

United States Senate
WASHINGTON, DC 20510

September 23, 2019

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

Dear Secretary Perdue:

We write to raise serious concerns about the Administration's recent proposed rule "Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) (84 FR 35570)." This rule is yet another example of the Trump Administration ignoring Congressional intent and proposing a self-initiated, flawed rule that will take food assistance away from millions of Americans, disproportionately affecting children, seniors and working families. Changes to broad-based categorical eligibility (BBCE) have been rejected countless times by Congress, on a bipartisan basis, most recently by the Agriculture Improvement Act of 2018 (P.L. 115-334), which passed Congress by a historic vote of 87-13 in the Senate and by 369-47 in the House of Representatives and signed into law by President Trump. Further, the regulatory impact assessment is seriously flawed, ignoring key impacts, particularly on children, that have been previously recognized by this Administration in budget proposals and the Congressional Budget Office when estimating the cost of bills that would change broad-based categorical eligibility (BBCE).

The broad-based categorical eligibility option is currently being used by over 40 states in order to smooth the benefits cliff for working families, allow modest assets for emergencies and reduce the administrative and paperwork burden on individuals and state agencies. Contrary to assertions in the proposed rule, this policy is not the result of accidental expansion of state authority or variation in program implementation. Rather, BBCE is a well-established policy that has been utilized by nearly every state in the country for over two decades.

Both the 2014 and 2018 Farm Bills contemplated changes to BBCE, but in both cases, Congress deliberately chose to exclude any changes due to the devastating impact on families. This was evident during debate on the final bills in both the House and Senate as numerous members remarked that the “conference agreement very specifically protects SNAP’s categorical eligibility” and that their yes vote was based on the conference report excluding limitations to BBCE and other harmful House provisions.¹ The Conference report, written by Chairman Pat Roberts, Ranking Member Debbie Stabenow, Chairman Mike Conaway and Ranking Member Collin Peterson and approved by the 369 members of the House and 87 members of the Senate was clear in its conclusions: The Conference substitute “deletes the House provision.”² Thus, Congress considered, and rejected, changes to broad based categorical eligibility.

Not only has this Administration ignored the will of Congress by promulgating this rule, it has also abdicated its responsibility in producing an accurate regulatory impact assessment. Executive Order 13563, Executive Order 12866, and OMB Circular A-4 specifically require that “In addition to the direct benefits and costs of each alternative, the list should include any important ancillary benefits and countervailing risks.... 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 (e.g., adverse safety impacts from more stringent fuel-economy standards for light trucks). As with other benefits and costs, an effort should be made to quantify and monetize both ancillary benefits and countervailing risks.” Loss of school meal access is a widely recognized consequence of changes to BBCE. During debate related to the 2018 Farm Bill, CBO noted that the changes to BBCE proposed by House Republicans would result in over 265,000 children losing access to school meals.³ In its analysis of the President’s FY20 Budget proposal, CBO again noted that proposed BBCE changes would impact school breakfast and lunch. In presenting the details of this rule to Congressional staff, USDA admitted that, at a minimum, 500,000 children would lose access to school meals. Some students currently receiving free meals also would

¹ Jim McGovern et al.; Rep Gwen Moore "[Providing for Consideration of Conference Report on H.R. 2, Agriculture and Nutrition](#)," remarks in the House, *Congressional Record*, daily edition, vol. 164 (December 12, 2018), pp. H10115- H10127 and Rep. Marcia Fudge et al., "[Conference Report on H.R. 2, Agriculture and Nutrition Act of 2018](#)," remarks in the House, *Congressional Record*, daily edition, vol. 164 (December 12, 2018), pp. H10142- H10151.

² United States, Congress. Public Law 115-334. "[Conference Report to Accompany H.R. 2, Agriculture and Nutrition Act of 2018](#)." pp.631. <https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf>

³ United States, Congressional Budget Office. *Cost Estimate for H.R.2, the Agriculture and Nutrition Act Of 2018*, (May 2, 2018), p.13 https://www.cbo.gov/system/files/2018-07/hr2_1.pdf.

be switched to reduced price meals, increasing the likelihood that some students would accrue school meal debt. However, these impacts are noticeably absent from USDA's regulatory impact analysis.

