

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA, *et al.*,

Plaintiffs

v.

U.S. DEPARTMENT OF AGRICULTURE, *et al.*,

Defendants.

Civil Action No. 1:20-cv-00119-BAH

BREAD FOR THE CITY, *et al.*,

Plaintiffs

v.

U.S. DEPARTMENT OF AGRICULTURE, *et al.*,

Defendants.

Civil Action No. 1:20-cv-00127-BAH

**BRIEF OF AMICUS CURIAE SHRIVER CENTER ON POVERTY LAW,
ET AL., IN SUPPORT OF PLAINTIFFS**

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INTEREST OF AMICI CURIAE

Amici have a strong interest in this case concerning expansion of work requirements in the Supplemental Nutrition Assistance Program (SNAP). *Amici* are state-level law and policy advocacy organizations that provide legal representation to low-income individuals and/or promote laws and policies facilitating their participation in government benefits programs to meet their basic needs. *Amici* work closely with, and direct advocacy toward, their state SNAP agencies, and understand how ill-conceived public benefits policies threaten critical support and economic stability of vulnerable communities. Further, *Amici* have advocated on behalf of SNAP recipients deemed able-bodied adults without dependents (ABAWDs), who are impacted by this rule. *Amici* are intimately familiar with the challenges confronting ABAWDs, and the barriers they face in maintaining stable employment to comply with SNAP work requirements expanded under the Rule challenged in this litigation. *Amici* are well positioned to assist the Court in assessing the arbitrary and capricious nature of the Rule's promulgation and its specific harms.

Advocates for Basic Legal Equality (ABLE) is a nonprofit law firm that provides high quality legal assistance on civil matters to help individuals and groups in Western Ohio achieve self-reliance, equal justice and economic opportunity.

Center for Civil Justice (CCJ) is a non-profit organization that advocates for people in Michigan who need help meeting basic needs. CCJ engages in impact litigation and policy advocacy to ensure low-income people receive assistance through social safety net programs.

The **Center for Law and Social Policy (CLASP)** is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions at the federal, state and local level to promote the economic security of people with low incomes. CLASP has extensive expertise in the area of income and work supports, health and nutrition policy, workforce development and

job quality. CLASP also has deep experience providing technical assistance to states and localities in the implementation of these programs.

The **Colorado Center on Law and Policy** is a non-profit that advances the health, economic security and wellbeing of low-income Coloradans through research, education, advocacy and litigation.

Community Legal Services of Philadelphia (CLS) is a non-profit organization that provides free civil legal assistance to low-income Philadelphians. CLS has represented thousands of individuals in public benefits. In the last year, CLS represented 6,731 low-income individuals who are receiving SNAP and handled 314 SNAP-specific cases.

Florida Legal Services (FLS) is a statewide legal services organization dedicated to advancing economic, social, and racial justice. FLS helps poor, vulnerable, and hard to reach people access supports and services they need, and, together with fellow amicus curiae, share a mission to eliminate food insecurity and hunger for all people.

The **Kentucky Equal Justice Center (KEJC)** promotes equal justice for all Kentuckians by advocating for low-income and other vulnerable communities and individuals. KEJC is a statewide nonprofit, nonpartisan law firm and advocacy organization that litigates and lobbies to change oppressive, unfair, and inefficient laws and systems.

Legal Services of New Jersey (LSNJ) is a nonprofit state-wide legal assistance organization, providing systemic and individual representation for low-income communities in New Jersey. Through litigation, administrative and legislative advocacy, research, and training, LSNJ provides legal assistance and advocacy for low-income individuals in need of nutrition assistance, healthcare, affordable housing, shelter, and other family support services. LSNJ has represented a substantial number of individuals subject to the ABAWD rules.

The **Mississippi Center for Justice** (MCJ) is a non-profit public interest law organization founded to advance racial and economic justice in Mississippi. MCJ uses systemic advocacy to address problems of broad impact low-income Mississippians in need.

Nebraska Appleseed is a non-profit organization that engages in systemic advocacy on issues such as child welfare, immigration policy, affordable health care and poverty. Nebraska Appleseed works to address historic gaps in utilization of federal nutrition programs in Nebraska and has a history of advocating for policies that help Nebraskans access to food assistance.

New Hampshire Legal Assistance (NHLA) is a non-profit law firm that provides civil legal services to low income clients to address legal problems affecting their most basic needs. NHLA has a history of providing both individual representation and systemic advocacy to New Hampshire's poor and disadvantaged residents on public benefits matters, including SNAP.

The **Shriver Center on Poverty Law** (Shriver Center) is a non-profit legal and policy advocacy organization based in Chicago. The Shriver Center works in partnership with low-income individuals to advance their basic needs and access to opportunity and has used class action relief to protect the interests of thousands of low-income Illinoisans.

South Carolina Appleseed Legal Justice Center is a legal non-profit organization that advocates for low-income South Carolinians to achieve social, economic, and racial justice. SC Appleseed engages in systemic advocacy through impact litigation, policy advocacy, coalition-building, and robust community outreach and education.

The **Tennessee Justice Center** (TJC) is a nonprofit public interest law firm established by Tennessee Bar leaders in 1995. TJC represents vulnerable Tennessee families and children in civil legal matters in which access to the necessities of life is at stake. TJC has enabled hundreds of thousands of Tennessee families to receive vitally necessary nutrition assistance.

