

November 20, 2023

SNAP Quality Control Branch  
Program Accountability and Administration Division  
Food and Nutrition Service  
1320 Braddock Place  
Alexandria, Virginia 22314

Re: Notice of Proposed Rule Making Regarding Supplemental Nutrition Assistance Program (SNAP) quality control (QC) system – RIN 0584-AE79

Dear SNAP Quality Control Branch:

The Center for Law and Social Policy (CLASP) submits these comments to express our concerns about the U.S. Department of Agriculture's (USDA) proposed rule regarding the Food and Nutrition Service's (FNS) Supplemental Nutrition Assistance Program (SNAP) Quality Control (QC) system.<sup>1</sup> Our comments focus on the problem that the payment error rate fails to capture improper denials, and therefore creates asymmetrical incentives for states. The proposed rules would entrench a biased QC system for measuring improper SNAP payments that significantly understates the magnitude of underpayments, while establishing more sophisticated measures for overpayments. USDA's proposed rule will continue to produce increasingly skewed payment error rates, leading legislators, rule makers, and states to heavily under-focus on the problem of eligible households being improperly denied SNAP benefits and instead pay disproportionate attention to overpayments. Further, this rule undermines SNAP's crucial role as a fiscal stabilizer (as per USDA's own study<sup>2</sup>) at times of high unemployment and low economic growth..

The Center for Law and Social Policy (CLASP) is a national, nonpartisan nonprofit advancing anti-poverty policy solutions that disrupt structural and systemic racism and sexism and remove barriers blocking people from economic security and opportunity.. We work at both federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. CLASP works to develop and implement federal, state, and local policies (in legislation, regulation, and on the ground) that reduce poverty, improve low-income people's lives, and create pathways to economic security for everyone. That includes directly addressing the barriers people face because of race, ethnicity, and immigration status. Through high-quality analysis grounded in data and on-the-ground experience, effective advocacy, a strong public voice, and hands-on technical assistance, CLASP develops and promotes new ideas, mobilizes others, and provides guidance to government leaders and advocates to help them implement strategies that deliver meaningful results to people across America. CLASP works to amplify the voices of directly impacted workers and families and help public officials design and implement effective programs.

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<sup>1</sup> [Federal Register, "Provisions to Improve the Supplemental Nutrition Assistance Program's Quality Control System," Food and Nutrition Service, U.S. Department of Agriculture](#), September 19, 2023

<sup>2</sup> ["Supplemental Nutrition Assistance Program \(SNAP\) Linkages with the General Economy," USDA](#), November 9, 2021,

These comments draw on CLASP’s deep experience with SNAP, and the role it plays in the lives of people with low incomes, including families with children, young adults, people of color, seniors, students, and people with disabilities, as well as our knowledge of other benefit programs. We strongly urge USDA to modify this proposed rule.

### *Background*

A key objective of the SNAP QC system is to accurately collect and report data about how frequently SNAP benefits are issued erroneously, and USDA’s primary measure to do so is the “payment error rate”.<sup>3</sup> Reducing the payment error rate is a matter of central importance within SNAP program operations. SNAP has established a highly sophisticated QC system to track payment error rates and has assigned a substantial number of personnel (federal and state) to monitor eligibility determinations and program integrity. Further, the payment error rate is used as the central measure of performance for SNAP offices and individual staff. Significantly, states are subject to fiscal penalties if their error rates exceed certain thresholds.<sup>4</sup>

The payment error rate combines “overpayment” and “underpayment” rates.<sup>5</sup> The overpayment rate measures the percentage of SNAP benefit dollars issued to ineligible households or to eligible households in excess of what the program rules allocate to them. However, the underpayment rate only measures the percentage by which eligible, *currently participating* households receive lesser benefits than what the program rules direct.<sup>6</sup> Therefore, while the overpayment rate includes benefits issued to participants who were improperly found eligible, the underpayment rate neither includes benefits withheld from applicants who were improperly found ineligible, nor benefits withheld from participants whose eligibility was improperly terminated. In other words, the payment error rate does not treat any instance of eligible households being improperly denied their entire SNAP entitlement (and allotted \$0) as an “underpayment”, but counts all instances of ineligible households being issued any benefits as overpayments. This leads to a serious discounting of the underpayment problem within the payment error rate.

### *Payment error rate v. CAPER*

Instead of including all underpayments within the payment error rate, USDA uses a wholly separate measure, the “Case And Procedural Error Rate” (CAPER), to measure the percentage of improper SNAP eligibility denials and terminations.<sup>7</sup> CAPER, however, is a far less rigorous and emphasized measure.<sup>8</sup> For example, USDA does not assess the amount of benefits that improperly denied households should have received – in other words, how much (in dollars) they were effectively “underpaid” by. USDA also includes the incidence of procedural errors within the CAPER measure, such as improper notice of benefits termination, which further muddies the measure. The U.S. Government Accountability Office’s (GAO) last study on the strength of SNAP QC measures completely failed to address the CAPER

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<sup>3</sup> U.S. Department of Agriculture, Food and Nutrition Service, SNAP Quality Control, <https://www.fns.usda.gov/snap/quality-control>

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> [Federal Register, “Provisions to Improve the Supplemental Nutrition Assistance Program’s Quality Control System,” Food and Nutrition Service, U.S. Department of Agriculture](#), September 19, 2023

<sup>7</sup> *Id.*

<sup>8</sup> Center on Budget and Policy Priorities, [SNAP Includes an Extensive Payment Accuracy System](#), June 28, 2023

measure, instead focusing solely on the rigor of payment error rates.<sup>9</sup> In terms of emphasis, CAPER is not used as a key performance measure for states, SNAP offices or staff. Further, states do not face penalties for high CAPERs like they do for high payment error rates. Consequently, states and USDA heavily under-focus on the problem of households being improperly found ineligible or having benefits terminated improperly, while being extremely reactive to payment error rates (which, in effect, means being extremely reactive to overpayments alone).

