

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 273

[FNS–2018–0037]

RIN 0584–AE62

#### Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** Section 5(a) of the Food and Nutrition Act of 2008, as amended, provides that households in which each member receives benefits under a State program funded under part A of Title IV of the Social Security Act (SSA) (also known as Temporary Assistance for Needy Families (TANF) block grants<sup>1</sup>) shall be categorically eligible for the Supplemental Nutrition Assistance Program (SNAP). Currently, SNAP regulations broadly interpret “benefits” to mean cash assistance and non-cash or in-kind benefits or services from any TANF-funded program.<sup>2</sup> In operation, this has allowed categorical eligibility for SNAP to be conferred on households based on receipt of minimal benefits issued by TANF-funded programs which may not conduct a robust eligibility determination and do not meaningfully move families toward self-

sufficiency. The Food and Nutrition Act has clear parameters regarding the income and resource limits that SNAP households must meet, and categorical eligibility is intended to apply only when the conferring program has properly determined eligibility. Extending categorical eligibility to participants who have not been screened for eligibility compromises program integrity and reduces public confidence that benefits are being provided to eligible households.

Therefore, the Department proposes updating the regulations to refine categorical eligibility requirements based on receipt of TANF benefits. Specifically, the Department proposes: (1) To define “benefits” for categorical eligibility to mean ongoing and substantial benefits; and (2) to limit the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports and childcare. The proposed rule would also require State agencies to inform FNS of all non-cash TANF benefits that confer categorical eligibility.

The proposed revisions would create a clearer and more consistent nationwide policy that ensures categorical eligibility is extended only to households that have sufficiently demonstrated eligibility by qualifying for ongoing and substantial benefits from TANF-funded programs designed to assist households and move them towards self-sufficiency.

In addition, the revisions would help ensure that receipt of nominal, one-time benefits or services do not confer categorical eligibility and would address program integrity issues that have surfaced since the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 changed the programs whose benefits confer categorical eligibility. The Department believes these revisions will maintain categorical eligibility’s dual purpose of streamlining program administration while ensuring that SNAP benefits are targeted to the appropriate households.

**DATES:** Written comments must be received on or before September 23, 2019 to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be

submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Send comments to Program Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Dr., Alexandria, VA 22302. Email: Send comments to [SNAPPDBRules@usda.gov](mailto:SNAPPDBRules@usda.gov). Include Docket ID Number [FNS–2018–0037], “Revision of Categorical Eligibility in the Supplemental Nutrition Assistance” in the subject line of the message.

- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Program Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Dr., Alexandria, VA 22302. [SNAPPDBRules@usda.gov](mailto:SNAPPDBRules@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*) outlines specific income and resource eligibility standards for SNAP. Generally, the statute requires that SNAP households who do not have elderly or disabled members must have a monthly gross income equal to or lower than 130% of the Federal Poverty Level (FPL) and a net income equal to or lower than 100% of the FPL in order to be eligible for SNAP.<sup>3</sup> The statute also requires that SNAP households meet specific resource limits: One for households with elderly or disabled members, and one for all other households.

Section 5(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(a)) provides categorical eligibility for households in which all members receive TANF

<sup>1</sup> State programs funded under part A of Title IV of the SSA include programs funded by Federal TANF block grant funds, as well as programs not funded by Federal TANF block grants but funded by State maintenance-of-effort dollars that allow a State to receive Federal TANF block grant funds. For simplicity, this proposed rule will refer to all State programs funded under part A of Title IV of the SSA as “TANF-funded programs,” and to benefits from such programs as “TANF benefits.”

<sup>2</sup> While some benefits that meet the TANF definition of “assistance” at 45 CFR 260.31, such as transportation and childcare, would be considered “non-cash benefits” in this proposed rule, references to “assistance” and “benefits” in this proposed rule are for SNAP categorical eligibility purposes only. The terms are not intended to align with the TANF use of “assistance” or “benefits” in 45 CFR 260.31.

<sup>3</sup> Households with an elderly or disabled member need only meet the net income test. All eligible one- and two-person households are guaranteed a minimum benefit.

benefits.<sup>4</sup> Categorical eligibility simplifies the SNAP application process for both SNAP State agencies and households by reducing the amount of information that must be verified if a household already qualifies and has been determined eligible to receive benefits from another assistance program.

Categorical eligibility has changed significantly over time because of changes in the Social Security Act (SSA) (42 U.S.C. 601). Section 5(a) of the Food and Nutrition Act dates back to the Food Security Act of 1985 (Pub. L. 99–198), which made households in which all members receive Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) benefits categorically eligible for SNAP. AFDC was an entitlement program intended to support needy families by providing cash welfare payments to households who met certain State eligibility requirements. While each State designed its own eligibility criteria and benefit levels, these requirements were governed by Federal limitations; States received matching Federal funds for the cash payments to eligible households.<sup>5 6</sup> Therefore, categorical eligibility as outlined in the Food and Nutrition Act was contemplated when State AFDC programs conferring categorical eligibility had specific income eligibility and resource<sup>7</sup> criteria that were targeted toward low-income households. While States had some flexibility, overarching Federal parameters for AFDC meant there was greater consistency across States and general alignment with the standards for SNAP.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) (PRWORA) amended the SSA and replaced the cash AFDC program with the TANF block grant, providing a set amount of funding for States to design and implement TANF-funded programs. Section 401 of the

SSA outlined four broad purposes for TANF block grants: (1) To provide assistance to needy families so that children can be cared for in their own homes; (2) to reduce the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and (4) to encourage the formation and maintenance of two-parent families. The State Maintenance-of-Effort (MOE) requirement in Section 409(a)(7) of the SSA (42 U.S.C. 609(a)(7)) requires States to spend a certain amount of their own funds for qualified purposes under TANF to receive Federal TANF block grants. PRWORA allowed States to use Federal TANF and State MOE funds to provide cash and non-cash benefits to serve needy families under TANF purposes one and two, as well as potentially broader populations under TANF purposes three and four.

Under PRWORA, States gained significant flexibility in TANF-funded program administration, resulting in a wide array of programs designed to further TANF's four purposes, including ones that may not have meaningful eligibility criteria.<sup>8</sup> For example, States define “needy” for TANF purposes one and two and may develop their own eligibility criteria absent any Federal requirement or standard of “need”. As a result, TANF-funded programs vary greatly from State to State,<sup>9</sup> with some States focusing more on basic cash assistance for needy households and other States developing programs that are less likely to focus on low-income households, and may not have appropriate income or resource tests.

