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Submitted via regulations.gov

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

Re: Comments to Proposed Rule:
Supplemental Nutrition Assistance
Program ("SNAP"): Requirements for
Able-Bodied Adults without Dependents
RIN 0584-AE57

Dear Certification Policy Branch:

The William E. Morris Institute for Justice ("Institute") is a non-profit organization dedicated to protecting the rights of low-income Arizonans. The Institute focuses on issues that are important to low-income persons. One such program is the Supplemental Nutrition Assistance Program ("SNAP" or "food stamps"). We write to express strong opposition to the United States Department of Agriculture's ("USDA" or "Department") proposed restrictions to the waiver allowances for work requirements for Able-Bodied Adults without Dependents ("ABAWDs") receiving food stamps.

Federal law currently limits most non-disabled adults ages 18 to 49 without dependent children, or ABAWDs, to just 3 months of SNAP in a 36-month period unless they engage in work or job training activities at least part time. 7 C.F.R § 273.24. The law allows the Department to approve waivers of the time limit in areas that have an unemployment rate of 10 percent or higher or, based on other economic indicators, have "insufficient jobs." *Id.* Now, due to a reported decrease in national levels of unemployment, the Department is proposing to permanently change the law to "encourage broader application of the statutory ABAWD requirement." The stated reason for this change is to "improve employment outcomes and economic dependence."

The proposed rule would make it more difficult for areas with elevated unemployment rates to qualify for waivers of the time limit by adding a 7 percent unemployment rate floor as a condition. The proposed rule would also make it harder for states to obtain and implement waivers. The proposed rule does this by dropping statewide waivers except when a state triggers extended benefits under Unemployment Insurance. It would unduly limit the economic factors considered in assessing an area's eligibility for a waiver (such as by no longer allowing employment to population ratios that demonstrate economic weakness to qualify areas for waivers). It would undermine efficient state implementation of waivers by limiting their duration to 12 months and delaying their start dates until after USDA processes the request. Further, the proposed rule would remove states' ability to use exemptions accumulated prior to the rule's implementation and limit the time states have to use exemptions they receive in the future.

Moreover, the changes in the proposed rule were rejected by Congress late last year. Thus, the proposed rule appears to be an attempt to circumvent Congressional intent and oversight.

The proposed changes would cause serious harm to low-income Arizonans, who without employment or enough good-paying jobs, are in desperate need of food stamps, and to our local communities and our nation. We provide specific comments below.

I. The Importance of SNAP in Addressing Hunger and Food Insecurity

SNAP plays a critical role in addressing hunger and food insecurity in our community. It is the first line of defense against hunger for low-income Arizonans, and provides food assistance to youth, working families, people with disabilities, seniors, and many more. As of February 2019, 818,000 Arizonans received SNAP.¹ Nationwide, approximately 39 million people in nearly 20 million households are able to put food on the table because of the food stamp program.²

Food insecurity is an important and widespread tragedy in Arizona that is often hard to address. Recent statistics show that 1,033,590 Arizonans struggle with hunger,

¹ *Statistical Bulletin*, Ariz. Dept. of Economic Security (Feb. 2019), <https://des.az.gov/digital-library/statistical-bulletin-february-2019>.

² *SNAP Participation*, U.S. Dept. of Agriculture (Sept. 2018), <https://fns-prod.azureedge.net/sites/default/files/pd/34SNAPmonthly.pdf>.

which includes one in four children in the state.³ Indeed, Arizona has one of the highest levels of children living in poverty. Several conditions contribute to Arizonans living with hunger: a large percentage of the state is rural, there are few large employers, and the state has an unreliable and limited transportation system. These conditions make it difficult for individuals and families to get the nutrition they need.⁴ Arizona also has a large Native American population living on reservations and high poverty rates and limited employment opportunities on the reservations lead to prevalent hunger.⁵ SNAP helps to fill some of the gaps caused by these conditions. But under current law, Arizona only serves about 73 percent of the persons eligible for SNAP.⁶

SNAP also plays a critical role in alleviating the costly public health and economic consequences of food insecurity. After controlling for factors that likely affect medical care spending, the Center for Budget and Policy Priorities estimated that low-income adults who participate in SNAP incur about \$1,400 (nearly 25 percent) less in medical costs per year than their non-participant counterparts.⁷ The difference is even more significant for those with hypertension (nearly \$2,700 less annually) and heart disease (over \$4,100 less annually).

