



Institute for  
**Policy Integrity**  
NEW YORK UNIVERSITY SCHOOL OF LAW

September 23, 2019

**VIA ELECTRONIC SUBMISSION**

Department of Agriculture

**Attn:** Program Design Branch, Program Development Division, Food and Nutrition Service

**Re:** Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program, 84 Fed. Reg. 35,570 (proposed July 24, 2019)

**Docket ID:** FNS-2018-0037

The Institute for Policy Integrity at New York University School of Law<sup>1</sup> (“Policy Integrity”) respectfully submits the following comments to the Department of Agriculture (“USDA” or the “Department”) regarding proposed revisions to eligibility for the Supplemental Nutrition Assistance Program, or “SNAP” (“Proposed Rule”).<sup>2</sup> Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decision-making through scholarship in the fields of administrative law, economics, and public policy.

Our comments focus on serious flaws in the Regulatory Impact Analysis (“RIA”) that accompanies the Proposed Rule.<sup>3</sup> Specifically, we note that the Department fails to:

- identify any significant social benefits that would result from the Proposed Rule, or conclude that the rule’s social benefits justify its social costs;
- monetize the negative economic consequences of reduced food security and savings rates among individuals who no longer qualify for assistance under the Proposed Rule; and
- account for numerous additional costs to the U.S. economy, including potential declines in several metrics—such as public health, academic performance, employment, and gross domestic product—that the federal government has previously recognized as benefits of SNAP assistance, along with a reduction in eligibility for free school meals.

**Comments on the Regulatory Impact Analysis for the Proposed Rule**

Executive Order 12,866 requires agencies to assess the costs and benefits of any economically significant regulatory action, including, but not limited to, the action’s expected effects on “the

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<sup>1</sup> This document does not purport to present New York University School of Law’s views, if any.

<sup>2</sup> Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program, 84 Fed. Reg. 35,570 (proposed July 24, 2019).

<sup>3</sup> USDA, Regulatory Impact Analysis: Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program, Proposed Rule, Docket No. FNS-2018-0037 (2019) [hereinafter RIA].

efficient functioning of the economy and private markets,” “health,” and “safety.”<sup>4</sup> The agency should “propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs,” and after considering “all costs and benefits of available regulatory alternatives, including the alternative of not regulating.”<sup>5</sup>

This cost-benefit assessment must be based “on the best reasonably obtainable scientific, technical, economic, and other information,” and effects should be quantified “to the extent feasible.”<sup>6</sup> Longstanding guidance on regulatory analysis from the Office of Management and Budget similarly advises that “[s]ound quantitative estimates of benefits and costs, where feasible, are preferable to qualitative descriptions.”<sup>7</sup> Because some effects are “too difficult to quantify or monetize given current data and methods,” however, agencies must also “carry out a careful evaluation of non-quantified benefits and costs.”<sup>8</sup>

Separate from the requirements of Executive Order 12,866, courts have held that “when an agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable.”<sup>9</sup> The Department’s cost-benefit analysis for the Proposed Rule “inconsistently and opportunistically frame[s]” the rule’s economic impacts and “fail[s] adequately to quantify the certain costs or to explain why those costs could not be quantified.”<sup>10</sup> The Department therefore does not “adequately . . . assess the economic effects” of the Proposed Rule, and finalizing the Proposed Rule in reliance on this flawed cost-benefit analysis would be arbitrary and capricious.<sup>11</sup>

## **I. The Department Does Not Identify Any Significant Social Benefits of the Proposed Rule or Conclude that the Proposal Is Economically Justified**

The Department hardly discusses any alleged benefits of the Proposed Rule in the RIA, stating only that the rule is “intended to simplify regulations for States, minimize variation across States in the eligibility determination process, and ensure both program integrity and program access.”<sup>12</sup> Even assuming that these “intended” impacts can properly be considered benefits,<sup>13</sup> the Department does not seem to consider them significant, as it does not discuss them in any detail, attempt to monetize them (or explain why they cannot be monetized), or determine that

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<sup>4</sup> Exec. Order No. 12,866 § 6(a)(3)(C), 58 Fed. Reg. 51,735 (Oct. 4, 1993). The Department has concluded that the Proposed Rule is an economically significant regulatory action for the purposes of Executive Order 12,866. 84 Fed. Reg. at 35,575.

