 543-8602

estimates anticipated net Federal expenditure savings of these benefit cuts at “approximately \$9.386 billion over the five years 2019–2023” (Federal Register (FR), Vol. 184, No. 42, July 24, 2019 at p. 35575). But with the federal deficit already more than \$1 trillion for Fiscal Year 2019 alone,⁷ these savings are manifestly a miniscule contribution to deficit reduction and come at a very high cost to SNAP beneficiaries.

The Proposed Rule alludes to but does not publish the cost benefit analysis required by law:⁸ “The Regulatory Impact Analysis conducted by FNS in connection with this proposed rule includes a cost/ benefit analysis and explains the alternatives considered to modify categorical eligibility regulations” (FR, 35576). However, the Proposed Rule only estimates costs to the Federal government: no analysis of the estimated value of SNAP benefits, not even a summary, is published. IATP does not regard the FNS estimated cost of State agency verification of SNAP beneficiary resources as a cost benefit analysis. Because the Proposed Rule lacks a cost benefit analysis, it is unable to answer a couple of fundamental questions posed by the Agricultural Policy Analysis Center about a 2013 proposed SNAP rule: “[D]oes the cost of the additional paperwork—when categorical qualification is not used—exceed the additional costs incurred by people whose income would otherwise exclude them from participating in SNAP? Or not? If the issue is one of dollars and cents, it is a researchable problem, as economists like to say.”⁹ The Proposed Rule provides no basis for answering these and related questions, even though a cost benefit analysis must be published and submitted for the Office of Management and Budget to finalize this and any major rule.¹⁰

The Proposed Rule lacks analysis of the impact on SNAP beneficiaries of the proposed changes in definitions and eligibility criteria and lacks any research or outreach to food and nutrition organizations that could provide such analysis. Data, analysis and research on the food insecurity that SNAP and other federal nutrition programs help mitigate food insecurity are available from the USDA Economic Research Service (ERS) on a state by state basis.¹¹ It does not appear that FNS availed themselves of that data and research in drafting the Proposed Rule, probably because of FNS’s attempt to curtail the discretion of States to tailor SNAP and other nutritional assistance to the needs and circumstances of their residents:

Specifically, the Department proposes: (1) To define “benefits” for categorical eligibility to mean ongoing and substantial benefits; and (2) to limit the types of non-cash TANF [Temporary Assistance to Needy Families block grants to States] benefits conferring categorical eligibility to those that focus on subsidized employment, work supports and childcare. The proposed rule would also require State agencies to inform FNS of all non-cash TANF benefits that confer categorical eligibility. The proposed revisions would create a clearer and more consistent nationwide policy that ensures categorical eligibility is extended only to households that have sufficiently demonstrated eligibility by qualifying for

ongoing and substantial benefits from TANF-funded programs designed to assist households and move them towards self-sufficiency (FR 35570).

First, it is important to recognize that average monthly per person SNAP benefits in 2018 were about \$126 or \$1.40 per meal,¹² so that the contribution of those benefits, while crucial for improving household food security—particularly for those classified by ERS as experiencing “very low food security”—are markedly insufficient to move households towards “self-sufficiency,” which IATP understands to mean earning enough money consistently to no longer qualify for TANF, SNAP or other federal benefit programs. FNS has requested comments on what the Proposed Rule should mean by “ongoing” and whether the proposed minimum threshold of \$50 monthly of TANF benefits to receive SNAP benefits (FR 35573) is adequate to achieve the Proposed Rule’s dual purpose of “streamlining program administration while ensuring that SNAP benefits are targeted to the appropriate households” (FR 35570). IATP believes that “ongoing” should be aligned with the monthly ERS measurements of food insecurity,¹³ rather than the six-month period of SNAP certification, which will require more burdensome paperwork in the Proposed Rule. The six-month period is bureaucratically consistent with the Office of Management and Budget (OMB) certification, but inconsistent with the ebb and flow of episodic food insecurity, as measured by ERS and reported by private food pantries that FNS has not consulted for this Proposed Rule.

