

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

DISTRICT OF COLUMBIA, et al.,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, et al.,

*Defendants.*

C.A. No. 1:20-cv-00119-BAH

BREAD FOR THE CITY, et al.,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, et al.,

*Defendants.*

C.A. No. 1:20-cv-00127-BAH

**MOTION OF FOOD RESEARCH & ACTION CENTER AND MARYLAND HUNGER  
SOLUTIONS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF  
IN SUPPORT OF THE STATE-PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 7(o) of the Local Civil Rules of the United States District Court for the District of Columbia, *amici curiae* Food Research & Action Center (“FRAC”) and Maryland Hunger Solutions (“MDHS”) (collectively, “*Amici*”), respectfully move the Court for leave to file the attached *amici curiae* brief in support of the State-Plaintiffs’ Motion for Summary Judgment. All parties have consented to the filing of the brief. No party’s counsel authored this brief in whole or in part, and no party, party counsel, or person other than the *Amici*

or their counsel contributed money that was intended to fund this brief's preparation or submission.

The identity and interest of the *Amici* is stated in the accompanying brief, attached as Exhibit 1. *Amici* submit this brief to highlight the myriad of negative public health impacts that will be caused by implementing the challenged final rule, and the United States Department of Agriculture's (USDA) failure to consider these harms when enacting the challenged final rule.

Proposed *amicus* FRAC leads efforts to identify and communicate the connections among poverty, hunger, and obesity among low-income people. As part of those efforts, FRAC conducts research to document the extent of hunger, its impact, and effective solutions to hunger. In working to end hunger in the United States, FRAC seeks stronger federal, state and local public policies that will reduce hunger, undernutrition, and obesity. The Supplemental Nutrition Assistance Program (SNAP) is one such federal program that FRAC has studied for its impact on reducing food insecurity and associated negative health outcomes.

Proposed *amicus* MDHS was founded in 2007 by FRAC to fight hunger and improve the nutrition, health and well-being of children and families throughout Maryland. MDHS works closely with Maryland residents all across the state to facilitate access to federal and state nutritional programs, advocate for improved benefits, and eradicate hunger in Maryland. As an advocate for low-income residents in Maryland, MDHS routinely assists residents in obtaining SNAP benefits.

The Court has broad discretion to permit leave to file *amicus* briefs. *Amici* submit that their expertise provides "a special interest in th[e] litigation as well as a familiarity and knowledge of the issues raised therein that could aid in the resolution of th[e] case." *Ellsworth Assocs. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996). *Amici*'s proposed brief presents

their expertise researching the harms of food insecurity and facilitating access to SNAP among Maryland residents. *Amici* contend that implementing the final rule will result in irreparable harm to individuals and the public health, in addition to raising overall health care costs. The USDA has failed to consider these cascading harms, rendering the challenged final rule arbitrary and capricious under the Administrative Procedure Act.

For the foregoing reasons, *Amici* respectfully request that their motion to file their proposed *amici curiae* brief be granted. A proposed order also accompanies this motion.

Dated: July 8, 2020

Respectfully submitted,

/s/ Christopher Suarez  
Christopher Suarez (D.C. Bar No. 1018294)

Matthew N. Bathon (D.C. Bar No. 480538)  
Nigel G. Ray (D.C. Bar No. 1660084)  
Eva Rigamonti (D.C. Bar No. 1023367)  
**Steptoe & Johnson LLP**  
1330 Connecticut Ave. NW  
Washington, DC 20036  
Telephone: (202) 429-3000

*Counsel for Food Research & Action Center  
and Maryland Hunger Solutions as Amici  
Curiae*

**CERTIFICATE OF SERVICE**

I certify that on this 8<sup>th</sup> day of July 2020, I electronically filed the foregoing motion using the CM/ECF system, which I understand to have caused service of the counsel for all parties.

