



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL



September 23, 2019

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

Re: Notice of Proposed Rule Making: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) RIN 0584-AE62, 84 Fed. Reg. 35570

Dear SNAP Program Design Branch:

We are writing on behalf of the Legal Aid Society of the District of Columbia (Legal Aid) and Bread for the City in response to the Department of Agriculture's (USDA or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the proposed revision of categorical eligibility in the SNAP program published in the Federal Register on July 23, 2019.

Legal Aid is the oldest and largest general legal services program in the District of Columbia. Legal Aid's mission is to make justice real – in individual and systemic ways – for persons living in poverty in the District. Over the past 87 years, we have provided legal assistance to tens of thousands of individuals and impacted many more through our systemic litigation and advocacy. Today, Legal Aid provides legal services in five broad areas: housing, family law, public benefits, consumer, and immigration, our newest practice area added in 2018. Our work includes individual and systemic advocacy with the District and federal governments to eliminate access barriers to vital public benefits for eligible District residents.

Bread for the City is a non-profit organization whose mission is to help District of Columbia residents living with low income to develop the power to determine the future of their own communities. We provide food, clothing, medical care, and legal and social services to reduce the burden of poverty. We seek justice through community organizing and public advocacy. We work to uproot racism, a major cause of poverty. We are committed to treating our clients with the dignity and respect that all people deserve. Bread for the City Legal Clinic seeks to ensure better access to justice in our nation's capital. The Legal Clinic offers front-line civil legal services primarily in the areas of housing, family, immigration, and public benefits law.

We write to express our strong opposition to this proposed rule because its implementation would harm the low-income populations we serve, increase states' administrative burden, reduce children's access to school lunch programs, and violate congressional intent. Like the Administration's proposed regulation governing the work requirements for ABAWDs, *see* 84 Fed. Reg. 980 (Feb. 1, 2019), implementation of this proposed regulation would likely result in the elimination of Broad-Based Categorical Eligibility (BBCE), resulting in greater food insecurity and disincentives to work and savings, all without any discernible program improvement. In fact, implementation of this proposed regulation, like the ABAWD regulation, would likely impede program administration, resulting in higher costs for states and even greater insecurity for the vast majority of SNAP beneficiaries who would retain eligibility. *We urge the Department to withdraw this proposed rule in its entirety.*

BBCE Improves the Functioning of the SNAP Program, Creates Work Incentives, Improves Child Nutrition and Allows Low-Income Families to Save Without Sacrificing their Access to Nutritional Assistance.

The Food and Nutrition Act (FNA) provides for categorical eligibility for households in which all members receive other public benefits such as Temporary Assistance for Needy Families (TANF) and Supplemental Security Income. *See* 7 U.S.C. § 2014(a); *see also* 7 C.F.R. § 273.2(j). Because federal and state TANF funds can be used to pay for non-cash benefits and services as well, states have the option of expanding categorical eligibility to provide for SNAP eligibility for individuals who receive a TANF-funded non-cash benefit or service that meets one of the four specified purposes of the TANF program.¹ This policy option is known as “Broad-Based Categorical Eligibility” (or BBCE).

Currently, 41 states and the District of Columbia have used BBCE to align their SNAP eligibility rules with those for non-cash TANF-funded benefits or services.² Like many states, the District has used BBCE to expand income eligibility for SNAP to 200 percent of the Federal Poverty Line and eliminate the asset test for those who qualify.³ All District households' applying for or

¹ *See* Jessica Shahin (Associate Administrator, Supplemental Nutrition Assistance Program), Memo to SNAP Regional Directors, *Improving Access to SNAP through Broad-Based Categorical Eligibility* (Sept. 30, 2009), <https://fns-prod.azureedge.net/sites/default/files/snap/Improving-SNAP-Access-through%20Broad-Based-Categorical-Eligibility.pdf> (last visited Sept. 22, 2019) [hereinafter Shahin USDA Memo]. The four purposes of the TANF program are: (1) assisting needy families so children can be cared for in their own homes; (2) reducing the dependency of needy parents by promoting job preparation, work, and marriage; (3) preventing out-of-wedlock pregnancies; and (4) encouraging the formation and maintenance of two-parent families. *See* 42 U.S.C. § 601(a).

² <https://fns-prod.azureedge.net/sites/default/files/resource-files/BBCE2019.pdf> (last visited Sept. 22, 2019).

