

September 23, 2019

Food and Nutrition Service, U.S. Department of Agriculture
Program Design Branch, Program Development Division
Via Electronic Submission

RE: *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program*
FNS Docket No. FNS-2018-0037

The City of New York (NYC) submits this comment in response to the United States Department of Agriculture's (USDA) Proposed Rule entitled, "Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)", published in the Federal Register on July 24, 2019 (Proposed Rule). The Proposed Rule must be withdrawn as it conflicts with the congressional intent of the Food Stamp Act and the Agriculture Improvements Act of 2018 (AIA also known as the "Farm Bill") and violates other affirmative obligations of the rulemaking process.

The Proposed Rule would dramatically change the longstanding rules for SNAP eligibility in such a way that will increase food insecurity for working-class families and vulnerable populations and negatively impact public health while at the same time imposing additional administrative and fiscal burdens on state and local governments. For the following reasons, NYC strongly opposes the Proposed Rule and calls upon the USDA to withdraw it. Nothing in these comments constitutes a waiver of any arguments that NYC may assert in any other forum.

I. Legal Issues

A. The Proposed Rule Violates the Administrative Procedures Act Because it is Not in Accordance with Governing Law and Contravenes Legislative Intent

The Proposed Rule should not be finalized because it violates the Administrative Procedures Act (APA) and other affirmative obligations of the rulemaking process. The APA requires courts to hold unlawful and set aside agency actions, findings and conclusions that are found to be an abuse of discretion, not in accordance with law, or which are in excess of statutory jurisdiction or authority.¹

An agency "does not have the power to adopt a policy that directly conflicts with its governing statute" or which contravenes the unambiguously expressed intent of Congress.² Agency action is "not in accordance with law" where it "ignores the plain language of the statute," renders

¹ See 5 U.S.C. 706(2)(A) and (C). See also *Motor Vehicle Mfrs. Ass'n of United States v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 41 (1983); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 942-843 (1984).

² *Maislin Indus., U.S. v. Primary Steele, Inc.*, 497 U.S. 116, 134-35 (1990). See also *United States v. Mead*, 533 U.S. 218, 228-29 (2001)(agency action cannot be "manifestly contrary to the statute"); *Chevron, U.S.A, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S 837, 843 n.9 (1984) (courts "must reject administrative constructions which are contrary to clear congressional intent.")

statutory language “superfluous,” or “frustrate[s] the policy Congress sought to implement” in the statute.³

The Proposed Rule conflicts with the Congressional intent for the SNAP⁴ (formerly known as the Food Stamp Program and originally enacted under the Food Stamp Act of 1964) and the recent amendments to it made by the AIA, which was enacted on December 20, 2018.⁵

Throughout the proposal, USDA continuously emphasizes its desire to better align the conferring of SNAP eligibility with the receipt of ongoing and substantial TANF benefits, expressing that the current manner in which categorical eligibility is determined is based on a process that is laden with program integrity issues.⁶ Yet, in addition to contravening plain statutory language, many of the proposed changes actually *circumvent* Congress’s intent, by making rule changes that the 115th Congress recently declined to pass into law. The AIA, which passed overwhelmingly in the house (369-47)⁷ and the Senate (87-13)⁸ in December of 2018, was a clear expression of preferences regarding categorical eligibility. Congress was aware of States’ use of categorical eligibility and decided against reforms similar to what are now in the Proposed Rule. Despite the expressed desire of the Secretary, USDA cannot impose a regulation that contravenes statutory authority or clear congressional intent or otherwise thwart a policy which Congress has sanctioned.⁹

USDA seeks to do by rulemaking what Congress did not do in the AIA by changing categorical eligibility requirements based on the receipt of TANF benefits that are (1) ongoing and substantial, and (2) limited to non-cash TANF benefits that focus on subsidized employment, work supports, and childcare. The proposed changes would eliminate the flexibility that various states utilize as prescribed in current rules. USDA has included this in the Proposed Rule, despite Congress’s explicit rejection of a proposal to the AIA that sought to restrict the categorical eligibility criteria. This proposal was included in the Engrossed House Version of the AIA, dated June 21, 2018, which sought to limit the categorical eligibility criteria to instances where a beneficiary is receiving either cash assistance or ongoing and substantial services such as

³ *Pacific Northwest Generating Coop v. Department of Energy*, 580 F.3d 792, 806 (9th Cir. 2009).

⁴ 7 U.S.C.S § 2011, et al.

⁵ Agriculture Improvement Act of 2018, Pub. L 115-334, (enacted December 20, 2018). Retrieved August 12, 2019, from <https://www.congress.gov/bill/115th-congress/housebill/2/text/enr?q=%7B%22search%22%3A%5B%22snap%22%5D%7D&r=49>

⁶ Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), 84 FR 35570 (USDA Proposed Rule July 24, 2019) available at: <https://www.govinfo.gov/content/pkg/FR-2019-07-24/pdf/2019-15670.pdf>

⁷ Final Vote Results for Roll Call 434. December 12, 2018. On Agreeing to the Conference Report: Agriculture and Nutrition Act of 2018. Retrieved August 12, 2019 <http://clerk.house.gov/evs/2018/roll434.xml>.