While the RIA is clearly lacking proper evaluation of some key impacts, we are also concerned about the detrimental impacts that USDA does acknowledge in its evaluation. According to analysis by Mathematica, at least 3.6 million SNAP participants will lose SNAP benefits as a result of this proposed rule.⁴ Some states would see as much as 18% of its SNAP households lose access to food assistance. The proposed rule would impose new paperwork burdens on 69% of current SNAP participants and increase churn, or eligible individuals losing and regaining benefits in a short amount of time, by 26%, creating the risk that families in need will lose access to food because of paperwork errors or barriers. As USDA's own research notes, "churn imposes costs both to participants and to State Agencies. For States, churn increases costs by requiring States to process additional applications" and "for households, costs include the loss of benefits they otherwise would have received as well as administrative burden associated with the recertification process."⁵ This is one example of many that highlights that the costs, both human and administrative, far outweigh any benefit USDA claims.

This proposed rule would also have a disproportionate impact on our most vulnerable populations, including 13% of seniors currently receiving SNAP benefits. Governors and Mayors throughout the country have weighed in in opposition to this rule because of the \$2.3 billion in increased administrative costs, negative impact on local economies and very real prospects of worsening hunger in local communities.

Even with the current BBCE policy in place, we know that SNAP maintains a rigorous benefits determination process. SNAP also has a long history of providing state options and flexibilities to allow states to address local circumstances like high housing costs and encourage earnings and savings to help families to move beyond the cycle of poverty.

⁴ Cunnynham, Karen, pp. (2018, July). "Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2010 to Fiscal Year 2016." Prepared by Mathematica Policy Research for the U.S. Food and Nutrition Service. Pp. 99-100 <https://fns-prod.azureedge.net/sites/default/files/snap/Trends2010-2016.pdf>

⁵ Mills, Gregory, Tracy Vericker, Heather Koball, Laura Wheaton, Key Lippold, and Sam Elkin. 2014. "Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP)." Prepared by the Urban Institute for the U.S. Food and Nutrition Service. p. 98. <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf>

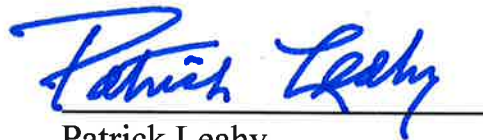
The Agriculture Improvement Act of 2018 received more votes from Congress than any other Farm Bill in history. This law represents a bipartisan consensus directing food and farm policy for the next five years. The Administration's justification for this proposed rule is tenuous at best, and is far outweighed by the very real negative consequences this rule would impose on American families. This proposed rule is yet another example of this Administration's attempt to circumvent the will of Congress and advance partisan policies that hurt American families.

We urge you to immediately withdraw this proposed rule.

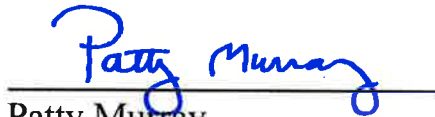
Sincerely,



Debbie Stabenow
United States Senator



Patrick Leahy
United States Senator



Patty Murray
United States Senator



Tammy Baldwin
United States Senator



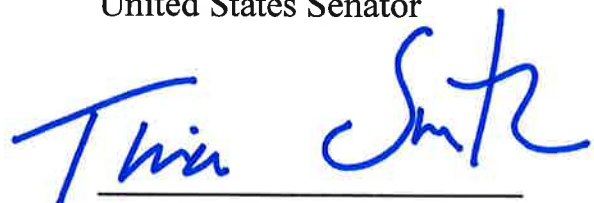
Sherrod Brown
United States Senator



Kirsten Gillibrand
United States Senator



Amy Klobuchar
United States Senator



Tina Smith
United States Senator

Bob Casey, Jr.

Robert P. Casey, Jr.
United States Senator

Bern Sanders

Bernard Sanders
United States Senator

Charles Schumer

Charles E. Schumer
United States Senator

Michael F. Bennet

Michael F. Bennet
United States Senator

Chris Van Hollen

Chris Van Hollen
United States Senator

Richard J. Durbin

Richard J. Durbin
United States Senator

Elizabeth Warren

Elizabeth Warren
United States Senator