Respectfully submitted,

/s/ Christopher Suarez  
Christopher Suarez (D.C. Bar No. 1018294)

**Step toe & Johnson LLP**  
1330 Connecticut Ave. NW  
Washington, DC 20036  
Telephone: (202) 429-3000

*Counsel for Food Research & Action Center  
and Maryland Hunger Solutions as Amici  
Curiae*

# **EXHIBIT 1**

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MARYLAND HUNGER SOLUTIONS  
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## INTEREST OF AMICI CURIAE<sup>1</sup>

*Amici curiae* Food Research & Action Center (“FRAC”) and Maryland Hunger Solutions (“MDHS”) (collectively, “*Amici*”) are nonprofit organizations working to eradicate poverty-related hunger and undernutrition in the United States. The Supplemental Nutrition Assistance Program (“SNAP”) is an important national program for ending hunger. *Amici* agree with Plaintiffs’ challenge of the *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, 84 Fed. Reg. 66782 (Dec. 5, 2019) (“Final Rule”) implemented by the United States Department of Agriculture (“USDA”). *Amici* write separately to highlight the myriad of negative public health impacts that will be caused by the Final Rule, and the USDA’s failure to consider these harms when enacting the Final Rule.

### I. INTRODUCTION

Congress enacted SNAP to alleviate hunger and malnutrition for low-income households.<sup>2</sup> The Final Rule frustrates the very purpose of SNAP by denying many eligible low-income individuals access to food.

*Amici* submit this brief to present research and studies illuminating the myriad ways food insecurity negatively impacts the health and well-being of individuals. The United States is the single largest economy in the world, and yet over 11 percent of households—or approximately 14.3 million households<sup>3</sup>—across the U.S. suffer from food insecurity. Even Maryland, with the

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<sup>1</sup> All parties have consented to the *Amici* filing this brief. No party’s counsel authored this brief in whole or in part and no person, other than *Amici* and their counsel, contributed money that was intended to fund preparing or submitting this brief.

<sup>2</sup> 7 U.S.C. § 2011.

<sup>3</sup> <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/interactive-charts-and-highlights/> (providing food security data in 2018 across the United States).

nation's highest average income per household,<sup>4</sup> has a food insecurity rate of 11.1 percent.<sup>5</sup> The very purpose of SNAP is to be the nation's largest safety net providing access to food for those in need.

The Final Rule will not only prevent low-income individuals from obtaining food, resulting in grave health risks, it will also increase mental distress and place a greater burden on the overall health care system. As the Final Rule itself acknowledges, if implemented, hundreds of thousands of individuals could lose their SNAP benefits. Research and studies over the past several years demonstrate that when individuals lose access to SNAP benefits, they are at a much greater risk of food insecurity and other detrimental health outcomes, both physical and mental. These individuals are also likely to incur greater health care costs that will ultimately be borne by the States and local governments.

For the reasons provided below, *Amici* submit that the USDA should be enjoined from implementing the Final Rule. The manifest physical, mental, and economic harm that will be incurred by those individuals denied SNAP benefits as a result of the Final Rule greatly outweigh any potential benefits suggested by the USDA. The USDA acted arbitrarily and capriciously by failing to respond to the concerns raised by the public comments in opposition to the Final Rule.

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<sup>4</sup> Papadopoulos, A. "Ranked: These are the Richest States in the U.S. 2019," CEOWORLD Magazine, October 7, 2019 <https://ceoworld.biz/2019/10/07/ranked-these-are-the-richest-states-in-the-u-s-2019/>.

<sup>5</sup> Food Research & Action Center, "Table 1: Household Food Insecurity Rates by State, 2016-2018," [https://frac.org/maps/food-security/tables/tab1\\_foodinsecurity\\_2016\\_2018.html](https://frac.org/maps/food-security/tables/tab1_foodinsecurity_2016_2018.html).

## **II. BACKGROUND**

### **A. Food Research & Action Center and Maryland Hunger Solutions**

FRAC leads national efforts to identify and communicate the connections among poverty, hunger, and obesity among low-income people.<sup>6</sup> FRAC's efforts include conducting research to document the extent of hunger, its impact, and effective solutions to hunger. In working to end hunger in the United States, FRAC seeks stronger federal, state and local public policies that will reduce hunger, undernutrition, and obesity. SNAP is one such federal program that FRAC has studied for its impact on reducing food insecurity and associated negative health outcomes.

