

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

DISTRICT OF COLUMBIA, STATE OF
NEW YORK, STATE OF CALIFORNIA,
STATE OF CONNECTICUT, STATE OF
MARYLAND, COMMONWEALTH OF
MASSACHUSETTS, ATTORNEY
GENERAL DANA NESSEL ON
BEHALF OF THE PEOPLE OF
MICHIGAN, STATE OF MINNESOTA,
STATE OF NEVADA, STATE OF NEW
JERSEY, STATE OF OREGON,
COMMONWEALTH OF
PENNSYLVANIA, STATE OF RHODE
ISLAND, STATE OF VERMONT,
COMMONWEALTH OF VIRGINIA, and
CITY OF NEW YORK,

Plaintiffs,

v.

U.S. DEPARTMENT OF
AGRICULTURE; GEORGE ERVIN
PERDUE III, in his official capacity as
Secretary of the U.S. Department of
Agriculture, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 1:20-cv-00119

DECLARATION OF KATHLEEN KONOPKA

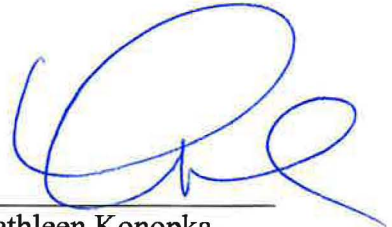
I am the Deputy Attorney General for the Public Advocacy Division employed by the Office of the District of Columbia Attorney General. I submit this declaration in support of the Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the facts stated herein.

1. Attached as **Exhibit A** is a true and correct copy of the Comment on the Proposed Rule *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, 84 Fed. Reg. 980 (February 1, 2019) (the “Proposed Rule”) by the California Health and Human Services Agency, Department of Social Services, cited in the Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Preliminary Injunction.
2. Attached as **Exhibit B** is a true and correct copy of Comment on the Proposed Rule by the United Food and Commercial Workers International Union, cited in the Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Preliminary Injunction.
3. Attached as **Exhibit C** is a true and correct copy of the December 3, 1996 United States Department of Agriculture (“USDA”) Guidance entitled “Guidance for states Seeking Waivers for Food Stamp Limits,” cited in the Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Preliminary Injunction.
4. Attached as **Exhibit D** is a true and correct copy of the December 2, 2016 USDA Guidance entitled, “Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” cited in the Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Preliminary Injunction.
5. Attached as **Exhibit E** is a true and correct copy of the August 2006 USDA Guidance entitled “Guidance on Requesting ABAWD Waivers,” cited in the Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Preliminary Injunction.
6. Attached as **Exhibit F** is a true and correct copy of Comment on the Proposed Rule by the Attorneys General of the District of Columbia, California, Connecticut, Guam,

Hawaii, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, cited in the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 15, 2020, in Washington, DC.



Kathleen Konopka

Exhibit A



PAT LEARY
ACTING DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

March 28, 2019

Via Federal eRulemaking Portal

The Honorable Sonny Perdue, Secretary
Mr. Brandon Lipps, Administrator
Certification Policy Branch
Program Development Division
Food and Nutrition Services
United States Department of Agriculture
3101 Park Center Drive
Alexandria, Virginia 22302

SUBJECT: COMMENTS ON PROPOSED RULE: FNS DOCKET ID: FNS-2018-0004;
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: REQUIREMENTS FOR
ABLE-BODIED ADULTS WITHOUT DEPENDENTS, 84 FED. REG. 980 (FEBRUARY
1, 2019), RIN 0584-AE57

Dear Secretary Perdue and Administrator Lipps:

The California Department of Social Services (CDSS) submits the following comments for your consideration on the Proposed Rule entitled, *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, (84 Fed. Reg. 980 (February 1, 2019)), RIN 0584-AE57 (Proposed Rule).

In California, the Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, is overseen by CDSS and administered by the State's 58 County Health and Human Services Agencies. CalFresh provides nearly 4 million Californians, including 2 million children, with food benefits each month. These benefits are spent at grocery stores and farmers' markets across the state, generating more than \$12 billion in economic activity annually.

As the responsible state agency, CDSS strives to assure accurate and effective implementation of CalFresh in an effort to provide the best possible services to the individual recipients who rely on these benefits. In accordance with the statutory purpose of SNAP, CDSS prioritizes efforts to eradicate malnutrition and hunger and increase employment opportunities.¹ CDSS strongly believes that food stability is key to an individual's ability to gain adequate employment and is key to enhancing the health and well-being of children and families.

¹ 7 U.S.C. §§ 2011, 2025.

Contrary to these objectives, if implemented in its current form, the Proposed Rule would directly and adversely impact the health and well-being of hundreds of thousands of Californians, result in significant financial losses for the State's retail and agricultural industries, frustrate the State's efforts to improve SNAP Employment & Training (CalFresh Employment & Training) services, and create an insurmountable administrative burden for the State.

In addition to its many negative repercussions, the Proposed Rule violates the Administrative Procedures Act (APA). It arbitrarily and capriciously seeks to alter longstanding regulation, as it fails to provide reasonable, logical, or evidentiary bases for the changes.² It lacks sufficient impact analyses and ignores important aspects of the problems it purports to address.³ Perhaps most importantly, the Proposed Rule directly conflicts with the congressional intent recently evidenced by the passing of the Agriculture Improvement Act of 2018 (Farm Bill). The changes of the Proposed Rule were considered and rejected by Congress.⁴ The Proposed Rule therefore exceeds the United States Department of Agriculture's (USDA or Department) rule making authority by contradicting Congress' intent.

Thus, CDSS strongly opposes the Proposed Rule and requests that the USDA and the Food and Nutrition Service (FNS) withdraw it.

The Proposed Rule Will Increase Hunger and Aggravate Employment Barriers

The Proposed Rule states that broad application of the ABAWD time limit "would encourage greater engagement in meaningful work activities and movement toward self-sufficiency among ABAWDs".⁵ However, the Department fails to provide any evidence to support this assertion. It repeats this unsubstantiated assertion multiple times, while also predicting a savings in SNAP benefits of approximately \$1.7 billion per year. This illogical and unsupported series of claims fails to provide the reasoned explanation required under the APA.⁶ Contrary to the Department's assertions, the Proposed Rule imposes requirements on individuals in need of food, regardless of

² See *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (holding that agencies must "provide a reasoned explanation for the change" to regulations").

³ See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 2867 (1983) (holding that a rule is arbitrary and capricious if the agency fails to consider an important aspect of the problem or offers an explanation that contradicts the evidence before the agency).

⁴ *Joint Explanatory Statement of the Committee of Conference: Agriculture Improvement Act of 2018*, 115th Cong. (2018),

<https://docs.house.gov/billsthisweek/20181210/Joint%20Explanatory%20Statement.pdf>.

⁵ 84 Fed. Reg. at 982.

⁶ *Encino v. Navarro*, 136 S. Ct. 2117, 2125 (2016).

available jobs and training in the region, their individual skills and barriers, and their access to work supports like child care.

Despite its stated goal to increase self-sufficiency, the Proposed Rule limits California's continuing efforts to expand CalFresh employment and training programs, which lead to greater self-sufficiency. In the last several years, California has nearly doubled the number of individuals served through CalFresh Employment & Training (CalFresh E&T) and has made significant strides toward improving the quality of services available to participants. CalFresh E&T seeks to increase the employment and earning capacity of CalFresh recipients by providing more recipients with access to valuable work experience, education, and training. The Department has previously stated its prioritization of SNAP E&T (CalFresh E&T) and has recently invested additional funding to support States in expanding the quantity of people served and the quality of services offered. Unfortunately, even with this funding and California's efforts to expand services, CalFresh E&T does not have the capacity to provide services to all of the hundreds of thousands of ABAWDs that would be suddenly subject to the time limit as a result of the Proposed Rule. As a result, many ABAWDs would be discontinued from CalFresh prior to having access to CDSS' expanding CalFresh E&T services, and they would be deprived of the very food stability necessary to gain employment.

The Proposed Rule incorrectly assumes that ABAWDs are unemployed or underemployed as a result of a lack of motivation. In doing so, the Department fails to consider the many barriers to employment that exist for many low-income childless adults. One-third have a mental or physical limitation, including depression, post-traumatic stress disorder, mental or learning disabilities, or physical injuries. Some of these disabilities, though not severe enough to qualify for federal disability benefits, may still limit an individual's ability to work more than 20 hours a week. More than 40 percent lack access to reliable private or public transportation, and 60 percent lack a valid driver's license. Fifteen percent need supportive services like language interpretation or help with transportation to obtain employment.

The Department also fails to consider that women and people of color are disproportionately impacted by unemployment and underemployment. Nationally, the demographics of the ABAWD population are very diverse. Approximately 45 percent are women. Among those who report their race, a third are African American and a tenth are Hispanic.⁷ People of color and women face employment discrimination that contributes to higher-than-average unemployment, irrespective of their education level or criminal history. Generally, unemployment rates tend to be higher for African Americans. In 2017, the rate for African American men over 16 years old was 7.5

⁷ CENTER ON BUDGET AND POLICY PRIORITIES, MORE THAN 500,000 ADULTS WILL LOSE SNAP BENEFITS IN 2016 AS WAIVERS EXPIRE (MARCH 18, 2016), <https://www.cbpp.org/research/food-assistance/more-than-500000-adults-will-lose-snap-benefits-in-2016-as-waivers-expire>.

percent, compared to an overall rate for men over 16 of 4.4 percent. In California, the unemployment rate for African Americans is 2 percent higher than the overall State unemployment rate.⁸ The Proposed Rule's failure to adequately consider these societal disparities, coupled with its unsubstantiated claims that unemployed or underemployed ABAWDs simply need encouragement, fails to recognize or address the needs of the populations to be served.

The Proposed Rule does not support adults in finding gainful employment and overcoming barriers. In fact, it does the opposite. Limiting access to food assistance does not support underemployed and unemployed individuals in finding work. Hunger is a barrier to employment. CalFresh food benefits help people meet their nutritional needs and lessen the financial impacts of having to buy food each month, which is a burden to those who are unemployed or working for low wages. When people can afford nutritious food, they are better prepared to learn and develop the skills necessary to obtain higher-paying jobs.

The Proposed Rule Would Lead to Inaccurate Determinations of the Availability of Jobs

Under Title 7 of the U.S. Code section 2015, waivers may be approved for "any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside -- [...] does not have a sufficient number of jobs to provide employment for the individuals". The Proposed Rule significantly limits the evidence States may provide in order to demonstrate a lack of jobs. It also develops a "floor" for unemployment rates. The Department asserts that these changes are intended to "improve consistency across States and only allow approvals in areas where waivers are truly necessary."⁹ However, these proposals will only lead to inaccurate determinations of job availability as they do not allow for the submission of relevant information or provide States with the ability to make determinations about local economies.

By limiting waiver evidence to data from the Federal Bureau of Labor Statistics (BLS) or a BLS-cooperating agency, the Department unreasonably excludes other valuable sources of information. The Proposed Rule provides no reasoning why it cannot or should not continue to consider supplemental data from other sources to establish regional unemployment rates. It also limits consideration of non-BLS data and evidence to "exceptional circumstances". Neither of these proposed changes are supported by a satisfactory explanation for why the current rule is insufficient.

⁸ CA EMPLOYMENT DEVELOPMENT DEP'T, CALIFORNIA DEMOGRAPHIC LABOR FORCE, SUMMARY TABLES (JANUARY 2019),

https://www.labormarketinfo.edd.ca.gov/specialreports/CA_Employment_Summary_Table.pdf.

⁹ 84 Fed. Reg. at 983.

The Department's proposed unemployment floor for the 20 percent standard fails to consider several important factors. The Department asserts that an unemployment floor is necessary as States continue to receive waivers, even though the national unemployment rate has dropped since the Great Recession. This assertion is flawed, as the current waiver rules have been in place since before the Great Recession and States are receiving more limited waivers each year, as their local unemployment rates improve.¹⁰ In other words, the current rule is addressing improving economies, but is doing so in a way that better suits local economic realities and barriers to employment than the Proposed Rule would. As previously discussed, unemployment rates do not accurately reflect an ABAWD's ability to obtain employment. As such, the current rule allows States to properly consider local circumstances when they continue to apply for waivers. California chooses not to comment on whether a floor of 6, 7, or 10 percent would be best, as it is unnecessary for any such floor to be implemented. The Department has failed to provide a satisfactory explanation for this proposed change.

For Effective Administration, Federal Regulations Must Be Responsive to State Economic and Workforce Needs

California faces unique and ever-changing challenges due to its geographic and economic diversity; its size; and the racial, linguistic, and socio-economic diversity of individuals within the State. As such, CDSS must be able to respond to localized needs for accurate and effective administration of SNAP employment rules and services in this State. The Proposed Rule repeatedly refers to state flexibility as a negative attribute of the current rules, suggesting that States have abused this flexibility, without providing any evidence to support this claim. In proposing more restrictive policies, the Department fails to acknowledge and account for the varied economic and workforce circumstances that each of the States, territories, and D.C. must address and the important purpose state discretion in employment policies serves.

One example of a restriction that adversely impacts the State's ability to address unique circumstances is the Proposed Rule's elimination of grouped areas, except those areas that are designated Labor Market Areas (LMAs) by BLS. It claims that States have been inappropriately grouping high-unemployment areas and excluding other low-unemployment areas in an effort to receive waivers. Such a significant limitation on which waivers can be requested and approved is contrary to the broad statutory language, which refers to "any group of individuals" and the "area in which the individuals reside".¹¹ Additionally, the Proposed Rule fails to consider the fact that the State is often better suited to identify how certain areas are interrelated and why more prosperous adjacent areas may not be an appropriate addition to a grouping. This limitation is unnecessary, unfounded, and overly burdensome.

¹⁰ *Id.* at 982.

¹¹ 7 USCS § 2015(o)(4)(A).

Similarly, the proposed limitation on statewide waivers when substate data is available through BLS ignores States' expert understanding of local circumstances. A state may have one or two regions of relatively low unemployment, but it could be that those areas are closely economically tied to surrounding regions, so a substate analysis is not appropriate in that case. This requirement also creates unnecessary administrative burdens for the State.

The Proposed Rule's elimination of the unlimited percentage exemption carryover would impede the States' ability to address unique case circumstances. Although the Proposed Rule suggests repeatedly that States are taking advantage of a system that offers too much flexibility, the accrual of percentage exemptions demonstrates States' historical restraint when granting a percentage exemption to an ABAWD. These exemptions allow eligibility workers to ameliorate the impact of the time limit at the individual level on a case-by-case basis. The ability to retain unused exemptions serves two additional important purposes in California. First, it provides flexibility to counties as they begin implementing the ABAWD time limit and allows them to provide an extension of nutrition benefits and support to ABAWDs who were not yet prepared for the change in eligibility rules. Second, it provides the State with a safety net for emergency local economic hardships that may not rise to the level of a new waiver. For example, if a disaster or temporary work stoppage badly impacts one community, these exemptions would allow the State and County to create the equivalent of a mini-waiver to address the immediate need.

The Department provides no evidence that the exemptions are being misused, that this change is needed, or that the accrual is contrary to congressional intent, because no such evidence exists. In developing and passing the Farm Bill, Congress reviewed the current exemption rules and decided to change the allocation percentage from 15 to 12, but chose not to make changes to the "carryover".¹² As such, this proposed change is not only in violation of the APA, but it exceeds the Secretary's rulemaking authority as it conflicts with congressional intent.

The Proposed Rule Impairs State Operations and Creates Insurmountable Administrative Burdens

The Department fails to adequately consider the impact many of its proposals would have on state operations and the administration of the program. For example, the Proposed Rule eliminates the States' ability to implement prior to waiver approval and limits waivers to one year. While appearing reasonable, these two proposals fail to acknowledge the time it takes for waivers to be approved and the time needed to prepare for implementation of the ABAWD time limit in a region that has been under

¹² Agriculture Improvement Act of 2018, S. 3042, 115th Cong. (2018).

waiver in the preceding years. For reference, California submitted a waiver application for the period beginning in September 2018 to FNS in September of 2017 and did not receive approval from FNS until July of 2018. Given this delay in processing, these two proposals are impractical and no reasonable basis is given for their implementation.

The Proposed Rule would require the governors of each state to approve all ABAWD time limit waiver requests. This is an unnecessary and burdensome administrative requirement that serves no purpose. The Department asserts that this administrative requirement is necessary to “ensure that such a critical request is supported at the highest levels of State government”.¹³ However, this requirement is an abuse of discretion and a clear overreach by the Department. States have internal procedures and standards for what must be approved by their governors prior to submission or publication. It is not the place of the Department to interfere with internal state processes.

The proposed implementation date of October 1, 2019 would provide an inadequate and unrealistic amount of time for States to prepare for the expiration of the ABAWD time limit waivers and the widespread implementation of the ABAWD time limit. If the Proposed Rule were implemented in its current form, California estimates that it would have to implement the ABAWD time limit in over fifty counties on the same day (October 1, 2019). For reference, California implemented the ABAWD time limit in three counties in fall of 2018 and spent over a year preparing at both the state and county level. Implementation in just three counties required new policy guidance, significant training efforts, substantial automation, and the production of county and state ABAWD implementation plans.¹⁴ Most importantly, implementation of the ABAWD time limit rules requires special notice to impacted individuals.¹⁵ The October 1, 2019 implementation date would not provide sufficient time for the State to coordinate with counties, identify ABAWDs, and provide notice. This unreasonable timeframe for such a sizeable change in policy, will lead to increased Quality Control (QC) error rates, an inability to properly serve clients, and the potential for violations of individuals’ procedural due process rights.¹⁶

¹³ 84 Fed. Reg. at 983.

¹⁴ The State ABAWD time limit implementation plan is required by FNS due to the substantial and unique operational burdens associated with it.

¹⁵ Lizbeth Silbermann, [SNAP – Requirements for Informing Households of ABAWD Rules](#), United States Department of Agriculture, Food and Nutrition Service (April 17, 2017); Lizbeth Silbermann, [SNAP -Best Practices and Resources for Informing Households of ABAWD Rules](#), United States Department of Agriculture, Food and Nutrition Service (April 17, 2017).

¹⁶ Lizbeth Silbermann, [Supplemental Nutrition Assistance Program – ABAWD Time Limit Policy and Program Access](#), United States Department of Agriculture, Food and Nutrition Service (November 19, 2015).

Under the current ABAWD time limit waiver criteria, California anticipates implementing the ABAWD time limit statewide progressively over several years. This staggered implementation allows CDSS to provide the necessary oversight and guidance to each implementing county and education to each client. The Proposed Rule seeks to disqualify all but a limited number of California counties from the waiver simultaneously. Given this impact, an implementation date of several months past October or even in October 2020, would still require the State to implement this new and complex rule in dozens of counties with hundreds of thousands of clients at the same time. Such an overly burdensome implementation process will also negatively impact client understanding of a complex eligibility rule. This Proposed Rule leaves little doubt that California clients will be unnecessarily subjected to heightened errors in benefit administration and consequently the State will be subjected to heightened Quality Control (QC) error rates and potential penalties if forced to implement in the manner prescribed.

The Proposed Rule Fails to Complete the Required Analyses

Executive Orders 12866 and 13563 require agencies to “assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).”¹⁷ The Proposed Rule focuses on the Office of Management and Budget’s estimated savings in federal spending and the number of individuals who will no longer be eligible to receive SNAP benefits – a purported benefit – but fails to consider the true “net” costs and benefits. The Proposed Rule fails to consider the impact on public health and increased health care costs when individuals no longer receive proper nutrition. It also fails to acknowledge the disparate impact these changes would have on vulnerable populations, such as communities of color, adults with disabilities, and young adults attempting to find gainful employment, especially those aging out of the dependency system. Further, food security is key to employment, yet the Proposed Rule counts the elimination of food security, and therefore the resulting decline in employment, as a benefit of the rule.

While the Proposed Rule presents decreased SNAP payments as a “savings” we adamantly disagree. In creating SNAP, Congress found “that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation’s agricultural abundance and will strengthen the Nation’s agricultural economy, as well as result in more orderly marketing and distribution of foods.”¹⁸ Not only does SNAP improve educational outcomes, increase self-sufficiency, help individuals out of poverty, and improve the

¹⁷ 84 Fed. Reg. at 989.

¹⁸ 7 U.S.C. § 2011.

health of recipients and their families, money spent on SNAP is money spent on the agricultural, food, and retail industries. Each year, SNAP benefits lead to tens of thousands of jobs in California alone.¹⁹ From farmers' market vendors to large-scale agricultural producers, businesses in the agricultural industry benefit from the use of SNAP benefits.²⁰ If eligible individuals do not receive SNAP, then each dollar "saved" as a result of this Proposed Rule, is a dollar kept from our country's food and farm industry.

California's food banks distribute federal Emergency Food Assistance Program commodities to over 1.5 million people each month, via networks of hundreds of community charities and congregations. Individuals who are no longer eligible for SNAP will still need food and will turn to food banks' supply of federal, purchased, and donated food boxes. But food banks do not have the capacity to address a new significant need of this kind. Given these "net" impacts, the Department must conduct and provide further analysis that truly meets the requirements of these Executive Orders.

Similarly, under Executive Order 13771, the Department is required to "reduce regulation and control regulatory costs and provide[] that the cost of planned regulations be prudently managed and controlled through a budgeting process."²¹ The Proposed Rule states that it is "deregulatory" and does not include any new costs. It instead finds that States will experience a savings. This wholly disregards the fact that the proposed changes will subject States to more regulations as they will no longer be eligible for statewide or partial waivers. The costs of automation and training alone, especially on this timeline, will be exorbitant.

