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

To Whom It May Concern:

The American Public Human Services Association (APHSA), a bipartisan, nonprofit membership organization representing state and local health and human services agencies, is pleased to submit comments in response to the Notice of Proposed Rulemaking (NPRM) entitled *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)*, Docket ID Number [FNS-2018-0037]. Through our affinity group, the American Association of SNAP Directors (AASD), we leverage the unique perspective of state and local SNAP administrators to assess how proposed federal policies impact the administration and outcomes of nutrition assistance programs.

Under the NPRM, USDA proposes to limit the use of broad-based categorical eligibility by (1) defining “benefits” that confer categorical eligibility to mean “ongoing” and “substantial” benefits; and (2) to limit the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports, and childcare. USDA’s stated purpose for these revisions is to maintain categorical eligibility’s dual purpose of streamlining program administration while ensuring that SNAP benefits are targeted to the appropriate households.

For more than 20 years, states have been using broad-based categorical eligibility to reduce administrative burden and increase efficiency. The practice is an important tool for many states to develop integrated policy levers that help clients meet their nutritional needs while receiving benefits that advance TANF policy goals. Furthermore, the policy is instrumental in reducing the administrative burden of state and local agencies, provides flexibility for working families with significant housing and child care costs, and incentivizes income-eligible households to set aside modest savings without losing SNAP. While we

The American Public Human Services Association advances the well-being of all people by influencing modern approaches to sound policy, building the capacity of public agencies to enable healthy families and communities, and connecting leaders to accelerate learning and generate practical solutions together.

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recognize the objective of the proposed rule is to preserve this tool for households receiving TANF-funded benefits designed to move them towards self-sufficiency, we believe as written, the policy is overly restrictive in its limitation on states' abilities to provide categorical eligibility to TANF recipients. Furthermore, we believe additional analysis is needed to understand the full impacts of the rule.

Accordingly, we have provided the following feedback to ensure a transparent process is followed that results in states being enabled to confer appropriate categorical eligibility to recipients of TANF-funded benefits in a manner that reflects the range of approaches used to create the enabling conditions that support the well-being and economic mobility of low-income households.

USDA Should Republish its NPRM to Conduct a Regulatory Impact Analysis on School Meal Programs

Because SNAP recipients are eligible for free school meals, the proposed rule will have a direct and substantial impact on school meal programs (National School Lunch Program and School Breakfast Program). However, in its Regulatory Impact Analysis, USDA did not estimate how many children will lose automatic eligibility for free school meals as part of the rule change. In order for human services and education agencies to appropriately assess what these impacts are in the community and to develop plans to mitigate negative consequences from the proposed rule, it is critical that a detailed analysis be shared with stakeholders. In addition to being a regulatory requirement to complete such analysis¹, when similar restrictions to broad-based categorical eligibility have been proposed in past farm bills, Congressional Budget Office analyses have included such estimates. USDA should withdraw the proposed rule and republish it to include a regulatory impact analysis on school meal programs.

The Proposed Limits to the Types of Non-Cash Benefits that Confer Categorical Eligibility Fail to Account for the Full Range of Strategies Used by States to Promote Self-Sufficiency and Support Well-Being

In the proposed rule, USDA would limit the types of non-cash benefits that can confer categorical eligibility to those that focus on subsidized employment, work supports, and child care. USDA's stated rationale for this is to eliminate programs which may not conduct a robust eligibility determination and do not meaningfully move families toward self-sufficiency. To support this argument, USDA references a 2012 Office of Inspector General (OIG) report that cites three examples of benefits being conferred in a manner which OIG considers improper. Since that report, FNS issued additional guidance in 2016 that ensure states appropriately complete eligibility determinations and that services are achieving one of the four TANF block grant goals.² We believe that this guidance provides appropriate oversight to ensure broad-based categorical eligibility is used consistent with its intended use. Therefore, the proposed rule is not necessary and should be withdrawn.