Prior to PRWORA, categorical eligibility for SNAP was conferred by receipt of cash AFDC benefits, as non-cash AFDC benefits did not exist. While PRWORA did not modify the categorical eligibility provision in Section 5(a) of

the Food and Nutrition Act, the Department recognized that the changes enacted by PRWORA and the move from AFDC to TANF meant that categorical eligibility could be conferred by both cash and non-cash benefits. As a result, programs conferring categorical eligibility would change in scope and types of benefits offered and might not target families in need. The Department issued regulations (65 FR 70133 (November 21, 2000)) that further defined and limited the conferring of non-cash categorical eligibility. Specifically, the Department determined that, to appropriately limit categorical eligibility to needy households, those TANF-funded programs serving purposes three and four must have income eligibility criteria at or below 200% of the FPL. As discussed in the preamble to the November 21, 2000 rule, this threshold was based on advice provided to the Department by the U.S. Department of Health and Human Services (HHS), the agency with oversight of the TANF block grant program. HHS analysis indicated that most services with income eligibility criteria had income limits set at 200% FPL or lower.

However, after the change from AFDC to TANF, under current regulations, States have significant flexibility to determine what types of non-cash TANF-funded services and benefits can confer categorical eligibility for SNAP and what the eligibility criteria for those benefits should be. As of March 2019, 43 States have used this flexibility to expand categorical eligibility to households that receive non-cash TANF benefits, resulting in significant variation across States in the SNAP eligibility determination process, and in program rules and operations.<sup>10</sup> When using non-cash TANF benefits as the basis of categorical eligibility decisions, many States use income thresholds and resource limits that are higher than the Federal standards for SNAP. Due to the current broad flexibility afforded States in the construction of TANF-funded programs, these households, who would not otherwise have qualified for SNAP due to their income or resources, are considered categorically eligible and therefore able to receive SNAP. As a result of these policies, it is estimated that 4.1% of currently participating SNAP households (767,000 households or 1.4 million individuals) have resources above the SNAP limit and 4.9% have incomes above the Federal SNAP gross income limit of 130% FPL

<sup>4</sup> Section 5(a) also provides categorical eligibility for SNAP based on receipt of Supplemental Security Income (SSI) and General Assistance (GA). SSI and GA benefits are not affected by this proposed rule.

<sup>5</sup> <https://aspe.hhs.gov/system/files/pdf/167036/1history.pdf>.

<sup>6</sup> <https://aspe.hhs.gov/aid-families-dependent-children-afdc-and-temporary-assistance-needy-families-tanf-overview-0>.

<sup>7</sup> “States determined eligibility thresholds and benefit amounts. However, Federal law established a gross income limit (185% of the state-determined need standard); an asset test (no more than \$1,000 in countable assets); and rules for how states count different forms of income, including earnings.” Gene Falk, *The Temporary Assistance for Needy Families (TANF) Block Grant: A Legislative History*, Congressional Research Service 11 (April 2, 2019), <https://fas.org/spp/crs/misc/R44668.pdf>.

<sup>8</sup> Congressional Research Service, “The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements,” updated December 14, 2017, <https://crsreports.congress.gov/product/pdf/RL/RL32748>, p. 13; Congressional Research Service, “The Temporary Assistance for Needy Families (TANF) Block Grant: Responses to Frequently Asked Questions”, updated June 3, 2019, <https://crsreports.congress.gov/product/pdf/RL/RL32760>.

<sup>9</sup> <https://www.acf.hhs.gov/ofa/resource/tanf-and-moe-spending-and-transfers-by-activity-fy-2017-contains-national-state-pie-charts>. In Fiscal Year 2017, 22.7 percent of combined TANF Federal and State MOE funds were used for basic assistance (e.g., cash); 10.5 percent were used for work, education, and training activities; and 16.1 percent were used for child care. In Fiscal Year 2017, 27 States used less than 50 percent of their TANF Federal and State MOE funds on a combination of basic assistance; work, education, and training activities; and child care.

<sup>10</sup> <https://fns-prod.azureedge.net/sites/default/files/snap/BBCe.pdf>.

(914,000 households or 1.7 million individuals).

### Current Issues With Categorical Eligibility

While categorical eligibility based on the receipt of non-cash TANF benefits reduces administrative burden for State agencies and households, and particularly benefits working households, the current regulation on categorical eligibility has created several issues. The current broad interpretation of “benefits,” which includes any non-cash or in-kind benefits or services, and the significant variation across State TANF-funded programs permits nominal non-cash benefits or services, such as TANF-funded brochures or hotline numbers, to confer categorical eligibility for SNAP.<sup>11 12</sup>

Federal auditors have raised program integrity concerns about the wide adoption of categorical eligibility policies and the prevalence of TANF benefits with minimal value. A 2012 General Accountability Office (GAO) audit found that the expansion of categorical eligibility beyond pure cash programs resulted in States conferring categorical eligibility to households in some cases without actually providing the TANF-funded benefit or service necessary to confer the categorical eligibility determination for SNAP.<sup>13</sup> In some cases households may not receive the TANF-funded benefit until *after* their SNAP eligibility determination, may only receive the benefit upon request, or may not receive it at all, which weakens the intended linkage between the two programs. For example, a USDA Office of Inspector General (OIG) audit found that households who were determined categorically eligible based on the receipt of a family planning brochure did not actually receive the brochure unless they specifically requested it from the State.<sup>14</sup>

<sup>11</sup> USDA Office of Inspector General, “FNS Quality Control Process for SNAP Error Rate Audit Report 27601–0002–41,” <https://www.usda.gov/oig/webdocs/27601-0002-41.pdf>.

<sup>12</sup> Examples of nominal benefits are brochures provided to clients that explain referrals to social services, pregnancy prevention, or the 2–1–1 hotline. Additionally, States may simply provide information about these services or a phone number to contact for more information on the application for multiple benefit programs.

<sup>13</sup> <https://www.gao.gov/assets/600/593070.pdf> The GAO estimated that in fiscal year 2010, 2.6 percent (473,000) of households that received Supplemental Nutrition Assistance Program (SNAP) benefits would not have been eligible for the program without expanded categorical eligibility because their incomes were over the Federal SNAP eligibility limits (95% confidence interval of 2.4–2.8%).

<sup>14</sup> USDA Office of Inspector General, “FNS Quality Control Process for SNAP Error Rate Audit

Further, because of the flexibility afforded States in the design and operation of TANF-funded programs, it is also possible that households who may not have undergone a meaningful TANF financial eligibility determination through the TANF-funded program become categorically eligible for SNAP. Policies in 41 States indicate that they have an income limit of 200% or less for their expanded categorical eligibility program, however, they also indicate that “all households are eligible” for the expanded categorical eligibility benefit.<sup>15</sup> For example, four States utilize TANF funds to print their multi-benefit applications for SNAP, TANF, and other programs and include information and referrals to other services on those applications. The applications are provided to anyone who requests one, regardless of their gross income, and confer expanded categorical eligibility at the time the household receives the application. Conferring categorical eligibility in such cases compromises the integrity of SNAP by allowing households that did not undergo a financial eligibility determination before receiving TANF-funded benefits, to then be deemed categorically eligible to receive SNAP.