IATP defers to State administrators of TANF benefits on setting a quantitative minimum threshold, but cautions FSN against using anecdotal information, e.g. that reported to the OIG on TANF eligibility (FR 35772), as a criterion for reducing the minimum threshold. Instead, FNS should ensure that “ongoing and substantial benefits” are directed in terms of ensuring that the benefits mitigate the reality of U.S. food insecurity, such as those outlined by academic researchers in this article:

In 2014, almost one in five households with children (19.2%) was classified as food insecure as compared to 15.8% of households in 2007 (Coleman-Jensen et al. 2014). This trend is troublesome due to the negative health effects associated with food insecurity in households with children, including birth defects, cognitive problems, poor general health, and complications from oral health issues (Jyoti et al. 2005). These statistics remind us “No rich democracy matches the United States in the depth and expanse of its poverty.”¹⁴

It is a public health tragedy and a human rights scandal that such a wealthy nation as the U.S. has such a high percentage of children living with poverty and food insecurity. The tragedy and the scandal will not be reduced to the food insecurity levels of other rich democracies,¹⁵ if the quantitative definitions of “ongoing and substantial benefits” are inadequate. Since the U.S. does not recognize the human right to food as a policy framework, it should at least consider the cost of food insecurity to the U.S. economy. One study concluded: “The combined cost of hunger for poor education and adverse

health outcomes and the opportunity costs of contributions to emergency food organizations were \$125.5 billion in 2007, rising to \$167.5 billion for 2010.”¹⁶ If eligibility criteria for “ongoing and substantial benefits” reduce benefit levels and fail to reduce food insecurity, USDA will gain savings for its budget, but at the cost of passing the buck to the health care and education systems.

In FNS’s effort to “create a clearer and more consistent nationwide policy,” the agency ignores the state by state evidence of U.S. food insecurity compiled by ERS in a report released on September 4, 2019, but whose data were surely available to FSN prior to the July 23 release of this Proposed Rule for comment. ERS reports that 56 percent of those classified as food insecure during the 30 days prior to the ERS survey used at least one federal food and nutrition assistance program.¹⁷ Among the key findings of the ERS report are these:¹⁸

- “The rates of food insecurity were much higher for households headed by African Americans (21.2 percent — two and a half times the rate for white non-Hispanic households) and Hispanics (16.2 percent — two times the rate for white non-Hispanic households).
- Households in rural areas are experiencing considerably deeper struggles with hunger compared to those in metro areas, with higher rates of food insecurity overall (12.7 percent compared to 10.8 percent), and higher rates of very low food security (4.8 percent compared to 4.2 percent).
- The food insecurity rate is highest in the South census region, followed by the Midwest, West, and Northeast.”

USDA could have released the Proposed Rule after having incorporated the ERS food insecurity evidence to develop a Proposed Rule targeted to improve food insecurity for the most vulnerable populations and regions. Had it done so, FNS would have not ignored the impact of the Proposed Rule on African Americans and Hispanics, as the agency does in its “Civil Rights Impact Analysis” (FR, 35576). Furthermore FNS states, “Tribes were subsequently provided the opportunity for consultation on the issue, but the Department received no feedback” (FR 35576). The statement is very misleading at best, as FNS and the USDA Office of Tribal Relations surely know, since the National Congress of American Indians filed an April 2, 2019 comment, protesting other proposed eligibility changes to SNAP.¹⁹ It would surprise us if several African American, Hispanic and Native American groups have not filed comments opposing this Proposed Rule and other rules tailored to reduce federal food assistance. Apparently, in the interest of “program integrity” and USDA budget savings, FNS has decided to ignore their comments, notwithstanding the Civil Right Impact Analysis and Executive Orders 12988 and 13175 requirements.

