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SNAP “Program Integrity”

How Racialized Fraud Provisions Criminalize Hunger

CLASP
The Center for Law and Social Policy

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March 2022

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Special Thank You to: Elizabeth Lower-Basch, David Super, Tyler Offerman, Vicky Negus, Jessi Russell, Rachel Cahill, Saima Akhtar, Ty Cox, Jimmieka Mills, Bridget Owens, and the Southeast Public Benefits Technical Assistance Group (SEPBTAG)

I. Introduction

Health care, food, secure housing, and a livable wage are basic human needs. And seeking the help you need to succeed is a statement of human dignity and justice. However, coded language, dog-whistling, and racist stereotypes have reinforced the lie that folks receiving public benefits are exaggerating how poor they really are and that they are likely committing fraud. People experiencing poverty, particularly people of color, have routinely been profiled and policed, leading to higher rates of arrests and fines due to minor offenses.¹ Over-policing and criminalization of people experiencing poverty and hunger also shows up in public benefit programs, including the Supplemental Nutrition Assistance Program (SNAP).

At a minimum, those who receive public benefits are forced to endure intrusive questioning, public scrutiny of food choices, and even surprise visits to their homes. However, charges of fraud can lead to disqualification from public benefits and even jail time. This brief will explore the damage of criminalizing hunger through charging SNAP recipients with Intentional Program Violations (IPVs). The report concludes with a list of equitable, anti-racist solutions that shift the focus from fraud and program integrity to dismantling systemic, historical, and structural inequities that exacerbate hunger, while at the same time trusting SNAP recipients to know what’s best for their families.

Of course, no program can survive if it does not take abuses seriously. However, when actions taken in the name of improving program integrity have a strong negative and racially skewed impact on public perceptions of the program, policymakers have a moral obligation to first determine whether those actions achieve their stated goals and then look for less harmful ways to fight fraud. They also must repair the harm these actions have inflicted on innocent recipients’ dignity and trust in government.²

Historically, anti-hunger advocates have been afraid to criticize the negative consequences of the focus on “program integrity” and its disproportionate impact on people of color for fear of being accused of defending fraud or legitimizing racist tropes. The reality is that we must properly discuss and address fraud, program integrity, and the over-policing of people experiencing poverty or “aporophobia”³ to achieve policies that reflect equity, trust, and truth instead of mistrust, mistreatment, and systemic oppression.

II. SNAP Fraud is Rare, but Garners Disproportionate Attention

SNAP fraud is quite rare. Political and media discussions frequently lump all forms of SNAP errors or violations as “fraud,” but this is inaccurate and misleading. The SNAP error rate calculated by the Food and Nutrition Service (FNS), the federal agency within the U.S. Department of Agriculture that administers SNAP, includes both **overpayments**, which is when people receive more SNAP benefits than they should have received, and **underpayments**, which is when people receive less than they should have received.

Overpayments may be caused by agency errors, unintentional mistakes by recipients, or intentional reporting of false information by recipients. Only the last of these—which is the least

common—can be considered fraud. In FY 2019, only 0.1 percent of SNAP issuances were overpayments based on IPVs—just a dime for every \$100 of SNAP benefits. And just 0.9 percent were overpayments of any sort, including household and agency errors.⁴ According to testimony before the U.S. House Committee on Oversight and Government Reform, “the overwhelming majority of SNAP errors that do occur result from mistakes by recipients, eligibility workers, data entry clerks, or computer programmers, not dishonesty or fraud by recipients.”

Beyond attempts to receive benefits improperly, IPVs also include the misuse of benefits, whether properly or improperly issued.⁵ This could include:

- Using SNAP benefits to purchase non-allowable items, such as hot meals or personal hygiene items,
- Allowing people outside the household to use them, or
- Selling them for cash.

According to the Congressional Research Service (CRS) and the most recent SNAP State Activity Report, occurrences of fraud are also low.⁶ Only 1.5 percent of redeemed SNAP benefits were sold for cash or exchanged illegally.⁷

However, stories about benefits fraud receive disproportionate attention in the media and are often dramatized, similar to what happened in the 1980s with the “welfare queen” trope used to denigrate recipients of public benefits. Although anomalies, these sensationalized stories can transform into permanent policies. For example, a new rule to penalize SNAP recipients for dumping beverages and claiming the payment for returning the bottles for deposit was enacted in response to this headline: “Bangor woman records couple dumping water in food stamp scam.”⁸ Media coverage affects not only policy decisions, but also the public’s perception of public benefits recipients. These harmful stereotypes about poverty can also lead to unfair treatment from eligibility workers and others who work in close proximity to people with low incomes, which compounds recipients’ feelings of shame and stigma about seeking public benefits. Stigma is an oppressive barrier to accessing SNAP and other public benefits. As Johnnie Tillmon, a prominent activist in the welfare rights movement, noted in 1972, “we’ve been trained to believe that the only reason people are on welfare is because there’s something wrong with their character.”

People with low incomes are well aware of how the public perceives them. Individuals struggling to feed their families face difficult choices. Do they apply for public benefits and subject themselves to mistreatment, over-policing, shame, and the possibility of being labeled an unfit parent, a leech, fraud, or welfare queen? Or do they continue struggling to make ends meet without getting assistance?

According to David A. Super, a Georgetown law professor, the cultural bias that public benefits fraud is widespread undermines the goals of SNAP by increasing stigma, which in turn discourages eligible people from seeking assistance and reduces public confidence in the program.⁹

A. SNAP eligibility process focuses on preventing fraud

The SNAP program has rigorous application and eligibility review processes. While justified as the first line of defense against fraud, these processes can also present barriers to applicants and

prove burdensome to the workers processing applications. The most notable example of this is the interview that’s required as part of the application and renewal process. This is a labor-intensive process that is burdensome for both agency workers and recipients. The typical process begins with states mailing recipients a letter assigning them an interview time, and then workers attempting to call them at that time. Clients report that they frequently don’t receive these letters at all or may get them after the scheduled interview time. Others report rescheduling work shifts in order to wait for a call that does not come. The interview requirement frequently delays approval and causes many recipients to “churn” off of SNAP at renewal, even though they remain eligible. Procedural denials of eligible recipients based on barriers and red tape, instead of eligibility limits, costs states more money and makes it difficult to maneuver the renewal process.¹⁰ Many states are experimenting with approaches such as using text messages to alert clients of upcoming interviews or “on-demand” interview scheduling, but state administrators have given little consideration to whether an annual interview itself is actually needed. However, during the COVID-19 pandemic, states were allowed to request waivers of the interview requirement.