<sup>5</sup> Exec. Order No. 12,866 §§ 1(a), (b)(6),

<sup>6</sup> Exec. Order No. 12,866 §§ 1(b)(7), 6(a)(3)(C).

<sup>7</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT OMB CIRCULAR A-4, REGULATORY ANALYSIS 26 (2003) [hereinafter CIRCULAR A-4].

<sup>8</sup> *Id.* at 26–27.

<sup>9</sup> *Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012); *see also Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (Administrative Procedure Act requires agency to “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made” (internal quotation marks omitted)).

<sup>10</sup> *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011).

<sup>11</sup> *Id.* at 1148.

<sup>12</sup> RIA, *supra* note 3, at 6.

<sup>13</sup> Several of these alleged benefits are highly suspect. For instance, the Department alleges that the Proposed Rule would “simplify regulations for States,” but finds that the rule would actually *increase* state administrative costs. *See id.* The Department also fails to specify how the Proposed Rule would “ensure . . . program access” when it would in fact result in a *decrease* in SNAP participation by an estimated 3.1 million individuals. *Compare id. with id.* at 15.

these benefits justify even the small portion of the Proposed Rule’s costs that the Department recognizes in the RIA.<sup>14</sup>

Instead, the Department appears to justify the rule by estimating “the net reduction in Federal spending associated with the proposed rule to be approximately \$9.386 billion over the five years 2019-2023.”<sup>15</sup> This includes an “estimated reduction in Federal transfers of approximately \$10.543 billion over the five-year period” due to the fact that approximately 3.1 million individuals who currently receive SNAP benefits would no longer be eligible.<sup>16</sup> While the Department formally recognizes this impact as a transfer, it gives it far more detailed consideration than the Proposed Rule’s alleged benefits and appears to invoke it as a major justification for the rule.<sup>17</sup>

Insofar as the Department considers this reduction in federal spending to be a social benefit of the Proposed Rule, it ignores longstanding principles of regulatory cost-benefit analysis distinguishing between benefits and transfers.<sup>18</sup> The purpose of a regulatory cost-benefit analysis is to determine whether a proposed policy will maximize welfare for society as a whole; regulatory “benefits” are therefore the consequences of a regulation that increase overall societal welfare.<sup>19</sup> “Transfer payments,” in contrast, are “monetary payments from one group to another that do not affect total resources available to society,”<sup>20</sup> a classic example being a “[p]ayment by the Federal government for goods or services provided by the private sector.”<sup>21</sup>

Applying these principles to the Proposed Rule, it is evident that the projected reduction in federal spending is simply a transfer from individuals who would have received SNAP funds absent the Proposed Rule to the federal government, which would have provided those funds. In accordance with fundamental cost-benefit principles and longstanding practice, therefore, the Department “should not include [them] in the estimates of the benefits and costs” of the Proposed Rule.<sup>22</sup> If the Department ignores this guidance and considers savings to the federal government as a benefit of the Proposed Rule, then it must also consider shortfalls to SNAP beneficiaries as a cost of the rule, thus cancelling out this so-called benefit.

While transfer payments (and reductions thereof) are not themselves properly viewed as regulatory costs or benefits, they can nevertheless generate costs or benefits by incentivizing

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<sup>14</sup> See generally *id.* at 3–35 (discussing Proposed Rule’s costs and benefits).

<sup>15</sup> 84 Fed. Reg. at 35,575.

<sup>16</sup> *Id.*

<sup>17</sup> See, e.g., RIA, *supra* note 3, at 1 (stating that the Proposed Rule would “ensur[e] that SNAP benefits are targeted to the appropriate households”).

<sup>18</sup> See, e.g., CIRCULAR A-4, *supra* note 7, at 38 (“Benefit and cost estimates should reflect real resource use. Transfer payments are monetary payments from one group to another that do not affect total resources available to society.”).