Finally, the Proposed Rule's Civil Rights Impact Analysis is wholly insufficient. While the analysis is required in order "to identify and address any major civil rights impacts the Proposed Rule might have on minorities, women, and persons with disabilities", the Proposed Rule only provides a cursory acknowledgement that there may be a disparate impact.²² As discussed above, the implementation of the ABAWD time limits will disproportionately impact women, people of color, and individuals with disabilities. As such, a more robust discussion of these issues, with supporting evidence, is required. The Department's claim that vague mitigation strategies will lessen the impacts is insufficient and must be addressed in greater detail.

¹⁹ CALIFORNIA ASSOCIATION OF FOOD BANKS, THE ECONOMIC AND ANTI-HUNGER VALUE OF SNAP (CALFRESH) (2016),

http://www.cafoodbanks.org/sites/default/files/factsheet_econantihungersnap_hyperlinks_121916.pdf.

²⁰ CALIFORNIA FOOD POLICY ADVOCATES, LOST DOLLARS, EMPTY PLATES, THE IMPACT OF CALFRESH ON STATE AND LOCAL ECONOMIES (2016), <https://cfpa.net/CalFresh/CFPAPublications/LDEP-FullReport-2016.pdf>.

²¹ 84 Fed. Reg. at 990.

²² *Id.*

The Honorable Sonny Perdue
Mr. Brandon Lipps
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In enacting the Farm Bill, Congress chose which of the current ABAWD waiver and exemption polices to keep and which to change. The Proposed Rule contravenes congressional intent and fails to provide satisfactory reasons for its burdensome and unfair proposals. CDSS strongly opposes the Proposed Rule entitled *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents* and requests that the Department withdraw it. California is committed to improving nutrition and employment outcomes, expanding CalFresh E&T services and accurately implementing the ABAWD time limit rules in the regions ineligible for waivers under the current regulations. CDSS encourages the Department to continue its own work to achieve these goals throughout the country.

Thank you for your consideration of these points.

Sincerely,



KIM MCCOY WADE
Branch Chief
CalFresh and Nutrition Branch

Exhibit B



April 1, 2019

Certification Policy Branch
SNAP Program Development Division
Food and Nutrition Service, USDA
1301 Park Center Drive
Alexandria Virginia 22302

RE: **Proposed Rule: Supplemental Nutrition Assistance Program (SNAP):
Requirements for Able-Bodied Adults without Dependents RIN 0584-AE57**

Dear Certification Policy Branch:

The United Food and Commercial Workers International Union (UFCW) submits these comments in opposition to the United States Department of Agriculture's (USDA) Proposed Rulemaking on the Supplemental Nutrition Assistance Program (SNAP) requirements and services for Able-Bodied Adults Without Dependents (ABAWDs). The UFCW is concerned that this proposed rule is an attempt to cut off SNAP benefits to those who need it and to limit state flexibility to respond to local economic conditions.

The UFCW represents 1.3 million hard-working professionals and their families in grocery stores, meatpacking, food processing, and retail shops in every state, Canada, and Puerto Rico. As the union who puts food on America's tables, we understand intimately how SNAP impacts communities across our country. The UFCW opposes cuts that would negatively impact hard-working families and the communities they call home.

A. SNAP is vital in addressing food insecurity for America's working poor.

SNAP is our nation's first line of defense against hunger, helping over 42 million individuals across the nation each year.¹ This kind of support is critically important given the high rates of food insecurity, obesity, and diet-related chronic disease in the nation.²

Many Americans turn to SNAP when their income is lowest or when their income is stretched to the limit. Federal law already limits ABAWD SNAP recipients to three months of benefits every three years unless they maintain an average of 20 hours a week of employment. Because these time limits are so harsh and deny basic nutrition to hungry Americans, states have a certain number of waivers to extend to recipients. States may carry unused waivers forward year-over-year. States also can request a waiver of the time limits for areas that have

¹ <https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>

² <http://frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf>



- 2 -

ten percent or higher unemployment rates or “insufficient jobs” based on various economic indicators.

This proposed rule attempts to impose more stringent limitations on the recipients of benefits, which would harm already vulnerable Americans. The assumption behind this proposed rule is that these recipients do not look for work, which could not be further from the truth. Many ABAWD SNAP recipients are underemployed because they do not have regular work, making their incomes far below the poverty line.³ In fact, 58 percent of ABAWDs report receiving benefits in a month in which they had employment. This proposed rule would take food away from 755,000 of these low-income and underemployed Americans. For those who regularly seek work and need supplemental nutrition, this proposed rule will encourage people to cobble together multiple, low-wage, part-time jobs that do not foster long-term self-sufficiency.

B. SNAP creates jobs along the food supply chain and supports local economies.

SNAP’s economic benefits extend beyond providing food assistance to those in need. Research has proven that SNAP plays an integral role in stimulating local economies. The UFCW encourages programs that help states and local economies by supporting local food retailers. More than 87 percent of SNAP benefits are redeemed at super stores, supermarkets, and grocery stores.⁴ In fiscal year 2016, 81 percent of benefits were used in local community grocery stores,⁵ increasing to 82 percent in fiscal year 2017.⁶ This steady flow of customers creates good jobs and empowers economic growth in local communities— as each dollar spent on SNAP benefits generates \$1.79 in economic activity.⁷ Every \$5.00 in new SNAP benefits generates \$9.00 in total community spending, and every additional dollar’s worth of SNAP benefits generate 17 to 47 cents of new spending on food.⁸ On average, \$1 billion of retail generated by SNAP creates 8,900-17,900 full-time jobs, including close to 3,000 farm jobs.⁹

The USDA claims that this proposed rule would cut \$15 billion in benefits over the next ten years, with a total economic impact of over \$26 billion taken out of our local economies in this time. Such drastic cuts will harm the benefits’ positive economic effects on the food supply chain and local communities.

C. Limiting waivers, carry-overs and grouping would harm vulnerable adults.

i. Changing the unemployment threshold could potentially adversely impact hundreds of communities.

³ <https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>

⁴ <http://frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf>

⁵ <https://fns-prod.azureedge.net/sites/default/files/snap/2016-SNAP-Retailer-Management-Year-End-Summary.pdf>

⁶ <https://fns-prod.azureedge.net/sites/default/files/snap/2017-SNAP-Retailer-Management-Year-End-Summary.pdf>

⁷ <http://frac.org/programs/supplemental-nutrition-assistance-program-snap/positive-effect-snap-benefits-participants-communities>

⁸ <https://www.fns.usda.gov/snap/benefits-increasing-supplemental-nutrition-assistance-program-snap-participation-your-state>

⁹ <https://www.fns.usda.gov/snap/benefits-increasing-supplemental-nutrition-assistance-program-snap-participation-your-state>

USDA's proposed rule would change the unemployment threshold for states' eligibility for waivers from the "natural rate" of local unemployment, which the USDA notes currently averages between five and six percent, to a fixed seven percent.¹⁰ This means states without an average unemployment rate of seven percent in their local area would be ineligible for a waiver request.¹¹ In 2017, nearly 400 metropolitan areas had unemployment rates below six percent.¹² Therefore, this proposed rule change could potentially adversely impact hundreds of communities. Indeed, the USDA concedes that this proposed rule would reduce the total number of areas that could receive waivers by 75 percent.¹³

To introduce a fixed unemployment rate as a standard for waivers ignores factors that are more representative of states' economic health. These include a lack of quality jobs for low-income adults, lack of transportation, and lack of education. These factors pose concrete challenges for low-income adults seeking work. In addition, a fixed rate does not account for economic variation, including recessions. The USDA should consider more representative economic factors in assessing an area's eligibility for a waiver and provide more time that many adults need to find quality jobs.

ii. Ending states' ability to carry over unused exemptions for ABAWDs places a financial and administrative burden on state agencies.

States currently have discretion to exempt individuals from work requirement time limits by utilizing a pool of exemptions that they can carry over from year to year. The proposed rule, limits states' carry-over allowance to just one year and removes states' ability to carry over unused exemptions for a future economic downturn.¹⁴ This removal would create a financial and administrative burden on states' agencies that may not have the resources nor time to screen and track all beneficiaries as they move on and off SNAP, especially in rural parts of this country.¹⁵ Additionally, limiting carry-over exemptions to one-year limits states' flexibility to provide SNAP to individuals who may need it more than one year, especially in instances where a recession may occur or severe economic hardship.¹⁶

iii. Eliminating the grouping of county unemployment data makes it harder to determine which areas truly need waivers.

States currently are permitted to combine the unemployment data of two or more counties, commonly referred as "grouping." This gives states flexibility in their decision-making to determine which specific areas truly need waivers. For example, under current criteria, states currently can use data from two or more individual's areas, such as counties and cities, this data

¹⁰ <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2018-28059.pdf>

¹¹ <https://investigatamidwest.org/2018/12/22/usda-to-reduce-work-exemptions-for-some-snap-recipients/>

¹² <https://investigatamidwest.org/2018/12/22/usda-to-reduce-work-exemptions-for-some-snap-recipients/>

¹³ <https://investigatamidwest.org/2018/12/22/usda-to-reduce-work-exemptions-for-some-snap-recipients/>

¹⁴ <https://www.naco.org/blog/usda-proposes-expanding-work-requirements-food-stamp-recipients-response-farm-bill>

¹⁵ <https://www.naco.org/blog/usda-proposes-expanding-work-requirements-food-stamp-recipients-response-farm-bill>

¹⁶ <https://www.naco.org/blog/usda-proposes-expanding-work-requirements-food-stamp-recipients-response-farm-bill>

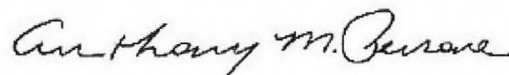
- 4 -

then calculates an unemployment rate representative of the whole group.¹⁷ Under the current criteria, the USDA also requires grouping of areas to be economically-tied, whereby each area shares the same economic region.¹⁸ Under this proposal, the USDA would prohibit states from grouping areas, except for areas that are designated as Labor Market Areas (LMA). Grouping would now be limited to only “economically integrated geographic areas within which an individual can reside and find employment within a reasonable distance or can readily change employment without changing their place of residency.”¹⁹ As mentioned above, this proposal would eliminate states’ ability to qualify for a waiver with an unemployment rate below the natural floor rate of five and six percent.²⁰ Effectively, only counties and cities with more than a seven percent unemployment rate or grouped LMA’s would be eligible for waiver throughout the state.²¹

Conclusion

The USDA’s proposal to implement more stringent limits on the SNAP program will stand in the way of low-income individuals’ opportunities to thrive. Furthermore, this proposal ignores current trends in the labor market where available hours are always changing, and work schedules are unpredictable. SNAP benefits supplement the food budgets of low-income families so that they may remain independent and work towards self-sufficiency. We urge this Administration to break down barriers for those who struggle to obtain healthy food and dedicate more resources, not less, to assist those in our country who experience food insecurity while seeking full time employment. We encourage this Administration to **NOT adopt this proposed rule**, and to continue allowing states to optimize the effectiveness of SNAP by retaining the flexibility to waive work requirements and more accurately calculate unemployment data.

Sincerely,



International President

¹⁷ <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2018-28059.pdf>

¹⁸ <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2018-28059.pdf>

¹⁹ <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2018-28059.pdf>

²⁰ <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2018-28059.pdf>

²¹ <https://www.theatlantic.com/politics/archive/2018/12/trump-proposes-new-work-requirements-food-stamps/578752/>

Exhibit C

Guidance for States Seeking Waivers for Food Stamp Limits

December 3, 1996

Note as of 9/4/2019: The version of the guidance below that was sent to welfare commissioners contained four appendices. Those appendices are not reproduced here. They were: a list of phone numbers in federal agencies for the use of State agencies working with employment data; tables showing the statistical data USDA could supply to State agencies that intend to request waivers; a sample format for waiver requests; and a list of U.S. counties with unemployment above 10 percent.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 limits receipt of food stamp benefits to three months in a 3-year period for able-bodied adults who are not working, participating in a work program for 20 hours or more each week, or in workfare. Individuals are exempt from this provision if they are:

- under 18 or over 50 years of age,
- responsible for the care of a child or incapacitated household member,
- medically certified as physically or mentally unfit for employment, pregnant, or
- already exempt from the work requirements of the Food Stamp Act.

States may request a waiver of this provision in areas with an unemployment rate above 10 percent, or for those residing in an area that does not have " ... a sufficient number of jobs to provide employment for the individuals." The Department of Agriculture (USDA) will allow States broad discretion to decide if a waiver request is appropriate for a particular locale or situation.

USDA believes that the law provided authority to waive these provisions in recognition of the challenges that low-skilled workers may face in finding and keeping permanent employment. In some areas, including parts of rural America, the number of unemployed persons and the number of job seekers may be far larger than the number of vacant jobs. This may be especially so for persons with limited skills and minimal work history. The purpose of this guidance is to address some of the issues that States may consider in identifying areas for which to seek a waiver of the time limits on food stamp participation. USDA may reevaluate the guidance offered here and its policies for approving waiver requests in the event of a national economic recession.

General Issues

Defining an Area: USDA will give States broad discretion in defining areas that best reflect the labor market prospects of program participants and State administrative needs. In general, USDA encourages States to consider requesting waivers for areas smaller than the entire State. There is enough variety in local employment conditions that statewide averages may mask slack job markets in some counties, cities, or towns. Accordingly, States should consider areas within, or combinations of, counties, cities, and towns for the same reason. USDA also urges States to consider the particular needs of rural areas and Indian reservations.

Duration of Waivers: In general, it is USDA's intent to grant waivers for a maximum of one year. Waivers may be renewed if conditions warrant. In some circumstances described below, or if States request, waivers may be granted for less than one year.

Waivers for Unemployment Rates Above 10 Percent

Established Federal policy requires Federal executive branch agencies to use the most recent National, State, or local labor force and unemployment data from the Bureau of Labor Statistics (BLS) for all program purposes, including the determination of eligibility for and the allocation of Federal resources unless otherwise directed by statute. (1) This policy ensures the standardization of collection methods and the accuracy of data used to administer Federal programs. In accordance with this policy, States seeking waivers for areas with unemployment rates higher than 10 percent will be expected to rely on standard BLS data or methods.

Availability of Local Area Unemployment Rates: Unemployment figures for many local areas based on standard BLS data or methods are readily available. In the Local Area Unemployment Statistics (LAUS) program, BLS works in concert with State employment security agencies to estimate unemployment rates for:

- all States;
- all counties in the United States;
- all cities with a population of 25,000 or more;
- all cities and towns in New England; and
- all metropolitan and small labor market areas in the United States.

These estimates are produced monthly. In addition, State employment security agencies can use standard BLS methods to generate unemployment rates for smaller geographic areas and special geographic areas such as Indian reservations (as long as the boundaries of those areas coincide with the boundaries of the group of census tracts). (2).

There are two key issues related to the availability of data to document areas with unemployment rates above 10 percent. First, it is essential to identify areas with unemployment rates above 10 percent using standard BLS data or methods. Second, while these standard methods can be used to estimate unemployment rates for areas smaller than those routinely covered by current BLS publications, the reliability of these estimates will necessarily be less for smaller areas.

Duration of High Unemployment: Unemployment rates can and will fluctuate from month to month. The size of these fluctuations is likely to be larger for estimate based on smaller areas. One fairly standard approach to smooth such fluctuations is by using an average over a number of months, calculated by first averaging unemployment and the labor force. (3).

If requested, USDA will automatically grant a waiver for any area in which the average unemployment rate in the preceding 12 months is greater than 10 percent. BLS routinely publishes monthly data so that 12-month moving average unemployment rates can be produced for all counties, all cities of 25,000 or more, and all cities and towns in New England. (4). A list of counties with unemployment rates above 10 percent for the period of time from July 1995 to July 1996 is included as Appendix D.

There are two shortcomings associated with using a 12-month average to waive the time limits on food stamp participation. First, a 12-month average will mask portions of the year when the unemployment

rate rises above or falls below 10 percent. Second, a 12-month average will also require a sustained period of high unemployment before an area become eligible for a waiver.

To avoid these situations and ensure that waivers are granted as quickly as possible where needed, States have several options. First, a State might opt to use a shorter moving average. A moving average of at least three months is preferred. In periods of rising unemployment, a three-month average provides a reliable and relatively early signal of a labor market with high unemployment. A State might also consider using historical unemployment trends to show that such an increase is not part of a predictable seasonal pattern to support a waiver for an extended period (up to one year).

Second, in areas with predictable seasonal variations in unemployment, States may use historical trends to anticipate the need for waivers for certain periods. For example, if the pattern of seasonal unemployment is such that an area's unemployment rate typically increases by two percentage points in January, February, and March, and the area's unemployment rate is current 9 percent, a State may request a waiver for this area based on its current rate and historical trends. The period covered by the waiver will then coincide with the period of high unemployment. (If a State did not anticipate the rise in unemployment, the increase in unemployment rates would not show up until after the fact.)

USDA will generally expect that the duration of the waiver requested will have some relationship to the period of high unemployment on which the request is based, although the time period for the waiver need not be identical to the period of unemployment data. There may be circumstances in which States may want to consider requesting waivers for as long as one year based on a shorter period of high unemployment. USDA will entertain such requests if a reasonable case is made that the high unemployment is not a seasonal or short term aberration. States may renew waivers as necessary, as long as area unemployment rates exceed 10 percent.

Waivers for Areas Without Sufficient Jobs

The statute recognizes that the unemployment rate alone is an imperfect measure of the employment prospects of individuals with little work history and diminished opportunities. It provides States with the option to seek waivers for areas in which there are not enough jobs for groups of individuals who may be affected by the new time limits in the Food Stamp Program.

To some extent, the decision to approve waivers based on an insufficient number of jobs must be made on an area-by-area basis. Examples of such situations include areas where an important employer has either relocated or gone out of business. In other areas there may be a shortage of jobs that can be filled by persons with limited skills and work experience relative to the number of persons seeking such jobs.

The guidance that follows offers some examples of the types and sources of data available to States as they consider waiver requests for area with insufficient jobs. Because there are no standard data or methods to make the determination of the sufficiency of jobs, the list that follows is not exhaustive. States may use these data sources as appropriate, or other data as available to provide evidence that the necessary conditions exist in the area for which they intend the waiver to apply. The absence of a particular data source or approach (for example, data or statistics compiled by a university) is not meant to imply that it would not be considered by USDA if requested by a State.

Lack of Jobs in Designated Labor Surplus Areas: The U.S. Department of Labor (DOL) Employment and Training Administration compiles an annual list of labor surplus areas. As the name implies, these are areas in which it has been determined that the number of workers is relatively larger than the number of

available jobs. Employers located in labor surplus areas can be given preference in bidding on Federal procurement contracts. The purpose in providing such preference is to help direct the government's procurement dollars into areas where people are in the most severe economic need.

Labor surplus areas are classified on the basis of civil jurisdictions rather than on a metropolitan area or labor market area basis. By classifying labor surplus areas in this way, specific localities with high unemployment rather than all civil jurisdictions within a metropolitan area, (not all of which may suffer from the same degree of unemployment) can be identified. This feature also makes the classification potentially useful to identify areas for which to seek waivers.

The labor surplus listing is issued for each Federal fiscal year. During the course of the fiscal year, the annual listing is updated on the basis of exceptional circumstance petitions submitted by State employment security agencies and approved by the Employment and Training Administration. Monthly updates of the list are available in Area Trends in Employment and Unemployment.

Lack of Jobs in States with Extended UI Benefits: The Department of Labor's Unemployment Insurance Service determines whether a State can qualify for extended unemployment benefits. Unemployed persons in these areas are eligible to receive extended unemployment insurance (UI) benefits. Extended UI benefits are an indication that jobs are relatively hard to find. The designation of State as meeting the criterion for extended UI benefits, therefore, may be a useful indicator that insufficient jobs are available. DOL issues a list of States that meet the criteria for extended benefits each week. States may request a copy from the DOL Unemployment Insurance Service.

Lack of Jobs Due to Lagging Job Growth: Job seekers may have a harder time finding work in an area where job growth lags behind population growth. A falling ratio of employment to population may be an indicator of an adverse job growth rate. When the number of jobs in an area grows more slowly than the working age population, the local economy is not generating enough jobs.

The employment-to-population ratio complements measures of unemployment by taking into account working age persons who may have dropped out of the labor force altogether. The ratio can be computed by dividing the number of employed persons in an area by the area's total population. A decline in this ratio over a period of months could indicate an adverse job growth rate for the area.

State social service agencies can obtain employment data from State employment security agencies or BLS. Population estimates for the corresponding areas are also available through the Bureau of the Census, or State employment security agencies. (5) Census population data at the county level are updated annually as of July 1 of each year. There is a lag of at least one year in this population data (the most recent county data are for 1995, the most recent city data are for 1994).

Lack of Jobs in Declining Occupations or Industries: Employment markets dominated by declining industries could lead to the presence of large numbers of people whose current job skills are no longer in demand. This can be especially true in smaller, rural areas where the loss of a single employer can immediately have a major effect on local job prospects and unemployment rates. In more occupationally diverse areas however, displaced workers might have more work options available to them, including jobs other than those for which they may have been previously trained.

States might consider several options to capture the effect of a declining industry or occupation. ELS provides monthly data on State and local employment figures by major industry (including mining, construction, manufacturing, transportation and public utilities, wholesale and retail trade; finance,

insurance and real estate; services, and government). This information, published in Employment and Earnings, compares the current month to the month before and to the same month from the previous year.