MDHS was founded in 2007 by FRAC to fight hunger and improve the nutrition, health and well-being of children and families throughout Maryland.<sup>7</sup> MDHS works closely with Maryland residents across the state to facilitate access to federal and state nutritional programs, advocate for improved benefits, and eradicate hunger in Maryland.

### **B. SNAP Promotes Food Security, Health, and Well-Being**

"Food insecurity" is a term used by the USDA to indicate limited or uncertain availability of nutritionally adequate food in a household. The USDA's Economic Research Service tracks the levels of food insecurity throughout the United States. In 2018, more than 37 million people lived in food insecure households.<sup>8</sup> Food insecurity is a health-related social need that contributes to poor physical and mental health outcomes.<sup>9</sup> For example, studies have shown

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<sup>6</sup> <https://frac.org/about/what-we-do>

<sup>7</sup> <https://www.mdhungersolutions.org/about-us/>

<sup>8</sup> Coleman-Jensen, A., Rabbitt, M. P., Gregory, C. A., & Singh, A., *Household food security in the United States in 2018*, USDA Economic Research Report, 270 (2019), available at <https://www.ers.usda.gov/publications/pub-details/?pubid=94848>

<sup>9</sup> Hartline-Grafton, H., *The Impact of Poverty, Food Insecurity, & Poor Nutrition on Health and Well-Being*, Food Research & Action Center (2017), available at <https://frac.org/wp-content/uploads/hunger-health-impact-poverty-food-insecurity-health-well-being.pdf>.

food insecurity amongst adults increases the prevalence and severity of numerous diseases including type-2 diabetes, heart disease, stroke, and some cancers.<sup>10</sup>

SNAP is the nation's largest nutrition assistance program. It is administered by the USDA and serves as the first line of the nation's public policy defense against hunger and undernutrition. This invaluable program plays a critical role, not just in reducing food insecurity, but in improving the overall health of the nation, especially amongst the most vulnerable Americans.<sup>11</sup> SNAP alleviates food insecurity, which, in turn, can improve the dietary intake and health of SNAP recipients. Studies have shown that SNAP reduces the likelihood of being food insecure by over 30 percent.<sup>12</sup>

### III. ARGUMENT

In this brief, *Amici* with expertise in nutrition, the effects of food insecurity, and benefits of SNAP on public health, detail the disastrous impacts of the Final Rule on both individuals losing SNAP benefits and the general public health, underscoring why the USDA's failure to consider these impacts was arbitrary, capricious, and problematic.

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<sup>10</sup> *Id.* at p. 4 (identifying health conditions associated with food insecurity and collecting research studies).

<sup>11</sup> Hartline-Grafton, H., *The Role of the Supplemental Nutrition Assistance Program (SNAP) in Improving Health and Well-Being*, Food Research & Action Center (2017), available at <https://frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf>.

<sup>12</sup> Ratcliffe, C., McKernan, S. M., & Zhang, S., *How much does the Supplemental Nutrition Assistance Program reduce food insecurity?*, *Am. J. of Agricultural Economics* 93(4), 1082–1098 (2011).

**A. The USDA’s Final Rule Causes Irreparable Harm to Individuals’ Health by Undermining State Flexibility to Provide SNAP Benefits to Low-Income Adults in Areas with Insufficient Jobs**

**1. The Final Rule Will Result in Dramatic Decreases in SNAP Participation by Limiting Evidence of Insufficient Jobs and Reducing State Exemptions**

The Final Rule attempts to limit States’ flexibility to request waivers of SNAP’s three-month time limit for adults receiving benefits in areas with insufficient jobs. 84 Fed. Reg. at 66811. It also cuts the time that States have to use discretionary exemptions to protect individuals against the three-month eligibility time limit. *Id.* The time limit applies to so-called able-bodied adults without dependents (“ABAWDs”) who do not document 80 hours of work or other qualifying activities each month—a particularly acute problem in areas that lack sufficient jobs that has only been exacerbated by the ongoing COVID-19 pandemic, *see infra* Section III.A.3. Enforcing the Final Rule, particularly now, will drastically cut SNAP participation among unemployed and underemployed people. The USDA acknowledges that the Final Rule “will also newly subject an estimated 1,087,000 ABAWDs to the time limit” and further “estimates the vast majority, approximately 688,000, will not meet the work requirement.” 84 Fed. Reg. at 66809. Even these estimates of the number of adults losing SNAP benefits may be too low as the estimates were made before the COVID-19 pandemic and current economic recession.

