



April 21, 2020

The Honorable George Ervin Perdue III  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250

Dear Secretary Perdue:

We, the undersigned, write to urge the Department of Agriculture to immediately suspend the rulemaking process for the Proposed Rule entitled, *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)*, 84 Fed. Reg. 35,570 (July 24, 2019) (“The Proposed Rule”).

The COVID-19 pandemic has gripped the nation’s health care infrastructure and economy. More than 23,000 people have died, and hundreds of thousands more have been infected. These figures grow every day. Approximately 95 percent of people in our nation live under a stay-at-home order.<sup>1</sup> And, as the President recently declared, “For the first time in history there is a fully signed Presidential Disaster Declaration for all 50 States.”<sup>2</sup> Millions are working from home—or, worse yet, not working at all or working much less. More than 16 million people have filed new applications for unemployment benefits just in the last three weeks. As the U.S. District Court for the District of Columbia recently noted, “The pandemic has put [many] already more vulnerable workers at higher risk of losing much-needed income, or even their jobs.”<sup>3</sup>

It is vital to our national response to this crisis that people who are supposed to *stay home* be able to have food on the table *at home*. Those who are working from home, or are staying home and unable to look for work, or are staying home from school or daycare, still need to eat. That is what SNAP provides: it supplements the food budgets of needy families to enable them to buy groceries.<sup>4</sup> Moreover, many performing essential functions in our economy—stocking

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<sup>1</sup> Sarah Mervosh, Denise Lu, & Vanessa Swales, *See Which States and Cities Have Told Residents to Stay Home*, N.Y. Times, Apr. 7, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

<sup>2</sup> <https://twitter.com/realDonaldTrump/status/1249418405951799309>

<sup>3</sup> *District of Columbia, State of New York, et al. v. U.S. Dep’t. of Agric.*, CV 20-119 (BAH), 2020 WL 1236657, at \*26 (D.D.C. Mar. 13, 2020).

<sup>4</sup> See What Can SNAP Buy?, <https://www.fns.usda.gov/snap/eligible-food-items>

grocery stores or warehouses, working in restaurants or food delivery, transporting people or goods, or serving in other important roles—still rely on supplemental assistance to put food on the table for their families. The last thing they should worry about while keeping the country running safely for the rest of us is whether they can feed their own families.

It would be irresponsible, and contrary to Congressional intent, to finalize the Proposed Rule in the middle of a global pandemic and deepening economic crisis. The Proposed Rule would curtail “categorical eligibility” in SNAP, which Congress enacted to enable eligibility for one public assistance program to be usable to establish SNAP eligibility—simplifying the process for States and eligible households and cutting down on administrative effort. Moreover, Congress recently passed emergency legislation appropriating billions of dollars of additional funds for SNAP to respond to the COVID-19 crisis, and also waiving benefit time limits during this public health emergency that would have otherwise caused approximately 700,000 individuals to lose vital food assistance.<sup>5</sup> This Proposed Rule threatens more than four times that number of people with hunger, including hundreds of thousands of children. The Department’s own projections<sup>6</sup> state that the Proposed Rule would throw “**1.7 million households** in FY 2020, **containing 3.1 million individuals**” off of vital nutrition assistance benefits. The Rule also “could result in 265,000 children losing their free lunch,”<sup>7</sup> as the undersigned have noted.

The Rule’s human costs would be bad enough, but the Rule also will impose substantial additional administrative burdens on the States in the midst of a pandemic in which the States already are the front-line public health and economic responders. As noted above, the point of categorical eligibility is to reduce administrative costs and burdens. As the *Congressional Research Service* has noted, categorical eligibility was intended “as advancing the goals of simplifying administration, easing entry to the program for eligible households, emphasizing coordination among low-income assistance programs, and reducing the potential for errors in establishing eligibility for benefits.”<sup>8</sup> USDA has noted that adopting broad-based categorical eligibility (as 42 states have done) can “increase SNAP participation and reduce State workloads.”<sup>9</sup> The Rule, however, would reduce categorical eligibility and increase administrative burdens associated with categorical eligibility. States will have to expend more effort, and duplicative effort, on these programs for little obvious benefit.

In addition, any effort by the Department to implement the Proposed Rule would be inconsistent with the Office of Management and Budget’s Directive M-20-16, *Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19*, issued on March 17, 2020. Directive M-20-16 instructs agency heads to focus on mission-critical work and

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<sup>5</sup> See *Families First Coronavirus Act*, Pub. L. No. 116-127, § 2301; *Coronavirus Aid, Relief, and Economic Security (CARES) Act*, Pub. L. No. 116-136, Div. B, Tit. I.

