

April 2, 2019

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

RE: Proposed Rule: Supplemental Nutrition Assistance Program (SNAP):
Requirements for Able-Bodied Adults without Dependents (ABAWDs) at 84 Fed.
Reg. 980 (February 1, 2019)

Dear Certification Policy Branch:

I am writing on behalf of the Legal Aid Society of the District of Columbia (Legal Aid) in response to the Department of Agriculture's Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the changes regarding the Supplemental Nutrition Assistance Program (SNAP) Requirements for Able-Bodied Adults without Dependents (ABAWDs), published in the Federal Register on February 1, 2019.

Legal Aid is the oldest and largest general legal services program in the District of Columbia. Legal Aid's mission is to make justice real – in individual and systemic ways – for persons living in poverty in the District. Over the past 87 years, we have provided legal assistance to tens of thousands of individuals and impacted many more through our systemic litigation and advocacy. Today, Legal Aid provides legal services in five broad areas: housing, family law, public benefits, consumer, and immigration, our newest practice area added in 2018. Our work includes individual and systemic advocacy with the District and federal governments to eliminate access barriers to vital public benefits for eligible District residents.

Legal Aid strongly opposes the proposed changes to the SNAP ABAWD requirement because it would harm the approximately 20,000 ABAWD SNAP recipients in the District of Columbia who would become subject to this onerous requirement. SNAP plays a critical role in addressing hunger and food insecurity in the District. In Fiscal Year 2018, over 58,000 households in the District benefitted from SNAP.¹ And SNAP promotes economic activity, generating \$1.79 for every \$1 in federal SNAP benefits.² If implemented, the proposed rule would plunge tens of thousands of vulnerable District residents further into food insecurity by causing them to lose their SNAP benefits, while doing little, if anything, to increase their

¹ District of Columbia Department of Human Services (DHS) Fiscal Year 2019 Oversight Responses, Part I, 111, *available at* http://dccouncil.us/wp-content/uploads/2019/02/dhs19_Part1.pdf (last visited Mar. 31, 2019).

² United States Department of Agriculture, Economic Research Service, *SNAP Stimulates Economic Activity During an Economic Downturn*, <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/economic-linkages/> (last updated Apr. 11, 2018).

work participation or, more importantly, their economic stability and those of their communities.

We therefore urge the Department to withdraw this proposed rule and work with states on strategies to improve workforce participation by SNAP beneficiaries in ways that do not increase food insecurity.

Area Waivers and Individual Exemptions Provide Ways to Modestly Ameliorate the Harsh Impact of Arbitrary Time Limits

Federal law limits SNAP eligibility for childless unemployed and underemployed adults ages 18-50 (except for those who are exempt) to just three months out of every three years unless they are able to obtain and maintain an average of 20 hours a week of employment or participation in other narrowly defined sets of activities. *See* 7 U.S.C. § 2015(o). This rule is harsh and unfair. It harms vulnerable people by denying them food benefits at a time when they most need them, and it does not result in increased employment and earnings.³ 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.

However, federal law also provides states with flexibility to ameliorate the impact of the cutoff. States can request a waiver of the time limit for areas within the state that have an unemployment rate of 10 percent or higher or, based on other economic indicators, do not have “sufficient jobs to provide employment for individuals” subject to the work requirements. 7 U.S.C. § 2015(o)(4).

Current federal regulations specify the ways in which states can satisfy the statutory standards for a waiver. Specifically, states can obtain waivers for areas in their states upon a showing of: (a) a recent 12-month unemployment rate above 10 percent; (b) a recent 3-month unemployment rate above 10 percent; (c) a historical seasonal unemployment rate of 10 percent; (d) a designation as a Labor Surplus Area (LSA) by the Department of Labor; (e) qualification for extended unemployment benefits; or (f) a recent 24-month average unemployment rate 20 percent above the national average for the same 24-month period. 7 C.F.R. § 273.24(f). Moreover, states have discretion to exempt individuals from the time limit by utilizing a pool of exemptions (referred to as “15 percent exemptions”). *Id.* § 273.24(g).

