



October 16, 2019

U.S. House Committee on Education and Labor
2176 Rayburn House Office Building
Washington, DC 20515

U.S. House Agriculture Committee
1301 Longworth House Office Building
Washington, DC 20515

U.S. Senate Committee on Health, Education, Labor, & Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
328A Russell Senate Office Building
Washington, DC, 20510

RE: Accountability and Oversight Regarding Proposed Changes to Eligibility for the Supplemental Nutrition Assistance Program and its Effect on the National School Lunch Program

Dear Chairpersons Scott, Peterson, Alexander, Roberts, and Ranking Members Foxx, Conaway, Murray, and Stabenow:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we are writing to request appropriate action and oversight be taken in response to recent efforts by the Trump Administration to limit eligibility for the Supplemental Nutrition Assistance Program (SNAP), which will lead to nearly one million children losing automatic eligibility for free or reduced-price school meals.¹ The school lunch program is essential for millions of low-income students to receive the nutrition they need to thrive both at school and at home, and removing children from the rolls could be drastically detrimental to their lives. We are asking you to engage in vigorous oversight of these changes and engage in all appropriate legislative action to continue to provide these vital resources to children across the country.

¹ See

Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), 84 Fed. Reg. 35570 (proposed July 24, 2019) (to be codified at 7 C.F.R. pt. 273).— Potential impacts on Participants in the National School Lunch Program and School Breakfast Program, Oct. 15, 2019, *available at* <https://www.regulations.gov/document?D=FNS-2018-0037-16046>.

Founded in 1940 by Thurgood Marshall, LDF is the nation's oldest civil rights legal organization. For almost 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color. Since the historic U.S. Supreme Court decision in *Brown v. Board of Education*,² which LDF litigated and won, we have continued to represent students of color to ensure they receive quality and equitable educational opportunities.

In the 1960s, LDF was involved in pioneering work expanding access to the National School Lunch Program (NSLP) for low-income students. Jean Fairfax, who created LDF's Division of Legal Information and Community Service in 1965 and served as its Director, coordinated a [National Committee](#) on School Lunch Participation in 1966 to study the NSLP, which at the time was not mandatory for students falling below any set income levels,³ resulting in fewer than 4% of students receiving free or reduced-price lunch.⁴ The coalition issued a groundbreaking 1968 report, *Their Daily Bread*,⁵ which exposed the existing inadequacies and limited reach of the school lunch program, which left millions of eligible children hungry. In its report, the Committee made a number of recommendations that were incorporated into legislation updating the National School Lunch Program in 1970, including the creation of a uniform standard of need under which students would automatically be eligible for free lunch; a reduction in price for reduced-price lunch; and a prohibition on discriminatory practices against students eligible for free lunch.⁶ In FY 2018, 29.7 million children participated daily in the NSLP, with over three quarters of the lunches provided free or at a reduced price.⁷

In July 2019, the U.S. Department of Agriculture (USDA) published a proposed rule that would reduce eligibility for the Supplemental Nutrition Assistance Program (SNAP),⁸ benefits provided to low-income families to supplement their food budgets. The change would result in 3 million fewer people qualifying for this essential benefit that

² 347 U.S. 483 (1954).

³ See Inside the Archives: Jean Fairfax and the Division of Legal Information and Community Service, LDF Thurgood Marshall Institute, <https://tminstituteldf.org/archives/inside-the-archives/elementor-2419/> (last visited Oct. 2, 2019); Associated Press, *School Lunch Guidelines Announced*, WASH. POST, Aug. 5, 1970, at A9 (providing that before the federal law governing the NSLP was updated in 1970, state and local officials were allowed to determine who was eligible for free meals).

⁴ Jean Fairfax, Chairman, Committee on School Lunch Participation, Statement at a Press Conference at the Willard Hotel, Washington, D.C. (Apr. 16, 1968), available at https://tminstituteldf.org/wp-content/uploads/2019/07/1C_LDFA12_1968-04-16_Fairfax-press-stmt.pdf.