The USDA’s estimates of SNAP benefit losses comport with recent research showing that a lack of area waivers to SNAP’s time limits is associated with disturbing declines of SNAP participation among ABAWDs.<sup>13</sup> Taking into account unemployment, poverty, and Medicaid

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<sup>13</sup> Ku, L., Brantley, E., & Pillai, D., *The effects of SNAP work requirements in reducing participation and benefits from 2013 to 2017*, Am. J. of Public Health 109(10), 1446–1451 (2019).

expansions, the analysis determined that reductions in designated waiver areas between 2013 and 2017 were associated with a loss of SNAP benefits for approximately 600,000 people and a cut in SNAP benefits of approximately \$2.5 billion in 2017 alone.<sup>14</sup>

The staggering loss of SNAP benefits expected by the Final Rule is even more troubling when considering the hardships for low-income adults resulting from food insecurity and its associated health consequences, which again are only exacerbated by the ongoing pandemic. As explained below, food insecurity causes a number of hardships beyond hunger, including increasing the prevalence and severity of health impairments, diseases, and mental distress.

## **2. The Final Rule Will Result in Irreparable Physical and Mental Harm to Individuals Who Lose Their SNAP Benefits**

SNAP provides critical nutritional intervention and support for vulnerable Americans, and considerable evidence demonstrates SNAP's effectiveness in improving health outcomes. The most immediate and direct impact of SNAP is to alleviate food insecurity. SNAP reduces the likelihood of participants being food insecure by approximately 31 percent and the likelihood of being very food insecure by 20 percent.<sup>15</sup> In addition to providing an improved dietary intake, SNAP improves the overall physical and mental health of participants as explained below. Denying SNAP benefits to low-income adults, however, will have a dramatic impact on their health—increasing hospitalizations, the prevalence of diseases, and depression. These problems are unconscionable in any climate, but they are particularly alarming now—at a time when the COVID-19 pandemic is straining hospital capacities and causing mental distress across the country.

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<sup>14</sup> *Id.*

<sup>15</sup> Ratcliffe, C., McKernan, S. M., & Zhang, S., *How much does the Supplemental Nutrition Assistance Program reduce food insecurity?* *Am. J. of Agricultural Economics* 93(4), 1082–1098 (2011).

*First*, food insecurity itself increases the prevalence and severity of numerous diseases, and results in harmful coping strategies that stretch household budgets.<sup>16</sup> Specifically, food insecurity can lead to diseases such as type-2 diabetes, heart disease, stroke, and cancer.<sup>17</sup> Individuals suffering from food insecurity have also been known to reduce their spending by cutting necessary medical costs. For example, adults suffering from food insecurity may engage in cost-related medication underuse, postpone or forgo preventive or needed medical care, forego the foods needed for special medical diets, and make other trade-offs between food and basic necessities (*e.g.*, housing, utilities, and transportation).<sup>18</sup> SNAP reduces food insecurity and lessens the likelihood that beneficiaries will be forced to rely on such harmful coping strategies.

*Second*, SNAP serves diabetic recipients by promoting glucose control and reducing hospitalizations. In one study of low-income patients with type 2 diabetes, for example, SNAP participation lowered the risk of poor glucose control among those who were food insecure. The authors of the study raised concerns that cuts to SNAP could result in “worse chronic disease control among low-income patients with diabetes.”<sup>19</sup> Other studies have examined the ability of low-income patients to afford a diabetic diet. For example, one survey of diabetic patients found that participants suffering from food insecurity were more likely to have difficulty affording a

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<sup>16</sup> *Id.* at p. 4 (identifying health conditions associated with food insecurity and collecting research studies).

