



April 2, 2019

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

RE: Comments on the Proposed Rule regarding Supplemental Nutrition Assistance Program (SNAP) Requirements for Able-Bodied Adults without Dependents; RIN 0584-AE57

Dear Certification Policy Branch:

The National Association of Criminal Defense Lawyers (“NACDL”) opposes USDA’s proposed rule on SNAP time limits and services for Able-Bodied Adults Without Dependents (ABAWDs). The proposed changes would cause serious harm to thousands of unemployed or underemployed people but especially people directly and indirectly impacted by criminal justice institutions, who are often burdened with numerous collateral consequences – specific legal barriers, generalized discrimination, and social stigma - that impair their access to employment and basic necessities.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's many thousands of direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system. NACDL has worked extensively on advocating for the reduction of the collateral consequences of an arrest or conviction, with several projects aimed at examining collateral consequences, including our 2014 report, “Collateral Damage: America’s Failure to Forgive or Forget in the War on Crime – A Roadmap to Restore Rights and Status After Arrest or Conviction.” This report was the result of the work of our Task Force on Restoration of Rights and Status After Conviction, which heard testimony from over 150 witnesses at hearings in Chicago, Miami, Cleveland, San Francisco, New York and Washington, DC. It is with this experience and perspective that we provide comments on this proposal.

Proposed Rule Will Reduce SNAP Benefits and Harm Communities

Federal law currently limits SNAP eligibility for ABAWDs if they are not working 20 hours a week or an average of 80 hours a month. These work requirements are onerous for people directly impacted by the criminal legal system because of the myriad barriers to employment stemming from a criminal record. Research shows that unemployment among formerly incarcerated people



hovers around 27 percent¹; higher than national unemployment rates during the Great Depression. By limiting states' abilities to provide work requirement waivers in high unemployment areas, the Administration will only exacerbate food insecurity and prevent directly impacted people and their families from accessing support during a time when they need it most, as they transition home following incarceration.

Under the law, states can request a waiver of the time limit for areas within the state that have 10 percent or higher unemployment rates or, based on other economic indicators, have a lack of sufficient 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 their ability to carry over unused exemptions forward.

The proposed rule would further limit these waivers and expose even more people to the arbitrary food cutoff policy by limiting state flexibility regarding area waivers and individual exemptions. By the Administration'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. The proposed rule would make it harder 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.

Proposed Rule Will Disparately Harm Justice Involved Individuals

This proposed rule will specifically affect people directly impacted by the criminal justice system due to the myriad of collateral consequences that impedes their successful reentry. Though in recent years we have seen a movement, particularly at the state level, towards criminal justice reform that seeks to promote successful reentry and remove the collateral consequences of a conviction, there is still much work to be done to eradicate the stigmatization associated with justice involved individuals. Absent fair chance hiring policies, almost all employers require some or all job applicants to undergo a criminal background check.²

As stated previously, the unemployment rate for formerly incarcerated people is approximately 27 percent; within the first year of release, it is approximately 60 percent. Further limiting food security for people who already face numerous barriers to employment is cruel and would undermine the criminal justice reforms the President and Congress supported in the FIRST STEP Act.

1 Prison Policy Initiative, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People* (Northampton: Prison Policy Initiative, 2018).

² *Collateral Damage: America's Failure to Forgive or Forget in the War on Crime – A Roadmap to Restore Rights and Status After Arrest or Conviction*. This publication is available online at: www.nacdl.org/restoraton/roadmapreport.



Second, studies have proven that SNAP restrictions can increase recidivism rates. SNAP provides critical support and stability as people return home from incarceration. For example, 70 percent of formerly incarcerated individuals in the Boston Reentry Study received SNAP benefits within two months of their release. But many of these people return home to communities facing chronic, high unemployment. Research has shown that recidivism rates can increase as much as 58 percent when harsher SNAP restrictions are implemented.³ These types of policies only increase corrections costs and the social harms inflicted upon these people and their communities.

Third, these proposed rules contradict the Administration's support for criminal justice system reform including the First Step Act (FSA). Individuals who will be eligible for release under the FSA will be entering a society that not only bars them from gainful employment, but with this rule further excludes them from an essential protection against hunger. The proposed rule would punish directly impacted people long after they have completed their sentence, increasing recidivism, government correctional spending, and hunger.

We strongly oppose the proposed rule that would expose even more people to arbitrary SNAP food cutoff policy and disproportionately impact individuals with a criminal record. If you have any questions, please direct them to Kyle O'Dowd, Associate Executive Director for Policy, kodowd@nacdl.org.

Respectfully Submitted,

National Association of Criminal Defense Lawyers

3 Tuttle, Cody. Snapping Back: Food Stamp Bans and Criminal Recidivism (College Park: University of Maryland, College Park, 2018).