⁵ FLORENCE ROBINSON, DIRECTOR, & COMMITTEE ON SCHOOL LUNCH PARTICIPATION, *THEIR DAILY BREAD: A STUDY OF THE NATIONAL SCHOOL LUNCH PROGRAM* (1968).

⁶ See Associated Press, *supra* note 3; Nick Kotz, *Senate Panel Told of Abuses in School Lunch Program*, WASH. POST, Oct. 14, 1970, at A2 (finding that schools continued to engage in practices such as establishing quotas on the number of free lunches distributed, publishing or announcing the names of eligible students, serving free lunches on different-colored plates, and requiring children to work for their meals, despite these practices being prohibited by the federal law); Nat'l School Lunch Act, Pub. L. No. 91-248 (1970).

⁷ National School Lunch Program, U.S. Dep't of Agriculture Economic Research Service (Aug. 20, 2019), <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/national-school-lunch-program/>.

⁸ Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), 84 Fed. Reg. 35570 (proposed July 24, 2019) (to be codified at 7 C.F.R. pt. 273).

has been shown to improve the health and well-being of children and families.⁹ Although the Regulatory Impact Analysis published with the proposed rule did not include any discussion of the NSLP, the proposed rule would have an impact on eligibility for free and reduced price lunch because households who participate in SNAP are directly certified to receive free school meals. In an impact statement related to the proposed rule change released on October 15, 2019, USDA provided that the proposed rule would result in almost one million children no longer having automatic access to free or reduced price school meals through the NSLP and School Breakfast Program (SBP).¹⁰ The change to SNAP eligibility would also affect the Community Eligibility Provision (CEP), a USDA program that allows schools and districts to provide free breakfast and lunch to all students when at least 40% of students are certified for free meals, including through direct certification through SNAP.¹¹ If changes to SNAP eligibility cause a school or district to drop below the 40% threshold, it would jeopardize eligibility for the CEP and create barriers to access to free meals school- and district-wide. These changes to eligibility for free and reduced-price school meals would be especially detrimental for students of color, who are eligible for them at higher rates than their white peers.¹² These meals are often the only complete and nutritious meal of the day for low-income students, and access to them is correlated with fewer suspensions, better health outcomes, and higher test scores.¹³

We ask Congress to exercise the full extent of its oversight authority to ensure that actions by the USDA will not unfairly deprive almost one million children of access to meals they need to thrive at school and at home. We request specifically that a hearing be held to gather from the USDA more information on how they calculated the number of children who would no longer be eligible for free and reduced-price lunch, whether they considered eligibility for the CEP, and most importantly, why they are choosing to deprive hungry children of food.

Thank you for considering this letter. If you have any questions, please contact us at 202-682-1300.

Sincerely yours,

⁹ See, e.g., The Positive Effect of SNAP Benefits on Participants and Communities, Food Research & Action Center (FRAC), <https://frac.org/programs/supplemental-nutrition-assistance-program-snap/positive-effect-snap-benefits-participants-communities> (last visited Oct. 2, 2019).

¹⁰ See Democratic Members, *supra* note 1.

¹¹ USDA Fact Sheet, The Community Eligibility Provision (CEP): What Does It Mean For Your School or Local Educational Agency? (Apr. 2015), <https://fns-prod.azureedge.net/sites/default/files/cn/CEPfactsheet.pdf>.

¹² Concentration of Public School Students Eligible for Free or Reduced-Price Lunch, Nat'l Ctr. for Educ. Statistics (May 2019), https://nces.ed.gov/programs/coe/indicator_clb.asp (in Fall 2016, 44% of Black students, but only 8% of white students, attended schools where more than 75% of students were eligible for free or reduced price lunch).

¹³ See, e.g., Matt Barnum, A benefit of free lunch for all: fewer students get repeatedly suspended, new study suggests, CHALKBEAT, Sept. 18, 2018, <https://chalkbeat.org/posts/us/2018/09/18/could-expanding-school-lunch-programs-help-keep-kids-in-school/> (citing several studies linking access to the NSLP to positive outcomes).

Lisa Cylar Barrett
Director of Policy

Nicole Dooley
Senior Policy Counsel