⁸ Vote Summary: Agriculture Improvement Act of 2018. December 11, 2018. Retrieved August 12, 2019 https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=2&vote=00259.

⁹ See 5 U.S.C. § 706(2)(A) and (C). See also *Motor Vehicle Mfrs. Ass’n of United States v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 41 (1983); *Chevron, U.S.A, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984).

transportation, childcare, counseling, or other services funded under part A of title IV of the Social Security Act with an income eligibility limit of not more than 130 percent (200 percent for elderly or disabled) of the poverty line.¹⁰ Congress removed these requirements from the final Act. USDA now proposes reversing the clearly stated will of Congress by implementing this rule.

B. USDA Has Not Complied with Executive Order 13132

USDA's failure to consider the economic costs that the Proposed Rule would shift to state and local governments implicates section 6 of Executive Order 13132, which mandates that:

no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments and that is not required by statute, unless: (1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or (2) the agency, prior to the formal promulgation of the regulation, (a) consulted with State and local officials early in the process of developing the proposed regulation; (b) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget [OMB] a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and (C) makes available to [OMB] any written communications submitted to the agency by State and local officials.¹¹

USDA summarily concludes, without providing any data or analysis, that it “has determined that this rule does not have Federalism implications” and therefore “a Federalism summary impact statement is not required.”¹² Despite this dismissive and cursory conclusion, as explained below, the Proposed Rule would likely impose economic harm on state and local governments and fails to consider the administrative costs the Proposed Rule will impose. USDA estimates that the net reduction in spending as a result of the Proposed Rule will be approximately \$9.4 billion over the five fiscal years 2019-2023.¹³ USDA further estimates that approximately 9 percent of currently participating SNAP households with an estimated 1.7 million households in FY 2020 containing 3.1 million individuals will not otherwise meet SNAP's income and asset eligibility requirements set forth in this proposed rule.¹⁴ Additionally, USDA estimates that households with one or more elderly individuals and/or earned income would be disproportionately affected with

¹⁰ H.R. 2, 115th Cong. § 4015(F) (engrossed in House June 21, 2018). Retrieved August 12, 2019, from <https://www.congress.gov/bill/115th-congress/housebill/2/text/eh?q=%7B%22search%22%3A%5B%22snap%22%5D%7D&r=49>

¹¹ Exec. Order 13132, 64 Fed. Reg. 43, 255 (Aug. 10, 1999).

¹² 84 FR 35570, at 35576.

¹³ 84 FR 35570, at 35575.

¹⁴ *Id.*

approximately 13.2 percent of all households with an elderly member and 12.5 percent of all households with earned income would lose SNAP benefits.¹⁵

USDA, however, conducted no analysis of the impact on what the loss of SNAP dollars will have on state and local economies. NYC estimates that the Proposed Rule will cause the City to lose close to \$2.5 million in SNAP benefits per month. Since the loss of SNAP benefits translates into losses for the whole economy in the form of reduced spending, lower business revenue and losses in job creation, this direct loss of SNAP benefits represents an estimated loss of more than \$4.4 million per month in overall economic activity (based on a calculation of \$1.79 overall economic loss/\$1 of SNAP loss). As stated below, in Section III. D., 19,193 NYC SNAP households (with 47,257 people) would immediately become ineligible for SNAP. Accordingly, pursuant to Executive Order 13132, USDA must prepare a federalism impact statement prior to finalizing the Proposed Rule.

C. The USDA Failed to Comply with Its Own Departmental Regulation 4300-4 Which Requires a Civil Rights Impact Analysis

USDA Departmental Regulation 4300-4 requires the Agency to conduct a Civil Rights Impact Analysis to examine the civil rights impact of Agency policies, actions and decisions that may adversely or disproportionately impact protected group members or which may have the purpose or effect of excluding, limiting, or otherwise disadvantaging any group or class of persons on one or more prohibited bases.¹⁶ The Civil Rights Impact Analysis, among other things, requires the Agency to “develop civil rights strategies to eliminate, alleviate, or mitigate such impacts. . .”¹⁷ The Agency must: “[i]dentify and compare/contrast alternatives that could eliminate, alleviate, or mitigate adverse and disproportionate civil rights impacts for the affected groups or classes of persons” and “[d]raw conclusions and identify feasible strategies and actions that the agency could utilize to offset adverse and disproportionate civil rights impacts (short-term and/or long term)”¹⁸

The Civil Rights Impact Analysis done by USDA falls far short of the required standard. USDA makes a conclusory statement that the Proposed Rule has “the potential for civil rights impacts to result if the proposed action is implemented because more elderly individuals may not otherwise meet the SNAP eligibility requirements.”¹⁹ USDA’s statement reflects its awareness of eligibility concerns facing elderly individuals currently in receipt of SNAP benefits, however, USDA does not describe a plan for ensuring that the affected groups will be protected from the adverse disparate impact of this Proposed Rule. USDA offers no alternatives which could eliminate, alleviate, or mitigate the adverse impact, nor does it identify any feasible strategy or action which could offset the adverse impact as required by Regulation 4300-4.²⁰ USDA must conduct a proper Civil Rights Impact Analysis and develop a concrete plan for mitigation strategies for

¹⁵ *Id.*

¹⁶ USDA Office of Civil Rights, Departmental Regulation (DR) 4300-4, *Civil Rights Impact Analysis*, dated May 30, 2003

¹⁷ See USDA DR 4300-4. at 9.

