



May 17, 2016

Ms. Vicky T. Robinson
SNAP Retailer Management and Issuance Branch Chief
USDA Food and Nutrition Service (FNS)
3101 Park Center Drive, Room 426
Alexandria, VA 22302

Re: Proposed Rule on Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP), Docket RIN 0584-AE27

Dear Ms. Robinson:

Thank you for the opportunity to comment on the Food and Nutrition Service's Proposed Rule on Enhancing SNAP Retailer Standards. The [Center for Law and Social Policy \(CLASP\)](#) is a national, nonpartisan, anti-poverty organization advancing policy solutions that work for low-income people. CLASP advocates for public policies and programs at the federal, state, and local levels that reduce poverty, improve the lives of poor people, and create ladders to economic security for all. In recent years we have focused particularly on the role public benefits play in the lives of low-income college students, many of whom have significant unmet need and struggle to balance work, family, and school.

Researchers who are studying college access and completion among low-income students have learned that a growing number of low-income undergraduates experience food and housing insecurity, even when students work and receive financial aid. A Wisconsin HOPE Lab survey of 4,000 community college students shows half (52 percent) of all respondents were at least marginally food insecure over the past 30 days. Specifically, 13 percent were marginally secure, 19 percent had a low level of security and 21 percent indicated a very low level of food security. Student need far outpaces student receipt. Among the 29 percent of surveyed students who had low or very low levels of food security, 20 percent receive SNAP. And 11 percent of students identifying themselves as food secure are already relying on SNAP to help meet their needs.

According to the Wisconsin HOPE Lab research, the most prevalent challenge facing community college students appears to be their ability to eat balanced meals, which research suggests may affect their cognitive functioning. In addition, 39 percent of students said that the food they bought didn't last and they did not have sufficient money to purchase more. Twenty-eight

percent cut the size of their meals or skipped meals at least once, and 22 percent did so on at least three days in the last 30 days. More than one in four respondents (26 percent) ate less than they felt they should, and 22 percent said that they had gone hungry due to lack of money.

The best available evidence comes from studies of single college campuses. For example, 21 percent of students at the University of Hawaii and 39 percent of students at the City University of New York (CUNY) are food insecure. More recent reports indicate that over half of the students attending certain colleges in Oregon, Maryland, and Alaska are food insecure.

SNAP Is Vitally Important

A strong and effective SNAP is crucial for ending hunger and improving health in America. Research shows that SNAP plays a critical role in alleviating poverty and food insecurity and in improving dietary intake, weight outcomes, and health, especially among the nation's most vulnerable children.¹ One of SNAP's key strengths is the public/private partnership that allows it to operate through normal channels of commerce for redemption of benefits via Electronic Benefit Transfer (EBT) cards at authorized food retailers. The SNAP delivery system is efficient and provides a mainstream way for low-income consumers to obtain their food with dignity.

While some college students are denied access to SNAP benefits due to the special rules that apply to students enrolled at least half time in college, many low-income students qualify for exceptions including being under the age of 18 or older than 50; working for pay at least 20 hours per week; receiving any Federal or State Work-Study; caring for a child under 6; being a single parent caring for a child age 6-11 and enrolled full time or unable to attain child care; receiving TANF benefits; being unable to work because of a disability; or attending college as part of a qualified federal, state or local education and training program. For these students, SNAP is an important means to help meet their and their families' nutritional needs.

SNAP can be an invaluable support for low-income college students, whose tuition and living expenses often outpace available federal and state financial aid. Recent research by the Institute on Women's Policy Research, showed that approximately one in four students (25.1 percent) below the income maximum for SNAP (130 percent of FPL) receive the benefits, and among student parents at 130 percent of FPL or below, 40.2 percent receive SNAP. An analysis of the National Postsecondary Student Aid Survey of 2012 revealed that just 27 percent of undergraduates who are likely eligible for SNAP participate in the program. "Likely eligible" means students with incomes under 130 percent of the federal poverty line who are work at least

¹ For more background, see *Long-Term Benefits of the Supplemental Nutrition Assistance Program*, White House Council of Economic Advisors, December 2015, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/SNAP_report_final_nonembargo.pdf and the White House fact sheet, available at <https://www.whitehouse.gov/the-press-office/2015/12/08/fact-sheet-council-economic-advisers-releases-report-highlighting-new>

20 hours per week, take part in work-study, receive TANF or have a dependent child under age 6.

Recommendations for the Final Rule

A. Support for Proposed Rule Provisions Implementing 2014 Farm Bill Mandate

We support the proposed rule provision implementing the 2014 Farm Bill mandate requiring authorized SNAP food retailers to carry a greater variety of foods within the four staple food groups and more perishables within those groups:

- “Offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than seven different varieties of food items in each of the four staple food categories”; and
- “Offer for sale perishable staple food items in at least three staple food categories.”