<sup>19</sup> See *id.* at 2 (describing significance of cost-benefit analysis to “provide[] decision makers with a clear indication of the most efficient alternative, that is, the alternative that generates the largest net benefits to society (ignoring distributional effects)).”)

<sup>20</sup> *Id.* at 38.

<sup>21</sup> OFFICE OF INFO. AND REGULATORY AFFAIRS, REGULATORY IMPACT ANALYSIS: A PRIMER 8 (2011), available at [http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4\\_regulatory-impact-analysis-a-primer.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf) [hereinafter Regulatory Impact Analysis Primer].

<sup>22</sup> CIRCULAR A-4, *supra* note 7, at 38 (instructing agencies to instead “address [transfer payments] in a separate discussion of the regulation’s distributional effects”).

behavioral changes that consequently affect the availability and use of real resources.<sup>23</sup> What the Department must address in its cost-benefit analysis, then, is whether projected reductions in benefit payments will have positive consequences for the larger economy. Without completing such an analysis, the Department cannot conclude that the Proposed Rule has any significant benefits.

Given that the Department has not identified any significant social benefits of the Proposed Rule (nor, as detailed below, sufficiently analyzed its social costs), it is hardly surprising that the agency was unable to conclude that the social benefits of the Proposed Rule outweigh its social costs.<sup>24</sup> But Executive Order 12,866 instructs agencies to “propose or adopt a regulation *only* upon a reasoned determination that the benefits of the intended regulation justify its costs.”<sup>25</sup> Finalizing the Proposed Rule in the absence of such a determination would be both a violation of Executive Order 12,866 and arbitrary and capricious under the Administrative Procedure Act.<sup>26</sup>

## II. The Department Does Not Adequately Assess the Proposed Rule’s Social Costs

### A. USDA Should Monetize the Proposed Rule’s Negative Impacts on Food Security and Savings Rates Among SNAP Beneficiaries

While the Department cursorily recognizes that the Proposed Rule “may . . . negatively impact food security and reduce the savings rates” among individuals who lose SNAP benefits, it neither quantifies nor qualitatively discusses these possibly substantial harms.<sup>27</sup> It therefore contravenes longstanding and widely accepted principles of cost-benefit analysis. Rather than merely acknowledging the possibility that the Proposed Rule may affect food security (i.e., the disruption of food intake due to a lack of means to purchase food) and savings among SNAP beneficiaries, the Department should use “the best reasonably obtainable scientific, technical, and economic information available” to assess the likely extent of these harms.<sup>28</sup>

Executive Order 12,866 explains that an assessment of a rule’s costs should include “any adverse effects on . . . health, safety, and the environment” that the rule may cause.<sup>29</sup> An agency should attempt to “quantif[y] and express[] in monetary units” all costs and benefits, as this “provides decision makers with a clear indication of the most efficient alternative.”<sup>30</sup> But even when it is “not . . . possible to express in monetary units all of the important benefits and costs” of a rule,

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<sup>23</sup> Cf., e.g., Daniel Hemel et al., *Cost-Benefit Analysis of Tax Regulations: A Case Study*, MEDIUM (July 27, 2018), available at <https://medium.com/whatever-source-derived/cost-benefit-analysis-of-tax-regulations-a-case-study-with-jennifer-nou-and-david-weisbach-f74ea211a5ef>.

<sup>24</sup> See 84 Fed. Reg. at 35,575–76; see also RIA, *supra* note 3, at 3–35 (discussing Proposed Rule’s costs and benefits).

<sup>25</sup> Exec. Order No. 12,866 § 1(b)(6) (emphasis added); accord CIRCULAR A-4, *supra* note 7, at 2 (stating that regulatory analysis is used to “learn if the benefits of an action are likely to justify the costs”).

<sup>26</sup> See, e.g., *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015) (“No regulation is ‘appropriate’ if it does significantly more harm than good.”).

<sup>27</sup> 84 Fed. Reg. at 35,575.

<sup>28</sup> CIRCULAR A-4, *supra* note 7, at 17.