<sup>17</sup> Hartline-Grafton, H., *The Impact of Poverty, Food Insecurity, & Poor Nutrition on Health and Well-Being*, Food Research & Action Center (2017).

<sup>18</sup> *Id.* at 5 (collecting studies).

<sup>19</sup> Mayer, V. L., McDonough, K., Seligman, H., Mitra, N., & Long, J. A., *Food insecurity, coping strategies and glucose control in low-income patients with diabetes*, *Public Health Nutrition* 19(6), 1103–1111 (2016).

diabetic diet.<sup>20</sup> Other studies have also shown that hospital admissions for hypoglycemia (*i.e.*, low blood sugar) are 27 percent higher at the end of the month for low-income individuals with diabetes.<sup>21</sup> The researchers found that the most likely cause of the increase in admission rates late in the month were due to exhaustion of SNAP benefits, which are distributed to recipients at the beginning of each month.<sup>22</sup> That is, by the end of the month SNAP recipients have likely run out of funds for food, resulting in hypoglycemia when little or no food is available. It is plain that each of these problems will only be exacerbated by the Final Rule, which is more likely to foreclose SNAP benefits to diabetic recipients.

*Third*, SNAP's time limit may lead to additional denials of benefits for adults with disabilities, as was shown in research published in June of this year.<sup>23</sup> This research is particularly troubling because SNAP's time limit is only intended to apply to "able-bodied" adults *without disabilities*; they should not apply to adults with disabilities. The research suggests that this result may occur when a person has a disability that does not qualify for an exemption, or a person has not completed the exemption process due to paperwork barriers.<sup>24</sup> Regardless of the underlying cause, the researchers concluded that limiting the use of SNAP area

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<sup>20</sup> Seligman, H. K., Jacobs, E. A., López, A., Tschann, J., Fernandez A., *Food Insecurity and Glycemic Control Among Low-Income Patients with Type 2 Diabetes*, *Diabetes Care* 35(2), 233-238, 2012).

<sup>21</sup> Seligman, H. K., Bolger, A. F., Guzman, D., López, A., & Bibbins-Domingo, K., *Exhaustion of food budgets at month's end and hospital admissions for hypoglycemia*, *Health Affairs* 33(1), 116–123 (2014).

<sup>22</sup>*Id.* at 121.

<sup>23</sup> Brantley, E., Pillai, D., & Ku L., *Association of Work Requirements With Supplemental Nutrition Assistance Program Participation by Race/Ethnicity and Disability Status, 2013-2017*, *JAMA Network Open*. (2020), available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2767673>.

<sup>24</sup> *Id.*

waivers to the time limit requirement could “decreas[e] access to food, including for adults with disabilities, who are more likely to experience food insecurity.”<sup>25</sup> These are the exact types of people for whom SNAP should be a safety net.

Finally, in addition to improved physical health, SNAP participation has also been linked to improved *mental* health. Food insecurity frequently coincides with depression; however, SNAP participation reduces the psychological distress caused by hunger and food insecurity.<sup>26</sup> One study found that SNAP participants were less likely to experience depression than non-participants.<sup>27</sup> Another national study found that participation in SNAP for six months was associated with a 38 percent reduction in psychological distress.<sup>28</sup>

The Final Rule contemplates that it will cause nearly 700,000 ABAWDs to lose their SNAP benefits. If the Final Rule goes into effect, these individuals—and possibly many more given the lack of available jobs at this time—will be at a much greater risk of suffering from food insecurity and the many negative outcomes associated with food insecurity. In short, the cascading damage caused by denying these benefits will increase the prevalence of harmful coping strategies, increase both the prevalence and severity of diseases, and increase psychological distress. SNAP improves more than just dietary intake; it improves physical and mental health outcomes.

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<sup>25</sup> *Id.*

<sup>26</sup> Leung, C. W., Epel, E. S., Willett, W. C., Rimm, E. B., & Laraia, B. A., *Household food insecurity is positively associated with depression among low-income Supplemental Nutrition Assistance Program participants and income-eligible nonparticipants*, *J. of Nutrition* 145(3), 622–627 (2015).

<sup>27</sup> *Id.* at 626.

