

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

DISTRICT OF COLUMBIA, *et al.*,

*Plaintiffs,*

v.

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

*Defendants.*

Case No. 20-119 (BAH)

BREAD FOR THE CITY, *et al.*,

*Plaintiffs,*

v.

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

*Defendants.*

**BRIEF OF THE INSTITUTE FOR POLICY INTEGRITY AT NEW YORK  
UNIVERSITY SCHOOL OF LAW AS *AMICUS CURIAE* IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Christopher M. Curran (DC Bar No. 408561)

Naari K. Ha (DC Bar No. 1047654)\*

Nicholas McGuire

Ada Wang

**WHITE & CASE** LLP

701 Thirteenth Street, NW

Washington, DC 20005

(202) 626-3600

*\*Application for admission pending*

Richard L. Revesz

Jack Lienke

Max Sarinsky

INSTITUTE FOR POLICY INTEGRITY

139 MacDougal Street, 3rd Floor

New York, New York 10012

(212) 992-8932

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The Institute for Policy Integrity at New York University School of Law (“Policy Integrity”) submits this brief as *amicus curiae* in support of Plaintiffs’ Motion for Summary Judgment, which seeks vacatur of the final rule promulgated by the Department of Agriculture (“Department” or “USDA”), Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, 84 Fed. Reg. 66,782 (Dec. 5, 2019) (“Rule”). This brief does not purport to represent the views, if any, of New York University School of Law. Policy Integrity states that no party’s counsel authored this brief in whole or in part, and no person contributed money intended to fund the preparation or submission of this brief.

### **INTERESTS OF AMICUS CURIAE**

Policy Integrity is a nonpartisan, not-for-profit think tank dedicated to improving government decision-making through advocacy and scholarship in the fields of administrative law, economics, and public policy. In particular, Policy Integrity’s staff of economists and lawyers has written extensively on the use of cost-benefit analysis in regulatory decision-making, while its director, Richard L. Revesz, has published more than eighty legal articles and books, including works that address the legal and economic principles that inform rational agency decisions.

In furtherance of its mission, Policy Integrity has filed *amicus* briefs in numerous recent cases addressing economic analyses performed by administrative agencies. *See, e.g.*, Br. of Inst. for Pol’y Integrity as Amicus Curiae, *New York v. U.S. Dep’t of Homeland Sec.*, No. 19-3591 (2d Cir. filed Jan. 31, 2020) (critiquing cost-benefit analysis underlying Department of Homeland Security’s public charge rule for disregarding key health and welfare harms). In many such cases, courts have agreed that the administrative agency’s analysis—and thus the rule relying on that analysis—was arbitrary and capricious for mischaracterizing or ignoring the costs of a regulatory rollback. *See, e.g.*, *California v. U.S. Dep’t of the Interior*, 381 F. Supp. 3d 1153, 1170 (N.D. Cal. 2019) (finding repeal arbitrary due in part to agency’s flawed regulatory impact assessment).

Policy Integrity regularly files comments and testifies before federal and state administrative agencies, and Policy Integrity has filed comments with the Department detailing considerable empirical research showing widespread social benefits from the Supplemental Nutrition Assistance Program (“SNAP”). In those comments, Policy Integrity advised the Department that it would be arbitrary and capricious to limit SNAP assistance without rationally accounting for these impacts. Inst. for Pol’y Integrity, Comments on Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (Sept. 23, 2019), *available at* <https://www.regulations.gov/document?D=FNS-2018-0037-16920>.

In this case, Plaintiffs contend that the Rule is arbitrary and capricious under the Administrative Procedure Act because the Department fails to meaningfully assess and account for the widespread harms that will befall both individuals who lose SNAP assistance and the broader economy. State Pls.’ Mot. for Summ. J. 37–41, *District of Columbia v. U.S. Dep’t of Agric.*, No. 20-119 (D.D.C. Jan. 16, 2020). Policy Integrity’s expertise in cost-benefit analysis gives it a unique perspective from which to evaluate this claim.

### **SUMMARY OF ARGUMENT**

The Department’s regulatory-impact analysis fails to meaningfully assess the widespread and profound social costs of substantial disenrollment from SNAP assistance, while also failing to identify any genuine social benefits of the Rule. The Department’s abject failure to consider these “relevant factors” renders the Rule arbitrary and capricious under the Administrative Procedure Act. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, No. 18-587, 2020 U.S. LEXIS 3254, at \*21 (U.S. June 18, 2020) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)).