³ *See* Economic Security Administration (ESA) Policy Manual, Appendix B, at 479, <https://dhs.gov/sites/default/files/dc/sites/dhs/publication/attachments/ESA-Policy-Manual-Combined-Revised-2.pdf> (last visited Sept. 22, 2019).

recertifying their SNAP eligibility, regardless of whether they will ultimately qualify for SNAP on the basis of BBCE, must follow all of the SNAP rules to submit an application, verify income, household size and other items and participate in an interview with the SNAP agency.⁴

BBCE provides a number of benefits to SNAP applicants and beneficiaries, as the Department itself recognized in a 2009 memo to the Department's Regional Staff. The memo encouraged the Department's regional staff to promote expanded categorical eligibility in the states whose operations they oversaw, stating:

In these times of rising caseloads and shrinking State budgets, expanded categorical eligibility can benefit States by simplifying policies, by reducing the amount of time States must devote to verifying resources, and by reducing errors. It can benefit families hurt by the economic crisis. For example, families with low incomes and modest assets will be eligible for benefits. It can extend food assistance to families with high expenses but gross incomes slightly higher than the normal gross income test. Applicants will not need to provide documentation verifying their resources. Finally, adopting expanded categorical eligibility can promote asset accumulation among low-income families.⁵

The memo concludes, “[w]e believe that increasing the number of States that implement broad-based categorical eligibility will benefit families hurt by the economic crisis, promote savings among low income households, and simplify State policies. Please encourage your States to adopt broad-based categorical eligibility to improve SNAP operations in your States.”⁶

Analyses of the effects of BBCE support the Department's position expressed in the 2009 memo.

- (1) By allowing households with earnings to continue to receive benefits even if they experience modest increases in income, BBCE smooths out the earnings cliff that working families face in means-tested programs.⁷

⁴ See ESA Policy Manual, Part I, Chapter 12.2, at 193 (stating that while the agency will provide a TANF-funded brochure to all applicants and beneficiaries who are recertifying their SNAP eligibility, only households whose income is below 200 percent of the Federal Poverty Level will qualify for SNAP); Chapter 12.7 at 197 (“[I]f the household qualifies for [SNAP] under expanded categorical eligibility, [the Social Service Representative determining eligibility] must independently verify: income, S[ocial] S[ecurity] N[umber]s, and residency.”), <https://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/ESA-Policy-Manual-Combined-Revised-2.pdf> (last visited Sept. 22, 2019).

⁵ Shahin USDA Memo, at 1.

⁶ *Id.* (emphasis added).

⁷ See Dorothy Rosenbaum, *SNAP's “Broad-Based Categorical Eligibility” Supports Working Families and Those Saving for the Future* (Center on Budget and Policy Priorities) (July 30,

- (2) Because of BBCE, low-income households can save for retirement, education for their children, emergencies or a down payment for a home without jeopardizing their ability to feed themselves.⁸ This is particularly true for people of color who face a large racial wealth gap between them and their white counterparts. In 2013 and 2014, the median wealth for white families in the District of Columbia was \$284,000 compared to \$3,500 for black families and \$13,000 for Latinx families.⁹
- (3) BBCE helps households with earnings and high expenses (for, among other necessities, child care and housing) can obtain SNAP benefits to help make food more affordable.¹⁰ This is particularly important in the District of Columbia where housing and child care costs are among the highest in the country.¹¹

2019), at 2, 5-8, <https://www.cbpp.org/research/food-assistance/snaps-broad-based-categorical-eligibility-supports-working-families-and> (last visited Sept. 22, 2019); Elaine Waxman, Testimony Before the Subcommittee on Nutrition, Oversight and Department Operations, Committee on Agriculture, U.S. House of Representatives, *The Importance of Broad-Based Categorical Eligibility in SNAP* (June 20, 2019), at 5-6, https://www.urban.org/sites/default/files/publication/100429/the_importance_of_broad-based_categorical_eligibility_bbce_in_snap_2.pdf (last visited Sept. 22, 2019).

⁸ See Carolyn Ratcliffe, et. al., *The Unintended Consequences of SNAP Asset Limits* (Urban Institute) (July 2016), at 4, <https://www.urban.org/research/publication/unintended-consequences-snap-asset-limits> (last visited Sept. 22, 2019).

⁹ See Tinsae Gebriel, *Economic Inequality in DC Reflects Disparities in Income, Wages, Wealth, and Economic Mobility. Policy Solutions Should Too* (D.C. Fiscal Policy Institute) (Aug. 6, 2018) <https://www.dcfpi.org/all/economic-inequality-in-dc-reflects-disparities-in-income-wages-wealth-and-economic-mobility-policy-solutions-should-too/> (last visited Sept. 22, 2019).