The District of Columbia has a waiver based on the fact that its unemployment rate is 20 percent higher than the national average over a recent 24-month time period.⁴ By granting

³ E. Bolen and S. Dean, *Waivers Add Key State Flexibility to SNAP’s Three-Month Time Limit*, Center on Budget and Policy Priorities (Feb. 6, 2018) (“SNAP recipients’ benefits are generally cut off after three months irrespective of whether they are searching diligently for a job or willing to participate in a qualifying work or job training program.”).

⁴ The District should also qualify for a waiver based on its FY 2019 designation by the U.S. Department of Labor as a Labor Surplus Area, a measure of labor-market weakness, meaning

this waiver, the Department has recognized that while the overall economy in the District of Columbia has improved, there are still many residents (including many SNAP beneficiaries) who are unable to find work. Implementation of the proposed rule would make it harder for the District and other areas with elevated unemployment rates to qualify for waivers of the time limit by adding a seven-percent unemployment rate floor to the requirement that an area have an unemployment rate 20 percent higher than the national average over the past 24 months. In fact, the agency is soliciting comments on whether or not a 10-percent floor should be added, which would appear to be manifestly beyond the agency’s mandate. The Department argues that the addition of a 10-percent floor to the 20-percent requirement would only produce a “similar, but separate standard requir[ing] an area to have an average unemployment rate of over 10 percent for a 12-month period.” 84 Fed. Reg. 984. However, it is unclear how using a 10-percent floor to restrict the definition of “insufficient jobs” would not be the same as stating that an area cannot qualify for a waiver without an unemployment rate of 10 percent or more.⁵

Implementation of the Proposed Rule Would Harm Vulnerable District Residents, Exacerbating Food Insecurity and Racial and Geographic Disparities Without Improving Self-Sufficiency Among ABAWDs.

Implementation of this rule would have a devastating impact on tens of thousands of ABAWDs in the District of Columbia who already must contend with reduced economic opportunity, racial disparity, and limited access to food. National studies have found that ABAWDs tend to be “extremely poor, have limited education and sometimes face barriers to work such as criminal justice histories or racial discrimination.”⁶ Implementation of this

that the District is a “civil jurisdiction [area with 20,000 or more residents] that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period,” or six percent or more. 83 Fed Reg. 46521 (Sept. 18, 2018). The FY 2019 designation as an LSA is based on data from January 2016 through December 2017. See Department of Labor, *Labor Surplus Area: Frequently Asked Questions* (Oct. 3, 2018), https://www.doleta.gov/lisa/lisa_faq.cfm.

⁵ Additionally, the proposed rule would eliminate 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 (e.g., by no longer allowing employment to population ratios that demonstrate economic weakness to qualify areas for waivers). It would undermine efficient state implementation of area waivers by limiting their duration to 12 months and delaying their start dates until after USDA processes the request. In addition, the proposed rule would remove states’ ability to use exemptions accumulated prior to the rule’s implementation as well limit the time states have to use exemptions they receive in the future.

⁶ See *supra* note 3.

proposed rule would do nothing to address these barriers and simply lead to more hardship among an already vulnerable population.

In justifying its proposed regulation, the Department states its “commit[ment] to implementing SNAP as Congress intended and bel[ief] that those who can work should work.” 84 Fed. Reg. 981. Furthermore, the Department continues, “[t]he application of waivers [of the work requirements] on a more limited basis would encourage more ABAWDs to take steps towards self-sufficiency.” *Id.*; *see also id.* at 982 (“Through the stricter criteria for waiver approvals, the Department would encourage greater engagement in meaningful work activities and movement towards self-sufficiency among ABAWDs, thus reducing the need for nutrition assistance.”).

However, in assessing the impact of implementation of this proposed regulation, the Department concedes that 90 percent of ABAWDs would be subject to the work requirements, and of these, “approximately two-thirds (755,000 individuals in FY 2020) would not meet the requirements for failure to engage meaningfully in work or work training.” 84 Fed. Reg. 989.⁷ Moreover, the Department also acknowledges that implementation of this regulation has “the potential for disparately impacting certain protected groups due to factors affecting rates of employment of members of these groups,” but it is confident that the “implementation of [as yet, unspecified] mitigation strategies and monitoring by the Civil Rights Division of FNS will lessen these impacts.” *Id.*

Exacerbating geographic unemployment differentials. In November 2017, the overall unemployment rate in the District was 6.4 percent,⁸ a figure that undercounts the number of unemployed because it only encompasses individuals who looked for work in the last four weeks, not those who have looked for work in the last year but have become discouraged or are marginally attached to the labor market.⁹ This rate also masks the disparity between the job opportunities for individuals in higher-income wards and the fewer job opportunities for those who live in lower-income wards. In Wards 2 and 3 (where seven percent of SNAP

⁷ Furthermore, the agency estimates that implementation of this proposed rule would result in a \$1.7 billion reduction in the amount of SNAP benefits provided per year. *See id.* This means that, nationwide, retailers would lose almost \$3 billion in revenue if this rule were implemented.