In 2016, FNS issued subsequent guidance<sup>16</sup> to State agencies following these audits regarding the proper procedures under which categorical eligibility may be conferred. The Department has determined, however, that due to the nominal nature of many benefits offered under current expanded categorical eligibility programs, further rulemaking is required in order to narrow the scope of potential TANF benefits conferring categorical eligibility, to ensure that applicant eligibility is properly assessed. Therefore, the Department wishes to further strengthen the requirements through this rulemaking to ensure that TANF-funded programs conferring categorical eligibility align more closely with SNAP eligibility standards outlined in the Food and Nutrition Act. The Department has an obligation to expend taxpayer funds in a fiscally responsible manner and in alignment with the intent of the Food and Nutrition Act to alleviate hunger among low-income households. Prior rulemaking regarding categorical eligibility was intended to use the streamlined approach of categorical

Report 27601–0002–41,” <https://www.usda.gov/oig/webdocs/27601-0002-41.pdf>.

<sup>15</sup> <https://fns-prod.azureedge.net/sites/default/files/snap/BBCE.pdf>.

<sup>16</sup> <https://fns-prod.azureedge.net/sites/default/files/snap/clarification-bbce-memo.pdf>.

eligibility to support households in need. The Department has seen that, given the significant operational flexibilities inherent in TANF-funded programs, current regulations are insufficient to achieve this goal. As a result, the Department thinks revising the categorical eligibility regulations at 7 CFR 273.2(j)(2) and limiting categorical eligibility to those households receiving ongoing and substantial benefits from TANF-funded programs strikes a prudent and reasonable balance between administrative flexibility and program integrity. With this proposed rule, the Department intends to ensure consistency across TANF-funded programs whose benefits confer categorical eligibility and to discourage the types of practices that States developed for conferring categorical eligibility with TANF non-cash benefits. The Department believes that instituting an ongoing and substantial threshold for both cash and non-cash TANF benefits, as described below, is an appropriate way to achieve this goal.

### Summary of Proposed Approach

Given the substantial variation across all TANF State program operations, and in the interest of program integrity, the Department proposes revising the requirements for cash and non-cash TANF benefits that would confer categorical eligibility for SNAP. Such revisions would create a clearer and more consistent nationwide policy regarding the cash and non-cash TANF benefits that confer categorical eligibility. This proposal would limit cash and non-cash categorical eligibility to households that receive ongoing and substantial benefits. In addition, non-cash categorical eligibility would be limited to specific types of TANF benefits—subsidized employment, work supports, and/or childcare—that support family self-sufficiency. It is the Department’s understanding that programs providing such benefits have meaningful eligibility determinations because of the value of the benefits provided. As SNAP and TANF eligibility determinations may be accomplished concurrently, the Department also understands that a household may not yet be in receipt of the TANF benefit (e.g., be in physical possession of a voucher or payment) at the time categorical eligibility is conferred. However, it is the Department’s intent that the household be enrolled in a TANF-funded program expected to start on a date certain. Such programs would need to be ongoing and substantial in order to be considered one that could confer categorical

eligibility for SNAP. The Department requests comments to better understand the eligibility determination and enrollment processes for TANF-funded programs. Specifically, the Department is interested in comments on the processes by which TANF-funded programs actually determine applicant financial and non-financial eligibility for the conferring programs, and at what point in the TANF enrollment process this determination and delivery of benefit(s) to the household may take place relative to the SNAP eligibility determination.

The Department believes the policies explained further below will ensure SNAP benefits reach those most in need while balancing administrative efficiency, customer service, and program integrity.

### Simplification of Terminology

The proposed rule simplifies some of the terminology used when addressing categorical eligibility. Current regulations at § 273.2(j)(2) provide for categorical eligibility based on the receipt of “non-cash or in-kind benefits or services.” Because no meaningful distinction exists between “non-cash” and “in-kind,” or “benefits” and “services,” in this context, the Department proposes simply using “non-cash benefits” in the revised § 273.2(j)(2)(i)(B).

### Move From TANF Purposes to TANF Benefits

Current regulations at § 273.2(j)(2)(i)(B) and (C) allow non-cash programs designed to further TANF block grant purposes one through four to confer categorical eligibility. The flexibility afforded States under the TANF block grant allows for variation in how States link their various TANF-funded programs to TANF purposes. The Department has learned through consultation with HHS that, for example, one State may designate a given benefit as furthering purposes one and two of the TANF block grant, while another State offering a substantially similar benefit may designate it as furthering TANF purposes three and four. Since the distinction between purposes is not necessarily meaningful in conferring non-cash categorical eligibility, the Department proposes to link categorical eligibility to specific types of TANF *benefits* rather than to TANF block grant *purposes*. Specifically, the Department is proposing to limit categorical eligibility to TANF non-cash benefits that support meaningful work opportunities—specifically, subsidized employment, work supports, and childcare support—

that help move families from welfare to self-sufficiency. The Department’s proposal would remove mention of TANF block grant purposes in § 273.2(j)(2)(i)(B) and eliminate § 273.2(j)(2)(i)(C) and instead describe TANF benefits in § 273.2(j)(2)(i)(B)(2).

As described below, the Department is proposing that these non-cash benefits be both ongoing and substantial to confer categorical eligibility for SNAP.

### Ongoing and Substantial Benefits in Conferring Programs

This proposed rule would revise the interpretation of “benefits” under Section 5(a) of the Food and Nutrition Act to mean that, for purposes of categorical eligibility, TANF or State-MOE funded benefits must be “ongoing” and “substantial”. The Department also proposes that, for the purposes of alignment across all types of TANF benefits, these thresholds be set for both cash and non-cash benefits.

Current regulations at § 273.2(j)(2)(i)(B) and (C) provide for categorical eligibility based on the receipt of “non-cash or in-kind benefits or services,” without further detail. As explained above, such a policy means an individual may be categorically eligible for SNAP even if the individual receives a one-time, minimal, non-cash TANF benefit such as an information brochure, hotline number, or referral to other services.<sup>17</sup> This practice threatens the integrity of categorical eligibility, the purpose of which is to streamline services to households who have received an eligibility determination from a means-tested program.

To help address these issues, the Department proposes clarifying in § 273.2(j)(2)(i)(B)(1) that, to be considered “ongoing”, “benefits” under Section 5(a) must be those that a household receives or is authorized to receive for a period of at least six months. In the TANF context, this might include a household that would be eligible to receive benefits for a period of at least six months, barring changes in financial status or compliance. In addition, six months is the certification period length for many SNAP households and a mid-point for the most common certification period length of 12 months.<sup>18</sup> The Department

believes that six months is long enough to be considered ongoing, and would maintain program alignment. The Department welcomes comments about using the six-month standard, including whether another timeframe would be more appropriate. These proposed changes are reflected in § 273.2(j)(2)(i)(A)(1) and § 273.2(j)(2)(i)(B)(1).