A declining trend within a particular industry or sector may be taken as evidence of declining employment prospects for persons with experience in or skills appropriate to that sector.

State welfare agencies can also work with State employment security agencies to identify declining industries and occupations in their areas. Databases on occupation and employment changes are used by the UI divisions of State employment security departments to determine how quickly displaced workers can find new jobs (a process known as "profiling"). These databases may also be helpful in identifying groups of individuals that may have an unusually difficult time finding work.

Finally, evidence of increased filing of unemployment insurance claims, available from State employment security agencies, may also offer signs of diminished employment prospects in some areas. The description of options above is not intended to preclude a State from submitting a request for a waiver that covers specific categories of individuals for whom there are insufficient jobs in an area. Any such requests will be evaluated on a case by case basis.

Applying for Waivers

To ensure that waivers are granted quickly where they are needed, USDA will keep the application and approval process as simple as possible. USDA will offer States the option to self-certify areas where the unemployment rate exceeds 10 percent. States will have to seek prior approval from USDA for waiver requests for areas that lack available jobs.

Areas with Unemployment Rate Above 10 Percent: States may self-certify areas that have an unemployment rate higher than 10 percent based upon standard BLS data or methods. State welfare agencies should work with State employment security agencies to make this determination. States must inform their USDA Food and Consumer Service Regional Office and Headquarters (at the address shown in Appendix A) of each area that meets this criterion and certify that the determination was based on standard BLS data or methods. States may update these certifications as frequently as necessary. The waiver period will begin as soon as a State certifies that an area's unemployment rate is above 10 percent. USDA will contact States if additional clarification on the waiver is needed.

Areas with Insufficient Jobs: Waivers granted under this category may not be implemented until they are approved by USDA. As indicated above, waiver requests for areas with insufficient jobs may be based on a number of criteria, some of which are straightforward (such as areas designated as labor surplus areas or meeting the criteria for extended UI benefit) while others are more subjective. States are encouraged to request waivers for any area based on the circumstances in those areas. USDA's decision will be based on the current unemployment rate for the area (based on standard BLS data or methods), the type of waiver requested, and sufficient documentary evidence to determine whether to grant a waiver. USDA may contact States for additional information on a case by case basis.

Waiver requests of either type may be renewed on request if the condition which formed the basis of the initial approval persists.

Notes

1. This policy is constrained in Statistical Policy Directive No. 11, issued by the Office of Federal Policy Standards, Office of Management and Budget.
2. A List of each cooperating State employment agency is included as Appendix A. A list of State employment security administration contacts can be accessed through the BLS LAUS Home Page. Monthly State and local area unemployment rates are also readily available from a variety of published sources. These include the Bureau of Labor Statistics State and Metropolitan Area Employment and Unemployment news release, the monthly Employment and Earnings, and Unemployment in State and Local Areas (available on microfiche). States wishing to subscribe to these documents may contact the U.S. Government Printing Office at the number shown in Appendix A. A complete set of up-to-date data can be obtained via the LAUS home page, the LAUS program, BLS regional offices, or the State employment security agency.
3. A 12-month average of monthly total unemployment and monthly labor force should be computed, with the average unemployment rate estimated by dividing average unemployment into average labor force.
4. A 12-month moving average is computed each month based on data for the month and the 11 months prior to that month.
5. The Bureau of Labor Statistics provides population estimates each year to cooperating State employment security agencies. The Census Bureau does not routinely publish small area population estimates, but they will provide it upon request.

Exhibit D



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

DEC 02 2016

SUBJECT: Supplemental Nutrition Assistance Program – Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD)

TO: All Regional Directors
Supplemental Nutrition Assistance Program

Section 6(o) of the Food and Nutrition Act of 2008, as amended (the Act), limits the time an ABAWD can receive Supplemental Nutrition Assistance Program (SNAP) benefits to 3 months in any 36-month period, unless the individual meets the ABAWD work requirement or is otherwise exempt. The Act also provides that States may request to waive the time limit for individuals in all or part of the State if the requested area demonstrates high unemployment or a lack of sufficient jobs. This legislation was passed in 1996 and then codified at section 273.24(f) of Title 7 of the Code of Federal Regulations in 2001. Since then the Food and Nutrition Service (FNS) has provided policy memoranda on the subject in addition to the Federal Regulations because the methodologies, evidence, and data that can be used to support requests to waive the time limit are complex and the potential sources of data change over time.

The attached guide consolidates and underscores FNS policy concerning waivers of the ABAWD time limit and replaces its predecessor, FNS's August 2006 *Guidance on Requesting ABAWD Waivers*. FNS began developing this version of the guide in November 2014, as part of its efforts to support and reaffirm State agency's understanding of ABAWD policy. Specific policy areas covered include the following:

- Waivers Based on Labor Surplus Area Designation;
- Waivers Based on Extended Unemployment Benefit Criteria;
- Waivers Based on an Unemployment Rate Over 10 Percent;
- Waivers Based on a 24-Month Average Unemployment Rate 20 Percent Above the National Average;
- Combining Data for Geographic Areas and Economic Regions;
- Estimating Unemployment Rates for Tribal Lands;
- Other Potential Types of Waiver Requests;
- 2-Year (24-Month) Approval of Waivers; and
- Statutory and Regulatory Authority for Waivers.

FNS advises State agencies to use this guide to understand, obtain, and prepare evidence that successfully supports an ABAWD time limit waiver request based on relevant sections of the Act; Federal Regulations; and historical SNAP policy.

All Regional Directors

Page 2

Please distribute this guidance to your State agencies and advise them to contact their respective regional points of contact for technical assistance. FNS Regional Offices should contact Casey McConnell at casey.mcconnell@fns.usda.gov with any questions concerning this memorandum.

A handwritten signature in blue ink that reads "Lizbeth Silberman". The signature is written in a cursive style with a long, sweeping underline.

Lizbeth Silberman

Director

Program Development Division

SUPPORTING REQUESTS TO WAIVE THE TIME LIMIT FOR ABLE-BODIED ADULTS WITHOUT DEPENDENTS

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I. INTRODUCTION

This guide explains the criteria, methodologies, and data typically used in support of requests to waive the Supplemental Nutrition Assistance Program (SNAP) time limit for able-bodied adults without dependents (ABAWD). The Food and Nutrition Service (FNS) advises State agencies to use this guide to understand, obtain, and prepare evidence that successfully supports an ABAWD time limit waiver request based on relevant sections of the Food and Nutrition Act of 2008, as amended, (the Act); Title 7 of the Code of Federal Regulations (CFR); and historical SNAP policy. This guide updates and replaces FNS's August 2006 *Guidance on Requesting ABAWD Waivers*.

Please note, this guide does not provide an exhaustive list of criteria, methodologies, or data that States could submit in support of a waiver, nor does it address other areas of ABAWD policy. For in-depth policy guidance on the ABAWD time limit and work requirements, please consult the *Guide to Serving ABAWDs Subject to Time-Limited Participation* and ABAWD-related policy memos available on the FNS public website at <http://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds> and on the SNAP Community Partnerweb.

WHAT IS THE ABAWD TIME LIMIT AND WORK REQUIREMENT?

Section 6(o) of the Act limits the time an ABAWD can receive SNAP to 3 months in any 36-month period, unless the individual meets the ABAWD work requirement or is otherwise exempt. Individuals are exempt from, and therefore not subject to, the ABAWD time limit if they meet any one of the exceptions listed at 7 CFR 273.24(c).

Fulfilling the ABAWD work requirement means:

- Working 80 hours or more per month;
- Participating in and complying with the requirements of a work program 80 hours or more per month;
- Any combination of working and participating in a work program for a total of 80 hours per month; or
- Participating in and complying with a workfare program.

The Act also provides that States may request FNS approval to waive the time limit for individuals in all or part of the State. FNS will approve these waiver requests if it determines that the area has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals. This provision is codified at 7 CFR 273.24(f).

STATE AGENCY RESPONSIBILITIES AND KEY CONCEPTS

The State agency has discretion to define the area(s) in which it requests to waive the time limit. The State can request that a waiver apply statewide or at the sub-state level, as statewide averages may mask slack job markets in some counties, cities, or towns. However, in order to receive FNS approval to waive the ABAWD time limit the State must support its request with evidence that corresponds to the requested area (e.g., a county-wide waiver must be supported by county-wide data). The State must also clearly identify which areas are being requested and under which criteria.

Requests based on unemployment rates or labor force data must be supported with data that relies on standard Bureau of Labor Statistics (BLS) data or methods. When the State thoroughly explains the data, methods, and evidence provided in its request FNS can review and respond to the waiver request more quickly.

There is no limit to the number of waivers the State can request during a given time period. Waivers are typically approved for 12 months and align with the calendar year or the State of Federal fiscal year, but they can begin at any point during the year and the State could have waivers covering different time periods for different areas. The State may also request to amend an existing waiver based upon additional or new supporting evidence or data, or could choose to discontinue a waiver at any time.

However, only one criterion can be applied to an area at a time. This prevents the State from using data from a particularly economically distressed area to support multiple waiver approvals covering different groups of areas at the same time. For example, the State cannot waive an individual county based on its designation as a Labor Surplus Area, but also use that same county’s unemployment data to waive a group of areas based on its combined unemployment rate. Similarly, the State cannot include the same area in different waivers with the same or overlapping approval periods.

II. WAIVERS BASED ON LABOR SURPLUS AREA DESIGNATION

Labor Surplus Areas (LSAs) are civil jurisdictions (usually counties, cities, or towns) that the Department of Labor determines have average unemployment rates at least 20 percent above the national average for the previous 2 calendar years. The State may use an area’s designation as an LSA to support a claim of lack of sufficient jobs in the area. If the area is designated as an LSA for the current fiscal year, FNS will approve the waiver readily and the State may begin to operate the waiver at the time the request is submitted. In these cases, FNS will contact the State if the waiver must be modified. LSA waivers are generally approved for 12 months, but may be approved for up to 24 months in certain cases as described in Section IX. The LSA list is available at <http://www.doleta.gov/programs/lsa.cfm>. An example is shown on the right. Note that the LSA list includes the qualified LSAs in the left column and the jurisdiction where they are located on the right. For example, if there is a city listed as an LSA, then the column on the right will list the county or equivalent where it is located, but this does not mean that the county listed in the right is eligible.

Labor Surplus Areas October 1, 2015 Through September 30, 2016	
Eligible Labor Surplus Areas	Civil Jurisdictions Included
Montana	

Big Horn County	Big Horn County
Glacier County	Glacier County
Lincoln County	Lincoln County
Mineral County	Mineral County

III. WAIVERS BASED ON EXTENDED UNEMPLOYMENT BENEFIT CRITERIA

Extended Unemployment Benefits (also referred to as “Extended Benefits” or “EB”) are for individuals who have exhausted regular unemployment insurance benefits during periods of high unemployment. If the State meets the criteria needed to offer EB (i.e., “trigger” for EB) it is eligible for an ABAWD waiver, regardless of whether the State takes the option to offer EB. The State can qualify for a 12-month statewide waiver for up

to 12 months after the trigger date. The State need only meet one of these EB criteria, including those that are optional, to qualify for a waiver. This information is listed each week on a trigger notice at: http://www.ows.doleta.gov/unemploy/claims_arch.asp.

Extended Unemployment Insurance Benefits (EB) Trigger Criteria	
13-Week Insured Unemployment Rate (IUR)	<ul style="list-style-type: none"> ▪ 5% and 120% of each of last 2 years (mandatory all States) - OR - ▪ 6%, regardless of previous years (optional)
3-Month Total Unemployment Rate (TUR)	<ul style="list-style-type: none"> ▪ 6.5% and 110% of either of last 2 years (optional)

An excerpt of a trigger notice is shown below. At the bottom of the chart, States that trigger for EB based on the 3-month total unemployment rate (TUR) *and* opt to offer it are identified with "@" (e.g., Connecticut). States that offer EB are described by the trigger notice as "ON". States that trigger for EB based on the 3-month TUR *but opt not to offer* EB are identified with "&" (e.g., Arkansas). As mentioned, States that meet the criteria needed to trigger for EB are eligible to waive the ABAWD time limit, regardless of whether they take the option to offer EB. Even though Arkansas was not listed as "ON" for EB on this trigger notice, the State clearly met the criteria needed to offer EB because its 3-month TUR was 7.8 percent (greater than the threshold of 6.5 percent) and was 136 percent of the second prior year (greater than the threshold of 110 percent). Based on this example trigger notice, both Connecticut and Arkansas were eligible for a waiver (among other States).

TRIGGER NOTICE NO. 2010 - 51
STATE EXTENDED BENEFIT (EB) INDICATORS UNDER P.L. 111-312
 Effective January 2, 2011

			INDICATORS					STATUS Periods Begin Date(B) End Date(E)	
			13 Weeks Insured Unemployment Rate	Percent of Prior 2 Years	3 months S.A. TUR	Percent of prior Year	Second Year		Available Weeks
@		Alabama	2.67	91	9.0	83	145	20	B 03-29-2009
@		Alaska	5.75	130	7.9	94	117	13	B 01-25-2009
@		Arizona	2.82	93	9.5	102	135	20	B 02-22-2009
	&	Arkansas	3.59	87	7.8	104	136		E 09-26-2009
@		California	4.08	96	12.4	101	151	20	B 02-22-2009
@		Colorado	2.61	114	8.4	112	155	20	B 04-12-2009
@		Connecticut	3.64	100	9.1	104	146	20	B 02-15-2009
@	*	Delaware	2.67	90	8.3	97	140	20	B 06-28-2009
Total Number 'ON': 36			0		36				

* - State does not have 6 % TUR option in law
 & - State does not have TUR option in law

12/30/2010

@ - State "ON" by 3-month average TUR
 # - State "ON" by 13-week IUR
 IUR reflects 13-week period ending December 18, 2010
 TUR reflects avg. seasonally adjusted TUR for 3-month period ending November, 2010.

IV. WAIVERS BASED ON AN UNEMPLOYMENT RATE OVER 10 PERCENT

To support a waiver request based on an unemployment rate of over 10 percent, the State can submit:

- A recent 12-month average unemployment rate over 10 percent;
- A recent 3-month average unemployment rate over 10 percent; or
- A historical seasonal unemployment rate over 10 percent.

For waivers based on a recent 12-month average unemployment rate over 10 percent, the data must include at least 1 month within the 12 months immediately preceding the waiver's implementation date. For example, the furthest a State could look back in requesting a waiver for January 1, 2018, implementation would be the 12-month period of February 2016 through January 2017.

For waivers based on a recent 3-month average unemployment rate over 10 percent, the data must also include at least 1 month within the 12 months immediately preceding the waiver's implementation date. For example, the furthest a State could look back in requesting a waiver for January 1, 2018 implementation would be the 3-month period of November 2016 through January 2017.

In areas where data from BLS or a BLS cooperating agency show a most recent 12-month average unemployment rate over 10 percent, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will notify the State if the waiver must be modified.

CALCULATING AN AVERAGE UNEMPLOYMENT RATE FOR AN AREA

1. Obtain monthly labor force data for the period (12 months, 3 months, or the historical seasonal rate)
2. Obtain monthly unemployment data for the same period
3. Total the monthly labor force data.
4. Total the monthly unemployment data.
5. Divide the unemployment total by the labor force total.
6. If the quotient has more than four decimal places, drop the fifth and all subsequent decimal places.
7. Multiply the quotient by 100. The result is the unemployment rate.

Points of Emphasis:

- Use *not seasonally adjusted* data.
- Monthly labor force and unemployment data must be obtained and provided.
- Do not include the annual total that is sometimes included in the BLS columns.
- Do not average the labor force data or the unemployment data.
- Monthly labor force data and unemployment data must be aggregated then used to calculate the unemployment rate. Calculating monthly unemployment rates, then averaging the monthly unemployment rates is unacceptable.

The following is an example of the documentation and calculations needed to support a waiver based on a recent 12-month average unemployment rate over 10 percent. All calculations should be documented in Excel spreadsheets and emailed to the FNS Regional Office.

County A, State X			
Year	Month	Labor Force	Unemployment
2016	Jan	14301	2192
2016	Feb	14354	2225
2016	Mar	14185	1836
2016	Apr	14481	1957
2016	May	14360	1735
2016	Jun	14399	1810
2016	Jul	14239	1790
2016	Aug	14175	1772
2016	Sep	14147	1843
2016	Oct	14261	1851
2016	Nov	14486	2170
2016	Dec	14217	1936
Total		171605	23117
Average Unemployment Rate		13.5%	

OBTAINING UNEMPLOYMENT DATA FROM THE BUREAU OF LABOR STATISTICS

BLS Local Area Unemployment Statistics are available at www.bls.gov/laa and can be accessed using the steps below.

1. Scroll down to **Featured LAU Searchable Databases**.
2. Click on **One-Screen Data Search**.
3. Select the area(s) for which data is needed.
4. Click on **Get Data**. Use the **not seasonally adjusted** data.

Featured LAU Searchable Databases

- Please note that the "Get Detailed LAUS Statistics" tools for data retrieval will be unavailable from 10:00 AM to approximately 10:30 AM on the day of a Local Area Unemployment Statistics release because the LAUS database is updated during that time. Schedules of upcoming release dates are available as follows:
 - [Regional and State Employment and Unemployment](#)
 - [Metropolitan Area Employment and Unemployment](#)
- [Instructions for Extracting Data](#)—Quick, easy instructions on how to extract Local Area Unemployment Statistics (LAUS) data.

Databases

Database Name	Special Notice	Top Picks	Data Finder	One Screen	Multi-Screen	Tables	Text Files
Local Area Unemployment Statistics (LAUS)							
	SPECIAL NOTICE	TOP PICKS	DATA FINDER	ONE-SCREEN DATA SEARCH	MULTI-SCREEN DATA SEARCH	TABLES	TEXT FILES

V. WAIVERS BASED ON A 24-MONTH AVERAGE UNEMPLOYMENT RATE 20 PERCENT ABOVE THE NATIONAL AVERAGE

The State agency can also support waiver requests based on high unemployment rates relative to the national average. Namely, the State must provide data from BLS or a BLS cooperating agency showing an area has a 24-month average unemployment rate 20 percent above the national average for a recent 24-month period. The 24-month period can begin no earlier than the period the Department of Labor uses to calculate LSAs for the Federal fiscal year in which the waiver is implemented. For example, the 24-month period for the Fiscal Year 2017 LSA list runs from January 1, 2014 through December 31, 2015. Thus, a waiver that would start in Fiscal Year 2017 could be supported with a 24-month period beginning any time after (but not before) January 1, 2014. The table below shows additional time frames.

Fiscal Year	LSA List is Effective	The 24-Month Period for Calculating an Area's Unemployment Rate Can Begin No Earlier than
2017	10-1-16 to 9-30-17	01-01-14
2018	10-1-17 to 9-30-18	01-01-15
2019	10-1-18 to 9-30-19	01-01-16
2020	10-1-19 to 9-30-20	01-01-17

To obtain accurate results that will be consistent with FNS's calculations, the State must use the method provided by example in the pages that follow. Monthly labor force data and unemployment data must be obtained and aggregated, then used to calculate the unemployment rate. All calculations should be documented on Excel spreadsheets and emailed to the FNS Regional Office.

The State can use any consecutive 24-month period within the acceptable time frame, and would use the same method for any consecutive 24-month period. Use the **not seasonally adjusted data**, as previously noted in Section IV. Please also note the specific directions on how to round data, as explained in the following example.

CALCULATING A 24-MONTH AVERAGE UNEMPLOYMENT RATE FOR AN AREA

STEP 1: Obtain the area’s labor force data for the selected 24-month period and calculate the total. The 24-month period need not align with the calendar year, although this example does. Be careful to not include annual totals that may be in the BLS data. This data can also be downloaded in vertical Excel tables.

Labor Force	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014	16449	16467	16298	16457	17037	16943	17220	16579	15994	15850	15817	15749
2015	15653	15825	15703	15840	16148	16311	16605	16483	16257	16047	15852	15630
Total	389,214											

STEP 2: Obtain the same 24 months of unemployment data and calculate the total.

Unemployment	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014	1128	1221	1051	1071	1432	1348	1609	1107	749	846	917	917
2015	1000	1117	998	917	928	918	1093	955	804	796	801	736
Total	24,459											

STEP 3: Divide the total unemployment by the total labor force.

$$24,459 \text{ divided by } 389,214 = 0.062842$$

If the quotient has more than four decimal places, drop the fifth and all subsequent decimal places. 0.062842 is truncated to 0.0628.

STEP 4: Multiply the quotient in Step 3 by 100, to express it as a percentage.

$$.0628 \times 100 = 6.28 \text{ percent}$$

STEP 5: Round the percentage to one decimal place. This is the area’s average unemployment rate for the 24-month period. The State would compare this number to the 20 percent above the national average unemployment rate threshold to determine if the area qualifies for an ABAWD waiver.

6.28 percent is rounded to 6.3 percent; the area’s average unemployment rate for the 24-month period is **6.3 percent**.

CALCULATING THE 24-MONTH NATIONAL AVERAGE UNEMPLOYMENT RATE

STEP 1: Obtain the monthly national labor force for the 24-month period and calculate the total. To calculate a 24-month average for a period other than a calendar or fiscal year, the State would need to calculate the national average unemployment rate for the selected 24-month period.