<sup>29</sup> Exec. Order No. 12,866 § 6(a)(3)(C)(ii). Courts have repeatedly struck down rules that fail to consider potentially significant indirect costs. See, e.g., *Competitive Enter. Inst. v. Nat’l Highway Traffic Safety Admin.*, 956 F.2d 321, 326–27 (D.C. Cir. 1992); *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1225 (5th Cir. 1991); see also *Mingo Logan Coal Co. v. EPA*, 829 F.3d 710, 732 (D.C. Cir. 2016) (Kavanaugh, J., dissenting) (“As a general rule, the costs of an agency’s action are a relevant factor that the agency must consider before deciding whether to act.”).

<sup>30</sup> CIRCULAR A-4, *supra* note 7, at 2.

the agency must still perform a sufficient analysis to “determin[e] how important the non-quantified benefits or costs may be in the context of the overall analysis.”<sup>31</sup>

Despite its passing recognition that the Proposed Rule could exacerbate food insecurity and reduce savings rates among low-income individuals, the Department makes no attempt to quantify or monetize these costs or determine their importance. In fact, the Department does not even take the initial step towards evaluating the significance of these costs by determining, for instance, how many individuals are likely to be affected or the severity of this impact among the affected population. If the Department were to finalize the Proposed Rule, its reliance on such a clearly deficient cost-benefit analysis would render the resulting rule arbitrary and capricious.

The Department’s failure to monetize or otherwise quantify the impacts of the Proposed Rule is especially egregious in the case of the rule’s impacts on food security, since the federal government has previously credited recent academic research providing “strong evidence that SNAP is effective at reducing food insecurity below what it otherwise would be” and quantifying the significance of this impact.<sup>32</sup> One study that the government highlighted, for instance, concluded that SNAP participation reduced food insecurity by 17 percent among beneficiaries who had recently begun receiving benefits.<sup>33</sup> Another study recognized by the government found “even larger impacts on children’s food security in low-income households with children, showing that food insecurity among children fell by roughly 33 percent after their families had been receiving benefits for about six months.”<sup>34</sup>

In addition to studying the impacts of SNAP on food security generally, academic studies that the federal government has recently highlighted have also quantitatively assessed the impact on food security of historical changes in SNAP benefits and eligibility, similarly finding a robust connection between SNAP benefits and reductions in food insecurity.<sup>35</sup> One such study, for instance, found that a 2009 increase to the maximum SNAP benefit amount resulted in “about an 8 percent reduction in food insecurity for SNAP-eligible low-income households—equivalent to pulling about 530,000 households out of food insecurity.”<sup>36</sup>

The Department attempts to minimize the well-documented link between SNAP participation and food security by stating, without any supporting research or analysis, that it “believes the indirect effect on participants in the food supply chain will be minimal because of the likelihood that those who no longer qualify for SNAP benefits due to their income and/or assets will substitute other dollars for food purchases.”<sup>37</sup> But the Department cannot avoid analyzing the

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<sup>31</sup> *Id.*

<sup>32</sup> Exec. Off. of the President of the United States, *Long-Term Benefits of the Supplemental Nutrition Assistance Program* 16 (2015), available at [https://obamawhitehouse.archives.gov/sites/obamawhitehouse.archives.gov/files/documents/SNAP\\_report\\_final\\_nombargo.pdf](https://obamawhitehouse.archives.gov/sites/obamawhitehouse.archives.gov/files/documents/SNAP_report_final_nombargo.pdf) [hereinafter “Executive Office Report”].

<sup>33</sup> *Id.* at 17 (citing James Mabli & Jim Ohls, *Supplemental Nutrition Assistance Program is Associated with an Increase in Household Food Security in a National Evaluation*, 145 JOURNAL OF NUTRITION 344 (2015)).

<sup>34</sup> *Id.* (citing James Mabli & Julie Worthington, *Supplemental Nutrition Assistance Program Participation and Child Food Security*, 133 PEDIATRICS 1 (2014) (concluding, based on a rigorous quantitative analysis, that “SNAP serves a vital role in improving the health and well-being of low-income children by increasing food security”).

<sup>35</sup> *Id.* at 18–19.

