Congress of the United States
Washington, DC 20510

September 19, 2019

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

RE: Proposed Categorical Eligibility in SNAP rule

Secretary Perdue:

We write to express our strong opposition to the proposed rule published in the Federal Register on July 24, 2019 entitled, *"Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)"* (84 Fed. Reg. 35570). This rule changes how states can opt to increase the Federal Poverty Limit (FPL) for SNAP eligibility using Broad-Based Categorical Eligibility (BBCE)—an option Washington state utilizes. If this proposed rule is implemented, the consequences for Washingtonians will be devastating and disproportionate: an estimated 175,600 Washingtonians, including children under five, seniors, and low-income families, will lose access to critical food security benefits.[1] The proposed rule will also place significant added financial and administrative burden on state agencies. Lastly, this rule runs counter to Congressional intent and lacks proper regulatory review regarding the consequences for children enrolled in the National School Lunch and Breakfast programs.

BBCE allows states to make families and individuals who have already undergone rigorous income and other eligibility verification requirements for services funded by Temporary Assistance for Needy Families (TANF) "categorically eligible" for SNAP benefits. Washington state adopted BBCE to make families and individuals whose household income is between 130 and 200 percent of FPL categorically eligible for SNAP. SNAP is a critical tool to reduce food insecurity, improve nutrition, and reduce poverty for low-income people of all ages.[2] The individuals who fall within this income threshold do not have enough resources to be self-sufficient.[3] SNAP benefits, made available through BBCE, help them meet basic needs.

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[1] *Broad-Based Categorical Eligibility for SNAP: Comprehensive Impact Statement,* WASHINGTON STATE DEPARTMENT OF SOCIAL & HEALTH SERVICES ECONOMIC SERVICES ADMINISTRATION, August 15, 2019 at 1.
[2] L. Tiehen, D. Jolliffe, & C. Gundersen, "Alleviating Poverty in the United States: The Critical Role of SNAP Benefits." U.S. DEPARTMENT OF AGRICULTURE, ECONOMIC RESEARCH SERVICE (Report Number 132), April 1, 2012.
[3] *Reducing Poverty & Inequality in Washington State*, POVERTY REDUCTION WORKGROUP, May 10, 2019. <https://www.governor.wa.gov/sites/default/files/documents/PRWG_workforce_development_conference_05.10.2019.pdf>

Disproportionate impact in Washington state. An August 2019 analysis from the Washington State Department of Social and Health Services (DSHS) found that the proposed rule would render an estimated 35,211 low-income households ineligible for ongoing Basic Food assistance each month, which will negatively impact our state's economy.[4] This would result in lost benefits for 175,600 individuals in Washington state annually, including 19,263 children under 5 years old, 46,839 school-aged children, 15,838 elderly individuals, and thousands of people with disabilities. With an average monthly allotment per household of $60.02, this equates to a loss of over $25 million in spending from the local economy on an annual basis.

In addition, the proposed rule will significantly increase administrative costs to Washington state. According to DSHS, the state would incur significant operational, system, and quality assurance costs. The state would be required to terminate cases, as well as verify and recertify cases, which will lengthen application processing times and require recalibration of IT systems. For example, DSHS estimates that they will require 55 additional full-time employees (FTEs) to terminate existing cases that become ineligible as a result of this change, 71 FTEs annually to review and verify resources for existing recipients, and 39 FTEs annually to account for increased administrative burden and processing times.[5]

Lacking regulatory review. Beyond this significant impact, we are further concerned that USDA's Regulatory Impact Analysis (RIA) for this rule leaves out required analysis of alarming consequences for child nutrition.

Executive Orders 13563 and 12866 require careful and transparent analysis of the anticipated consequences of economically significant regulatory actions. The proposed rule was determined by USDA to be "economically significant" meaning that it must undertake a full analysis of anticipated consequences.[6] Further, OMB Circular A-4 specifically requires that important ancillary benefits and countervailing risks must be included in the RIA. A countervailing risk is "an adverse economic, health, safety, or environmental consequence that results from a regulatory action and is not already accounted for in the direct cost of the action."