NATIONAL LABOR FORCE (NUMBERS IN THOUSANDS)												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014	143228	144266	144334	144158	144527	145940	146189	145565	145167	145320	144854	144807
2015	145301	145693	145801	145925	146067	148117	147822	146967	146166	146787	146969	146501
Total	3,496,471											

STEP 2: Obtain the monthly national unemployed for the 24-month period and calculate the total.

NATIONAL UNEMPLOYED (NUMBERS IN THOUSANDS)												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014	9051	8823	8776	8255	7969	8758	8693	8271	7790	7769	8170	8209
2015	9395	9260	9018	8501	8500	9649	9319	8830	8436	8169	8269	7945
Total	205,825											

STEP 3: Divide the total unemployment by the total labor force:

$$205,825 \text{ divided by } 3,496,471 = .058866.$$

If the quotient has more than four decimal places, drop the fifth and all subsequent decimal places. .058866 is truncated to .0588

STEP 4: Obtain the unemployment rate 20% above national average (multiply by 1.2). The national average must be multiplied by 1.2 prior to any rounding. Only after multiplying the national average by 1.2 can the figure be rounded.

$$.0588 \times 1.2 = .07056$$

Truncate to four decimal places: .0705

STEP 5: Express as a percentage by multiplying by 100: 7.05

STEP 6: Round to one decimal place: 7.05 is rounded to **7.1 percent**.

In this example, the selected area does not qualify for a waiver as its 24-month average unemployment rate of **6.3 percent** does not reach 20 percent above the national unemployment rate. It would need an unemployment rate of at least **7.1 percent** (20 percent above the national average) to qualify.

VI. COMBINING DATA FOR GEOGRAPHIC AREAS AND ECONOMIC REGIONS

Unemployed and labor force data from individual areas can be combined to waive a larger group of areas, whether based upon a recent unemployment rate over 10 percent or a 24-month unemployment rate 20 percent above the national average. In order to be combined, the areas must be contiguous or considered parts of the same economic region. For example, two or more contiguous counties could be grouped together in order to consider their aggregate average unemployment rate.

The State has discretion to define the group of areas to be combined, provided that the areas are contiguous or can be considered to be part of an economic region. If the State defines its own group, the rationale for the boundaries of the group must be thoroughly documented. For example, State or local labor departments often have defined economic regions based upon shared industries or other factors. Other sources, methods, or rationale to support that areas share an economic region may also be considered.

When combining areas, consider the entire combination as one area and aggregate the unemployed and labor force figures. Never calculate individual unemployment rates for counties or jurisdictions and then average the averages.

EXAMPLE OF COMBINED AREA

North Central Montana Economic Area. The following counties are included in this economic area: Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Phillips, Pondera, Teton, and Toole. The State could request a waiver for all counties or a sub-area such as Glacier, Liberty and Toole, as long as the data for the combined area meets the waiver criteria. If the counties in the sub-area all belong to the same region, they do not need to be contiguous to be defined as an area.

To calculate an economic area's unemployment rate:

- Obtain monthly unemployment data for the same period for each individual area. (Follow the instructions in **Section IV or V** to obtain this data.)
- After obtaining this data for each individual area, follow these steps:
 1. Total the monthly labor force data for each individual county.
 2. Total the monthly unemployment data for each individual county.
 3. Aggregate the individual county totals to obtain the labor force and unemployed figures for the combined area.
 4. Divide the aggregate unemployment total by the labor force total. The quotient is the combined area's unemployment rate.

VII. ESTIMATING UNEMPLOYMENT RATES FOR TRIBAL LANDS

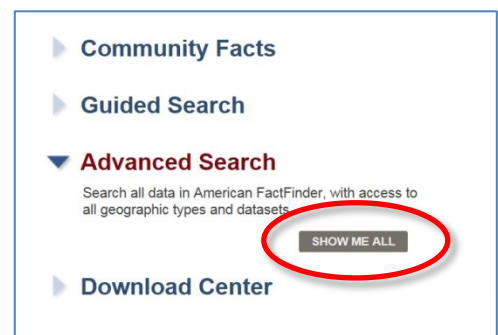
The State also has the opportunity to support waiving Native American reservation areas and tribal lands using unemployment rates, but BLS does not produce data specific to these areas and other unemployment data is often unavailable. However, the State can estimate unemployment rates for tribal lands by applying data from the United States Census Bureau's American Community Survey (ACS) to available BLS data. The instructions beginning on the next page only cover how to estimate unemployment rates for tribal areas by applying ACS data to BLS data. Some tribal governments generate their own labor force and/or unemployment data, which is also acceptable to support a waiver.

INSTRUCTIONS ON ESTIMATING UNEMPLOYMENT RATES FOR TRIBAL LANDS

STEP 1.1: Use the **American Fact Finder** at

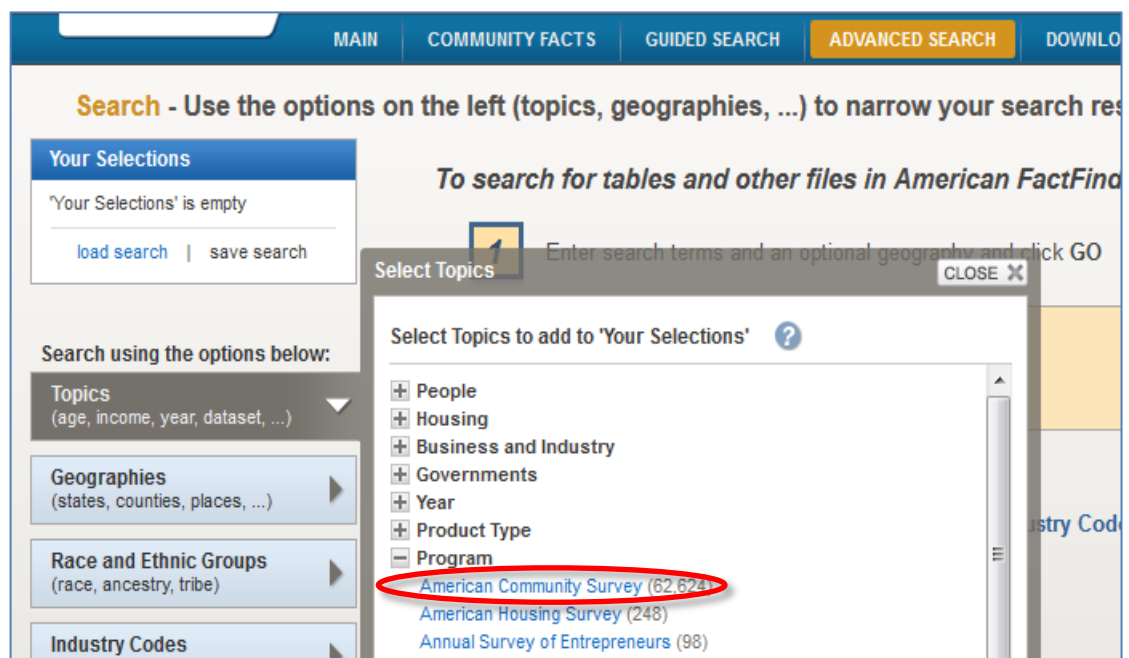
<http://factfinder.census.gov> to obtain 5-year ACS estimates for unemployed and labor force in the tribal area and the county or counties in which it is located. If the tribal area crosses county lines, unemployed and labor force data must be obtained for each county in which the tribal area is located.

STEP 1.2: Select the **Advanced Search** option and click on **show me all**.



STEP 1.3:

Open **Topics**, then open **Program** and select the **American Community Survey**. The ACS will now appear in the **Your Selections** block.



STEP 1.4: Close the **Topics** window and select **Geographies**. Select the **Name** tab and select **all geographic types**. Request ACS Data for the selected tribal area(s) and the county or counties in which it is located. This example uses the Duck Valley Reservation Area located in Owyhee County, Idaho.

The screenshot shows the 'Select Geographies' interface. On the left, there are navigation tabs for 'Topics', 'Geographies', 'Race and Ethnic Groups', 'Industry Codes', and 'EEO Occupation Codes'. The 'Geographies' tab is active. The main area is titled 'Select Geographies' and has three sub-tabs: 'List', 'Name', and 'Map'. The 'Name' tab is selected. Below the tabs, there is a search bar and a 'GO' button. To the left of the main content, there are two panels: 'Your Geography Filters' (currently empty) and 'Geography Filter Options'. The 'Geography Filter Options' panel has a tree view with 'Geographic Type' expanded, showing 'Nation (1)', 'Region (4)', 'Division (9)', 'State (11,615)', 'County (127,273)', 'School District (29,483)', 'Congressional District (38,938)', and 'State Legislative District (27,152)'. The 'County' option is selected. To the right of the filter options, there is a 'Select from:' section with three radio buttons: 'most requested geographic types', 'all geographic types' (which is selected and circled in red), and 'individual blocks'. Below this is a 'Geography Results: 1-25 of 1,137,578' section. It includes a 'Selected:' section with 'Add', 'Check All', 'Clear All', and 'Reset Sort' buttons. A table below shows the results:

Geography Name	Geography Type	About
<input type="checkbox"/> United States	United States	?
<input type="checkbox"/> All States within United States and Puerto Rico	State	
<input type="checkbox"/> All States within United States, Puerto Rico, and the Island Areas	State	
<input type="checkbox"/> Alabama	State	?

STEP 1.5: Select **County** from the **Geography Filter Options**. Open **Within State** and select the State (in this example Idaho). Select **Type of American Indian Area** and click **Reservation** (note: areas are not restricted to reservations for some States).

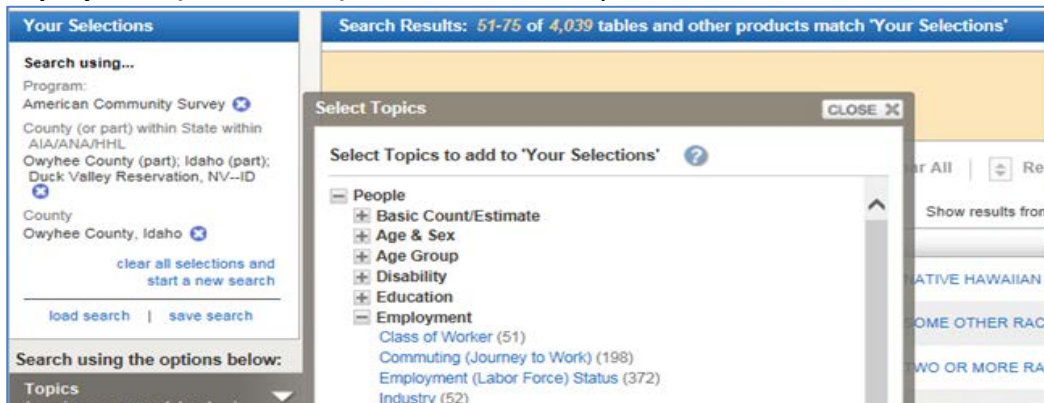
The screenshot shows the 'Select Geographies' interface with filters applied. The 'Your Geography Filters' panel shows: 'Geographic Type: County', 'Within State: Idaho', and 'Type of American Indian Area: Reservation'. The 'Geography Filter Options' panel shows: 'Within County' and 'Within American Indian Area' selected. The 'Select from:' section has 'all geographic types' selected. The 'Geography Results: 1-12 of 12' section shows a table with the following entries:

Geography Name
<input type="checkbox"/> Benewah County (part); Idaho (part); Coeur d'Alene Reservation, ID
<input type="checkbox"/> Kootenai County (part); Idaho (part); Coeur d'Alene Reservation, ID
<input type="checkbox"/> Owyhee County (part); Idaho (part); Duck Valley Reservation, NV--ID
<input type="checkbox"/> Bannock County (part); Idaho (part); Fort Hall Reservation and Off-Reservation Trust Land, ID

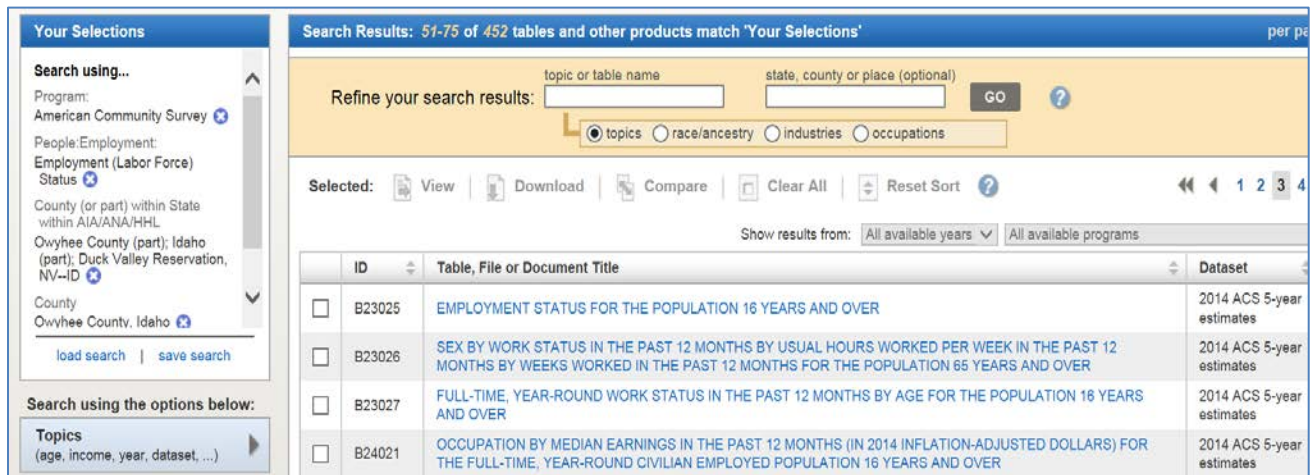
STEP 1.6: Check off **Owyhee County (part); Idaho (part); Duck Valley Reservation** and select the **Add** icon at the bottom of the window. (These checkboxes are shown in the screenshot above.) It is possible to add multiple areas at once.

STEP 1.7: Close that geography window. With the tribal area(s) selected, move on to collecting county data. Open **Geographies** again and select **County**. Then, select **Within State** and select **Idaho**. For this example select **Owyhee County**, and then click **Add** again so that the **Your Selections** column includes the county. It is possible to add multiple counties at once as shown in the screenshot included in the following step.

STEP 1.8: Close **Geographies**, select **Topics**, then select **People**. Open, **Employment** and select **Employment (Labor Force) Status** to add it to your selections.



STEP 1.9: Close the **Topics** window and select **B23025 Employment Status for the Population 16 Years and Over**. It is also possible to enter the table number **B23025** at the top.



B23025 | EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER
 Universe: Population 16 years and over
 2010-2014 American Community Survey 5-Year Estimates

Table View

Actions: [Modify Table](#) | [Add/Remove Geographies](#) | [Bookmark/Save](#) | [Print](#) | [Download](#) | [Create a Map](#)

[View Geo](#)

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that provides estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

Versions of this table are available for the following years:
 2014
 2013
 2012
 2011

	Owyhee County, Idaho		Owyhee County (part); Idaho (part); Duck Valley Reservation, NV--ID	
	Estimate	Margin of Error	Estimate	Margin of Error
Total:	8,602	+/-63	207	+/-72
In labor force:	4,828	+/-204	102	+/-52
Civilian labor force:	4,815	+/-203	102	+/-52
Employed	4,176	+/-229	43	+/-25
Unemployed	639	+/-134	59	+/-40
Armed Forces	13	+/-13	0	+/-11
Not in labor force	3,774	+/-209	105	+/-39

Source: U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates

The data can also be downloaded as a WinZip file that contains Excel spreadsheets by selecting **Comma delimited (.csv) format (data rows only)**, and **Data and annotations in a single file**.

STEP 2.1: Calculate the **employed** and **unemployed census shares** for the reservation and the county by dividing the reservation estimate by the county estimate.

a) Reservation Estimate Employed / County Estimate Employed = Reservation Employed Share

Example: $43 / 4,176 = .01029693486$

Truncate to six decimal places (drop the seventh and all subsequent decimal places): .010296

The employed share for Duck Valley Reservation is .010296

b) Reservation Estimate Unemployed / County Estimate Unemployed = Reservation Unemployed Share

Example: $59 / 639 = .09233176838$

Truncate to six decimal places: .092331

The unemployed share for Duck Valley Reservation is .092331

An example of these calculations in an Excel spreadsheet:

	Employed	Employed Share	Unemployed	Unemployed Share
Owyhee County (part); Idaho (part); Duck Valley Reservation, NV-ID	43	0.010296	59	0.092331
Owyhee County	4,176		639	

STEP 2.2: Apply the census shares to the BLS county employment and unemployment totals for the selected time period to estimate the reservation unemployment rate. For directions on how to obtain the BLS county data for the selected time period, consult Sections IV and V. For this example, the 24-month period of January 2014 through December 2015 is used.

To estimate the reservation unemployment and employment totals, multiply the employed and unemployed census shares by the employment and unemployment totals from BLS for the relevant county. Then, combine the results to get the estimated reservation labor force.

a) Reservation employed share multiplied by BLS county employment total

Example: $.010296 \times 118,848 = 1,223.6590$

Reservation employment total = 1,224

b) Reservation unemployed share multiplied by BLS county unemployment total

Example: $0.092331 \times 5,164 = 476.7972$

Reservation unemployment total = 477

c) Reservation employment total plus reservation unemployment total equals the reservation labor force total

Example: $1,224 + 477 = 1,701$

Reservation labor force total = 1,701

STEP 2.3: Divide the reservation unemployment total by the reservation labor force to get the estimated reservation unemployment rate.

Example: $477/1,701 = .280423$

Estimated reservation unemployment rate = 28%

The table below summarizes the entire process.

	Owyhee County BLS Data: Jan. 2014 - Dec. 2015	Reservation Census Share	Reservation Estimate
Unemployment	5,164	0.092331	477
Employment	118,848	0.010296	1,224
Labor Force			$1,224 + 477 = 1,701$
Reservation Estimated Unemployment Rate			$477/1,701 = 28\%$

The reservation's estimated unemployment rate is 28%. This figure could be used to determine whether the area qualifies for a waiver based upon the criteria explained in Sections IV and V. In some cases, two or more tribal areas cross the same county's boundaries. In these cases, calculate the census shares and estimate the unemployment rates for each tribal area independently, one at a time.

ESTIMATING UNEMPLOYMENT RATES FOR TRIBAL LANDS LOCATED IN MULTIPLE COUNTIES

An individual tribal area could be located in more than one county. In these cases, calculate the census shares, unemployment, employment, and labor force for each county part individually. Next, aggregate the figures to obtain the totals for the tribal area. Using the totals, estimate the unemployment rate for the tribal area (example below).

	County BLS Data: Jan. 2014 - Dec. 2015	Reservation Census Share	Reservation Estimate
Unemployment (county A part)	5,164	0.092331	477
Unemployment (county B part)	2,225	0.023000	51
Employment (county A part)	118,848	0.010296	1,224
Employment (county B part)	10,100	0.034000	343
Total Reservation Unemployment			477+51 = 528
Total Reservation Labor Force			(477+51) + (1,224+343) = 2,095
Reservation Estimated Unemployment Rate			(477+51)/2,095 = 25%

VIII. OTHER POTENTIAL TYPES OF WAIVER REQUESTS

In addition to the established types of requests and supporting evidence covered in this guide, there are additional types of requests that FNS may approve on a case-by-case basis. Potential support for such requests could include, but is not limited to:

- **A low and declining employment-to-population ratio.**

Historically, low and declining employment-to-population (ETP) ratio data have been used successfully to waive Native American reservation areas or tribal lands where unemployment statistics and other economic data are limited or unavailable.

ETP data can also be used to request non non-tribal areas, such as counties, but it is uncommon because BLS unemployment data is readily available for these areas. ETP can be a meaningful economic indicator for an area where the unemployment rate may not provide a complete picture of the labor market due to people leaving the workforce – but demographic changes, such as an aging population, can influence these data. Therefore, FNS has approved requests based on ETP data for non-tribal areas, such as rural counties, on a limited basis when the State has demonstrated that the area’s ETP ratio is:

- Low: at least 1 percentage point below the national average for the most recent year of the reference period;
 - Declining: best demonstrated by a decline year after year;
 - Covering at least a 4-year reference period, ending no earlier than 2 years prior to the year in which the waiver is effective; and
 - Complemented by a recent 24-month unemployment rate at least 10% above the national average in the requested area.
- **A lack of jobs in declining occupations or industries.**
Employment markets dominated by declining industries could impact large numbers of people whose current job skills are no longer in demand. This can be especially true in smaller, rural areas in which the loss of a single job provider, such a major manufacturing plant or mining industry, can have a major effect on local job availability. The State might consider providing studies, reports, or other analysis from credible sources in demonstrating that an area has a lack of jobs in declining occupations or industries.
 - **Description in an academic study or other publication as an area where there is a lack of jobs.**
The State might consider providing an academic study or other credible publication that documents a lack of sufficient jobs in an area.

The State may submit whatever data or evidence it deems appropriate to support these types of requests. FNS will evaluate such requests on a case-by-case basis and will approve those that provide compelling support of a lack of sufficient jobs in the area. FNS strongly encourages the State to work closely with its regional offices for technical assistance if it is considering requesting a waiver based on the less common support mentioned above.