First, while the Department projects that the Rule’s principal impact will be the loss of SNAP assistance for 688,000 individuals, USDA, Regulatory Impact Analysis: Supplemental

Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents (2019) (“RIA”), available at <https://www.regulations.gov/document?D=FNS-2018-0004-19016>, its analysis disregards nearly all of the harmful consequences of this disenrollment. As many commenters noted, empirical research establishes that SNAP assistance reduces food insecurity, improves public health, and lifts the national economy. By dramatically cutting assistance, the Rule is likely to forgo a substantial portion of these benefits. Put another way, the Rule imposes substantial costs on individuals who lose SNAP assistance, along with their communities and society at large. The Department’s failure to assess or account for those costs in any meaningful fashion violates its obligation to “pay[] attention to the advantages *and* the disadvantages of [its] decisions.” *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015).

Second, the Department’s cursory assessment of the Rule’s benefits points to no positive effects of disenrollment that could justify these considerable social costs. The supposed benefits that the Department does identify are illusory or ill-considered. For instance, while the Department notes that the Rule will lead to a reduction in federal outlays as a result of a rollback of SNAP assistance, this is merely an economic “transfer” from disenrollees to the federal government rather than a regulatory benefit. And while the Department suggests that the Rule may lead to an increase in employment, it provides no evidence for this suggestion and disregards considerable data showing that the Rule will likely have the opposite effect. The Department’s own prior research in fact shows that SNAP assistance *increases* employment, meaning that the Rule—by substantially reducing SNAP assistance—is likely to decrease employment, not increase it.

By emphasizing speculative benefits while minimizing or ignoring likely costs, the Department “inconsistently and opportunistically frame[s] the [Rule’s] costs and benefits.” *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011). And because the Department relies

on this lopsided and cursory analysis, the Rule is arbitrary and capricious.

## ARGUMENT

Final agency actions are arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), if the agency fails to “examine the relevant data,” “consider an important aspect of the problem,” or “articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). Under this standard, a “serious flaw undermining” the cost-benefit analysis accompanying an agency’s rule “can render the rule unreasonable,” *Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012), even if that analysis was not legally required, *id.* at 1039–40. Accordingly, courts have set aside rules when the issuing agency “inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified ... [or] failed to respond to substantial problems raised by commenters [regarding its economic analysis].” *Bus. Roundtable*, 647 F.3d at 1148–49.

Here, the Department fails to meaningfully consider most of the Rule’s substantial social costs or to identify any non-speculative benefits of the Rule. Each of these analytic insufficiencies—detailed in turn below—provides an independent basis to vacate the Rule.

### **I. The Department Impermissibly Disregards the Substantial Social and Economic Costs of Large-Scale SNAP Disenrollment**

The Department’s regulatory-impact analysis for the Rule gives practically no consideration to the Rule’s biggest costs, barely acknowledging and entirely failing to analyze its likely impacts on, for example, public health, food insecurity, and the efficient functioning of the economy—despite receiving many comments describing these effects.

“[R]easonable regulation ordinarily requires paying attention to the advantages and the disadvantages” of a proposed rule. *Michigan*, 135 S. Ct. at 2707. The Supreme Court has recognized that the concept of regulatory “cost” encompasses “any disadvantage” resulting from a rule, “including, for instance, harms that regulation might do to human health.” *Id.* The executive order that has governed agency cost-benefit analysis for almost three decades similarly instructs agencies to assess, through both “quantifiable measures” and “qualitative measures,” “all costs and benefits” of a proposed rule, including harms to “health, safety, and the natural environment” and “adverse effects of the efficient functioning of the economy.” Exec. Order No. 12,866 §§ 1(a), 6(a)(3)(C)(ii), 58 Fed. Reg. 51,735, 51,741 (Oct. 4, 1993).

The Rule is expected to strip 688,000 individuals of SNAP eligibility, RIA at 2, which, the Department briefly acknowledges, may in turn increase poverty and food insecurity, *id.* at 6, 54. But the Department makes no attempt to assess the scope and severity of these effects or their consequences for disenrollees’ health or for the national and local economies. RIA at 6, 49–54. And while the Department offers some cursory excuses for its failure to closely evaluate the Rule’s broader effects, none are persuasive.

