

April 9, 2018

Ms. Sasha Gersten-Paal
SNAP Program Development Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, Rm. 812
Alexandria, VA 22302

Re: Advanced Notice of Proposed Rulemaking: Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents RIN 0584–AE57

Dear Ms. Gersten-Paal:

The National Women’s Law Center (the “Center”) appreciates the opportunity to comment on the U.S. Department of Agriculture’s Advanced Notice of Proposed Rulemaking: Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents (ABAWDs). For over 45 years, the Center has advocated to expand opportunities for women and girls, with particular emphasis on low-income women and their families. Because of the importance of the Supplemental Nutrition Assistance Program (SNAP) to women’s economic security, health, and well-being,¹ the Center strongly opposes any change in policy or regulation that further limits the receipt of SNAP benefits by low-income women. Moreover, because low-income women face significant barriers to finding stable jobs that meet SNAP’s weekly hours requirements, the Center’s position is that depriving unemployed and underemployed women of much-needed food assistance will not help them find jobs, but instead further jeopardize their economic security.

SNAP plays a critical role in reducing hunger, food insecurity, and poverty for millions of women and families. If counted in the official poverty measure, SNAP would have lifted the incomes of more than 2.7 million people above the poverty line in 2016, including more than 854,000 women between the ages of 18 and 64.² In Fiscal Year (FY) 2016, SNAP served more than 44.2 million people in nearly 21.8 million households on average each month.³ Women make up over half (63 percent) of adult SNAP recipients overall.⁴ SNAP serves a diverse group of women,

¹ HEATHER HARTLINE-GRAFTON, FOOD RES. & ACTION CTR., THE IMPACT OF FOOD INSECURITY ON WOMEN’S HEALTH, <http://frac.org/blog/impact-food-insecurity-womens-health>. See also STEVEN CARLSON & BRYNNE KEITH-JENNINGS, CTR. ON BUDGET AND POL’Y PRIORITIES, SNAP IS LINKED WITH IMPROVED NUTRITIONAL OUTCOMES AND LOWER HEALTH CARE COSTS, (Jan. 17, 2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>.

² Nat’l Women’s Law Ctr. calculations based on U.S. CENSUS BUREAU, 2017 CURRENT POPULATION SURVEY using Table Creator, available at <https://www.census.gov/cps/data/cpstablecreator.html>.

³ U.S. DEP’T OF AGRIC., CHARACTERISTICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS: FISCAL YEAR 2016 xv (Nov. 2017), available at <https://fns-prod.azureedge.net/sites/default/files/ops/Characteristics2016.pdf>.

⁴ Nat’l Women’s Law Ctr. calculations based on U.S. DEP’T OF AGRIC., CHARACTERISTICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS: FISCAL YEAR 2016 – TABLE A.23 – GENDER AND SNAP BENEFITS OF PARTICIPANTS BY SELECTED

including elderly women and women with disabilities. White women make up 24 percent of nonelderly adult recipients, while 34 percent of nonelderly adult recipients are women of color.⁵ Thirty-two percent of elderly adult recipients are white women, while 31 percent of elderly recipients are women of color.⁶ Moreover, 34 percent of bisexual women, 32 percent of lesbians, and 24 percent of straight women between 18 and 44 report participating in SNAP.⁷

Under current policy, ABAWDs aged 18 to 49 are required to work or participate in a work training program for 20 hours per week in order to receive SNAP. Unemployed and underemployed ABAWDs who do not meet this threshold are precluded from receiving SNAP benefits for more than three months in a 36-month period.

