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November 1, 2019

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

Mr. Brandon Lipps  
Deputy Under Secretary  
Food, Nutrition, and Consumer Services  
U.S. Department of Agriculture  
3101 Park Center Drive  
Alexandria, VA 22302

**Re: Updated Analysis of the Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), Notice of Proposed Rulemaking, Release No. FNS 0015-19, 84 Fed. Reg. 35,570, FNS-2018-0037**

Dear Secretary Perdue and Mr. Lipps,

On behalf of our state associations and the 90,000 school board members who govern our country's 14,000 local public school districts, the National School Boards Association (NSBA) recognizes your leadership in administering child nutrition programs that help ensure the overall success of our public school students, including the more than 30 million students who participate in the National School Lunch Program. In this regard, NSBA is writing in opposition to the U.S. Department of Agriculture's proposed change to eligibility guidelines for the Supplemental Nutrition Assistance Program (SNAP). Specifically, NSBA urges you to rescind the proposed rule and work with us, Congress, and other stakeholders who represent the students and families who would be susceptible to food insecurity for a better solution to address concerns the Department has about programmatic integrity, to reduce any waste, fraud, and abuse that Mr. Lipps referenced during recent congressional hearings.

#### **A. Impact on Educational Equity and Student Success**

The proposed rule comes at a crucial time for schools as they are diligently working to offer adequate nutrition for their students while dealing with escalating costs and other burdens. This rule change would make those problems worse. As our school board members and other national stakeholders have cited, the loss of free- and reduced-price meals for millions of students will lead to food insecurity and malnourishment, which directly impacts student learning and success. In fact, in its report on *Household Food Security in the United States in 2017*, the Department's Economic Research Service has stated that children in almost three million households have experienced food insecurity, as these households "were unable at times to provide adequate, nutritious food for their

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children.”<sup>1</sup> This report also notes that the “prevalence of food insecurity among children was near the 2007 pre-recession level of 8.3 percent.” This finding alone raises significant concerns about the impacted students’ ability to learn and succeed in school.

Additionally, these report findings speak to the inequities affecting certain groups of students and their communities, of which NSBA and other education stakeholders have identified, that “Rates of food insecurity were higher than the national average for the following groups: households with incomes near or below the Federal poverty line, all households with children and particularly households with children headed by single women or single men, women and men living alone, Black and Hispanic-headed households, and households in principal cities and nonmetropolitan areas.”<sup>2</sup> Addressing equity and closing achievement gaps among students from the groups cited above is a key priority. Therefore, the promulgation of the proposed rule to change SNAP eligibility would deny these groups of students the support they need to prosper academically and grow in healthy, nurturing environments conducive to learning. Further, this proposed rule would be counterproductive to the efforts of NSBA and other national stakeholders to advance equity in education.

The proposed rule to change SNAP eligibility would impose negative consequences on the work in progress throughout our nation’s school districts, in Congress, and in the Administration to support equity in education among all groups of students. Our school boards and their districts are implementing the *Every Student Succeeds Act* and identifying areas to close gaps in educational opportunity and attainment that address the whole child. Our public schools are also expanding partnerships and curricula for career and technical education to address the skills gap and to help ensure college- and career-readiness. Our public school districts are supporting efforts to increase programmatic efficiency in the National School Lunch Program and other school meal programs. The progress of these areas would be negatively affected by this proposed rule, as students facing food insecurity would be impeded in their ability to learn and matriculate through many innovative programs such as advanced placement courses, early literacy initiatives, career and technical education apprenticeships and credentialing programs, dual enrollment programs between school districts and institutions of higher education, and President Trump’s initiative to increase access to science, technology, engineering, math (STEM), and computer science education.<sup>3</sup>

“These [proposed] changes will improperly take benefits away from hungry students and increase administrative burdens on school districts,” according to the California School Boards Association and the Association of California School Administrators. “The proposed change will also have a negative cascading effect on other federal programs, such as the major formula programs of

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<sup>1</sup> Alisha Coleman-Jensen, Matthew P. Rabbitt, Christian A. Gregory, and Anita Singh, *Household Food Security in the United States in 2017*, Economic Research Service, U. S. Department of Agriculture, September 2018.

<sup>2</sup> Alisha Coleman-Jensen, Matthew P. Rabbitt, Christian A. Gregory, and Anita Singh, *Household Food Security in the United States in 2017*, page 13.

<sup>3</sup> President Donald J. Trump, Presidential Memorandum for the Secretary of Education, Increasing Access to High-Quality Science, Technology, Engineering, and Mathematics (STEM) Education, September 25, 2017.

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the Every Student Succeeds Act, which use the free and reduced school lunch measures to allocate resources designed to promote educational equity.”