These proposed SNAP retail requirements to stock a greater variety of staple foods and to increase the number of staple foods groups that must contain perishable foods are consistent with the improvements mandated by the 2014 Farm Bill. These improvements will support good nutrition and enhance the variety of foods available for SNAP customers by increasing the variety of foods and number of perishable foods that must be available in each of the four staple food groups: dairy products; fruits and vegetables, breads and cereals, and meat, poultry and fish. Increasing the stocking requirements from a minimum of three to a minimum of seven staple food groups, and the number of staple food groups that contain perishable foods from a minimum of two up to a minimum of three staple food groups will have a positive impact.

B. Changes to Other Provisions of the Final Rule, However, Are Needed to Safeguard Low-Income Consumer Food Access

We are concerned, however, by several proposed provisions that exceed the mandate of the relevant 2014 Farm Bill provisions and that could well undercut food access for low-income consumers, including consumers who reside in “food deserts” and those who struggle with lack of transportation or with mobility issues. Low-income college students often fall into these categories.

The problematic provisions include a redefinition of “staple food” to exclude “commercially processed foods and prepared mixtures with multiple ingredients that do not represent a single staple food category;” sharply heightened criterion excluding “firms that do not have 85 percent or more of their total food sales in items that are not cooked or heated on-site, before or after purchase;” and the exclusion of some businesses because they operate under one roof and share certain commonalities (such as “shared space”) with an entity that would not qualify. These limitations harm college student access because for those colleges and universities that do have grocery stores that accept SNAP, they are sometimes under the same roof as a dining hall.

1) Proposed Redefinition of Multiple Ingredient Foods Exceeds Mandate and Is Unwise

Congress did not change the definition of SNAP staple foods” or SNAP “food” in the 2014 Farm Bill. USDA has exceeded its congressional mandate by changing the definition of a staple food to exclude “commercially processed foods and prepared mixtures with multiple ingredients that do not represent a single staple food category.”

In addition to exceeding the statutory mandate, USDA’s proposal to exclude convenient, multiple ingredient foods from the staple food category is inconsistent with the purchasing practices of American shoppers. Given time constraints, work schedules and family situations, multiple ingredient items – such as canned soup, frozen dinners, or prepared salads -- can meet important needs for SNAP participants and other shoppers. Research demonstrates the time-constraints facing SNAP participants, especially in terms of the limited time they and other low-income consumers have available for food production.

In addition, especially as low-income consumers have job shifts that go into the evening hours, or take evening classes after their day jobs, older children in low-income households often take some responsibility for meal preparation. As a result, parents concerned about safety may prefer that those youngsters prepare convenience items (e.g., heat up a bowl of canned soup in the microwave versus turning on the stove to make soup from scratch).

USDA has recognized before how essential convenient, multiple ingredient foods are to food purchasing and preparation among SNAP participants. The Thrifty Food Plan is the government market basket upon which SNAP benefit amounts are based. In an effort to be more realistic about the time available for food preparation in the home, USDA incorporated more convenience foods in the 2006 revision of the Thrifty Food Plan. A report by the center for Nutrition Policy and Promotion explained that “efforts were made to consider ease of food preparation and convenience in the development of the Thrifty Food Plan market baskets.² Foods such as boxed macaroni and cheese, frozen vegetables, ready-to-serve breads and cereals, canned soups, chicken parts, canned dry beans, and boxed mashed potatoes are included in the Thrifty Food Plan market baskets.” Therefore, it is especially odd that many of the foods specifically added to Thrifty Food Plan market baskets in 2006 would be excluded as staple foods under the proposed rule.

So long as retail food stores are meeting the increased amounts, variety of staple items and perishable items called by the statute, there is no compelling purpose to exclude multiple ingredient items from counting (as they do under current regulations) under one of the SNAP staple food categories.

² See *Thrifty Food Plan, 2006*, USDA Center for Nutrition Policy and Promotion, April 2007, available at http://www.cnpp.usda.gov/sites/default/files/usda_food_plans_cost_of_food/TFP2006Report.pdf

2. Additional Provisions Risk Loss of Needed Food Retailer Access

The current SNAP regulations at 7 C.F.R. 278.1(b)(1)(iv) provide that ineligible SNAP food retail firms include “firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in hot and/or cold prepared foods not intended for home preparation and consumption.” The proposed rule instead would provide: “Firms that do not have 85 percent or more of their total food sales in items that are not cooked or heated on-site, before or after purchase, are ineligible.” The preamble explains, “This proposed threshold is based on a review of the data submitted by SNAP authorized restaurants currently operating outside of the intent of the Program. FNS requests comments regarding this threshold and the benefits and costs of alternative levels.”

We appreciate the Department’s specifically seeking additional comments on this threshold level.

We urge the Department to take into account additional information it receives about the inability of small stores to qualify under the new threshold. We remain concerned about access for low-income consumers, particularly in food desert areas, and for all shoppers with mobility issues, such as those who are elderly, have disabilities, and/or lack affordable transportation. We caution the Department against setting a threshold that would cause stores to drop out of SNAP and lessen food access, particularly for these particular SNAP consumers. Moreover, we caution that in setting any new threshold, the Department takes into account potential trends for grocery retailers to meet increased consumer demand for prepared foods and set a threshold that will continue to be appropriate in coming years.

