



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

September 23, 2019

VIA ELECTRONIC SUBMISSION

Program Design Branch
Program Development Division
Food and Nutrition Service
United States Department of Agriculture

Re: Notice of Proposed Rule Making -- Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), RIN 0584-AE62, FNS-2018-0037

Dear SNAP Program Design Branch:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) write in response to the notice of proposed rulemaking referenced above. We oppose these changes to the longstanding categorical eligibility rules for the Supplemental Nutrition Assistance Program (SNAP) because they would cause millions of people, including people with disabilities who rely on SNAP, to lose needed access to food, and urge the Administration to withdraw this rule.

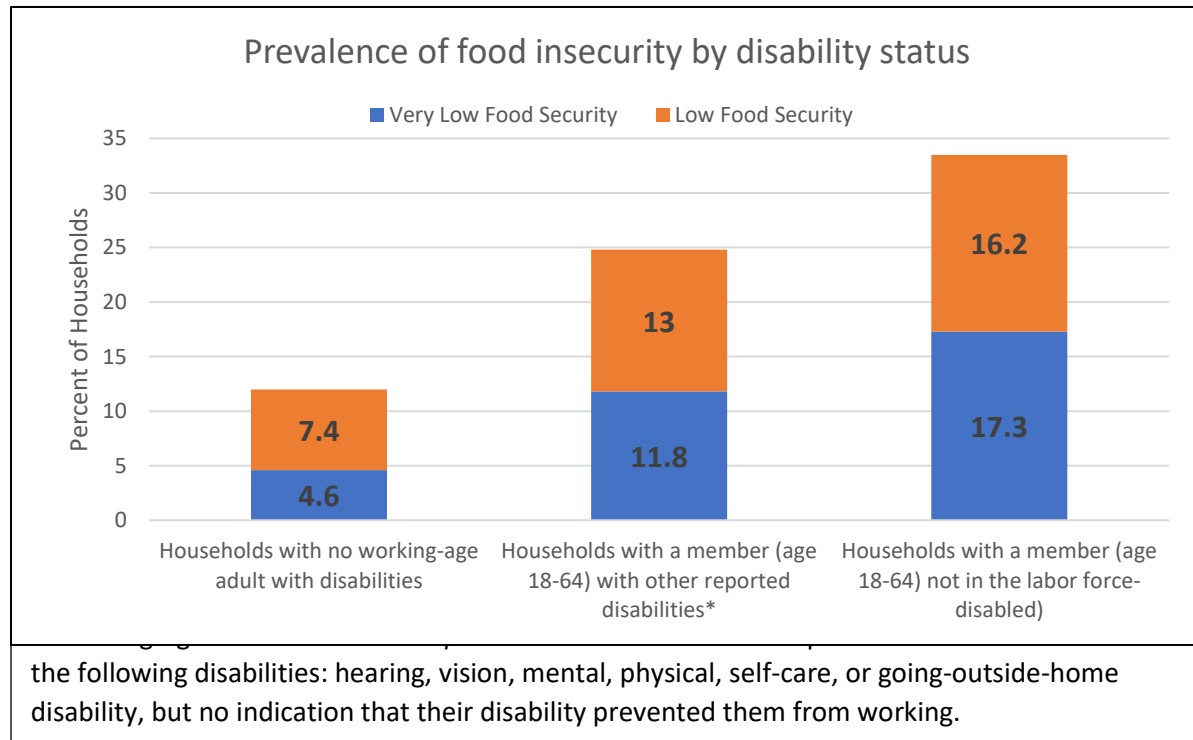
CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

In the United States, all too often food insecurity and disability go together, regardless of individual or family income or assets. Compared to people without disabilities, people with disabilities and their families are significantly more likely to experience hunger and food insecurity. Similarly, people experiencing food insecurity have increased likelihood of chronic illness and disability. USDA's own research provides evidence of these facts.

In 2013, USDA researchers documented food insecurity among 33 percent of households with an adult age 18 to 64 with a disability who was not in the labor force, and 25 percent of households with adults age 18 to 64 with other reported disabilities – compared to 12 percent of households with no adult with a disability.¹ The same study also found high rates of “very

¹ Department of Agriculture, Economic Research Service, *Food Insecurity Among Households with Working-Age Adults with Disabilities*, 2013, https://www.ers.usda.gov/webdocs/publications/45038/34589_err_144.pdf

low food security” (the most severe level of food insecurity) among households with non-elderly adults with disabilities.² Very low food security occurred in 17 percent of households with an adult age 18 to 64 with a disability and not in the labor force, and 12 percent of households with adults age 18 to 64 with other reported disabilities – compared to 5 percent of households with no adult with a disability.