IX. 2-YEAR (24-MONTH) APPROVAL OF WAIVERS

The State may request a 2-year waiver approval for an area that demonstrate chronic, sustained high unemployment. In order to receive FNS approval for a 2-year waiver, the affected area must meet at least one of the below criteria indicating that the area has experienced and will probably continue to experience chronic high unemployment:

- An unemployment rate greater than 10 percent for the 2-year period immediately prior to the request;
- Designation as a labor surplus area by the Department of Labor’s Employment and Training Administration for a minimum of 2 consecutive fiscal years (the year of the request and the fiscal year prior to the request); or
- An unemployment rate greater than 20 percent above the national average for a 36-month period, ending no earlier than 3 months prior to the request (please note that this time frame is different and more restrictive than the 24-month time frame used for waivers in which the State is requesting a waiver for a 12-month period).

Unemployment rate calculations for 2-year waiver requests are the same as those previously discussed in Sections IV and V; but, as noted above, the time frames for data are more extensive and restrictive.

X. STATUTORY AND REGULATORY AUTHORITY

Relevant statutory and regulatory authority include Section 6(o)(4) of the Food and Nutrition Act of 2008, as amended, and 7 CFR 273.24(f).

SECTION 6(O)(4) OF THE FOOD AND NUTRITION ACT OF 2008, AS AMENDED

(4) WAIVER.—

(A) IN GENERAL.—On the request of a State agency, the Secretary may waive the applicability of paragraph (2) to any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside—

- (i) has an unemployment rate of over 10 percent; or
- (ii) does not have a sufficient number of jobs to provide employment for the individuals.

(B) REPORT.—The Secretary shall report the basis for a waiver under subparagraph (A) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

7 CFR 273.24(f)

(f) Waivers —

(1) General. On the request of a State agency, FNS may waive the time limit for a group of individuals in the State if we determine that the area in which the individuals reside:

- (i) Has an unemployment rate of over 10 percent; or
- (ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) Required data. The State agency may submit whatever data it deems appropriate to support its request. However, to support waiver requests based on unemployment rates or labor force data, States must submit data that relies on standard Bureau of Labor Statistics (BLS) data or methods. A non-exhaustive list of the kinds of data a State agency may submit follows:

- (i) To support a claim of unemployment over 10 percent, a State agency may submit evidence that an area has a recent 12 month average unemployment rate over 10 percent; a recent three month average unemployment rate over 10 percent; or an historical seasonal unemployment rate over 10 percent; or
- (ii) To support a claim of lack of sufficient jobs, a State may submit evidence that an area: is designated as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (ETA); is determined by the Department of Labor's Unemployment Insurance Service as qualifying for extended unemployment benefits; has a low and declining employment-to-population ratio; has a lack of jobs in declining occupations or industries; is

described in an academic study or other publications as an area where there are lack of jobs; has a 24-month average unemployment rate 20 percent above the national average for the same 24-month period. This 24-month period may not be any earlier than the same 24-month period the ETA uses to designate LSAs for the current fiscal year.

- (3) Waivers that are readily approvable. FNS will approve State agency waivers where FNS confirms:
- (i) Data from the BLS or the BLS cooperating agency that shows an area has a most recent 12 month average unemployment rate over 10 percent;
 - (ii) Evidence that the area has been designated a Labor Surplus Area by the ETA for the current fiscal year; or
 - (iii) Data from the BLS or the BLS cooperating agency that an area has a 24 month average unemployment rate that exceeds the national average by 20 percent for any 24-month period no earlier than the same period the ETA uses to designate LSAs for the current fiscal year.

(4) Effective date of certain waivers. In areas for which the State certifies that data from the BLS or the BLS cooperating agency show a most recent 12 month average unemployment rate over 10 percent; or the area has been designated as a Labor Surplus Area by the Department of Labor's Employment and Training Administration for the current fiscal year, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will contact the State if the waiver must be modified.

(5) Duration of waiver. In general, waivers will be approved for one year. The duration of a waiver should bear some relationship to the documentation provided in support of the waiver request. FNS will consider approving waivers for up to one year based on documentation covering a shorter period, but the State agency must show that the basis for the waiver is not a seasonal or short term aberration. We reserve the right to approve waivers for a shorter period at the State agency's request or if the data is insufficient. We reserve the right to approve a waiver for a longer period if the reasons are compelling.

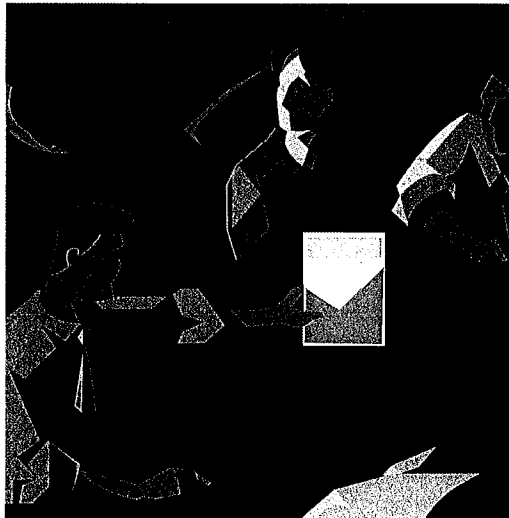
(6) Areas covered by waivers. States may define areas to be covered by waivers. We encourage State agencies to submit data and analyses that correspond to the defined area. If corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.

Additional information on ABAWD waivers and other relevant policy guidance can be found at <http://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds> or by contacting the State's Regional Office representatives. FNS stands ready to work with State agencies to provide technical assistance regarding waivers of the ABAWD time limit.

Exhibit E

GUIDANCE ON REQUESTING

**ABAWD
WAIVERS**



AUGUST 2006

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INTRODUCTION

Paragraph 273.24(b) of the Regulations states that Able-Bodied Adults Without Dependents (ABAWDs) can participate in the Food Stamp Program for no more than three countable months during any three-year period, except that individuals can qualify for up to three additional countable months if they meet certain work requirements. ABAWDs who have exhausted their three-month time limit and who do not meet the criteria for additional months are ineligible for food stamps unless the individual can be waived from the work requirements of Section 273.24 because he or she resides in an area that has insufficient jobs.

This guidance does not address ABAWD policy, the 15 percent exemptions, or State reporting. This guidance only addresses the criteria and methods for requesting waivers of the ABAWD provisions in areas of a State. This guidance also discusses the different methods used to obtain a waiver and details where to find the data to substantiate the waiver request.

Waivers that can be readily approved are listed under Paragraph 273.24(f). Upon request from a State, FNS may waive the ABAWD work provisions for a group of individuals in certain areas of the State if it is determined that the area in which the individuals resides:

- ▶ Has an unemployment rate of over 10 percent; or
- ▶ Does not have a sufficient number of jobs to provide employment for the individuals.

To support a claim of a lack of sufficient jobs, a State may submit evidence that an area:

- ▶ Is designated as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (DOLETA).
- ▶ Is determined by the DOL's Department of Unemployment Insurance Service as qualifying for extended unemployment benefits.
- ▶ Has a 24-month average unemployment rate 20 percent above the national unemployment rate for the same 24-month period. This 24-month period may not be any earlier than the same 24-month period DOLETA uses to designate LSAs for the current fiscal year. For FY 2006, the 24-month period is January 2004 through December 2005. Data must come from BLS (or the BLS cooperating state agency).
- ▶ Has a low and declining employment-to-population ratio.
- ▶ Has a lack of jobs in declining occupations or industries.
- ▶ Is described in an academic study or other publications as an area where there is a lack of jobs.

The State may submit whatever data it deems appropriate to support its request. However, to support waiver requests based on unemployment rates or labor force data, the State must submit data that relies on standard Bureau of Labor Statistics (BLS) data or methods.

The State is responsible for clearly saying which areas are to be waived and under what criteria. Once the areas are identified, the justification and documentation must be thoroughly explained in order to expedite review of the data. There is no limit to the number of waivers a State can submit during a fiscal year. Only one criterion can be applied to a county or area at a time. In other words, a State cannot exempt one county as a LSA and also use that same county in an area that has a 24-month average unemployment rate 20 percent above the national unemployment rate.

WAIVERS BASED ON UNEMPLOYMENT RATE OVER 10 PERCENT

To support a waiver of unemployment of over 10 percent, a State can submit:

- ▶ a recent 12 month average unemployment rate over 10 percent;
- ▶ a recent three month average unemployment rate over 10 percent; or
- ▶ a historical seasonal unemployment rate over 10 percent. (This third one may not be recent at all.)

How recent must the data be? The regulations do not say. It is up to the State to submit what it regards as recent data, and FNS will evaluate if the data adequately represents "recent". Keep in mind that we are trying to measure a lack of jobs. For example, calendar year 2001 data would not be very meaningful to support a lack of jobs in calendar year 2006.

To justify that an area meets the criteria for a waiver:

1. Obtain monthly labor force data for the period (12 months, 3 months, or the historical seasonal rate)
2. Obtain monthly unemployment numbers for the same period

Once the above data has been gathered:

3. Total the monthly labor force numbers.
4. Total the monthly unemployment numbers.
5. Divide the unemployment total by the labor force total.
6. The quotient is the unemployment rate.

Actual monthly data is obtained. **Be careful to not include the annual total that is sometimes included in the BLS columns. Do not average the labor force numbers or the unemployment numbers.** The method that is absolutely not acceptable is to calculate a monthly unemployment rate, then average the unemployment rates. Usually this method produces a result that is very close to our method, but it is not exactly the same result. It is imperative that all States use the same method.

Following is an example of the documentation and calculations needed to support a waiver based on a recent 12-month average unemployment rate over 10 percent:

Marion County, South Carolina

		Labor Force	Unemployed
2005	Jan	14301	2192
2005	Feb	14354	2225
2005	Mar	14185	1836
2005	Apr	14481	1957
2005	May	14360	1735
2005	Jun	14399	1810
2005	Jul	14239	1790
2005	Aug	14175	1772
2005	Sep	14147	1843
2005	Oct	14261	1851
2005	Nov	14486	2170
2005	Dec	14217	1936

Above are the monthly labor force and unemployed figures for the most recent 12 month period to request a waiver for Fiscal Year (FY) 2006. Refer to Attachment A (Excel Spreadsheet - Sheet 1) to review computations.

This information is obtained from the Bureau of Labor Statistics, Local Area Unemployment Statistics. The website is www.bls.gov/lau.

- ✗ Click on “**Get Detailed LAUS Statistics**”.
- ✗ Then click on “**Create Customized Tables (one screen)**”.
- ✗ Select the area(s) for which data is needed, and
- ✗ Click on “**Get Data**”. Use the “**not seasonally adjusted**” data.

Jurisdictions or a cluster of areas or counties may be combined to waive an area larger than one county. States have authority to define the cluster of areas to be combined. If a State defines its own jurisdiction or cluster of areas, the boundaries or clusters must be thoroughly documented to expedite review of the waiver request. The Department of Commerce, Bureau of Economic Analysis is one source that can be used to identify economic areas. This data may be found at the website www.bea.gov/bea/regional/docs/econlist.cfm. These areas define the relevant regional markets surrounding metropolitan or micropolitan statistical areas. They consist of one or more economic nodes - metropolitan or micropolitan statistical areas that serve as regional centers of economic activity - and the surrounding counties that are economically related to the nodes. Other sources or methods may be used to combine a cluster of areas.

When combining jurisdictions or a cluster of areas, consider the entire combination as one area. Never calculate individual counties' or jurisdictions' unemployment rates and then average.

To illustrate a waiver for an area larger than one county, following is an example using the Department of Commerce's economic areas: Area 65 is the Great Falls, Montana Economic Area. The following counties are included in this economic area: Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Phillips, Pondera, Teton, and Toole. The State could request a waiver for all counties or a sub-area such as Glacier, Liberty and Toole, as long as the data for the combined area meets the waiver criteria.

To calculate an economic area's unemployment rate:

- ▶ Complete Steps 1 and 2 above for each county in the economic area. If the State wanted to waive the sub-area mentioned immediately above, it would obtain the monthly labor force data for the 12-month period for Glacier County, and then for Liberty County and then Toole County.
- ▶ The next step would be to obtain monthly unemployment numbers for the same period for each county.
- ▶ After obtaining this data, follow Steps 3-6 above. In other words:
 3. Total the monthly labor force numbers for all three counties,
 4. Then total the monthly unemployment numbers for all three counties,
 5. Divide the unemployment total by the labor force total.
 6. The quotient is the unemployment rate.

(Keep in mind that Montana's economic area was just used as an example. This does not mean this sub-area would qualify for a waiver based on a recent 12-month average unemployment rate over 10 percent.)

A State can use a different 12-month period for different contiguous areas when requesting a waiver. This must be clearly documented.

In areas where the BLS or the BLS cooperating agency data show a most recent 12 month average unemployment rate over 10 percent, the State may begin to operate the waiver at the time the waiver request is submitted. The State will be notified if the waiver must be modified. In general, these waivers will be approved for one year. The duration of a waiver should bear some relationship to the documentation provided in support of the waiver request.

The above steps would be used to request a waiver based on a recent three month average unemployment rate over 10 percent or a historical seasonal unemployment rate over 10 percent.

WAIVERS BASED ON LABOR SURPLUS AREA DESIGNATION

An area that has been designated as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (DOLETA) may be waived from the ABAWD provisions. LSAs are civil jurisdictions (usually cities, towns, and counties) with an average unemployment rate that exceeded the national average for two years by at least 20 percent for the previous two calendar years. There are exceptions to this formula when the national average unemployment rate is very low or very high. The DOLETA constructs the LSA list and publishes a new one each fiscal year in the *Federal Register*. The website for the LSA list is: <http://www.doleta.gov/programs/lsa.cfm>. Below is an example of the LSA list for Kansas for Fiscal Year 2005.

LABOR SURPLUS AREAS OCTOBER 01, 2004 THROUGH SEPTEMBER 30, 2005

KANSAS

**CHEROKEE COUNTY
COFFEY COUNTY
DONIPHAN COUNTY
KANSAS CITY KN**

LEAVENWORTH CITY

**LINN COUNTY
SUMNER COUNTY
WICHITA CITY**

**CHEROKEE COUNTY
COFFEY COUNTY
DONIPHAN COUNTY
KANSAS CITY KN IN
WYANDOTTE COUNTY
LEAVENWORTH CITY IN
LEAVENWORTH COUNTY
LINN COUNTY
SUMNER COUNTY
WICHITA CITY IN
SEDGWICK COUNTY**

FNS will approve waivers when it is confirmed the area has been designated a LSA by the ETA for the current fiscal year. If the area has been designated as a LSA by the DOLETA for the current fiscal year, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will contact the State if the waiver must be modified. These waivers will be approved for a period of one or two years, depending on the data submitted.

WAIVERS BASED ON EXTENDED UNEMPLOYMENT BENEFITS

Extended Unemployment Benefits (EUB) are available to workers who have exhausted regular unemployment insurance benefits during periods of high unemployment. The basic

EUB program provides up to 13 additional weeks of benefits when a State is experiencing high unemployment. Some States have also enacted a voluntary program to pay up to 7 additional weeks (20 weeks maximum) of EUB during periods of extremely high unemployment.

DOL will notify State Employment Security Agencies (SESAs) by trigger notices to advise them of the method by which the States' EB status has change. An example of a trigger notice follows:

TRIGGER NOTICE NO. 2006 - 10
STATE EXTENDED BENEFIT (E.B.) INDICATORS UNDER P.L. 102-318
Effective March 26, 2006

		INDICATORS					STATUS	
		13 Weeks Insured Unemployment Rate	Percent of Prior 2 Years	3 months S.A. T.U.R.	Percent of prior Year		Periods Begin Date(B) End Date(E)	
					Second Year	Available Weeks		
	&	Alabama	1.54	80	5.7	78	66	E 06-04-1983
		Alaska	5.60	88	6.8	94	88	E 06-04-2005
	&	Arizona	0.89	62	4.9	104	90	E 10-29-1982
	&	Arkansas	2.68	84	4.6	88	79	E 03-26-1983
	&	California	2.40	77	5.0	84	74	E 07-09-1983
	&	Colorado	1.29	75	4.8	88	81	E 01-24-1981
		Connecticut	2.93	86	4.6	95	86	E 01-24-1981
*	&	Delaware	2.29	86	4.3	104	107	E 07-17-1982
	&	District of Col.	0.84	73	5.7	78	78	E 01-24-1981
*	&	Florida	1.06	61	3.3	76	67	

EUB may start after an individual exhausts other unemployment insurance benefits (not including Disaster Unemployment Assistance or Trade Readjustment Allowances). The weekly benefit amount of EUB is the same as the individual received for regular unemployment compensation. The total amount of EUB that an individual could receive may be fewer than 13 weeks (or fewer than 20 weeks).

When a State begins an EUB period, it notifies those who have received all of their regular benefits that they may be eligible for extended benefits. If your State's unemployment is high, you should contact the State Unemployment Insurance agency to determine whether EUB has been authorized. If a State is eligible for extended unemployment benefits anytime during the past 12 months, a waiver will be approved based on a State's eligibility for extended employment benefits.

WAIVERS BASED ON A 24-MONTH AVERAGE UNEMPLOYMENT RATE 20 PERCENT ABOVE THE NATIONAL UNEMPLOYMENT RATE

Waivers based on data from BLS or the BLS cooperating state agency that an area has a 24-month average unemployment rate 20 percent above the national unemployment rate for any 24-month period will be granted for a period of one year. (Refer to the section titled "TWO YEAR APPROVAL OF WAIVERS" for waivers that can be approved for two years under limited circumstances.)

A State can choose any 24-month period, as long as the period does not begin earlier than the period DOLETA uses to designate LSAs for the current fiscal year. DOLETA's 24-month period for the Fiscal Year 2006 LSA list runs from January 1, 2003 through December 31, 2004. The following table illustrates the time frames:

For Fiscal Year	The LSA List Is Effective	And The 24-Month Period for Calculating an Area's Unemployment Rate Can Begin No Earlier Than
2007	10-01-06 to 09-30-07	01-01-04
2008	10-01-07 to 09-30-08	01-01-05
2009	10-01-08 to 09-30-09	01-01-06
2010	10-01-09 to 09-30-10	01-01-07
2011	10-01-10 to 09-30-11	01-01-08

To use the most accurate method and be consistent with FNS' calculations, the following methods should be used. An example is provided below. **All calculations should be submitted on Excel spreadsheets and transmitted to the Regional Office by email.** (This applies to waivers based on a recent 12-month average unemployment rate over 10 percent as well.) The most obvious characteristic of this method is that the State never averages monthly unemployment rates. To average monthly unemployment rates is not acceptable.

If a State calculates a 24-month average for a period other than a calendar or fiscal year, the State will also have to use this new method to calculate the national average unemployment rate for the same 24-month period. The only difference is that the rounding to one decimal place (please see Step 7 below) would not occur until after the state calculated the 20 percent above the national average.

Method for Calculating a 24-Month Average Unemployment Rate for One County

Step 1

Obtain 24 labor force numbers. Be careful to not include annual totals that may be in the BLS data.

Step 2

Total the 24 labor force numbers.

Step 3

Obtain 24 unemployed numbers

Step 4

Total the 24 unemployed numbers

Step 5

Divide the total in Step 4 by the total in Step 2. If the quotient in Step 5 has more than four decimal places, drop the fifth and all subsequent decimal places.

Step 6

Multiply the quotient in Step 5 by 100, to express it as a percentage.

Step 7

Round the number in Step 6 to one decimal place. This is the county's average unemployment rate for the 24-month period. The state would compare this number to the 20 percent above the national average unemployment rate to see if the county qualifies for an ABAWD waiver.

An Example of the Method for Calculating a 24-Month Average Unemployment Rate for One County

Noname, County

Step 1

Year	Period	labor force
2002	Jan	16449
2002	Feb	16467
2002	Mar	16298
2002	Apr	16457
2002	May	17037
2002	Jun	16943
2002	Jul	17220
2002	Aug	16579
2002	Sep	15994
2002	Oct	15850
2002	Nov	15817
2002	Dec	15749
2003	Jan	15653
2003	Feb	15825
2003	Mar	15703
2003	Apr	15840
2003	May	16148
2003	Jun	16311
2003	Jul	16605
2003	Aug	16483
2003	Sep	16257
2003	Oct	16047
2003	Nov	15852
2003	Dec	15630

Step 2

Year	Period	labor force
2002	Jan	16449
2002	Feb	16467
2002	Mar	16298
2002	Apr	16457
2002	May	17037
2002	Jun	16943
2002	Jul	17220
2002	Aug	16579
2002	Sep	15994
2002	Oct	15850
2002	Nov	15817
2002	Dec	15749
2003	Jan	15653
2003	Feb	15825
2003	Mar	15703
2003	Apr	15840
2003	May	16148
2003	Jun	16311
2003	Jul	16605
2003	Aug	16483
2003	Sep	16257
2003	Oct	16047
2003	Nov	15852
2003	Dec	15630

TOTAL 389214

Noname, County

Step 3

Step 4

Year	Period	unemployment
2002	Jan	1128
2002	Feb	1221
2002	Mar	1051
2002	Apr	1071
2002	May	1432
2002	Jun	1348
2002	Jul	1609
2002	Aug	1107
2002	Sep	749
2002	Oct	846
2002	Nov	917
2002	Dec	917
2003	Jan	1000
2003	Feb	1117
2003	Mar	998
2003	Apr	917
2003	May	928
2003	Jun	918
2003	Jul	1093
2003	Aug	955
2003	Sep	804
2003	Oct	796
2003	Nov	801
2003	Dec	736

Year	Period	unemployment
2002	Jan	1128
2002	Feb	1221
2002	Mar	1051
2002	Apr	1071
2002	May	1432
2002	Jun	1348
2002	Jul	1609
2002	Aug	1107
2002	Sep	749
2002	Oct	846
2002	Nov	917
2002	Dec	917
2003	Jan	1000
2003	Feb	1117
2003	Mar	998
2003	Apr	917
2003	May	928
2003	Jun	918
2003	Jul	1093
2003	Aug	955
2003	Sep	804
2003	Oct	796
2003	Nov	801
2003	Dec	736

TOTAL 24459

Step 5

24459 divided by 389214 = 0.062842. Since the quotient has more than four decimal places, drop the fifth and all subsequent decimal places. Step 5 becomes 0.0628.