¹⁸ *Id.* at 9.

¹⁹ 84 FR 35570, at 35576.

²⁰ *Id.*

those groups who will face elevated employment barriers and who will be severely and disproportionately impacted by the Proposed Rule.

II. Harmful Effect on Clients and Economy

While the USDA suggests that the proposed changes to the Broad-Based Categorical Eligibility (BBCE) would prevent the provision of SNAP benefits to people who do not need assistance and would ensure that families become more self-sufficient, the proposed changes to BBCE do not meet the intended objectives. Instead, the Proposed Rule will decrease food access, increase risk of food insecurity on vulnerable populations, negatively impact public health, pull benefits from households on the cusp of self-sufficiency, and cause harmful ripple effects as explained in more detail below.

A. SNAP Protects Family Health and Well-Being, Improves Economic Outcomes, and Promotes Greater Self-Sufficiency

There are several ways in which the loss of SNAP benefits will have significant implications for family health and well-being. The USDA in its own Regulatory Impact Analysis sets forth the vast numbers of households who would no longer be eligible to participate in SNAP.²¹ For example, USDA estimates that 9% of households (an estimated 1.7 million households in FY 2020, containing 3.1 million persons) will be ineligible under the proposed rule.²² The USDA states that approximately 12.5 percent of SNAP households with earnings will lose benefits.²³ Most immediately, food-insecure households may have to choose between spending limited resources on food or on other needs, including healthcare. One study found that almost one-third of households reporting very low food security also reported skipping medications to save money.²⁴ Moreover, food insecurity is linked to serious health conditions such as diabetes, obesity, complications in pregnancy, low birth weight, and mental health problems.²⁵ Given the health problems associated with inadequate nutrition, food insecurity is also associated with increased use of healthcare services, including more emergency room visits and hospital admissions, while SNAP participation is associated with lower healthcare expenditures.²⁶

Thus, it is not surprising that research shows a direct relationship between SNAP and health. Low-income adults enrolled in SNAP spent 25 percent less on medical care compared to those

²¹ 84 FR at 35575

²² *Id.*

²³ *Id.*

²⁴ Herman, D., Afulani, P., Coleman-Jensen, A., & Harrison, G. G. (2015). Food Insecurity and Cost-Related Medication Underuse Among Nonelderly Adults in a Nationally Representative Sample. *American Journal of Public Health, 105*(10), e48-59.

²⁵ Food Research and Action Center. (December 2017). The role of the Supplemental Nutrition Assistance Program in improving health and well-being. Accessed at <http://frac.org/research/resource-library/snap-public-health-role-supplemental-nutrition-assistance-program-improving-health-well-being-americans>.

²⁶ Berkowitz S. Seligman H., & Basu S. (2017). Impact of food insecurity and SNAP participation on healthcare utilization and expenditures. University of Kentucky Center for Poverty Research Discussion Paper Series, DP2017-02. Accessed at https://uknowledge.uky.edu/ukcpr_papers/103/.

not enrolled,²⁷ while SNAP is associated with reduced hospital admissions among older adults, and fewer sick days and outpatient visits among adults overall.²⁸ Given these factors, there are two groups in particular that the proposed rule, if promulgated, would significantly and adversely affect – seniors and children.

1. The Proposed Rule Would Overwhelmingly Harm Seniors

The USDA states that “[h]ouseholds with one or more elderly individual[s] and/or earned income would be disproportionately affected.” By the USDA’s own admission, the proposed rule would result in 13.2 percent of participating households with seniors losing access to SNAP.²⁹ BBCE is especially important for seniors and people with disabilities who live on fixed incomes, whose savings can help them avert a financial crisis or weather an emergency that would otherwise push them deeper into poverty or could lead to homelessness. In today’s economy, many retirees no longer receive pensions. These retirees live off of their investments and savings and the Proposed Rule would discourage such savings. BBCE promotes greater self-sufficiency. The data shows that outcomes for seniors who are enrolled in SNAP are far better than outcomes for low-income seniors who are not enrolled in SNAP. Seniors enrolled in SNAP are significantly less likely to be hospitalized compared to nonparticipating low-income seniors, with an even greater effect among those experiencing food insecurity.³⁰ Elderly SNAP participants are less likely to report cost-related medication underuse compared to eligible non-participants.³¹ Elderly low-income SNAP participants are 23 percent less likely to enter a nursing home.³²

2. The Proposed Rule Will Overwhelmingly Harm Children

By the USDA’s own admission, this rule, if promulgated, would result in 7.4 percent of participating households with children losing access to SNAP. Increased SNAP benefit levels implemented under the American Recovery and Reinvestment Act (ARRA) were associated with better child health,³³ while loss of SNAP benefits has been associated with higher risk for

²⁷ Carlson, S., & Keith-Jennings B. (2018). SNAP is linked with improved nutritional outcomes and lower health care costs. Center on Budget & Policy Priorities. Access at <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>.