<sup>36</sup> *Id.* at 18 (citing Mark Nord & Mark Prell, *Food Security Improved Following the 2009 ARRA Increase in SNAP Benefits*, USDA Econ. Research Report No. 116 (2011), available at [https://www.ers.usda.gov/webdocs/publications/44837/7469\\_err116.pdf?v=0](https://www.ers.usda.gov/webdocs/publications/44837/7469_err116.pdf?v=0) [hereinafter Nord & Prell (2009)]).

<sup>37</sup> RIA, *supra* note 3, at 6.

issue altogether through unstudied and unsupported speculation. Particularly given that the Department’s own research has found that many households whose incomes are too high to qualify for SNAP still struggle with food insecurity,<sup>38</sup> its wholly “conclusory [and] unsupported supposition[.]” that the Proposed Rule’s limitations on SNAP eligibility would have a marginal impact on food security are unreasonable and cannot be used to support the rule.<sup>39</sup>

### **B. The Department Entirely Ignores Several Other Categories of Costs that the Proposed Rule Will Likely Impose on SNAP Beneficiaries**

In addition to failing to quantify or qualitatively discuss the social costs that it does acknowledge, the RIA also neglects to even mention several social costs of the Proposed Rule, including potential declines in public health, academic performance, employment, and gross domestic product, along with a reduction in eligibility for free school meals. The federal government has previously recognized improvements in these metrics as benefits of SNAP assistance, and by reducing SNAP participation, the Proposed Rule can be expected to forgo some of those improvements. Yet the RIA does not account for these foregone gains. Without any assessment of these potentially substantial costs, the Department’s cost-benefit analysis is incomplete. The Department must therefore reconsider its analysis of the Proposed Rule’s costs to account for these salient impacts of SNAP assistance.

Executive Order 12,866 instructs agencies “deciding whether and how to regulate” to “assess *all* costs and benefits of available regulatory alternatives.”<sup>40</sup> As part of this analysis, agencies are expected to “[i]dentify the expected undesirable side-effects and ancillary benefits of the proposed regulatory action”—in addition to the rule’s “direct benefits and costs”—and using this information “should be able to assess quantitatively the benefits and costs of the proposed rule.”<sup>41</sup>

The Department fails to do that here. Specifically, while the government has previously recognized a “growing body of high-quality research show[ing]” that the social benefits of SNAP “extend beyond the immediate goal of alleviating hunger and include improvements in short-run health and academic performance as well as in long-run health, educational attainment, and economic self-sufficiency,”<sup>42</sup> the RIA does not analyze the Proposed Rule’s impact on any of these metrics, and arbitrarily ignores the voluminous data documenting the relationship between SNAP and these valuable social goods.

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<sup>38</sup> Nord & Prell (2009), *supra* note 36, at 25 (showing roughly 10 percent of households with incomes at 150-250% of the poverty line to be food insecure).

<sup>39</sup> *United Techs. Corp. v. Dep’t of Def.*, 601 F.3d 557, 562 (D.C. Cir. 2010) (“[W]e do not defer to the agency’s conclusory or unsupported suppositions.”) (internal quotations marks omitted); *accord BNSF Ry. Co. v. Surface Transp. Bd.*, 526 F.3d 770, 781 (D.C. Cir. 2008) (Kavanaugh, J.) (agency’s “predictive judgments” entitled to deference only when they are “reasonable”).

<sup>40</sup> Exec. Order 12,866 §1(a) (emphasis added); *accord* Circular A-4, *supra* note 7, at 2 (noting that agencies conducting cost-benefit analysis must seek to quantify “*all* benefits and costs,” and even when this is impossible, the agency should evaluate the significance of “*all* of the important benefits and costs” (emphasis added)).

<sup>41</sup> Circular A-4, *supra* note 7, at 3; *see also* Regulatory Impact Analysis Primer, *supra* note 21, at 7 (“In addition to the direct benefits and costs of each alternative, the [analysis] should include any important ancillary benefits and countervailing risks.”).

<sup>42</sup> Executive Office Report, *supra* note 32, at 3.