¹⁰ See Elizabeth Laird and Carole Trippe, *Programs Conferring Categorical Eligibility for SNAP: State Policies and the Number and Characteristics of Households Affected* (Mathematica Policy Research) (Feb. 2014), at 20 (finding that “income-ineligible BBCE households are more likely to have every type of allowable deduction, and higher average amounts for earnings, dependent care, and child support deductions in comparison with all SNAP households”).

¹¹ The District has “the highest rent in the country out of 56 states and territories” with an average fair market rent for a two bedroom of \$1,665 and for a three bedroom of \$2,176. See <https://www.rentdata.org/states/district-of-columbia/2019> (last visited Sept. 22, 2019). The District also has the most expensive child care in the country. The average monthly cost of child care for an infant in the District is \$2,020 and for a four year old, it is \$1,593. The cost of infant care alone would require 83 percent of the salary of a minimum wage worker over the course of a year. See Economic Policy Institute, *The Cost of Child Care in Washington DC*, <https://www.epi.org/child-care-costs-in-the-united-states/#/DC> (last visited Sept. 22, 2019).

- (4) Implementation of BBCE has allowed states to streamline their SNAP eligibility determination processes and led to a reduction in caseload churn caused by households cycling on and off the program.¹²

Implementation of This Regulation Would Harm Millions of Households Nationwide and Thousands in the District of Columbia.

The proposed regulation would define TANF-funded “benefits for categorical eligibility to mean ongoing and substantial benefits,” and “limit the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports and child[]care.” 84 Fed. Reg. 35570. In attempting to justify this proposed rule change, the Department pays little attention to the benefits of BBCE described above. In fact, these beneficial effects should be a key consideration for the Department, as the proposal’s principal effect would be to take SNAP away from millions of individuals. However, the Department offers no data or rationale suggesting that such SNAP benefits are no longer needed by the individuals the proposal stands to hurt.

Implementation of this proposed rule would harm the SNAP program (and those who depend on it for their food security) in two major ways. First, the proposed rule would eliminate eligibility for millions of individuals who receive SNAP by virtue of qualifying under their state’s BBCE criteria. Second, the elimination of BBCE, contrary to the Department’s assertion, would make it more costly for states to operate the SNAP program which would lead to losses of benefits for the “appropriate households,” who qualify for SNAP other than on the basis of BBCE. 84 Fed. Reg. 35570.

Harm to Households Who Would Lose SNAP Eligibility. First, the proposed rule would eliminate SNAP eligibility for 3.1 million individuals (or nine percent of the current caseload) nationwide. *See* 84 Fed. Reg. 35575. The Department acknowledges 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.” *Id.* (emphasis added). Further, the Department acknowledges that implementation of the proposed rule would disproportionately affect seniors (due to the imposition of asset limits) and working families (due to lowered income limits). *See id.* This would be the case in the District of Columbia where implementation of the proposed rule would eliminate benefits for 19 percent of households with earnings and 12 percent of households with an elderly individual.¹³

For individuals and the District as a whole, the harm would extend beyond the dollar value of the benefits lost. Among our clients who have lost SNAP benefits, some of have had to choose

¹² *See* Laird and Trippe, at 3-4 (finding that “being in a state with BBCE decreases the likelihood of SNAP churn by two percentage points, representing a substantial 26 percent decline”).

¹³ *See* Mathematica, *State-by-State Impact of Proposed Changes to "Broad-Based Categorical Eligibility" in SNAP*, <https://www.mathematica-mpr.com/dataviz/impact-of-bbce-proposal-on-snap-caseloads?MPRSource=TCSide> (last visited Sept. 22, 2019).

between feeding their children and paying their utility bills. Others have had to ask their family or neighbors for help which they found humiliating. And others have skipped meals even though doing so could exacerbate underlying health conditions. And the harm goes beyond the individuals and families who are directly impacted, as every \$1 spent on SNAP benefits yields \$1.70 of economic activity.¹⁴

Harm to All SNAP Beneficiaries Resulting From Increased Barriers and Strains on Service Delivery. Restricting BBCE would increase the burden on states of administering the SNAP program and on all current and future SNAP applicants and recipients. Implementation of the proposed rule would increase SNAP administrative costs by \$2.314 billion over five years. *See* 84 Fed. Reg. 35575. The Department doesn't specify the components of these increased costs, which limits our ability to respond, but we assume they would likely include the associated costs of reprogramming computer systems, the costs of having to verify assets and other losses in efficiency due to churn.¹⁵