²⁸ Food Research and Action Center. (December 2017). The role of the Supplemental Nutrition Assistance Program in improving health and well-being. Accessed at <http://frac.org/research/resource-library/snap-public-health-role-supplemental-nutrition-assistance-program-improving-health-well%e2%80%90being-americans>.

²⁹ 84 FR at 35575

³⁰ Kim, J. (2015). Are older adults who participate in the Supplemental Nutrition Assistance Program healthier than eligible nonparticipants? Evidence from the Health and Retirement Study. *The Gerontologist*, 55(Issue Suppl_2), 672.

³¹ Srinivasan, M., & Pooler, J. A. (2018). Cost-related medication nonadherence for older adults participating in SNAP, 2013–2015. *American Journal of Public Health*, 108(2), 224-230.

³² Carlson, S., & Keith-Jenning,s B. (2018). SNAP is linked with improved nutritional outcomes and lower health care costs. Center on Budget & Policy Priorities. Access at <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>.

³³ March E., de Cuba S., Bailey K., Cook J., Coleman S., Schiffmiller A., & Frank D. (2011). Boost to SNAP benefits protect ted young children’s health. *Children’s Healthwatch Policy Action Brief*.

developmental delays,³⁴ which could result in an increased burden on and costs for early intervention and special education services.

More broadly, there is an extensive and growing body of evidence suggesting that poor health in childhood is a major factor in the persistence of poverty across generations. Programs that support childhood well-being, on the other hand, contribute to improved economic outcomes in adulthood. Thus, reduced access to public benefits that results in inadequate nutrition, less access to medical care, and other deficits in basic human needs have serious implications not only for the immediate well-being of families but also for future generations. Children who experience food insecurity are almost twice as likely to have poor physical and mental health compared to children in food-secure families, including increased risk for anemia, asthma, and depression.³⁵ Adolescents who experience food insecurity are at greater risk for serious mental health issues such as depression and suicidal symptoms.³⁶ Longitudinal research shows that young children who receive SNAP in the first 5 years experience better health, education, and employment outcomes compared to those who do not.³⁷ Children in SNAP households are also at reduced risk for poor educational outcomes such as repeating a grade.³⁸ Access to SNAP during early childhood (ages 0-4) is associated with a greater likelihood of economic self-sufficiency in adulthood, driven largely by higher levels of educational attainment, as well as improved health.³⁹ One study estimated that improved health (and lower future healthcare spending) among children in immigrant households participating in SNAP recouped 42% of the benefit's cost.⁴⁰ These findings are particularly concerning in light of prior analysis estimating that three-quarters (74.9%) of individuals in households that would become ineligible for SNAP if broad-based categorical eligibility were eliminated are children.⁴¹

³⁴ Ettinger de Cuba, S., Harker, L., Weiss, I., Scully, K., Chilton, M., & Coleman, S. (2013). Punishing hard work: the unintended consequences of cutting SNAP benefits. Boston, MA: Children's HealthWatch. Accessed at <http://www.centerforhungerfreecommunities.org/sites/default/files/pdfs/cliff%20effect%20report%20sing%20pages%5B1%5D.pdf>.

³⁵ Gunderson, C., & Ziliak, J. (2015). Food insecurity and health outcomes. *Health Affairs*, 34(11), 1830-1839.

³⁶ Alaimo K., Olson C., & Frongillo E. (2002). Family food insufficiency, but not low family income, is positively associated with dysthymia and suicidal symptoms in adolescents. *The Journal of Nutrition*, 132(4), pp. 719-725.

³⁷ Page, M. (March 2017). The intergenerational transmission of poverty and the long reach of child health and nutrition programs. UC Center Sacramento: Bacon Public Lectureship and White Paper. Accessed at http://uccs.ucdavis.edu/events/event-files-and-images/BaconWhitePaper_2.23.17.pdf.

³⁸ Beharie B., Mercado, M., & McKay, M. (2017). A protective association between SNAP participation and educational outcomes among children of economically strained households. *J Hunger Environ Nutr*, 12(2), 181-192.

³⁹ Hoynes, H., Schanzenbach D., & Almond D. (2016). Long-run impacts of childhood access to the safety net. *The American Economic Review*, 106(4), 903-934.

⁴⁰ East, C. (2017). The effect of food stamps on children's health: evidence from immigrants' changing eligibility. Accessed at https://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

⁴¹ Laird, E., & Trippe, C. (2014). *Programs Conferring Categorical Eligibility for SNAP: State Policies and the Number and Characteristics of Households Affected*. Washington, DC: Mathematica Policy Research.

The Proposed Rule will also put children’s health and learning at risk by reducing access to healthy food and free school meals. The consequences of implementing this rule would be devastating for children, which is why Congress rejected a similar proposal on a bipartisan basis and passed the Farm Bill to preserve access to SNAP and free school meals through the BBCE tool.