In 2016, 3.8 million people qualified as ABAWDs, nearly half of whom were female.⁸ As a group, ABAWDs are in dire need of basic assistance, with an average household income of only \$367 per month.⁹ Many face considerable barriers to employment, including low educational attainment, and may lose their SNAP benefits due to the time limit despite their willingness to work, in part because most states do not help them find work or training opportunities.¹⁰ Time limits also harm children living in poverty, who often depend on pooled resources (including SNAP benefits) from extended family members who do not claim them as dependents,¹¹ and youth aging out of foster care who experience high rates of unemployment and poverty.¹²

Question 1: ABAWD Waivers

Under the current rules, states have the flexibility to waive work requirements in areas within the state that have experienced elevated unemployment. The current waiver criteria allow

DEMOGRAPHIC CHARACTERISTICS 62 (Nov. 2017), available at <https://fns-prod.azureedge.net/sites/default/files/ops/Characteristics2016.pdf>.

⁵ Nat'l Women's Law Ctr. calculations based on U.S. CENSUS BUREAU, 2017 CURRENT POPULATION SURVEY using STEVEN RUGGLES ET AL., INTEGRATED PUBLIC USE MICRODATA SERIES (IPUMS): VERSION 6.0 [Machine-readable database] (Minneapolis: University of Minnesota, 2015).

⁶ *Id.*

⁷ Government data is not available on the percentage of SNAP recipients who are LGBT. The data provided measuring sexual orientation is based on the population-based National Survey of Family Growth, administered in 2011-2013. See TAYLOR N. T. BROWN ET. AL., THE WILLIAMS INSTITUTE, FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY, 13 (July 2016), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

⁸ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERVS., CHARACTERISTICS OF ABLE-BODIED ADULTS WITHOUT DEPENDENTS, available at <https://fns-prod.azureedge.net/sites/default/files/snap/nondisabled-adults.pdf>.

⁹ *Id.*

¹⁰ NUNE PHILLIPS, CTR. FOR LAW AND SOCIAL POL'Y, SNAP AND WORK, (Feb. 26, 2018), available at https://www.clasp.org/sites/default/files/publications/2018/01/2018_snapandwork.pdf.

¹¹ RACHEL MERKER, FIRST FOCUS, KIDS WILL PAY THE PRICE FOR USDA'S PUSH FOR "FLEXIBILITY" IN FOOD ASSISTANCE PROGRAMS (Dec. 7, 2017), <https://firstfocus.org/blog/kids-will-pay-the-price-for-usdas-push-for-flexibility-in-food-assistance-programs>.

¹² RACHEL MERKER, FIRST FOCUS, STRENGTHENING AND PROTECTING SNAP: AMERICA'S BEST DEFENSE AGAINST CHILD FOOD INSECURITY 4-5 (Sept. 2017), available at <https://firstfocus.org/wp-content/uploads/2017/10/Strengthening-SNAP-Fact-Sheet-FINAL.pdf>.

states to be immediately responsive and to assist workers and families during larger economic downturns, like those that arose during the recession. This waiver authority allows unemployed and underemployed women with very low incomes to continue to receive basic food assistance that helps them make ends meet during such difficult times. 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 states' current ability to waive areas with elevated unemployment must not be pursued.

Because of the importance of SNAP as a basic support for low-income women, the Center urges the U.S.D.A. to forego efforts to restrict or eliminate states' waiver authority. While the U.S.D.A.'s notice does not preemptively reject suggestions on how to make the time limit less harsh through administrative action, it expresses concern that the number of state waivers is too high. In addition, the notice expresses the U.S.D.A.'s intent to align SNAP regulations with the Administration's FY 2019 budget proposals, which sought to eliminate states' flexibility to exempt certain individuals and most high unemployment areas from the time limit and to increase the ages of individuals subject to the ABAWD work requirements. But restricting or eliminating state waivers could have a devastating impact: for example, when several states that had previously utilized waivers reinstated time limits for ABAWDs in 2016, at least 500,000 individuals lost access to SNAP.¹³

The request for comment also seems to suggest that potential improvements to other aspects of the time limit policy, such as individual exemption policy, would justify weakening states' flexibility to waive the time limit in areas with elevated unemployment. This logic is unfounded. The current waiver authority for states to exempt certain individuals from the rule is important, but is insufficient on its own to meet the needs of entire communities that face challenging economic conditions, and could never make up for having to apply the time limit in areas with elevated unemployment. And, as noted further below, the underfunded workforce system and SNAP employment and training programs are not designed, sufficiently funded, or well-suited to meet the job training requirements under this rule. Put simply, current waiver rules should not be weakened at the risk of exposing more low-income women and families to SNAP's harsh eligibility cutoff.