**A. The Department Fails to Meaningfully Assess the Rule’s Harmful Effects on Disenrollees’ Food Security and Health**

While the Rule will cause extensive disenrollment from SNAP, the Department fails to meaningfully assess the profound consequences of this change for individuals who lose SNAP assistance. Considerable evidence establishes that SNAP assistance reduces food insecurity and improves health outcomes, and so the Rule—by drastically reducing SNAP enrollment—will produce substantial costs on both fronts.

First, because it has been well established by commenters that SNAP reduces food insecurity, it stands to reason that the Rule will produce substantial increases in food insecurity.

Food insecurity refers to a household reduction in the quality of foods (considered “low food security”) or to the disruption of eating patterns and reduction of food intake (considered “very low food security”). USDA Econ. Research Serv. Rep. No. 235, *Food Insecurity, Chronic Disease, and Health Among Working-Age Adults 2* (Jul. 2017), available at <https://www.ers.usda.gov/webdocs/publications/84467/err-235.pdf?v=6399.3> (cited in 68 comments) (“Food Insecurity Study”). Considerable data provided to the Department shows that SNAP is effective at reducing both types of food insecurity, which the USDA’s own prior research confirms. USDA Econ. Research Serv. Rep. No. 116, *Food Security Improved Following the 2009 ARRA Increase in SNAP Benefits* (Apr. 2011), available at [https://www.ers.usda.gov/webdocs/publications/44837/7469\\_err116.pdf?v=5028](https://www.ers.usda.gov/webdocs/publications/44837/7469_err116.pdf?v=5028) (cited in 5 comments).

One study, provided to the Department by the American Diabetes Association and other commenters, finds that SNAP reduces food insecurity by up to 17 percent among recent beneficiaries and 19 percent among households experiencing severe food insecurity. James Mabili & Jim Ohls, *Supplemental Nutrition Assistance Program Participation Is Associated with an Increase in Household Food Security in a National Evaluation*, 145 *J. Nutrition* 344, 349 (2015) (cited in 7 comments) (“J. Nutrition Study”). Likewise, another study presented to the Department finds that “participation in SNAP reduces the likelihood of being food insecure by 16.2 percentage points . . . and reduces the likelihood of being very food insecure by 3.9 percentage points.” Caroline Ratcliffe et al., *How Much Does the Supplemental Nutrition Assistance Program Reduce Food Insecurity*, 93 *Am. J. Agric. Econ.* 1082, 1096 (2011) (cited in 62 comments).

By reducing food security, the Rule can also be expected to harm the health of individuals who lose SNAP benefits, since a substantial body of research demonstrates a strong link between

food security and improved health outcomes. According to the USDA’s own research provided to the agency by commenters, lower food security is associated with a higher probability of various chronic diseases, including hypertension, coronary heart disease, hepatitis, stroke, cancer, asthma, diabetes, arthritis, chronic obstructive pulmonary disease, and kidney disease, as well as a higher risk of multiple chronic diseases. Food Insecurity Study at 17–20. In fact, the Department’s research shows that “food security status is more strongly predictive of chronic illness in some cases even than income.” *Id.* at 20. Food insecurity among adults has also been found to be associated with depression and other adverse mental health conditions, *id.* at 3, and SNAP assistance during pregnancy is associated with increased birth weight and healthier birth outcomes, Ctr. for Law and Soc. Pol’y, Comment Letter on Supplemental Nutrition Assistance Program 3 (Mar. 29, 2019), available at <https://www.regulations.gov/document?D=FNS-2018-0004-18385> (“CLASP Comments”).

SNAP-related reductions in food insecurity improve health outcomes not just by enabling beneficiaries to purchase healthier foods, which tend to be more expensive, but also by “free[ing] up money that a household would otherwise have spent on food and thereby allow for increased expenditures on health and preventative medical care.” Exec. Off. of the President of the United States, Long-Term Benefits of the Supplemental Nutrition Assistance Program 23 (2015) (included in the administrative record for this rulemaking at <https://www.regulations.gov/document?D=FNS-2018-0004-18564> (Attachment 2)). As explained in a 2015 White House Report, “food insecurity is associated with postponing needed medical care, postponing medications, increased emergency department use, and more frequent hospitalizations among low-income adults.” *Id.* The Academy of Nutrition and Dietetics echoed this key effect in its comments on the Rule, explaining that SNAP reduces healthcare utilization,