B. SNAP Provides Economic Benefits to the Wider Community

SNAP benefits have a ripple effect on the economy as a whole. Benefits are spent at local food retailers, with SNAP recipients spending more dollars on food at local retailers compared to eligible non-recipients.⁴² The USDA has estimated that, during times of economic downturn, every additional \$5 in SNAP benefits generates up to \$9 of economic activity, and every \$1 billion increase in SNAP benefits results in 8,900 full-time equivalent jobs.⁴³ Research conducted after temporary increases in SNAP under ARRA expired found that household grocery store spending declined by \$0.37 for every \$1 lost in SNAP benefits.⁴⁴

C. Repeal of BBCE Will Create Disincentives to Work and Save for the Future

The rule’s repeal of BBCE would also create disincentives for SNAP households to work and their ability to save for the future. SNAP households in states that relaxed or eliminated asset limits under BBCE are both more likely to have a bank account and more likely to have at least \$500 saved.⁴⁵ The proposed rule fails to support working families by creating a hard “benefit cliff” at 130% of FPL (or \$2,252 per month for a family of three in fiscal year 2019), where even a small increase in income would make the household ineligible, which creates a disincentive to work or attain increased wages. In addition, NYS SNAP participants with earned income currently remain eligible up to 150% FPL, and this rule would no longer permit this. This proposal would weaken SNAP’s role in supporting work while making it harder for working families that struggle to get by on low wages to meet their basic needs.

Example: Under the Proposed Rule, in a single-parent household with 2 children, a single mother is working full-time at the minimum wage, earning \$2,100 per month. Assuming the family qualifies for the maximum shelter allowance, the family’s monthly SNAP benefit is \$209—or higher if she is paying for child care. When the parent is given an increase in wages to \$16.25, this brings her earnings to \$2,275 per month, which puts her income over the 130% FPL. Without the expanded gross income limit provided through categorical eligibility, this \$175/month earnings increase costs her

⁴² U.S. Department of Agriculture, "The Benefits of Increasing the Supplemental Nutrition Assistance Program Participation in Your State," December 2011, https://www.fns.usda.gov/sites/default/files/bc_facts.pdf.

⁴³ Economic Research Service, US Department of Agriculture. (2010). The Food Assistance National Input-Output Multiplier (FANIOM) Model and the stimulus effect of SNAP. Accessed at www.ers.usda.gov/publications/err103.

⁴⁴ Bruich, G. (2014). The effect of SNAP benefits on expenditures: new evidence from scanner data and the November 2013 benefit cuts. Access at http://scholar.harvard.edu/files/bruich/files/bruich_2014b.pdf.

⁴⁵ Ratcliffe C., McKernan S., Wheaton L., Kalish E., Ruggles C., Armstrong S., & Oberlin C. (2016). *Asset Limits, SNAP Participation, and Financial Stability*. Washington, DC: Urban Institute.

\$209 in SNAP benefits, a net loss of resources to the family, which doesn't take payroll deductions into consideration. That family would clearly still need assistance, but if the proposed rule is promulgated, then that family would be ineligible for SNAP. Under BBCE, as the parent continues to work and receive periodical increases, and with their SNAP benefits continuing, that family can save and plan accordingly, so that they will be better situated and more likely to achieve food security and self-sufficiency by the time that they are no longer eligible for SNAP.

The Proposed Rule would also discourage savings among low-income families who already struggle to establish financial security. Nationally, fewer than half of SNAP households have liquid assets; among those with assets, the median value is \$450.⁴⁶ The SNAP resource limits, which are set at low levels, were only indexed to inflation beginning on October 1, 2008.⁴⁷ Building modest assets allows low-income families to avoid accumulating debt and to be better financially prepared for old age and unforeseen events, such as a home or car repair or the loss of a job in a recession. Recent reports show most City residents do not have enough savings to cover an emergency.⁴⁸ Data from the 2015 New York City Poverty Tracker show that three-quarters of SNAP recipients reported less than \$700 in liquid assets and 80% reported they would not be able to cover 3 months of expenses.⁴⁹

While NYC DSS does not have a SNAP bank match, it has bank matches for Cash Assistance (CA) and Medicaid (MA). CA is the most restrictive and MA is the most expansive of the three programs, so based on the other sets of data, we can confidently estimate that 6% to 8% of SNAP households would have bank accounts that would put them over the eligibility limit set forth in the proposed rule. The median bank account for MA clients is \$5,600 and we estimate the SNAP caseload would have a similar figure.

Clients losing categorical eligibility, but lucky enough to have limited savings may have to use those savings for food instead of shelter which could drive up homelessness. Additionally, the proposed rule would make it more difficult for households to save money, including first and last months' rents and security deposits, which would exacerbate homelessness. It is NYC DSS's position that, if the USDA opts to implement a resource test to accomplish the goal of preserving program integrity by not providing SNAP benefits to households that are not in need, then that resource test should be at \$25,000 or more. Considering a lesser amount as a barrier to SNAP has the potential to cause the adverse effects described throughout this document.

D. Unnecessary Churning of Cases Will Harm Households and May Discourage Reapplications for SNAP

⁴⁶ Ratcliffe C., McKernan S., Wheaton L., Kalish E., Ruggles C., Armstrong S., & Oberlin C. (2016). *Asset Limits, SNAP Participation, and Financial Stability*. Washington, DC: Urban Institute.