⁸ District of Columbia Department of Employment Services, *District of Columbia Unemployment Rate Improves to 6.4 Percent in November* (Dec. 2017), <https://does.dc.gov/release/district-columbia-unemployment-rate-improves-64-percent-november>.

⁹ United States Department of Labor, Bureau of Labor Statistics, *Alternative Measures of Labor Underutilization for States, 2018 Annual Averages*, <https://www.bls.gov/lau/stalt.htm> (last updated Jan. 25, 2019).

beneficiaries live) the unemployment rate was 3.5 and 3.6 percent, respectively, in 2017.¹⁰ Meanwhile, in Wards 7 and 8 (where 40 percent of SNAP households – and an estimated 55 percent of ABAWDs – live), the median income is \$35,000 and \$38,000, respectively, compared to \$83,000 for the District as a whole,¹¹ and the unemployment rate in November 2017 was 10.2 and 13.0 percent, respectively.¹²

Exacerbating racial unemployment differentials. Implementation of this proposed rule would also disparately impact African-Americans in the District. Wards 7 and 8 are 92-percent African-American, the only racial group whose unemployment rate remains higher after the recession of 2008 than it was before the recession.¹³ Racial discrimination remains a key force in the labor market. A study from 2013 submitted fake resumes of nonexistent recent college graduates through online job applications for positions based in Atlanta, Baltimore, Portland, Oregon, Los Angeles, Boston, and Minneapolis. African Americans were 16 percent less likely to get called in for an interview.¹⁴ Similarly, a 2017 meta-analysis of field experiments on employment discrimination since 1989 found that white Americans applying for jobs receive on average 36 percent more callbacks than African Americans and 24 percent more callbacks than Latinos.¹⁵ Given this phenomenon, it is unsurprising that in the District of Columbia — where roughly 48 percent of residents are African American —

¹⁰ District of Columbia Department of Employment Services, *Ward, Labor Force, Employment and Unemployment Rate, 2017*, available at https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Ward_2017_BM.pdf (last visited Apr. 2, 2019).

¹¹ DC Health Matters, *2019 Demographics, Households/Income Data for City: District of Columbia*, <http://www.dchealthmatters.org/?module=demographicdata&controller=index&action=index&id=131494§ionId=936> (last updated Jan. 2019).

¹² DC Health Matters, *2019 Demographics, Households/Income Data for Wards: Ward 7 and Ward 8*, <http://www.dchealthmatters.org/?module=demographicdata&controller=index&action=index&id=131494§ionId=936> (last updated Jan. 2019).

¹³ L. Lassiter, *Still Looking for Work: Unemployment in DC Highlights Racial Inequity*, DC Fiscal Policy Institute (Mar. 2, 2017), available at https://www.dcfpi.org/wp-content/uploads/2017/09/Still-Looking-for-Work-Unemployment-2017_fnl.pdf.

¹⁴ B. Arends, “In Hiring, Racial Bias is Still a Problem. But Not Always for Reasons You Think,” *Fortune*, (Nov. 4, 2014), <http://fortune.com/2014/11/04/hiring-racial-bias/>.

¹⁵ L. Quillian, D. Pager, O. Hexel, et al., *Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring over Time*, Proceedings of the National Academy of Sciences of the United States of America (Oct. 10, 2017 (print), Sept. 2017 (electronic)), available at <https://doi.org/10.1073/pnas.1706255114>.

black unemployment rates are 8.5 times white unemployment rates, a disparity that is higher than in any other state in the nation.¹⁶