helps reduce stress over finances (which is particularly significant given that stress can exacerbate poor health outcomes), and frees up resources to spend on medications and other medical care. Acad. of Nutrition and Dietetics, Comment Letter on Proposed Rule on Supplemental Nutrition Assistance Program 2, 3 (Mar. 13, 2019), *available at* <https://www.regulations.gov/document?D=FNS-2018-0004-17907>). Reducing SNAP benefits, then, will forego these improved health outcomes and instead impose on disenrollees negative physical and mental health outcomes as a result of food insecurity and malnutrition. *Id.* at 2–3. Indeed, research demonstrates that food-insecure individuals are more likely to engage in harmful behaviors such as medication underuse or non-adherence, forgoing special medical diets (such as for diabetes treatment), or postponing or forgoing needed medical care, all because of limited financial resources. CLASP Comments at 2.

Yet despite the extensive costs likely to result from the Rule, the Department pays virtually no attention to the Rule’s harms with respect to food insecurity and poor health outcomes, barely acknowledging these impacts and providing no analysis of their scale or severity. With respect to food insecurity, for instance, the Department simply states in one sentence that the Rule “may [cause] increases in poverty and food insecurity” for disenrollees. RIA at 54. And with respect to health costs, likewise, the Department reports that it received comments discussing “healthcare costs related to increases in food insecurity and poverty,” yet fails to assess these impacts in any meaningful way. *Id.* at 6. The Department makes no effort to quantify these costs or otherwise assess “how important [they] may be in the context of the overall analysis.” Office of Mgmt. & Budget, Circular A-4 on Regulatory Analysis 2 (2003) (“Circular A-4”).

The Department’s minimal evaluation of the Rule’s substantial health and welfare impacts on disenrollees is a far cry from the “central[] relevan[ce]” that costs are normally given in agency

decision-making, *Michigan*, 135 S. Ct. at 2707, and presents a textbook case of arbitrary and capricious rulemaking.

**B. The Department Disregards the Rule’s Substantial Impacts on Local Businesses and the National Economy**

In addition to disregarding health and welfare harms for individuals who lose SNAP eligibility, the Department also fails to analyze the Rule’s broader costs for the U.S. and local economies. By reducing consumption among disenrollees, the Rule will lead to lower spending at retailers and farmers’ markets, which, as some commenters emphasized, will likely result in closed grocery stores and decreased job opportunities. Yet once again, the Department makes passing reference to these harms without any meaningful analysis.

Various commenters emphasized SNAP’s significant role in stimulating spending, as SNAP assistance puts money into the hands of low-income individuals and allows them to spend more at local grocers. One commenter, for instance, cited research showing that SNAP spending “produce[s] a fiscal multiplier of 1.22, meaning that every additional \$1 policymakers allocate[s] to SNAP create[s] \$1.22 in gross domestic product.” Ctr. for Am. Progress, Comment Letter on Proposed Rule on Supplemental Nutrition Assistance Program 9 (May 29, 2019), *available at* <https://www.regulations.gov/document?D=FNS-2018-0004-17828> (“CAP Comments”). The multiplier is bigger and SNAP’s role in stimulating the economy is even more pronounced during recessions. During the Great Recession, for instance, “each \$1 spent in SNAP benefits generated \$1.74 in economic activity,” which was a higher rate of stimulus than “tax cuts, increases in unemployment insurance, infrastructure spending or general aid to the state governments.” Mass. Law Reform Inst., Comment Letter on Proposed Rule on Supplemental Nutrition Assistance Program 5 (Apr. 2, 2019), *available at* <https://www.regulations.gov/document?D=FNS-2018-0004-18398>. Notably, “[t]he economic stimulus of SNAP is superior to any other federal benefit.”

*Id.* (citing to Mark M. Zandi, *Assessing the Macro Economic Impact of Fiscal Stimulus 2008*, Moody's Economy.com (Jan. 2008), available at <https://www.economy.com/mark-zandi/documents/Stimulus-Impact-2008.pdf>).

Indeed, the Department itself has previously assessed the economic stimulus effect of SNAP and the economic losses caused by SNAP disenrollment and concluded that these impacts are substantial. Specifically, in 2010, the USDA's Food Assistance National Input-Output Multiplier ("FANIOM") model estimated that \$1 billion of SNAP benefits generates \$1.79 billion in gross domestic product and 17,900 job gains. USDA Econ. Research Serv. Rep. No. 103, *The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP* 6 (Oct. 2010), available at [https://www.ers.usda.gov/webdocs/publications/44748/7996\\_err103\\_1\\_.pdf](https://www.ers.usda.gov/webdocs/publications/44748/7996_err103_1_.pdf) ("FANIOM Study"). Correspondingly, cutting SNAP assistance has a subtractive effect on the economy, meaning that the Rule—by drastically reducing SNAP assistance—can, according to the Department's own research, be expected to reduce gross domestic product and result in job losses.