The Department also proposes requiring in § 273.2(j)(2)(i)(A)(2) and § 273.2(j)(2)(i)(B)(2) that cash and non-cash benefits be “substantial” to confer categorical eligibility. In defining substantial, the Department wants to eliminate the practice of conferring categorical eligibility based on receipt of benefits that are nominal and of minimal value. Allowing categorical eligibility based on the receipt of benefits nominal in value may encourage cursory or nonexistent eligibility determinations because the amount of those TANF benefits do not warrant the cost of staff time and resources to administer. However, by requiring the benefits to be substantial, the proposed rule limits categorical eligibility to those TANF benefits for which a State is more likely to establish a meaningful eligibility determination and dedicate resources. The Department consulted with HHS to determine an appropriate definition of “substantial”. Based on this consultation, the Department proposes that the benefit be valued at a minimum of \$50 per month in order to confer categorical eligibility. There is no minimum benefit amount currently required by TANF, in keeping with the flexibility afforded to States by that program. However, should that ever change, the Department also proposes in § 273.2(j)(2)(i)(A) that, should HHS develop a minimum threshold amount for TANF cash benefits, the Department would select the higher of the two standards.

Because the types and amounts of TANF benefits vary greatly among States, the Department is particularly seeking comments on appropriate measures for “substantial” and “ongoing” benefits, as well as comments on the proposed \$50 threshold. The Department will consider these comments when formulating the final rulemaking.

### Types of Non-Cash Benefits Conferring Categorical Eligibility

The President’s Executive Order on Reducing Poverty in America by Promoting Opportunity and Economic Mobility (April 10, 2018) directed the

of SNAP households with children have a certification period length of 12 months.

<sup>17</sup> <https://fns-prod.azureedge.net/sites/default/files/snap/BCE.pdf>.

<sup>18</sup> <https://fns-prod.azureedge.net/sites/default/files/ops/Characteristics2016.pdf>. In Fiscal Year 2016, across all SNAP households the average certification period length was 13 months. 25% of all SNAP households and 37% of SNAP households with children have a certification period length of 6 months. 50% of all SNAP households and 54%

Department to review its regulations and to determine whether they are consistent with the principles of increasing self-sufficiency, well-being and economic mobility. In keeping with the principles of the Executive order, and the Administration's focus on encouraging self-sufficiency, the Department has determined that the types of benefits conferring categorical eligibility should be limited to those that, in addition to being ongoing and substantial, also provide meaningful opportunities for households to obtain employment and financial stability.

Therefore, the Department proposes in § 273.2(j)(2)(i)(B)(2) to limit the conferring of categorical eligibility to those non-cash TANF benefits that provide subsidized employment, work supports, and childcare benefits, that are substantial and ongoing as defined earlier. Based on consultation with HHS, the Department is proposing to limit these conferring benefits to the following types:

- Subsidized employment for which the employer or a third party receives a subsidy to offset some or all of the wages and costs of employing an individual;
- Work supports, including transportation benefits or vouchers to assist families to participate in employment or work activities; and/or
- Childcare subsidies or vouchers to support working families.

The Department believes the existence of a ready market valuation for benefits conferring categorical eligibility is important for administrative ease and ensuring a consistent nationwide policy. The Department understands that additional non-cash TANF benefits, such as education and training, job search assistance, or work experience, are provided on an hourly or weekly basis to program participants. The Department is unsure how to determine a ready market valuation for such benefits, which are less concrete and measurable than subsidized employment, work supports, and child care benefits, which can be easily valued at a cash equivalent. However, the Department is interested in public comment as to whether and how the benefits from such hourly-based programs could be valued for the purposes of conferring categorical eligibility, or other ways to determine whether such benefits could be ongoing and substantial.

#### **Treatment of Non-Cash Benefit Conferring Programs**

The Department is seeking comments on the current regulation's distinction among non-cash TANF-funded

programs conferring categorical eligibility based on the amount of Federal TANF and State MOE funding for the non-cash TANF-funded programs. Under current regulations, a non-cash TANF-funded program funded by more than 50 percent Federal TANF/State MOE funds and serving TANF purposes one and two must confer categorical eligibility (§ 273.2(j)(2)(i)(B)). At the State's option, categorical eligibility may be conferred if the TANF-funded program is funded by less than 50 percent Federal TANF/State MOE funds (§ 273.2(j)(2)(ii)). In such cases, the State must inform FNS if the program serves TANF purposes one and two. Programs serving TANF purposes three and four, no matter the funding makeup, must have income limits below 200 percent FPL; those funded by less than 50 percent Federal TANF/State MOE funds must also be approved by FNS.

The proposed rule would maintain the funding distinction by: (1) Requiring that States confer categorical eligibility when a TANF-funded program providing ongoing and substantial non-cash benefits is funded with 50 percent or more of combined Federal TANF or State MOE money (§ 273.2(j)(2)(i)(B)); and (2) allowing States the option to confer categorical eligibility when a TANF-funded program that issues ongoing and substantial non-cash benefits is funded by less than 50 percent of a combination of Federal TANF or State MOE money. However, the Department seeks comments to better understand current State funding mixes for TANF-funded programs, and to learn whether these funding distinctions and practices have an impact on the type and scope of benefits provided to households. The Department is interested in whether eliminating the distinction, or adjusting the 50 percent funding threshold would help streamline SNAP regulations, ensure consistency in serving households through categorical eligibility, and simplify administration. The Department will take these comments into consideration in determining whether and how to adjust these requirements in final rulemaking.

The Department would update the regulatory language at § 273.2(j)(2)(i)(B) and 273.2(j)(2)(ii) to reflect the proposed shift from conferring categorical eligibility based on TANF purposes to receipt of ongoing and substantial non-cash TANF benefits. In addition, the Department proposes to clarify the funding threshold. The regulatory language currently at § 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A) and 273.2(j)(2)(ii)(B) describe TANF-funded

programs that are "more than 50 percent" and "less than 50 percent" funded by Federal TANF or State MOE money. The Department proposes in this rulemaking to change references from "more than 50 percent" to "50 percent or more" so that it is clear into which category programs funded with 50 percent Federal TANF or State MOE money should fall. The Department also proposes conforming changes to § 273.8(e)(17) to align with the proposed definition of "ongoing and substantial" benefits and to strike paragraph references that would no longer be applicable given the changes this proposed rule would make to § 273.2(j)(2)(i)(B) and § 273.2(j)(2)(ii).

The proposed rule retains the policy regarding household categorical eligibility based on an individual household member's receipt of qualifying benefits currently at § 273.2(j)(2)(iii). Under this policy, if one member receives or is authorized to receive such benefits and the State determines the whole household benefits, the whole household would be categorically eligible. This policy allows a household to be categorically eligible for SNAP based on receipt of non-cash benefits that, while provided at the individual level, support overall family self-sufficiency. For example, a State may determine that a TANF-funded childcare voucher provided to a mother actually supports and benefits her and her two children; pursuant to such a determination, the entire household would be categorically eligible, thereby streamlining the family's process of applying for SNAP assistance. The Department proposes incorporating this policy into the revised § 273.2(j)(2)(i)(B) and § 273.2(j)(2)(ii) to consolidate the criteria for non-cash TANF benefit categorical eligibility.

