



## The Women's Legal Defense and Education Fund

Carol A. Baldwin Moody, *President and CEO*

### BOARD OF DIRECTORS

**Chair:** G. Elaine Wood  
*Duff & Phelps, LLC*

**First Vice Chair:** Loria B. Yeadon  
*Yeadon IP LLC*

**Vice Chair:** Robert M. Kaufman  
*Proskauer Rose LLP*

**Vice Chair:** Deborah L. Rhode  
*Stanford Law School*

**Vice Chair:** Jay W. Waks  
*American Kennel Club*

**Vice Chair:** Laura A. Wilkinson  
*Weil, Gotshal & Manges LLP*

**General Counsel:** Beth L. Kaufman+  
*Schoeman Updike Kaufman & Gerber LLP*

**Secretary:** Eileen Simon  
*Mastercard*

**Treasurer:** Susan B. Lindenauer  
*The Legal Aid Society (retired)*

**Executive Committee At Large:**  
Elizabeth J. Cabraser  
*Lieff Cabraser Heimann & Bernstein, LLP*

**Esha Bandyopadhyay**  
*Fish & Richardson PC*

**Dede Thompson Bartlett**  
*Woodrow Wilson Visiting Fellow*

**Glynnna Christian**  
*Orrick, Herrington & Sutcliffe, LLP*

**Ethan Cohen-Cole, PhD, MPA, MA**  
*Vega Economics*

**Alexis S. Coll-Very**  
*Simpson Thacher & Bartlett LLP*

**Meena Elliott.**

**Kim Gandy**  
*National Network to End Domestic Violence (NNEDV)*

**Vilia B. Hayes**  
*Hughes Hubbard & Reed LLP*

**Matthew S. Kahn**  
*Gibson, Dunn & Crutcher LLP*

**Amy Dorn Kopelan**  
*Bedlam Productions, Inc. (on leave)*

**Amy S. Leder**  
*Holland & Knight LLP*

**Lori B. Leskin**  
*Arnold & Porter Kaye Scholer LLP*

**Stephanie A. Sheridan**  
*Steptoe & Johnson LLP*

**Karen E. Silverman**  
*Latham & Watkins LLP*

### HONORARY DIRECTORS

**Muriel Fox, Chair**

**Barbara M. Cox**

**Etta Froio**  
*Women's Wear Daily (retired)*

**Stephanie George**  
*Fairchild Fashion Media Inc.*

**Ralph I. Knowles, Jr. (deceased)**  
*Doffernyre Shields Canfield & Knowles LLC*

**Michele Coleman Mayes**  
*New York Public Library*

**Lisa Specht**  
*Manatt, Phelps & Phillips, LLP*

+Non-voting Board Officer

\*Organizational affiliations for purposes of identification only.

April 2, 2019

Certification Policy Branch  
Program Development Division  
3101 Park Center Drive  
Alexandria, VA 22302

**Re: RIN 0584-AE57: Comments in Response to Proposed Rule on Requirements for Able-Bodied Adults Without Dependents (ABAWD) under the Supplemental Nutrition Assistance Program (SNAP)**

***Submitted via the Federal Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov)***

Dear Certification Policy Branch:

Legal Momentum welcomes the opportunity to comment on the proposed rule issued by the Department of Agriculture ("the Department") seeking to amend regulations to limit waivers for able-bodied adults without dependents ("ABAWD") under the Supplemental Nutrition Assistance Program ("SNAP").

Advocating for gender equality for over 40 years, Legal Momentum remains committed to achieving economic and personal security for all women and girls by eliminating barriers to equal treatment and advancing access to equal opportunity. Based on our longstanding experience advancing the rights of the most vulnerable, including low-income women, we respectfully submit the comments below.

Legal Momentum strongly opposes the proposed rule. Standards for ABAWD waivers should not be made more stringent to deny states the discretion they were intentionally granted under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). Instead of promoting self-sufficiency, which is the stated intention of the rule, the proposed amendments will hurt our economy by increasing poverty and inequality, disproportionately penalize low-income women and exacerbate systemic gender discrimination, and jeopardize the safety of survivors of gender-based violence. Accordingly, we urge you to act expeditiously to withdraw this proposed rule in its entirety.