The Rule's impact on the national economy will be mirrored on the local level. In San Francisco alone, "the local economic impact will be \$6.25 million annually," assuming the estimated 1,500 directly-affected able-bodied adults without dependents ("ABAWDs") lose their SNAP benefits, according to San Francisco's Human Services Agency. *See* City and Cty. of San Francisco's Human Serv. Agency, *Comment Letter on Proposed Rule on Supplemental Nutrition Assistance Program* 2 (May 29, 2019), available at <https://www.regulations.gov/document?D=FNS-2018-0004-17976>. Rural communities are even more dependent on SNAP, and thus could be more significantly harmed by the Rule. Greater Kansas City Food Pol'y Coal., *Comment Letter on USDA's Advanced Notice on Requirements*

and Services for ABAWDs 1 (Apr. 10, 2018), *available at* <https://www.regulations.gov/document?D=FNS-2018-0004-2191>. Thus, the impact of disenrollment is likely to be substantial: It would significantly reduce the money disenrollees are able to spend at places like local groceries and farmers' markets, which rely heavily on SNAP. While these revenue reductions are not themselves social costs, they may cause local groceries to close and, particularly in the rural areas, "make it more difficult for the surrounding community to attract and retain employers." *Id.*

Yet despite the well-documented link between SNAP assistance and economic well-being, the Department once again fails to evaluate or meaningfully consider the Rule's broader economic consequences. After acknowledging, in one sentence, SNAP's role in generating and stabilizing economic activity and the Rule's potential to diminish those beneficial effects, RIA at 6, the Department tersely concludes, without engaging in any meaningful analysis, that it "cannot feasibly estimate potential impacts of this rule on the overall U.S. economy as suggested by commenters." *Id.* at 7.

This dismissive treatment is plainly inadequate. Simply mentioning the Rule's potential downstream economic impacts does not pass for a sufficient analysis. *See Prometheus Radio Project v. FCC*, 939 F.3d 567, 585–86 (3d Cir. 2019). Instead, the Department must meaningfully evaluate the Rule's indirect social and economic costs. By giving these impacts minimal consideration, it impermissibly "fail[s] to consider an important aspect" of the Rule. *State Farm*, 463 U.S. at 43.

### **C. The Department Cannot Excuse Its Failure to Consider Costs by Citing Data Limitations**

The Department attempts to excuse its failure to assess the Rule's substantial social costs by stating that the "studies do not permit estimation" of those costs that might result from the Rule,

invoking this as the basis for its inability to “feasibly estimate potential impacts of this rule on the overall U.S. economy” or “costs specific to the ... ABAWD population that might result from this rule.” RIA at 6–7. But the Department overstates the limitations of the data and, in any event, cannot cite a lack of perfect information as a basis for entirely disregarding the harmful consequences of its action.

To start, available data to project the Rule’s impacts are not as limited as the Department indicates. As detailed throughout this section, the administrative record contains many quantitative estimates of the Rule’s myriad effects, such as increased food insecurity, *see* J. Nutrition Study (finding that SNAP decreases food insecurity by up to 17 percent); worse health outcomes, *see* Food Insecurity Study at 20 (showing negative correlation between SNAP assistance and ten chronic illnesses); and decreased national economic activity, *see* CAP Comments at 9 (finding that every \$1 in SNAP assistance creates \$1.22 in gross domestic product). The Department should have “present[ed] all available quantitative information,” Circular A-4 at 27, and, rather than disregard the data, used it to “estimate the magnitude” of these impacts on both the directly affected population and society as a whole.

The Department does virtually none of this. Despite suggesting that the Rule “may” lead to “increases in poverty and food insecurity,” RIA at 54, the Department does not acknowledge this impact definitively, nor does it “examine the relevant data,” *State Farm*, 463 U.S. at 43, concerning the consequences of such disenrollment on public health and welfare, such as increased hunger and health costs. Such an analysis is certainly possible given that, as noted above, the Department itself has developed a statistical model to evaluate the broader impacts of SNAP benefits, which the Department of Homeland Security used last year to assess the impacts of its rule defining “public charge.” DHS, Regulatory Impact Analysis: Inadmissibility on Public

Charge Grounds 105 (2019), available at <https://www.regulations.gov/document?D=USCIS-2010-0012-63741>. But for the Rule, the Department fails to conduct any such analysis.