<sup>28</sup> Oddo, V.M., & Mabli, J., *Association of participation in the Supplemental Nutrition Assistance Program and psychological distress*, *Am. J. of Public Health* 105(6), e30-e35 (2015).

**3. The COVID-19 Pandemic and Economic Crisis Highlight the Dangers Posed by the Final Rule**

The Final Rule limits the States' ability to waive the time limit for low employment areas and flexibility to provide exemptions to ABAWDs. As noted above, the dangers posed by the Final Rule are only exacerbated by the current COVID-19 pandemic and ensuing economic crisis. Unemployment and underemployment have skyrocketed over the past several months,<sup>29</sup> COVID-19 has wreaked havoc on individuals and the health care system,<sup>30</sup> and there is a general lack of certainty when the United States will recover.<sup>31</sup> In times like these, the States need flexibility to get SNAP benefits to adults suffering from hunger and undernutrition. The Final Rule threatens to reduce States' flexibility to deal with hunger at a time when States need that flexibility the most.

**B. States and Individuals Will Suffer Irreparable Harm Due to SNAP Losses Increasing Health Care Expenditures and Decreasing Economic Activity**

The public benefits of SNAP extend beyond preventing food insecurity and improving the overall health and well-being of low-income individuals. In fact, it is well documented that SNAP has a beneficial economic impact on the States and local communities by *decreasing* health care costs and *stimulating* economic activity. As explained below, the USDA's Final Rule

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<sup>29</sup> <https://www.bls.gov/news.release/empsit.nr0.htm>, last accessed July 6, 2020 (“[T]he jobless rate and the number of unemployed are up by 7.6 percentage points and 12.0 million, respectively, since February.”).

<sup>30</sup> <https://www.ipr.northwestern.edu/documents/reports/ipr-rapid-research-reports-pulse-hh-data-1-june-2020.pdf>, last accessed July 6, 2020 (estimating that food insecurity rates have at least doubled during the COVID pandemic).

<sup>31</sup> Lawder, D., *Global economy in 2020 on track for sharpest downturn since 1930s: IMF*, Reuters (Apr. 14, 2020) available at <https://www.reuters.com/article/us-imf-worldbank-outlook/global-economy-in-2020-on-track-for-sharpest-downturn-since-1930s-imf-idUSKCN21W1MA>.

would result in a dramatic increase in health care costs while decreasing economic activity in agricultural industries.

### **1. Removing SNAP Benefits Increases Overall Health Care Expenditures**

An ancillary benefit to SNAP is reduced health care expenditures for both individual participants and State governments. As explained above, food insecurity and its related coping strategies can exacerbate existing diseases and compromise health. Numerous studies have found a correlation between food insecurity and increased health care expenditures for individuals and States.

SNAP participation reduces health care utilization and costs. One national study found that “SNAP participation was associated with approximately \$1,400 per year per person lower subsequent health care expenditures in low-income adults.”<sup>32</sup> The savings were even larger for SNAP participants with existing health conditions such as hypertension or coronary heart disease.<sup>33</sup> The Final Rule, however, will reduce SNAP participation and thus increase health care costs. As most individuals with food insecurity lack private health insurance, it will fall to State and local governments to shoulder much of the increased health costs.<sup>34</sup>

Food insecurity, unsurprisingly, is a strong predictor of increased health care costs. As such, SNAP’s efforts to prevent food insecurity further reduce health care costs. Numerous studies over the past several years have examined the ways in which food insecurity contributes

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<sup>32</sup> Berkowitz, S. A., Seligman, H. K., Rigdon, J., Meigs, J. B., & Basu, S., *Supplemental Nutrition Assistance Program (SNAP) participation and health care expenditures among low-income adults*, *JAMA Internal Medicine* 177(11) 1642–1649 (2017).