Not only does SNAP benefit individual and family recipients, it has historically served as an economic stabilizer in changing times.⁸ SNAP helps to shorten recessions

³ *What Hunger Looks Like in Arizona*, Feeding America, <https://www.feedingamerica.org/hunger-in-america/arizona> (last visited Mar. 28, 2019).

⁴ *Hunger and Poverty in Rural Areas*, Community Food Bank of Southern Arizona (last visited Mar. 28, 2019), <https://www.communityfoodbank.org/Realities-of-Hunger/Hunger-Health-and-Poverty/Rural-Hunger>.

⁵ Zachary Sobol, *One in 4 Native Americans is Food Insecure*, Move for Hunger (Apr. 30, 2018), <https://www.moveforhunger.org/one-in-4-native-americans-is-food-insecure/>.

⁶ U.S. Dept. of Agriculture, *Reaching Those In Need: Estimates of State Supplemental Nutrition Assistance Program Participation Rates in 2016* (Mar. 2019), <https://fns-prod.azureedge.net/sites/default/files/ops/Reaching2016.pdf>.

⁷ Steven Carlson & Brynne Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, Center on Budget and Policy Priorities (Jan. 17, 2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>.

⁸ *Supplemental Nutrition Assistance Program (SNAP) Linkages with the General Economy*, U.S. Dept. of Agriculture (last updated Apr. 11, 2018), <https://www.ers.usda>.

and dampen the effects of an economic cycle in a downturn. Based on the USDA Economic Research Service's own analysis, it is estimated that each \$1 in federal SNAP benefits generates \$1.79 in economic activity.⁹ Those dollars, in turn, help many food retailers operating on thin margins to remain in business, something that improves food access for all residents.¹⁰ For example, local farmers' markets receive revenue from SNAP purchases and many of those markets also participate in incentive programs that provide SNAP shoppers with bonuses for purchasing fruits and vegetables.

Because of the importance of the SNAP program to low-income persons' economic security, the Institute strongly opposes any change in policy or regulation that would reduce the receipt of SNAP benefits. Requiring a set number of work hours before receiving SNAP benefits is unduly harsh and already causes lots of eligible people to lose needed assistance.

The people most affected by the ABAWD time limit are demographically diverse: approximately 52 percent are persons from communities of color, including an estimated 35 percent who are African-American and 13 percent who are Latino.¹¹ Nearly half (47 percent) of the people subject to the time limit are ages 18 to 29 and approximately 85 percent have at most a high school diploma or equivalent. An estimated 45 percent of persons subject to the time limit are women.¹²

II. Waivers Provide Ways for States like Arizona to Minimize the Harsh Impact of Arbitrary Time Limits

The federal law's SNAP eligibility limitations for ABAWDs is harsh and unfair. It harms vulnerable people by denying them food benefits at a time when they most need it. Persons subject to the time limit face considerable employment challenges that make

gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/economic-linkages.

⁹ *Id.*

¹⁰ *SNAP Boosts Retailers and Local Economies*, Center on Budget and Policy Priorities (Apr. 6, 2018), <https://www.cbpp.org/research/food-assistance/snap-boosts-retailers-and-local-economies>.

¹¹ Steven Carlson, Dorothy Rosenbaum, and Brynne Keith-Jennings, *Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?*, Center on Budget and Policy Priorities (Feb. 2016), <https://www.cbpp.org/research/food-assistance/who-are-the-low-income-childless-adults-facing-the-loss-of-snap-in-2016>.

