COMMENTS ON FNS-2019-15670

Food and Nutrition Service
U.S. Department of Agriculture

August 13, 2019

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Opportunity Solutions Project (OSP) supports the U.S. Department of Agriculture's (USDA) efforts to reestablish clear standards for food stamp eligibility. The proposed rule is a critical step forward in promoting program integrity and financial sustainability in public assistance programs. It will begin to crack down on longstanding abuses of the broad-based categorical eligibility (BBCE) loophole by implementing commonsense standards to preserve resources for the truly needy, fight fraud, and lower administrative costs.

The proposed rule will crack down on some of the worst abuses of the BBCE loophole and begin to restore the original purpose of categorical eligibility. Closing this loophole will strengthen the program by reestablishing clear standards for eligibility and will preserve limited resources for the truly needy. However, the proposed rule leaves a number of loopholes in place that will undermine these efforts. USDA should eliminate these loopholes to protect from future abuses.

Federal eligibility standards are set in statute

Federal law requires states to assess the income and financial assets of food stamp applicants to ensure eligibility under the program.[1] Under these standards, households must generally have income below 130 percent of the federal poverty level (FPL).[2-3]

Households must also generally have assets below $2,250 or $3,500, depending on household type.[4-5] These asset limits generally apply only to liquid assets like money in bank accounts, while excluding other types of assets, such as home equity, household goods, life insurance, pension funds, retirement accounts, education savings accounts, and more.[6-7] All states also exclude the value of at least one vehicle from the asset test, while most exclude all vehicles.[8]

However, loopholes have allowed states to bypass these federal eligibility standards and enroll millions of individuals who do not meet federal eligibility criteria.[9]

Categorical eligibility was intended to ease duplication, not expand eligibility

To prevent administrative duplication, federal law allows state agencies to deem individuals "categorically eligible" for food stamps—without further verifying that they meet federal income and asset standards—if they already receive benefits from the Temporary Assistance of Needy Families (TANF) program.[10] As USDA has explained, the intent of categorical eligibility is to "deem eligibility for food stamp families already subjected to an income and resource test" under TANF that is comparable or more restrictive than food stamp eligibility criteria.[11-13]

States have exploited the BBCE loophole

Guidance issued by USDA in 1999 laid the groundwork for future abuse through a new pathway called BBCE. The 1999 guidance permitted state agencies to classify individuals as automatically eligible for food stamps if the agencies determined applicants were eligible for *any* "benefit" funded by TANF funds, rather than just traditional cash assistance.[14-16]

This guidance created a loophole ripe for states to exploit, ultimately letting them expand eligibility to millions of individuals who do not meet federal eligibility criteria.[17] First, states began spending money from their TANF block grants to print brochures, operate toll-free numbers about TANF, and to add information about TANF to the bottom of food stamp applications.[18-20] Because these advertisements are funded with TANF funds, states have claimed that individuals who receive these brochures and phone numbers have received a "benefit" from TANF.[21] These individuals are then deemed categorically eligible for food stamps under BBCE.

Federal regulations have made this loophole even worse by allowing individuals to bypass the federal eligibility criteria if they are "authorized" to receive these so-called benefits under TANF.[22] Now, states need not even provide the brochures to applicants.[23]

The result is that most states—at USDA's urging—now ignore the federal eligibility standards for virtually all food stamp applicants.[24] In states that have adopted the BBCE loophole, a whopping 97.8 percent of households are deemed categorically eligible for the program.[25] In states that do not use the loophole, just 24.5 percent of households are deemed categorically eligible.[26]

Consider the experience of a food stamp applicant living alone in Colorado. A state employee hands him an application. At that moment, the applicant is deemed categorically eligible, even if he has an income as high as 200 percent of the federal poverty level—far above the federal standard—and without having his assets checked at all, even if his checking account balance has seven figures. How is this sleight of hand possible? The applicant received what Colorado calls a TANF-funded "benefit" when he received the notice of his eligibility on the application itself.[27] This problem is only possible because of the BBCE loophole. And it plays out across the country.