The Department also estimates that implementation of the proposed rule would cut SNAP benefits over five years by \$10.543 billion. *See id.* This estimate undercounts the impact that implementation of this rule would have. USDA estimates that those who qualify for SNAP solely as a result of the application of BBCE constitute only five percent of total SNAP benefits.¹⁶ *See id.* However, “[a]ny changes to BBCE would require states to alter their SNAP eligibility rules, modify their computer systems, retain staff, and revise applications and program manuals. Such changes also would make SNAP rules considerably more complicated.”¹⁷ Based

¹⁴ *See* Elizabeth Wolkemir, *SNAP Boosts Retailers and Local Economies* (Center on Budget and Policy Priorities) (April 6, 2018), at 3, <https://www.cbpp.org/research/food-assistance/snap-boosts-retailers-and-local-economies> (Sept. 22, 2019).

¹⁵ Rosenbaum, at 11-12 (“In many cases, households and state workers will need to gather documents about households’ assets, even when such assets are too small to disqualify the household from SNAP. These activities increase administrative workload and costs for states.”); *see also* Laird and Trippe, at 3-4 (discussing churn). We have reason to believe that these administrative costs are under-estimated. For example, the Department estimates that agencies would only have to spend an additional seven to twelve minutes to verify assets and households would only have to spend an additional four to six minutes providing verification. *See* 84 Fed. Reg. 35578. In our experience, this estimate dramatically understates the difficulty that many of our clients have in providing (and the agency in processing) verification of income and assets.

¹⁶ In the District of Columbia, the eight percent of households who would not otherwise qualify for SNAP receive three percent of the SNAP benefits in the District with an average monthly benefit of about \$89. *See* Mathematica, *State-by-State Impact of Proposed Changes to "Broad-Based Categorical Eligibility" in SNAP*, <https://www.mathematica-mpr.com/dataviz/impact-of-bbce-proposal-on-snap-caseloads?MPRSource=TCSide> (last visited Sept. 22, 2019).

¹⁷ Rosenbaum, at 11 (citing to testimony before the House of Representatives by the Mississippi Executive Director of Human Services that reinstating the asset test would cost his state at least \$1.5 million and the Lieutenant Governor of Wisconsin who estimated that eliminating BBCE would cost his state \$2 million).

on our organizations' experience representing clients, we expect that these increased administrative costs and associated complications would result in many otherwise eligible individuals losing or foregoing the SNAP benefits for which they are eligible due to increased barriers to participation.

Our clients already face barriers to obtaining and keeping SNAP benefits without interruption. Since October 2016, the District has struggled to provide SNAP benefits to individuals in a timely manner and provide adequate notice, as it implemented a new computer system.¹⁸ Too often, applicants and beneficiaries must go to already overburdened service centers to turn in documentation of income, sometimes multiple times, and wait in line for hours in order to be seen.¹⁹ As a result, clients have cycled on and off SNAP at some point, while continuing to remain eligible. Forcing the District to do costly reprogramming of its computer system and change its business processes to request and process additional verifications (even when the household's assets would not make them ineligible) would make the processes of getting and keeping SNAP benefits more complicated, less well-resourced and harder for our clients to navigate on an ongoing basis. Therefore, the harmful impact of this proposed rule would be felt throughout the caseload, not just on those who lose eligibility due to the new BBCE requirements.

The Harms of This Proposal Are Outweighed By the Assumed Benefits. The Department's impact analysis briefly mentions that losing SNAP benefits would reduce families' food security and savings rates. *See* 84 Fed. Reg. 35575. However, the Department makes no effort to quantify these effects. Furthermore, the cursory analysis is also deficient because it does not account for the effect of disincentivizing work for low-income families which is contrary to the Department's stated goal of "mov[ing] households] to self-sufficiency." 84 Fed. Reg. 35570. Nor does it account for the impact on children of reducing access to nutrition despite numerous studies documenting the link between childhood food insecurity and "various health risks, including higher rates of asthma and greater odds of hospitalization, mental health problems, including anxiety, depression, and behavioral issues" and negative impacts on children's "cognitive skills, as well as their interpersonal skills, self-control, attentiveness, persistence, and flexibility."²⁰

¹⁸ *See* Zach Rausnitz, *How an Ambitious New Computer System Crashed the Department of Human Services*, Wash. City Paper (May 25, 2017), <https://www.washingtoncitypaper.com/news/article/20862623/how-an-ambitious-new-computer-system-crashed-the-department-of-human-services> (last visited Sept. 22, 2019).