¹² *Id.*

it difficult to meet this requirement, including a lack of reliable transportation, unstable housing arrangements, criminal histories, unstable work histories, or undiagnosed physical or mental limitations.¹³ Further, by time-limiting food assistance to this group, federal law has shifted the burden of providing food to these unemployed individuals from SNAP to states, cities, and local charities.

Under the current law, states like Arizona, have the flexibility to minimize the impact of the time limit by requesting a waiver of the time limit for areas within the state that have 10 percent or higher unemployment rates or have insufficient jobs. Moreover, states have discretion to exempt individuals from the time limit by utilizing a pool of exemptions (referred to as “15 percent exemptions”). While the 2018 Farm Bill modified the number of exemptions that states can receive each year from 15 percent to 12 percent, it did not change the states’ ability to carry over unused exemptions forward.

Arizona evaluates its waiver requests on a county level and 12 of Arizona’s 15 counties are covered by the waivers. Currently, three counties, Maricopa, except for the city of Apache Junction, Pima and Yavapai do not have waivers. The following areas are exempt from the time limits due to high levels of unemployment: all Native American reservations except the Yavapai Prescott Reservation and the remaining mostly rural counties. Maricopa, Pima, and Yavapai are the three most populous counties in the state; they have more jobs and thus, lower levels of unemployment. The rest of Arizona, however, is rural, does not have reliable public transportation, and has scarce job opportunities. Arizona illustrates that looking at national unemployment levels does not reflect concentrated pockets of unemployment and local conditions within a state. The area waivers allow Arizona to account for difficulties in rural locales so residents living in those areas do not go hungry. The proposed rule would limit Arizona’s ability to ensure its residents receive adequate nutrition assistance.

In Arizona, since January 2016 when the 3-month time limit went back into effect in Maricopa County and subsequently later in 2016 in Pima and Yavapai Counties, 32,535 persons were cut off from food stamps through January 2019.¹⁴ Approximately 13,678 persons were subsequently found eligible for an exemption and were reinstated to receipt of food stamps again. Thus, in over 3 years, approximately 18,857 persons have been termed limited off the program. But there was a significant administrative cost to

¹³ Carlson & Rosenbaum, *supra* at 5-6.

¹⁴ Monthly ABAWD reports are sent to the Institute by the Arizona Department of Economic Security, the state agency that determines food stamp eligibility pursuant to a public records request.

the state agency that processes food stamp applications and a corresponding increase in reporting requirements for food stamp recipients. But even a state agency that tries very hard to process these cases correctly, found that about 42 percent of the persons initially identified as ABAWDs met an exemption. The proposed rule will only further increase drop-off and churn rates and will cause serious harm to low-income Arizonans.

III. The Proposed Rule Would Expose More People to the Arbitrary Cutoff Policy and Do Nothing to Improve Employment Outcomes

The proposed rule would expose even more people to the arbitrary cutoff policy by limiting state flexibility regarding area waivers and individual exemptions. By the Department's own calculations, the proposed rule would take food away from 755,000 low-income Americans, cutting food benefits by \$15 billion over ten years. Further, the Department does not estimate any improvements in health or employment among the affected population as a result of the implementation of this proposed rule.

Lessons learned from Temporary Assistance for Needy Families ("TANF") and other programs demonstrate that work reporting requirements are not effective in connecting people to living-wage jobs.¹⁵ As laid out by the Center on Budget and Policy Priorities, research shows that any employment increases among individuals subject to work reporting requirements were modest and faded over time.¹⁶ In nearly all of the approximately dozen programs evaluated, employment among recipients *not* subject to work reporting requirements was the same as or higher than employment among individuals subject to work reporting requirements within five years.¹⁷

Work reporting requirements are not only ineffectual but have opportunity costs: the time that a SNAP recipient loses in low-intensity programs or low-wage jobs simply to meet requirements could have been spent obtaining skills and credentials, finding a quality job, and increasing their earnings. A much better focus for public policy is to invest in strategies that support people to develop skills and access training that prepares them for jobs that pay living wages and foster an economy that creates more quality jobs with fair wages.