#### **State Notification to FNS of Non-Cash Conferring Benefits**

For appropriate oversight purposes, the proposed § 273.2(j)(2)(i)(B) would also require State agencies to inform FNS of the non-cash TANF benefits that confer categorical eligibility. Current regulations require that State agencies inform FNS if they elect the option to confer categorical eligibility through a program that is less than 50 percent funded by Federal TANF or State MOE dollars, and that furthers purposes one and two of the TANF block grant. States are not currently required to inform FNS of conferring programs that are more than 50 percent funded and that further purposes one and two. Under the proposed rule, a State would be required to inform FNS of all non-cash TANF benefits that confer categorical

eligibility. The notification requirement would ensure appropriate monitoring and transparency, as well as help ensure consistency nationwide. States would be required to report when this rule takes effect and any time there is a subsequent change to the conferring programs. The Department expects the notification requirement would not unduly burden most State agencies because the TANF benefits that confer categorical eligibility do not frequently change.

### Procedural Matters

#### Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

#### Regulatory Impact Analysis

The Department estimates the net reduction in Federal spending associated with the proposed rule to be approximately \$9.386 billion over the five years 2019–2023. Included in this is an estimated reduction in Federal transfers of approximately \$10.543 billion over the five-year period as well as a \$1.157 billion increase in Federal administrative costs. The Department estimates an additional \$1.157 billion in Federal reimbursement of administrative costs to State agencies (for a total of \$2.314 billion in additional administrative costs). In addition, the Department estimates that households that remain eligible for SNAP and new SNAP applicants will face additional burden associated with the application process, at a cost of approximately \$5 million annually. The proposed rule may also negatively impact food security and reduce the savings rates among those individuals who do not meet the income and resource eligibility requirements for SNAP or the substantial and ongoing requirements for expanded categorical eligibility.

The Department estimates that approximately 9 percent of currently-participating SNAP households (an estimated 1.7 million households in FY 2020, containing 3.1 million individuals) will not otherwise meet SNAP's income and asset eligibility prerequisites under the proposed rule. These households are nearly evenly split between those that fail the Federal SNAP income test (4.9 percent) and those that fail the Federal resource test (4.1 percent). Collectively, these households receive about 5 percent of total SNAP benefits. However, households who would not meet the eligibility requirements due to the resource test account for 80 percent of the expected reduction in benefits. This is because they have lower incomes relative to households that fail the Federal income test, and thus receive larger monthly SNAP allotments.

Households with one or more elderly individual(s) and/or earned income would be disproportionately affected. Approximately 13.2 percent of all SNAP households with elderly members will lose benefits (7.4 percent will fail the income test and 5.8 percent will fail the resource test), as will 12.5 percent of households with earnings (8.6 percent will fail the income test and another 3.9 percent will fail the resource test). The proposed rule is relatively less likely to affect households with children—only 7.4 percent are expected to no longer meet eligibility requirements (4.1 percent will fail the income test and 3.4 percent will fail the resource test).

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This proposed rule would not have an impact on small entities because the proposed rule primarily impacts State agencies and SNAP participants. State agencies in affected States will need to revise their procedures for processing SNAP applications and recertifications and will face increased administrative costs associated with the revised procedures.

Small entities, such as smaller SNAP-authorized retailers, would not be subject to any new requirements. However, all retailers would likely see a drop in the amount of SNAP benefits redeemed at stores if these provisions were finalized, but impacts on small

retailers are not expected to be disproportionate to the impact on large entities. As of FY 2017, approximately 76 percent of authorized SNAP retailers (nearly 200,000 retailers) were small groceries, convenience stores, combination grocery stores, and specialty stores, store types that are likely to fall under the Small Business Administration gross sales threshold to qualify as a small business for Federal Government programs. While these stores make up most authorized retailers, collectively they redeem less than 15 percent of all SNAP benefits.

The proposed rule is expected to reduce SNAP benefit payments by about \$3 billion per year. This would equate to about a \$183 loss of revenue per small authorized retailer on average per month [(3 billion × 15%)/(200,000 stores/12 months)]. In 2017, the average small store redeemed about \$3,800 in SNAP each month; the potential loss of benefits represents less than 5 percent of their SNAP redemptions and only a small portion of their gross sales. Based on 2017 store data, a 4.8 percent reduction in SNAP redemptions represented between 0.01 and 0.95 percent of these stores' average gross sales.

#### Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This proposed rule is expected to be an Executive Order 13771 regulatory action. We estimate that it would impose \$415 million in annualized costs at a 7% discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is necessary, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost

effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains Federal mandates (under the regulatory provisions of Title II of the UMRA) that are expected to result in aggregate expenditures by State, local and tribal governments or the private sector of more per year. Thus, the rule is subject to the requirements of sections 202 and 205 of the UMRA.

The Regulatory Impact Analysis conducted by FNS in connection with this proposed rule includes a cost/benefit analysis and explains the alternatives considered to modify categorical eligibility regulations. Based on this analysis, the Department believes there are no alternatives to the proposal that would accomplish the stated objectives in a less burdensome manner. However, the Department invites comments regarding less burdensome approaches to achieving the stated objectives. Per the Food and Nutrition Act, the Federal government would pay 50 percent of allowable State administrative costs required under this proposed rule.

#### **Executive Order 12372**

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the **Federal Register** notice, published June 24, 1983 (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

#### **Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its

provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Before any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

#### **Civil Rights Impact Analysis**

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that there is a potential for civil rights impacts to result if the proposed action is implemented because more elderly individuals may not otherwise meet the SNAP eligibility requirements.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that this rule has tribal implications that require tribal consultation under E.O. 13175. FNS briefed Tribes on this rule at the February 14, 2019, listening session; Tribes were subsequently provided the opportunity for consultation on the issue, but the Department received no feedback. If a tribe requests consultation in the future, FNS will work with OTR to ensure meaningful consultation is provided.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it

displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule contains existing information collection requirements that are subject to review and approval by the Office of Management and Budget; therefore, the Department is submitting for public comment the changes in the information collection burden that would increase the OMB burden inventory as a result of adoption of the proposals in the rule. These existing requirements impact a current collection that has been used without a valid OMB control number or expiration date. The Department plans to bring these burden requirements into compliance, contingent upon OMB approval under the Paperwork Reduction Act of 1995. FNS plans to account for and maintain these burden hours under a new OMB control number assigned by OMB. Written comments on the information collection in this information must be received by September 23, 2019. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Requests for additional information or copies of this information collection should be directed to Program Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Dr., Alexandria, VA 22302. E-mail: Send comments to [SNAPPDBRules@usda.gov](mailto:SNAPPDBRules@usda.gov). For further information, or for copies of the information collection requirements, please contact the Program Design Branch at the address indicated above. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

*Title:* Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program.