INTRODUCTION

The importance of flexibility in responding to hunger in America has come into sharp focus as COVID-19 has disrupted so many lives and livelihoods. A critical tool for fighting food insecurity and alleviating poverty is the Supplemental Nutrition Assistance Program (SNAP).¹ SNAP is equipped to efficiently and effectively reduce hunger because of its ability to grow and contract with economic conditions. However, the United States Department of Agriculture (USDA) has sought to use its rulemaking authority to remove critical aspects of this flexibility, jeopardizing the SNAP benefits of 688,000 individuals by USDA’s own estimates. USDA accomplishes this by undermining the ability of states to respond to the needs of a population more likely to experience extremely low incomes and an urgent need for SNAP benefits: able-bodied adults without dependents (“ABAWDs”). *See Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, 84 Fed. Reg. 66782 (Dec. 5, 2019) (to be codified at 7 C.F.R. Part 273) (hereafter “the Rule”).

A person classified as an ABAWD under SNAP is an individual between the ages of 18 and 50 who has neither a disability nor a minor dependent. *Brooks v. Roberts*, 251 F. Supp. 3d 401, 410 (N.D.N.Y. 2017). Generally, if such a person is unable to maintain consistent employment, they can receive SNAP benefits only for a limited time. Federal law allows a state to seek a waiver of this time limit for ABAWDs in a specific geographic area if that area lacks sufficient jobs for ABAWDs. Under the prior rule, states had significant discretion to define this

¹ Caroline Ratcliffe and Signe-Mary McKernan, *How Much Does Snap Reduce Food Insecurity?* (April 2010), Urban Institute, <https://www.ers.usda.gov/webdocs/publications/84336/ccr-60.pdf?v=1570.1> (noting that SNAP reduces the chances of being food insecure by nearly 30%); Liana Fox, U.S. Census Bureau, P60-268, *The Supplemental Poverty Measure: 2018* (October 2019), <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-268.pdf> (noting that SNAP lifted about 3.2 million people above the poverty line in 2018).

geographic area. The current Rule, however, removes this discretion and restricts states to seeking waivers solely for geographic areas designated as Labor Market Areas (LMAs), large statistical areas defined by the Department of Labor’s Bureau of Labor Statistics (BLS). These LMAs are overly broad and do not provide a precise measure of the employment prospects of ABAWDs. By adopting the LMA designation, in spite of its well-known deficiencies, USDA acted arbitrarily and capriciously in violation of the Administrative Procedure Act. *Amici* support Plaintiffs’ motions for summary judgment and focus on how USDA’s adoption of the LMA delineation as the sole geographic basis for a waiver request is deeply flawed, leading to harmful outcomes for individuals subject to the requirement, including the deepening of racial disparities.

ARGUMENT

I. Adopting the Labor Market Areas designation as the sole definition of the “waiver area” is arbitrary and capricious

USDA’s adoption of the Labor Market Area as the sole definition of the “waiver area” reverses well-established policy recognizing states’ expertise in crafting the geographic scope of waivers that are responsive to local economic conditions and food security needs of their residents. Since the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), SNAP has limited the amount of time that ABAWDs can receive SNAP benefits if they do not maintain consistent employment. Generally, ABAWDs may only receive SNAP for a maximum of three months during a fixed thirty-six month period, unless they are working, volunteering, or participating in an otherwise qualifying activity — such as those offered by the SNAP Employment and Training program (“SNAP E&T”) — for 80 hours per month. 7 U.S.C. § 2015(o)(2) (2018) (“ABAWD time limit”). Under the prior rule, states could request that ABAWDs within the entire state – or a particular area that states had discretion to define – not be subject to the ABAWD time limit due to insufficient employment opportunities.

Under long-standing USDA regulations, waivers submitted by state SNAP agencies were “readily approvable” by the Secretary of Agriculture if the geographic area for which the waiver was requested: 1) was designated as a Labor Surplus Area;² 2) had a 24-month average unemployment rate at least 20 percent above the national average; or 3) had a 12-month average unemployment rate over 10 percent.³ 7 C.F.R. § 273.24(f)(3)(i-iii) (2019). Waivers approved under these long-standing core criteria protected millions of ABAWDs from compliance with the ABAWD time limit in areas where there were insufficient jobs. During the slow economic recovery from the Great Recession, these waivers and a blanket suspension of the ABAWD time limit in The American Recovery and Reinvestment Act of 2009, ensured that ABAWDs continued to receive critical nutritional support as unemployment remained persistently high. *See* Sheila Zedlewski et al., *SNAP's Role in the Great Recession and Beyond*, Urban Institute (July 2012), <https://www.urban.org/sites/default/files/publication/25626/412613-SNAP-s-Role-in-the-Great-Recession-and-Beyond.PDF>.

The rule limits this important flexibility to respond to local economic conditions by, among other things, drastically narrowing the definition of a “waiver area” – limiting states to requesting waivers only for Labor Market Areas (LMAs) as defined by the Department of Labor’s Bureau of Labor Statistics (BLS).⁴ The rule’s use of the Labor Market Area (LMA) delineation as the sole geographic basis for a waiver will produce absurd and harmful results in

² U.S. Department of Labor, “Labor Surplus Area: Frequently Asked Questions,” updated August 21, 2015, https://www.doleta.gov/programs/lisa_faq.cfm.

³ Under previous regulations, states could also submit evidence that an area had a low and declining employment-to-population ratio or a lack of jobs in declining occupations or industries, as evidence of lack of sufficient jobs for ABAWDs. *See* 7 C.F.R. § 273.24(f)(2)(ii) (2019).

⁴ Native American reservation areas and U.S. Territories are also allowable waiver areas, but in general, the Rule will only allow for waivers covering LMAs. 84 Fed. Reg. 66782, 66796 (Dec. 12, 2019).

violation of the APA. LMAs are often large geographic areas created for the purpose of providing nationally consistent delineations for collecting, tabulating, and publishing federal statistics. In using these statistical areas to assess the sufficiency of jobs for ABAWDs, USDA: 1) fails to adequately explain why these LMAs are an appropriate replacement for long-standing policy; 2) fails to adequately consider the harms to communities of color — particularly Black communities — by adopting a standard that masks the effect of residential segregation and systemic racism on localized economic conditions; and 3) fails to consider how the LMA delineation restricts states in their ability to address food insecurity within their borders.