In another example, many states don’t yet have the technology to allow clients to submit photos of documents necessary for eligibility. Therefore, customers are required to submit their documents in person, which causes some people to take public transportation, wait in long lines, or mail them in—risking their documents being lost—to ensure their eligibility.

Despite the rarity of fraud, federal and state legislators prioritize fraud prevention with millions of dollars in grants and targeted funding for “program integrity.”¹¹ Fraud protections are generally robust. Yet eligibility workers are often better trained to look for fraud than they are to provide trauma-informed care¹² or to refer families to other necessary assistance based on the many challenges of living in poverty. Case workers are more likely to be penalized or threatened with losing their jobs for accidentally approving recipients for more benefits than they are eligible for than they are for denying people benefits that they are eligible for. Legislators and administrators too often send the simple message that they want more disqualifications for IPVs without explicitly specifying that those disqualifications should be obtained in ways that ensure that only guilty people are caught. In so doing, these policymakers and administrators further perpetuate a pervasive culture in state agencies inviting abuses that terrorize and harm innocent people in need. Many of these practices date back to Reagan-era federal policies that penalized states for overpayments and improper awards—but not for underpayments or improper denials—creating a huge incentive for states to err on the side of cutting people off SNAP benefits.¹³

B. Fraud hotlines are dog whistles that have no value in combating fraud

All states and the federal government have SNAP fraud hotlines—some using billboards and bus signs to ask people to report suspected fraud. But the public’s perception of what constitutes fraud is often different from the legal definition and can be deeply biased. In practice the overwhelming majority of reports are of purchases of foods considered “luxury,” or the use of SNAP benefits by someone who is well-dressed or driving a nice car.¹⁴ Those billboards and signs serve as publicly funded dog whistles because virtually no third party will know enough information about a person using SNAP to judge whether fraud is even likely in that particular

case.¹⁵ Even people who know SNAP policy exceedingly well would still have to interview the recipient, eligibility worker, or attorney for an extended period before determining if an IPV likely occurred.¹⁶ Although many states have under-resourced or insufficiently staffed call centers for SNAP applicants and recipients, they seem to have no problem finding the resources to run call lines for reporting fraud. Sadly, when applicants and recipients can't get through the phone lines quickly and efficiently, they can't get the information they need or aren't able to report changes promptly and accurately. Instead of putting resources into useless fraud hotlines, a much better use of public investment is good governance and customer service.



III. Line Between “Intentional” Program Violations and Inadvertent Mistakes is Not Clear

What is an Intentional Program Violation?

(I)ntentional (P)rogram (V)iolation

Federal Regulatory Definition

Intentional Program Violations shall consist of having **intentionally**:

- (1) Made a false or misleading statement, or misrepresented, concealed, or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.¹⁷



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For a SNAP recipient to be charged with an IPV, the agency is required to prove the recipient told a lie or purposely hid facts and intentionally violated the Food and Nutrition Act, federal regulations, or state law governing SNAP benefits.¹⁸ Recipients are not supposed to be charged with IPVs when they make mistakes—or inadvertent household errors (IHEs)—by accident, oversight, or not understanding the rules. For example, if someone receives payment for babysitting a family member every week, but they were unaware of the need to report that type of income, it should be classified an IHE and not an IPV. In the book *\$2 a Day*, Edin and Shaefer describe one of their informants buying Kool Aid with SNAP benefits and making popsicles to sell to neighborhood children; the recipient was clearly unaware that this was against SNAP rules and therefore could not be charged with an IPV.¹⁹

In practice, states often charge recipients with IPVs even when it is not clear that the recipient knew what they were doing was wrong. Two of the most common ways to get charged with an IPV are failure to report earned income from a job and failure to report a change in household composition, such as when a spouse or parent has returned to the household. These are program violations because the unreported information on income or household size could result in the recipient receiving more public assistance than they are eligible to receive. Failing to report changes in both instances is an easy mistake to make, but recipients often find it difficult to prove that it wasn't intentionally concealed.²⁰ For example, due to the COVID-19 pandemic, many SNAP recipients received enhanced unemployment benefits (UI) in 2020. Because the increase in benefits came from the state, people reasonably believed that they did not have to report the changes because they assumed the SNAP and UI systems communicate with each other. While they usually do, many states used separate systems to administer the special pandemic unemployment programs. Unfortunately, this has likely resulted in an increase in overpayments.

Often the difference between a IPV and an IHE comes down to caseworker discretion. When information is missing from a case record, it is often unclear whether the household failed to report the information or if a caseworker missed recording it. Even if the household did not share the information, it is only an IPV if the household member had intent to mislead. The vast majority of eligibility IPV cases lack any real evidence of intent. Yes, someone may have answered a SNAP application question incorrectly, but if the questionnaire was written at a college reading level and the claimant did not make it to high school, that tells us little. For example, the applicant could have excluded a 19-year-old child from their SNAP household because the 19-year-old prepares their food separately. However, the applicant wasn't aware of needing to include the child and their income because they are under 22. So, the eligibility worker has to make a judgment about whether this incorrect or incomplete information was the result of an attempt to deceive or an innocent error: in the latter instance, the eligibility worker makes no referral to the fraud unit, and nothing ever happens.