More than five million food stamp enrollees do not meet federal eligibility criteria

These widespread distortions produced predictable results. Enrollment in the food stamp program exploded and benefits meant for the truly needy have flowed to more than five million enrollees who do not meet federal eligibility criteria.[28] As a result, even millionaires now qualify for food stamps in most states.[29]

Using this opening, four million food stamp enrollees had countable assets beyond those allowed by federal law in 2015.[30] That same year, the number of recipients with incomes higher than the federal threshold was 1.2 million.[31]

The BBCE loophole has worsened program integrity

By effectively removing independent verification of food stamp eligibility, states have made their programs more vulnerable to waste, fraud, and abuse. Unsurprisingly, caseworkers have reported that BBCE's reduction in verification may increase fraudulent applications and benefits.[32] This worsening problem stems in part from the loss of vital anti-fraud tools. For example, caseworkers previously accessed bank account information to check for unreported income.[33] By eliminating the asset limit and not verifying applicants' resources, agencies no longer have access to that information, blinding themselves to obvious fraud and abuse.

Federal audits have found corresponding results in investigating payment errors. Payment errors occur nearly three times as often for households with incomes in the expanded BBCE range than households eligible under the federal criteria.[34] The true extent of improper payments is not known, as USDA issued guidance in 2011 specifically exempting enrollees made eligible under BBCE from full quality control review.[35]

The proposed rule will begin cracking down on BBCE's worst abuses

The proposed rule will begin to close the BBCE loophole and bring categorical eligibility closer to the program's statutory intent. Each of the proposed rule's three major reforms target the root of the problem—states' exploitation of the definition of TANF "benefits" which confer eligibility. By defining TANF benefits as those that are ongoing, substantial, and clearly related to TANF's core purposes provides precision and practicality.

Requiring TANF benefits to be ongoing to confer eligibility better reflects the statutory purpose of categorical eligibility

The proposed rule requires that TANF "benefits" conferring categorical eligibility be ongoing, which are benefits that are expected to last for at least six months. This would cut down on states' free-wheeling practice of determining categorical eligibility for ongoing and continuous food stamps by providing a one-time TANF-funded "benefit."

This current discrepancy promotes abuse and fraud. Categorical eligibility, in its original purpose, was designed to free agencies and individuals already fully engaged in the TANF program from the additional bureaucracy of the food stamp program. Allowing agencies and applicants to shoehorn this process by converting a one-time TANF benefit into ongoing food stamp enrollment contravenes the purpose of categorical eligibility and diverts resources to otherwise ineligible recipients.

The six-month threshold is a reasonable level, as it aligns with current reporting and certification requirements and the vast majority of enrollees are enrolled in the program longer than six months. For example, fewer than four percent of TANF enrollees leave the food stamp program within six months.[36]

Requiring TANF benefits to be substantial to confer eligibility better reflects the statutory purpose of categorical eligibility

The proposed rule requires that TANF "benefits" conferring categorical eligibility be substantial, which are benefits that are valued at $50 or more per month.

This requirement will curb the worst abuses associated with the BBCE loophole. Without this requirement, states have defined "benefits" to include providing applicants with de minimis "benefits" like brochures, toll-free numbers, and referrals to information about other programs that they are not even eligible for.[37] Presumably, if states were required to provide substantial benefits to individuals on whom they are conferring categorical eligibility, the eligibility levels for such programs would be comparable to or more restrictive than federal criteria, restoring the original intent of categorical eligibility.

The $50 threshold is a reasonable level, as it aligns with current TANF spending. More than 99 percent of food stamp enrollees in households also receiving TANF benefits receive $50 per month or more in cash welfare.[38] Nationally, just 140 enrollees reside in households that receive TANF benefits valued at less than $50 and have income above the federal gross income limit.[39]

Requiring non-cash TANF benefits to be work-related to confer eligibility better reflects the statutory purpose of categorical eligibility

The proposed rule requires that TANF benefits conferring categorical eligibility be limited to either cash benefits or non-cash benefits that provide work supports, including subsidized employment, transportation benefits, reimbursement for work-related expenses, and child care benefits.