A. USDA does not adequately explain its departure from long-standing policy in favor of using an LMA delineation that is not well suited for its purpose under the rule.

Restriction of waiver requests only to those based on the LMA designation is a drastic departure from USDA’s decades-long policy of permitting “[s]tates to define areas to be covered by waivers” themselves. 7 C.F.R. § 273.24(f)(6) (2019). “A central principle of administrative law is that, when an agency decides to depart from decades-long past practices and official policies, the agency must at a minimum acknowledge the change and offer a reasoned explanation for it.” *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017). A change in administration does not authorize an unreasoned reversal of course. *See Regents of the Univ. of Cal. v. U.S. State Dept.*, 908 F.3d 476, 510 (9th Cir. 2018); *California v. U.S. Bureau of Land Mgmt.*, 277 F. Supp. 3d 1106, 1123 (N.D. Cal. 2017). Any “[u]nexplained inconsistency” in agency policy is “a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016). However, USDA offers little reasoning for its adoption of the LMA standard and reversal of long-standing policy in favor of a designation that is not intended for the purpose it is

being used here, and that does not reflect the transportation barriers that ABAWDs regularly face.

1. LMAs were designed for statistical, and not programmatic, purposes.

The LMA designation is ill-suited for the SNAP ABAWD context because it was designed for statistical purposes, not for programmatic use. The Bureau of Labor Statistics (BLS) defines an LMA as an area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

Geographic Concepts, U.S. Bureau of Lab. Stat., <https://www.bls.gov/lau/laugeo.htm#geolma> (last modified Mar. 20, 2020). These areas are mutually exclusive, non-overlapping geographies based on the degree of economic integration as measured by commuting flows without regard to state boundaries. *Id.* LMAs are broken up into “major” LMAs⁵ – based on Core Based Statistical areas (CBSAs) delineated by the Office of Management and Budget (OMB) and “small” LMAs⁶ – which make up the balance of counties not included in “major” LMAs.

⁵ “Major” LMAs are created using Core Based Statistical Areas (CBSA) delineated by the Office of Management and Budget (OMB); these CBSAs include Metropolitan and Micropolitan statistical areas. Metropolitan Statistical Areas have at least one urbanized area with a population of 50,000 or more, and Micropolitan Statistical Areas have at least one urban cluster with a population of at least 10,000 but less than 50,000. Counties with either 50 percent of their population or 5,000 people within the county living in one of these urbanized areas or clusters, are designated as “central” counties. Using commuting data, “outlying” counties are then combined with the central county or counties if: 1) At least 25 percent of the workers living in the outlying county work in the central county or counties of the CBSA; or 2) at least 25 percent of the employment in the county is accounted for by workers who reside in the central county or counties of the CBSA. *See 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas*, 75 Fed. Reg. 37246 (June 28, 2010).

⁶ For counties that do not belong to areas included in “major” LMAs, BLS uses a methodology similar to that used by OMB to combine the balance of counties into “small” LMAs if: 1) at least 25 percent of the employed residents of one county commute to work in another county; or 2) At least 25 percent of the employment (persons working) in one county are accounted for by workers commuting from another county. *See Geographic Concepts*, U.S. Bureau of Lab. Stat., <https://www.bls.gov/lau/laugeo.htm#geolma> (last modified Mar. 20, 2020).

OMB establishes and maintains the CBSAs which make up major LMAs “solely for statistical purposes.” OMB makes clear that it “does not take into account or attempt to anticipate any public or private sector nonstatistical uses that may be made of the delineations” and that “these areas are not designed to serve as a general-purpose geographic framework applicable for nonstatistical activities or for use in program funding formulas.” *See 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas*, 75 Fed. Reg. 37246 (June 28, 2010).. In fact, OMB specifically cautions that these “delineations should not be used to develop and implement Federal, state, and local nonstatistical programs and policies without full consideration of the effects of using these delineations for such purposes.” *See Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas*, OMB Bulletin No. 15-01 (July 15, 2015), <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2015/15-01.pdf>. Despite this clear instruction from OMB, USDA did not sufficiently explain its rationale for using LMAs as the sole geographic basis for a waiver request, saying only that it believes LMAs represented the “best available and most practical” delineation. 84 Fed. Reg. at 66793, 66795.

2. *The LMA designation is based on commuting data, and does not account for transportation barriers for ABAWDS*

Potentially covering hundreds of square miles, LMAs rely upon commuting patterns that do not reflect the common experiences of ABAWDs and therefore will not allow states to accurately assess their employment prospects. Labelling these often massive areas as “economically tied” based only on commuting patterns is not an appropriate indicator of true economic conditions within that area, especially for low-income people who have shorter

average commutes.⁷ Further, as many commenters note, the LMA designation fails to measure whether transportation is available. This failure is particularly devastating for ABAWDs, more than 40 percent of whom lack access to reliable private or public transportation, and 60 percent of whom lack a valid driver's license. *See Comprehensive Report on Able-Bodied Adults Without Dependents, Franklin County, Ohio Work Experience Program*, Ohio Association of Foodbanks (2015), http://admin.ohiofoodbanks.org/uploads/news/ABAWD_Report_2014-2015-v3.pdf. Further, even if transportation is available, ABAWDs tend to live in deep poverty and thus are often unable to afford even modest commuting costs.⁸ The lack of access to transportation can severely undermine a worker's ability to obtain and maintain employment and is frequently cited as a barrier for public benefits recipients who fail to comply with work requirements. Data related to other SNAP work requirements, such as those associated with mandatory participation in SNAP E&T, show that lack of access to transportation was the most common barrier, with 35.6 percent of survey respondents reporting this issue. U.S. Department of Agriculture, *SNAP*