This discretion that eligibility workers have creates opportunity for racial discrimination.²¹ Given our nation's history and the studies about racial skew in eligibility workers' exercises of discretion in other contexts (e.g., approving transportation and child care subsidies in TANF work programs),²² it would be very naive to believe that race played no part when the eligibility worker concluded that “Shatira,” who is Black, was attempting fraud but “Helga,” who is white, made an innocent mistake. Systemic racism is so intrinsic within public benefits programs that although individual caseworkers may not be racist, racial bias still persists in decision-making. Unfortunately, no entity collects national data on the racial breakdown of IPVs. While the quantitative data doesn't exist, it's reasonable to believe there is a disproportionate impact by race. Moreover, we do know that IPV rates differ largely from state to state,²³ with cases particularly high in the South. There isn't a concrete racial correlation, yet it is likely that caseworkers and fraud investigators are treating the same behaviors differently, depending on the state and its racial makeup.

SNAP regulations are exceedingly complex, and clients are not told clearly—in simple, plain language and repeatedly—what rules they need to follow. Instead, they are told about their reporting rules one time, on the approval notice, in tiny print with no examples to make it easier to understand. Furthermore, they are not gently and respectfully reminded of these rules when getting notifications about their SNAP case, for example when checking their EBT card balance or

getting an update. The SNAP rules are so exceedingly complex in the first place that intentionally manipulating the rules to receive SNAP is very difficult to do. For example, SNAP recipients get a periodic update as part of “Simplified Reporting” that asks if their income has changed and lists what income was on record when they initially certified. They say “no” their income has not changed, because it hasn’t. But they don’t know to report that their 18-year-old started a part-time job—the student is in high school, and the family hasn’t been told at any point that the earnings of their child will count once hitting their 18th birthday. The parent isn’t intentionally withholding information, but states may perceive the failure to report as an intentional act to deceive instead of a consequence of expansive and extremely complex regulations that have not been fully and clearly explained.

Furthermore, states have a financial incentive to treat overpayments as IPVs instead of IHEs or agency errors. If a state collects on an IPV, they get to retain 35 percent of those funds. If states collect on a IHE, they only get to collect 20 percent. If it is an agency error, meaning the worker or state agency made a mistake, they collect zero.²⁴ Consequently, states have a financial incentive to err on the side of categorizing cases as IPVs and push harmful and racist policies to recoup more money. States have another incentive to erroneously charge IPVs due to Reagan-era policies that penalize SNAP programs for overpayments and improper awards — but not for underpayments or improper denials.²⁵ These policies created huge incentives to err on the side of cutting people off.²⁶

A. Guilty until proven innocent

When dealing with IPVs and overpayments in public benefits, recipients are unfortunately often considered guilty until proven innocent and, in most cases, don’t have the resources to prove themselves innocent. Because an IPV is considered a civil violation, recipients are not entitled to a court-provided lawyer. However, states can choose to prosecute people with IPVs for fraud in criminal cases, and the IPV may be considered evidence in such cases. Anti-fraud units have learned to take advantage of the ambiguity of IPVs to deprive people of counsel. By threatening criminal prosecution, they keep away most civil legal services attorneys who are not allowed to take criminal matters. And by not formally beginning criminal prosecutions, anti-fraud units can thwart recipients’ right to counsel guaranteed under the landmark *Gideon v. Wainwright* decision.

People charged with IPVs are being threatened with criminal prosecution to coerce them into admitting fault and accepting the civil consequences without any due process, administrative hearing, criminal process, or legal representation. These civil consequences are not plea bargains, and there is absolutely no advantage for clients to sign these administrative disqualification hearing (ADH) waiver forms. When they sign them, they are disqualified for the same period and with the same effect as if they had lost a hearing. Why do people sign them? The most plausible explanation is that either they do not understand the consequences or their right to present their side of the story, or they are afraid they will be criminally charged if they refuse to sign. According to multiple state advocates and legal aid attorneys, states lead the client to think that signing the waiver is better for them, when the client would actually benefit from being able to explain their side to a hearing officer in an ADH.

Sadly, this has been known to happen in multiple states. The SNAP State Activity Report shows dozens of states with staggering numbers of waivers of hearings or disqualification consent agreements.²⁷ In 2004, FNS issued guidance highlighting how states are getting people to sign waivers and consents by threatening them with criminal charges, which likely caused many innocent people to sign.²⁸ (As discussed below, recipients are right to fear criminal charges, since any public defender they are assigned is likely to have minimal knowledge of public benefits law. Moreover, a criminal conviction can have lasting harmful consequences on access to jobs, housing, child custody, and more.) Yet FNS has refused to take action to end this practice, and the rate of waivers and consents is hardly changed from the issuance of the 2004 FNS guidance. Legal services providers report that it continues to happen. One small note of progress was when FNS forced Georgia, after two decades, to abandon its system of paying bounties to prosecutors for bullying people into signing consents to disqualification.²⁹ But FNS did not decide to do this based on equity or due process grounds, but rather because Georgia was violating federal financial procedures.

Administrative disqualification hearings are the one place where the merits or validity of the state’s case might be tested. However, because so few of the accused have access to counsel and are unlikely to understand and be able to function in a formal hearing setting with serious allegations lodged against them, only rarely do these hearings genuinely test the validity of agencies’ cases. Each year, a few jurisdictions sustain every single IPV allegation brought, while almost all others do so for the overwhelming majority of allegations. Furthermore, states can continue with the ADH even if a client does not show up by phone or in person, although fraud investigators are required by federal law to present their case upon a no-show—which further reinforces the bias of the hearing officer without hearing the client’s side of the story. People have many reasons for being unable to show up for an ADH, including lack of transportation, confusion about the process, not receiving the notice, etc. For example, the rate of hearing officers determining an IPV was higher in Massachusetts when folks weren’t able to show up for their hearing. People should not be penalized because they weren’t able to make it to their ADH hearing.