The fact that the Rule’s “precise consequences” may not be “certain” does not absolve the Department from conducting such an analysis, particularly one that it has already developed. Circular A-4 at 38. The Department should still have “analyze[d] uncertainty,” “discuss[ed] the quality of the available data,” and used “plausible assumptions ... to inform decision makers and the public about the effects” of the Rule. *Id.* at 38–39. Even if it were true that the Department could not make reliable numerical estimates of the Rule’s impacts based on such an analysis—as the Department seems to suggest, despite a wealth of evidence to the contrary—the Department should at least have assessed “how important the non-quantified ... costs may be in the context of the overall analysis,” using all available information to compare these costs to the Rule’s identified regulatory benefits, if any. *Id.* at 2, 27.

The Department’s approach—citing the lack of “detailed information on relevant characteristics of affected ABAWDS” to justify forgoing any analysis or in-depth consideration, RIA at 54—falls well short of this standard. While there may be “a range of [plausible] values” for the Rule’s myriad harms, the Department’s blanket assertion that these effects are “too uncertain ... [for] valuation and inclusion” effectively and impermissibly assigns the effects “zero” value. *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1200 (9th Cir. 2008) (internal quotation marks omitted). Yet “non-quantified ... costs” are “important” in regulatory analysis and “justify consideration in the regulatory decision” when, like here, they represent such significant and widespread health and public-welfare harms. *See* Circular A-4 at 10.

In short, “[r]egulators by nature work under conditions of serious uncertainty,” and “[t]he mere fact that the magnitude of [a regulatory cost] is uncertain is no justification for disregarding the effect entirely.” *Pub. Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d 1209, 1219, 1221 (D.C. Cir. 2004) (emphasis omitted). The Department’s failure to assess so many of the Rule’s significant costs thus renders the Rule arbitrary and capricious.

## **II. The Department Fails to Identify Any Genuine Regulatory Benefits**

The Department not only fails to properly identify and assess the Rule’s substantial costs, but also fails to identify any genuine regulatory benefits. Because “[n]o regulation is ‘appropriate’ if it does significantly more harm than good,” *Michigan*, 135 S. Ct. at 2707, the Rule is therefore an arbitrary and unreasonable exercise of agency discretion.

An agency should “adopt a regulation only upon a reasoned determination that the benefits . . . justify its costs,” Exec. Order No. 12,866 § 1(b)(6), and the Department’s cursory assessment of regulatory benefits falls woefully short of this standard. The Department makes three feeble gestures in the RIA to the Rule’s potential benefits. First, it asserts that the Rule will “set clear, robust, and quantitative standards for waivers of the ABAWD time limit.” RIA at 4. But the Department does not elaborate on how clear standards constitute a regulatory benefit, let alone justify them as worth the Rule’s substantial costs. Rather, this statement seems merely to describe how the Rule purportedly operates, rather than estimate the Rule’s concrete, “key effects” on individuals. Circular A-4 at 1. Simply put, it does not identify a regulatory benefit by any meaning of the term.

And as detailed further below, the other two benefits hinted at by the Department are equally unavailing. The Department briefly floats a claim that the Rule may increase employment and economic well-being, though it does not make that argument explicitly. RIA at 54. But the Department neither conducts analysis nor provides evidence that the Rule’s net impact on

employment will be positive. Nor does it grapple in any meaningful fashion with evidence indicating the opposite. Finally, the Department occasionally touts the reduction in federal spending on SNAP assistance that will result from the Rule. *Id.* at 2, 53–54. However, well-established White House guidance and agency precedent—echoing the economic consensus on regulatory best practices—counsel the Department to treat the loss of SNAP assistance as a “transfer” of money from SNAP recipients to the federal government, not as a benefit that “reflect[s] real resource use.” Circular A-4 at 38.

None of these claims constitutes a regulatory benefit, let alone justifies the substantial costs the Rule will impose. As a result, the Department’s failure to analyze or even identify benefits of the Rule provides an additional, independent ground to vacate the Rule.