Despite these requirements, USDA failed to take into account an anticipated and serious countervailing risk: how this rule would impact children who receive services under the National School Lunch and Breakfast programs. Under these programs, children who reside in a household receiving SNAP benefits are automatically eligible for free school meals. Because this proposed rule would reduce household SNAP eligibility, these children would *also* lose automatic eligibility for free school meals. In Washington state alone, an estimated 15,663 students would no longer be directly certified for free school meals as a result of the proposed

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[4] *Broad-Based Categorical Eligibility for SNAP: Comprehensive Impact Statement,* WASHINGTON STATE DEPARTMENT OF SOCIAL & HEALTH SERVICES ECONOMIC SERVICES ADMINISTRATION, August 15, 2019 at 2.
[5] *Id.* at 3.
[6] Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), 84 Fed. Reg. 35575 (proposed Jul. 24, 2019).

rule.[7] Furthermore, direct certification rates are what allow schools to use the Community Eligibility Provision (CEP) to offer universal free breakfast and lunch to all students. By limiting SNAP eligibility, this rule would also reduce the number of schools eligible to use CEP.

These risks are well known to USDA and there is no justifiable reason for their exclusion. CBO analysis of past Farm Bill proposals have often included estimates of children who would lose free meals as a result of modifying BBCE.[8] For example, the 2018 Farm Bill CBO analysis estimated that in an average year, 265,000 children would lose access to free meals.[9]

Proposed rule is contrary to Congressional intent. This rule is not in accordance with Congressional intent for BBCE. Congress has spoken directly to this issue and has rejected efforts to change BBCE on multiple occasions, as discussed below:

- 2018 Farm Bill: The Agricultural Improvement Act of 2018 (P.L. 115-334) expressly preserved categorical eligibility after the House proposed to cut it. After extensive negotiations, the final Farm Bill conference report was overwhelmingly passed by the Senate (87-13) and the House (369-47) on a bipartisan basis before being signed into law in December 2018.[10] In addition to rejecting attempts to cut categorical eligibility, the 2018 Farm Bill rejected other attempts to curtail SNAP. For example, the bill rejected deep cuts to SNAP benefits through a proposed expansion of rigid work requirements.[11] Just seven months after Congress rejected efforts to change BBCE, USDA issued the NPRM that is the subject of this comment.
- 2014 Farm Bill: The Agricultural Improvement Act of 2014 (P.L. 113-79) similarly contemplated changes to BBCE; Congress deliberately excluded these changes on a bipartisan basis in the Senate (68-32) and in the House (216-208).[12]
- Deficit Reduction Act of 2005: As part of the budget reconciliation process in the fall of 2005, the House bill contained a provision that would have limited BBCE for food stamps (SNAP's previous title) to cash assistance, but also allowed certain TANF-funded non-cash benefits. The Senate rejected this approach, and did not include cuts to food stamps. The conference report adopted the Senate approach and rejected the House's cut to BBCE.[13]

Congress has time and again rejected attempts to restrict BBCE, which can only be pursued with a change in the law that governs the program. The 2018 Farm Bill received more votes from Congress than any other Farm Bill in history. As such, this law represents a bipartisan consensus that directs food and farm policy for a five-year period. USDA's legal and policy justifications

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[7] *Id.* at 3.
[8] CRS Report, The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility, August 1, 2019 at 18. Available here < https://fas.org/sgp/crs/misc/R42054.pdf>
[9] *Id.* at 15.
[10] H.R. REP. NO.115-1072 at 631 (2018) (Conf. Rep).
[11] H.R. REP. NO.115-1072 at 615 (2018) (Conf. Rep).
[12] H.R. REP. NO.113-333 at 436 (2014) (Conf. Rep).
[13] H.R. REP. NO.109-362 at 193 (2014) (Conf. Rep).

for this proposed rule are tenuous, and more importantly, vastly outweighed by the proposed rule's negative impacts on food security and increased costs to state agencies.

Fundamentally, BBCE helps low-income people who are working but just don't earn enough to put food on the table. The elimination of BBCE would create a benefit cliff and act as a punishment for families and individuals who are working hard to get ahead. This rule will undermine low-income families' health, and jeopardize the food security and development of young and school-aged children. If you have any questions please contact Jaron Goddard at jaron_goddard@murray.senate.gov or at (202) 224-6935.

Sincerely,

Patty Murray
United States Senator

Adam Smith
Member of Congress

Kim Schrier, M.D.
Member of Congress