B. Lawyers unequipped to handle the complexities of SNAP law

Besides waivers and consents, the other two sources of disqualifications are criminal convictions and lost administrative disqualification hearings. The overwhelming majority of all criminal cases, regardless of the charges, are pleaded out. Public defenders’ offices and appointive indigent defense counsel typically lack the resources to take more than a relatively small number of cases to trial. Most criminal defense attorneys know little or nothing about the complexities of SNAP law that would be essential to mounting a defense in these cases. Therefore, it is very likely that almost all of those criminal convictions result from trials that do not focus on the merits of the case and that are defended by lawyers who don’t understand the complexities of SNAP. Too often, criminal defense attorneys are woefully ill-equipped to handle SNAP fraud charges when the defense is not that the defendant did not do as charged—but rather that the defendant’s having done so was not unlawful if one sorts through the regulations properly. When the accused tells their attorney that the facts alleged by the state are largely correct and the state has documentation of those facts, the typical criminal defense attorney assumes the state must know that the alleged charge is unlawful. Due to the complexity of SNAP law, however, the alleged violation might not be unlawful.

In an example provided by David Super, an applicant learned that she had been hired to a new job after her SNAP interview but before the agency made a decision on her application. She notified the agency three or four days later, but the agency did not take the report into account in approving her application. The prosecutor alleged fraud because, she said, it is widely known that one must immediately report any changes, so reporting a few days later was fraud. This is wrong on several fronts: first, regulations give applicants 10 days to report changes; second, it is only considered a change when a new source of income actually starts, which was weeks away in this case; and third, reporting the new hire to the state agency before the SNAP application had been decided obviously demonstrates that the applicant did not intend to deceive. But because the facts were more or less as the state alleged, a defense attorney who did not know SNAP well was going to assume that the prosecutor knew the law.

C. Over-policing

Although the number of convicted instances of fraud is low, everyone who receives public benefits is clouded by fear. SNAP recipients have reported over-policing, privacy invasions, and other mistreatment—all in the name of “program integrity.” For example, a legal aid attorney in Kentucky reported that a woman receiving SNAP was jarred awake by armed agents knocking at her door. Without disclosing their identities, the agents threatened to take her children if she did not cooperate and allow them to enter her home. Later, the woman found out that the armed men were fraud agents from the state’s Social Services Department who were searching for evidence of a man in her home. Other legal aid attorneys report that agents have looked for extra toothbrushes in the bathroom as evidence that a man lives in the home who is not included in the SNAP household. It is completely unacceptable for people to experience that type of privacy invasion and over-policing simply because they are seeking food assistance. In some cases, it appears that eligibility workers refer people for fraud investigations based on their own personal biases or because an applicant was not sufficiently deferential to them.

People receiving SNAP are also afraid of over-policing in the form of store raids and backend tracing where SNAP recipient’s purchases are used as evidence of IPV. If a store is flagged for allowing SNAP recipients to exchange benefits for cash, or to purchase non-allowable items, agents can be sent to raid the store and interrogate any recipients who shop there. The FNS Compliance Branch of the Inspector General of United States Department of Agriculture looks for fraud by dispatching undercover agents into a store and attempting to sell SNAP benefits for cash; if successful, they disqualify the store. The state agency may then seek to disqualify recipients who shopped at the store, using EBT transaction records and so-called error-prone transaction profiles. These often look very similar to other people’s transactions; at most, some of them show that the store operates informally— not rigidly enforcing its closing time or rounding purchases down to the nearest whole dollar. But because the Compliance Branch and the Inspector General mostly target small stores, which typically operate informally, this demonstrates that informality is not substantial in proving that a store is trafficking SNAP benefits.

This means that disqualifications for trafficking depend heavily on several layers of subjectivity. First, the Compliance Branch of the Inspector General makes highly subjective choices about which stores to try to tempt with undercover agents. One of its criteria for suspecting a recipient is that the individual did not go to a cheaper large supermarket. However, this does not consider the fact that people might have transportation issues getting to larger stores or that immigrant communities and other communities of color shop where they see familiar faces who may speak their language and sell their native foods. For example, if a Jamaican American man receives SNAP for his family and decides to do his grocery shopping at a corner store that sells food, spices, and snacks from his home country, he may be under surveillance because large or even small purchase amounts at corner stores alert agencies to possible fraudulent activities—despite the fact that most communities of color rely heavily on corner stores, bodegas, delis, or “Mom and Pop” stores because they are historically in food deserts.

D. Artificial intelligence systems create presumption of guilt

Technology cannot be a neutral tool in public benefits administration because the people who code and operate that technology are not, and cannot be, unbiased. Therefore, the computerized tools applied to public benefits programs are designed with the institutional biases endemic in our society, starting with the false notions that

- 1) poverty is the fault of poor people,
- 2) Black people and people of color will try to take advantage of the system, and
- 3) a goal of our welfare systems is to make sure that nobody gets aid who doesn’t deserve it – even if that means denying aid to people who do.³⁰

States are increasingly using artificial intelligence and other automated systems for eligibility decisions to further surveil public benefits recipients and find instances of fraud. Unfortunately, these new technological systems are error-prone and automatically assume criminal intent.³¹ FNS uses data-mining algorithms to track unusual purchases along with retailer data and eligibility data to try to indicate fraud.³² In the most recent year for which data are available, 90 percent of trafficking cases were based on analysis of transaction data.³³ Once flagged, retailers find it extremely difficult to contest the disqualification.

FNS explicitly doesn’t make the data used in its algorithms public, so it’s impossible to know if they are using biased data. These systems and algorithms can have a catastrophic effect on the lives of people with low incomes and small business owners. Therefore, the algorithms need to have much more oversight, including human intervention, cross checking, and guard rails.

In the administration of SNAP, states often contract with third-party vendors to carry out large portions of the program. Just like FNS, these contractors use “fraud detection algorithms.” However, unlike like FNS, these companies are private and not subject to the same level of scrutiny and accountability as federal and state agencies. Any attempts—whether through investigative journalism, advocacy, or legal discovery—to find out exactly why an algorithm has accused someone of fraud are often met with a denial on the grounds that they contain “proprietary information” or “trade secrets” and are therefore exempted from Open Records and disclosure laws.