<sup>33</sup> *Id.*

<sup>34</sup> Berkowitz, S. A., Basu, S., Gundersen, C., & Seligman, H. K., *State-level and county-level estimates of health care costs associated with food insecurity*, *Preventing Chronic Disease* 16, e90 (2019).

to avoidable health care costs such as increased physician visits, emergency room visits, hospitalizations, and expenditures for prescription medications.<sup>35</sup> One such analysis performed last year found that food insecurity contributed to \$52.9 billion in excess health care costs for the nation.<sup>36</sup> The authors of that study concluded that SNAP benefits are associated with “lower health care costs” and “having area-level policy options could provide a multilevel framework for addressing high health care spending by supporting access to proper nutrition.”<sup>37</sup>

Lastly, the Final Rule threatens to substantially increase Medicaid costs. Studies have found a correlation between Medicaid admissions and SNAP benefits. For example, a nationwide study published in 2018 examined the impact on Medicaid admission rates due to a temporary increase of SNAP benefits in 2009, and admission rates after a decrease in benefits in 2013. That study found that the monthly Medicaid admission growth rate fell from 0.80 to 0.35 percent after the increase in SNAP benefits, which resulted in a \$26.5 billion savings from 2009 to 2013.<sup>38</sup> However, after SNAP benefits were decreased in 2013, the Medicaid admission growth rate rose to 2.42 percent, resulting in \$6.4 billion additional costs over a 14-month period. The Final Rule and its expected decrease in SNAP benefits will result in substantial increases to Medicaid costs.

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<sup>35</sup> Hartline-Grafton, H., *The Impact of Poverty, Food Insecurity, & Poor Nutrition on Health and Well-Being*, Food Research & Action Center (2017).

<sup>36</sup> Berkowitz, S. A., Basu, S., Gundersen, C., & Seligman, H. K., *State-level and county-level estimates of health care costs associated with food insecurity*, Preventing Chronic Disease 16, e90 (2019).

<sup>37</sup> *Id.* at 5.

<sup>38</sup> Sonik, R. A., Parish, S. L., & Mitra, M., *Inpatient Medicaid usage and expenditure patterns after changes in Supplemental Nutrition Assistance Program benefit levels*, Preventing Chronic Disease 15, e12 (2018).

## 2. SNAP Benefits Support the Economy

SNAP benefits improve local economies in addition to providing access to healthy food. Indeed, in declaring its support for SNAP, Congress stated that increasing the utilization of food will “promote the distribution in a beneficial manner of the Nation’s agricultural abundance and *will strengthen the Nation’s agricultural economy.*”<sup>39</sup> By denying SNAP benefits to 688,000 participants or more, the Final Rule threatens to undermine this support to the agricultural economy.

Recent research supports the conclusion that SNAP is meeting its intended purpose of bolstering the agricultural economy. It is estimated that every \$1 of SNAP benefits results in between \$1.50 and \$1.80 in total economic activity during a recession.<sup>40</sup> Those dollars help all parts of the food system, from farmers and food producers, to store owners and clerks. Many farmers’ markets receive revenue from SNAP purchases and many of those markets also participate in incentive programs that provide SNAP shoppers with bonuses for purchasing fruits and vegetables. As such, SNAP leads to many positive results, not only decreasing food insecurity and improving health, but also benefiting the government’s private sector partners in the agricultural industry. SNAP ensures that low-income households have funds to spend at American farmers’ markets, small format retailers, and grocery stores—essential businesses that employ numerous people.

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<sup>39</sup> 7 U.S.C. § 2011 (emphasis added).

<sup>40</sup> Canning, P., & Stacy, B., *The Supplemental Nutrition Assistance Program (SNAP) and the economy: new estimates of the SNAP multiplier*, USDA Economic Research Report 265 (2019) (Table 1 at page 7 reports on a range of multipliers supported by recent, relevant research).

**C. The USDA’s Failure to Consider the Public Health Impact Renders the Final Rule Arbitrary and Capricious**

The Final Rule drastically limits States’ ability to designate waiver areas and maintain exemptions to the time limit for ABAWDs, which will result in denying benefits to countless people across the country. As explained above and throughout the public comments to the Final Rule, implementing the Final Rule will have an alarming public health impact as nearly 700,000 ABAWDs face food insecurity, undernutrition, and related health consequences. The USDA should be enjoined from implementing the Final Rule due to its failure to address these concerns, particularly in the context of a global pandemic.

