



CLOSING THE DOOR TO FOOD STAMP FRAUD

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Introduction

Chairman Krishnamoorthi, Ranking Member Cloud, and members of the subcommittee, thank you for the privilege of testifying. I am Sam Adolphsen, the policy director at the Foundation for Government Accountability (FGA). FGA is a non-partisan research organization dedicated to helping millions of individuals achieve the American Dream.

Before joining FGA, I served as the chief operating officer of the Maine Department of Health and Human Services. In that role, I oversaw operations for Maine's welfare programs, including direct oversight of the food stamp eligibility and policy office.

I saw firsthand the damage that innocuous-sounding policies like "broad-based categorical eligibility" (BBCE) could have on the integrity of the welfare system. BBCE did not provide Maine with flexibility. Instead, it provided us with a loophole to put thousands of people on food stamps who did not meet federal eligibility rules—including individuals who had thousands of dollars in the bank and who owned private planes. Worse yet, BBCE opened a gateway for fraud by closing down any chance for our caseworkers to even look at bank statements or other information that would have led to more accurate case determinations.

Welfare programs like the food stamp program should be reserved for the truly needy—not people with large sums of cash in the bank or new recreational vehicles in the garage. I am proud of our work to restore asset tests in Maine and encouraged to see President Trump close this loophole for good.

Congress set eligibility rules in statute

In establishing the food stamp program, Congress set out eligibility rules in statute. The food stamp statute sets out eligibility standards for both income and countable assets.¹⁻³ The asset limit typically applies only to liquid assets, like cash in the bank, recreational vehicles, or other available assets, and excludes assets like home equity, pension and retirement accounts, as well as several other classes of assets.⁴⁻⁵ All states also exclude at least one vehicle from the asset limit, with most states excluding all vehicles.⁶

These standards were not set frivolously but were meant to safeguard scarce resources for those individuals who truly needed assistance to provide for their families. The standards were also designed to screen out those unscrupulous individuals who may try to scam the system. Unfortunately, states have exploited the BBCE loophole to bypass these eligibility standards and enroll millions of individuals who do not meet federal eligibility criteria into the program.⁷ Bypassing these standards opens wide the door to fraud and abuse of the food stamp program.

In addition to eliminating the asset test, the BBCE loophole dramatically expands the income someone can have and still be eligible for the program. Under BBCE, states can allow individuals with incomes up to 200 percent FPL to enroll in the program.⁸ For a family of four, that is near the median household income nationally and is higher than the median household income in several states.⁹

Categorical eligibility was never intended to expand eligibility

Although states have used BBCE to bypass eligibility checks and expand eligibility, this was never the intent of categorical eligibility. Categorical eligibility was created to prevent administrative duplication for applicants who were already enrolled in other welfare programs and undoubtedly met food stamp eligibility criteria as defined in federal law.¹⁰⁻¹² When the Clinton administration first authorized BBCE, it noted that the statutory purpose of categorical eligibility was to “deem eligibility for food stamp families *already* subjected to an income and resource test” under Temporary Assistance for Needy Families (TANF), which had more restrictive eligibility rules than food stamps.¹³

The BBCE loophole was created by regulatory decree

Although traditional categorical eligibility was created by statute, the BBCE loophole was created through regulatory guidance. In 1999, the U.S. Department of Agriculture (USDA) issued guidance that allowed states to expand categorical eligibility beyond traditional cash welfare.¹⁴⁻¹⁶ At the time, the Clinton administration determined that such a policy would violate the statutory intent of categorical eligibility, but it nevertheless allowed states to deem individuals as categorically eligible if they received anything they wished to classify as a “benefit” funded by TANF.¹⁷

In order to exploit this loophole, states began spending TANF funding to print welfare brochures, operate toll-free information lines, or add information about TANF to the bottom of food stamp applications.¹⁸⁻²⁰ States then claimed that individuals receiving this information were somehow receiving TANF “benefits.”²¹ Worse yet, federal rules now allow states to grant such eligibility to those who never even receive such “benefits,” so long as they are deemed “authorized to receive” the information.²²⁻²³