⁷ A 2011 Brookings Institution analysis found the typical resident in the nation's largest metro areas earning less than \$15,000 a year commutes 7.6 miles, while those earning more than \$40,000 a year commutes 9.6 miles on average. *See* Elizabeth Kneebone and Natalie Holmes, *The growing distance between people and jobs in metropolitan America*, Metropolitan Policy Program at Brookings Institution (Mar. 2015) https://www.brookings.edu/wp-content/uploads/2016/07/Srvy_JobsProximity.pdf. Another study analyzing Census Transportation Planning Products data from 2012–2016 in the Memphis metro area found that commuting distances for low-income commuters were 3 miles shorter than the average commuter in the same metro area. *See* Anzhelika Antipova, *Analysis of Commuting Distances of Low-Income Workers in Memphis Metropolitan Area, TN*, 12 *Sustainability* (2020), <https://www.mdpi.com/2071-1050/12/3/1209/htm>.

⁸ In 2014, ABAWDs had extremely low incomes that averaged 17 percent of the poverty line — about \$2,000 per year for a household of one in 2015. Even while participating in SNAP, ABAWDs' average income hovers around 29 percent of the poverty line — a mere \$3,400 per year for a single person in 2016. *Id.* With such little income, even small transportation costs can be insurmountable. Ed Bolen et al., *More Than 500,000 Adults Will Lose SNAP Benefits in 2016 as Waivers Expire*, Center on Budget and Policy Priorities (updated Mar. 18, 2016), <https://www.cbpp.org/research/food-assistance/more-than-500000-adults-will-lose-snap-benefits-in-2016-as-waivers-expire>.

Employment and Training (E&T) Characteristics Study: Final Report (October 2017) at 29. Due to these barriers, the area contained within large LMAs is not a “reasonable commuting distance” as USDA asserts, making LMAs poorly suited geographic designations within which to determine the availability of jobs for low-income people. 84 Fed. Reg. at 66796.

When USDA originally proposed using LMAs as the sole basis for grouping sub-state areas, USDA received numerous comments highlighting the LMA designation’s inadequacy for that purpose. USDA ignored these comments, many of which specifically highlighted the failure of LMAs to account for available transportation. Worse still, after receiving comments critical of the LMA designation, USDA doubled down on this standard by making it the sole geographic basis for a waiver. Although an agency need not respond to every fact or contention raised by the comments submitted, the rule’s “basis and purpose statement must identify ‘what major issues of policy were ventilated by the informal proceedings and why the agency reacted to them as it did.’” *Automotive Parts & Accessories Ass’n v. Boyd*, 407 F.2d 330, 338 (D.C. Cir. 1968). Thus, courts have held that for an agency action not to be arbitrary or capricious requires that “agency must ‘examine all relevant factors and record evidence.’” *Steward v. Azar*, 313 F. Supp. 3d 237, 259 (D.D.C. 2018) (quoting *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir 2017)). Here, there is no evidence that USDA heeded OMB’s admonition to conduct a “full consideration of the effects of using these [LMA] delineations for [programmatic] purposes.” Without adequate explanation for its decision to ignore such significant concerns, the Department’s actions were arbitrary and capricious. *Perdue*, 873 F.3d at 923.

B. LMAs do not account for more localized employment prospects impacted by residential segregation, systemic racism, and employment discrimination.

The Rule is arbitrary and capricious because USDA failed to consider how relying on the LMA designation severely and disparately impacts communities of color, in particular Black

communities. *Motor Veh. Mfrs. Ass'n v. State Farm Ins.*, 463 U.S. 29, 43 (1983). USDA claims to have conducted a “comprehensive” Civil Rights Impact Analysis (CRIA), however this CRIA was not published as a part of the Rule. Without seeing the actual analysis of the racial disparity caused by the Rule or having a detailed explanation of potential mitigation strategies and monitoring, there was no opportunity to comment on its sufficiency. *Cf. Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008) (holding FCC violated notice and comment provisions of the APA by failing to publish unredacted internally conducted studies that it relied on in its rulemaking). A truly comprehensive CRIA would have revealed that because of structural racism in the United States, a person’s race and zip code can have far-reaching implications for the trajectory of their life, including their educational attainment, resources, health, income potential, and employment. Xavier de Souza Briggs & William J. Wilson, *The Geography of Opportunity: Race and Housing Choice in America* (2005). If USDA’s rule is allowed to proceed and states are forced to aggregate unemployment rates from sub-state areas that make up sprawling LMAs, the localized unemployment factors created by structural racism will be masked, greatly prejudicing Black communities in particular.

USDA’s failure to consider varied local employment conditions essentially makes an employment market deeply impacted by discrimination and systemic racism “race neutral.” A single LMA can stretch hundreds of miles, span multiple states, and encompass numerous sub-state areas including different counties, municipalities, and townships. Economic indicators, such as unemployment rate, can vary drastically between sub-state areas within the same LMA. USDA’s use of large geographic areas as a basis for assessing availability of sufficient jobs for ABAWDs fails to account for the multitude of factors that contribute to different employment opportunities and challenges at the local level, including those created by systemic racisms and

segregation. USDA cannot ignore how systemic racism and residential segregation have impacted the ability to secure and maintain stable employment. *See* Kimberly Quick and Richard D. Kahlenberg, *Attacking the Black–White Opportunity Gap That Comes from Residential Segregation*, The Century Foundation (June 25, 2019), <https://tcf.org/content/report/attacking-black-white-opportunity-gap-comes-residential-segregation/>; *see also* John Lukehart et al., *The Segregation of Opportunities: The Structure of Advantage and Disadvantage in the Chicago Region*, Leadership Council for Metropolitan Open Communities (May 2005), http://www.kirwaninstitute.osu.edu/reports/2005/05_2005_ChicagoComofOppReport.pdf. By failing to adequately consider these harms results, USDA acted arbitrarily and capriciously. *Ass’n of Private Sector Colleges & Univs. v. Duncan*, 681 F.3d 427, 448-49 (D.C. Cir. 2012).