Furthermore, people of color, particularly African Americans and Latinos, are significantly overrepresented in the U.S. prison population, making up more than 60 percent of the people behind bars.¹⁷ After release, formerly incarcerated individuals fare poorly in the labor market, with most experiencing difficulty finding a job. Research shows that roughly half of people formerly incarcerated are still unemployed one year after release.¹⁸ People who have been involved in the justice system struggle to obtain a driver's license, 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.¹⁹ And in the District of Columbia, the racial implications of these statistics are very stark. According to a 2016 report from the Council on Court Excellence, “[a]lthough slightly less than half of all D.C. residents are black, more than 96 percent of D.C. Code offenders incarcerated at BOP [(Bureau of Prison)] facilities are black. *The struggles that result from a criminal record are experienced almost entirely by D.C.’s black community.*”²⁰

Worsening hunger and lack of access to food. Furthermore, implementation of this proposed rule would also lead to even greater food insecurity in the District. In addition to having fewer job opportunities for its residents, Wards 7 and 8 also contain the majority of food deserts located in the District, which makes it harder for these residents to meet their

¹⁶ J. Jones, “In 14 states and DC, the African American unemployment rate is at least twice the white unemployment rate,” Economic Policy Institute (May 17, 2018), <https://www.epi.org/publication/state-race-unemployment-2018q1/>.

¹⁷ “United States profile,” Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/US.html#disparities> (last visited Apr. 2, 2019).

¹⁸ A. Looney and N. Turner, *Work and Opportunity Before and After Incarceration*, The Brookings Institution, Mar. 2018, available at <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>; J. Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (2003), available at <https://www.amazon.com/When-Prisoners-Come-Home-Prisoner/dp/0195386124>; J. Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry* (2005), available at <https://www.amazon.com/But-They-All-Come-Back/dp/0877667500>.

¹⁹ M. Duane, N. La Vigne, M. Lynch, *et al.*, *Criminal Background Checks: Impact on Employment and Recidivism*, The Urban Institute, Mar. 2017, available at https://www.urban.org/sites/default/files/publication/88621/2017.02.28_criminal_background_checks_report_finalized_blue_dots_1.pdf.

²⁰ Council on Court Excellence, *Beyond Second Chances: Returning Citizens’ Re-Entry Struggles and Successes in the District of Columbia* (Dec. 2016), at vi (emphasis added), available at <http://www.courtexcellence.org/uploads/File/BSC-FINAL-web.pdf>.

nutritional needs.²¹ The loss of SNAP benefits for tens of thousands of ABAWDs would surely exacerbate this existing problem.

Mandatory work requirements do not increase economic self-sufficiency and stability.

The Department argues that implementation of the proposed rule would increase work activity among ABAWDs and lead to more self-sufficiency among this population. *See, e.g.*, 84 Fed. Reg. 981 (“The Department is committed to implementing SNAP as Congress intended and believes that those who can work should work.”); *id.* at 982 (“The Department recognizes that long-term, stable employment provides the best path to self-sufficiency for those who are able to work.”); *id.* (“Limiting waivers would make more ABAWDs subject to the time limit and thereby encourage more ABAWDs to engage in meaningful work activities if they wish to continue to receive SNAP benefits.”). However, since the passage of the Personal Responsibility and Work Opportunity Reconciliation Act in 1996 (the legislation that contained the ABAWD work requirements as well as those that are now imposed on recipients of Temporary Assistance for Needy Families (TANF) benefits), numerous studies have shown that mandatory, strict work requirements do not lead to greater work activity in the long term.

In an analysis of the impact of work requirements in SNAP and TANF, the Urban Institute concludes, “the evidence shows work requirements fail to achieve their goal for two primary reasons: [w]ork requirements don’t necessarily help people find jobs, and certainly not jobs that lift people out of poverty;” and “[t]he red tape associated with work requirements can cause people to lose access to vital supports even when they are working or should be exempt from the requirements.”²² And these types of mandatory work requirements are unlikely to lead to “self-sufficiency” among ABAWDs according to the Department’s own 2002 study, which found that “ABAWD leavers’ employment rates [were] significant, but earnings and incomes [were] low and their poverty rates [were] high.”²³

In fact, many SNAP beneficiaries are already working. As the Urban Institute found, “most working-age people receiving Medicaid and SNAP who are not disabled are already working or between jobs, and these programs provide crucial supports that help them keep their jobs or

²¹ K. Vandersluis Morgan, *Food Insecurity and its Effects in Washington, DC*, Roots for Life (Nov. 12, 2018) <https://www.roots-for-life.org/resources/2018/11/11/food-insecurity-and-its-effects-in-washington-dc>.