## **1. The Proposed Rule Undermines the Legislature’s Intent to Grant States Discretion to Implement SNAP In Accordance with Each State’s Local Needs and Priorities.**

As the comments note, the PRWORA affords states flexibility to respond to fluctuations in the economy.<sup>1</sup> Specifically, the law gives states limited percentage exemptions to extend SNAP eligibility for ABAWDs and authorizes the Department, under limited circumstances, to issue waivers to states, upon their request, to extend time limitations for SNAP eligibility.<sup>2</sup> The Department now argues that this flexibility has resulted in widespread use of waivers during a period of low unemployment, which it believes undermines the work requirements under the law.<sup>3</sup> Accordingly, the Department believes that states should no longer have flexibility to make waiver requests and to define a waiver’s geographic scope, and instead seeks to amend the regulatory standards to encourage broader application of the work requirement.

The Department should not amend existing regulations to impose the proposed limitations. Not only did the PRWORA purposefully bestow states with this discretion, it did so for good reason. The purpose of the statute as a whole was to shift control over public benefits from the federal government to the states by expanding state flexibility.<sup>4</sup> When the law was enacted, it was the deliberate intention of Congress to give individual states the responsibility to implement PRWORA, which would allow for a service structure that could best accommodate local needs and priorities.<sup>5</sup> The current waiver scheme therefore allows states to assist workers and families respond to various factors that may impact unemployment and self-sufficiency in their area.

For example, the regulations should not limit the ability of areas to qualify for waivers based on current low unemployment rates. Flexibility granted to states takes into account that unemployment rates fluctuate over time and based on localized dynamics, including structural economic changes such as factory closures or local downturns. Similarly, the regulations should not be amended to prohibit states from combining data from adjoining areas, because Congress believed that states are better equipped to analyze, account for, and respond to local employment dynamics, including local and regional population movements since many people don’t work where they live. Moreover, the Department should not limit the duration of waivers to one year and limit the range of economic factors considered in assessing waiver eligibility. To serve as a meaningful indicator, self-sufficiency cannot be assessed based on unemployment alone. It must be assessed based on a more complex economic analysis that takes into account a broader context, including critical factors such as wage rates, cost of living, and discrimination. Eliminating the flexibility that states currently retain would undermine the intention and purpose of the statute, which intentionally sought to give states the ability to respond and adapt to these realities.

---

<sup>1</sup> 83 Fed. Reg. 980.

<sup>2</sup> 7 U.S.C. § 2015.

<sup>3</sup> 83 Fed. Reg. 983.

<sup>4</sup> See, e.g., 42 U.S.C. § 601 (“The purpose of this part is to increase the flexibility of States in operating a program”); Nathan, Richard P., Gais, Thomas L., *Is Devolution Working? Federal and State Roles in Welfare*, Brookings Institution (June 1, 2001), <https://www.brookings.edu/articles/is-devolution-working-federal-and-state-roles-in-welfare/>.

<sup>5</sup> Centre for Public Impact, *Case Study: The 1996 Personal Responsibility and Work Opportunity Reconciliation Act in the US* (Oct. 30, 2017), <https://www.centreforpublicimpact.org/case-study/personal-responsibility-and-work-opportunity-reconciliation-act-the-clinton-welfare-reform/>.

## **2. Further Limiting SNAP Eligibility Will Not Serve the Intended Goal of Promoting Self-Sufficiency and is Instead Likely to Increase Poverty and Inequality.**

According to the Department, the purpose of the proposed amendments is to foster self-sufficiency.<sup>6</sup> The Department believes that waivers are no longer warranted and that such changes will “encourage more ABAWDs to engage in work or work activities if they wish to continue to receive SNAP benefits.”<sup>7</sup> To support its position, the Department notes that the unemployment rate has declined from 9.9 percent in April 2010 to 2.9 percent in April 2018, reflecting a new reality in which the “economy is booming” and unemployment is low.<sup>8</sup> The Department therefore notes that in making its standards more stringent, it now simply seeks to implement SNAP “as Congress intended and believes that those who can work should work.”<sup>9</sup>

We agree with the Department that waiver decisions should be made based on “representative, accurate, and consistent economic data.” However, looking at unemployment data in a vacuum will not serve the Department’s intended goal of advancing self-sufficiency. As discussed above, the problem with the Department’s current analysis is that it assesses self-sufficiency based solely on the unemployment rate while disregarding the myriad factors, including depressed wages; sky-rocketing housing costs; the high cost of education, which leaves many in long-term debt; and systemic and long-term gender and racial discrimination, which have created legitimate barriers to self-sufficiency *even for those who are employed full-time*.