*OMB Number:* 0584–NEW.

*Expiration Date:* [Not Yet Determined.]

*Type of Request:* New collection.

*Abstract:* Section 5(a) of the Food and Nutrition Act of 2008, as amended, (the Act), provides that households in which each member receives benefits under a State program funded under part A of Title IV of the Social Security Act (SSA) (also known as Temporary Assistance for Needy Families (TANF) block grants) shall be categorically eligible for SNAP. Originally, categorical eligibility was intended to reduce administrative burden for States and households, making the application process easier for households that qualified for benefits under means-tested programs similar to SNAP by removing the requirement that these households verify eligibility twice for two separate programs. However, TANF-funded programs provide States with considerable flexibility in program administration, resulting in programs that vary greatly from State to State.

Under current regulations, all States must confer categorical eligibility to households in which all members receive cash assistance from TANF, General Assistance (GA), or SSI. States have significant flexibility to determine what types of non-cash TANF-funded services and benefits can confer categorical eligibility for SNAP. Currently, 43 States have expanded categorical eligibility to households that receive non-cash TANF benefits and thirty-seven of these States currently have no resource test.

The proposed rule would provide a clearer and more consistent nationwide policy that limits categorical eligibility to households that qualify for TANF-funded programs designed to help move them towards self-sufficiency and ensure that receipt of nominal, one-time benefits or services does not confer categorical eligibility. Section 5(j) of the Act indicates that households who are considered to be categorically eligible are considered to have met the SNAP resource standards and therefore these households do not undergo another resource determination. The proposed restriction of categorical eligibility would reduce the number of households

who would be categorically eligible and, therefore, would require States to assess more households' income and resources to determine if they are eligible for SNAP benefits. Under current policies, it is estimated that 4.9% of SNAP households have resources above the SNAP limit and 4.1% have incomes above the Federal SNAP gross income limit of 130% FPL. However, the proposed rule has a greater impact on the need to verify resources since all households (both eligible and ineligible) that are not categorically eligible would be subject to the resource verification requirements, and as noted earlier, this rule would reduce the number of households who are categorically eligible.

As discussed further below, to date, FNS has been conducting the information collection and imposing burden for a limited set of States and SNAP applicant households regarding resource verification without OMB approval.

This is an existing collection in use without an OMB control number and FNS is seeking OMB approval. FNS is requesting a new OMB Control Number for these requirements in this proposed rule, Revision of Categorical Eligibility in SNAP. Because State agencies do not verify resources for applicants that are currently considered categorically eligible per 5(j) of the Act, they would be required to make changes to their application process to assess the resources of those households' that would no longer be categorically eligible. Out of 53 State agencies, 43 State agencies have adopted expanded categorical eligibility policies: Therefore, only 10 States are currently collecting resource information as part of the SNAP eligibility determination process. The ten (10) State agencies that have not taken the option to expand categorical eligibility will be unaffected by this proposed rule; these States are currently conducting the information collection and imposing burden for States and SNAP applicant households regarding resource verification without OMB approval.

There is no new recordkeeping burden required for this new information collection request. The recordkeeping burden for State agencies is currently covered under the approved information collection burden for application processing, OMB Control Number 0584–0064 (expiration date: 7/31/2020), which already accounts for the casefile documentation that States must maintain for each SNAP household at § 273.2(f)(6).

*Description of Costs and Assumptions:* This rule will narrow the

types of programs whose benefits may confer categorical eligibility. The proposed restriction of categorical eligibility would reduce the number of households who would be categorically eligible for SNAP and, therefore, would require States to assess more households' resources to determine if they are eligible for SNAP benefits; under the rule, all 53 State agencies (including the 10 States currently collecting this data without OMB approval) will now be required to collect resource information from more households. For example, States and households will need to contact financial institutions, Departments of Motor Vehicles and other entities to obtain documentation of household's resources.

*Reporting Burden Activities:*

Currently, all applicant households are required to meet the SNAP resource limits at § 273.8 (Resource eligibility standards); applicants who are categorically eligible are considered to have met the SNAP resource standards (Section 5(j) of the Food and Nutrition Act). Recent data<sup>19</sup> shows that 21.9% of SNAP households are pure public assistance households (*i.e.*, categorically eligible through receipt of SSI, cash TANF or GA); these households are considered to have met the SNAP income and resource requirements. Therefore, the household estimates in this burden narrative do not include the 21.9% of households who would remain categorically eligible through their pure public assistance status, and therefore not subject to any additional burden under this rulemaking. Under this rulemaking, fewer SNAP households will be categorically eligible through their receipt of non-cash TANF benefits and therefore considered to have met the resource standards. As fewer SNAP households will be categorically eligible, more households will therefore need to have their resources evaluated by SNAP eligibility workers to determine whether or not these households meet the SNAP resource standards. Resources are one of several elements of eligibility that are used to determine SNAP eligibility and are subject to verification if questionable (§ 273.2 (f)(2)). To come up with a reporting burden estimate of how much burden would be added to SNAP state agencies and households, FNS consulted with States to learn about current State practices around resource verification.

<sup>19</sup> Characteristics of SNAP Households, FY2017, Table B.12; <https://fns-prod.azureedge.net/sites/default/files/resource-files/Characteristics2017.pdf>.



### State Agency Burden Assessment Feedback

FNS first needed to estimate the amount of time that resource verification would take for State agencies. To do so, FNS consulted with eight States that currently do not have expanded categorical eligibility and, therefore, subject SNAP households to a resource test and asked these States to provide estimates of the amount of time that State agency staff spent verifying resources with clients at initial and recertification. FNS learned that four of these States verify resources when resources are close to the resource limit, two States only verify resources when questionable and two States verified resources at all times. FNS therefore estimates that, of the 43 States who, under this proposed rule, would now be required to conduct substantially more resource verification, 22 would adopt a policy to verify a household's resources if close to the resource limit (for the purposes of this discussion, "High Limit States"), 10 would verify resources only when deemed questionable ("Self-Attestation States") and 11 would verify resources for households at all times ("Always" States). The burden table column "Estimated Total Burden Hours" also accounts for the 10 States that are currently collecting resource information without OMB approval (5 "High Limit" States, 3 "Self-Attestation States" and 2 "Always" States; so that the total burden reflected in the table is for all 53 State agencies at both initial as well as recertification.

Using the estimates that each group of States provided for the amount of time needed to verify resources and averaging the responses, FNS estimates that State agency staff in States with a policy to verify resources if close to the limit or questionable would on average spend 12.3 minutes (0.205 hours) per case at initial certification and 7.4 minutes (0.123 hours) per case at recertification. FNS estimates that State agency staff in States who would adopt a policy to verify resources at all times would have a higher burden: 43.75 minutes (0.729 hours) per case at initial certification and 26.25 minutes (0.4375 hours) per case at recertification.