²² H. Hahn, *Work Requirements in Safety Net Programs: Lessons for Medicaid from TANF and SNAP*, Urban Institute (Apr. 2018), available at https://www.urban.org/sites/default/files/publication/98086/work_requirements_in_safety_net_programs_0.pdf.

²³ E. Dagata, *Issues in Food Assistance: Assessing the Self-Sufficiency of Food Stamp Leavers* (Sept. 2002), available at https://www.ers.usda.gov/webdocs/publications/46644/31106_fanrr26-8_002.pdf?v=41414.

find the next one.”²⁴ In FY 2017, more than 21 percent of SNAP beneficiaries in the District were in working families.²⁵ Therefore, receipt of SNAP already supports work, making it unlikely that receiving SNAP benefits is the cause of ABAWD joblessness.

In short, implementation of this proposed rule will do nothing to decrease employment barriers for the anywhere from 11,000 to 20,000 ABAWDs (many of whom are people of color) who will lose their SNAP as a result. Instead, implementation will lead to the very things that SNAP was designed to counteract — food insecurity resulting from food deserts, and poverty due to joblessness that results at least in part from larger labor market forces and racial disparities in unemployment rates. While the District (and all states) provide education, training, and work opportunities to SNAP beneficiaries, successful programs are very expensive and there is nowhere near enough funding being dedicated to SNAP Education and Training to help all of the ABAWDs who will need it to obtain employment.

The Proposed Rule Is Inconsistent with Congressional Intent.

The Administration’s proposed rule seeks to end run Congress, which just concluded a review and reauthorization of SNAP in the 2018 Farm Bill. *But see* 84 Fed. Reg. 981 (“The Department is committed to implementing SNAP as Congress intended.”). Initially, the House-passed Farm Bill (HR 2) proposed several restrictive ABAWD-related policies. First, the legislation would have amended the statute to require SNAP participants ages 18 through 59 (as opposed to the current law’s 18 through 49) who are not disabled or raising a child under 6 to prove — every month — that they are working at least 20 hours a week, participating at least 20 hours a week in a work program, or a combination of the two. Second, the legislation would have changed the waiver and exemption requirements in a way similar to those enumerated in the proposed regulation.²⁶

²⁴ *See supra* note 18.

²⁵ C. Nchako and L. Cai, *A Closer Look At Who Benefits from SNAP*, Center on Budget and Policy Priorities, https://www.cbpp.org/research/food-assistance/a-closer-look-at-who-benefits-from-snap-state-by-state-fact-sheets#District_of_Columbia (last updated Dec. 3, 2018).

²⁶ In order to qualify for a waiver under the House legislation, an area would have had to show that it: (1) has an unemployment rate of over 10 percent; (2) is designated as a Labor Surplus Area by the Employment and Training Administration of the Department of Labor for the current fiscal year based on the criteria for exceptional circumstances; (3) has a 24-month average unemployment rate 20 percent or higher than the national average for the same 24-month period unless the 24-month average unemployment rate of the area is less than seven percent, with adjustments to the 24-month period that can be used; or (4) is in a State (A) that is in an extended benefit period (within the meaning of section 203 of the Federal State Extended Unemployment Compensation Act of 1970) or (B) in which temporary or emergency unemployment compensation is being provided under any Federal law. *See*

The House clearly felt that adjustments to the waiver authority must come from Congress and not the Administration. During the debate over the Farm Bill, Representative Mike Conley, the Chair of the House Agriculture Committee, said that the legislative branch (as opposed to the Administration) was responsible for “fixing the waiver issue,” stating:

*The Senate seems to have abandoned the idea that it is Congress’ responsibility to fix the waiver issue and that somehow [USDA] Secretary (Sonny) Perdue could wave a magic wand and fix that. It’s not his responsibility; he does not have the authority. Quite frankly if President Obama’s Agriculture secretary (Tom Vilsack) had done that, we would have been screaming bloody murder. So, the Senate is perpetuating the same bad government solution to having the executive branch ignore the law and ignoring the legislative branch. So, it’s our job to fix it and then once we get the law fixed, it’s the Secretary’s responsibly to implement the new law, not fix the existing broken system that’s allowing waivers to be abused.*²⁷