¹⁹ <https://www.makingjusticereal.org/long-lines-persist-at-dc-safety-net-program-centers> (last visited Sept. 22, 2019).

²⁰ Elaine Waxman and Nathan Joo, *How Households with Children Are Affected by Restricting Broad-Based Categorical Eligibility for SNAP* (Urban Institute) (Sept. 2019), at 5 (citing numerous studies, https://www.urban.org/sites/default/files/publication/101029/how_households_with_children_are_affected_by_restricting_broad-based_categorical_eligibility_for_snap_1.pdf (last visited Sept. 22, 2019).

What is more disturbing, in light of these harms, is that this proposal would not provide any discernible benefits. The Department states that implementation of this proposed rule would “maintain categorical eligibility’s dual purpose of streamlining program administration while ensuring that SNAP benefits are targeted to the appropriate households.” 84 Fed. Reg. 35570. As discussed above, however, BBCE in its current form helps to streamline program administration by reducing the administrative burden on individuals and state agencies. Moreover, the Department asserts that this revision would “address program integrity issues” in the SNAP program. *Id.* Yet, this claim contradicts the Department’s 2009 statement that adoption of BBCE “reduc[es] errors.”²¹ Finally, the Department makes no effort to explain why terminating SNAP benefits for low-income households’ attempting to “move . . . towards self-sufficiency” through low-wage employment or those who are saving for education or future, unanticipated emergencies is consistent with the goals of the program. *Id.*

Notably, while the proposal is framed as a response to state practice, USDA states in its regulatory impact analysis that the Department is “unable” to predict the extent to which states would change their TANF-funded programs to preserve their ability to use BBCE for the benefits described above.²² As a result, it is unlikely that states and individuals would realize whatever effects the Department attempts to associate with use of its new BBCE criteria.

The Department Does Not Estimate (or Even Acknowledge) the Impact of Its Proposed Regulation on the Free and Reduced Price School Lunch Program or the Children it Serves.

The Department’s analysis of the impact of its proposed regulation also understates the harm this rule will impose because its regulatory impact analysis does not estimate (much less acknowledge) the impact of implementation of this rule on children’s ability to qualify for free school lunch—an obvious and important ancillary effect of the proposal that should be included to make its cost-benefit analysis complete.²³

Children can receive free and reduced price school meals based on an application submitted by their family (the income cutoff for free lunch is 130 percent of the federal poverty level and reduced price lunch is 185 percent of the federal poverty level). Or they can automatically

²¹ Shahin USDA Memo, at 1.

²² U.S. Department of Agriculture, Food and Nutrition Service, Regulatory Impact Analysis, 7 C.F.R. Part 273, *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)* (July 24, 2019), at 33, <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=SR%2BO&D=FNS-2018-0037> (last visited Sept. 23, 2019).

²³ See Letter from U.S. Representative Bobby Scott (D-VA) to USDA Secretary Sonny Perdue (July 26, 2019), <https://edlabor.house.gov/imo/media/doc/2019-07-26%20Chairman%20Scott%20to%20Secretary%20Perdue%20SNAP%20Cat%20EI%20Proposed%20Rule%5b1%5d.pdf> (last visited Sept. 22, 2019).

qualify for free meals through the process of “direct certification,” in which a state or locality can determine eligibility for the program without an application, based on state records of the child’s family’s receipt of SNAP, TANF, Head Start.²⁴ Direct certification “is an important tool for ensuring that low-income children receive free breakfast and lunch without barriers. School districts benefit from the reduction in the number of school meal applications that they must process as more students are determined eligible for free school meals through direct certification. This results in greater administrative savings for the district, which allows them to put those resources into improving meal quality and service.”²⁵

In the District, almost 1,000 households with children would lose their SNAP benefits if this rule were to be implemented.²⁶ While some of the children in these households might still be able to qualify for a free school lunch (because their household income is below 130 percent of the Federal Poverty Level but the household’s assets exceed the low statutory limits), most would have to submit an application (which would increase barriers to participation). Furthermore, children in households above 130 percent of the Federal Poverty Level would only be income-eligible for reduced price lunches which would still strain the resources of low-income families, particularly those with substantial work-related expenses.

Food insecurity among households with children is associated with worse health outcomes, higher health care costs and decreased educational performance.²⁷ These costs should be accounted for in the Department’s regulatory analysis of this regulation.

The Proposed Rule Is Inconsistent with Congressional Intent.