As it continues to evaluate the Proposed Rule, the Department must consider—and monetize (or explain why it cannot monetize) the cost of—the proposal’s impact on the following<sup>43</sup>:

**Public Health:** The federal government has previously recognized that “a number of studies generally find that SNAP . . . help[s] to improve nutrition” among its beneficiaries, including “higher household nutrient availability[,] . . . better nutrient intake among preschoolers . . . , and healthier diets overall.”<sup>44</sup> Additionally, by “free[ing] up money that a household would otherwise have spent on food,” SNAP benefits can also improve health outcomes by “increas[ing] expenditures on health and preventative medical care.”<sup>45</sup> There is rigorous and extensive research cataloging the causal connection between SNAP benefits and improved health; one study, in fact, concludes that “the benefits of food assistance for children begin even before birth,” as “a mother’s access to [SNAP assistance] during pregnancy led to increased birth weight and may have reduced neonatal mortality.”<sup>46</sup>

Despite the availability of such extensive research documenting the positive impact of SNAP assistance on public health, the Department fails to even mention the likely effect of the Proposed Rule—which would reduce SNAP enrollment by a projected 3.1 million individuals—on health outcomes, much less monetize or otherwise quantify that impact. The Department must evaluate the impact of the Proposed Rule on public health, with a particular focus on how reducing SNAP enrollment by 3.1 million individuals would affect health costs and outcomes. Certain published studies are particularly suitable for this task: One study, for instance, found that SNAP participation lowers annual healthcare expenditures by an average of \$1,409 per beneficiary.<sup>47</sup>

**Academic Performance:** The federal government has also recognized that SNAP benefits, in addition to improving health outcomes and mitigating food scarcity generally, are especially significant for ensuring “good nutrition in the first few years of life.”<sup>48</sup> This improves “the architecture of the brain and central nervous system in a variety of ways,” and is thus associated with numerous early-life benefits including better academic performance.<sup>49</sup> Indeed, research has catalogued the impact of reducing childhood food insecurity on improving academic performance, finding that “food insecurity in kindergarten has been linked to lower test scores even in later years.”<sup>50</sup> This, in turn, is associated with “a host of long-run benefits that could follow from these shortrun outcomes—including reductions in high school dropouts and criminal behavior . . . as well as increases in earnings, college attendance, home ownership, and

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<sup>43</sup> We do not provide an exhaustive list of indirect costs of the Proposed Rule that the Department fails to consider. As the Department continues to review the Proposed Rule, it should evaluate all other potential costs and benefits and assess them appropriately.

<sup>44</sup> Executive Office Report, *supra* note 32, at 19 (collecting sources).

<sup>45</sup> *See id.* at 23 (collecting sources).

<sup>46</sup> *Id.* at 25 (citing Douglas Almond et al., *Inside the War on Poverty: The Impact of Food Stamps on Birth Outcomes*, 93 REVIEW OF ECONOMICS AND STATISTICS 387 (2011)).

<sup>47</sup> Seth A. Berkowitz et al., *Impact of Food Insecurity and SNAP Participation on Healthcare Utilization and Expenditures*, University of Kentucky Center for Poverty Research Discussion Paper Series (2017), available at [https://uknowledge.uky.edu/ukcpr\\_papers/103/](https://uknowledge.uky.edu/ukcpr_papers/103/).

<sup>48</sup> Executive Office Report, *supra* note 32, at 28.

<sup>49</sup> *See id.*

<sup>50</sup> *Id.* at 25 (citing Diana F. Jyoti et al., *Food Insecurity Affects School Children’s Academic Performance, Weight Gain, and Social Skills*, 135 JOURNAL OF NUTRITION 2831 (2005)).

retirement savings.”<sup>51</sup> Given this available research, the Department must assess the Proposed Rule’s likely cost on children’s health and academic performance.