What’s more, some algorithms are what is known as “black box models.” In machine learning, these black box models are created directly from data by an algorithm, meaning that humans, even those who design them, cannot understand how variables are being combined to make predictions. Even if one has a list of the input variables, black box predictive models involve such complicated functions of the variables that no human can understand how the variables are jointly related to each other to reach a final prediction.³⁴

Government contractors such as Fidelity National Information Services (FIS)³⁵ and Deloitte³⁶ actively shop around “fraud detection” packages to states that often include algorithmic hierarchies that flag SNAP beneficiaries to state agencies for investigation and prosecution. However, it would appear to be a clear violation of due process protections to accuse someone of a crime and then refuse to turn over the evidence used in that charge. But that is exactly what happens when trying to figure out what’s in these algorithms and how they came to their conclusion.

E. Consequences of IPV

The penalty for an IPV is disqualification from SNAP eligibility for a set period of time. According to federal law, individuals found guilty of IPV in criminal, civil, or administrative proceedings can be disqualified from receiving SNAP benefits for 12 months on the first violation, 24 months on the second violation, and permanently on the third violation.³⁷ SNAP recipients can be disqualified for longer periods of time if they are found guilty of trading their SNAP benefits for drugs or firearms,³⁸ misrepresenting their residence and receiving multiple SNAP allotments in the same month, or selling over \$500 in SNAP benefits.³⁹ SNAP does not disqualify whole households for IPV, only the guilty individual. But that doesn’t mean the whole household is not harmed. Although the guilty individual is removed from the household member count, their income is still counted—resulting in higher income based on a reduced household size, which can cause the benefits for the entire household to drop substantially. All members of the SNAP household at the time of the overpayment are equally responsible for the claim. Not all of them are sanctioned, but they are all punished for the overpayment. Furthermore, the household has to repay all of the benefits unless the state agency settles or adjusts the claim amount.

Fraud Violation	Penalty
First fraud/intentional program violation	12-month disqualification period
Second fraud/intentional program violation	24-month disqualification period
Third fraud/intentional program violation	Permanent disqualification from SNAP
False statement with respect to identity or place or residence in order to receive multiple SNAP benefits simultaneously	10-year disqualification period

Source: Center on Budget and Policy Priorities

When recipients widely known in their communities to be highly honest are charged with IPVs and thrown off the program—or charged with criminal fraud—this has a broader chilling effect. Their friends and neighbors are likely to drop out of the program lest they, too, face deeply unjust charges. So, the likely racial skew of this system carries beyond the individual being victimized by having an overall effect on eligible participation within whole communities.

Another chilling effect from the consequences of IPVs is when folks are permanently disqualified after three IPVs because of facing addiction, racial bias, or other issues that society now thinks of differently than when the regulations were created. Thirty years ago, drug addiction carried a heavy stigma. Moreover, the “super predator” and Black single mother tropes of the late ’80s and early ’90s presumably played a role in the public perceptions of people living in poverty who were of color or experiencing addictions. Recently, racism and drug addiction have been named as a public health crisis. However, what about those who lost critical food assistance and have never gained it back, based on unaddressed bias?

IV. Racialized History of Public Benefits, Fraud, and Program Integrity

The perception of fraudulence based on poverty and race has a long history in this country. During the Trump Administration, FNS put out three proposed rules to cut millions of people from the SNAP program. At the same time, the agency also invested over \$5 million in grants to help states increase their efforts to strengthen program integrity on the premise that “FNS takes its responsibility to be good stewards of American tax dollars very seriously.”⁴⁰ The Biden Administration also recently put \$2.5 toward fraud framework grants.⁴¹ The tactic of cutting benefits from millions of Americans, while reinvesting in more measures to ensure that fewer folks have access to food and other basic needs is not new. Harmful racist stereotypes like the “welfare queen” further justify the perceived need for increased program integrity by characterizing all

people who receive public benefits as dependent scammers with fur coats who ride around in fancy Cadillacs.⁴² For decades these narratives have been employed to garner support from Americans to cut programs like SNAP based on who is perceived as deserving or undeserving. It is important to understand the historical origins of all these classist and racist ideologies and how they still are woven into the fabric of our policies today.

A. Deserving vs. undeserving and the racialization of public benefits

To understand the notion of the “deserving” and “undeserving” requires an understanding of the laws that shaped the United States as a British Colony. Those laws specified the definition of being “poor,” what society owes people who have low incomes, and what the government’s responsibility is to them.⁴³ The policies and practices of aiding people experiencing poverty in Colonial America were shaped primarily by the Elizabethan Poor Laws of 1594 and 1601, as well as the Law of Settlement and Removal of 1662.⁴⁴ The English poor laws established a requirement for residency before aid was provided and classified settlers experiencing poverty into two classes: the “worthy” and the “unworthy.” The worthy consisted of orphans, widows, people with disabilities, and elderly people. The unworthy consisted of people who were perceived to be lazy, vagrants, drunkards, or shiftless.⁴⁵ Vagrants or others deemed physically able to work but who refused to work could be put in jail.⁴⁶

These laws ingrained in policy and practice claimed that poverty was a “personal choice,” not a result of misfortune, systemic inequity, classism, or even racism. The primary intent of this structural belief was to maintain social order by giving people just enough that they don’t rebel, but not too much that they stay dependent.⁴⁷ Consequently, criminalizing poverty played into the narrative of who is deserving and undeserving of government aid and has been a practice since the genesis of this country. Therefore, it is no coincidence that this practice only intensified as time progressed.