The Federal Poverty Level formula, upon which the ERS food insecurity metrics and the Proposed Rule’s categorical eligibility formula derive, has not been revised fundamentally

since its inception more than a half century ago.²⁰ As a result, the ERS survey surely underestimates U.S. food insecurity. Instead of modernizing SNAP with the best evidence that ERS can collect, collate and analyze, the proposed USDA budget for Fiscal Year 2020 (Explanatory Notes for ERS²¹) “would also eliminate 67 [ERS] staff focusing on the nutrition and food assistance area. USDA leaders want ERS to stop all research into USDA food and nutrition programs, and on food consumption and nutrition.”²² To further increase the information vacuum for implementing the Proposed Rule, the Fiscal Year 2020 budget proposes to eliminate all data collection and research into the rural economy.

In Minnesota, where IATP is headquartered, an article authored by the State’s major private nutrition assistance programs, analyzes the direct and indirect impacts of the Proposed Rule that USDA has failed to do:

Changes to SNAP eligibility do not just impact individual families; the ripple effects would be felt throughout our community. SNAP infused an estimated \$550 million into Minnesota’s economy in 2018, benefiting the more than 3,500 stores and farmers markets whose customers use SNAP benefits to help pay for groceries. The connection between hunger and health also means that these new rules could add up to \$77 billion in health care costs, nationwide, as providers struggle to treat illnesses exacerbated by food insecurity. Any savings from this proposed rule change would remain in the short term as we struggled to absorb the negative economic impact moving forward.²³

The article continues to note, “[s]chools could lose funding for free breakfast and lunch for students in need if the proposed changes move forward.” The educational benefits of USDA food assistance are well-documented and quantifiable but nowhere considered in the Proposed Rule. A simple Google™ search turns up dozens of studies that FNS could have verified and summarized in a cost benefit analysis for the Proposed Rule.²⁴ FNS is surely aware of such studies, so it is incomprehensible that the agency would not use them to quantify benefits to the direct recipients of SNAP. FNS must consider the studies on the health and education benefits of SNAP in its total benefits estimate. IATP grants that estimating the above mentioned “ripple effects” of SNAP would require cooperation with State agencies and ERS. But if a group of a dozen private food agencies in Minnesota can make such a “ripple effects” estimate, USDA surely has the resources to do that also in a full-fledged, nation-wide cost benefit analysis.

IATP works to help enable Minnesotan farmers to provide healthy foods to schools and early child care education programs.²⁵ The rural and urban partners of our Farm to Head Start initiatives report economic, educational and health benefits, all of which will be in jeopardy if the rule is finalized as proposed. IATP’s Farm to School and Farm to Early Care initiatives have observed the health and educational benefits of healthy foods for a decade.²⁶ IATP is also a partner in Farm to Summer, an initiative to incorporate local foods into free Summer Food

Service Program meals provided to Minnesota children during non-school months.²⁷ Will this vital program for some of Minnesota's poorest children likewise be jeopardized by the Proposed Rule's empirically unjustified eligibility restrictions? On May 29, 2019, the Minnesota House of Representatives and Senate passed an Omnibus Agricultural Policy Bill with bipartisan support for Farm to School and Farm to Early Care initiatives across the state, including \$400,000 in budgetary support.²⁸ Although this bill and the work of private food assistance programs are important steps to reduce food insecurity in Minnesota, they cannot compensate for the scale of projected SNAP benefit losses and associated health costs outlined in the above mentioned article.

Conclusion

IATP appreciates that FNS is under enormous pressure from the Secretary and OMB to reduce SNAP and other federal food assistance,²⁹ regardless of need, by any means necessary. As FNS is well-aware, the Proposed Rule is legally and empirically defective and will be litigated with a high probability of success to prevent its implementation. Rather than finalize this Proposed Rule, at subsequent great legal expense to the U.S. taxpayer, to say nothing of the myriad of harms to SNAP recipients, IATP urges the agency to withdraw the Proposed Rule and re-propose it, after having completed a comprehensive and cost benefit analysis and other required Regulatory Impact Analysis. Indeed, if ERS survives what Senator Debbie Stabenow has called its "demolition" (regarding proposed agency relocation, and resulting massive staff departures),³⁰ there are recently identified populations of the food insecure that ERS and FNS should research and plan how to serve. For example, FNS could request ERS to study the increasing food insecurity among college students to determine the causes and extent of collegiate food insecurity, so that FNS could tailor a program of food assistance for food insecure post-secondary school students.³¹

In the best of all possible worlds, the U.S. government would modernize its half-century old formula for determining the Federal Poverty Level, so FNS could undertake a comprehensive review of its food assistance programs according to statistically relevant and realistic definitions of poverty. But here, IATP only urges FNS to withdraw the Proposed Rule and re-propose it following comprehensive cost benefit and other federally required analysis.