1. *Residential segregation was intentionally created and maintained through past and present racist laws, policies, and practices.*

Black-white residential segregation remains high and has become so entrenched that a person’s race and residence significantly influences their economic outcomes. John R. Logan and Brian J. Stults, *The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census*, Project US2010 (Mar. 24, 2011), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report2.pdf>. The average white person in metropolitan areas lives in a neighborhood that is 75 percent white. *Id.* at 2. The average Black person lives in a neighborhood that is only 35 percent white. *Id.* This segregation persists because of more than a century of deliberate policies aimed at excluding Black Americans from generational wealth and segregating them into areas starved of resources that are also disproportionately exposed to environmental toxins and pollutants. New Deal-era legislation included the National Housing Act of 1934, made it easier for low-income families to purchase homes. However, this resource was made unavailable to Black Americans through the Home Owners’ Loan Corporation’s practice of redlining.

Redlining caused property values to drop in these areas where Black people lived and made it impossible for Black families to buy homes and build wealth. In addition to the National Housing Act of 1934, the G.I. Bill – aimed at helping veterans prosper after World War II – ultimately shut out 1.2 million Black veterans, deepening immense racial disparities and segregation. Congress fought for individual states, rather than the federal government, to administer the G.I. Bill, and local Veterans Administration (VA) counselors were able to refuse access to Black veterans. Shannon Luders-Manuel, *The Inequality Hidden Within the Race-Neutral G.I. Bill*, JSTOR Daily (Sept. 18, 2017), <https://daily.jstor.org/the-inequality-hidden-within-the-race-neutral-g-i-bill>. Furthermore, white-run financial institutions had full discretion to exclude Black applicants when administering the loans.

Three decades after the passage of the GI bill, in 1976, 68 percent of white families owned their home, compared with 44 percent of Black families. To date, those percentages have not meaningfully changed, causing further expansion of the racial wealth gap. In 1963, the average wealth of white families was \$121,000 higher than the average wealth of Black families. By 2016, the average wealth of white families was over \$700,000 higher than the average wealth of Black families. Urban Institute, *Nine Charts about Wealth Inequality in America (Updated)* (October 5, 2017), <http://apps.urban.org/features/wealth-inequality-charts/>. This widening is spurred – in part – by a legacy of discriminatory lending that continues today. Homes in formerly redlined, majority-Black neighborhoods are frequently undervalued, limiting the dollar amounts of available home loans and locking potential buyers out of neighborhood markets entirely. Of the \$57.4 billion federally-reported home loan dollars distributed in Chicago from 2012 to 2018, 68.1 percent went to majority-white neighborhoods, while only 8.1 percent went to majority-Black neighborhoods. Linda Lutton et al., *Where Banks Don't Lend*, WBEZ (June 3, 2020),

<https://interactive.wbez.org/2020/banking/disparity/>. For generations of Black people, this lack of wealth obstructed their ability to create new wealth, trapping Black families in neighborhoods in which systemic disinvestment continued. Housing segregation then leads to a host of other wrongs, including increased exposure to environmental toxins and pollutants and disinvestment in Black communities. All these factors combined directly impact a person's economic potential.

2. *Residential segregation contributes to unequal school funding and lower educational attainment for Black children, which can constrain their job prospects and income potential.*

Schools are more segregated now than they were in the 1960s, in large part due to residential segregation. Gary Orfield et al., *Brown at 62: School Segregation by Race, Poverty and State*, Civil Rights Project/Proyecto Derechos Civiles, UCLA (May 16, 2016), <https://escholarship.org/uc/item/5ds6k0rd>. Residential segregation not only creates schools defined primarily by their racial make-up but results in stark disparities in terms of the quality and the resources at schools' disposal. This is in part because school funding is affected by local property taxes and disparities in the allocation of state funds. Every student enrolled in a nonwhite school district received \$2,226 less than the average student in a white school district, contributing to a nationwide gap of \$23 billion in funding between white and nonwhite school districts. *Nonwhite School Districts Get \$23 Billion Less Than White Districts Despite Serving the Same Number of Students*, EdBuild (Feb. 2019), <http://www.edbuild.org/content/23-billion>. Students attending underfunded schools and without access to resources necessary to excel academically "are often at risk of school dropout and disconnection from the economic mainstream." *See For the Sake of All, Segregation in St. Louis: Dismantling the Divide*, Health Equity Works 1, 10 (2018), <https://healthequityworks.wustl.edu/items/segregation-in-st-louis-dismantling-the-divide/> ("For the Sake of All 2018 Report"). For example, in 2012, twenty-one of twenty-three school districts

in St. Louis had a school population where either white or black children were overrepresented by at least 10 percent. Aaron N. Taylor, *Segregation, Education, and Blurring the Lines of Division in St. Louis*, 33 St. Louis U. Pub. L. Rev. 183 (2013). All of the majority-Black school districts had graduation rates below the state average, compared to only one of the majority-white districts. *Id.* at 186. In 2012, about one in ten Black high school students in St. Louis dropped out of school. For the Sake of All, *A Report on the Health and Well-Being of African Americans in St. Louis and Why it Matters for Everyone*, Washington University in St. Louis and Saint Louis University 1, 35 (May 30, 2014), <https://forthesakeofall.files.wordpress.com/2014/05/for-the-sake-of-all-report.pdf> (“For the Sake of All 2014 Report”). School segregation, driven almost exclusively by residential segregation, results in stark disparities in educational attainment, particularly between white and Black students, which ultimately impacts job prospects and future income.