In another recent USDA study looking at people with 10 chronic health conditions, across the board researchers saw a “...statistically significant increase in the prevalence of chronic health conditions as food security worsens.”³ Notably, the study found dramatically higher risk of chronic illness in households with very low food security:

*Adults in households with very low food security were 15.3 percentage points more likely to have any chronic illness than adults in households with high food security... This is a 40-percent increase in overall prevalence.*⁴

v=41284. Individuals with other reported disabilities are individuals “who had a disability but did not indicate they were out of the labor force due to disability.”

² *Id.* The data analyzed by the USDA looked at “high food security,” “marginal food security,” “low food security,” and “very low food security.” “Very low food security” represented the most severe level of food insecurity, defined as “At times during the year, eating patterns of one or more household members were disrupted and food intake reduced because the household lacked money and other resources for food.”

³ Department of Agriculture, Economic Research Service, *Food Insecurity, Chronic Disease, and Health Among Working-Age Adults with Disabilities*, 2017, <https://www.ers.usda.gov/webdocs/publications/84467/err-235.pdf?v=42942>.

⁴ *Id.*

Studies have also consistently found high rates of food insecurity in households that include children with disabilities,⁵ and a robust literature has found that food insecurity and inadequate food intake can negatively affect children’s health and development.^{6,7} Older adults and seniors with disabilities are also much more likely to experience food insecurity, compared to their peers without disabilities.⁸

The Supplemental Nutrition Assistance Program (SNAP) is vitally important for people with disabilities and their families. By increasing access to adequate, nutritious food SNAP plays a key role in reducing hunger and helping people with disabilities across the United States to maximize their health and participate in their communities.

According to the Center on Budget and Policy Priorities (CBPP), 11 million people with disabilities of all ages received SNAP in 2015, representing roughly one in four SNAP participants.⁹ CBPP reviewed not only USDA administrative data, but also data from the National Health Interview Survey (NHIS). The NHIS looks at disability more inclusively than the relatively narrow SNAP program definitions of “disability” used by the USDA to identify non-elderly people with disabilities.¹⁰ In 2015, USDA administrative data identified only 5.3 million or 13 percent of non-elderly SNAP recipients as having disabilities.¹¹ This discrepancy suggests that many people with disabilities are not becoming eligible for SNAP due to their disability but instead through other pathways.

This also suggests that existing exemptions and alternative rules in SNAP for people with disabilities are not being applied to everyone with a disability, something that is supported by research into both SNAP and other poverty programs. For example, when Georgia reinstated the SNAP work requirement and time limits for “able-bodied adults without dependents” in 2016, the State found that 62 percent of nearly 12,000 individuals subjected to the requirement lost benefits after only three months.¹² State officials acknowledged that hundreds of enrollees

⁵ Parish, Susan L. et al (2015). *Food Insecurity among US Children with Disabilities*. Presentation at the National Association for Welfare Research and Statistics Annual Workshop, Atlanta, GA. <http://nawrs.org/wp-content/uploads/2015/09/2C-Parish-Food-Insecurity.pdf>.

⁶ American Academy of Pediatrics, *Promoting Food Security for All Children*, 2015, <http://pediatrics.aappublications.org/content/pediatrics/136/5/e1431.full.pdf>

⁷ Child Trends Data Bank, *Food Insecurity: Indicators of Child and Youth Well-Being*, 2016, https://www.childtrends.org/wp-content/uploads/2016/12/117_Food_Insecurity-1.pdf.

⁸ AARP Foundation, *Food Insecurity Among Older Adults*, 2015, https://www.aarp.org/content/dam/aarp/aarp_foundation/2015-PDFs/AF-Food-Insecurity-2015Update-Final-Report.pdf. See Table 2, p. 28 for food security rates by disability status (employment-related).

⁹ Center on Budget and Policy Priorities, *SNAP Provides Needed Food Assistance to Millions of People with Disabilities*, 2017, <https://www.cbpp.org/research/food-assistance/snap-provides-needed-food-assistance-to-millions-of-people-with>.

¹⁰ See, 7 C.F.R. § 271.2, “Elderly or disabled member”.

¹¹ *Supra* note 9.

¹² *Correction: Benefits Dropped Story*, U.S. NEWS & WORLD REPORT, May 26, 2017, <https://www.usnews.com/news/best-states/georgia/articles/2017-05-25/work-requirements-drop-thousands-in-georgia-from-food-stamps>.

who should have been exempt due to their disability had been wrongly classified.¹³ Likewise, the Congressional Research Service cautioned regarding estimates that “information on the Quality Control Data File sometimes fails to categorize a household with a disabled member. Therefore, some households classified in this table as “without an elderly or disabled member” may in fact contain a disabled person.”¹⁴ Given this inaccuracy, any change to SNAP eligibility rules will impact people with disabilities, despite existing exemptions or alternative rules for people with disabilities.

