September 23, 2019

FILED VIA Email: SNAPPDBRules@usda.gov

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

RE: ABA Opposition to Proposed Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP); Federal Docket No. FNS-2018-0037

Dear Sir or Madam:

On behalf of the American Bar Association (ABA), which is the largest voluntary association of attorneys and legal professionals in the world, I write in opposition to the proposed changes to the Supplemental Nutrition Assistance Program (SNAP) stated in the Proposed Rule published in 84 FR 35570. The contemplated changes would impact millions of people who will lose eligibility or otherwise endure unnecessary and untenable delays in obtaining food assistance benefits.

The ABA recognizes that the Department of Agriculture must scrutinize federal programs as responsible stewards of taxpayer funds, but absent any exigency we do not believe that the proposed changes to reduce eligibility for SNAP benefits can be justified against the harm it will cause to the American people and even to other Administration objectives. In fact, we note that related proposals to eliminate or restrict categorical eligibility to benefits were robustly debated in Congress as late as last year and ultimately not adopted. According to estimates in the Proposed Rule, more than three million people would lose eligibility if the rule is adopted, including 500,000 school-aged children, and another nine million would endure a more burdensome application process, particularly families with elderly persons. We urge you not to adopt these material changes and to work instead in consultation with Congress, states and other stakeholders—including the people directly impacted—to realize cost savings in other ways.

As you know, food insecurity is a national crisis. In 2018, 14.3 million American households – 37.22 million individuals – suffered from food insecurity.\(^4\) Further, 5.6 million households, or 12.65 million individuals, experienced “very low food security”\(^5\) at some point in 2018.\(^6\) The ABA recognizes the human right to adequate food and nutrition, and in 2014, we adopted policy urging governments to promote this right through increased funding and the implementation of strategies that would prevent infringement of it.\(^7\) We believe that when eligibility for life-sustaining federal assistance programs like SNAP are at issue, changes must only come following greater study and analysis of their short- and long-term impact on individuals, budgets, and state and federal constitutions,\(^8\) and only then when aligned with American values. We cannot—and must not—turn our backs on hungry children and adults.

We appreciate the immediate cost savings these changes may produce, but there has been insufficient consideration of how denials or delays of food assistance may contribute to a family’s greater reliance on other state and other federal programs, for example. This is because a lack of food often leads a head of household to divert funds away from less-exigent needs like housing to more immediate needs like putting food on the table. Such difficult decisions can easily result in the loss of one’s housing, job, and degradation of family members’ health. We know this is true precisely because of the SNAP program’s impact on poverty. SNAP is the largest and only universal anti-hunger program—one-in-eight Americans rely on food assistance, whether disabled, elderly, a survivor of crime, or children. The program is widely acknowledged as one of the most effective defenses against hunger and poverty, having kept three million Americans out of poverty last year and preventing millions more from falling deeper into poverty.

More specifically, your proposed changes would intentionally restrict a primary means by which people become eligible for SNAP. As you know, under current SNAP eligibility rules, families must fall below both (1) income guidelines and (2) an asset test, or else receive benefits through “categorical eligibility.” Categorical eligibility is conferred to families through an optional authority given to states if the family has already qualified for another program such as assistance under the federal Temporary Assistance for Needy Families block grant program (TANF). Forty-two states and territories choose to extend categorical eligibility for SNAP in this way, based on state-determined limits subject to federal government restriction, e.g., gross income cannot exceed 200% of the federal poverty level. This relationship between the two programs has existed since TANF was created in 1996\(^9\) and the regulations that authorized

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\(^7\) [https://www.americanbar.org/content/dam/aba/administrative/homelessness_poverty/policy-resolutions/2014-right-to-food.pdf](https://www.americanbar.org/content/dam/aba/administrative/homelessness_poverty/policy-resolutions/2014-right-to-food.pdf).