3. *Racial disparities in income are apparent at the local level.*

Educational attainment is closely linked to income. Students who drop out of high school are likely to earn about \$7,000 less per year than high school graduates. Residential segregation also greatly influences an individual’s income potential because of its impacts on the quality of schools, access to transportation, and investment in economic development in the community – all contributing to the ability to find and maintain employment. In Chicago, for example, stark disparities remain in average incomes depending upon the racial make-up of the community. For example, in Riverdale, a community that is 93 percent Black, the average household income was \$8,201, while the Near North Side community, which is 71 percent white, has an average household income of \$88,669. *See* Chicago Metropolitan Agency for Planning (CMAP), *Community Data Snapshot: Riverdale, Chicago Community Area* (June 2019),

<https://www.cmap.illinois.gov/documents/10180/126764/Riverdale.pdf>. People living in neighborhoods with fewer resources and high rates of disinvestment face difficulties in the job market, due to fewer available jobs in their community, while at the same time being unable to pay transportation costs necessary to compete for jobs outside of their community.

4. *Racial disparities in health, access to health insurance, and food security, can impact employment.*

Racial segregation is also a key contributor to significant racial disparities in mortality and health outcomes, impacting a Black person's economic and employment prospects. In the United States, significant racial disparities in life expectancy exist between white and Black people, particularly for Black men, whose lives are an average of 4.5 years shorter than white men. Elizabeth Arias and Jiaquan Xu, *United States Life Tables, 2017*, 68 National Vital Statistics Reports 1 (June 24, 2019), https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_07-508.pdf. Even greater disparities in infant and adult mortality rates exist in more segregated communities. For example, in St. Louis, areas with higher concentrations of Black residents have higher rates of poverty and higher rates of death from chronic diseases. For the Sake of All 2014 Report, at 30. Residents of zip codes separated by just a few miles have up to an 18-year difference in life expectancy. *Id.* For example, in St. Louis suburban town of Clayton, the population is 78 percent white, and the life expectancy is 85. *Id.* at 6. By contrast, in Jeff-Vander-Lou, a neighborhood in the heart of St. Louis' metro area northwest of downtown, the population is 95 percent Black, and the life expectancy is to age 67. *Id.*

Contributing to these health disparities is a significant gap in access to public and private health insurance by race. Before the implementation of the Affordable Care Act (ACA), nearly 1 in 5 Black Americans were uninsured, compared to about 1 in 8 white Americans. Christen L. Young, *There are Clear, Race-Based Inequalities in Health Insurance and Health Outcomes*,

USC-Brookings Schaeffer Initiative for Health Policy (Feb. 19, 2020), <https://www.brookings.edu/%20blog/usc-brookings-schaeffer-on-health-policy/2020/02/19/there-are-clear-race-based-inequalities-in-health-insurance-and-health-outcomes>. Even after implementation of the ACA, from 2010 to 2018, Black Americans remained 1.5 times more likely to be uninsured than white people. Samantha Artiga et al., *Changes in Health Coverage by Race and Ethnicity since the ACA, 2010-2018*, Kaiser Family Foundation (Mar. 5, 2020), <https://www.kff.org/disparities-policy/issue-brief/changes-in-health-coverage-by-race-and-ethnicity-since-the-aca-2010-2018/>.

Studies have also observed disparities between white and Black neighborhoods in access to healthy food. In a multi-state study, 8% of Black Americans, compared to 31% of white Americans, live in a census tract with a supermarket. Sarah Treuhaft and Allison Karpyn, *The Grocery Gap: Who Has Access to Healthy Food and Why It Matters*, The Food Trust 1, 7 (2010), http://www.thefoodtrust.org/uploads/media_items/grocerygap.original.pdf. In another study, the availability of chain supermarkets in Black neighborhoods was only 52% that of white neighborhoods. Renee E. Walker et al., *Disparities and Access to Healthy Food in the United States: A Review of Food Deserts Literature*, 16 *Health & Place* 876, 880 (2010), <https://www.rootcausecoalition.org/wp-content/uploads/2017/07/Disparities-and-access-to-healthy-food-in-the-United-States-A-review-of-food-deserts-literature.pdf>. Research has demonstrated that poor health is associated with an increased risk of job loss or unemployment, making health and food security other key metrics to consider when analyzing the LMA delineation's erasure of local economic conditions. See Larisa Antonisse and Rachel Garfield, *The Relationship Between Work and Health: Findings from a Literature Review*, Kaiser Family Foundation (Aug. 7, 2018), <https://www.kff.org/medicaid/issue-brief/the-relationship-between->

work-and-health-findings-from-a-literature-review; *see also* Rogier van Rijn, et al., *Influence of Poor Health on Exit from Paid Employment: A Systematic Review*, 71 *Occupational & Environmental Medicine* 295 (2014), <https://oem.bmj.com/content/71/4/295>.