⁴⁷ 7 USC 2014 (g)(1)(B).

⁴⁸ https://anhd.org/wp-content/uploads/2016/11/20161106_anhd_ed_poster.pdf; <https://www.theatlantic.com/magazine/archive/2016/05/my-secret-shame/476415/>

⁴⁹ Center on Poverty and Social Policy, Columbia University School of Social Work. Analysis of 2015 Poverty Tracker data (unpublished).

The proposal would create unnecessary churning of cases where low-income households' resources may slightly exceed the resource limit at the end of the month, be found ineligible, but in the following month after bills are paid, would be under the limit and then reapply. These households will face hardships during the time in which they are not receiving benefits. In addition, it is likely that many households will be discouraged from reapplying for benefits because they see the reapplication process as too burdensome.

E. The Proposed Definitions of “Ongoing” and “Substantial” Are Arbitrary and Damaging to Those Genuinely In Need

Research on appropriate definitions of ongoing and substantial in this context is limited, so the proposal that \$50 receipt of CA be the minimum to be considered as a “substantial” CA benefit seems to be arbitrary. The proposed threshold of \$50 minimum receipt of CA for 6 months creates a potential hurdle for families facing homelessness. Many who participate in housing programs, receive a nominal CA grant, because a household member works at a low-wage job. Adding a requirement for these families to separately apply for SNAP, while dealing with homelessness, means they may face food insecurity too, compounding their crisis. People in crisis mode are less likely to submit applications or complete an eligibility process.

In contrast to the arbitrary definitions in the Proposed Rule, NYC DSS offers the following options based on existing standards: the threshold for “substantial” could be set at \$15/month, equivalent to the minimum SNAP benefit, and the threshold for “ongoing” could be set at one month per year, equivalent to the ABAWD benefit period of three months every three years (if not meeting work requirements or exempt).

With regard to the question of assigning a numerical/dollar value to programs such as education and training, job search assistance, or work experience, that are provided on an hourly or weekly basis, NYC DSS' position is that such programs have inherent value that may vary based on the specific subject matter, length of program, and other aspects of each program. The inherent value is that such programs prepare clients to be able to work, earn an income, and become self-sufficient, thereby building the capacity to be able to afford to purchase food and eventually become food secure. Therefore, placing a numerical/dollar value on these programs would be arbitrary.

F. Documentation Requirements May Be Burdensome to Households

Under the Proposed Rule, there would be an increase in the documentation required for clients to demonstrate their resources, which is likely to be burdensome. As a result, some clients may be unable to provide the necessary documentation or provide inadequate documentation, which may lead to more eligibility denials for applicants whose resources do not exceed the limits for SNAP and who genuinely need the assistance that SNAP was created to provide.

It should be noted that this creates added stress and yet another disincentive for working-class families who are juggling food insecurity with busy work schedules and childcare/school schedules for their children. Working-class families that fit the description may simply give up on the added burden of locating the necessary documents being newly required of them. Despite

their genuine need for assistance, applications from such families would be denied due to lack of documentation not due to actual ineligibility.

G. The Proposed Rule Would Disincentivize The Formation and Maintenance of Two-Parent Households

The proposed rule, if promulgated, would disincentivize two-parent households. One of the four TANF purposes is to encourage the formation and maintenance of two-parent families.⁵⁰ Unlike BBCE, which allows states to lift the eligibility threshold and phase benefits out more gradually, thereby allowing two-parent households to combine income that may bring them close to the threshold and still allow them to benefit from SNAP, the Proposed Rule, if promulgated, would immediately deem ineligible for SNAP two-parent households whose household income total more than 130% of the FPL. Currently, in New York State, participant families with earned income currently remain eligible up to 150% of the FPL, which helps to better equip families to achieve food security and self-sufficiency.

If the Proposed Rule is promulgated and potential two-parent families calculate their earned income and realize that combining their income would result in them being found ineligible for SNAP, they may decide against forming a two-parent household, and instead, remain as individual households, one of which would be a single-parent household, and both households (or at least one) would be food insecure and dependent on SNAP benefits for a much longer time than would be the case for the two-parent household that broad-based categorical eligibility and TANF encourages. The effect of the proposed rule could be the opposite of what it intends. Instead of eliminating reliance on SNAP, the proposed rule could potentially overburden the SNAP system because it would create a greater reliance on SNAP rather than a reliance on the parents' ability to work together in providing for their family to gradually lead to food security and self-sufficiency.

III. Burden on States and Local Governments

A. The Proposed Rule Would Create a Disincentive to Work

The proposed rule, if promulgated, would weaken SNAP's role in supporting work while making it harder for families that struggle to get by on low wages to meet their basic needs. Currently, SNAP supports work by gradually phasing benefits down as a participant's income increases. Under the proposed rule, a family can lose substantial SNAP benefits from earnings increase that raises its gross income over SNAP's eligibility threshold (130% of the FPL or \$2,252 per month for a family of three in fiscal year 2019). Under the current rule, states may lift the eligibility threshold and phase benefits out more gradually, which lets households close to that threshold take higher-paying work and still benefit from SNAP. In NYS SNAP participants with earned

⁵⁰ 42 U.S.C. 601(a)(4)

income currently remain eligible up to 150% of the FPL, and this rule would no longer permit this. As a result, SNAP participants are disincentivized from seeking better work opportunities that could lead them along the path to food security and self-sufficiency.

