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November 1, 2019

The Honorable Sonny Perdue
Secretary
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington DC 20250

RE: Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), RIN 0584-AE62

Dear Secretary Perdue:

As Democratic members of the House Committee on Education and Labor (the Committee), we write to reiterate our strong opposition to the proposed rule entitled *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)*¹ and request that you withdraw this proposed rule.² According to the U.S. Department of Agriculture's (the Department) own analysis, the proposed rule would result in nearly one million children losing their automatic eligibility for free school meals—nearly twice as many children as the Department previously informed Committee staff would be affected.

The Department failed to follow appropriate rule-making procedures

Children who live in households that participate in SNAP are directly certified to receive free school meals through the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). In a phone briefing with Committee on Education and Labor staff on July 22, 2019, Department staff stated that they estimated the proposed rule would result in more than 500,000 children losing automatic access to free school meals. Yet when the proposed rule was published on July 24, 2019, the Regulatory Impact Analysis (RIA) did not include any discussion

¹ U.S. Dep't of Agric., Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (RIN 0584-AE62) 3 (2019), <https://www.regulations.gov/document?D=FNS-2018-0037-16542>.

² A first request to withdraw this proposed rule was signed and submitted by all Democratic Members of the House Education and Labor Committee. Letter from U.S. House of Representatives Educ. and Labor Comm. Democratic Members, to Sonny Perdue, Sec'y of Agric. (Sept. 23, 2019) (on file with author), available at <https://edlabor.house.gov/imo/media/doc/2019-09-19%20SNAP%20Cat%20E1%20Comment%20Letter.pdf>.

of the proposed rule's effect on free school meal eligibility. Under Executive Order 13563, the Department may propose a regulation "only upon a reasoned determination that its benefits justify its costs" and must "tailor its regulations to impose the least burden on society."³ Furthermore, Executive Order 12866 requires the Department to include in its RIA the "costs anticipated from the regulatory action," including adverse effects on health.⁴ The proposed rule's effect on school meal eligibility represents a societal cost that the Department should have considered in its RIA in order to give stakeholders the opportunity to comment on all aspects of the rule. Yet despite multiple requests, the Department provided no information on this effect to the public during the comment period, nor any explanation of why the effect was not included in the RIA.⁵

On October 15, 2019, the Department released new analysis revealing that the rule would cause 982,000 children to lose automatic access to free school meals—nearly twice as many children as it had initially reported to Committee staff.⁶ This analysis was published more than three weeks after the 60-day comment period had closed and less than 24 hours before Deputy Under Secretary Brandon Lipps was scheduled to testify before the Committee on the proposed rule. Despite the large number of children affected and multiple requests that the effect on children's access to school meals be considered in the RIA, the Department published this as an "informational analysis" rather than as a revision to its RIA. Furthermore, while the Department has since reopened the comment period, it has provided only 14 additional days for the public to comment on the proposed rule's full effects—only a fraction of the 60 days the Department initially deemed appropriate for the public to consider the proposed rule and its effects.

The Department's analysis fails to consider the proposed rule's full effects

In its newly released analysis, the Department claims that its estimate that the proposed rule will affect nearly one million children represents an "upper-bound."⁷ The Department's analysis as published is insufficient to support this conclusion. The Department asserts that some of the students who would lose categorical eligibility for school meals under its proposed rule attend schools that participate in the Community Eligibility Provision (CEP), which enables schools in high-poverty communities to provide free meals to all students, and thus would continue to receive free school meals if the proposed rule took effect.⁸ However, the Department fails to

³ Exec. Order No. 13563, 3 C.F.R. § 215 (2012), *reprinted in* 5 U.S.C. §601 app. 816–17 (2012).

⁴ Exec. Order No. 12866, 3 C.F.R. § 649 (1994), *reprinted as amended in* 5 U.S.C. § 601 (2012).

⁵ Letter from Robert C. "Bobby" Scott, Chairman, U.S. House of Representatives Educ. and Labor Comm., to Sonny Purdue, Sec'y of Agric. (July 26, 2019) (on file with author), *available at* [https://edlabor.house.gov/imo/media/doc/2019-07-26%20Chairman%20Scott%20to%20Secretary%20Perdue%20SNAP%20Cat%20EI%20Proposed%20Rule\[1\].pdf](https://edlabor.house.gov/imo/media/doc/2019-07-26%20Chairman%20Scott%20to%20Secretary%20Perdue%20SNAP%20Cat%20EI%20Proposed%20Rule[1].pdf);

and letter from Robert C. "Bobby" Scott, Chairman, U.S. House of Representatives Educ. and Labor Comm., to Sonny Purdue, Sec'y of Agric. (Sept. 10, 2019) (on file with author).