**A. The Department Fails to Support Its Claims that the Rule May Improve Economic Well-Being Among Some of Those Who Lose Benefits**

The Department fails to provide any data—or any argumentation in the RIA at all—supporting its claim that the Rule may improve the “economic well-being” of SNAP disenrollees, RIA at 54. Specifically, the Department acknowledges that the Rule’s new restrictions may cause “increases in poverty and food insecurity” among the people stripped of their SNAP benefits, yet briefly speculates that “those ABAWDs who become employed may see increased self-sufficiency and an overall improvement in their economic well-being.” *Id.* The Department provides no evidence for its claim, but does cursorily suggest that the Rule may increase employment. The Department’s analysis is lacking in two fundamental respects.

For one, the Department makes no attempt to explain how an increase in employment necessarily improves an individual’s “well-being,” and its apparent logic is both conclusory and contrary to basic economic theory. *Id.* By arguing that the Rule may “increase[] self-sufficiency,” the Department implies that there are jobs available in their communities that ABAWDs are not

taking, and that they will opt to take these jobs if doing so is contingent on maintaining SNAP assistance. *Id.* But assuming these jobs even exist (a big if), there is likely a rational reason that beneficiaries have not taken them—such as long commute time, a mismatch between skills and job requirements, or inconvenient hours. *See* Nat’l Emp’t Law Project, Comment Letter on Proposed Rule on Supplemental Nutrition Assistance Program 2 (Apr. 9, 2018), *available at* <https://www.regulations.gov/document?D=FNS-2018-0004-2640>. Indeed, the Department admits that it cannot “accurately estimate” the impact of the Rule because it “lacks detailed information on relevant characteristics of affected ABAWDs” that would factor into a determination of the disenrollees’ economic well-being. RIA at 54. A regulatory benefit, by definition, produces an increase in welfare. *See, e.g.*, Circular A-4 at 26 (describing a “benefit” as a “favorable impact of the rule”). As a result, an increase in employment through cases where individuals had previously chosen not to take jobs that decreased their quality of life cannot count as a benefit.

In any event, the Department fails to explain how the Rule will boost employment and disregards considerable data—including research that the agency itself has produced—indicating that cutting SNAP benefits will actually result in a net employment loss. For instance, as the Department was advised, “[r]esearch shows that a significant share of individuals subject to the [ABAWD] time limit work when they can find employment (including while on SNAP) and will work after leaving SNAP even in the absence of the time limit.” Ctr. on Budget and Pol’y Priorities, Comment Letter on Supplemental Nutrition Assistance Program 112 (Apr. 1, 2019), *available at* <https://www.regulations.gov/document?D=FNS-2018-0004-18406>. Related research has also shown that time limits and work requirements “generally fail to encourage employment.” *Id.* In fact, “[a] broad array of research has shown that SNAP does not discourage work,” but instead “supports employment by enabling its beneficiaries to maintain the physical and mental health

necessary to sustain what are often labor-intensive jobs.” Ctr. for Am. Progress, Comment Letter on Proposed Rule on Supplemental Nutrition Assistance Program 2 (Apr. 9, 2018), *available at* <https://www.regulations.gov/document?D=FNS-2018-0004-2570>. “Without access to adequate nutrition, people’s capacity to work actually diminishes.” *Id.*

Furthermore, the Department’s own research and modeling finds that SNAP assistance in fact increases employment in the aggregate. One Department-produced study, for instance, finds that every \$25,000 of SNAP spending in non-metropolitan counties produces one additional job. USDA Econ. Research Serv. Rep. No. 263, *The Impacts of Supplemental Nutrition Assistance Program Redemptions on County-Level Employment 15* (May 2019), *available at* <https://www.ers.usda.gov/webdocs/publications/93169/err-263.pdf?v=15093>. This is largely because, as another Department study explained, SNAP “serves as an automatic stabilizer for the economy.” Patrick Canning & Rosanna Mentzer Morrison, *Quantifying the Impact of SNAP Benefits on the U.S. Economy and Jobs*, USDA Econ. Research Serv. (2019), *available at* <https://www.ers.usda.gov/amber-waves/2019/july/quantifying-the-impact-of-snap-benefits-on-the-us-economy-and-jobs/>. “[D]uring an economic downturn, when unemployment increases and wages fall, more individuals become eligible for SNAP,” and as “SNAP participants spend this increased Federal assistance, income is generated for those involved in producing, transporting, and marketing the food and other goods purchased by SNAP recipients.” *Id.* And as noted above, the Department’s own FANIOM model projects that \$1 billion in SNAP assistance generates 17,900 jobs throughout the economy. FANIOM Study at 2.