Therefore, the proposed rule may actually lead participants to decline incremental promotions after they have calculated the amount of the promotion against the amount of SNAP benefits they would lose. In essence the proposed rule could potentially overburden the SNAP system because it would create a greater reliance on SNAP rather than a reliance on one's ability to work and obtain promotions that can gradually lead a participant to food security and self-sufficiency. NYC DSS promotes SNAP's role in supporting work and promotional opportunities.

B. The Proposed Rule Would Increase Requests for Emergency Assistance

Based on the above-mentioned benefit cliff, which would make it harder for families to meet their basic needs, the proposed rule, if promulgated, would leave a large number of current participants ineligible for SNAP, which means that a portion of their income that would otherwise go to paying rent or utility bills will have to be used to purchase food. This would create an increase in requests for emergency assistance since families who lose SNAP would now need to use the little cash that they have to purchase food.

C. The Proposed Rule Would Create an Administrative Burden on State and Local Governments

States and local social services districts have embraced BBCE because it helps them better serve working families and those saving for the future, as it also helps state and local governments to streamline their operations.

The current BBCE rule allows states to lift SNAP's very low asset tests so that families, seniors, people with a disability, and others who are very unlikely to be able to replenish any assets they spend down, can have modest savings without losing SNAP. As a result of the proposed rule, local governments will have an increase in the workload and case processing time for workers who will need to gather resource information that is currently not required for most households.

Few low-income households that apply for SNAP have assets above the federal limits, but under the proposed rule, social services workers must ask about assets during the application process and eligibility interview. Additionally, social services workers will need to gather documentation about an applicant's assets, even when such assets are too small to disqualify the household from SNAP. Documentation may be difficult for applicants to find, and the time involved in the applicant locating the requested documentation and then in the social services worker reviewing the documentation increases administrative workload for states and local governments. BBCE makes state operations more efficient.

The proposed rule, if promulgated, will require states to change their SNAP eligibility rules, modify their computer systems, hire additional staff, retrain staff, and revise applications and

procedures. As a result of the foregoing administrative changes that would be required if the proposed rule is promulgated, administrative costs will inevitably increase.

There are significant systematic and related personnel implications imposed by this proposed rule. Administrative costs for states, most of whom have BBCE, will increase in terms of work hours (since they would have to follow up on resources).

It is nearly impossible to fully quantify the burden that will result from requiring resource verification, but even if it added five minutes to each NCA SNAP application and recertification, NYC DSS estimates that it will cost approximately \$2 million annually.

Additional qualified staff will be required in order to handle the increase in emergency assistance requests and increased churn. Moreover, existing and new staff will need to be trained. The proposed rule will require redevelopment of forms, procedures, training curricula, and costs and resources attached to training sessions.

D. The Proposed Rule Would Create Costly Churning

The proposed rule, if promulgated, would create costly churning of cases where resources in low-income households may slightly exceed the resource limit at the end of one month, but in the following month after bills are paid, the household's resources would be under the resource limit and they could then reapply. BBCE "lowers 'churn,' which occurs when SNAP households stop participating in SNAP (for procedural reasons or because they briefly become ineligible) and then reapply within a very short period. Churn creates added work for state workers and benefit gaps for SNAP households."⁵¹ In-depth modeling of the effects of BBCE suggests that flexible asset limits reduce SNAP churn by 26 percent, likely for two reasons. First, a less burdensome recertification process reduces the likelihood that eligible households will experience a gap in benefits as they seek to comply with recertification requirements. Second, eliminating or reducing asset limits allows households that receive a lump sum payment to remain on the SNAP caseload rather than leave and return once the money has been spent down.⁵²

It should be noted that, under the proposed rule, as of June 2019, 19,193 NYC SNAP households (with 47,257 people) would immediately become ineligible for SNAP because their current household income exceeds the statutory 130% of FPL gross income limit for households without any members who are age 60 or older or disabled. 12,354 of these 19,193 households are working households with an average monthly benefit of \$82.51. 6,839 of these 19,193 households currently pay out-of-pocket for dependent care costs as they are working, looking for work, or are engaged in an approved employment training activity, and have an average monthly benefit of \$215.90. An undetermined number of New York State and New York City households would be denied eligibility upon applying or would lose eligibility at recertification due to the re-imposition of the resource/asset test for SNAP eligibility.

⁵¹ [*SNAP's "Broad-Based Categorical Eligibility" Supports Working Families and Those Saving for the Future*](#), Dottie Rosenbaum, Center on Budget and Policy Priorities, July 30, 2019.

⁵² Ratcliffe C., McKernan S. Wheaton L., Kalish E. Ruggles C., Armstrong S. and Oberlin C. (2016). *Asset Limits, SNAP Participation, and Financial Stability*. Washington, DC: Urban Institute

Administrative costs would increase due to an upsurge in case processing in connection with reapplications and reestablishment of eligibility. Additionally, with the anticipated increase in churn that will be caused by potentially tens of thousands of reapplications being submitted, along with the additional documentation requirements of the proposed rule, the need for additional qualified staff across states and local social services districts to process these applications, conduct interviews, and review documentation, would increase astronomically.