The BBCE loophole added millions of ineligible enrollees to the program

While only a handful of states initially used this option, the Obama administration spent eight years urging states to expand eligibility through these loopholes.²⁴⁻²⁸ By 2011, 41 states were exploiting the loophole.²⁹ As a result, the vast majority of states now ignore federal eligibility criteria for nearly all food stamp applicants.³⁰ In states that have adopted BBCE, nearly 98 percent of households enrolled in the program are deemed categorically eligible.³¹

BBCE has resulted in millions of individuals enrolling in food stamps despite not meeting federal eligibility criteria.³² In 2015, for example, an estimated four million food stamp enrollees had countable assets beyond those allowed by federal law, while more than one million had incomes higher than the federal threshold.³³

The BBCE loophole has stretched the program far beyond its initial purpose. Most BBCE-eligible individuals with assets above the federal asset limit have more than \$20,000 in countable assets.³⁴ More than a third of these individuals have countable assets worth at least \$50,000, while more than one in five have \$100,000 or more.³⁵ The widespread misapplication of federal law has even allowed millionaires to qualify for the program.³⁶

The BBCE loophole expanded welfare fraud

States exploiting the BBCE loophole have made the food stamp program far more vulnerable to waste, fraud, and abuse. Caseworkers have reported that BBCE can increase fraudulent applications and benefits by reducing verification requirements.³⁷ Worse yet, BBCE has led to the loss of vital anti-fraud tools, including access to bank account information to check for unreported income.³⁸ Unfortunately, the extent of this fraud is unknown, as the Obama administration issued guidance in 2011 specifically exempting BBCE enrollees from the full quality control review process.³⁹ What little information that does exist suggests it is a significant problem: the Government Accountability Office concluded that individuals with income above the federal eligibility criteria who were made eligible through BBCE were nearly three times as likely to have payment errors as those with income below the federal standard.⁴⁰

This may be in large part because checking and verifying the asset holdings of the household leads to a clearer picture of who resides in the household applying for food stamps. Household composition, who resides in a household, is a critical component of food stamp eligibility. Assets like bank accounts or vehicle registrations often contain the names of all heads of households and can help the state agency make an accurate determination of household composition and total earned income of the household. With the asset test, and any checking of assets, waived under BBCE, this valuable tool is no longer utilized for verifying the accuracy of reported income, making it much easier for fraud to slip through the cracks.

The proposed rule would begin to crack down on the worst BBCE abuses

In 2019, USDA proposed a new regulation to close the loophole and prevent the worst BBCE abuses. To be clear, the proposed changes to BBCE do not end automatic categorical eligibility for those truly receiving TANF benefits. Under the proposed rule, states would continue to be able to deem individuals categorically eligible for food stamps if they are receiving ongoing and substantial TANF benefits that are clearly related to TANF's core purposes. But states would no longer be able to consider welfare brochures or phone numbers as TANF "benefits" for purposes of conferring categorical eligibility. This would bring categorical eligibility back in line with statutory requirements and return the program to its original Congressional intent.

Congress never authorized the BBCE loophole

The BBCE loophole has no statutory basis. In fact, USDA has maintained for more than 20 years that the loophole violates the statutory intent of categorical eligibility, which initially applied only to cash welfare.⁴¹ In the years since, Congress has never codified this policy.

In 2015, the Office of Inspector General warned USDA that its BBCE policies were unlawful.⁴² In 2017, USDA proposed eliminating the BBCE loophole as part of the fiscal year 2018 budget.⁴³ In early 2018, USDA announced its intention of addressing this abuse through rulemaking.⁴⁴ In short, USDA has provided ample notice that it would address this loophole. After receiving this notice, Congress chose not to codify the loophole into statute in the 2018 Farm Bill. Instead, Congress left the statute as-is for categorical eligibility purposes, leaving in place USDA's

authorization to correct regulatory defects and restore categorical eligibility to its statutory purpose.

Millions of individuals are unlawfully receiving food stamps under BBCE. If Congress wishes to expand eligibility to individuals with no regard for the liquid assets they own, there is already a path to do so: pass a bill through both chambers of Congress and have it signed by the President.