While unemployment has been on the decline nationally, we have seen alarming spikes in poverty, inequality, and homelessness, which are not the result of a scheme to receive benefits without working. In fact across the country, we are seeing more examples of individuals who work full-time but are homeless and must rely on critical public benefits such as SNAP to survive while working.<sup>10</sup>

To serve as a meaningful indicator, self-sufficiency cannot be assessed based on unemployment alone. Taking into account wage dynamics, housing costs, and the countless legitimate barriers that low-income individuals face in securing employment, this proposed rule will not serve its intended purpose of promoting self-sufficiency. Instead, it will force a large sector of the American population to fall deeper into poverty and to live under increasingly desperate conditions.

## **3. Instead of Advancing Self-Sufficiency, the Proposed Rule Will Disproportionately Penalize Women, Exacerbating Existing Gender-Based Discrimination.**

The proposed rule to limit waivers and individual exemptions will have a negative gendered impact, exacerbating existing discriminatory trends and pushing women further to the margins. Despite their essential role in our economy, women are often the lowest paid individuals in our country. In the United States, women

---

<sup>6</sup> 83 Fed. Reg. 980.

<sup>7</sup> 83 Fed. Reg. 981.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See McCoy, T., *This is Not Me: The Rise of Tent Encampments is Changing the Face of American Homelessness*, WASHINGTON POST (March 22, 2019), [https://www.washingtonpost.com/news/local/wp/2019/03/22/feature/homeless-living-in-a-tent-blocks-from-the-u-s-capitol-and-working-full-time/?noredirect=on&utm\\_term=.cbdf8530995c](https://www.washingtonpost.com/news/local/wp/2019/03/22/feature/homeless-living-in-a-tent-blocks-from-the-u-s-capitol-and-working-full-time/?noredirect=on&utm_term=.cbdf8530995c).

are 35% more likely than men to live in poverty and twice as likely to work in low-wage occupations.<sup>11</sup> Tipped workers, two-thirds of whom are women, are twice as likely to live in poverty.<sup>12</sup> Financial insecurity and lack of access to opportunity drive far too many women into low-wage jobs and employment in the informal economy. Women of color, immigrant women, and working mothers are especially likely to work low-wage jobs essential to our economy but typically overlooked.<sup>13</sup> For example, women day laborers and domestic workers generally make less than their male counterparts, yet many are the primary income earners in their households and are responsible for dependent children at home or elsewhere.<sup>14</sup> Even if the proposed rules only apply to individuals without dependents, they will negatively impact women at critical stages in their life, either reinforcing existing financial penalties that women have incurred as primary caregivers or disadvantaging women at critical stages when they may be preparing for a family and need financial stability.

At only \$7.25 an hour, the federal minimum wage is not nearly enough for working families to meet basic needs such as housing, food, and healthcare, and the sub-minimum wage is even worse.<sup>15</sup> Moreover, low-wage and immigrant women are especially susceptible to wage-theft, including minimum wage violations, withholding of wages, denial of overtime or benefits, off-the-clock work, and stealing of tips.<sup>16</sup> Across the United States, too many families must rely on public benefits not because they are unemployed but rather because they are being compensated unfairly or in violation of the law.