\(^8\) [https://www.americanbar.org/content/dam/aba/directories/policy/1992_am_122.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/1992_am_122.pdf).

categorical eligibility for SNAP were promulgated in 2000.\textsuperscript{10} Justifications for authorizing categorical eligibility include simplifying administration, easing families’ entry into the programs, promoting coordination among low-income assistance programs, and reducing the potential for errors in determining program eligibility.\textsuperscript{11} In other words, there were more objectives than simply cost.

Through categorical eligibility, many persons who do not fall within income and asset restrictions for SNAP receive program benefits if they qualify for benefits under TANF. Under the current regulations for SNAP, cash and non-cash TANF benefits of only nominal value that do not require a thorough evaluation of a person’s assets and income nevertheless have been the basis for conferring SNAP eligibility. We are concerned that the Department’s proposals under this rulemaking exceed the scope of the identified problem and instead rise to the level of reform that was debated but not adopted by Congress less than a year ago. Such material changes to the program that would terminate eligibility for many persons who do meet income guidelines require a more careful study of their overall impact beyond simply cost.

If the proposed rule changes are adopted, there will be other negative consequences as well. For example, under the proposed changes to “categorical eligibility,” not only would fewer TANF-funded programs qualify, but families in crisis would be subjected to lengthy and burdensome filing requirements. It is not clear under the proposed regulations, but a family that meets the new guidelines for categorical eligibility could face a delay of 45 days while waiting for approval, and the requirement that the family must have first been awarded benefits under TANF valued at $50 or more for at least six months would require them to go without food support over several months to satisfy an arbitrarily-determined period. Such delays would be inhumane. The requirement that children of parents eligible for SNAP would no longer automatically qualify for school lunch assistance and need to apply for it separately also seems an unnecessary bureaucratic obstacle for families to overcome.

The proposed changes also fail to accommodate households with fluctuating incomes, eliminating benefits for anyone, including seniors and individuals with disabilities, whose assets exceed $3,500. In the current “bit-economy” in which households rely on short-term hourly work, monthly incomes can fluctuate significantly. Families that attempt to save money as a buffer against harder months would be penalized under this test, which runs counter to the Administration’s goal of promoting self-sufficiency. This is also not the only Administration objective weakened by these rule changes.

\begin{itemize}
\item \textsuperscript{10} See 7 C.F.R. 273.2(j)(2).
\end{itemize}
The current Administration has been a strong supporter of improvements to the criminal justice system and of helping formerly incarcerated people make a fresh start.\[12\] These proposed regulatory changes, however, will disproportionately hurt communities that have been marginalized by mass criminalization. Formerly incarcerated and convicted people are already subject to more than 46,000 potential collateral consequences of their convictions, eroding opportunities for basic employment, housing, education, and other life needs.\[13\] Consequently, nearly 91% are food insecure\[14\] and many are unemployed despite actively seeking work.\[15\] Food and economic stability are vital to lowering recidivism rates and supporting a person’s successful transition back into their family and society. Creating new barriers for access to food assistance will only contribute to cycles of poverty and crime.

For these reasons, the ABA opposes the proposed changes to SNAP program eligibility that would render millions of Americans who are in, or at-risk of falling into, poverty ineligible for basic food and nutrition assistance; impose burdensome requirements and delays even for those who would remain eligible; and contradict Administration-supported objectives of family stability, self-sufficiency, and successful transitions for formerly incarcerated persons reentering society. Proposed changes of this magnitude require more thorough consideration of their impact on the people and communities affected, as well as on other state and federal programs.

Thank you for considering the views of the ABA on this important issue. If you have any questions regarding the ABA’s position on the Proposed Rule, please contact Kenneth Goldsmith in the ABA Governmental Affairs Office, (202) 662-1789 or kenneth.goldsmith@americanbar.org.

Sincerely,

Judy Perry Martinez
President, American Bar Association

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\[12\] First Step Act and the Second Chance Reauthorization Act (P.L. 115-391), and the Juvenile Justice Reform Act of 2018 (P.L. 115-385).