“Broad-based categorical eligibility” (known as Cat EI) gives states flexibility around narrow SNAP income and asset eligibility rules that increase administration costs and create benefit cliffs. Cat EI allows states to ensure that people who have incomes slightly above the federal poverty line or more assets than allowed by the program (such as modest savings) to access needed food. In 2017, 42 states and territories, including Alabama, California, Idaho, New York, and Oklahoma, use Cat EI to ensure people have access to the food they need by raising asset and income limits on SNAP.¹⁵ All households that are eligible for SNAP via these Cat EI are still subject to the other program requirements of SNAP, including work requirements and time limits for coverage, and the amount of their benefit is still calculated by the regular allotment formulary.¹⁶

Due to different eligibility criteria for different federal programs, individuals who are receiving SNAP and obtain wage increases often encounter “a net loss of income or only a small overall increase” due to the rules of SNAP and other income support programs, creating “a disincentive to work.”¹⁷ Cat EI allows states to eliminate this disincentive to work and standardizes eligibility for different programs to reduce administrative burden on state governments. Research has also demonstrated that Cat EI “increases low-income households’ savings (8 percent more likely to have at least \$500) and participation in mainstream financial markets (5 percent more likely to have a bank account).¹⁸ And Cat EI “reduces SNAP churn (26 percent)” also reducing administrative costs for states.¹⁹

Other benefits also depend on Cat EI: children in households receiving SNAP are eligible for free and reduced price meals at schools.²⁰ The number of households receiving SNAP in a “district, group of schools in a district, or a school with 40 percent or more” also triggers community

¹³ *Id.*

¹⁴ Congressional Research Service, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility*, R42054, August 1, 2019, <https://fas.org/sgp/crs/misc/R42054.pdf>.

¹⁵ United States Department of Agriculture, *State Options Report as of October 1, 2017*, Fourteenth Edition (May 31, 2018).

¹⁶ Congressional Research Service, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, R42505, April 11, 2018, <https://fas.org/sgp/crs/misc/R42505.pdf>.

¹⁷ The National Conference of State Legislatures, *Moving on Up: Helping Families Climb the Economic Ladder by Addressing Benefits Cliffs*, July 2019, http://www.ncsl.org/documents/cyf/Benefits_Cliffs_Brief_32099.pdf.

¹⁸ Urban Institute, *The Unintended Consequences of SNAP Asset Limits*, July 26, 2016, <https://www.urban.org/research/publication/unintended-consequences-snap-asset-limits>.

¹⁹ *Id.*

²⁰ *Supra* note 14.

eligibility for all students within that district, group of schools in a district, or school.²¹ Not only will changes to Cat EI impact the eligibility of children currently receiving services via that eligibility pathway, but may also impact the community eligibility of an entire school or district. As for all children, children with disabilities can be negatively affected by inadequate food intake and the proposal places access to needed food at school in jeopardy.

In the proposed rule, the Administration proposes limiting Cat EI, eliminating state flexibility to raise these asset limits and, by the Administration's own estimate, causing at least 3.1 million individuals to lose SNAP benefits.²² Since the USDA lacks the authority to implement this change, has not done sufficient analysis of the proposal, and has failed to sufficiently consider the harms resulting from this change, we urge the USDA to withdraw the rule.

As an initial matter, we remind the USDA that Congress directly considered changes to the Cat EI rules while negotiating the Agriculture Improvement Act of 2018 and rejected any such changes.²³ The last time the USDA issued regulations modifying the Cat EI rules was in 2000 in order to “implement several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).”²⁴ Congress has not modified the Cat EI statute since that time and the USDA has no authority to revise them without Congressional action. The USDA is attempting an end-run around Congress’ legislative authority that was clearly exercised in the Agriculture Improvement Act of 2018.

Even if the USDA had the authority to rule make on this issue, the noticed of proposed rule-making does not contain sufficient analysis of how these changes will impact those who rely on the program. The Administration’s estimates do not include any estimates of how many children would lose free and reduced price meal eligibility or how many of the 28,500 high-poverty schools who utilize community eligibility based on SNAP would lose that status. These estimates are necessary in order to truly assess the impact of the proposal. Press reports and Congressional communications suggest that the Administration has a technical estimate that 500,000 children will lose eligibility for free and reduced price meals, but we cannot provide comment on that because the USDA has not included this estimate in their analysis of the impact of the rule.

We would also note that Cat EI rules have been utilized for over 20 years and it will be extremely burdensome for states to implement new systems. The USDA estimates an additional \$1.157 billion in reimbursable state expenses, but fails to discuss how other state and federal programs will be impacted by the changes to SNAP. Or how state economies will be impacted by the creation of a new benefit cliff and does not discuss how the loss of the SNAP benefits will impact rural communities specifically.