B. False racist narratives and exclusion from New Deal

Another horrendous system shaped by the false concept of deservingness and un-deservingness is slavery. As a racialized system of forced labor, slavery paved the way for what are now known as “work requirements” by popularizing stereotypes of Black people to justify their forced labor for more than 200 years.⁴⁸ Despite the reality that, according to Steven Hahn, “African Americans were more consistently a part of the nation’s working class, over a more extended period of time, than any other social, ethnic, or racial group,”⁴⁹ untrue stereotypes that question the work ethic of Black people were and continue to be pervasive. This harmful myth contributed to the Franklin Delano Roosevelt Administration’s deliberate exclusion of Black people from New Deal era policies, which created our modern public benefits programs.

Historically, rhetoric about and media portrayals of groups of people help to determine the place they hold in the economy and in the democratic process.⁵⁰ To receive support for the New Deal during the Great Depression, policymakers depicted white mothers as blameless for their economic circumstances by using language commonly used for natural disasters, similar to what is seen now during the COVID-19 pandemic. Through strategic framing and media portrayal of white mothers nursing babies and poor hungry children, the people seen as “deserving” of public benefits helped to politically mobilize the New Deal.

Black people were not included in these favorable portrayals and, in turn, were deemed undeserving of public benefits. The Social Security Act of 1935 excluded agricultural and domestic workers, which were majority Black at the time, through explicit policy choices and discriminatory implementation. The federal Aid to Dependent Children program gave states substantial discretion in determining eligibility for benefits, which resulted in the disproportionate exclusion of Black families. Southern states sometimes restricted access to benefits during harvesting seasons to effectively coerce poor, Black families—but not white families—into working in the fields at whatever wages were offered. For example, the court case of *Anderson v. Burson* successfully challenged Georgia’s policy of cutting all “able-bodied Negro women” off welfare at cotton-picking time.⁵¹ Another case, *King v. Smith*, overturned widespread practices of denying aid to families because the mother had relations with a man not the father of her child—a policy clearly applied in a racially discriminatory manner.⁵²

Although FDR’s New Deal included a food assistance program, the modern food stamps program was created by President John F. Kennedy, who had been struck by the poverty he witnessed in West Virginia during the 1960 Democratic primary campaign. He revived the New Deal’s food stamps as a pilot program in one of his first actions upon taking office in 1961.⁵³ The food stamp program saw its largest expansion under the stewardship of President Richard Nixon in the wake of Senator Robert F. Kennedy’s highly publicized trips to the Mississippi Delta and Appalachia, the Poor People’s Campaign of Dr. Martin Luther King, Jr.,⁵⁴ and the 1968 CBS documentary “Hunger in America,”⁵⁵ which shocked viewers with images of starving American children with sunken features and bloated bellies. That documentary featured a Latino community in Texas; a white community in Virginia; a Native American reservation in Arizona; and an African American community in Alabama. It was a transformational documentary that showed poverty in multiple regions and ethnicities throughout the United States that ultimately garnered more support for the SNAP program.

Although depictions through the Poor People’s Campaign by MLK, Kennedy’s visit to Appalachia, and the Hunger in America documentary documenting Black, white, Latino and Native communities showed the diversity of poverty, it took no time for the idea of deserving and undeserving to permeate a seemingly well-intended program with mistrust, fraud provisions, and work requirements through the 1967 amendments to the Social Security Act.⁵⁶ As civil rights struggles intensified, the media’s portrayal of poverty and its relationship to race dramatically shifted. In 1964, only 27 percent of the photos accompanying stories about poverty in three of the country’s top weekly news magazines featured Black people; by 1967, 72 percent of photos accompanying stories about poverty featured Black people.⁵⁷

Racism and classism are not just confined to the extremes of the KKK or the pervasive use of derogatory terms. Both racist and classist structures and systems affect every facet of our society, but these pernicious and hateful biases can be easily disguised when people or systems use terms like “fraud,” “undeserving,” “dependent,” or “program integrity.” Media portrayals, stereotypes, and dog whistle politics are used to sway the thoughts, opinions, and mindsets of the public because they will eventually guide policy decisions. While many of these policies appear race neutral on the surface, policies and regulations such as work requirements, IPVs, drug testing, child support cooperation and disqualifications, and resource limits are fundamentally rooted in oppression, paternalism, and control of Black and brown lives. These policies reinforce the ugly stereotypes that individuals with low incomes must be coerced to work and avoid drug use—forcing people to accept jobs on any terms—while the labor they already perform within their homes and communities is disregarded entirely.⁵⁸ This narrow framing of work and productivity has deep historical roots stemming from exploitation that disproportionately affects women of color.⁵⁹ Although whites are the largest group of beneficiaries of government programs supporting basic needs, policies that frame benefits access in terms of “deserving” versus “undeserving” rely upon and perpetuate false racist narratives about benefit recipients, which in turn hurts everyone, including white recipients.⁶⁰

C. “Ending welfare as we know it”

“Ending welfare as we know it,” a rallying cry of the 1990s, further cemented the framing of poverty as exclusively a consequence of individual choices and circumstances—rather than structural conditions—by relying on racial narratives about poverty for its popular support. Building on President Ronald Reagan’s “welfare queen” myth, policymakers in the 1990s drew misleading associations in the popular imagination between welfare and Black criminality, laziness, and irresponsibility. The strategic deployment of these stereotypes is affirmed by public opinion data that confirms white Americans are more likely to favor welfare cuts when they believe that their status is threatened, and that people of color are the main beneficiaries of public benefits programs.⁶¹

After the Personal Responsibilities and Work Opportunities Reconciliation Act (PRWORA) passed by Congress in 1996, “welfare as we knew it” came to an end and a new era of public assistance programs began. Cash assistance was now administered in the newly created Temporary Assistance for Needy Families (TANF) program, where the strenuous eligibility rules and low cash amounts drastically cut participation. In 1996, 68 of every 100 families who lived in poverty received Aid to Families with Dependent Children (AFDC); in 2019, only 23 families received TANF for every 100 families in poverty.⁶²