Question 2: Employment

Question two in the U.S.D.A.'s request for comment focuses on efforts to help states assist SNAP recipients "obtain and retain employment." In fact, the majority of adult SNAP recipients

¹³ ED BOLEN ET. AL., *CTR. ON BUDGET AND POL'Y PRIORITIES, MORE THAN 500,000 ADULTS WILL LOSE SNAP BENEFITS IN 2016 AS WAIVERS EXPIRE*, (Mar. 2016), available at <https://www.cbpp.org/research/food-assistance/more-than-500000-adults-will-lose-snap-benefits-in-2016-as-waivers-expire>.

who can work, do work.¹⁴ But low-paying and low-quality jobs are often the only ones available to low-income individuals, 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—this is especially difficult for women.

Compared to women's representation in the overall workforce, women of virtually all races and ethnicities are overrepresented in jobs that typically pay less than \$11 per hour and those that pay less than \$10 per hour.¹⁵ Of the more than 26 million people working in low-wage jobs (typically paying less than \$11 per hour), nearly six in ten are women. Twenty-nine percent of low-wage workers are white, non-Hispanic women; 14 percent are Latina; and 10 percent are Black women.¹⁶ In addition, women make up almost 70 percent of the lowest-wage occupations (typically paying less than \$10 per hour). Thirty-nine percent of workers in the lowest-wage workforce are white, non-Hispanic women; 14 percent are Latina; and 11 percent are Black women.¹⁷

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.¹⁸ Many offer only part-time work, despite many workers' need and desire for full-time hours.¹⁹ In March 2018, 11.5 percent of women working part time did so involuntarily.²⁰ In fact, involuntary part-time work is especially common in some low-wage sectors.²¹ Moreover, part-time workers may need to hold more than one job to make ends meet—but unpredictable schedules can make it difficult to do so. Among the nearly 3.7 million women who worked multiple jobs in 2015, close to one in seven worked at least one job that

¹⁴ CTR. ON BUDGET AND POL'Y PRIORITIES, CHART BOOK: SNAP HELPS STRUGGLING FAMILIES PUT FOOD ON THE TABLE (Feb. 14, 2018), <https://www.cbpp.org/research/food-assistance/chart-book-snap-helps-struggling-families-put-food-on-the-table>.

¹⁵ JASMINE TUCKER & KAYLA PATRICK, NAT'L WOMEN'S LAW CTR., LOW-WAGE JOBS ARE WOMEN'S JOBS: THE OVERREPRESENTATION OF WOMEN IN LOW-WAGE WORK 2 (Aug. 2017), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/08/Low-Wage-Jobs-are-Womens-Jobs.pdf>.

¹⁶ *Id.* Four percent of low-wage workers are Asian or Pacific Islander women and one percent are Native American women. *Id.*

¹⁷ *Id.* Four percent of workers in the lowest-wage occupations are Asian or Pacific Islander women and one percent are Native American women. *Id.*

¹⁸ See generally JULIE VOGTMAN & JASMINE TUCKER, NAT'L WOMEN'S LAW CTR., COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (April 2017), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Collateral-Damage.pdf>.

¹⁹ *Id.*

²⁰ Nat'l Women's Law Ctr. calculations based on U.S. DEPT OF LABOR, BUREAU OF LABOR STATISTICS, CURRENT POPULATION SURVEY, TABLE A-18 EMPLOYED AND UNEMPLOYED FULL- AND PART-TIME WORKERS BY AGE, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY, available at <https://www.bls.gov/web/empsit/cpseea18.htm>.