This limitation ensures that the benefit conferring categorical eligibility is clearly related to TANF's core purposes. Currently, the BBCE loophole allows states to provide "benefits" that have no meaningful connection to TANF's statutory purposes. Without the proposed limitation, current rules allow for nearly limitless exploitation. Printing brochures and offering referral information to toll-free numbers are not core purposes of TANF. Similarly, their receipt cannot constitute the receipt of a TANF "benefit" under any reasonable or practical definition. But that is exactly what is happening under the status quo.

Indeed, USDA has acknowledged for more than 20 years that these "benefits" do not meet the intent of categorical eligibility, because families can receive such benefits without meeting income and resource tests that are comparable to or more restrictive than federal criteria for food stamp eligibility.[40]

Closing the BBCE loophole will not increase administrative costs

Closing the BBCE loophole will move millions of individuals who do not meet federal eligibility criteria off of the food stamp program, preserving resources for the truly needy.[41] Some defenders of the loophole have argued that closing the loophole will increase administrative costs by increasing the amount of verification required per-case.[42] There is no evidence to support such an assumption.

Overall, states not using the BBCE loophole have lower administrative costs than states utilizing the loophole.[43] States using traditional federal eligibility standards spend an average of $160 on administrative costs per enrollee, while states using the loophole spend $180.[44]

States which have expanded the loophole the furthest—eliminating both asset tests and increasing income eligibility—spend almost $210 per enrollee.[45]

Additionally, a review of states expanding or adopting the loophole between 2006 and 2015 revealed that the vast majority of states saw overall administration and certification costs *increase* after expanding or adopting the loophole.[46] At the same time, the few states that have reversed BBCE policies did not experience increases in administrative costs.[47]

The reason for this is simple: administrative costs are driven primarily by enrollment.[48] Any plausible "savings" that could be expected on a per-case basis is more than offset by the vastly higher enrollment levels caused by the loophole.[49]

USDA's regulatory impact analysis wrongly concludes administrative costs will increase

USDA's regulatory impact analysis incorrectly calculates the administrative cost of closing the loophole. In its analysis, USDA assumes that federal administrative costs will increase by $17.50 per case.[50] USDA then multiplies this per-case increase by 15.8 million cases in affected states, determining overall federal administrative costs would increase by $276 million in fiscal year 2020.[51]

But this analysis does not account for the decline in administrative costs from fewer households on the program. According to the analysis, federal administrative costs would average $246 per-case without the rule change and the proposed rule reduce the number of households on the program by approximately 1.7 million.[52] This suggests that any increase in administrative costs would be offset by nearly $419 million in federal administrative savings from lower caseloads.[53] Even adopting USDA's assumption that per-case costs would rise, federal administrative costs would decline by nearly $142 million in fiscal year 2020 after accounting for lower caseloads.[54-55]

USDA should eliminate the "authorized to receive" loophole

While the proposed rule represents a significant step in the right direction, the revised categorical eligibility policy remains vulnerable to state abuses and exploitation that would render the changes irrelevant.

Although the proposed rule correctly blocks states from using welfare brochures to deem applicants categorically eligible for food stamps, it leaves in place a major loophole that could undermine the entirety of the new rule. Specifically, the proposed rule preserves a loophole for those "authorized to receive" non-cash benefits.

Under the proposed rule, states may grant categorical eligibility to individuals who "receive or are authorized to receive" substantial and ongoing benefits. Separate federal regulations define applicants "authorized to receive" TANF benefits as individuals who have "been determined eligible for benefits," even if those benefits are never actually provided.[56] For example, individuals can be "authorized to receive" benefits even if such benefits are never paid because they are less than a minimum payment threshold.[57]

By maintaining this loophole, states would be allowed to characterize all applicants as "authorized to receive" substantial and ongoing benefits, whether or not such benefits are ever delivered.