IATP thanks FNS for its consideration of these comments.¹

¹ IATP submits this comment in honor of Rodney Leonard, one of the three co-designers of federal food assistance during the Kennedy and Johnson administrations. He served as the USDA Administrator of the Consumer and Marketing Division during the Johnson administration. Mr. Leonard is a former IATP Board member.

Steve Suppan, Ph.D.
Senior Policy Analyst

¹ <https://www.govinfo.gov/content/pkg/FR-2019-07-24/pdf/2019-15670.pdf>

² IATP is a nonprofit, 501(c)(3) nongovernmental organization, headquartered in Minneapolis, Minn., with offices in Washington, D.C. and Berlin, Germany.

³ Steve Suppan, "Mulvaney as Budget Director: destructive for agriculture, nutrition and the environment," Institute for Agriculture and Trade Policy, February 1, 2017. <https://www.iatp.org/blog/201702/mulvaney-as-budget-director-destructive-for-nutrition-agriculture-and-the-environment>

⁴ Ben Lilliston, "Trump's Budget Spurns Rural Communities," Institute for Agriculture and Trade Policy, February 26, 2018. <https://www.iatp.org/blog/trump-spurns-rural-america>

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⁶ "Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility," Congressional Research Service, August 1, 2019. <https://fas.org/sgp/crs/misc/R42054.pdf>

⁷ Niv Ellis, "Deficit over \$1 trillion: CBO" *The Hill*, September 9, 2019. <https://thehill.com/policy/finance/460603-deficit-surpasses-1-trillion-cbo>

⁸ Maeve P. Carey, "Cost Benefit and Other Analysis Requirements in the Rulemaking Process," Congressional Research Service, December 9, 2014. <https://fas.org/sgp/crs/misc/R41974.pdf>

⁹ Daryll Ray and Harwood Schaefer, "SNAP program debates center on effectiveness and cost," Agricultural Policy Analysis Center, April 26, 2013. <https://nfu.org/2013/04/30/snap-program-debates-center-on-effectiveness-and-cost/>

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¹¹ E.g. <https://www.frac.org/wp-content/uploads/2018-food-insecurity-data.pdf> and "State by State Data, Fact Sheets and Resources," Center for Budget and Policy Priorities, June 26, 2019. <https://www.cbpp.org/research/food-assistance/snap-state-by-state-data-fact-sheets-and-resources>

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¹⁸ As summarized in “Food Insecurity Show the Need for Robust Anti-Hunger Efforts, Not Ill-Considered Policies,” Food Research Action Council, September 4, 2019. <https://www.frac.org/news/new-food-insecurity-data-show-the-need-for-more-robust-anti-hunger-efforts-not-ill-considered-policies-that-increase-hunger>

¹⁹ http://www.ncai.org/policy-issues/land-natural-resources/agriculture/SNAP_Proposed_Rule.pdf

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²¹ <https://www.obpa.usda.gov/16ers2020notes.pdf>

²² Chris Clayton, “ERS Move: Goal to Cut the Agency’s Budget, Staff and Research,” *Progressive Farmer*, June 26, 2019. <https://www.dtnpf.com/agriculture/web/ag/blogs/ag-policy-blog/blog-post/2019/06/26/ers-move-goal-cut-agencys-budget?referrer=twitter#.XRptsPFAuvQ.twitter>

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²⁴ E.g. See the studies summarized for children in Southern federal states in Maureen Downey, “Student scores affected by when their students get their federal food aid,” *Atlantic Journal Constitution*, March 20, 2018.

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