BBCE policies have been in place for over two decades. In 1996, when Congress overhauled the AFDC program and replaced it with a TANF Block Grant that gave states more flexibility in the cash assistance and work support benefits they could provide, Congress could have chosen to restrict categorical eligibility to cash assistance but it did not.

In subsequent years, the Department has encouraged states to expand their use of categorical eligibility in order to “extend food assistance” and “benefit families hurt by the economic

²⁴ See 42 U.S.C. § 1758(b)(12). Children can also receive free school lunches without an application based on their or their status as a foster or migrant youth or runaway. See *id.*

²⁵ Food Research Action Center, *Direct Certification Improves Low-Income Student Access to School Meals: An Updated Guide to Direct Certification*, <http://frac.org/wp-content/uploads/direct-cert-improves-low-income-school-meal-access.pdf> (last visited Sept. 22, 2019).

²⁶ See Mathematica, *State-by-State Impact of Proposed Changes to "Broad-Based Categorical Eligibility" in SNAP*, <https://www.mathematica-mpr.com/dataviz/impact-of-bbce-proposal-on-snap-caseloads?MPRSource=TCSide> (last visited Sept. 22, 2019).

²⁷ See *supra* note 20.

crisis.”²⁸ Such encouragement is entirely consistent with SNAP’s purpose of “permit[ing] low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.” 7 U.S.C. § 2011.

Thus, in 2013, knowing that states had expanded their use of categorical eligibility to include TANF-funded non-cash assistance with FNS approval, Congress once again had the opportunity to enact restrictions to BBCE in its reauthorization of the Farm Bill. The House version of this legislation would have restricted BBCE only to those receiving cash assistance (as opposed to non-cash assistance) through other low-income programs such as TANF.²⁹ This provision was rejected by the Senate, and it was not included in the final legislation.³⁰

Five years later, in the 2018 debate over reauthorization of the Farm Bill, Congress again explicitly chose not to restrict BBCE. The House-passed Farm Bill proposed to limit categorical eligibility to recipients of state-funded general assistance cash benefits or “ongoing and substantial” TANF-funded services. The bill would have limited categorical eligibility to households without an elderly or disabled member to 130 percent of the Federal Poverty Line and households with such a member to 200 percent of the Federal Poverty Line.³¹ However, the Senate explicitly rejected this provision, and it was not included in the final legislation.³²

This proposed regulation adopts much of the language from the 2018 House bill that was explicitly rejected by Congress and signed into law by the President, thus contravening congressional intent. “Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.” *Lorillard, Div. of Loew’s Theatres, Inc. v. Pons*, 434 U.S. 575, 580 (1978) (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414, n. 8 (1975); *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 366 (1951); *National Lead Co. v. United States*, 252 U.S. 140, 147 (1920)); see 2A C. Sands, *Sutherland on Statutory Construction* § 49.09 and cases cited (4th ed. 1973). Congress

²⁸ Shahin USDA Memo, at 2.

²⁹ See Federal Agriculture Reform and Risk Management Act of 2013, H.R. 1947, 113th Cong. § 4005 (reported in House June 10, 2013), <https://www.congress.gov/bill/113th-congress/house-bill/1947/text#toc-H1B06A719CEAD4433A475DA5EC1B42308> (last visited Sept. 22, 2019).

³⁰ See Conference Report accompanying Agriculture and Nutrition Act of 2014, H.R. 2642, Report 113-333, <https://www.congress.gov/113/crpt/hrpt333/CRPT-113hrpt333.pdf>, at 436 (last visited Sept. 22, 2019).

³¹ See Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. § 4006 (as passed by House, June 21, 2018), available at <https://www.congress.gov/bill/115th-congress/house-bill/2/text/eh> (last visited Sept. 22, 2019).

³² See Conference Report accompanying Agriculture and Nutrition Act of 2018, H.R. 2, Report 115-072, <https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf> (last visited Sept. 22, 2019), at 603 (emphasis added).

has now reauthorized the Farm Bill and explicitly rejected restrictions on BBCE multiple times. As such, this proposed regulation is contrary to Congress's intent in maintaining current BBCE standards.

Conclusion

For the reasons stated above, Legal Aid and Bread for the City strongly oppose this regulation which would harm millions without a corresponding benefit. Please feel free to reach out to Jennifer Mezey (jmezey@legalaiddc.org) or Allison Miles-Lee (amiles-lee@breadforthecity.org) with any questions or concerns.

Sincerely,

/s/ Eric Angel
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