5. *Employment opportunities for Black people are directly impacted by factors stemming from segregation and widespread employment discrimination.*

On top of the barriers and disparities created by residential segregation, Black individuals often face severe employment discrimination, even when controlling for education level, skills, and local labor market factors. The LMA designation is not well-suited for identifying these employment barriers. In a 2015 review of all hiring discrimination field studies, researchers found that in 25 years, there was no decline in discrimination against Black applicants, who received 36% fewer callbacks than white applicants. Lincoln Quillian et al., *Meta-analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time*, 114 *Proceedings of the National Academy of Sciences* 10870 (Oct. 10, 2017) <https://www.pnas.org/content/pnas/114/41/10870.full.pdf>. Nationally, the unemployment rate of Black Americans has been roughly twice that of white Americans for several decades, and those disparities exist even when controlling for educational attainment. *See* Christian E. Weller, *African Americans Face Systematic Obstacles to Getting Good Jobs*, Center for American Progress (Dec. 5, 2019), <https://www.americanprogress.org/issues/economy/reports/2019/12/05/478150/african-americans-face-systematic-obstacles-getting-good-jobs/>. Unemployment rates are particularly high for working age Black men, many of whom are ABAWDs. According to the Bureau of Labor Statistics, Black men ages 20-24 experienced an unemployment rate of 14.9% in Q1 of 2020, the highest of any working age group. *Labor Force Statistics from the Current Population Survey*, U.S. Bureau of Lab. Stat., https://www.bls.gov/web/empsit/cpsee_e16.htm (last modified Apr. 3, 2020). In some communities, racial segregation has created

gaping employment disparities between neighborhoods. For example, in Chicago, according to 2014 census data, the unemployment rate for people over the age of sixteen ranged from 4.7 percent in Lake View, a 79 percent white neighborhood, to 35.9 percent in West Englewood, a 94 percent Black neighborhood. *Census Data: Selected Socioeconomic Indicators in Chicago, 2008-2012*, Chicago Data Portal (updated Sept. 12, 2014), <https://data.cityofchicago.org/Health-Human-Services/Census-Data-Selected-socioeconomic-indicators-in-C/kn9c-c2s2>. This highlights the effects of hyper-local conditions on unemployment rates, that will likely go undetected when assessing unemployment in larger geographic areas such as LMAs and therefore risks depriving some ABAWDs of the nutrition assistance that they need.

Commenters provided a detailed record of these racialized harms at the local level, which USDA ignored. USDA all but concedes this problem, acknowledging that changes in the Rule “have the potential for impacting certain protected groups due to factors affecting rates of employment of members of these groups.” 84 Fed. Reg. at 66808. However, USDA claims that “implementation of mitigation strategies and monitoring by the FNS Civil Rights Division and FNS SNAP may lessen these impacts” and that “if deemed necessary, the FNS Civil Rights Division will propose further rule changes to alleviate impacts that may result from the implementation of the final rule.” Without any further explanation in the face of numerous comments, these conclusory statements will not meet the APA’s arbitrary and capricious standard. *Ass’n of Private Sector Colleges & Univs.*, 681 F.3d at 448-49 (agency decision arbitrary under the APA where agency failed to meaningfully address comments regarding impact on minorities). The Department’s failure to address comments on the disparate racial impact of use of the LMA designation therefore renders the Rule arbitrary and capricious.

C. Restricting waiver requests to those based on LMA data will prejudice states with interstate LMAs.

The Rule is also arbitrary and capricious because USDA completely failed to consider potential prejudice to states with interstate LMAs. *Motor Veh. Mfrs. Ass'n v. State Farm Ins.*, 463 U.S. 29, 43 (1983). LMAs can include counties from multiple states. For example, the Philadelphia-Camden-Wilmington LMA includes counties belonging to Pennsylvania, New Jersey, Delaware, and Maryland, and the Chicago-Naperville-Elgin LMA includes counties that belong to Illinois, Indiana, and Wisconsin. The Department will allow states to request a waiver for intrastate portions of interstate LMAs, but these intrastate areas must qualify based on data from the entire interstate LMA. 84 Fed. Reg. at 66811. This is a considerable departure from the proposed version of the Rule, which limited grouping of sub-state areas to LMAs, but alternatively would have allowed states to request waivers for individual sub-state areas based on unemployment rates within only those areas. By limiting waiver requests to those based on LMA designations, using only aggregate data for the whole LMA, the Department is not only masking localized economic factors that contribute to the availability of jobs, but it is forcing states to account for economic environments that exist outside of their own borders, without any alternative.

This particular aspect of the Rule could prejudice some states with interstate LMAs in a way that the Department did not consider. Situations could emerge where counties within one state would have sufficiently high unemployment to qualify for a waiver as an individual sub-state area but will not be eligible for a waiver because of their inclusion in a larger LMA. For example, the St. Louis LMA includes counties within both Illinois and Missouri. In 2018, St. Clair County, IL and Calhoun County, IL (with respective 24-month average unemployment rates of 6.1 percent and 6.3 percent) would have continued to qualify for a waiver based on their own unemployment rates, despite an overall 24-month average unemployment rate of 4.7 percent

for the St. Louis LMA. Danielle Kwon et al., *Using Labor Market Areas to Determine ABAWD Waiver Eligibility Limits SNAP's Local Flexibility*, Urban Institute (Apr. 2020), https://www.urban.org/sites/default/files/publication/101940/using-labor-market-areas-to-determine-abawd-eligibility-limits-snaps-local-flexibility_3.pdf. The employment prospects in disproportionately Black and historically segregated St. Clair County, IL were not reflected in the overall employment conditions for this large multi-state LMA, which are greatly impacted by conditions outside of Illinois. The same phenomenon would have occurred in areas of the New York-Newark-Jersey City LMA in 2018. This LMA – which includes 25 counties from three states, and nearly 20 million people – had an overall 24-month average unemployment rate of 4.9 percent. However, all three states included in the LMA would have had counties with 24-month average unemployment over the 6 percent floor, such as Bronx County, NY (7.2 percent), Essex County, NJ (6.2 percent), Passaic Co , NJ (6.4 percent), and Pike County, PA (6.4 percent). All three states would lose the ability to respond to unique economic and nutritional needs of in-state residents, by basing waiver eligibility on the economic conditions for the entire LMA. *Id.*

Allowing a state to request a waiver for the intrastate portion of its interstate LMA is not sufficient to mitigate this problem if the request must still be based on unemployment data for the entire LMA. This change will restrict some states' ability to address the food security needs within their borders. Nowhere does USDA address this potential prejudice to states, as such, the Rule is arbitrary and capricious. *State Farm*, 463 U.S. at 43; *see also Dept. of Homeland Sec. v. Regents of Univ. of Cal.*, No. 18-587, slip op. at 21, 591 U.S. __ (June 18, 2020).