However, the Senate explicitly rejected many of the House’s proposed radical changes – a fact not acknowledged by the Department. *See, e.g.*, 84 Fed. Reg. at 984 (justifying the addition of a seven-percent floor to the 20-percent standard by stating “this [provision] aligns with the proposal in the Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. § 4015 (as passed by House, June 21, 2018))” (emphasis added). In fact, the ultimate legislation made minor changes to the waiver and exemption provisions by reducing the number of exemptions that a state could receive each year from 15 to 12 percent and requiring that any requests for waiver have the signature of the governor.²⁸ In rejecting the House proposal, the Conference Report accompanying the final legislation states:

The Managers also acknowledge that waivers from the ABAWD time limit are necessary in times of recession and in areas with labor surpluses or higher rates of unemployment. The Managers intend to maintain the practice that bestows authority on the State agency responsible for administering SNAP to determine when and how waiver requests for ABAWDs are submitted. In response to concerns that have been raised by some Members that State agencies have not fully communicated to the chief executive their intent to request a waiver under section 6(o), the Managers have included a provision to encourage communication between the State agency and the chief executive officer of the

Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. § 4015 (as passed by House, June 21, 2018), available at <https://www.congress.gov/bill/115th-congress/house-bill/2/text/eh>.

²⁷ J. Wiesmeyer, *Interview: House Ag Chairman Mike Conaway*, Pro Farmer, Sept. 19, 2018, <http://www.profarmer.com/markets/policy/interview-house-ag-chairman-mike-conaway>.

²⁸ Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. § 4005 (enrolled bill), available at <https://docs.house.gov/billsthisweek/20181210/CRPT-115hrpt1072.pdf>.

*State. The Managers agree that State agencies should have the support of these officials in their application for waiver, ensuring maximum State coordination. It is not the Managers' intent that USDA undertake any new rulemaking in order to facilitate support for requests from State agencies, nor should the language result in any additional paperwork or administrative steps under the waiver process.*²⁹

In passing legislation that did not substantially alter the current rules, Congress was implicitly acknowledging that for the past 20 years, these waiver rules have proven to be reasonable, transparent, and manageable for states to operationalize. Also, as a substitute for mandating ineffective work requirements, Congress provided additional resources for states to improve their Education and Training programs, stating in the Conference Report, “[t]he Managers recognize the importance of [Education and Training] as a means to improve SNAP participants’ ability to gain and retain employment and reduce reliance on public assistance. The Managers expect USDA and State agencies to review and bolster the quality and accountability of State [Education and Training] programs for SNAP participants.”³⁰

This proposed regulation adopts much of the language from the House bill that was explicitly rejected by Congress and signed into law by the President, thus contravening congressional intent. “Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.” *Lorillard, Div. of Loew’s Theatres, Inc. v. Pons*, 434 U.S. 575, 580 (1978) (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414, n. 8 (1975); *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 366 (1951); *National Lead Co. v. United States*, 252 U.S. 140, 147 (1920)); see 2A C. Sands, *Sutherland on Statutory Construction* § 49.09 and cases cited (4th ed. 1973). Therefore, this proposed rule is contrary to Congress’s intent in maintaining current ABAWD requirements, providing some tweaks to the waiver and exemption requirements, and encouraging USDA and State agencies to “continue pursuing effective methods for SNAP participants to attain sustainable employment,” rather than subjecting 90 percent of ABAWDs in areas of high unemployment to strict work requirements that are unlikely to lead to sustainable employment and self-sufficiency.³¹

Conclusion

For the reasons provided above, Legal Aid strongly opposes the proposed rule which flies in the face of congressional intent and would harm tens of thousands of District residents by exacerbating racial and geographic disparities in unemployment and food insecurity. We urge the Department to withdraw this proposed rule and focus on policies that will fulfill the

²⁹ Conference Report accompanying Agriculture and Nutrition Act of 2018, H.R. 2, Report 115-072, <https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf> at 616-17 (emphasis added).

³⁰ *Id.* at 617.

³¹ *Id.*

purposes of the SNAP program – mitigating the harmful impacts of food and job insecurity and poverty for individuals and communities.

Sincerely,

/s/ Eric Angel

Eric Angel
Executive Director

/s/ Jennifer Mezey

Jennifer Mezey
Supervising Attorney