FNS then needed to estimate the percentage of a State's caseload that would be subject to these resource verification requirements in order to calculate the State agency burden. In the estimated 13 States where caseworkers would verify resources at all times, the entire caseload would be subject to verification. In "High Limit" and "Self-Attestation" States, only a certain percent of SNAP applicants would meet

the criteria (e.g. substantial resources or questionable information) that would necessitate the caseworker undertaking resource verification. Using caseload data on households' resource levels from a recent study to determine how many households would have resources close to the resource limit,<sup>20</sup> FNS estimates that States that verify resources near the limit (27) would have to verify about 27% of the time; FNS rounded up to 30% to take into account caseworker discretion to verify when questionable. For the States that verify only when questionable (13) FNS estimates that resources would be verified 10% of the time. Accordingly, in the burden tables the estimated number of households whose resources would be verified by a caseworker are adjusted to 30% of the caseload in the estimated 22 "High Limit" States and 10% of the caseload in the estimated 10 "Self-Attestation" States. The estimated number of households for the 13 "Always" States would be all SNAP applicant households in those States.

This rule would also require State agencies to inform FNS of the types of non-cash TANF benefits that confer categorical eligibility in their States. This specific reporting would be a new reporting requirement under this rule. FNS estimates that it would take one hour of a State agency staff person's time to prepare and send this information to FNS. As 10 States do not currently have non-cash TANF-funded programs that confer categorical eligibility and would not be required to report to FNS, FNS anticipates that only the current 43 States with non-cash programs would be required to report to FNS under the new rule. This additional burden is included in the burden tables below. The Department seeks additional comment on how long it would take States to gather, review and report this information.

#### Household Burden

The Department then had to estimate the burden hours for households to provide verification. FNS referenced the currently approved estimated number of applicants in OMB Control Number 0584-0064; Expiration Date: 7/31/2020 and updated these numbers to reflect the most recently available participation data (FY18) for SNAP initial applicants

<sup>20</sup> Ratcliffe, Caroline, Sara Armstrong, Emma Kalish, Signe-Mary McKernan, Christina Oberlin, Catherine Ruggles, and Laura Wheaton. 2016. "Asset Limits, SNAP Participation, and Financial Stability." Washington, DC. Prepared by the Urban Institute and Orlin Research for the U.S. Food and Nutrition Service. Available online: <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPAssets.pdf>.

and recertification applicant households.<sup>21</sup>

The Department finds it reasonable to use the estimates from OMB approved Information Collection 0054-0064 regarding household burden for providing verification and estimates that providing verification would take 4 minutes or .0668 hours per household at initial certification and 6 minutes or .1002 hours at recertification. Using the estimates above for the number of households in each State subject to verification requirements (100% in 11 States, 30% in 22 States and 10% in 10 States), we then calculated the total number of households that would have to participate in this annual burden. We have rounded these burden times in the chart below.

The Department is very interested in States comments on the requested information burden, as the vast majority of households in most States have been certified under expanded categorical eligibility, and therefore have not been subject to resource verification in recent years. All comments will be reviewed and considered in the rulemaking process. To date, The Department has been conducting the information collection and imposing burden for States and SNAP applicant households regarding resource verification without OMB approval; however, as discussed earlier, due to expanded categorical eligibility policies, few States are currently collecting resource information as part of the SNAP eligibility determination process. The Department has estimated the current reporting burden for the States without expanded categorical eligibility policies and provided these numbers in the chart.

The burden estimates we are using without OMB approval is for the current ten states without expanded categorical eligibility; the overall burden collected without OMB approval is 833,745.10 burden hours, this burden total includes 691,092.51 total annual burden hours and 1,747,515.79 total annual responses for State agencies and 142,652.58 total annual burden hours and 1,747,515.79 total annual responses for Individuals/Households (SNAP Participants). The overall estimated burden we are requesting for both the Individuals/Households and State agencies is 5,154,728.15 total annual burden hours and 20,602,334 total annual responses. The reporting burden details are provided below for State Agencies and SNAP applicant households. This

<sup>21</sup> National Data Bank data from FY2018, FNS 366-B, Total Initial Applications and Total Recertification Applications.

request associated with rulemaking reflects an increase of 3,622,736.20 total annual burden hours and 8,553,672.90 total annual responses for State agencies and 698,246.85 total annual burden hours and 8,553,629.901 total annual responses for Households (SNAP Participants).

*Estimated Number of Respondents:* 53 State Agencies.

*Estimated Frequency of Responses per Year:* 643,822.61.

*Estimated Total Annual Responses:* 10,301,188.69.

*Estimated Time per Response:* 0.418769993.

*Estimated Total Annual Burden Hours:* 4,313,828.72.

*Estimated Number of Respondents:* 10,301,146 (SNAP households).

*Estimated Frequency of Response per Year:* 1.

*Estimated Total Annual Responses:* 10,301,146.

*Estimated Time per Response:* 0.081631642.

*Estimated Total Annual Burden Hours:* 840,899.43.

ESTIMATED ANNUAL BURDEN FOR 0584-NEW, REVISION OF CATEGORICAL ELIGIBILITY IN THE SUPPLEMENTAL NUTRITION ASSISTANCE

Reg. section	Respondent type	Description of activity	Estimated number of respondents	Estimated frequency of response	Total annual responses	Number of burden hours per response	Estimated total burden hours	Previous burden in use without approval	Differences due to program changes	Difference due to adjustments	Hourly wage rate*	Estimated cost to respondents
<b>Affected Public: State Agencies</b>												
273.2(f)(1) & (2)	State Agency Eligibility Worker.	Verification of resources at initial application (States verifying all resources).	13	255,661.04	3,323,593.55	0.7292	2,423,564.42	372,856.06	0.00	2,050,708.95	\$21.45	\$51,985,456.79
273.2(f)(1) & (2)	State Agency Eligibility Worker.	Verification of resources at initial application (States verifying resources if questionable).	13	25,566.10	332,359.36	0.205	68,133.67	15,723.15	0.00	52,410.51	21.45	1,461,467.18
273.2(f)(1) & (2)	State Agency Eligibility Worker.	Verification of resources at initial application (States verifying resources if close to limit).	27	76,698.31	2,070,854.44	0.205	424,525.16	78,615.77	0.00	345,909.39	21.45	9,106,064.71
273.2(f)(8)(i) .....	State Agency Eligibility Worker.	Verification of resources at recertification (States verifying all resources).	13	204,211.53	2,654,749.93	0.4375	1,161,453.09	178,685.09	0.00	982,768.00	21.45	24,913,168.86
273.2(f)(8)(i) .....	State Agency Eligibility Worker.	Verification of resources at recertification (States verifying resources if questionable).	13	20,421.15	285,474.99	0.123	32,653.42	7,535.41	0.00	25,118.02	21.45	700,415.95
273.2(f)(8)(i) .....	State Agency Eligibility Worker.	Verification of resources at recertification (States verifying resources if close to limit).	27	61,263.46	1,654,113.42	0.123	203,455.95	37,677.03	0.00	165,778.92	21.45	4,364,130.13
273.2(f)(2)(i) & 273.2(f)(2)(i)(B).	State Agencies ..	Verify FNS of TANF programs that confer categorical eligibility.	43	1	43	1	43	0	43.00	0.00	19.47	837.21
Sub-Total State Agencies .....			53	643,822.61	10,301,188.69	0.41877	4,313,828.72	691,092.51	0.00	3,622,736.20	21.17	92,531,540.82