In short, the Department provides no basis for its implication that the Rule will increase employment, and in fact the administrative record and the Department’s research suggest that the opposite is likely true. Accordingly, the Department’s vague assertions that the Rule will increase

“self-sufficiency” and “engagement in meaningful work,” 84 Fed. Reg. at 66,805, are entirely “speculati[ve and] . . . not supported by the record,” precluding a finding that these “benefits” outweigh even the incomplete selection of costs that the Department chooses to evaluate. *Ariz. Cattle Growers’ Ass’n v. U.S. Fish & Wildlife, Bureau of Land Mgmt.*, 273 F.3d 1229, 1244 (9th Cir. 2001). *See also United Techs. Corp. v. U.S. Dep’t of Defense*, 601 F.3d 557, 562 (D.C. Cir. 2010) (holding that courts “do not defer to the agency’s conclusory or unsupported suppositions”) (internal quotation marks omitted).

**B. The Rule’s Social Costs Cannot be Justified by a Reduction in Federal Spending**

It is also important to recognize that while the Rule is estimated to reduce federal outlays, a reduction in federal spending is not itself a regulatory benefit that can justify a rule’s costs. Rather, as the Department formally recognizes, the projected reduction in federal spending resulting from the Rule is a “transfer” rather than a benefit. RIA at 2–3 (“[R]eductions in Federal spending on SNAP benefits are categorized as transfers in the accounting statement” of the Rule); *accord id.* at 53–54; *see also* 84 Fed. Reg. 66,807 (highlighting the reduction in transfers of federal funds to SNAP recipients and the lessened administrative costs as the rule’s principle impact). Nonetheless, the Department touts this effect as one of the primary impacts of the Rule, *see* RIA at 2, paying it far more attention than any of the supposed “benefits” that the agency identifies, *compare id.*, *id.* at 53–54 (highlighting federal cost savings) *with id.* at 4 (briefly mentioning supposed regulatory “[b]enefits”).

But administrative agencies undertake regulatory cost-benefit analysis to determine not whether the federal government will see a “reduction in . . . spending,” *id.* at 2, but rather whether the regulation will improve societal welfare. *See* Exec. Order No. 12,866 § 1(a) (instructing agencies to regulate in a manner “that maximize[s] net benefits . . . unless a statute requires another

regulatory approach”). The Department’s mandate is therefore to determine whether society will be better off as a result of the Rule by conducting an analysis that looks to concrete, real-world “benefits and costs that accrue” to individuals. Circular A-4 at 15. Reductions in SNAP payments are neither a cost nor a benefit, but rather a monetary “transfer” from disenrollees to the federal government. Office of Info. & Regulatory Affairs, *Regulatory Impact Analysis: A Primer* 8 (2011) (“Transfer payments are monetary payments from one group to another that do not affect total resources available to society,” such as “[p]ayment by the Federal government for goods or services provided by the private sector[.]”). In other words, any savings that the government experiences from spending less on SNAP assistance are fully offset by corresponding losses to the beneficiaries who no longer receive that assistance. Acknowledging only one-half of this transfer and claiming it as a benefit would be arbitrary and capricious. *See Bus. Roundtable*, 647 F.3d at 1148–49 (warning agencies against “inconsistently and opportunistically fram[ing] the costs and benefits of [a] rule”).

Ultimately, because a reduction in federal spending is not a regulatory benefit—and the supposed benefits that the Department identifies fall entirely flat—the Department fails to identify any benefits of the Rule, leaving nothing to justify the Rule’s multitude of costs.

## CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for summary judgment and vacate the Rule.

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Respectfully submitted,

/s/ Christopher M. Curran  
Christopher M. Curran (DC Bar No. 408561)  
Naari K. Ha (DC Bar No. 1047654)\*  
Nicholas McGuire  
Ada Wang  
**WHITE & CASE** LLP  
701 Thirteenth Street, NW  
Washington, DC 20005  
*\*Application for admission pending*

Richard L. Revesz  
Jack Lienke  
Max Sarinsky  
INSTITUTE FOR POLICY INTEGRITY  
139 MacDougal Street, Third Floor  
New York, NY 10012

*Counsel for Amicus Curiae  
Institute for Policy Integrity*