## **B. Impact on Local Governance and Resources**

Established through SNAP, the direct certification process used to enroll students in free- and reduced-priced school meals should be maintained, as the majority of states and jurisdictions (forty-two) currently utilize broad-based categorical eligibility.<sup>4</sup>

The Department’s updated analysis of the proposed rule states that, “the number of impacted children shows that potentially as many as 982,000 children would no longer be directly certified for free school meals based on SNAP participation. Of the total number of impacted children, about 445,000 (or 45 percent) would be income eligible for free meals, and about 497,000 (or 51 percent) would be income eligible for reduced price meals. About 40,000 children (or 4 percent) would be required to pay at the “paid rate” for a school meal if they chose to participate in the NSLP and SBP.”<sup>5</sup> For each of these categories regarding students’ eligibility for school meals, the Department has not offered any explanation or alternatives for resources that many school districts would need for compliance, given that these categories of students would have to reapply, pursuant to the following: “The changes in this SNAP proposed rule intersect with school meal certification in that some households with school-aged children that no longer participate in SNAP will not be categorically-eligible or directly certified for free school meals. These households would instead be required to submit a household application to determine school meal eligibility, like other SNAP non-participants.”<sup>5</sup>

Even though the families/students could reapply, the impact on school districts (personnel, shared services agreements, and related school meals programs such as universal breakfast and summer meal programs) could be significant. For example, to address any new Rule and corresponding terms of compliance, school boards, administrators, and directors for school food services may need to alter purchasing agreements and contracts that were negotiated based on the student participation rate and related intervening factors. Staffing requirements could change, including those for the administrative functions of re-enrolling students for free- and reduced-price meals. If a district entered into a collective bargaining agreement covering school food service employees, those agreements may need to be re-examined and updated. Another example about the far-reaching impact of this proposed rule is regarding any shared services agreements or memoranda of understanding (MOU) a school district may have with local and state agencies for coordination of social and supplemental services for eligible students and their families. If such partnering agencies receive a percentage of funds from grants to the district, the shared services agreements or MOUs may need to be updated; and, any applicable service fees could increase, possibly beyond the statutory threshold for certain grants. For school districts that are instituting new programs, or that already provide services such as universal meals or breakfast-for-all programs, the proposed rule could negatively affect school budgets and possibly force districts to restrict services, delay

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<sup>4</sup> Randy Alison Aussenberg and Gene Falk, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility*, Congressional Research Service, updated August 1, 2019.

<sup>5</sup>Food and Nutrition Service, U.S. Department of Agriculture, Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (RIN 0584-AE62) – Potential impacts on Participants in the National School Lunch Program and School Breakfast Program, October 15, 2019.

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implementation, or discontinue services – all of which would impact the well-being of our most vulnerable students and their ability to learn.

The Wisconsin Association of School Boards has noted that school districts with student populations that are only slightly above the 40 percent eligibility threshold for the community eligibility provision (CEP) could lose eligibility for such programs entirely in the middle of a school year as a result of this Notice of Proposed Rulemaking (NPRM). These schools could find themselves in a position of having to engage in aggressive and costly efforts to canvass parents and guardians to have them complete applications and make determinations about eligibility for free- and reduced-price meals. Again, the impact of this NPRM could negatively impact the terms of existing contracts and relationships with food service vendors if schools are not able to receive the additional reimbursements necessary to make programs like CEP operational; or, if there are serious questions about whether a school will be able to maintain its CEP or similar programs in place. This is a critical matter since school districts in many states are unable to increase their budgets once property tax levies have been established and property tax bills have been mailed. All of these consequences from this NPRM would place an incredible burden on school districts in the middle of a school year as they attempt to ensure children are accessing the food they need to be able to learn.

### **C. More Students Could Be Excluded and “Lunch Shaming” Exacerbated**

In many communities, our school districts are a fundamental source of learning, opportunity, and stability for our nation’s neediest students; and, they cannot afford to operate according to a traditional profit and loss model, comparable to commercial entities.

As stated in the *Journal of Child Nutrition & Management*, “In commercial P&L models, a business can raise prices when costs increase; in schools, however, meal prices are more difficult to change. For federally reimbursable meals, the reimbursement rate is fixed by federal law and the school board is responsible for making the decision to raise prices for the student-paid portion of full price meals. Additionally, school meal consumers, which include both students and parents, are particularly price sensitive.”<sup>6</sup>

Given the USDA’s recent update on the impact of the NPRM, that “about 40,000 children (or 4 percent) would be required to pay at the ‘paid rate’ for a school meal if they chose to participate in the NSLP and SBP,” this estimate could be larger.<sup>7</sup> Raising prices for school meals is simply not feasible in many communities, especially at a time when numerous districts are making adjustments and implementing ingenuities to address childhood hunger and cover costs to help students who may be unable to pay for their school meals. Therefore, NSBA urges that the paid meal price mandate be eliminated or reduced, as it has resulted in unnecessary price increases for certain students; and, could force the exclusion of others who would be rendered ineligible for SNAP benefits.