The Administrative Procedure Act (“APA”) allows reviewing courts to set aside agency actions that are found to be “arbitrary, capricious, ... or otherwise not in accordance with law.”<sup>41</sup> “The requirement that agency action not be arbitrary or capricious includes a requirement that the agency adequately explain its result, and respond to ‘relevant’ and ‘significant’ public comments.”<sup>42</sup>

Here, the Final Rule will not only deny benefits to nearly 700,000 individuals, it will lead to and exacerbate health issues caused by food insecurity and undernutrition. *Supra*, Section III.A. The Final Rule will also result in a surge in health care costs and Medicaid costs, which will largely be borne by State and local municipalities. *Supra*, Section III.B. Congress’ stated goal in enacting SNAP was to “alleviate such hunger and malnutrition” among low-income households; yet, the Final Rule will do just the opposite as numerous public comments indicated:

- “Commenters also cited a recent study finding that counties that lost waivers saw significant declines in ABAWD caseloads in SNAP, *without any evidence of improvement in individual economic outcomes or well-being*, when

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<sup>41</sup> 5 U.S.C. § 706.

<sup>42</sup> *Pub. Citizen, Inc. v. F.A.A.*, 988 F.2d 186, 197 (D.C. Cir. 1993) (citations omitted).

compared to economically similar counties with waivers.” 84 Fed. Reg. 66806 (emphasis added)

- “Commenters also stressed the importance of SNAP and cited research indicating that *receipt of SNAP improves health outcomes, and that work requirements harm health and productivity.*” 84 Fed. Reg. 66806 (emphasis added).
- “Commenters pointed to research studies, including those by the Department, indicating that the *increased receipt of SNAP benefits stimulated local economic activity and increased employment during the Great Recession.*” 84 Fed. Reg. 66806 (emphasis added).

The USDA has not disputed or responded to the public comments describing the harm to public health anticipated by the Final Rule. *See* 84 Fed. Reg. 66806-07. Having failed to address these comments—which go against the very purpose of the statute, including alleviating hunger and malnutrition—the USDA’s decision to implement the Final Rule is arbitrary and capricious.<sup>43</sup> Accordingly, the Final Rule should be found unlawful and the USDA enjoined from its implementation.

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<sup>43</sup> *Tesoro Alaska Petroleum Co. v. F.E.R.C.*, 234 F.3d 1286, 1294 (D.C. Cir. 2000) (“The Commission’s failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious.”).

#### IV. CONCLUSION

The Final Rule threatens to take food from the very individuals Congress created SNAP to serve and instead cast those individuals further into food insecurity. The irreparable harm caused by the Final Rule goes beyond a loss of SNAP benefits; those impacted individuals will be at much greater risk for diseases, psychological distress, and increased medical costs. For the foregoing reasons, FRAC and MDHS support the State-Plaintiffs' Motion for Summary Judgment seeking an order vacating the Final Rule.

Dated: July 8, 2020

Respectfully submitted,

/s/ Christopher Suarez  
Christopher Suarez (D.C. Bar No. 1018294)

Matthew N. Bathon (D.C. Bar No. 480538)  
Nigel G. Ray (D.C. Bar No. 1660084)  
Eva Rigamonti (D.C. Bar No. 1023367)  
**Steptoe & Johnson LLP**  
1330 Connecticut Ave. NW  
Washington, DC 20036  
Telephone: (202) 429-3000

*Counsel for Food Research & Action Center  
and Maryland Hunger Solutions as Amici  
Curiae*

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

DISTRICT OF COLUMBIA, et al.,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, et al.,

*Defendants.*

C.A. No. 1:20-cv-00119-BAH

BREAD FOR THE CITY, et al.,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, et al.,

*Defendants.*

C.A. No. 1:20-cv-00127-BAH

**[PROPOSED] ORDER**

Upon consideration of the unopposed Motion of Food Research & Action Center and Maryland Hunger Solutions for Leave to File *Amicus Curiae* Brief in Support of the State-Plaintiffs' Motion for Summary Judgment, it is hereby **GRANTED**.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2020

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BERYL A. HOWELL  
Chief Judge