***Employment and Economic Growth:*** In addition to promoting social welfare by benefitting recipients directly, SNAP benefits have also been shown to improve national employment and gross domestic product, creating widespread benefits for the U.S. economy, which the Department fails to recognize or attempt to monetize in the Proposed Rule. The Department’s own research has found that SNAP improves a weak national economy, with an additional \$1 billion in SNAP benefits during an economic slowdown increasing gross domestic product by \$1.54 billion and supporting more than 13,500 jobs.<sup>52</sup> And just two months before publishing the Proposed Rule, the Department published a report finding that one job is created per roughly \$25,000 of additional SNAP redemptions in non-metro counties.<sup>53</sup> Despite previously publishing this research identifying the causal connection between SNAP assistance and economic growth, the Department fails to mention the Proposed Rule’s likely impact on employment and the national economy. As it continues to consider the Proposed Rule, the Department must quantitatively assess—including monetizing—this impact.

### **C. The Department Entirely Ignores the Costs that the Proposed Rule Will Likely Impose on Recipients of Free School Meals, Despite Recognizing this Impact in Meetings With Public Officials**

Children who live in households that receive SNAP assistance are automatically eligible to receive free school meals, so by substantially reducing SNAP participation, the Proposed Rule will likely cause many individuals to lose school meal eligibility. Indeed, the Department has reportedly recognized in meetings with government officials that more than 500,000 children will lose automatic eligibility for free school meals.<sup>54</sup> Yet it makes no mention of this impact in the RIA, despite its apparent awareness and quantification of the effect.

The social costs of limiting eligibility for free student meals are likely substantial. The Department itself has previously recognized that free student meals are “uniquely positioned to . . . increase food security among vulnerable children.”<sup>55</sup> Academic research corroborates this assessment, finding school meal participation to be associated with improved food security<sup>56</sup> and better children’s nutrition and health.<sup>57</sup>

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<sup>51</sup> *Id.* at 28 (collecting sources).

<sup>52</sup> Patrick Canning & Rosanna Mentzer Morrison, *Quantifying the Impact of SNAP Benefits on the U.S. Economy and Jobs*, USDA Econ. Research Service, available at <https://www.ers.usda.gov/amber-waves/2019/july/quantifying-the-impact-of-snap-benefits-on-the-us-economy-and-jobs/>.

<sup>53</sup> John Pender et al., *The Impacts of Supplemental Nutrition Assistance Program Redemptions on County-Level Employment*, USDA Econ. Research Service Report No. 263, available at [ers.usda.gov/webdocs/publications/93169/err-263.pdf?v=1509.3](https://ers.usda.gov/webdocs/publications/93169/err-263.pdf?v=1509.3).

<sup>54</sup> See Robert C. “Bobby” Scott, *Letter to U.S. Secretary of Agriculture Sonny Perdue* (June 26, 2019), available at <https://www.documentcloud.org/documents/6219685-Scott-Letter-to-Perdue-on-Food-Stamps.html>.

<sup>55</sup> National School Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010, 81 Fed. Reg. 50,194, 50,197 (July 29, 2016).

<sup>56</sup> See, e.g., Judith S. Bartfeld & Hong-Min Ahn, *The School Breakfast Program Strengthens Household Food Security Among Low-Income Households with Elementary School Children*, 141 JOURNAL OF NUTRITION 470 (2011) (finding that school breakfast decreases incidence of food insecurity by over 30% among some groups).

<sup>57</sup> See, e.g., Philip M. Gleason & Allison H. Dodd, *School Breakfast Program but Not School Lunch Program Participation Is Associated with Lower Body Mass Index*, 109 JOURNAL OF THE AMERICAN DIETETIC ASSOCIATION S118 (2009) (school breakfast participation associated with significantly lower body mass index); Melissa A. Clark



Using the available research, the Department must evaluate and attempt to monetize the Proposed Rule's social costs attributable to decreases in school meal participation. Should it fail to assess this or the other significant indirect costs of the Proposed Rule, any resulting rule would be arbitrary and capricious.<sup>58</sup>

Respectfully,

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& Mary Kay Fox, *Nutritional Quality of the Diets of U.S. Public School Children and the Role of the School Meal Programs*, 109 JOURNAL OF THE AMERICAN DIETETIC ASSOCIATION S44 (2009) (school meal participants are less likely to have nutrient inadequacies and more likely to consume fruits and vegetables).

<sup>58</sup> See *supra* note 29 for cases vacating rules after the agency failed to consider potentially significant indirect costs.