II. SNAP Employment & Training programs are not a viable method for all ABAWDs to maintain benefits.

The Rule will cause harm to Plaintiffs by depriving hundreds of thousands of their residents of critical nutritional support. USDA itself estimates that 688,000 ABAWDs may lose

SNAP benefits as a result of the Rule. 84 Fed. Reg. at 66807. Contrary to the position of nine *amici* states (Docket 38-1 Amicus Brief Arizona et al. (2020-02-28), investment in SNAP Employment & Training services (SNAP E&T) will not prevent large-scale loss of nutrition benefits. As anti-poverty law and advocacy organizations in Illinois, Pennsylvania, and Nebraska, however, *amici* have seen firsthand the severe shortcomings of the SNAP E&T programs in addressing the needs of SNAP recipients.

States are required to operate SNAP Employment and Training (“E&T”) programs. *See* 7 U.S.C. § 2015(d)(4)(A)(i) (2018). ABAWDs can comply with the time limit by participating in certain types of programming offered by SNAP E&T, but they must reach 80 hours a month. Lizbeth Silbermann, *Clarifications on Work Requirements, ABAWDs and E&T*, USDA (May 25, 2018), <https://fns-prod.azureedge.net/sites/default/files/snap/Clarifications-on-WorkRequirements-ABAWDs-ET-May2018.pdf>. However, states are not required to provide a SNAP E&T slot for all ABAWDs in the state. In exchange for additional funding, states can pledge to offer qualifying E&T services to *all* ABAWDs at risk of losing SNAP eligibility due to time limits, but that additional funding is capped at 20 million nationwide. Accordingly, most states have not pledged to offer services for all non-waived ABAWDs, because a share of the extra funding is often not enough for states to provide the additional programming. SNAP to Skills (S2S), *Why Now is the Time for States To Build Their SNAP E&T Programs*, USDA (2019), <https://snaptoskills.fns.usda.gov/sites/default/files/2016-09/Policy%20Brief%204%20pager.pdf>. Further, a significant portion of E&T program slots are dedicated to job search or job search training programs, which cannot be used to comply with the ABAWD time limit. 7 C.F.R. § 273.24(a)(3)(iii) (2019). Consequently, participation in E&T will not be a viable path for the overwhelming majority of ABAWDs to maintain compliance with the time limit.

In Illinois, for example, the state estimated that the SNAP E&T Program would only serve 9,400 participants, falling far short of its 147,000 ABAWDs in 2019. Similarly, Pennsylvania only has the resources to provide E&T to 2,777 participants a year, many of whom are not among the 96,611 ABAWDs in the state. And in Nebraska, the state can only serve 240 people through SNAP E&T, despite having nearly 12,000 ABAWDs and 165,000 SNAP recipients statewide.

Access to E&T can also be very geographically uneven in these states, meaning some ABAWDs will not have access to these programs near where they live. In Illinois, less than one-third of counties have a workforce provider contracted with the State to serve SNAP recipients, leaving large swaths of central Illinois completely devoid of SNAP E&T services. Likewise, in Nebraska, SNAP E&T services are only available in 16 of Nebraska's 93 counties, with no programming available in the two most populous counties – Douglas County and Lancaster County. Additionally, lack of availability of SNAP E&T is disproportionately felt by non-white Nebraskans, as E&T services are not currently available on Native American lands.

In these states, the available E&T slots includes hundreds in job search activities, which cannot be used to comply with the ABAWD time limit. Even for ABAWDs that are able to find a program in these states, few programs would provide the required 80 hours a month to maintain their benefits. Many are short-term training programs lasting only one to three months and provide only temporary protection from the time limit if the training opportunity does not immediately translate into more stable employment.

Many states can offer so few E&T slots that investment in E&T to the level required to serve all ABAWDs would be prohibitively expensive. The lack of E&T programming, as well as the host of other barriers that many ABAWDs face, including homelessness and unstable living

situations, language barriers, lack of access to private or public transportation, sporadic employment histories, and physical or mental limitations to achieving stable employment will result in hundreds of thousands of ABAWDs losing benefits under the Rule. Contrary to arguments put forth by amici states, therefore, amending the standards for ABAWD time limit waivers will most certainly result in the loss of SNAP benefits for those who need it the most.

The Department was “not compelled by arguments that E&T services or other work program availability should be factored in when defining which areas have high unemployment or lack sufficient jobs.” 84 Fed. Reg. at 66795. The experiences with E&T funding in Illinois, Pennsylvania, and Nebraska demonstrates that E&T programs will not prevent the harm of the Rule. Existing programming is insufficient, and sufficient levels of programming will be prohibitively expensive. As a result, E&T will not prevent hundreds of thousands of ABAWDs from losing benefits under the Rule.

CONCLUSION

For the reasons outlined above, *amici* respectfully requests that this Court grant the Plaintiffs’ Motion for Summary Judgment.

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Respectfully submitted,

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