²¹ Food Research & Action Center, *Community Eligibility: The Key to Hunger-Free Schools*, May 2019, <https://frac.org/wp-content/uploads/community-eligibility-key-to-hunger-free-schools-sy-2018-2019.pdf>.

²² *Supra* note 14.

²³ *Id.*

²⁴ *Supra* note 21.

We are also concerned that the USDA has failed to include any analysis of the impact this rule will have on people with disabilities. While we understand that households including people with disabilities have different income and asset rules, Cat EI will still impact many people with disabilities who utilize the Cat EI eligibility pathway currently. The USDA estimates that “13.2 percent of all SNAP households with elderly members will lose benefits,” a “disproportionate” effect.²⁵ We suspect that given that people with disabilities are subject to the same SNAP eligibility rules as elderly individuals, the impact of this rule change would also be disproportionate for people with disabilities. But the USDA makes no mention of doing any kind of analysis of the impact on people with disabilities.

Evidence, discussed above, shows that Cat EI in its current form promotes savings and encourages work by eliminating benefit cliffs. Given the unique needs of many people with disabilities, even small changes to income and support services can create financial challenges. Studies have estimated that “40 percent of people with disabilities experience material hardship because of the extra costs of living with a disability.”²⁶ These extra costs could be more expensive adaptive clothing, repairs or replacing mobility equipment, or simply additional health care costs. Preventing benefit cliffs and allowing for people with disabilities and their families to save up a modest amount ensures that these unexpected expenses are more manageable and can help people with disabilities and their family members to continue to work. The number of people impacted by these benefit cliffs should be analyzed and all of these harms should be weight against the Department’s rationale for the need for these changes.

Finally, the Department’s rationale for these changes is arbitrary and fails to adequately consider the harms. The USDA estimates that 3.1 million people will lose access to food and states that “[t]he proposed rule may also negatively impact food security and reduce the savings rates among those individuals who do not meet the income and resource eligibility requirements for SNAP or the substantial and ongoing requirements for expanded categorical eligibility.”²⁷ The USDA clearly states that the purpose of SNAP is “providing nutrition benefits to supplement the food budget of needy families so they can purchase healthy food and move towards self-sufficiency.”²⁸ It is unclear how a proposal that will negative impact food security and decrease self-sufficiency meets the fundamental purpose of the SNAP program.

The USDA’s rationale for these changes is that the current system “compromises program integrity” and “reduces public confidence” and that we need a “clearer and more consistent nationwide policy.”²⁹ However, the reports cited by the USDA regarding these program integrity issues are from 2010 and 2015, before, as the USDA itself mentions, the USDA issued a

²⁵ 84 Fed. Reg. 142, 35575, July 24, 2019.

²⁶ National Council on Disability, *National Disability Policy: A Progress Report*, October 26, 2017, https://ncd.gov/sites/default/files/NCD_A%20Progress%20Report_508.pdf.

²⁷ *Supra* note 25.

²⁸ Department of Agriculture, *Supplemental Nutrition Assistance Program (SNAP)*, last accessed September 23, 2019, <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program>.

²⁹ *Supra* note 25 at 35570.

clarifying memo to states on December 27, 2016.³⁰ The USDA does not report of the program integrity issues improved following that memo. Similarly, the use of Cat EI by 42 states and territories does not suggest that there is reduced public confidence in Cat EI or suggest that a clear national standard would be helpful. The USDA's failure to analyze the impact of these changes on free and reduced price meal eligibility for children and on people with disabilities, in addition to failing to assess the number of households impacted by the benefit cliff that the proposal would create, shows a lack of thorough analysis and fails to justify the loss of benefits to 3.1 million people.

The undersigned members of CCD strongly oppose the proposed rule because it would harm 3.1 million people, including many people with disabilities. We urge the USDA to withdraw the rule.

Sincerely,

American Association on Intellectual and Developmental Disabilities (AAIDD)
American Council of the Blind
American Dance Therapy Association
American Diabetes Association
ANCOR
Autism Society of America
Autistic Self Advocacy Network
Center for Public Representation
Council of Administrators of Special Education
Council of State Administrators of Vocational Rehabilitation
Easterseals
Epilepsy Foundation
Justice in Aging
Learning Disabilities Association of America
Lutheran Services in America-Disability Network
National Academy of Elder Law Attorneys
National Alliance on Mental Illness
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Disability Rights Network
National Down Syndrome Congress
National Organization of Social Security Claimants' Representatives (NOSSCR)
School Social Work Association of America
SourceAmerica
The Arc of the United States

³⁰ Department of Agriculture, *Clarification on Characteristics of Broad-Based Categorical Eligibility Programs*, December 27, 2016, <https://fns-prod.azureedge.net/sites/default/files/snap/clarification-bbce-memo.pdf>.