**Affected Public: Individual/Households**

273.2(f)(1) & (2)	Applicants for initial certification.	Verification of resources at initial application.	5,726,807	1	5,726,807	0.0668	382,550.73	64,897.00	317,653.73	0.00	7.25	2,773,492.80
273.2(f)(8)(i) .....	Applicants for recertification.	Verification of resources at recertification.	4,574,338	1	4,574,338	0.1002	459,348.70	77,755.58	380,593.12	0.00	7.25	3,323,028.09
Sub-Total Individual/Households .....			10,301,146	1	10,301,146	0.0816316	840,899.43	142,652.58	698,246.85	0.00	7.25	6,096,520.89
Grand Total Reporting Burden with both affected public .....			10,301,199	0	20,602,334	0.2502012	5,154,728.15	833,745.10	4,320,983.05	0.00	7.25	98,628,061.71

**Notes:** The column "Estimated number of respondents" for rows with the regulatory citation 273.2(f)(1) & (2) and 273.2(f)(8)(i) includes both the 10 State Agencies collecting this information without OMB approval and the 43 that would collect this information as a result of the rulemaking, for a total of 53 State agencies affected at application and recertification. Based on the Bureau of Labor Statistics May 2017 Occupational and Wage Statistics—the salaries of the eligibility workers are considered to be "Eligibility Interviewers, Government Programs" functions performed by State and local agency staff are valued at \$21.45 per staff hour 43-4061 (<http://www.bls.gov/oes/current/oes434061.htm>). Social and Human Service Assistants 21-1093 functions are valued at \$19.74 and the \$7.25 used to calculate a cost to applicants is the Federal minimum wage.

**E-Government Act Compliance**

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 7 CFR Part 273**

Administrative practices and procedure, Grant programs-social programs, Supplemental Security Income (SSI), Reporting and recordkeeping.

Accordingly, 7 CFR part 273 is proposed to be amended to read as follows:

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

■ 1. The authority citation for 7 CFR part 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 273.2:

- a. Revise paragraph (j)(2)(i)(A);
- b. Revise paragraph (j)(2)(i)(B);
- c. Remove and reserve paragraph (j)(2)(i)(C);
- d. Revise paragraph (j)(2)(ii) introductory text and remove (j)(2)(ii)(A) and (B);
- e. Remove and reserve paragraph (j)(2)(iii); and
- f. Amend paragraph (j)(2)(iv) by removing the phrase “paragraphs (j)(2)(i), (j)(2)(ii), and (j)(2)(iii)” and adding in its place “paragraphs (j)(2)(i) and (j)(2)(ii)”.

The revisions and additions read as follows:

**§ 273.2 Office operations and application processing**

\* \* \* \* \*

- (j) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive ongoing and substantial cash benefits through a PA program funded in full or in part with Federal money under Title IV–A or with State money counted for maintenance of effort (MOE) purposes under Title IV–A;

(1) For the purposes of this paragraph (j)(2)(i)(A), ongoing cash benefits are benefits that a household receives or is authorized to receive for at least six months.

(2) For the purposes of this paragraph (j)(2)(i)(A), substantial cash benefits are benefits that a household receives or is authorized to receive that are valued at

a minimum of \$50 per month or any minimum threshold determined by the Secretary of Health and Human Services for Title IV–A programs, whichever is higher.

(B) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive ongoing and substantial non-cash benefits, as specified in paragraphs (j)(2)(i)(B)(1) and (2) of this section, from a program that is funded with 50 percent or more State money counted for MOE purposes under Title IV–A of the Social Security Act (Pub. L. 74–271) or Federal money under Title IV–A of the Social Security Act. States must inform FNS of the types of non-cash TANF benefits that confer categorical eligibility under this paragraph. If one household member receives or is authorized to receive such benefits and the State determines the whole household benefits, the whole household shall be categorically eligible (except those listed in (j)(2)(vii) of this section).

(1) For the purposes of paragraphs (j)(2)(i)(B) and (j)(2)(ii) of this section, ongoing non-cash benefits are benefits a household receives or is authorized to receive for at least six months.

(2) For the purposes of paragraphs (j)(2)(i)(B) and (j)(2)(ii) of this section, substantial non-cash benefits are benefits that a household receives or is authorized to receive that are valued at a minimum of \$50 per month and that are of at least one of the following types: Subsidized employment for which the employer or a third party receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual; work supports, including transportation benefits or other allowances for work-related expenses; and/or child care subsidies or vouchers.

(C) [Reserved] \* \* \*

\* \* \* \* \*

(ii) The State agency, at its option, may extend categorical eligibility to any households (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive ongoing and substantial non-cash benefits, as specified in paragraphs (j)(2)(i)(B)(1) and (2) of this section, from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A of the Social Security Act (Pub. L. 74–271) or Federal money under Title IV–A of the Social Security Act. States must inform FNS of the types of non-cash TANF benefits that confer categorical eligibility under this paragraph. If one household member

receives or is authorized to receive such benefits and the State determines the whole household benefits, the whole household shall be categorically eligible (except those listed in (j)(2)(vii) of this section). The State agency may exercise this option only if doing so will further the purposes of the Food and Nutrition Act of 2008.

(iii) [Reserved]

\* \* \* \* \*

■ 3. In § 273.8, revise the third sentence of paragraph (e)(17).

The additions and revisions read as follows:

**§ 273.8 Resource Eligibility Standards**

\* \* \* \* \*

(e) \* \* \*  
 (17) \* \* \* For purposes of this paragraph (e)(17), if an individual receives ongoing and substantial non-cash benefits from a program specified in §§ 273.2(j)(2)(i)(B) or (j)(2)(ii), the State agency must determine whether the individual or the household benefits from the assistance provided. \* \* \*

\* \* \* \* \*

Dated: July 16, 2019.

**Brandon Lipps,**

*Acting Deputy Under Secretary Food, Nutrition, and Consumer Services.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–105476–18]**

**RIN 1545–BO60**

**Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in the Conduct of a U.S. Trade or Business; Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Proposed rule; notification of hearing.

**SUMMARY:** This document provides a notification of public hearing on proposed regulations to implement certain sections of the Internal Revenue Code, including sections added to the Internal Revenue Code by the Tax Cuts and Jobs Act, that relate to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in the conduct of a trade or business within the United States.

**DATES:** The public hearing is being held on Monday, August 26, 2019, at 10:00