

April 2, 2019

Certification Policy Branch
Program Development Division
Food and Nutrition Service
3101 Park Center Drive
Alexandria, VA 22302

Re: **Agency Notice of Proposed Rulemaking; Public Comment Request; Requirements and Services for Able-Bodied Adults Without Dependents RIN 0584-AE57**

To Whom it May Concern:

Lambda Legal Defense & Education Fund, Inc. (“Lambda Legal”) submits these comments to the Food and Nutrition Service, USDA in opposition to the proposed rule. Lambda Legal is the oldest and largest national legal organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, transgender and queer (“LGBTQ”) people and everyone living with HIV.

The Supplemental Nutrition Assistance Program (SNAP) program has long served as the first line of defense against hunger and food insecurity for low-income LGBTQ people and their families. We oppose the proposed rule because it seeks to limit the flexibility of states to administer the program to those in need by imposing rigid one-size-fits all standard. The existing waiver requirements have been working for almost 20 years and are reasonable, transparent, and manageable. We urge the Department to rescind the proposed rule.

The proposed rule seeks to reduce drastically SNAP benefits for people who are “able-bodied adults without dependents” (ABAWDs) by restricting the sources of data and methods states currently use to justify waivers by creating a floor unemployment rate of 7% for use in calculating insufficient employment in a specific area, by limiting the duration of waivers, by restricting the use of statewide waivers unless the state qualifies for extended unemployment benefits, and by ending the carry-over and accumulation of state exemptions.

The proposed rule is an end-run around Congress

The proposed rule blatantly disregards Congressional intent and is directly at odds with the bipartisan policies that were considered in the 2018 Farm Bill reauthorization. Rather than attempt to restrict the waiver process, Congress established ten different pilot programs to examine best practices for SNAP employment & training programs in 2014.¹ Last year, Congress invested further into these programs and rejected similar proposals in the 2018 Farm Bill that was passed by a vote of 87-13 in the Senate and by 369-47 in the House of Representatives.² As Representative Fudge clarified in a letter to Secretary Perdue, “language similar to the proposed rule was vetted for five months... before being struck from the final

¹ Jonathan H. Harsch, *Farm Bill SNAP Pilots Show Pockets of Success*, AGRIPULSE (Dec. 12, 2018), available at <https://www.agripulse.com/articles/11731-farm-bill-snap-pilots-show-pockets-of-success>.

² Agriculture Improvement Act of 2018 (P.L. 115-334).

bill.”³ Congress also clarified in the legislative record that states should continue to accrue their carry-over exemptions.⁴ The proposed rule seeks to circumvent the will of Congress and the American people by seeking to achieve administratively what Congress has denied.

The proposed rule fails to demonstrate that increasing hunger fosters self-sufficiency

In support of the proposed rule, the USDA misleadingly asserts that 74% of ABAWDs are unemployed.⁵ The citation is misleading because the Department fails to clarify that less than 2% of ABAWDs are *consistently* working less than 20 hours per week. It is likely many of these workers are seasonal workers in industries such as fishing and construction.⁶ The USDA ignores the reality that the people who can work are already working, and that SNAP is often a short-term support for people who experience periods of joblessness. Increasingly, the norm for low-wage earners has involved fluctuating schedules and multiple jobs, making it difficult for them to meet the rigid work requirements, and the proposed rule would force these vulnerable communities to undergo food insecurity. Instead of facilitating the law’s purpose of alleviating hunger and malnutrition to low-income and unemployed individuals, this proposed rule seeks to undermine SNAP’s ability to provide food assistance to those in need.