Step 6

Multiply the quotient in Step 5 by 100, to express it as a percentage...0628 x 100 = 6.28 percent

Step 7

6.28 percent is rounded to 6.3 percent. This is the Noname County's average unemployment rate for the 24-month period. The State would compare this number to the national average unemployment rate to see if the county qualifies for an ABAWD waiver. Refer to Attachment

B (Excel Spreadsheet - Sheet 2) to review computations. Now compare to the national unemployment rate for the same period. Follow the procedure outlined below to arrive at the national unemployment rate: (See charts immediately below.)

Step 1 - Monthly National Labor Force

Step 2 - Monthly National Unemployed

Step 3 - Total Labor Force = 3,496,471 (in thousands)

Step 4 - Total Unemployed = 205,825 (in thousands)

Step 5 - Divide Unemployed by Labor Force: $205,825/3,496,471 = .058866$.

Since the 66 is in the fifth and sixth decimal place, drop the 66 and get the quotient .0588

Step 6 - Multiply by 1.2: $.0588 \times 1.2 = .07056$

Drop the fifth decimal place and get the product: .0705

Step 7 - Express as a percentage by multiplying by 100: 7.05

Step 8 - Round to one decimal Place: 7.05 becomes 7.1%

National Labor Force (Number in thousands)

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
2002	143228	144266	144334	144158	144527	145940	146189	145565	145167	145320	144854	144807
2003	145301(1)	145693	145801	145925	146067	148117	147822	146967	146166	146787	146969	146501

National Unemployed (Number in thousands)

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
2002	9051	8823	8776	8255	7969	8758	8693	8271	7790	7769	8170	8209
2003	9395	9260	9018	8501	8500	9649	9319	8830	8436	8169	8269	7945

Refer to Attachment C (Excel Spreadsheet - Sheet 3) for the calculations to determine the national unemployment rate for the same period used for Noname County. As you will see, Noname County will not qualify for a waiver as their 24-month average unemployment rate is not 20 percent above the national unemployment rate.

Jurisdictions or a cluster of areas or counties may be combined to waive an area larger than one county. Consider the entire combination as one area. Never calculate individual counties' unemployment rates, and then average. The same procedure would apply as described under **WAIVERS BASED ON UNEMPLOYMENT RATE OVER 10 PERCENT**, except 24 months of labor force and unemployed data would be obtained.

- ▶ Each county's 24-month figures would be totaled;
- ▶ Then all areas' totals would be totaled;
- ▶ Then divide the total unemployed figure by the total labor force figure to arrive at the unemployment rate for the area.

This rate would then be compared to the 20 percent above the national unemployment rate, which is calculated as outlined immediately above.

For **Indian reservations**, the same method also applies. However, some reservations cross county lines; some occupy part of a county. A waiver for the reservations cannot include non-reservation areas. The first step is to get the employed, unemployed, and labor force numbers for just the reservation. This involves obtaining the census share for the counties involved. The significant difference is that the census share ratios have six decimal places, and we never shorten these ratios to four.

The next step in determining whether a reservation area meets criteria for a waiver is to determine the census share for the area to be waived. To illustrate obtaining the census share, the Pine Ridge Reservation and Off-Reservation Trust Land in South Dakota was used. The data to determine the census share comes from the Census Bureau. Go to www.factfinder.census.gov.

- ✘ Under the heading **“Getting Detailed Data”**, look for Decennial Census. Click on **“get data”**.
- ✘ Scroll down to **“Census 2000 Summary File 3 (SF 3) - Sample Data”** and click the button. A menu to the right will open. Click on **“Enter a table number”**. Enter P43 and click on **“Go”**.
- ✘ Under the first bullet, an item will read **“Show all geography types”**. Click on this item and the page will reload. The item will then read **“Show major geography types only”**.
- ✘ Under **“Select a geographic type”**, open the pull down menu. Go down to **“..... County (or part)”** under **“..... American Indian Area/Alaska Native Area/Hawaiian Home Land (or part)”** and click on **“..... County (or part)”**. The page will reload.
- ✘ Then go to **“Select a state”**, and select South Dakota for this illustration. The page will reload.
- ✘ Under **“Select an American Indian Area/Alaska Native Area/Hawaiian Home Land (or part)”**, open the pull down menu and click on **“Pine Ridge Reservation and Off-Reservation Trust Land, SD..NE (part)”**. The page will reload.
- ✘ Under **“Select one or more geographic areas and click ‘Add’”**, click on **“All Counties (or parts)”** and then click on **“Add”** directly below the box. You will see Bennett, Jackson, and Shannon Counties appear in the **“Current geography selections”** box. Once this information is displayed, **DO NOT** click on **“Remove”** or **“Show Result”**.
- ✘ Instead, go back up to the top of the page and again pull down the menu under **“Select a geographic type”**. Select **“..... County”** directly under State and click. The page will reload.
- ✘ Under **“Select a state”**, South Dakota should still be in the box.
- ✘ Under **“Select one or more geographic areas and click ‘Add’”**, click on **“Bennett County”** and then **“add”**. Then go back up to the box that contains the counties, find **“Jackson County”**, click on it and then click **“Add”**. Do the same for Shannon County. These three counties should now be in the **“Current geography selections”** box, as well as the county portions of the reservation.
- ✘ Now click **“Show Result”**. The table below is the result. (NOTE: Shannon County is completely on the Reservation, so a census share is not needed for this county.)

	Bennett County, South Dakota	Jackson County, South Dakota	Shannon County, South Dakota	Bennett County (part); Pine Ridge Reservation and Off-Reservation Trust Land, SD--NE (part); South Dakota	Jackson County (part); Pine Ridge Reservation and Off-Reservation Trust Land, SD--NE (part); South Dakota	Shannon County; Pine Ridge Reservation and Off-Reservation Trust Land, SD--NE (part); South Dakota
Total:	2,440	1,998	7,416	859	967	7,416
Male:	1,167	986	3,650	435	502	3,650
In labor force:	665	595	1,996	185	254	1,996
In Armed Forces	0	0	0	0	0	0
Civilian:	665	595	1,996	185	254	1,996
Employed	602	510	1,274	141	174	1,274
Unemployed	63	85	722	44	80	722
Not in labor force	502	391	1,654	250	248	1,654
Female:	1,273	1,012	3,766	424	465	3,766
In labor force:	719	538	1,888	194	216	1,888
In Armed Forces	0	0	0	0	0	0
Civilian:	719	538	1,888	194	216	1,888
Employed	636	445	1,327	125	126	1,327
Unemployed	83	93	561	69	90	561
Not in labor force	554	474	1,878	230	249	1,878

From this data:

- ▶ Add the Male Civilian Employed and the Female Civilian Employed (in red bold above) from Bennett County column. Result is $602 + 636 = 1238$.
- ▶ Then add the Male Civilian Employed and the Female Civilian Employed (in red bold above) from the Bennett County (part) column. Result is $141 + 125 = 266$.
- ▶ Divide the Bennett County (part) employed by the Bennett County employed: $266 \div 1238 = .214862681$, dropped to 6 decimal points = **.214862**. **This is the reservation employed census share.**

Now do the same for unemployed in Bennett County:

- ▶ The Male Civilian Unemployed and Female Civilian Unemployed (in blue bold) in Bennett County is $63 + 83 = 146$.
- ▶ The Male Civilian Unemployed and Female Civilian Unemployed (in blue bold) in Bennett County (part) is $44 + 69 = 113$.
- ▶ Divide the Bennett County (part) unemployed by the Bennett County unemployed: $113 \div 146 = .773972602$, dropped to 6 decimal points = **.773972**. **This is the reservation unemployed census share.**

Follow the same steps to determine the census shares for Jackson County. Jackson's employed census share is **.314136**. Jackson's unemployed census share is **.955056**.

Once the census shares are known, obtain the employment numbers and the unemployment numbers for 24 months for Bennett County and Jackson County from BLS. All the Labor Force numbers and unemployed numbers for Shannon County for 24 months must also be obtained. (See Attachment D - Sheets 4). The census share is not needed for Shannon County because the entire county is reservation.

Now that all data is gathered, the information is plugged into the flow chart, as illustrated below. Follow the flow chart below to obtain the reservation unemployment rate. (See Attachment D - Sheet 5 for calculations).

<u>Bennett County</u>		<u>Jackson County</u>	
Employment (24 mos.)	Unemployment (24 mos.)	Employment (24 mos.)	Unemployment (24 mos.)
32239	1768	28301	1916
<u>x Census Share(.214862)</u>	<u>x Census Share(.773972)</u>	<u>x Census Share(.314136)</u>	<u>x Census Share(.995056)</u>
Res Employ (A)	+ Res Unemploy (A)	Res Employ (B)	+ Res Unemploy (B)
6926.936	1368.382	8890.363	1906.527
Equals		Equals	
<u>Reservation Labor Force (A)</u>	← PLUS →	<u>Reservation Labor Force (B)</u>	
8295.319		10796.89	
Equals			

Total Reservation Labor Force: 8295.319 (Bennett) + 10796.89 (Jackson) + 94515 (Shannon) = 113607.2, rounded = 113607

<i>Bennett County</i>		<i>Jackson County</i>
<i>Reservation Unemployment (A)</i>	+	<i>Reservation Unemployment (B)</i>
1368.382		1906.527
Equals		

Total Reservation Unemployment: 1368.382 (Bennett) + 1906.527 (Jackson) + 9731 (Shannon) = 13005.91, rounded = 13006

$$\frac{\text{Total Reservation Unemployment (13006)}}{\text{Total Reservation Labor Force (113607)}} = \text{Reservation Unemployment Rate: 11.4\%}$$

The reservation unemployment rate is then compared to the 20 percent above the national unemployment rate for the same time period.

There may be instances when two or more reservations cross the same county's boundaries. In this case, determine census ratios as if only one reservation at a time crossed over into the county.

OTHER WAIVERS

Waivers may also be submitted based on the following criteria:

- ▶ Areas having a low and declining employment-to-population ratio.
- ▶ Areas having a lack of jobs in declining occupations or industries.
- ▶ Areas described in an academic study or other publications as an area where there is a lack of jobs.

The State may submit whatever data it deems appropriate to support requests based on this data. FNS will evaluate the data and determine if it is acceptable to justify a waiver.

TWO-YEAR APPROVAL OF WAIVERS

Two-year approval of waivers can be allowed under limited circumstances. This option reduces the burden on State agencies that prepare waivers for areas with chronic high unemployment.

Because of the dynamic nature of labor markets, very strict criteria are imposed for the approval of 2-year waivers. In order to be eligible for a 2-year waiver, the affected area must meet at least one of the following criteria indicating that the area has experienced and will probably continue chronic high unemployment:

- ▶ An unemployment rate greater than 10 percent for the 2-year period immediately prior to the request.
- ▶ Designation as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (DOLETA) for a minimum of 2 consecutive fiscal years (the year of the request and the fiscal year prior to the request).
- ▶ An unemployment rate that is 20 percent above the national average for a 36-month period, ending no earlier than 3 months prior to the request. (Please note that this time frame is different and more restrictive than the 24-month time frame used for waivers in which the State is requesting a waiver for a 1-year period.)

Computations for 2-year waiver requests are the same as for the waivers previously discussed; however, the time frames for data are more extensive and more restrictive.

SUMMARY

REMEMBER:

- ▶ All data must come from acceptable sources:
 - ☑ Unemployment rate data must come from the Bureau of Labor Statistics or cooperating state agencies.
 - ☑ Labor Surplus Area data must come from the Employment and Training Administration.
 - ☑ Census share data must come from the Census Bureau.

- ▶ All computations should be documented:
 - ☑ Computations that are made with spreadsheets should be e-mailed.
 - ☑ Spreadsheets' cells that contain the results of computations should contain the formulae that derive the results, not just the results themselves.
 - ☑ The Waiver Request Outline must accompany the spreadsheets. If the waiver request is based solely on LSA areas, a Waiver Request Outline is not necessary.

- ▶ All data should be completely cited:
 - ☑ Data from Internet websites should include the website's Uniform Resource Identifier (URI) or Uniform Resource Locator (URL).
 - ☑ Data from other sources should refer to the source document or enclose a copy with the request.

- ▶ Supplementary information should be clear and well documented:
 - ☑ Unusual terms (like Indian trust lands) should be defined and their use explained.
 - ☑ Maps should be included, when helpful.

Current waivers that are due for extension must be submitted to the Regional Office 90 days prior to the date of expiration.

FOOD STAMP ACT AND REGULATIONS

Following are the ABAWD waiver provisions from the Food Stamp Act and the Regulations. This information is provided to simply have the fundamental documents at hand.

FOOD STAMP ACT

- Section 6(o)(4) of the Food Stamp Act:

(4) WAIVER.—

(A) IN GENERAL.—On the request of a State agency, the Secretary may waive the applicability of paragraph (2) to any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside—

- (i) has an unemployment rate of over 10 percent; or
- (ii) does not have a sufficient number of jobs to provide employment for the individuals.

(B) REPORT.—The Secretary shall report the basis for a waiver under subparagraph (A) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

FOOD STAMP REGULATIONS

- 7 CFR 273.24(f):
(f) *Waivers*—

(1) *General*. On the request of a State agency, FNS may waive the time limit for a group of individuals in the State if we determine that the area in which the individuals reside:

- (i) Has an unemployment rate of over 10 percent; or
- (ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Required data*. The State agency may submit whatever data it deems appropriate to support its request. However, to support waiver requests based on unemployment rates or labor force data, States must submit data that relies on standard Bureau of Labor Statistics (BLS) data or methods. A non-exhaustive list of the kinds of data a State agency may submit follows:

- (i) To support a claim of unemployment over 10 percent, a State agency may submit evidence that an area has a recent 12 month average unemployment rate over 10 percent; a recent three month average unemployment rate over 10 percent; or an historical seasonal unemployment rate over 10 percent; or

(ii) To support a claim of lack of sufficient jobs, a State may submit evidence that an area: is designated as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (ETA); is determined by the Department of Labor's Unemployment Insurance Service as qualifying for extended unemployment benefits; has a low and declining employment-to-population ratio; has a lack of jobs in declining occupations or industries; is described in an academic study or other publications as an area where there are lack of jobs; has a 24-month average unemployment rate 20 percent above the national average for the same 24-month period. This 24-month period may not be any earlier than the same 24-month period the ETA uses to designate LSAs for the current fiscal year.

(3) *Waivers that are readily approvable.* FNS will approve State agency waivers where FNS confirms:

(i) Data from the BLS or the BLS cooperating agency that shows an area has a most recent 12 month average unemployment rate over 10 percent;

(ii) Evidence that the area has been designated a Labor Surplus Area by the ETA for the current fiscal year; or

(iii) Data from the BLS or the BLS cooperating agency that an area has a 24 month average unemployment rate that exceeds the national average by 20 percent for any 24-month period no earlier than the same period the ETA uses to designate LSAs for the current fiscal year.

(4) *Effective date of certain waivers.* In areas for which the State certifies that data from the BLS or the BLS cooperating agency show a most recent 12 month average unemployment rate over 10 percent; or the area has been designated as a Labor Surplus Area by the Department of Labor's Employment and Training Administration for the current fiscal year, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will contact the State if the waiver must be modified.

(5) *Duration of waiver.* In general, waivers will be approved for one year. The duration of a waiver should bear some relationship to the documentation provided in support of the waiver request. FNS will consider approving waivers for up to one year based on documentation covering a shorter period, but the State agency must show that the basis for the waiver is not a seasonal or short term aberration. We reserve the right to approve waivers for a shorter period at the State agency's request or if the data is insufficient. We reserve the right to approve a waiver for a longer period if the reasons are compelling.

(6) *Areas covered by waivers.* States may define areas to be covered by waivers. We encourage State agencies to submit data and analyses that correspond to the defined area. If corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.

Exhibit F

Attorneys General of the District of Columbia, California, Connecticut, Guam, Hawaii, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington

April 2, 2019

Via Federal eRulemaking Portal

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

Re: *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, Notice of Proposed Rulemaking, 84 Fed. Reg. 980, FNS–2018–0004

We, the Attorneys General of the District of Columbia, California, Connecticut, Guam, Hawaii, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington (the “States”) submit these comments to oppose the Department of Agriculture’s Food & Nutrition Service (“FNS”) Proposed Rule: *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, Notice of Proposed Rulemaking, 84 Fed. Reg. 980, FNS–2018–0004 (published Feb. 1, 2019) (to be codified at 7 C.F.R. pt. 273) (“Proposed Rule”).

The Proposed Rule is an impermissible attempt to use the rulemaking process to flout the legislative process and implement draconian changes to the Supplemental Nutrition Assistance Program (“SNAP”) for able-bodied adults without dependents (“ABAWDs”) that were rejected by Congress in the 2018 Farm Bill, Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat 4490 (2018). Furthermore, it is inconsistent with—and indeed undermines—the fundamental purpose of the Food & Nutrition Act (“FNA” or “Act”), which is to “alleviate hunger and malnutrition” and “permit [recipient] low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power.” 7 U.S.C. § 2011. Instead, the Proposed Rule restricts the ability of States to address local job availability and labor market nuances in administering the program, as the FNA provides, without offering any evidence to support such dramatic changes to long-standing policy.

The Proposed Rule would severely restrict the ability of States to extend SNAP benefits to unemployed ABAWDs for more than three months in a thirty-six-month period despite insufficient local job availability. As States responsible for ensuring the welfare of our residents, we have a deeper, more nuanced understanding of our labor markets, including conditions that

lead to increased unemployment at the local level. The Proposed Rule spurns this knowledge in favor of concentrating nearly the entirety of the waiver application process within the federal executive branch. It constrains the flexibility that States have long possessed in crafting waiver requests, including determining which geographic areas should be included in such requests and the relevant data offered in support thereof. In doing so, the Department of Agriculture (“the Department” or “USDA”) has completely disregarded the costs associated with restricting this flexibility.

The Proposed Rule cannot become final. First, it is wholly inconsistent with the text and intent of the FNA and narrows the application of the Act without any authority for doing so. Second, the Proposed Rule is unlawful and runs afoul of the Administrative Procedure Act (“APA”), as it is arbitrary, capricious, unsupported by any evidence or legitimate rationale, and fails to consider the costs associated with its implementation, including downstream harm to the States’ economies. Finally, the Proposed Rule would disproportionately impact protected groups, as the Department itself has acknowledged while failing to explain how it will mitigate this impact.

I. Background

SNAP, formerly known as the Food Stamp Program (“FSP”),¹ is the country’s most significant anti-hunger program. SNAP provides crucial non-cash nutritional support for millions of low-income individuals and families who meet financial eligibility tests for limited monthly income and liquid assets. SNAP gives people with limited incomes the opportunity to access nutritious food that they otherwise would not have. The authorizing legislation states that the program is intended to “alleviate . . . hunger and malnutrition” by “permit[ing] low-income households to obtain a more nutritious diet through normal channels of trade.” 7 U.S.C. § 2011. To do this, SNAP provides benefits redeemable for SNAP-eligible foods at SNAP-eligible retailers.

SNAP is a federal-state partnership.² While the federal government pays the full cost of SNAP benefits, it shares the costs of administering the program on a 50-50 basis with the States³ and local governments, which operate the program. Each State designs its own process—based on federal guidelines—for how low-income people can apply for benefits, and States must track whether participants meet the requirements for the program on a monthly basis and adjust their benefits accordingly.

¹ The FSP was authorized by the Food Stamp Act of 1977. The name of the program was changed to SNAP by the Food Conservation, and Energy Act of 2008, Pub. L. No. 110-246, which also changed the name of the Food Stamp Act to the Food and Nutrition Act. All references to the program prior to 2008 will use the FSP title, while references to the program after the 2008 change will use the SNAP title.

² References to a “State” herein include all jurisdictions that operate SNAP programs under federal law, including the 50 states, the District of Columbia, Guam, and the Virgin Islands. 7 U.S.C. § 2012(r).

³ 7 U.S.C. §§ 2013(a), 2019, 2025(a); 7 C.F.R. §§ 277.1(b), 277.4.

A. Introduction of a Time Limit for ABAWDs and the Ability of States to Request that the Time Limit be Waived

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) introduced new restrictions on who was eligible for benefits under the FSP. Among these restrictions was a provision that generally barred unemployed adults age 18 to 49 who are not disabled or raising minor children from receiving SNAP benefits for more than three months in any thirty-six-month period (hereinafter referred to as the “ABAWD time limit” or “time limit”). 7 U.S.C. § 2015(o);⁴ *see also* 7 C.F.R. § 273.24(b) (“Individuals are not eligible to participate in the Food Stamp Program . . . if the individual received food stamps for more than three countable months during any three-year period.”). These participants are eligible to receive benefits beyond the time limit if they engage in work activities for at least 20 hours a week.⁵

Built into PRWORA was the option for States to request a waiver from the time limit if the State or an area within the State has an unemployment rate above 10 percent⁶ or does not have a sufficient number of jobs to provide employment for the individuals. 7 U.S.C. § 2015(o). When the time limit was being debated in Congress, then-congressman and co-author of the provision John Kasich said, “It is only if you are able-bodied, if you are childless, and if you live in an area where you are getting food stamps and there are jobs available, then it applies.”⁷ According to guidance from the FNS, the law provided for waivers based on an insufficient number of jobs because the Congress recognized that “the unemployment rate alone is an imperfect measure of the employment prospects of individuals with little work history and diminished opportunities.”⁸

B. USDA Guidance and Regulations Regarding Waivers of the ABAWD Time Limit

After PRWORA was enacted, the USDA issued guidance to the States regarding requests for waivers.⁹ From the beginning, USDA’s guidance on how a State can qualify for a waiver due

⁴ Also exempt from the time limit are individuals who are pregnant and those who are otherwise exempt from the general SNAP work requirements under section 6(d)(2) of the Act. 7 U.S.C. § 2015(o).