The fact that our economy undervalues women in the workplace means that many working women must rely on public benefits to supplement their wages to cover basic necessities—to secure housing, purchase food for their families, and obtain healthcare for their children. Women comprise 63 percent of non-elderly SNAP recipients.<sup>17</sup> SNAP plays an essential role in reducing hunger, food insecurity, and poverty for millions of women and families. By decreasing food insecurity, SNAP is also associated with improved physical and mental health outcomes for low-income women and families.<sup>18</sup>

By failing to take into account the disproportionate ways in which poverty impacts women, the rules impose requirements that disadvantage low-income women further. For example, the requirement that adults

---

<sup>11</sup> Tucker, J., Lowell, C., *National Snapshot: Poverty among Women and Families, 2015*, THE NAT'L WOMEN'S LAW CTR. (Sept. 2016), <https://nwlc.org/wp-content/uploads/2016/09/Poverty-Snapshot-Factsheet-2016.pdf>.

<sup>12</sup> The Leadership Conference Education Fund & Georgetown Ctr. on Poverty and Inequality, *BARE MINIMUM: WHY WE NEED TO RAISE WAGES FOR AMERICA'S LOWEST-PAID FAMILIES 10-11* (2018), <http://civilrightsdocs.info/pdf/reports/Bare-Minimum.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> Figueroa, M., Guallpa, L., Sanchez, Y., Cabrera, L., *Standing up for Dignity: Women Day Laborers in Brooklyn, NY*, THE WORKER INSTITUTE, 6 (2016), [https://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/FINAL%20WOMEN%20DAY%20LABORERS%20REPORT%208-5-16\\_PS.pdf](https://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/FINAL%20WOMEN%20DAY%20LABORERS%20REPORT%208-5-16_PS.pdf).

<sup>15</sup> See National Low Income Housing Coalition, *Out of Reach: The High Cost of Housing* (2018), [http://nlihc.org/sites/default/files/oor/OOR\\_2018.pdf](http://nlihc.org/sites/default/files/oor/OOR_2018.pdf).

<sup>16</sup> Coleman, L.G., *Exploited at the Intersection: A Critical Race Feminist Analysis of Undocumented Latina Workers and the Role of the Private Attorney General*, 22 VA. J. SOC. POL'Y & L. 397, 401 n. 10 (2015); see also Cooper, D. & Teresa Kroeger, T., *Employers Steal Billions from Workers' Paychecks Each Year 3*, ECONOMIC POLICY INSTITUTE, 20 (May 10, 2017), <https://www.epi.org/files/pdf/125116.pdf>.

<sup>17</sup> U.S. DEP'T OF AGRIC., *CHARACTERISTICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS: FISCAL YEAR 2017*, 21 (Feb. 2019), <https://fns-prod.azureedge.net/sites/default/files/ops/Characteristics2017.pdf> (hereinafter "SNAP HOUSEHOLD CHARACTERISTICS FOR FY 2017").

<sup>18</sup> Hartline-Grafton, H., *The Impact of Food Insecurity on Women's Health*, FOOD RES. & ACTION CTR., <http://frac.org/blog/impact-food-insecurity-womens-health>; Food Res. & Action Ctr., *The Impact of Poverty, Food Insecurity, and Poor Nutrition on Health and Well-Being 3-6* (Dec. 2017), <http://frac.org/wp-content/uploads/hunger-health-impact-poverty-food-insecurity-health-well-being.pdf>.

without dependent children obtain, maintain, and document an average of 20 hours a week of employment to maintain eligibility beyond three months fails to account for the reality that women actually face in the world of work. Women, especially women with low-wages, are often forced to endure scheduling practices that make compliance with these requirements impossible. Because women continue to be overrepresented in the low-wage workforce, many women must maneuver unstable and unpredictable works schedules common in industries such as retail and food service. Low-wage employers often offer only part-time work hours and employers regularly cancel and change shifts depending on demand. Women therefore often suffer from inconsistent and insufficient work hours that result in irregular earnings, making it hard to earn a living, care for families, and obtain public benefits.<sup>19</sup> As a result, women working in these industries often have difficulty with consistently working 20 hours per week every week or calculating their irregular hours to prove that they met the requirements.

In fact, when women are not scheduled for sufficient hours with their employer, they are all the more in need of SNAP benefits. Women are further disadvantaged because historically they have been disproportionately tasked with caregiving responsibilities (whether formal or informal), which prevents many women from working fulltime or developing the necessary work experience to obtain full-time employment.