²¹ VOGTMAN & TUCKER, *supra* note 18 at 2. For example, 70 percent of the retail workers surveyed in the Retail Work and Family Life Survey reported wanting to work more hours. DANIEL SCHNEIDER & KRISTEN HARKNETT, WASH. CTR. FOR EQUITABLE GROWTH, SCHEDULE INSTABILITY AND UNPREDICTABILITY AND WORKER AND FAMILY HEALTH AND WELLBEING, 16 (Sept. 2016), available at <http://equitablegrowth.org/working-papers/schedule-instability-and-unpredictability/>.

had variable hours.²² Furthermore, women in low-wage jobs are especially vulnerable to discrimination and harassment at work,²³ which can result in lost hours or voluntary or involuntary job loss.²⁴

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. For those women struggling with multiple jobs that have unpredictable schedules, if they happen to receive enough hours to meet the work requirement, they are still at risk of losing benefits if they are unable to meet burdensome administrative requirements to document their hours of work.

Moreover, many ABAWDs who are unemployed for more than three months face significant obstacles to employment, including but not limited to lack of education and training. Some ABAWDs will have substantial stabilization needs, such as safe housing, addiction services, or domestic violence resistance, and as people surmount those barriers, access to a need as basic as food is paramount. The Government Accountability Office, moreover, found that SNAP participants subject to the ABAWD time limit are more likely than other SNAP participants to lack basic job skills like reading, writing, and basic math.²⁵ Existing workforce systems are chronically underfunded and not often designed to serve the range of needs of all ABAWDs.

²² Nat'l Women's Law Ctr. calculations based on U.S. DEP'T OF LABOR, BLS, CPS ANNUAL TABLE 36: MULTIPLE JOBHOLDERS BY SELECTED CHARACTERISTICS, <https://www.bls.gov/cps/cpsaat36.htm> (last visited Feb. 22, 2017). 5.3 percent of women held multiple jobs in 2015, compared to 4.5 percent of men. *Id.*

²³ *See, e.g.*, REST. OPPORTUNITIES CTRS. UNITED & FORWARD TOGETHER, THE GLASS FLOOR: SEXUAL HARASSMENT IN THE RESTAURANT INDUSTRY 5 (2014), available at http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf; HUMAN RIGHTS WATCH, CULTIVATING FEAR: THE VULNERABILITY OF IMMIGRANT FARMWORKERS IN THE US TO SEXUAL VIOLENCE AND SEXUAL HARASSMENT (May 2012), available at <https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual> (documenting pervasive sexual harassment and violence among immigrant farmworker women); IRMA MORALES WAUGH, EXAMINING THE SEXUAL HARASSMENT EXPERIENCES OF MEXICAN IMMIGRANT FARMWORKING WOMEN, 16 VIOLENCE AGAINST WOMEN 237, 241 (Jan. 2010), available at <http://vaw.sagepub.com/content/16/3/237.abstract> (eighty percent of female farmworkers in California's Central Valley reported experiencing some form of sexual harassment); UNITE HERE LOCAL 1, HANDS OFF, PANTS ON: SEXUAL HARASSMENT IN CHICAGO'S HOSPITALITY INDUSTRY (July 2016), available at <https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf> (58 percent of hotel workers and 77 percent of casino workers surveyed reported being sexually harassed by a guest); HART RESEARCH ASSOC., KEY FINDINGS FROM A SURVEY OF WOMEN FAST FOOD WORKERS (Oct. 5, 2016), available at <http://hartresearch.com/wp-content/uploads/2016/10/Fast-Food-Worker-Survey-Memo-10-5-16.pdf> (nationwide survey of workers in the fast food industry found nearly 40 percent of the women reported experiencing unwanted sexual behaviors on the job, and 21 percent of those workers reported that they suffered negative workplaces consequences after raising the harassment with their employer).

²⁴ NAT'L WOMEN'S LAW CTR., SEXUAL HARASSMENT IN THE WORKPLACE (Nov. 2016), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/11/Sexual-Harassment-Fact-Sheet.pdf>.