⁵ To meet the work requirement, these individuals must (1) work a minimum of 20 hours a week or 80 hours a month, (2) participate in a qualifying state employment and training (“E&T”) program for 20 hours a week, or (3) do public service through a state workfare program—a program that provides work in a public service capacity in exchange for public benefits. 7 U.S.C. § 2015(o)(2). Individuals who lose eligibility under the ABAWD time limit could regain eligibility by working or participating in work programs for 80 hours in a 30-day period, or complying with a workfare program for 30 days. 7 C.F.R. § 273.24(d)(1)(i)-(iii).

⁶ Waivers based on an unemployment rate above 10 percent can be based on a 12-month period, a 3-month period, or a seasonal unemployment rate. 7 C.F.R. § 273.24(f)(2)(ii).

⁷ Cong. Record, 104th Congress, Welfare and Medicaid Reform Act of 1996 (House of Representatives – July 18, 1996), page H7905, <https://www.congress.gov/crec/1996/07/18/CREC-1996-07-18.pdf>.

⁸ *See* U.S. Gen. Accounting Off., “Food Stamp Program: How States are Using Federal Waivers of the Work Requirement,” Report to the Chairman, Committee on the Budget, House of Representatives (Oct. 1999), at 4 (hereinafter “GAO Report”).

⁹ *See* Michael Leachman & Charles Sheketoff, “Helping Rural Oregonians Avoid Hunger: Eliminating the Three Month Food Stamp Time Limit in 30 Oregon Counties,” Oregon Center for Public Policy (Feb. 23, 2000) at 2, <https://www.ocpp.org/2000/rpt20000223.pdf> (describing the December 3, 1996 USDA guidance to the States regarding waiver requests).

to a lack of “a sufficient number of jobs” has been the same:¹⁰ States or area(s) within a State may qualify for a waiver of the ABAWD time limit if the State can demonstrate that:

- the area has been designated a Labor Surplus Area (“LSA”) for the current fiscal year by the Department of Labor (“DOL”);
- the DOL’s Department of Unemployment Insurance Service has qualified the State for extended unemployment benefits;
- the area has a low and declining employment-to-population ratio;
- the area has declining occupations or industries;
- the area is described in an academic study or other publication as an area where there are a lack of jobs; or
- the area has a 24-month average unemployment rate that is 20 percent above the national average for the same period (the 24-month period must begin no earlier than the date DOL uses to designate LSAs for the fiscal year) (“20 percent standard”).

States have always had some degree of flexibility in the data they can submit to support a waiver request.¹¹ Waivers are readily approvable when the waiver request is supported by unemployment data from the DOL Bureau of Labor Statistics (“BLS”) or evidence that the area has been designated as an LSA by DOL’s Employment and Training Administration (“ETA”).¹² But States can also submit other data to support their waiver requests. Recognizing that the lack of “sufficient jobs” can only be defined by reference to local labor market conditions, the Department has always allowed the States to define the areas to be covered by waivers based on data and analyses that correspond to the defined area.¹³

Because waiver requests based on data from the BLS or a BLS-cooperating agency or an ETA designation of an area as an LSA are readily approvable, States can begin implementing the waiver at the time that the waiver request is submitted.¹⁴ The Department typically grants ABAWD time limit waivers for a 1-year period, but a State or area may qualify for a longer waiver if there are compelling reasons.¹⁵

¹⁰ See, e.g., *Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Notice of Proposed Rulemaking, 64 Fed. Reg. 70,920, 70,944-46 (Dec. 17, 1999) (noting that the proposed rule did not substantially change the policies expressed in the Department’s December 3, 1996 guidance regarding waivers); *Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Final Rule, 66 Fed. Reg. 4,438, 4,462 (Jan. 17, 2001) (incorporating the “most pertinent aspects of the [December 3, 1996] guidance into the regulation.”).

¹¹ 7 C.F.R. § 273.24(f)(2) (States “may submit whatever data it deems appropriate to support its request.”).

¹² 7 C.F.R. § 273.24(f)(3). For territories that the BLS does not study, FNS accepts unemployment data generated by a State cooperating agency that relies on BLS methods. But States have also been permitted to submit data from the Census Bureau and other sources to support their waiver requests.

¹³ 7 C.F.R. § 273.24(f)(6).

¹⁴ 7 C.F.R. § 273.24(f)(4).

¹⁵ 7 C.F.R. § 273.24(f)(5).

States are not required to request a waiver of the ABAWD time limit, nor are they required to implement a waiver that has been granted by the Department. In the first year, 43 States applied for and received approval from FNS to waive some or all of the State from the ABAWD time limit.¹⁶ Since PRWORA was enacted, several States that would have qualified for waivers did not request them,¹⁷ and some States that requested waivers did not implement them.¹⁸

Under these rules, 6 States currently have statewide waivers, while 30 States have partial waivers for specific areas.¹⁹ 17 States do not have any ABAWD time limit waivers. All States, with the exception of Delaware, have had waivers at some point since PRWORA was enacted.²⁰

C. Introduction of Exemptions from the Time Limit for ABAWDs

In addition to the abovementioned flexibility through waivers, in the Balanced Budget Act of 1997 (“BBA”), Pub. L. No. 105-33, Congress gave additional flexibility to the States to exempt up to “15-percent” of the State’s “covered individuals” from the ABAWD time limit.²¹ The “15-percent” exemption rule is an imprecise name for a statutory allowance that States have to extend benefits for ABAWDs who do not reside in a waived area and would otherwise be ineligible for SNAP benefits because of the ABAWD time limit. The USDA allocates exemptions to the States based on 15 percent of the estimated ABAWD population who would otherwise be ineligible for benefits.²² Under the statute, States can use one exemption to provide one additional month of SNAP benefits to an individual ABAWD who would otherwise be ineligible for SNAP benefits because of the time limit.²³

In addition, the statute provides that the Secretary shall increase or decrease the number of individuals who may be granted an exemption by a State agency to the extent that the average monthly number of exemptions used in the State for the preceding fiscal year is different than the average monthly number of exemptions estimated for the preceding fiscal year.²⁴ Therefore, if a State does not use its allocated exemptions by the end of the fiscal year, the State may carry over the balance. If more exemptions are used than authorized in a fiscal year, the State’s allocation for the next year will be reduced.

¹⁶ Vivian Gabor & Christopher Botsko, “State Food Stamp Policy Choices Under Welfare Reform: Findings of 1997 50-State Survey,” (May 1998) at 12.

¹⁷ GAO Report, supra n. 8 at 6, 8-9.

¹⁸ Gabor & Botsko, supra n.16 at 12 (noting that 7 of the 43 States that had approved waivers did not apply the waiver in some or all of their approved local jurisdictions); GAO Report, supra n. 8 at 9.

¹⁹ U.S. Dep’t of Agric., *Supplemental Nutrition Assistance Program (SNAP): Status of Able Bodied Adult Without Dependents (ABAWD) Time Limit Waivers – Fiscal Year 2019 – 2nd Quarter* (Mar. 13, 2019), <https://fns-prod.azureedge.net/sites/default/files/snap/FY19-Quarter2-ABAWD-Waiver-Status.pdf>.

²⁰ Ed Bolen & Stacy Dean, “Waivers Add Key State Flexibility to SNAP’s Three-Month Time Limit,” Center on Budget & Policy Priorities (2017), <https://www.cbpp.org/research/food-assistance/waivers-add-key-state-flexibility-to-snaps-three-month-time-limit>.

²¹ “Covered individuals” are those ABAWDs who are not excepted, covered by a waiver, complying with the work requirement, or in their first or second three months of eligibility. 7 U.S.C. § 2015(o)(6)(A)(ii).

²² See 7 U.S.C. § 2015(o)(6).

²³ *Id.*

²⁴ 7 U.S.C. § 2015(o)(6)(G)

While the USDA determines the total number of exemptions a State can provide in a given year based on the Department’s own formula, States have “maximum flexibility to apply the exemptions as they deem appropriate.”²⁵

D. The 2014 Farm Bill and the Examination of the Effectiveness of Work Requirements

The work requirements for SNAP benefits have been the subject of long-running debates,²⁶ but there is no research evidence that simply setting work requirements, and specifically the requirements for ABAWDs, are effective at helping individuals gain employment, increase their incomes, reduce their dependence on SNAP benefits, and move people out of poverty.²⁷ Indeed, there is very little research available about how to help ABAWDs subject to the time limit attain self-sufficiency.²⁸ The lack of research evidence on the effectiveness of work requirements for SNAP benefits spurred Congress to authorize funding to study the matter. In the Agricultural Act of 2014 (“2014 Farm Bill”), Pub. L. No. 113-79, Congress authorized \$200 million in funding to the USDA for three-year employment & training (“E&T”) pilot projects in ten States to rigorously evaluate new approaches to move SNAP participants into work or higher paying jobs. In March 2015, the USDA awarded grants to California, Delaware, Georgia, Illinois, Kansas, Kentucky, Mississippi, Vermont, Virginia, and Washington. These pilots were fully operational beginning in Fiscal Year (“FY”) 2017. The pilot projects will be evaluated, but research findings are not yet available. A final report is due to Congress in 2021.²⁹

E. Executive Order Directing USDA to Examine Waivers

On April 10, 2018, President Trump signed an Executive Order (“EO”) on Reducing Poverty in America by Promoting Opportunity and Economic Mobility. Exec. Order No. 13,828, 83 Fed. Reg. 15,941 (Apr. 10, 2018). The EO outlines guiding principles for public assistance programs that primarily focus on enforcing work requirements. The EO directed the USDA and other federal agencies to review their public assistance programs and determine whether (i) implementing or enforcing work requirements and (ii) existing waivers are consistent with federal laws and the principles outlined in the executive order. *Id.* § 3.

²⁵ U.S. Dep’t of Agric., Food & Nutrition Serv., “Guide to Serving ABAWDs Subject to Time-limited Participation,” at 8 (2015).

²⁶ *See, e.g.*, Cong. Research Serv., “SNAP and Related Nutrition Provisions of the 2014 Farm Bill (P.L. 13-79),” R43332 (Apr. 24, 2014) at 9 (noting that “policy makers debated whether to require more SNAP participants to be working in addition to or instead of receiving food assistance.”), 12-13 (noting that the House proposed to repeal the USDA’s authority to grant area waivers from the ABAWD time limit based on local labor market conditions, but the change was not enacted in the 2014 Farm Bill).

²⁷ *See* Cong. Research Serv., “Research Evidence on the Impact of Work Requirements in Need-Tested Programs,” R45317 at 1 (Sept. 20, 2018) (“As Congress debates work requirements in SNAP, . . . there is no large accumulated research base to draw from.”).

²⁸ *See* Steven Carlson et al., “Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?” Center on Budget and Policy Priorities (Feb. 8, 2016), at 1, <https://www.cbpp.org/research/food-assistance/who-are-the-low-income-childless-adults-facing-the-loss-of-snap-in-2016> (“the research is surprisingly limited”).

²⁹ *See* U.S. Dep’t of Agric., *Evaluation of SNAP Employment and Training Pilots: Fiscal Year 2017 Annual Report to Congress* at 34.

The EO also emphasized the need “to empower State, local, and tribal governments and private-sector entities to effectively administer and manage public assistance programs.” *Id.* § 2(d). The EO noted that “Federal policies should allow local entities to develop and implement programs and strategies that are best for their respective communities.” *Id.*

F. Congress Rejects Stricter Requirements for Waivers and Exemptions in the Agriculture Improvement Act of 2018

The 115th Congress considered limiting the ability of States to request waivers and use exemptions in the 2018 Farm Bill. The version of the bill that passed the House would have eliminated the statutory language regarding a lack of “sufficient number of jobs,” and replaced it with a much stricter version of the USDA’s rule regarding waivers. H.R. 2 retained the ability of States to request waivers if an area is designated as an LSA by DOL’s ETA, but would not permit waivers based the 20 percent standard unless the area’s unemployment rate was at least 7 percent.³⁰ The House version of the bill also would have limited the data on which States can rely in their waiver requests, and would have permitted State agencies to request waivers only with the approval of the chief executive officer of the State. It also would have limited the ability of States to combine individual jurisdictions in a waiver request unless the jurisdictions were designated as a Labor Market Area (“LMA”) by DOL. Finally, it made changes to the “15-percent” exemption criteria, did not permit carryover exemptions, and decreased the number of exemptions starting in FY 2026.

The Senate version of the bill did not make any changes to the work requirements but consolidated the ABAWD work requirement into the general work requirements of the law.³¹ The Senate version did not make any changes to the waiver or exemption provisions. It did provide additional funding for additional pilot projects to study how to assist individuals with significant barriers to employment.

Faced with these conflicting bills, the Conference Committee retained the general work requirements and ABAWD work requirements from the prior law, struck the House’s modifications to the criteria that States may use to request a geographic waiver of the ABAWD time limit, and struck the changes to the “15-percent” exemption criteria. The Conference adopted language that specified that a State’s waiver request have the support of the State’s chief executive officer and decreased the “15-percent” exemption to 12 percent starting in FY 2020. The Conference also increased funding for E&T, including by allowing funds to be reallocated to fund pilot projects “that have the most demonstrable impact on the ability of participants to find and retain employment,” with a particular focus on individuals who have significant barriers to employment. *Id.*

President Trump signed the Agriculture Improvement Act of 2018 on December 20, 2018, as Pub. L. No. 115-334.

³⁰ The version of the bill that was introduced in the House set the unemployment floor at 6 percent, but the version that passed the House in mid-2018 raised the unemployment floor rate to 7 percent.

³¹ S. 3042, 115th Cong. § 4103 (as reported by S. Comm. on Agric., Nutrition, & Forestry, June 18, 2018).

G. The Proposed Rule

On the same day that President Trump signed the 2018 Farm Bill, and at the direction of President Trump, the Secretary of Agriculture announced a proposed rule “intended to move more able-bodied recipients of [SNAP] benefits to self-sufficiency through the dignity of work.”³² Rather than creating a program that would actually help ABAWDs overcome barriers and gain stable employment, the Proposed Rule would simply impose many of the features of the House version of the 2018 Farm Bill that were rejected by the Conference and that did not pass Congress. The Proposed Rule in fact goes even further than the House version of the bill did.

The proposed rule substantially limits the ability of States to request waivers of the ABAWD time limit by:

- Setting an unemployment rate floor for States that seek waivers because an area’s unemployment rate is 20 percent or more above the national average. Under the Proposed Rule, a State or portion thereof would not be eligible for a waiver under the 20 percent standard unless the unemployment rate is 7 percent or more, 84 Fed. Reg. 983-84;³³
- Eliminating the ability of a State to qualify for a waiver if it is designated as a Labor Surplus Area by DOL’s ETA, 84 Fed. Reg. 987;
- Limiting the availability of statewide waivers if there is data available from the Bureau of Labor Statistics at the substate level, 84 Fed. Reg. 985;
- Restricting States from combining data to group substate areas unless the areas are considered a Labor Market Area by DOL, 84 Fed. Reg. 985-86;
- Limiting the data on which States can rely for their waiver requests, requiring States to rely on data from BLS or BLS-cooperating agencies, 84 Fed. Reg. 986-87;
- Eliminating “a historical seasonal unemployment rate over 10 percent,” as a basis for a waiver, 84 Fed. Reg. 987;
- Limiting the duration of waiver approval to *up to* one year, but no longer than one year, 84 Fed. Reg. 986;
- Eliminating the ability of States to carry exemptions over from year to year, 84 Fed. Reg. 987-99;
- Requiring the “endorsement” of the Governor, 84 Fed. Reg. 983; and
- Prohibiting States from implementing waivers prior to receiving approval from FNS, 84 Fed. Reg. 987.

³² Press Release, “USDA to Restore Original Intent of SNAP: A Second Chance, Not A Way of Life,” U.S. Dep’t of Agriculture (Dec. 20, 2018), <https://www.fns.usda.gov/pressrelease/2018/027718>.

³³ The USDA actually requests public comment on whether 7 percent or another rate floor – 6 percent or 10 percent – would be appropriate, which is discussed *infra*.

II. The Proposed Rule Conflicts with the Purpose of the FNA and the Clear Intent of Congress.

The Proposed Rule is contrary to the purpose of SNAP. In the FNA, Congress declared that its policy is “to safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households.” 7 U.S.C. § 2011. Yet, by the Department’s own calculations, under the Proposed Rule more than three-quarters of a million people will lose their ability to obtain an adequate level of nutrition in FY 2020 alone. 84 Fed. Reg. 989.

Moreover, the Proposed Rule is contrary to the clear intent of Congress when it passed the 2018 Farm Bill. In the drafting and negotiations process of the 2018 Farm Bill, the House of Representatives included language regarding waivers and exemptions almost identical to the language that the Department now proposes. Congress removed the provisions from the final legislation and passed the 2018 Farm Bill on December 20, 2018, without the new restrictions on waivers and exemptions. The Department announced the Proposed Rule the same day with language virtually identical to that stricken from the 2018 Farm Bill. While Congress explicitly chose not to strengthen work requirements for SNAP by ensuring that more ABAWDs are subject to the time limit, the Department states that this is the express goal of the Proposed Rule. 84 Fed. Reg. 985, 987. Indeed, the Department says that its “proposal aligns with the proposal in . . . H.R. 2, as passed by the House June 21, 2018,” while failing to acknowledge that the proposal in the House failed to pass Congress. 84 Fed. Reg. 984. By proposing this rule, the Department now seeks to make an end-run around the legislative process and implement requirements that Congress refused to adopt through legislation.

It is abundantly clear—from both its actions and its explicit statements—that Congress believed that congressional action would be required to accomplish the changes to SNAP waivers and exemptions that FNS seeks to make in the Proposed Rule. Congress refused to make these statutory changes and intended for SNAP waivers and exemptions to continue to operate as they have since they were introduced in the law more than 20 years ago. By attempting to amend the statute through rulemaking, the Department has clearly overstepped its authority.

A. Waivers

In its draft of the 2018 Farm Bill, the House sought to remove a lack of “sufficient jobs” as a standard for waivers, including eliminating States’ ability to seek a waiver based on a showing of declining employment to population ratio or a lack of jobs in a declining industry. Instead, the House would have adopted the 20 percent standard with a 7 percent unemployment baseline.³⁴ The House also sought to virtually eliminate States’ ability to combine areas for purposes of waiver.³⁵ Congress intentionally excluded all of this language in its final 2018 Farm Bill.³⁶ Finally, the House also attempted to require the “approval” of the State’s chief executive officer before a State administering agency could request a waiver.³⁷

³⁴ H.R. 2 (115th) § 4015.

³⁵ H.R. 2 (115th) § 4015.

³⁶ Pub. L. No. 115-334 (2018).

³⁷ H.R. 2 (115th) § 4015.

By contrast, Congress in its final bill explicitly maintained the States’ discretion on ABAWD time limit waivers. It rejected using *any* unemployment floor for waiver requests based on an unemployment rate of 20 percent or more above the national unemployment rate. Moreover, in explaining their decision to make no changes to the waiver requirements by statute, the Conference Report stated that the conference managers from the House and Senate “intend to maintain the practice that bestows authority on the State agency responsible for administering SNAP to determine when and how waiver requests for ABAWDs are submitted.”³⁸ Congress thus intended to allow States to continue to use their discretion in what data to use and how to group regions together for the purposes of obtaining a waiver. Congress also rejected the requirement that a State agency’s waiver request have the “approval” of the State’s chief executive officer because Congress understood that the State agencies need to have the authority to respond to sudden changes in their local economies by seeking waivers. The Conference Committee added language to the statute to encourage communication between State agencies and their chief executive officers, but made clear that it was not Congress’s “intent that USDA undertake any new rulemaking in order to facilitate support for requests from State agencies, nor should the language result in additional paperwork or administrative steps under the waiver process.”³⁹

But the Department adopts a 7 percent floor for waiver requests based on the 20 percent standard in the Proposed Rule—the same *exact* floor that was passed by the House but rejected by the Conference. And the Proposed Rule severely restricts when areas can be combined in a State’s waiver request—grouping of contiguous areas is not permitted under the Proposed Rule unless the areas are considered an LMA by DOL, ignoring the fact that LMAs are not limited to regions within a State, and can cross State lines.⁴⁰ The Department also expressly adopts new regulatory language requiring “the Governor’s endorsement,” 84 Fed. Reg. 983, 992, despite congressional direction that no such rulemaking was necessary to implement the new language in the law. Finally, the Proposed Rule goes further than even the House version of the 2018 Farm Bill in proposing to eliminate an area’s designation as an LSA by DOL’s ETA as a basis for a waiver request. The Department now attempts to do what Congress explicitly refused to do by statute, usurping Congress’s lawmaking authority to make these policy decisions.