⁶ U.S. Dep't of Agric., Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (RIN 0584-AE62) – Potential impacts of Participants in the National School Lunch Program and School Breakfast Program 3 (2019), <https://www.regulations.gov/document?D=FNS-2018-0037-16046>.

⁷ U.S. Dep't of Agric., Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (RIN 0584-AE62) – Potential impacts of Participants in the National School Lunch Program and School Breakfast Program 3 (2019), <https://www.regulations.gov/document?D=FNS-2018-0037-16046>.

⁸ *Ibid.*

consider a potentially offsetting effect—namely, that some entire schools may lose their eligibility for CEP under the proposed rule. Schools are only eligible to participate in CEP if they have an identified student percentage (ISP) greater than 40 percent, meaning at least 4 in 10 of their students are certified for free school meals through programs such as SNAP. If the Department’s proposed rule causes some CEP-participating schools’ ISPs to drop below 40 percent, then all students at these schools would lose their automatic access to free school meals. During the 2016-2017 school year, nearly 2,200 schools participating in CEP had ISPs between 40 percent and 50 percent, putting them at risk of losing CEP eligibility under the proposed rule’s changes to SNAP.⁹ The Department’s analysis does not include sufficient information for the public to determine whether the number of children who would lose automatic access to school meals under its proposed rule is likely to be less than 982,000 children, as the Department claims, or more than 982,000 children. Additionally, during his testimony before the Committee on October 16, 2019, Deputy Under Secretary Lipps was not able to answer a question about the number of children the Department predicts will no longer receive free school meals despite being financially eligible due to the increased burden of submitting an application. This answer has still not been provided.

The Department’s proposed rule would have substantial harmful effects

Even taking the Department at its word that its newly released estimate represents an upper bound on the number of children affected, a proposal that puts a substantial number of our nation’s low-income children at risk of losing their automatic eligibility for free meals at school—at the same time as their families lose access to SNAP—is cause for deep concern. Extensive research demonstrates that food insecurity has negative consequences for children’s health and ability to learn in school,¹⁰ and the Department’s own research shows that in 2018, 11.2 million children lived in food insecure households.¹¹ Yet during the Committee’s October 16 hearing, the Department failed to explain how it would ensure that affected children who will remain financially eligible but no longer be directly certified for free school meals would not fall through the cracks if their households needed to complete applications. Stripping these children of their automatic school meal eligibility entails substantial costs of the type addressed in Executive Order 12866, not only for these children and their families, but also for educators, schools, our society, and our economy.¹²

Conclusion

The Department has failed stakeholders and the public by neglecting to include critical information on effects of the proposed rule in its RIA, refusing to provide the public with relevant information during the 60-day comment period, and offering inadequate time for the

⁹ Food Research and Action Center, *Community Eligibility: Making It Work with Lower ISPs 1* (2018), <http://frac.org/wp-content/uploads/making-cep-work-with-lower-isps.pdf>.

¹⁰ Valerie Tarasuk et al., *Association Between Household Food Insecurity and Annual Health Care Costs*, *Canadian Medical Association Journal* E429 (2015); John Cook & Karen Jeng, *Feeding America, Child Food Insecurity: The Economic Impact on our Nation 2* (2009), <https://www.nokidhungry.org/sites/default/files/child-economy-study.pdf>.

¹¹ Alisha Coleman-Jensen et al., *United States Dep’t of Agric. Econ. Research Serv., Household Food Security in the United States in 2018 9* (2019), <https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=963.1>.

¹² Exec. Order No. 12866, 3 C.F.R. § 649 (1994), *reprinted as amended in* 5 U.S.C. § 601 (2012).

The Honorable Sonny Perdue

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public to review and comment on relevant new analysis. In addition, the Department's newly released analysis fails to consider the full scope of relevant effects that the proposed rule would have on children's access to free school meals. Beyond these concerns, we are deeply troubled that the Department's proposed rule would have substantial negative consequences for the food security, academic outcomes, and health of nearly one million children through its effect on automatic free school meal eligibility.

We therefore request that the Department withdraw the proposed rule.

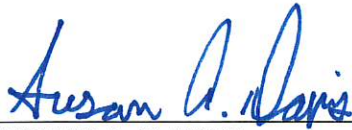
Sincerely,



ROBERT C. "BOBBY" SCOTT
Chair



SUZANNE BONAMICI
Chair
Subcommittee on Civil Rights and Human
Services



SUSAN A. DAVIS
Member of Congress



RAÚL M. GRIJALVA
Member of Congress



JOE COURTNEY
Member of Congress



MARCIA L. FUDGE
Member of Congress



GREGORIO KILILI CAMACHO SABLAN
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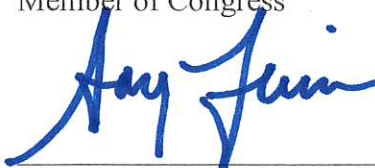
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