²⁵ U.S. GEN. ACCT. OFF., FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM BETTER DATA NEEDED TO UNDERSTAND WHO IS SERVED AND WHAT THE PROGRAM ACHIEVES (Mar. 2003), available at <https://www.gao.gov/assets/240/237571.pdf>.

In addition, it should be noted that among all unemployed women aged 20 to 64 years old, more than one in five (21.7 percent) have been searching for a job for six months or more.²⁶ Thus, SNAP’s time limits for ABAWDs are in many cases ill-matched to women’s actual experience of unemployment.

Cutting off unemployed and underemployed women’s access to SNAP does not address any of the many barriers that prevent them from finding and keeping a quality job. Instead of helping these women find employment, SNAP’s time limits only deprive them of critical assistance in meeting basic needs at the moment when they are most economically vulnerable. People should not be punished for grappling with hardship by losing SNAP benefits through harmful time limits. In addition, instead of focusing efforts on funneling people into low-paying jobs, resources should be focused on helping states ensure that people have high-quality, sustainable jobs that create a foundation for their long-term economic success.

Question 3: Exemptions

We oppose any changes to time limit exemptions, as suggested in the Administration’s FY 2019 budget proposal, or additional burdens placed on state agencies or individuals to verify their exemption status.

Many unemployed childless adults face barriers to work associated with physical or mental conditions. 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 week, which can result in the loss of SNAP benefits. Though the law includes an exemption for people with documented medical conditions, too many state agencies fail to help individuals prove they are exempt, even if they have difficulty obtaining the necessary records or verification from a doctor. Consequently, this exemption does not consistently protect this population from the harsh consequences of the time limit. Restricting the conditions or indicators that cause a SNAP participant to be determined “unfit for employment” and exempted from the ABAWD time limit would make the time limit’s impact on people with medical conditions even harsher.

The existing exemption policy is already insufficient to meet the needs of entire communities that face challenging economic circumstances.²⁷ Narrowing time limit exemptions would only

²⁶ Nat’l Women’s Law Ctr. calculations 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), *available at* <https://www.bls.gov/web/empsit/cpseea36.htm>. Older women face even higher unemployment rates (27.6 percent of unemployed women aged 45 to 54 years and 34.4 percent of unemployed women aged 55 to 64 years have been unemployed for six months or more). *Id.*

²⁷ Many non-disabled adults participating in SNAP who do not work report being unable to do so because they are caring for children or other household members or have a chronic health condition or impairment. *See* BRYNNE KEITH-JENNINGS & RAHEEM CHAUDRY, CTR. ON BUDGET AND POL’Y PRIORITIES, ISSUE BRIEF: MOST WORKING-AGE SNAP PARTICIPANTS WORK, BUT OFTEN IN UNSTABLE JOBS (Mar. 28, 2018), <https://www.cbpp.org/research/food-assistance/issue-brief-most-working-age-snap-participants-work-but-often-in-unstable>. These reasons fall under the current caregiving and “physically or mentally unfit for employment” exemptions to SNAP’s time limits. 7

create additional barriers to accessing much-needed food assistance. Any changes to exemption policy should better equip state agencies to help more eligible people receive the exemption.

Conclusion

The Center strongly opposes any administrative action by U.S.D.A. that would cause more people to face an increased risk of hunger and food insecurity. If anything, the Center encourages the U.S.D.A. to expand states' waiver authority, or better yet, support changes to statutory authority that would increase the length of the time limits for ABAWDs, or eliminate them altogether. We appreciate the opportunity to submit these comments.

Sincerely,



Amy K. Matsui
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National Women's Law Center

U.S.C. § 2015(o)(3) (2018). The Center would strongly oppose any statutory changes that would subject more women to ABAWD work requirements, such as by increasing the age limits, restricting conditions subject to the "unfit for employment" exemption, or including caregivers. Such proposals would increase hunger among senior women, those with health conditions, and children.