<sup>6</sup> 84 Fed. Reg. at 35,575.

<sup>7</sup> Letter from 24 State Attorneys General (Letter from AGs), Sept. 23, 2019, at 10, <https://ag.ny.gov/sites/default/files/snap-eligibility-comment-letter.pdf>.

<sup>8</sup> Congressional Research Service, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility*, at 3 (Oct. 2019), <https://fas.org/sgp/crs/misc/R42054.pdf>.

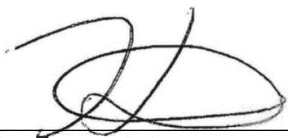
<sup>9</sup> Letter from AGs at 6 (citing 2009 USDA guidance)

“prioritize all resources to slow the transmission of COVID-19.”<sup>10</sup> There is no plausible argument that implementation or enforcement of the Proposed Rule would slow the transmission of COVID-19. In keeping with the OMB Directive, the Department should immediately focus all resources on the critical issues working families face in responding to the coronavirus—rather than expending any resources on finalizing the Proposed Rule to deny SNAP benefits to millions of people.

The present crisis is precisely the wrong time to be imposing additional burdens on the States in their efforts to ensure that all families are safe and nourished—and home to the extent they can be. As the U.S. District Court for the District of Columbia recently explained, “Especially now, as a global pandemic poses widespread health risks, guaranteeing that government officials at both the federal and state levels have flexibility to address the nutritional needs of residents and ensure their well-being through programs like SNAP, is essential.”<sup>11</sup>

We thus urge you to immediately suspend the rulemaking process for the Proposed Rule.

Sincerely,



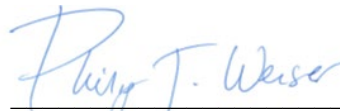
KARL A. RACINE  
Attorney General for the District of Columbia



LETITIA JAMES  
Attorney General of New York



XAVIER BECERRA  
Attorney General of California



PHIL WEISER  
Attorney General of Colorado



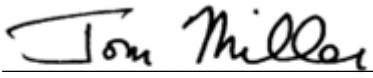
CLARE E. CONNORS  
Attorney General of Hawaii



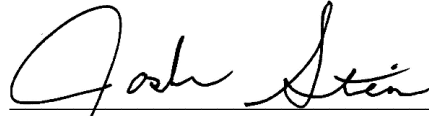
KWAME RAOUL  
Attorney General of Illinois

<sup>10</sup> Memorandum from Russell T. Vought, Acting OMB Director, to Heads of Departments and Agencies, *Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19* (March 17, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>.

<sup>11</sup> *District of Columbia*, 2020 WL 1236657, at \*1.



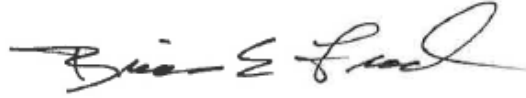
TOM MILLER  
Attorney General of Iowa



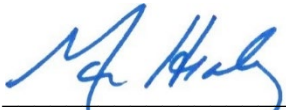
JOSH STEIN  
Attorney General of North Carolina



AARON M. FREY  
Attorney General of Maine



BRIAN E. FROSH  
Attorney General of Maryland



MAURA HEALEY  
Attorney General of Massachusetts



DANA NESSEL  
Attorney General of Michigan



KEITH ELLISON  
Attorney General of Minnesota



AARON D. FORD  
Attorney General of Nevada



GURBIR S. GREWAL  
Attorney General of New Jersey



ELLEN F. ROSENBLUM  
Attorney General of Oregon



JOSH SHAPIRO  
Attorney General of Pennsylvania

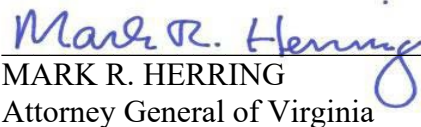


PETER F. NERONHA  
Attorney General of Rhode Island



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THOMAS J. DONOVAN, JR.  
Attorney General of Vermont



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MARK R. HERRING  
Attorney General of Virginia



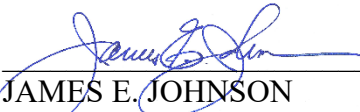
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BOB FERGUSON  
Attorney General of Washington



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JOSHUA L. KAUL  
Attorney General of Wisconsin



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JAMES E. JOHNSON  
Corporation Counsel of the City of New York