¹⁵ Ladonna Pavetti, *Work Requirements Don't Cut Poverty, Evidence Shows*, Center on Budget and Policy Priorities (June 2016), <https://www.cbpp.org/research/poverty-and-inequality/work-requirements-dont-cut-poverty-evidence-shows>.

¹⁶ *Id.*

¹⁷ *Id.*

The majority of adult SNAP recipients who can work, do work. But low-paying and low-quality jobs are often the only ones available to low-income persons, meaning many workers need SNAP to help them cover basic needs. And the nature of these jobs can make it highly challenging for those who hold them to consistently meet SNAP's 20-hour weekly work requirements. Moreover, particular populations of low-income workers face unique barriers to employment that make complying with the work requirements difficult. The Institute highlights three particular groups who are affected by high unemployment and who will be impacted by the proposed rule:

A. Persons Impacted by the Criminal Justice System

The proposed rule will specifically affect persons directly impacted by the criminal justice system who have a harder time finding and maintaining employment. Nationally over 600,000 persons are released from state and federal prisons each year¹⁸ and Arizona has one of the highest incarceration rates in the country.¹⁹

People of color, particularly African-Americans and Latinos, are unfairly targeted by the police and face harsher prison sentences than their white counterparts.²⁰ National data show that African-Americans and Latinos are three times more likely to be searched than whites²¹ and people of color are significantly overrepresented in the U.S. prison population, making up more than 60 percent of the people behind bars.²²

¹⁸ E. Ann Carson, *Prisons in 2016*, U.S. Bureau of Justice Statistics (Jan. 2018), <https://www.bjs.gov/content/pub/pdf/p16.pdf>.

¹⁹ Each month, Arizona has approximately 42,000 persons in prisons and another 5,500 in community supervision. *Corrections At A Glance*, Ariz. Dept. of Corrections (Feb. 2019), <https://corrections.az.gov/sites/default/files/REPORTS/CAG/2019/cagfeb19.pdf>.

²⁰ Jamal Hagler, *8 Facts You Should Know About the Criminal Justice System and People of Color*, Center for American Progress (May 2015), <https://www.americanprogress.org/issues/race/news/2015/05/28/113436/8-facts-you-should-know-about-the-criminal-justice-system-and-people-of-color/>.

²¹ Lynn Langton, Matthew Durose, et al., *Police Behavior during Traffic and Street Stops, 2011*, U.S. Department of Justice (Oct. 2016), <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf>.

²² *United States Profile*, Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/US.html#disparities>.

After release, formerly incarcerated individuals fare poorly in the labor market, with most experiencing difficulty finding a job after release. Research shows that roughly half of persons formerly incarcerated are still unemployed one year after release.²³ For those who do find work, it is common to have annual earnings of less than \$500.²⁴ Further, during the time spent in prison, many lose work skills and are given little opportunity to gain useful work experience.²⁵ Persons who have been involved in the justice system struggle to obtain a driver's license, encounter occupational licensing bans that prohibit them for many entry level positions, own a reliable means of transportation, acquire relatively stable housing, and maintain proper identification documents. These obstacles often prevent them from successfully re-entering the job market and are compounded by criminal background checks, which further limit access to employment.²⁶ A recent survey found that 96 percent of employers conduct background checks on job applicants that include a criminal history search.²⁷

All of the above factors result in persons with criminal records, whether recently reentering the community from incarceration or with old criminal cases, facing high unemployment rates that would make many of them unable to satisfy the 20-hour work

²³ Adam Looney and Nicholas Turner, *Work and Opportunity Before and After Incarceration*, The Brookings Institution, (March 2018), <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>; Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry*, Chicago, Ill: University of Chicago Press (2003), <https://www.amazon.com/When-Prisoners-Come-Home-Prisoner/dp/0195386124>; Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry*, Washington, D.C.: Urban Institute Press (2005), <https://www.amazon.com/But-They-All-Come-Back/dp/0877667500>.