Closing the BBCE loophole would reduce administrative costs

The purpose of categorical eligibility is to reduce administrative duplication for cases where individuals are clearly eligible for food stamps, as they have already met income and asset requirements of comparable or more restrictive programs. However, because the BBCE loophole expands eligibility to a significant new class of otherwise ineligible individuals, it has not reduced administrative costs at all. In my experience overseeing Maine's food stamp eligibility division, the number one driver of increased administrative effort and resource need was caseload increase, and BBCE drove up caseload dramatically when implemented across the country.

States using BBCE have higher administrative costs than states with traditional eligibility standards.⁴⁵ Additionally, the vast majority of states expanding or adopting BBCE policies between 2006 and 2015 saw overall administration and certification costs *increase* after expanding or adopting the loophole.⁴⁶ An analysis of USDA data reveals that closing the BBCE loophole would reduce administrative costs by hundreds of millions of dollars.⁴⁷⁻⁴⁸

Closing the BBCE loophole will have virtually no impact on the school lunch program

Closing the BBCE loophole will have no meaningful effect on the school lunch program. Under federal law, children are eligible for free school lunch benefits if their income is below 130 percent FPL.⁴⁹ Children with income between 130 percent and 185 percent FPL are eligible for reduced-price lunch, which caps their out-of-pocket costs at 40 cents per meal.⁵⁰ The proposed rule makes no changes to these eligibility standards, which were set by Congress.

To ease administrative duplication, USDA also authorized direct certification for the school lunch program based on enrollment in the food stamp program, as both shared an eligibility threshold of 130 percent FPL. Under this pathway, children receiving food stamps can be directly certified for the school lunch program without application.⁵¹ The food stamp program is just one of many programs conferring direct certification.⁵²

As households who never met federal eligibility criteria cycle off the food stamp program, some children may move from direct certification to application status. However, this does not mean that these individuals would lose access to the school lunch program.

Of the 30 million children who participate in the school lunch program annually, just 8.2 million are directly certified based upon food stamp participation.⁵³⁻⁵⁴ Virtually all of those children would remain eligible for the program based on their household incomes.⁵⁵⁻⁵⁶

In fiscal year 2017, for example, 12.4 million school-aged children were enrolled in the food stamp program.⁵⁷ Just 9,600 of these children lived in households with income above the statutory guidelines for the school lunch program.⁵⁸ Altogether, more than 99.9 percent of school-aged children on food stamps would continue to qualify for the school lunch program.⁵⁹ In 34 states, not a single child would lose access to the school lunch program, while only those who never met program eligibility criteria would be affected in the remaining states.⁶⁰ Nearly 97 percent of these children would continue to qualify for free lunches, while the remainder would be eligible for reduced-price lunches based on statutory eligibility rules.⁶¹

Even this minimal impact is likely overstated. For example, more than 5 million school-aged children on food stamps receive free lunches through the Community Eligibility Provision, which allows schools to provide free meals to all students, regardless of income.⁶²⁻⁶³ Because their eligibility is not assessed on an individual basis, these children would continue to receive free lunches despite not meeting federal income eligibility rules.

Trump administration food stamp rules will help move people from welfare to work

The Trump administration should be applauded for the rules they have put forward that close loopholes and government gimmicks that have inflated the food stamp rolls and opened the door to fraud. The robust economy developed under the Trump administration is well suited to transition these adults and their families from welfare to work, from dependence on government to self-sufficiency and independence. With a near-record number of open jobs, there are good jobs available for millions.

Opposition to these proposed rules centers on the supposed administrative burden for government employees or perceived barriers to accessing government benefits. But it is the role of government to properly administer the programs as Congress intended and these rules realign the food stamp program with those statutory guidelines. They also protect the program from fraud, preserving resources for the truly needy. Finally, they ensure that those who can work, or who have resources available to them, are not lingering on a government-funded welfare program, but instead are participating in the booming economy and helping fill one of the millions of open jobs.

Instead of focusing on finding more ways to keep children and families on welfare, these opposition groups should follow the administration's lead and focus on policies that help lift people out of welfare. Programs like food stamps and free meals may temporarily mitigate hunger; they don't solve the problem long term. These children deserve more than just a free meal—they deserve to be free from government dependency once and for all and to be part of a family moving up the economic ladder in pursuit of the American dream.

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