The result of this asymmetric focus is staggering both in terms of the data and its policy consequences. Compare the following numbers from USDA's SNAP QC report for 2022. The national payment error rate was 11.54%, with the overpayment rate at 9.84% and the underpayment rate only at 1.70%.<sup>10</sup> So, the payment error rate reflected that, on average, households that received lesser benefits than they were entitled to, received 1.70% less than their full entitlement. This statistic suggests to most people that underpayments are not a serious problem. However, the national CAPER average was an astonishing 44.12%.<sup>11</sup> That is, 44% of actions, across the nation, to deny or terminate SNAP benefits were found to be improper. Twenty-one states' CAPERs were either close to or in excess of 50%. Clearly, the payment error rate and CAPER tell very different stories – and USDA, states, and the public are primarily paying attention to only one of them.

### *Suggested modifications*

USDA's proposed rule represents a major overhaul of the methodology for calculating payment error rates. It changes the underlying sampling strategy for quality control and increases the number of households sampled by 30% in the hope of measuring the SNAP payment error rate more accurately. However, the rule leaves the definition of an "underpayment" untouched, therefore continuing to exclude underpayments due to improper ineligibility findings and terminations. We strongly urge the following modifications:

- 1) Modify the definition of "underpayment". We urge USDA to include all underpayments in the payment error rate. This would be an important statement that improper denials of benefits are just as much a program integrity issue as improper issuance of benefits. The U.S. Department of Labor recently issued guidance to Unemployment Insurance program administrators ([UIPL 01-24](#)) that explicitly states that improper denials are a program integrity issue, and notes the danger that "biased enforcement methods or criteria" may cause states to focus their energies on the the wrong problems. USDA should make this definition change to remove bias from this key measure.
- 2) Even if this definitional modification to the payment error rate cannot be made, We urge USDA to measure and release dollar quantities for all improper denials, terminations and suspensions currently captured by CAPERs. This will provide crucial data to contextualize the extent of the underpayment problem even if it is not directly reflected in the payment error rate.
- 3) Finally, USDA's proposed rule moves the requisite threshold from an objective percentage increase of 1 percent or more to "above the national average CAPER". Given the appallingly high national average CAPER rate, this substantially weakens the threshold for states to adopt corrective action plans in response to high CAPERs and comes in the face of already weak

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<sup>9</sup> U.S. Government Accountability Office, "SNAP: Policy Changes and Calculation Methods Likely Affect Improper Payment Rates, and USDA is Taking Steps to Help Address Recipient Fraud," July 6, 2016, <https://www.gao.gov/products/gao-16-708t>

<sup>10</sup> U.S. Department of Agriculture, [Supplemental Nutrition Assistance Program: Quality Control Annual Report FY 2022](#)

<sup>11</sup> U.S. Department of Agriculture, [Supplemental Nutrition Assistance Program: Case And Procedural Error Rates \(CAPER\) FY 2022](#)

structural incentives to respond to high CAPERs. We strongly urge USDA to move back to an objective percentage threshold. Even a higher amount, in the range of 2 to 5%, would maintain a greater onus to respond to high CAPERs than the national average based threshold would.

SNAP is an entitlement program and eligible households have a vested legal right to SNAP benefits. USDA's QC system must reflect that fact. As a key accountability measure, the payment error rate must reflect **all** dollars that are improperly denied to SNAP-eligible households applying for much needed nutrition assistance. This proposed rule, without our suggested modifications, would fail to accomplish that.

To make things worse, this rule would further compound the disproportionate attention that overpayments get by solely making the measure for overpayments more sensitive. Increased detection of overpayments without measuring the full extent of underpayments will not only lead to more misguided legislative focus on recipient fraud and benefits restrictions through work requirements, but also put immense downward pressure on state agencies to be more selective in issuing SNAP benefits. This, in turn and in a vicious cycle, will compound the bigger and under-focused problem: eligible applicants in dire need of assistance being improperly denied. Fixing the measurement of the payment error rate is, therefore, key to ensuring that all eligible households receive the assistance they are entitled to.

The QC system's priorities also have macro-economic implications. USDA's Economic Research Service has found that SNAP has stabilizing effects on the economy due to the program's adaptive, counter-cyclical nature (SNAP automatically provides assistance to more low-income households during economic downturns and to fewer households during expansions).<sup>12</sup> USDA has also found that SNAP acts as a particularly effective form of fiscal stimulus during downturns by supplementing lowered household spending during downturns and augmenting the incomes and spending of many others, ranging from farmers to retailers to food distributors.<sup>13</sup> However, all these positive effects are contingent on the effective issuance of SNAP benefits to eligible households in the first place – something the current QC system does not help ensure. Therefore, our ability to depend on SNAP for these macro-economic benefits also turns on whether the QC system facilitates a correction of improper SNAP eligibility denials/terminations.

Thank you for the opportunity to comment on the proposed regulations. If you have any questions about these comments or seek further information, please contact Sriram Sridharan ([rsridharan@clasp.org](mailto:rsridharan@clasp.org)) or Parker Gilkesson ([pgilkesson@clasp.org](mailto:pgilkesson@clasp.org)).

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<sup>12</sup> U.S. Department of Agriculture, "[Supplemental Nutrition Assistance Program \(SNAP\) Linkages with the General Economy](#)," November 9, 2021

<sup>13</sup> *Id.*