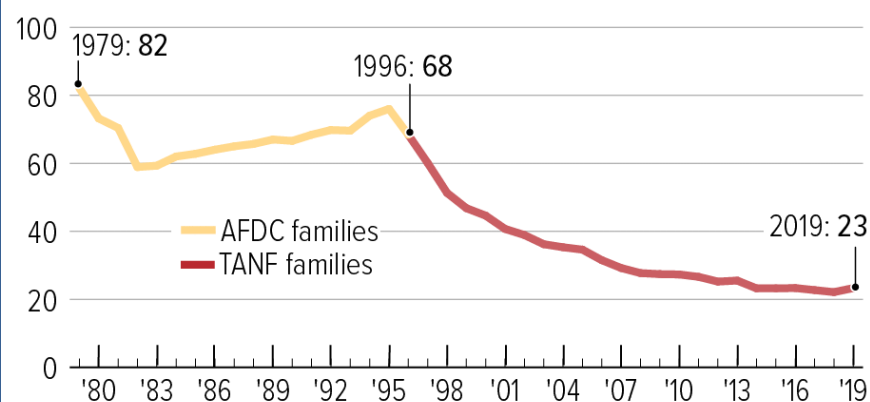
On top of creating TANF, which has the strictest work requirement in cash assistance yet, PRWORA also imposed a three-month time limit for certain SNAP recipients (i.e., working-age adults without children living with them and without documented disabilities). When states were offered extra money if they assured that anyone who wanted to work could keep getting benefits, only a small handful did so. The discretionary assistance was also an opening for people's bias, where assistance recipients are subjected to the personalized attitudes and beliefs of the decisionmaker. The block granting⁶³ and welfare reform statutes also took away private rights of action that people under AFDC (or its forerunner, Aid for Dependent Children, or ADC) previously had. Therefore, not only were welfare recipients then subjected to individualized and insidious beliefs and biases of the welfare workers, they could also no longer have enforceable rights concerning many aspects of these welfare programs.

A key element of the 1996 changes is that poverty was portrayed as the result of personal choices, not a systemic structure. Many Americans continue to attribute poverty to individual will, laziness, and too much assistance for households with low incomes, rather than too little assistance—while discounting the impact of systemic racism and the realities of the American economy.

If you look for individual explanations, many people will assert that IPVs are the result of moral failings by folks who are trying to take advantage of the system. However, from a systems point of view, certain types of IPVs can be seen as a consequence of cash assistance essentially disappearing as TANF significantly winnowed the number of people receiving it. Studies show that families who exchange their SNAP benefits for cash are doing so as a last resort to survive. SNAP assistance only accounts for food. In addition, the SNAP benefit calculation is inequitable and artificially limits the impact of high costs of living and medical costs—the burden of which disproportionately falls on SNAP households of color.

TANF's Reach Declined Significantly Over Time

Number of families receiving AFDC/TANF benefits for every 100 families with children in poverty



Note: TANF = Temporary Assistance for Needy Families, AFDC = Aid to Families with Dependent Children

Source: CBPP analysis of poverty data from the Census' Current Population Survey and AFDC/TANF caseload data from Department of Health and Human Services and (since September 2006) caseload data collected by CBPP from state agencies.

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V. SNAP trafficking is an indication of overall system failures

SNAP rules allow recipients to deduct housing, or shelter, expenses that exceed half of a recipient’s household income when determining eligibility for the program. However, this shelter deduction is capped at only \$597 a month,⁶⁴ which is far too little when the average rent in 2020 for a two-bedroom U.S. apartment is triple that at \$1,870 a month.⁶⁵ Also, SNAP recipients are only able to claim the paltry \$35 medical deduction each month if they are 60 and older or receiving a disability-based benefit. This medical deduction is an extremely low amount for the high cost of medical expenses and leaves out a large number of people under 60 who have medical expenses or who don’t qualify for medical benefits, which are extremely difficult to apply and become eligible for.⁶⁶ Plus, life necessities such as car payments, repairs, and emergencies are not accounted for in the benefits calculation.⁶⁷ Without additional assistance, many SNAP participants do not have enough cash to cover all of their living expenses.⁶⁸

For example, imagine working a job paying low wages where your hours were frequently cut short and you were unable to make enough to pay for diapers for your infant. Exchanging your benefits for cash is the only way you will be able to pay your light bill and afford the diapers.⁶⁹ Realistically, what would you do? This is not to turn a blind eye to SNAP trafficking, but to illustrate that SNAP trafficking is an indication of greater systemic failures. In order to minimize SNAP trafficking, legislators must address the need for a more comprehensive cash assistance program, livable wages, affordable housing, and more laws against predatory check cashing, loans, fraudulent utility assistance programs, and more.

VI. Conclusion

Based on the overarching emphasis on fraud and “program integrity,” state agency workers have been provided more training to recognize the possibility of fraud than they have on trauma-informed care and proper resource referral. This is a cultural phenomenon that permeates every facet of state agencies across the country—resulting in caseworkers’ fear that failing to detect fraud will lead to them losing their jobs. Therefore, when a person comes in to apply or recertify for SNAP benefits, they are more likely to be referred for some type of perceived fraudulent behavior than they are to the proper resources they may need for housing, immediate food, domestic violence assistance, the SNAP Employment and Training program, and more.

As much as legislators—conservative and liberal—try to crack down on fraud by using that issue as their flagship policy for ensuring fairness and ethical use of funds, there is nothing fair or ethical about blaming systemic shortcomings on individual people. The reality is that people need adequate housing, food, health care, and livable wages to live, survive, and thrive. Placing the blame on fraud is obviously a scapegoat to addressing the real historic and systemic issues. Despite previous fear, it is imperative that advocates directly address and combat stereotypes related to fraud, program integrity, racist tropes, faulty policies, and more. It is unacceptable that—based on their need for food—people are over-policed, surveilled, and discriminated against, while also having their privacy invaded and voices ignored.