²⁴ *Id.* at 41.

²⁵ Christy Visser, Sara Debus, and Jennifer Yahner, *Employment after Prison: A Longitudinal Study of Releasees in Three States*, The Urban Institute (Oct. 2008), <https://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releasees-in-Three-States.PDF>.

²⁶ Marina Duane, Nancy La Vigne, Mathew Lynch, et al., *Criminal Background Checks: Impact on Employment and Recidivism*, The Urban Institute (Mar. 2017), https://www.urban.org/sites/default/files/publication/88621/2017.02.28_criminal_background_checks_report_finalized_blue_dots_1.pdf.

²⁷ Thomas Ahearn, *Survey Finds 96 Percent of Employers Conduct Background Screening*, Employment Screening Resources (Aug. 2017), <http://www.esrcheck.com/wordpress/2017/08/03/survey-finds-96-percent-of-employers-conduct-background-screening/>.

requirement, especially in areas of high unemployment. Given these circumstances it is to be expected that they would need more than three months to find a job. Moreover, before entering prison, this population was more likely than the general population to have experienced poverty, unemployment, homelessness and poor health. Finally, many released persons have competing parole requirements, such as meetings with parole officers, curfews and required substance use treatment programs that can negatively impact their opportunities to meet the 20-hour requirement.

B. Women

The proposed rule will also particularly impact women. Many low-wage jobs that are primarily held by women—such as cashiers, maids and housekeepers, and restaurant servers—have work schedules that are often unpredictable, unstable, and inflexible.²⁸ Many offer only part-time work, despite many workers' need for full-time hours.²⁹ And women in low-wage jobs are especially likely to face discrimination and harassment at work, which can result in lost hours or voluntary or involuntary job loss.³⁰ All of these factors can make it difficult for low-income women to satisfy SNAP's 20-hour per week work requirement and makes women struggling with underemployment doubly vulnerable: if their employer schedules them for fewer hours, their wages decrease, and they are at risk of losing benefits.

Moreover, many of the ABAWDs who are unemployed for more than three months face significant obstacles to employment. Many women face long-term unemployment: 21.7 percent of women aged 20 to 64 years old have been unemployed for six months or more. Older women face higher unemployment rates (27.6 percent of women aged 45 to 54 years and 34.4 percent of women aged 55 to 64 years have been

²⁸ See generally Julie Vogtman & Karen Schulman, *NWLC, Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success* (Jan. 2016), <https://nwlc.org/wp-content/uploads/2016/01/Final-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf>.

²⁹ See generally Julie Vogtman & Jasmine Tucker, *NWLC. Collateral Damage: Scheduling Challenges for Workers in Low-Wage Jobs and Their Consequences* (Apr. 2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wpcontent/uploads/2017/04/Collateral-Damage.pdf>.

³⁰ *Sexual Harassment in the Workplace*, Nat'l Women's Law Ctr., (Nov. 2016), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/11/Sexual-Harassment-Fact-Sheet.pdf>.

unemployed for six months or more),³¹ and may have even more difficulty finding employment. Thus, SNAP's time limits for ABAWDs are in many cases ill-matched to women's actual experience of unemployment.