Similarly, we are concerned about any unintended consequences on food access from the proposal to consider businesses that operate under one roof and share certain commonalities (such as “shared space”) as “a single establishment when determining eligibility to participate in SNAP as retail food stores.” We understand that this may undercut SNAP authorization for otherwise eligible retailers located in certain locations such as shopping plazas (“strip malls”). This may also undercut SNAP authorization for grocery stores on a college campus, which may share a building (such as a student union) with a college cafeteria where prepared food is available. We urge the Department to consider information it receives about any undue negative impact of the proposed rule on retailers operating under one roof and to revise the language to avoid any negative impacts on food access for SNAP consumers.

Although many low-income college students are not eligible for SNAP due to the student rules, many of those who are eligible are combining work, schooling and family. These students have limited time to access SNAP-eligible vendors and so eliminating one route to healthy food—through an on-campus grocery store—increases the likelihood of food insecurity. Denying access to an otherwise qualified EBT retailer on the 85 percent basis presents a burden.

C. Proposed Rule Provisions for Exceptions Are Inadequate to Accommodate Low-Income Consumer Food Access

The 2014 Farm Bill amended Section 9(a) of the Act to allow USDA to consider whether an applicant retailer is located in an area with significantly limited access to food when determining the qualifications of that applicant. Especially given the significant concerns that we have expressed in the above comments about how certain aspects of the proposed rule changes could adversely impact access to affordable food for SNAP consumers, we believe this section is especially important.

FNS proposes to amend 278.1(b) by adding a new subparagraph (6) as follows: “FNS will consider whether the applicant is located in an area with significantly limited access to food. In determining whether an applicant is located in such an area, FNS will consider factors such as distance from the nearest SNAP authorized retailer, transportation options to other SNAP authorized retailer locations, the gap between a store's stock and SNAP required stock for authorized eligibility, and whether the store furthers the purpose of the Program.”

We appreciate that FNS is interested in comments and suggestions regarding this proposed change but are concerned that the factors that the proposed rule lays out to define an area of significantly limited access to food are too narrow to cover the myriad individual and community circumstances that are likely to arise.

Food access is not only a matter of distance to food retailers, especially for individuals who are elderly, have disabilities and/or lack transportation. Another SNAP retailer located several blocks or more away from an elderly SNAP consumer may not be a realistic alternative to the corner store on her block. For SNAP participants who are stretching their resources, having to spend an extra round trip bus fare may take as much out of their budgets as their daily SNAP benefit allotments. Moreover, having to travel further for an occasional purchase such as a gallon of milk may be problematic for working families juggling work schedules, child care and other responsibilities.

Convenience also is a matter of time and money, not simply geography. Therefore, having a multiplicity of SNAP retailer options is important to low-income consumers in urban, rural and suburban communities.

The proposed rule also lacks detail about the process for retailers to seek and gain approval of any such exemption, including the time frame for approvals and the status of SNAP retailer authorizations pending the resolution of the exemption process and any appeals process and review. Avoiding undue delay in retailer authorizations for nutrition benefit redemptions can be important to the ability of retailers to succeed in low-income communities, a factor that matters for decreasing the number of food deserts in the U.S. For smaller retailers, an application and/or appeal process on an exemption for meeting the new requirements could be burdensome and costly. Moreover, we believe that any such process should take into account the views of the

public, especially SNAP consumers and other national and local community stakeholders. The final rule should better ensure a waiver/exemption process that will garner necessary input in a meaningful and timely way before a SNAP retailer authorization is denied.

D. The Final Rule Should Provide More Adequate Time and Support for Retailers to Comply with the New Requirements

We urge the Department to provide adequate time for retailers to transition their operations to comply with the new requirements. The Agency proposes to make the requirements detailed under “Staple Food” and “Determination of Authorization” effective for all new applicants within 120 days of the effective date of a final rule, and for existing SNAP authorized retailers within 365 days of the effective date of a final rule.

The proposed implementation timeframe seems inadequate, particularly if the changes in multiple ingredient items, the 85 percent rule, and the businesses operating under one roof remain as proposed. Implementation of the proposed regulations will require significant administrative changes. Given the diverse backgrounds of small retailers, USDA’s materials should be available in multiple languages, not only English and Spanish. Stores will need to evaluate their current stock and operations and determine how to increase stock and make other necessary changes to comply. More adequate time for transition can help avoid disruption of food access for consumers.

Successful implementation will require clarity for SNAP retailers regarding the stocking requirements, effective strategies for marketing and storing healthy foods, and the eligibility of food for purchase with SNAP benefits. The rule preamble explains clearly that, whether categorized as “staple” or “accessory,” food will remain eligible for purchase with SNAP benefits. The proposed rule, however, drops the explicit language in the current regulations that accessory foods are still eligible for purchase with SNAP benefits. That current rule language should be restored in the final rule.

We appreciate your consideration of these views.

Sincerely,

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