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Opportunity Solutions Project (OSP) strongly supports the U.S. Department of Agriculture's (USDA) efforts to reestablish clear standards for food stamp eligibility and end the abuses of the broad-based categorical eligibility (BBCE) loophole.¹ Although some individuals have expressed concern about the alleged impact of this action on the school lunch program, the reality is that closing the BBCE loophole will have a minimal impact on the number of school-aged kids who qualify for free and reduced-price lunches, affecting only those families who do not meet statutory eligibility requirements established by Congress.

Introduction

The current BBCE loophole does not reflect statutory requirements, nor does it do what its proponents promise. Instead, BBCE completely distorts food stamp's eligibility requirements. In practice, BBCE permits states to expand food stamp eligibility to individuals—including millionaires—who do not meet federal income or resource standards.² States do this by deeming information provided through welfare brochures or toll-free numbers TANF "benefits," making anyone "authorized to receive" such information categorically eligible for food stamps.³ As a result, millions of individuals are currently enrolled in food stamps despite not meeting federal eligibility criteria.⁴

The proposed rule will begin to close this loophole, though there remains room for USDA to improve the rule to better protect program integrity and more closely align categorical eligibility to its statutory purpose.⁵ Nevertheless, opponents of stopping this abuse have falsely asserted that the proposed rule would force millions of children out of the school lunch program. Nothing could be further from the truth.

Closing the BBCE loophole will have little impact on the number of children who qualify for school lunch benefits

Despite concerns to the contrary, closing the BBCE loophole will have no meaningful impact on the school lunch program. Nothing in the proposed rule changes the eligibility standards used in the school lunch program at all. In fact, the school lunch program is only tangentially connected to food stamp eligibility.

Children have two routes to eligibility for school lunch benefits. They are eligible for the school lunch program based on income if their household incomes are below 185 percent of the federal poverty level (FPL), or if their households receive other welfare benefits, like food stamps.

Virtually no children receiving food stamps today would become ineligible for the school lunch program by the proposed rule. In fact, in 34 states, not a single child would lose access to the school lunch program. In the remaining states, only those few families who never met program eligibility rules in the first place would be affected.

More than 99.9 percent of school-aged children on food stamps would continue to qualify for the school lunch program

Because the school lunch program has an income eligibility pathway, children from households with income below the program's statutory eligibility thresholds—currently set at 185 percent FPL—would continue to qualify for free and reduced-price lunches.⁶⁻⁷ Those with household incomes below 130 percent FPL would continue to qualify for free lunches, while those with household incomes between 130 percent and 185 percent FPL would qualify for reduced-price lunches.⁸ In 34 states, not a single child would lose eligibility for the school lunch program, because those states have food stamp income eligibility thresholds at or below 185 percent FPL—the same level used by the school lunch program. Only those children in families that never met the school lunch program's income guidelines in the first place would no longer qualify.

In an analysis released in October 2019, USDA concluded that at most 40,000 school-aged children who could be affected by closing the BBCE loophole would no longer remain eligible for free or reduced-price lunches.⁹ But even this estimate likely overstates the rule change's potential indirect impact, as USDA's analysis did not account for children who would remain categorically eligible under the new proposed rule.¹⁰

In fiscal year 2017, roughly 12.4 million school-aged children received food stamps.¹¹ More than 2.2 million of those children lived in households with seniors or individuals with disabilities, which are not subject to a gross income limit and therefore will not be materially affected by the proposed rule change.¹² Another 900,000 children live in households that are categorically eligible for food stamps through traditional cash welfare programs.¹³ Of the remaining 9.3 million school-aged children on food stamps, just 9,600 had income above 185 percent FPL but below their state's BBCE thresholds.¹⁴

This means that more than 99.9 percent of school-age children on food stamps would continue to meet the school lunch program's eligibility guidelines.

Nearly 96.9 percent of school-aged children on food stamps would continue to qualify for free lunches

When USDA closes the BBCE loophole, some children currently receiving free lunches under the school lunch program are likely to shift to reduced-price lunches, based on federal eligibility criteria set by Congress. These children would still qualify for the school lunch program and their meals would be capped by federal law at no more than 40 cents.¹⁵

Of the 12.4 million school-aged children on food stamps in fiscal year 2017, just 391,000 who could be affected by the proposed rule had income above 130 percent FPL but below their state's BBCE thresholds.¹⁶ Nearly 382,000 of those children would still qualify for reduced-price lunches.¹⁷

This means that more than 96.9 percent of school-aged children on food stamps would continue to meet the school lunch program's eligibility guidelines for free lunches, with another 3.1 percent qualifying for reduced price lunches.

The Community Eligibility Provision could reduce the indirect impact even further

Some schools participating in the school lunch program utilize the Community Eligibility Provision, a special rule that allows schools to provide free lunches to all students, regardless of whether they meet program eligibility criteria.¹⁸ In schools utilizing this option, no children would lose eligibility for the school lunch program by closing the BBCE loophole, even if their income far exceeded the program's statutory eligibility rules. The vast majority of students enrolled in schools utilizing these options live in states that have expanded food stamp income eligibility through BBCE.¹⁹ This provision would even further reduce the minimal impact closing the BBCE loophole would have on the school lunch program.

Children who may no longer qualify come from families that never truly qualified in the first place

As explained, virtually all children enrolled in food stamps today will continue to qualify for the school lunch program and the vast majority of them will continue to receive free lunches. The outliers—the less than 0.1 percent of children who may no longer qualify for benefits—live in the handful of states that have raised food stamp eligibility under BBCE to 200 percent FPL. Because federal law sets an income threshold of 185 percent FPL for the school lunch program, these children were never truly eligible for the program in the first place.

In practice, the BBCE loophole expanded the school lunch program beyond federal guidelines or congressional intent. These households never truly met the income limits needed to qualify for *either* program.

Conclusion

The case for eliminating the BBCE loophole is clear. The explanation for the minimal indirect impact this change has on school lunches is also clear. Most school-aged kids who live in households that qualify for food stamps will continue to receive free and reduced-price lunches. The tiny fraction of school-aged children who could become ineligible for the school lunch program would no longer qualify because their families' income exceeds the statutory thresholds set by Congress and were never truly eligible in the first place.

Closing the BBCE loophole will bring both the school lunch and food stamp programs back into alignment with their statutory foundations and preserve resources for the truly needy. USDA should not reconsider its decision to close the BBCE loophole on the basis that a small number of ineligible households currently participating in the school lunch program despite not meeting federal income guidelines may cycle out of the program. If Congress wishes to expand eligibility for the school lunch program, it must do so by changing the law. USDA

should not continue jeopardizing program integrity and ignoring statutory requirements just to protect a regulatory loophole that indirectly and inappropriately expanded eligibility.

USDA should continue its work in closing the BBCE loophole to protect program integrity and preserve resources for the truly needy.

References

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who were living in households designated as categorically eligible through pure cash public assistance.

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