The three month time limitation also has a disproportionately negative impact on women. Imposing this unrealistic requirement does not result in increased employment and earnings because the rules fail to take into account the legitimate hurdles that women and families with low-incomes face in finding employment. In 2016, nearly half of the 3.8 million SNAP recipients subject to this time limit in 2016 were women.<sup>20</sup> In 2018, more than one in five unemployed women experienced unemployment that lasted six months or more.<sup>21</sup> Even as the unemployment rate declines, the barriers women face in securing employment are still considerably higher, making the three month timeline unrealistic and the area waivers critically necessary. Women face a range of obstacles including persistent gender discrimination and lack of various critical supports including education, basic job skills, specialized training to qualify for available jobs, transportation, and support to escape domestic abuse or to address addiction or stabilization needs such as finding safe and stable housing.

The proposed amendments, which would limit critical waivers and exemptions, would simply penalize many women who are seeking employment at a time when they need the benefits the most. As a result, it will have devastating impacts on low-income families, including a disparate impact on low-income women. While the department admits that two-thirds of those individuals who would now be subject to the strict time limits would not meet the work requirements and thus lose their SNAP benefits, it has failed to put forth any meaningful mitigation strategies, turning a blind eye to the realities facing hard working women across the country.

---

<sup>19</sup> See Dodson, L, Carré, F., Méric, L., *MOTHERS KNOW BEST: AT THE INTERSECTION OF LOW-WAGE WORK, PUBLIC ASSISTANCE, AND CHILD CARE*, 9to5 (June 2017), <http://9to5.org/wp-content/uploads/2017/06/IRreport.pdf>.

<sup>20</sup> U.S. Dep't of Agric. Food & Nutrition Servs., *Characteristics of Able-Bodied Adults without Dependents*, <https://fns-prod.azureedge.net/sites/default/files/snap/nondisabled-adults.pdf>.

<sup>21</sup> Nat'l Women's Law Ctr. calculations based on U.S. CENSUS BUREAU, BUREAU OF LABOR STATISTICS, CURRENT POPULATION SURVEY, TABLE 31: UNEMPLOYED PERSONS BY AGE, SEX, RACE, HISPANIC OR LATINO ETHNICITY, MARITAL STATUS, AND DURATION OF UNEMPLOYMENT, <https://www.bls.gov/cps/cpsaat31.htm>.

#### 4. The Proposed Rule Will Jeopardize the Safety and Security of Survivors of Gender-Based Violence.

The proposed rule will negatively impact survivors of gender-based violence and their families. Low-income women face high levels of gender-based violence, and women with fewer economic resources are increasingly susceptible to gender-based exploitation.<sup>22</sup> Women living in poverty are subjected to domestic violence at twice the rate of those who do not.<sup>23</sup> Poverty can serve as an impenetrable barrier to escaping the violence. Access to food assistance, housing, healthcare, and other supports play a pivotal role in helping victims escape and overcome domestic and sexual violence, whereas lack of access to such support can serve as a major barrier, preventing victims from overcoming abuse.<sup>24</sup>

Public benefits, including SNAP benefits, provide a vital form of support to help survivors of gender-based violence to escape and overcome their abuse in a sustainable way. According to a recent survey, 31 percent of victims of domestic violence disclosed that they had applied for food assistance.<sup>25</sup> The rigid work and training requirements, however, are infeasible for many domestic violence and sexual assault victims to comply with in light of the complex circumstances they face. Victims of gender-based violence face a host of specific challenges to securing employment including the need to move regularly to escape abusers; lack of access to household assets and finances; lack of access to credit, and poor credit scores and rental histories; and the need to take time off of work or leave to escape, go to court, seek medical attention, or enroll children in new schools. Among the women who call our national Helpline, all too many reach a point where they have to collect their belongings, give notice to their boss that they must immediately leave, and then flee, sometimes out of state, to escape an abusive relationship. Within seconds, a survivor can lose their means of economic security. It should come as no surprise that it often takes more than three months to secure new employment under these circumstances.