The survival of SNAP and other programs certainly depends on taking program integrity seriously. But we should do so in a way that does not abandon the search for people genuinely abusing the program by, instead, coercing disqualifications out of large numbers of people based on tenuous, racially motivated, and deeply ambiguous facts. Rather, we should use a more evolved definition of program integrity that includes restitution and repair for racist, historic, and systemic issues that have perpetuated over-policing, discrimination, fear, disenrollment, and innocent people being sanctioned for IPV. Once the focus is repair and restitution, we should reimagine the systems to identify people who are actually committing fraud and adjust accordingly to reflect trust, equity, fairness, and justice.

VII. Recommendations

CLASP proposes the following equitable and anti-racist recommendations for the Biden Administration, Congress, USDA, FNS, and state agencies to consider and enact.

A. Federal Legislative Changes

Congress should pass legislation to:

- Simplify the confusing and unwieldy IPV regulations.
- Protect households with low incomes who are incorrectly caught up in a fraud determination from being pushed deeper into poverty due to misguided, racist, and often factually incorrect IPV sanctions and overpayments.
- Hold states accountable for incorrect determinations of IPV, sanctions, and overpayments.
- Allow states to suspend overpayment establishment and collection to prevent further distress for households already struggling from the financial, physical, and emotional toll brought on by the COVID-19 pandemic.

B. Administrative Changes

FNS and/or USDA should:

- Release guidance on best practices for how state agencies should inform customers they are being investigated for an IPV.
 - The forms or notices should be easy to read, provide steps to take, and offer resources—including local legal aid offices.
- Provide guidance and oversight on artificial intelligence systems, including those used by third-party vendors, to ensure that the systems are not using algorithms that wrongfully accuse recipients of fraud.
- Provide oversight to make sure states aren't incorrectly pursuing IPV and/or claims in general.
- Encourage states to improve claims policies to be equitable and align with the regulations about what constitutes fraud.
- Enforce the 2004 policy memo on the use of ADH waivers⁷⁰ that clarifies the proper use of ADH waiver forms and discourages omission of due rights process.
- Release extensive guidance on best practices for artificial intelligence and automated

systems to mitigate wrongful and incorrect fraud cases in error.

- Invest in technology to improve accuracy and records retention, not just reduce worker transaction time. This is important because less worker time creates more openings for errors. Moreover, having better capacity to report and document changes is actually good for error control for workers and recipients.
- Require states to report data on their spending for program integrity, the number of cases identified, and overpayments prevented, along with the demographics of people charged with IPVs vs. IHEs vs. AEs.
- Require states to provide data on dollar amounts of IPVs along with racial breakdown to see if people of color are being punished inequitably for lower amounts of money.
- Encourage states to provide caseworkers with training on racial equity, trauma-informed care, and unconscious bias.
- Give customers and community stakeholders the opportunity to provide feedback more consistently than through occasional comment periods.
 - The USDA should strongly consider such feedback and give clear and transparent updates on its action plan to implement the input—engaging community members who gave direct feedback throughout the process to help co-create their conclusions and solutions.

C. Equity and Anti-Racist Changes

Federal and state administrators and policymakers involved in SNAP and other public benefit programs should:

- Center ALL public benefits programs on trust and the expertise and needs of people experiencing poverty.
- Deploy an intentional and targeted media campaign to undo the harm of racist tropes and aporophobia that have led to the shame and stigma surrounding public benefits programs and the creation of biased policies.
- No longer use the terms “welfare,” “fraud,” “the dignity of work,” or “program integrity” as dog whistles to promote cuts to public benefits programs.
- Provide adequate pass-through funding for organizations led by people who are Black, Indigenous, Latinx, Asian Americans & Native Hawaiians and Pacific Islanders (AA&NHPI), LGBTQ+, and immigrants when releasing grant funding.
- Admit the harm done by the original Social Security Act’s covert exclusion of people of color, along with other governmental policies and initiatives including welfare reform, work requirements, horrible treatment by state officials, fraud and program integrity, and how those policies have eroded the trust of people experiencing poverty.
 - Remedies can include repair and restitution to people experiencing poverty, particularly people of color, who must be prioritized.
- Advance a program to provide reparations for Black people for historic harms done to them and their ancestors.⁷¹

D. State Agency Changes

- **Training and Policy Recommendations.** State agencies should:
 - Engage in training on the impact of systemic racism, implicit bias, and white

supremacy to better understand current programs and regulations, as well as their origins.⁷²

- Work together with their customers and other community stakeholders to implement better employee training, hiring practices, asset-based language, and customer service.
 - Create tools for better recruitment and retention that can ensure people from the community, particularly people of color, are contracted with and employed by agency offices.⁷³
 - By increasing representation, agencies can garner deeper trust as community members are able to see individuals in positions of power who come from the same communities that they grew up in.⁷⁴
 - Provide training on how best to communicate with folks who may have certain types of disabilities or limited English proficiency. People may be reluctant to answer some questions, particularly around issues that are highly culturally specific.
 - Conduct staff training on best practices for establishing and pursuing claims in an equitable manner.
 - Provide ongoing training for agency workers on SNAP policy—including state and federal updates.
 - Offer repayment options for claims that do not push families deeper into poverty.
 - Eliminate fraud hotlines.
- **Culture Change Recommendations.** *State agencies should:*
 - Meaningfully engage with the individuals and communities who are most impacted—and have historically been traumatized by—benefits programs, policies, rules, processes, and operations.
 - Acknowledge and research the racist history of these federal policies and their local implementation.⁷⁵
 - Evaluate their agencies’ harmful culture based on their historical findings and direct feedback from their customers and other community stakeholders.
 - Give customers and community stakeholders the opportunity to provide feedback more consistently than the occasional online surveys or notice.
 - Seek out partnerships with organizations that are led by people who are Black, Indigenous, Latinx, AA&NHPI, LGBTQ+, and immigrants and that have supported communities when the federal government and administering agencies have failed to do so.
 - These partnerships should be conducted with humility (rather than transactionally, as if communities owe the governments something), to successfully build trust and create dialogue.

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