However, should USDA proceed with further defining which non-cash benefits are permissible to confer broad-based categorical eligibility, we strongly urge USDA to consider a broader set of services that can promote self-sufficiency and support overall well-being through intergenerational approaches to

¹ Under section 1(b) of Executive Order 13563, improving Regulation and Regulatory Review, the Department is required to provide "for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings.

² *Clarification on Characteristics of Broad-Based Categorical Eligibility Programs*. USDA FNS Supplemental Nutrition Assistance Program, Program Development Division. December 27, 2016.

poverty. Services consistent with TANF's objectives to promote the formation and maintenance of two-parent families and reduce the incidence of out-of-wedlock pregnancies are important components of states' strategies to address systemic barriers to long-term self-sufficiency and overall well-being. Disallowing the entirety of these programs for consideration for categorical eligibility is a disservice to the clients we serve and the outcomes we seek to achieve. At minimum, we encourage USDA to adopt language that would grant waivers for states that submit plans which demonstrate these types of programs provide robust eligibility determinations and are important tools that are part of states' strategies to create the enabling conditions that support self-sufficiency and overall well-being.

The Proposed Definitions of “Ongoing” and “Substantial” Benefits Would Exclude Important Services that Promote Self-Sufficiency

USDA's proposed rule further limits the eligible non-cash benefits that can confer categorical eligibility to those deemed “ongoing” and “substantial”, defined as benefits that are received for a period of at least six months and valued at a minimum of \$50 per month. However, there are numerous examples of services that may be provided for less than six months or at a value of less than \$50 that are worthy of inclusion for categorical eligibility. These include:

- **Grant Diversion Programs** – Under USDA's proposed rule, grant diversion programs that provide one-time or short-term payments of cash assistance would not qualify as an “ongoing” benefit. However, diversion payments can serve as a highly cost-effective strategy to help prevent individuals with short-term financial needs from becoming dependent on ongoing cash assistance. During this period of uncertainty, SNAP benefits are an important tool to help clients quickly and successfully transition back to independence. Furthermore, disallowing diversion payments from conferring categorical eligibility for SNAP benefits may provide an incentive for an individual dually eligible for regular cash assistance or a diversion program to enroll in more expensive regular cash assistance. Should the Department choose to move forward with the proposed rule, we urge USDA to amend its proposal to permit grant diversion programs that offer a substantial benefit to confer categorical eligibility.
- **Short-term Subsidized Employment** – Under the proposed rule, TANF-funded subsidized employment for less than six months would not meet the definition of an “ongoing” benefit, yet short-term subsidized employment can be an effective approach to helping some individuals, such as those with good work histories and those who are work-ready, to attach or stay attached to the labor market. For these households, being categorically eligible for SNAP helps them maintain food stability while they transition to unsubsidized employment. Subsidized employment for any length of time should be considered a benefit that confers categorical eligibility for SNAP.
- **Individuals Receiving Post-Employment Transitional Services** – USDA's proposed rule defines “ongoing” benefits as those that a household “receives or is authorized to receive for a period of at least six months.” The rule further clarifies that “In the TANF context, this might include a household that would be eligible to receive benefits for a period of at least six months, barring changes in financial status or compliance.” For individuals that actively engage in work activities and successfully obtain employment prior to six months, states often provide a period of post-employment case management services to help them successfully adjust to the demand of their new jobs. It is unclear whether case management services meet USDA's proposed definition of “ongoing” and “substantial” benefits. Case management services are proven to be an effective tool to keep individuals that received work supports on a path towards self-

sufficiency. Should the Department choose to move forward with the proposed rule, we urge USDA to clarify that transitional services such as post-employment case management, which on their own may not meet the definition of ongoing and substantial benefits but are provided as part of a broader set of services to transition an individual to independence, can confer categorical eligibility for SNAP.