In addition, work requirements can harm women with disabilities who do not receive disability benefits yet face barriers to obtaining and maintaining employment. Many unemployed childless adults face barriers to work associated with physical or mental conditions. Though the current law includes an exemption for people with documented medical conditions, this exemption has not protected all persons who should be covered and many in this population suffered the harsh consequences of the time limit. A mental illness, intellectual disability or physical limitation — such as an injury that makes it hard for a person to stay on their feet — can prevent someone from being able to work 20 hours per month, which can result in the loss of SNAP benefits. In Arizona, almost half the persons who were cut off from food stamps because of the time limit and subsequently were reinstated, fell within the unable to work category.³²

Cutting off unemployed women's access to food stamps does not address any of the many barriers that prevent them from finding and keeping a job. Instead of helping these women find employment, SNAP's three-month time limit only deprives them of critical assistance in meeting basic needs at the moment when they are most economically vulnerable. This is why states' current waiver authority, which allows them to mitigate these time limits, should not be curtailed or eliminated.

C. LGBTQ Community

The LGBTQ community also faces unique challenges to gaining employment and will be impacted by the proposed changes. Employment discrimination is a significant factor contributing to LGBTQ poverty and unemployment rates. 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.³³ Sixteen percent of respondents to the 2015 U.S. Transgender Survey reported

³¹ Based on U.S. Dep't of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, Table A-36 (Mar. 09, 2018), <https://www.bls.gov/web/empsit/cpseea36.htm>.

³² See footnote 16.

³³ *Discrimination in America: Experiences and Views of LGBTQ Americans*, NPR, Robert Wood Johnson Foundation, Harvard T.H. Chan School of Public Health (2017), <https://www.npr.org/documents/2017/nov/npr-discrimination-lgbtq-final.pdf>.

losing their job due to their gender identity or expression.³⁴ And 15 percent of the survey's respondents reported being unemployed, a rate of unemployment three times higher than the unemployment rate for the total U.S. population at the time.³⁵

D. The Proposed Rule Ignores Its Discriminatory Application

The Department provides little analysis to explain its conclusions about the potential disparate impact the proposed changes would have on individuals and population groups protected by anti-discrimination laws, or of realistic plans to avert the expected harm that will occur from those changes. USDA merely asserts its expectation that *two-thirds* of those individuals made newly subject to the time limit “would not meet the requirements for failure to engage meaningfully in work or work training.” Moreover, while the Department concedes that the proposed changes “have the potential for disparately impacting certain protected groups due to factors affecting rates of employment of these groups, [it] find[s] that implementation of mitigation strategies and monitoring by the Civil Rights Division of FNS will lessen these impacts.” But no explanation of the mitigation strategies and monitoring is provided, so there is no opportunity for the Institute to comment on whether the acknowledged disparate impact will in fact be mitigated.

IV. Conclusion

The rules governing areas' eligibility for waivers have been in place for nearly 20 years and every state except Delaware has availed themselves of waivers at some point since the time limit became law. The waiver rules are reasonable, transparent, and manageable for states to operationalize. Any change that would restrict, impede, or add uncertainty to Arizona's current ability to waive areas with elevated unemployment must not be pursued. Taking away access to food assistance programs will not result in increased employment and earnings and will only exacerbate existing inequities.

The Institute strongly opposes any administrative action by the Department that would cause more people to face an increased risk of hunger and food insecurity. Specifically, we strongly oppose any administrative action by USDA that would expose more people to this arbitrary ABAWD cutoff policy. The only action we encourage the

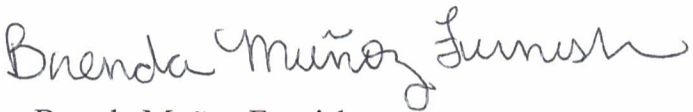
³⁴ Sandy E. James, *The Report of the 2015 U.S. Transgender Survey*, Washington: National Center for Transgender Equality, <https://transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>

³⁵ *Id.*

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Department to take with respect to this time limit rule that impacts ABAWDs is to propose its elimination. Restoring food stamps' ability to provide food assistance to impoverished unemployed persons would be a powerful policy improvement that would reduce food insecurity among those seeking work. We appreciate the opportunity to submit these comments.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Muñoz Furnish". The signature is written in dark ink and is positioned above the printed name.

Brenda Muñoz Furnish