Furthermore, the proposed rule repeatedly asserts that the modifications to the waiver system will encourage people to “engage in work or work activities” which will lead to self-sufficiency. The rule does not *demonstrate*, however, that drastically reducing waivers will lead to *any* improvements in health or employment, and that the effect won’t simply be to dis-enroll ABAWDs—exposing them to food insecurity and hunger. The rule boasts that if the most extreme version of the proposed changes were put into place, that the reduction in waivers would lead to just two percent of the relevant SNAP population living in waived areas, and that, according to the USDA’s own calculations, two thirds of those subjected to the requirement would be unable to comply with the requirements and would lose benefits. The rule estimates that nearly 1.1 million ABAWD SNAP recipients would no longer be covered under a time limit waiver, and the rule would take food away from 755,000 low-income Americans, cutting food benefits by \$15 billion over ten years.⁷ Eliminating food security for almost a million people without any evidence that those people will become “self-sufficient” is unconscionable. The failure to articulate a rational explanation between the facts and the proposed rule is arbitrary and capricious and violates federal law.⁸

³ Letter from Representative Marcia L. Fudge to Sonny Perdue, Secretary of Agriculture Sonny Perdue (Feb. 1, 2019), *available at* <https://fudge.house.gov/press-statements/congresswoman-marcia-l-fudge-requests-immediate-extension-of-usdas-comment-period-on-snap-rule/>

⁴ Agriculture Improvement Act of 2018 Conference Report (H. Rept. 115-1072) (p. 616) *available at* <https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf> (the Conference Report states that it was the intent of Congress that states will “...continue to accrue exemptions and retain carryover exemptions from previous years, consistent with current law.”)

⁵ USDA to Restore Original Intent of SNAP: A Second Chance, Not a Way of Life (Dec. 20, 2018), *available at* <https://www.usda.gov/media/press-releases/2018/12/20/usda-restore-original-intent-snap-second-chance-not-way-life>

⁶ Bauer, L. et al, *Work Requirements and Safety Net Programs*, THE HAMILTON PROJECT, *available at* http://www.hamiltonproject.org/assets/files/WorkRequirements_EA_web_1010_2.pdf

⁷ Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, 84 Fed. Reg. 980 (989) (Feb. 1, 2019). Federal Register: The Daily Journal of the United States. (“The Department estimates that approximately two-thirds (755,000 individuals in FY 2020) would not meet the requirements for failure to engage meaningfully in work or work training.”)

⁸ See *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962) (requiring a rational connection between the facts and the choices made).

Furthermore, the elimination of these waivers would prove harmful to entire communities as service providers such as food banks, homeless shelters, and health clinics would have to manage a significant increase in demand, as those impacted will lose benefits and would be in need of additional services. And food insecurity is far too pervasive to be solved by the private sector. We know this reality all too well after witnessing the unprecedented strain on the emergency food system during the government shutdown when 800,000 furloughed employees were suddenly exposed to unwarranted food insecurity and hunger.

The rule fails to fully consider its impact on vulnerable communities

The proposed rule would drastically limit time-limit waivers by implementing a new minimum unemployment rate of 7% when determining whether there is a lack of sufficient jobs, but the agency’s assumption that the floor unemployment rate is representative of the entire population fails to properly account for the employment discrimination that LGBTQ people—and other vulnerable communities—experience in securing and maintaining employment. The proposed rule acknowledges this deficiency by clarifying that the rule has “the potential for disparately impacting *certain protected groups* due to factors affecting rates of employment of members of these groups,” (italics added) but fails entirely to consider or enact a mitigation strategy or a monitoring program to limit the disparate impact or to provide any information whatsoever on how it intends to address this issue.

Employment discrimination is a significant contributor to LGBTQ unemployment and poverty. Over half of the US population lives in a state without explicit state-level nondiscrimination laws prohibiting employment discrimination based on sexual orientation and gender identity.⁹ A 2017 Harvard School of Public Health survey found that one in five LGBTQ people reported experiencing discrimination in hiring, pay, and promotions due to their sexual orientation or gender identity.¹⁰ Sixteen percent of respondents to the 2015 U.S. Transgender Survey reported losing their job due to their gender identity or expression.¹¹

Because of employment discrimination and other barriers to employment, LGBTQ people and their families are more than twice as likely to participate in SNAP as non-LGBTQ people.¹² Because LGBTQ families rely upon SNAP benefits at a higher rate, the proposed rule would disproportionately harm the LGBTQ community and lead to greater rates of poverty and food insecurity.