USDA Should Establish Market Values for Non-Cash Benefits Prior to Rule Implementation and Pre-Qualify Programs that Clearly Meet the Threshold of a “Substantial” Benefit

USDA’s proposed rule does not identify a methodology states should follow to monetize non-cash benefits in order to demonstrate whether they meet the minimum value for a “substantial” benefit. Requiring states to perform such valuations for each client receiving a non-cash benefit will inevitably result in additional and unnecessary time and costs. For many non-cash benefits used to confer categorical eligibility, it is obvious that the level of investment meets USDA’s definition of a “substantial” benefit; however, states do not have the processes or systems in place to monetize and report this information. Should the Department advance the proposed rule, it should coordinate with HHS to pre-qualify non-cash TANF activities that clearly and objectively meet the minimum value for a “substantial” benefit. This could be done by analyzing the cost of similar programs in different states and establishing criteria that can be used by states to demonstrate participants within their non-cash program receive a “substantial” benefit. This assessment should be performed prior to the proposed rule change becoming effective so that states do not need to invest in duplicative and costly procedures for calculating non-cash benefit costs for each individual client. Furthermore, for activities that are not pre-qualified as meeting the threshold of a “substantial” benefit, USDA must provide clear guidance to states prior to the rule’s effective date on how to perform market valuations when conferring categorical eligibility.

The Proposed Rule Would Result in Increased Administrative Burden and Inefficiencies in Services

Categorical eligibility reduces the complexity of the SNAP application process for agencies and customers. Many low-income working households have volatile incomes that fluctuate above and below 130% of the federal poverty level; however, their disposable income excluding certain household expenses is below the poverty line. Using broad-based categorical eligibility to increase the gross income and assets limits for SNAP supports economic mobility and reduces “churn” — when SNAP households that stop participating in SNAP reapply within a very short period. The proposed rule will result in significant churn that leads to added work for state workers and benefit gaps for SNAP households. This added strain on the system can lead to lengthier SNAP application processing times and increases in error rates, which states and the Department have worked very hard to improve in recent years.

Additionally, under the proposed rule, states would be required to report to the Department all non-cash TANF benefits that confer categorical eligibility when the rule takes effect and any time there is a subsequent change to the conferring programs. This notification requirement would be yet another burden for states that increases administrative costs while actual food aid would decrease.

USDA anticipates that, under the proposed rule, households that remain eligible for SNAP and new SNAP applicants will face an additional burden associated with the application process. Behavioral economics shows that even relatively minor barriers like learning new program rules or completing additional paperwork can deter people from signing up for assistance they need and qualify for. The Department even acknowledges that the proposed rule may negatively impact food security but offers no

plan for how it will attempt to mitigate the risk of food insecurity for low-income households. If the Department should move forward with the proposed rule, it should develop and execute a plan to mitigate its negative impact on food security for low-income households.

Conclusion

USDA has stated that its top priorities for SNAP are customer service, program integrity, and self-sufficiency. USDA's proposed rule as written would not serve any of these priorities. On the contrary, the proposed rule would negatively impact customer service by increasing administrative burden and reducing timeliness and it would create greater opportunities for case errors. It will do nothing to improve SNAP households' self-sufficiency and would actually serve as a disincentive for some working households with high expenses from seeking or accepting promotions and higher wages. The proposed rule would also result in increased administrative costs for federal, state and local agencies, the loss of SNAP benefits by millions of individuals, and additional unknown impacts to related programs such as free school meals. The issue of broad-based categorical eligibility has been considered by Congress repeatedly in recent years and has been left unchanged, indicating Congress' intent to keep the integrity of the policy intact. Given these factors, we strongly urge USDA to heed caution when making any changes to the policy through rulemaking, and to not impose broad-brushed restrictions that fail to consider the nuances of how states seek to promote self-sufficiency and family well-being through streamlining of SNAP and TANF benefits.

We thank you for the opportunity to comment on this important rule and will continue to work with you to promote effective implementation of federal policy at the state and local level. For further information, please contact Kerry Desjardins at kdesjardins@aphsa.org.

Sincerely,

Tracy Wareing Evans



President & CEO
American Public Human Services Association

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Chair
American Association of State SNAP Directors