E. The Proposed Rule Would Create an Increase in Quality Assurance Errors

The proposed rule, if promulgated, would create an increase in quality assurance errors as staff would be required to apply the resource test to many new populations. In the proposed rule, FNS states that it consulted with eight states that currently do not have expanded categorical eligibility, and therefore, apply the resource test in determining SNAP eligibility. According to FNS, “FNS learned that [of the eight states with which it consulted] four of these States verify resources when resources are close to the resource limit, two States only verify resources when questionable and two States verified resources at all times.” NYC DSS objects to the use of information from only two states as the standard to be applied to all states and territories. It is NYC DSS’s position that, prior to applying a standard to all states and territories, FNS should consult with all states because there was a time in which all states had to verify resources. In consulting with all states in this matter, FNS should conduct a study of quality control rates and timeliness associated with verification of resources. If FNS relies only on the two states that verify resources at all times, then FNS should carefully study the quality assurance rates and timeliness issues of those two states to see the impact, and all states and territories should be granted access to that data pertaining to quality assurance and timeliness.

F. The Proposed Rule Would Limit State Flexibility

Over 40 states have adopted BBCE, allowing states to “raise SNAP income eligibility limits somewhat so that many low-income working families that have difficulty making ends meet, such as because they face expenses for costly housing or child care that consume a sizeable share of their income, can receive help affording adequate food.”⁵³ In repealing BBCE, the proposed rule ignores the fact that states are differently situated and instead seeks to apply a one-size-fits-all approach on the states.

The proposed rule incorrectly assumes that, as a result of BBCE, states provide SNAP benefits to undeserving people. However, “BBCE does not cause substantial SNAP benefits to go to non-needy families because households can only qualify for a sizable SNAP benefit if they have high expenses that leave them with little income available for food. Only about 0.2 percent of SNAP benefits went to households with monthly disposable incomes (net income after deducting certain expenses) above the federal poverty line in 2017.”⁵⁴

⁵³ [*Misguided Trump Administration Rule Would Take Basic Food Assistance From Working Families, Seniors, and People With Disabilities*](#), Robert Greenstein, Center on Budget and Policy Priorities, July 23, 2019

⁵⁴ [*SNAP’s “Broad-Based Categorical Eligibility” Supports Working Families and Those Saving for the Future*](#), Dottie Rosenbaum, Center on Budget and Policy Priorities, July 30, 2019.

In fact, with BBCE, like all applicants for SNAP, categorically eligible households must complete a SNAP application, be interviewed, provide financial documentation, report changes in circumstances, and reapply for SNAP. With BBCE, states must still fully review each categorically eligible household's income and other circumstances to determine the household's SNAP benefit. The difference is that states are in the best position to know what the needs of their constituents are and can better serve the needs of those constituents by using less restrictive income and asset tests in SNAP, which allows them to better support low-income working families, promote asset building among those households, and improve state administration while lowering administrative costs. States that provide constituents with these benefits can gradually lead participants to food security and self-sufficiency, so that they can successfully transition away from SNAP.

G. The Proposed Rule Would Create A Financial Burden on NYC and Other Jurisdictions That Use the Community Eligibility Provision to Maintain The School Lunch Program

NYC has made a commitment that all NYC public school children can receive free breakfast and lunch without regard to their parent's income. NYC uses the Community Eligibility Provision under the national School Lunch Program to serve no cost lunch to students without collecting household applications on the basis of being a high poverty school district. Any decline in families being determined to be categorically eligible for benefits, will shift costs for school meals onto the City. School meals eligibility rates – based on current BBCE standards that render children whose households are in receipt of SNAP as eligible for free school meals – are used for apportionment of federal education funds to low-income schools/districts. The Proposed Rule's elimination of the current BBCE will affect the school meals eligibility rates used to determine federal education funds to low-income schools/districts as it will dramatically reduce the number of families deemed eligible by federal standards for free school meals.

While this section highlights the potential impact on New York City, it should be noted that, if the Proposed Rule is promulgated, it will likely create a similar financial burden on other jurisdictions that have opted to use the Community Eligibility Provisions.

H. The Proposed Rule Would Create an Increase in Administrative Fair Hearing Requests

In addition to all the issues presented above, if promulgated, the Proposed Rule will be a huge burden from an administrative fair hearing perspective. There would likely be an increase in fair hearing requests as SNAP case closings will rise, and existing and potential clients will receive notification of ineligibility for SNAP benefits.

An increase in fair hearings would also mean that states and local governments, in particular, NYS OTDA's Office of Administrative Hearings and NYC DSS, would need to hire additional qualified staff. Therefore, in addition to the need for an increase in SNAP center staff as mentioned above, there would be a need for additional legal and administrative staff with respect to fair hearings.

For all the reasons set forth above, the Proposed Rule must be withdrawn. Thank you for the opportunity to comment on this Proposed Rule.

Sincerely,