States will continue to exploit the "authorized to receive" loophole

The history of abuse in determining categorical eligibility demonstrates that agencies can and will expand such vacuous definitions far beyond what USDA currently imagines. As time goes on, agencies and applicants alike will pull and stretch these terms even further.

For example, a state could create a new TANF-funded program that provides a fixed "substantial and ongoing" benefit—valued at $50 per month for at least six months. This new program could lack an asset test and have an income limit above federal eligibility standards, just as the brochure "benefits" do today. The state could then set minimum payment threshold rules above that fixed value—e.g., $51—meaning the state would not have to make any payments under the program at all.

Under this scenario, all applicants would be deemed "authorized to receive" benefits from the program, but the state would not be required to actually pay out any such benefit. The past two decades of state abuses in categorical eligibility confirm that such a scheme is not only possible—it is probable. Yet, this is just one of many potential abuses of the remaining loophole. The failure to close this loophole risks undermining the entire purpose of the proposed rule.

The "authorized to receive" loophole has no statutory basis

The "authorized to receive" loophole was created through regulation and has no statutory basis. Under the food stamp statute, an individual is deemed categorically eligible only if he or she "receives benefits" under a TANF-funded program.[58] Expanding this eligibility pathway to include individuals "authorized to receive" benefits is in direct conflict with the plain meaning of the statutory language authorizing categorical eligibility. This loophole also conflicts with the purpose and statutory intent of categorical eligibility, which USDA has long maintained exists to deem eligibility for TANF *recipients* "already subject to an income and resource test."[59]

USDA should prohibit states from conferring eligibility based on programs only marginally funded by TANF

Under the proposed rule, states may extend categorical eligibility to households who receive or are authorized to receive benefits "from a program that is less than 50 percent funded" by TANF. As such, states could confer food stamp eligibility to households participating in any "programs" funded with just $1 in TANF funding. Under current regulations, states may not confer categorical eligibility based on programs that are funded less than 50 percent by TANF unless it would further the purpose of the food stamp statute and is specifically approved by USDA.[60] At a minimum, USDA should restore the requirement that states receive express approval before using programs only marginally funded by TANF to confer eligibility.

USDA should prohibit states from conferring eligibility based on programs without comparable eligibility standards

Under current regulations, programs that are less than 50 percent funded by TANF can only be used for categorical eligibility purposes if the income limits of such programs are below 200 percent of the federal poverty level.[61] This threshold is far above the federal limit and should be reduced to match the federal standard. However, the proposed rule does the opposite—it eliminates the income ceiling altogether. Under the proposed rule, programs conferring categorical eligibility need have no specific income or asset limit.

In order to meet the statutory purpose of categorical eligibility, USDA should adopt a requirement that such programs have income and resource limits comparable to or more restrictive than the federal eligibility standards. This is the statutory standard already in place for approving categorical eligibility based on receipt of benefits from state- and locally-funded general assistance programs.[62]

USDA should restore its oversight role over programs conferring eligibility

Under current regulations, programs that are less than 50 percent funded by TANF can only be used for categorical eligibility purposes if specifically approved by USDA.[63] The proposed rule eliminates the requirement for USDA approval altogether. Instead, the new rule provides that states may utilize this option "at [their] option."

The proposed rule also replaces current USDA oversight with meaningless notice requirements. Rather than requiring states to obtain USDA approval before using such programs for categorical eligibility purposes, the proposed rule simply requires states to "inform FNS of the types of non-cash TANF benefits" conferring eligibility. Although the proposed rule maintains the current purpose statement that such options may only be exercised "if doing so will further the purposes" of the food stamp program, it renders such a purpose statement unenforceable by eliminating the current USDA approval requirements. USDA should restore its oversight role and only allow such programs to confer eligibility if specifically approved.

Conclusion

The proposed rule will crack down on some of the worst abuses of the BBCE loophole and begin to restore the original purpose of categorical eligibility. Closing this loophole will strengthen the program by reestablishing clear standards for eligibility and will preserve limited resources for the truly needy. However, the proposed rule leaves a number of loopholes in place that will undermine these efforts. USDA should eliminate these loopholes to protect from future abuses.

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