Victims of gender-based violence must have stable access to resources and benefits like SNAP. Access to these vital benefits during this immensely vulnerable period provides a necessary safety net and can play a critical role in preventing survivors from returning to their abusers out of financial desperation. Current waiver rules are reasonable, necessary, and provide states the intended flexibility to safeguard their residents in light of local needs, priorities, and circumstances. Imposing stricter requirements that further limit waivers and

---

<sup>22</sup> See, e.g., Lyon, E., *Welfare, Poverty and Abused Women: New Research and its Implications*, NAT'L RESOURCE CENTER ON DOMESTIC VIOLENCE (Oct. 2000), [https://vawnet.org/sites/default/files/materials/files/2016-09/BCS10\\_POV.pdf](https://vawnet.org/sites/default/files/materials/files/2016-09/BCS10_POV.pdf); Mary Kay, Inc., 2012 Mary Kay Truth About Abuse Survey Report (2012), [http://content2.marykayintouch.com/public/PWS\\_US/PDFs/company/2012Survey.pdf](http://content2.marykayintouch.com/public/PWS_US/PDFs/company/2012Survey.pdf); Lyon, L., Lane, S., Menard, A., *Meeting Survivors' Needs: A Multistate Study of Domestic Violence Shelter Experiences*, National Institute of Justice (2018), [http://www.vawnet.org/Assoc\\_Files\\_VAWnet/MeetingSurvivorsNeeds-FullReport.pdf](http://www.vawnet.org/Assoc_Files_VAWnet/MeetingSurvivorsNeeds-FullReport.pdf); Lyon, E., Bradshaw, J., Menard, A., *Meeting Survivors' Needs through Non-Residential Domestic Violence Services & Supports: Results of a Multi-State Study* (2011), <https://vawnet.org/sites/default/files/materials/files/2016-07/DVServicesStudy-FINALReport2011.pdf>; Kimerling, R., Alvarez, J., Pavao, J., Mack, K. P., Smith, M. W., & Baumrind, N., *Unemployment Among Women: Examining the Relationship of Physical and Psychological Intimate Partner Violence and Posttraumatic Stress Disorder*, Journal of Interpersonal Violence (2009).

<sup>23</sup> *Id.*

<sup>24</sup> See CENTER FOR DISEASE CONTROL, *Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices* (2017), <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>.

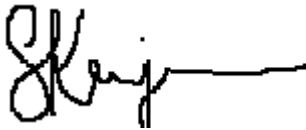
<sup>25</sup> THE NATIONAL DOMESTIC VIOLENCE HOTLINE, National Resource Center on Domestic Violence, and National Latin@ Network, *We Would Have Had to Stay* (2018), [https://vawnet.org/sites/default/files/assets/files/2018-11/NRCDV\\_PublicBenefits-WeWouldHaveHadToStay-Nov2018.pdf](https://vawnet.org/sites/default/files/assets/files/2018-11/NRCDV_PublicBenefits-WeWouldHaveHadToStay-Nov2018.pdf).

exemptions will deter survivors of gender-based violence from obtaining the vital services that allow them to escape and overcome abuse.<sup>26</sup> The proposed rule will therefore put survivors at greater risk of harm.

\*\*\*

In conclusion, Legal Momentum thanks the Department for this opportunity to express its views on the proposed regulation. As noted above, Legal Momentum strongly opposes the proposed rule. Instead of advancing self-sufficiency, the proposed amendments would undermine congressional intent to grant states the necessary discretion to implement SNAP in a way that is responsive to local needs and priorities. Notably, the impact of the more stringent requirements will be devastating to the wellbeing of low-income women, children, families, and victims of gender-based violence in the United States and will serve to entrench gender-based discrimination at an increased cost to us all. As the Department provides no meaningful plan to mitigate this harmful impact, we urge you to promptly withdraw the proposed rule in its entirety.

Sincerely,

A handwritten signature in black ink, appearing to read 'SK' followed by a long horizontal stroke.

Seher Khawaja  
Senior Attorney, Economic Empowerment  
Legal Momentum

---

<sup>26</sup> See NATIONAL TASK FORCE TO END SEXUAL AND DOMESTIC VIOLENCE, *Public Charge Regulation Harms Immigrant Families and Puts Victims of Sexual Assault and Domestic Violence at Risk* (Sept. 26, 2018), <http://www.4vawa.org/ntf-action-alerts-and-news/>.