The proposed rule would also lead to long-term health consequences for LGBTQ people and other vulnerable communities. Nutritious food is an essential aspect of health, and food insecurity is associated with higher rates of the most serious and costly chronic conditions, including hypertension and coronary heart disease. Adults who experience food insecurity are more likely to report lower health status overall, and good health security earlier in life is directly related to outcomes later in life.¹³ Being able to access nutritious food when someone suffers a life circumstance such as a job loss, reduced hours, the need to care

⁹ Movement Advancement Project, Non-Discrimination Laws (last accessed Mar. 29, 2018) *available at* http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

¹⁰ Harvard T.H. Chan School of Public Health, *Discrimination in America: Experiences and Views of LGBTQ Americans* (Nov. 2017) *available at* <https://www.npr.org/documents/2017/nov/npr-discrimination-lgbtq-final.pdf>.

¹¹ Sandy E. James, *The Report of the 2015 U.S. Transgender Survey* (2015) *available at* <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

¹² Caitlin Rooney et al, *Protecting Basic Living Standards for LGBTQ People* (2018) *available at* <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>.

¹³ Craig Gundersen and James P. Ziliak, *Food Insecurity and Health Outcomes*, *Health Affairs* (Nov. 2015) *available at* <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.0645>.

for a sick relative, or an economic downturn is critical for safeguarding an individual's immediate and long term well-being.¹⁴

States need flexibility to ease harsh work requirements

Furthermore, since the underlying law was passed in 1996,¹⁵ states have repeatedly invoked the waiver process.¹⁶ Every state (except Delaware) has sought waivers for areas with extremely high and sustained unemployment showing how essential it is to allow states the flexibility they need to help their residents put food on the table when they fall on hard times.¹⁷ States have been able to address economically challenged areas that are consistently difficult job markets or areas where it is difficult for individuals to find work that offers a minimum of 20 hour per week. The existing waiver requirements have also provided states with enough flexibility to address large employer closures and sudden environmental disasters.¹⁸ Furthermore, states are able to create their own work requirements that are better suited for this population and their communities. Eliminating state flexibility would lead to many people who could lose access to nutrition assistance leading to serious health care consequences.

The existing waiver process has been in place for nearly 20 years and almost every state has availed itself of waivers.¹⁹ Just last year, Congress considered and rejected similar waiver modifications. The existing process has given states the flexibility to adopt work requirements that meet the local conditions most accurately. The proposed rule's one-size-fits-all approach would harm the LGBTQ community and other vulnerable communities by denying them food benefits at a time when they need it most and will lead to hunger, food insecurity and negative long term health care-outcomes, all contrary to governing law. We urge the Department to rescind the rule.

Thank you for the opportunity to submit comments on the proposed rule. Please do not hesitate to contact Sasha Buchert at sbuchert@lambdalegal.org if further information would be of assistance.

Most respectfully,

Lambda Legal Defense & Education Fund, Inc.

¹⁴ See *The Impact of Poverty, Food Insecurity, and Poor Nutrition on Health and Well-Being*, Food Research & Action Center (FRAC) (December 2017) available at <http://frac.org/wp-content/uploads/hunger-health-impact-poverty-food-insecurity-health-well-being.pdf>

¹⁵ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), available at <https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf>.

¹⁶ See United States Department of Agriculture Food and Nutrition Service ABAWD Waivers (last accessed Mar. 27, 2019), available at <https://www.fns.usda.gov/snap/abawd-waivers>.

¹⁷ Ed Bolen and Stacey Dean, *Waivers Add Key State Flexibility to SNAP's Three-Month Time Limit* (Feb. 6, 2018), available at <https://www.cbpp.org/research/food-assistance/waivers-add-key-state-flexibility-to-snaps-three-month-time-limit>.

¹⁸ *Id.*

¹⁹ 7 C.F.R. 273.24 (Amdt. 379, 64 FR 48257) (Sept. 3, 1999).