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<sup>6</sup> Barry D. Sackin, SFNS, “School Foodservice – Outsource or Self-Op?,” *The Journal of Child Nutrition & Management*, Volume 30, Issue 1, School Nutrition Association, Spring 2006.

<sup>7</sup> Food and Nutrition Service, U.S. Department of Agriculture, Proposed Rule: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (RIN 0584-AE62) – Potential impacts on Participants in the National School Lunch Program and School Breakfast Program, October 15, 2019, page 3.

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In addition, many public schools with populations of food insecure students are already working with food pantries and other emergency food providers to ensure that children are receiving sustenance on weekends and holidays. If this NPRM is promulgated, the fiscal impact on those schools and districts would be egregious, forcing them to stretch already limited resources to maintain this work, given the increased need of families who would no longer receive assistance through SNAP.

“In a nation where one in seven children may not know where they will get their next meal, efforts to cut federal feeding programs are of concern,” according to the Dairy Farmers of America. “Reducing the eligibility of some to participate in these programs is counter to the federal nutrition guidance given.” As our school boards and USDA are aware, the school food service program as an integral part of the educational environment. The shared goal of all the partners involved is the achievement of children, and the school should provide the best opportunity for them to succeed. Part of that goal is to ensure that children are healthy, well nourished, and able to take advantage of educational opportunities offered to them in the classroom and beyond.<sup>8</sup>

Again, NSBA urges that the paid meal price be eliminated or reduced, since it has resulted in unnecessary price increases for certain students; and, that it could exacerbate food insufficiency and lunch shaming on more students and families, such as those identified by USDA as having to pay the paid meal price in its updated analysis of this NPRM. Particularly for families that are providing for multiple children throughout the school year, the paid meal price, or full-price lunch, is unaffordable. More than 40 percent of school districts have seen an increase in the number of students who are not certified for free meals and do not have the funds to pay.<sup>9</sup> Additionally, NSBA urges that reimbursement rates be increased to cover the cost of compliance; that flexibility be authorized for local school districts to make implementation feasible within available federal resources; and, that the eligibility determination process for enrolling students be streamlined.

Recently, the Alabama Association of School Boards and other education policy leaders in Alabama shared their concerns about how this proposed rule would affect the state’s most vulnerable students, in addition to disrupting local practices that have already been successful in helping address equity in educational opportunity, food insecurity, and lunch shaming among students. According to the Alabama State Department of Education, 460 schools would be impacted, as they currently provide free meals to all students under the USDA’s Community Eligibility Provision. If fewer students qualify for free meals through this proposed change to SNAP eligibility, some of those 460 schools could no longer meet the 40 percent threshold (regarding CEP and Title I schoolwide programs), and would be forced to stop free meals to all.

For example, Roanoke City Schools in Alabama has provided free meals for all students for three years; and, Superintendent Chuck Marcum attributes it to the district’s recent success, including an 87 on the recent state report card. “I can’t overstate the importance of the program and what it’s doing for our students,” Marcum said about community eligibility. He added that the biggest impact

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<sup>8</sup> Barry D. Sackin, SFNS, “School Foodservice – Outsource or Self-Op?,” page 8.

<sup>9</sup> Jessica Fu, “As student lunch debt skyrockets, little is known about its real cost,” *The New Food Economy*, January 8, 2019.

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may be at the district's high school, where the stigma of free meals for some students has been removed.<sup>10</sup>

NSBA appreciates Secretary Perdue's efforts to ensure meaningful consultation and increase stakeholder engagement through previous roundtables with school board members and other advocates. Likewise, NSBA urges the Department to establish advisory committees that include school board members to provide insight and recommendations to the USDA and other related federal and state agencies to ensure the nutritional value, safety, and affordability of foods served in school lunch, breakfast, and snack programs. Furthermore, NSBA urges that efforts to address program integrity be reviewed by Congress, including threshold eligibility limits to address factors such as local cost-of-living and concentration of poverty, in a way that balances the needs of families and children most in need.

Accordingly, NSBA urges you to rescind this proposed rule, as it would have a disproportionate impact on the most vulnerable students educated by our public school districts; and, could very well cause a negative impact on student learning, family engagement, and ongoing operational agreements between school districts and other agencies vital to school district resources.

NSBA looks forward to working with you and Congress to address this priority to assure the continuity and effectiveness of child nutrition programs in our public schools. Please contact Deborah Rigsby at [drigsby@nsba.org](mailto:drigsby@nsba.org) regarding further information needed for this request.

Thank you for your consideration.

Sincerely,



Thomas J. Gentzel  
Executive Director and Chief Executive Officer

cc: Ms. Jessica Shahin  
Associate Administrator  
Supplemental Nutrition Assistance Program  
Program Design Branch, Program Development Division  
Food and Nutrition Service  
U.S. Department of Agriculture

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<sup>10</sup> Mary Sell, "Change to SNAP would impact some Alabama students' access to free lunch," *Alabama Daily News*, October 31, 2019.