B. Exemptions

In 1997⁴¹ Congress provided States with the flexibility to provide one-month exemptions to up to 15 percent of the estimated ABAWD population who would otherwise be ineligible for food stamps and allowed for the States to carry over their allotted exemptions (“caseload exemptions”).⁴² In 2018, Congress made substantial changes to the law by reducing the exemption rates from 15 percent to 12 percent beginning in FY 2020. However, Congress did not change the statutory language that permits States to carry over exemptions from year to year, and

³⁸ H. Conf. Rpt. on H.R. 2 (115-1072) at 616.

³⁹ *Id.* at 617.

⁴⁰ See Bur. of Labor Statistics, “Local Area Unemployment Statistics,” (Mar. 15, 2019), <https://www.bls.gov/lau/laugeo.htm#geolma> (noting that because “these areas are based on the degree of economic integration as measured by commuting flows without regard to state boundaries, interstate LMAs exist”).

⁴¹ Pub. L. No. 105-33 (1997).

⁴² See 7 U.S.C. § 2015(o)(6).

maintained State authority in determining the use of exemptions. The 2018 Farm Bill Conference report makes clear that under the statute, States will “continue to accrue exemptions and retain any carryover exemptions from previous years, consistent with current law.”⁴³ By proposing to eliminate the ability of States to carry exemptions over, the Proposed Rule is inconsistent with and contrary to the law.

III. The Proposed Rule is Arbitrary and Capricious and Therefore Violates the APA.

Not only does the Proposed Rule flout the text and intent of the FNA, but it also violates the Administrative Procedure Act (“APA”). Under the APA, agencies are required to act reasonably, providing a reasoned explanation for their actions and observing the procedure required by law. *Schurz Commc’ns v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992); *see also Motor Vehicle Mfrs. Ass’n of United States v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (agency must show that it “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action.”); *American Ass’n of Cosmetology Schools v. Devos*, 258 F. Supp. 3d 50, 71 (D.D.C. 2017) (the “touchstone of arbitrary-and-capricious review is reasoned decisionmaking.”). When an agency action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, it will be held invalid and vacated. 5 U.S.C. § 706(2)(A).

The Proposed Rule is arbitrary and capricious, and therefore cannot withstand scrutiny under the APA, on several grounds: first, it conflicts with numerous longstanding policies of the USDA governing time limit waiver requests; second, the USDA provides no reasoned explanation for the proposed changes; third, the changes are not supported by available evidence; and fourth, the Proposed Rule does not consider the costs associated with its implementation.

A. The Proposed Rule Conflicts with the Longstanding Policy of the USDA.

The changes to time limit waiver requests in the Proposed Rule are inconsistent with more than two decades of USDA guidance on waivers. Because the Proposed Rule contradicts the USDA’s own longstanding position without reasoned support, this change would be arbitrary and capricious under the APA. *See Perez v. Mortgage Bankers Ass’n*, 135 S. Ct. 1199, 1209 (2015) (explaining that “the APA requires an agency to provide more substantial justification when ‘its new policy rests upon factual findings that contradict those which underlay its prior policy’”) (quoting *F.C.C. v. Fox Tel. Stations, Inc.*, 556 U.S. 502, 515 (2009)); *see also Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

The Proposed Rule reverses a variety of longstanding policies. First, relying on agency guidance to States regarding requests for waivers of the ABAWD time limit from December 1996, the USDA implemented a Final Rule in 2001 that set the standards for the current regulations. Among these standards was the ability of States to use a Labor Surplus Area (“LSA”) designation as a criterion for receiving a waiver. In fact, according to the 2001 Rule and guidance from as recently as 2016, “[i]f the area is designated as an LSA for the current fiscal

⁴³ H. Conf. Rpt. on H.R. 2 (115-1072) at 616.

year, FNS will approve the waiver readily and the State may begin to operate the waiver at the time the request is submitted.”⁴⁴

Second, the Proposed Rule would eliminate States’ discretion in defining geographic scope of the area to be covered by a waiver. Not only have States long been permitted to submit requests for statewide waivers, but they were given “complete discretion to define the geographic areas covered by waivers so long as they provide data for the corresponding area.” 66 Fed. Reg. 4463. The Department’s 2016 guidance permitted the States “discretion to define the group of areas to be combined, provided that the areas are contiguous or can be considered to be part of an economic region.”⁴⁵ The Proposed Rule, however, essentially eliminates statewide waivers and severely restricts States’ discretion in defining the geographic scope of the area for the waiver.

Third, agency guidance for the last twenty years has also permitted States to buttress their requests for waivers using a variety of data sources in addition to BLS data. These data sources included a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, and academic studies or other credible publications that document a lack of jobs in an area.⁴⁶ Nevertheless, the Proposed Rule seeks to undercut States’ more nuanced understandings of local job markets, and whether those conditions are accurately reflected in the data sources submitted with their waiver requests, by strictly limiting the data for evaluation to BLS data.

Other policies that have been in place for the last two decades that would be eliminated under the Proposed Rule include the ability of States to immediately implement waivers in extreme circumstances and the ability for some waivers to extend beyond a year.

As discussed in further detail in the subsequent sections, the USDA has provided no reasoning behind drastically changing course after following essentially the same guidance for more than two decades. Because the USDA has provided no support for these contradictory policies, the Proposed Rule is arbitrary and capricious.

B. The Proposed Rule is Not Supported by a Legitimate Rationale.

The Proposed Rule fails to provide a reasoned explanation for its radical departure from the Department’s longstanding policy. Indeed, the Proposed Rule abandons decades-old policy without any support whatsoever. This alone makes the Proposed Rule arbitrary and capricious. *See Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (federal agency has a

⁴⁴ U.S. Dep’t of Agric., Food & Nutrition Serv., “Supplemental Nutrition Assistance Program – Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” at 3 (Dec. 2, 2016) (hereinafter “USDA SNAP Guide”).

⁴⁵ *Id.* at 10.; *see also* 66 Fed Reg. 4462 (“States may submit evidence of a lack of sufficient jobs by submitting data that the area: (1) Was designated as a Labor Surplus Area by the Department of Labor’s employment and Training Administration (ETA); (2) was determined by the Department of Labor’s Unemployment Insurance Service as qualifying for extended unemployment benefits; (3) has a low and declining employment-to-population ratio; (4) has a lack of jobs in declining occupations or industries; or (5) has a 24 month average unemployment rate 20 percent above the national average for the same period.”).

⁴⁶ USDA SNAP Guide, *supra* n. 44 at 16-17.

“duty to explain why it deemed it necessary to overrule its previous position” and when “the agency has failed to provide even that minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law.”); *Massachusetts v. EPA*, 549 U.S. 497 534 (2007).

1. The Department Provides No Grounds for Establishing a Floor Unemployment Rate for the 20 Percent Standard.

In attempting to establish an unemployment rate floor for the 20 percent standard,⁴⁷ the Proposed Rule is arbitrary and capricious because it is not based on any legitimate rationale. The USDA primarily refers to unsupported assertions that there has been “excessive use of ABAWD time limit waivers to date,” without considering whether the use of waivers has been appropriate or necessary, and relies on “operational experience” without providing data or concrete examples to support its assertions that States have exploited time limit waivers. 84 Fed. Reg. 984. Rather, the USDA points to decreases in the percentage of the ABAWD population that will live in waiver eligible areas, noting that the current 44 percent of ABAWDs living in a waived area would decrease to 11 percent under the Proposed Rule. *Id.* However, the Department does not explain why the size of the waived areas or the number of ABAWDs who reside in waived areas somehow demonstrate that waivers have been exploited or abused.

The Department does not need to impose an unemployment rate floor if the sole purpose is to reduce the number of ABAWDs living in waived areas. This reduction has already occurred naturally after the economy stabilized following the economic downturn: the number of States and areas in which the time limit is waived has been steadily declining for the past four years, and the number of ABAWDs who reside in waived areas has been declining as well. 84 Fed. Reg. 982. Just reducing the number of ABAWDs residing in waived areas on its own is not a reasonable explanation for making it more difficult for States to qualify for waivers when their unemployment rates are 20 percent or more above the national unemployment rate. Moreover, simply reducing the size and proportion of waived areas, and thus decreasing the number of ABAWDs who live in waived areas, does not somehow mean that those individuals newly subjected to the time limit will more easily find employment.

The only other reason for the unemployment rate floor offered by the USDA is “so that areas do not qualify for waivers when their unemployment rates are generally considered to be normal or low.” 84 Fed. Reg. 984. The USDA raises concerns that local unemployment rates that are lower than the “natural” rate could lead to “inflationary pressure on prices.” *Id.* First, the USDA cites to no study that explains the “natural rate of unemployment” or its effect on inflation, nor does it cite to data demonstrating that the current “natural rate of unemployment” is approximately 5 or 6 percent, as the USDA claims it is. In fact, the current natural rate of unemployment may be as low as 4.0-4.6 percent.⁴⁸ Second, concerns about inflation do not

⁴⁷ The 20 percent standard is a criterion used for evaluating qualification for a time limit waiver. The standard is that an area has a 24-month average unemployment rate that is 20 percent above the national average for the same period. The 24-month period must begin no earlier than the date DOL uses to designate LSAs for the fiscal year. There has never been an unemployment rate floor for the 20 percent standard.

⁴⁸ Fed. Res., *What is the lowest level of unemployment that the U.S. economy can sustain?*, last updated March 20, 2019, https://www.federalreserve.gov/faqs/economy_14424.htm.

necessarily correlate with the Proposed Rule’s stated goal to increase self-sufficiency and employment. As such, the “natural rate of unemployment” is not a legitimate rationale for implementing an unemployment rate floor.⁴⁹

The USDA’s request for “evidence-based and data-driven feedback on the appropriate threshold for the floor” further underscores its failure to ground its rationale in research. *See* 84 Fed. Reg. 984. The proposed unemployment rate floor is a slipshod attempt to make a blanket reduction in the number of ABAWDs living in waived areas. That strategy ignores unique conditions in these areas indicating significant barriers to employment for ABAWDs and, more broadly, the congressionally expressed purpose to make appropriate exceptions where such barriers exist.

2. The Proposed Rule Unreasonably Restricts the Geographic Scope of Waiver Areas.

The Proposed Rule’s attempt to restrict States’ ability to define the geographic scope of requested waivers is also arbitrary and capricious. The Proposed Rule limits States’ flexibility to define the geographic scope of waivers in two primary ways: 1) eliminating statewide waivers when substate data is available through BLS,⁵⁰ and 2) prohibiting the grouping of substate areas unless the federal government itself has grouped those areas. As with many of the other changes included in the Proposed Rule, the USDA provides no legitimate reasoning for either of these changes.

The only reasoning provided for eliminating statewide waivers is “so that waivers of the ABAWD time limit are more appropriately targeted to those particular areas in which unemployment rates are high.” 84 Fed. Reg. 985. However, State agencies typically have a better understanding of economic conditions within a State that may cross substate areas in such a way that a statewide waiver would be warranted. The BLS substate data may not accurately convey such conditions. Additionally, States may not have the resources to track ABAWDs within the BLS-defined substate groups, and determining which substate areas should be included in waiver requests may impose a significant burden on already over-taxed State agencies.

Moreover, the BLS substate data may not accurately depict a substate economic market area, which may encompass several jurisdictions. Furthermore, the BLS data does not portray more nuanced aspects of employment statistics, such as the types of jobs available, the qualifications needed for such jobs, and whether affordable transportation options are available for those who need it.

The USDA attempts to justify the elimination of most statewide waivers by suggesting that it aligns with the Department’s goal to subject more individuals “to the ABAWD time limit and work requirement, which can be met through working or participating in a work program or

⁴⁹ Further undermining the Department’s reliance on the “natural” rate of unemployment is the growing criticism about this unproven economic theory. *See* Mike Konczal, *How low can employment go? Economists keep getting the answer wrong*, VOX, May 5, 2018, <https://www.vox.com/the-big-idea/2018/5/4/17320188/jobs-report-natural-rate-unemployment-inflation-economics-april>.

⁵⁰ The exception to this change in the Proposed Rule would be statewide waivers “based upon a State’s qualification for extended unemployment benefits as determined by DOL’s Unemployment Insurance Service.” 84 Fed. Reg. 985.

workfare program, consistent with the intent of the Act.” 84 Fed. Reg. 985. The intent of the waiver provisions of the FNA, however, was to ensure that nutrition assistance would be provided to those individuals who had insufficient opportunities to obtain employment. Eliminating most statewide waivers undercuts State agencies’ ability to determine which areas most appropriately qualify for time limit waivers. Barriers to employment may exist statewide, rather than just in one substate area. States should have the flexibility to determine whether it is more appropriate to seek a statewide waiver rather than waivers for substate areas.

The USDA’s only rationale for prohibiting States’ grouping of substate areas for waiver requests is that “in practice, the Department has learned that its standards for combining areas provide too much flexibility for State agencies and are often ineffective at ensuring that States are only grouping areas that are economically tied.” 84 Fed. Reg. 986. This rationale contradicts the facts. Current regulations in fact provide some restriction on how States can group substate areas for waiver requests. The USDA itself acknowledges that under current regulations, “States can only group areas and support approval based on qualifying unemployment data” and that grouped areas must be “contiguous and/or share the same Federal- or State-recognized economic region.” *Id.* at 985. Moreover, even according to the Proposed Rule itself, the amount of waivers sought by States and the population covered by waivers has fallen precipitously since its peak in 2013. *Id.* at 982. FNS states that ABAWD waivers covered 45 States and territories in full in 2013. By comparison, only 8 waivers currently apply to entire States or territories today. *Id.* This demonstrates that States are in fact using their discretion judiciously and in accordance with appropriate standards under the law and the current rule.

Nevertheless, the USDA accuses States of using their ability to group substate areas in order to omit areas of low unemployment and skew data to support waiver requests. However, such a practice is actually in accord with the USDA’s stated intent because rather than “maximize” the waived area, as the USDA contends, it narrows the areas covered by waivers to those with higher unemployment rates. Further, as previously mentioned, States have a better understanding of which regions are economically tied and what employment conditions are actually like in those regions.

The USDA proposes to use Labor Market Areas (“LMAs”) as a mechanism to group substate areas. However, grouping by LMAs is not only ineffective, but it infringes on State sovereignty. Metropolitan areas near State borders tend to fall within LMAs that extend into multiple States.⁵¹ State agencies, however, can only provide benefits to those individuals residing within their borders. In determining whether to apply for a waiver, then, these State agencies would have to take into account job conditions in another State or multiple other States, which is beyond the reach of their authority. Furthermore, these multistate LMAs may not reflect the job conditions in a particular substate area that falls within its confines.

Not allowing States to define the geographic scope of the requested waivers, whether by prohibiting grouping outright or by limiting grouping to LMAs as defined by the federal

⁵¹ Examples of these LMAs include Philadelphia (PA, NJ, DE, and MD), Washington, DC (DC, VA, MD, and WV), New York City (NY, NJ, and PA), and Memphis (TN, MS, and AR). See <https://www.bls.gov/lau/lmadir2015.xlsx>.

government, undermines States' abilities to effectively administer benefits to those individuals who need them and for whom the application of waivers is appropriate.

C. The Proposed Rule is Not Supported by the Available Evidence.

There is no evidence cited to support the effective elimination of waivers for most of the country. Nor is there evidence that the Proposed Rule will “restore the dignity of work,” as the Department claims it will. Rather, all the available evidence shows that the group of people who will be subject to the ABAWD time limit under the Proposed Rule will likely simply lose the limited nutrition assistance that SNAP provides and become more food insecure, and will continue to be unemployed because they will continue to face barriers to employment in the local labor market.

The evidence available to the Department demonstrates that the population that will be most directly affected by the time limit face many barriers to employment and self-sufficiency that cannot be solved simply by stripping them of limited but essential nutrition assistance. In 1997, the USDA published a report demonstrating that 95 percent of the men and women in this group had incomes below 75 percent of the poverty line with average incomes of 24 percent of the poverty line.⁵² More than 40 percent did not have a high school diploma, and many lived in rural areas and with limited access to transportation. 42 percent were women and one-third were aged 41 or older. The limited research done in the intervening years shows that the ABAWD population remains very poor and has a number of barriers to employment.

In 1998, the Department issued a report on “The Effect of Welfare Reform on Able-Bodied Food Stamp Recipients.” Michael Stavrianos & Lucia Nixon, U.S. Dep’t of Agric. (July 23, 1998). That report noted that only 3.6 percent of all FSP participants were subject to the ABAWD time limit. *Id.* at xi. The report noted that the employment prospects for this group were “not promising,” because “job opportunities for less-educated job seekers are severely limited, especially for nonwhites and in urban areas,” *id.* at xiii.⁵³ The report also noted that the job prospects for ABAWDs depends significantly on the prevailing conditions in their local area, including the demand for low-skill workers. *Id.* at xiv.

Among the most in-depth studies on the men and women affected by the time limit comes from the Work Experience Program in Franklin County, Ohio, a partnership between the Ohio Association of Foodbanks and the Franklin County Department of Job and Family Services.⁵⁴ Data from the assessments of affected recipients in the 2015 Ohio study showed a group of men and women who face a combination of barriers to work, with low levels of education and training and high incidences of health problems. Many in this group have no high

⁵² U.S. Dep’t of Agric., “Characteristics of Childless Unemployed Adult and Legal Immigrant Food Stamp Participants: Fiscal Year 1995” (Feb. 13, 1997).

⁵³ See also John L. Czajka, et al., “Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Participation,” Vol. I (Sept. 2, 2001) at xix (finding that ABAWDs were a mere 2.5 percent of FSP participants, and many of them faced “significant barriers to both work and participation in qualifying work activities.”).

⁵⁴ See Franklin County Dep’t of Job & Family Servs. & Ohio Ass’n of Foodbanks, *A Comprehensive Assessment of Able-Bodied Adults Without Dependents and Their Participation in the Work Experience Program in Franklin County, Ohio: Report 2015*, <http://ohiofoodbanks.org/wep/WEP-2013-2015-report.pdf>

school diploma or GED, and very few have college degrees. Many of these affected individuals have mental or physical limitations that make gaining and maintaining work difficult but did not meet the high threshold for disability benefits. More than a third of affected individuals have felony convictions or gaps in employment records, which deter employers and make it difficult to pass background checks. Individuals in this group also have undiagnosed intellectual disabilities, have only short-term housing or are experiencing homelessness, lack access to reliable public or private transportation, and are responsible for caring for another person, like a parent or other relative. All of these factors weigh in favor of maintaining the status quo, as States are in the best position to assess whether jobs are available for their ABAWD populations.

As the Department noted in 1998, the ability of this population to secure stable employment depends on the local labor market and the availability of jobs for workers with limited education and work histories. The Department cites no evidence showing that this has changed. Instead of relying on the evidence, the Department repeatedly reiterates its reliance on the low *nationwide* unemployment rate in issuing the proposed rule. 84 Fed. Reg. 981. The nationwide unemployment rate is an unreliable indicator of local availability of jobs for the ABAWD population. The FNA and the Department’s guidance have long recognized that States are in the best position to assess the local labor market conditions, and the need for flexibility to waive the time limit for ABAWDs within their borders, either by way of a waiver request or the use of exemptions. But the Proposed Rule expressly seeks to remove this flexibility that Congress provided without any supporting evidence of a need for change. Rather than “restoring the dignity of work” for this population, the Proposed Rule will simply lead to more hungry poor people who still cannot secure stable employment in the local labor market where they reside.

Moreover, recognizing that there is limited evidence about the effectiveness of work requirements for SNAP, Congress authorized substantial funding for pilot projects to study the best ways to secure employment for SNAP participants, and increase their incomes and self-sufficiency.⁵⁵ It would undermine the intent of Congress, and simply waste hundreds of millions of taxpayer dollars for the Department to implement a rule that tightens work requirements for more than three-quarters of a million people before the results of the pilot projects are reported to Congress in 2021.

D. The Department Failed to Consider the Costs of Drastically Slashing SNAP Benefits for the ABAWD Population.

Because the Department failed to adequately consider the costs of its Proposed Rule, the agency’s action is arbitrary and capricious. To the extent that the USDA conducted any assessment of the burden of the Proposed Rule, the agency found that there would not be “any new costs,” but rather, the Proposed Rule would result in “a reduction of burden hours since State agencies are no longer able to group areas together for waiver approval.” 84 Fed. Reg. 990. The USDA has estimated that the Proposed Rule would result in a collective savings of \$12,092 for State agencies. *Id.* However, the Department fails to account for the harms to the States’ economies or the burden on State agencies that must implement the time limit. As demonstrated

⁵⁵ Agricultural Act of 2014, Pub. L. No. 113-79, § 4022, 128 Stat. 805 (2014) (allocating up to \$200 million for pilot studies of effectiveness of work requirements).

below, the Proposed Rule would have significant costs that were not considered by the Department.

The Proposed Rule fails to account for the harm to the local and national economies that will occur when unemployed ABAWDs are subject to the time limit and are no longer eligible for SNAP benefits. SNAP is a highly efficient program that produces benefits to businesses and to individuals who do not participate in the program. Because SNAP benefits are provided to low-income individuals with immediate spending needs, SNAP boosts local economies by increasing consumer demand, injecting money directly into the economy, creating jobs, and supporting national and local retailers and the food industry generally.⁵⁶ During strong economic times, \$1 in redeemed SNAP benefits means more than \$1.20 in the local economy.⁵⁷ During a recession, \$1 in redeemed SNAP benefits generates more than \$1.70 in economic activity.⁵⁸

SNAP generates revenue for grocery stores both large and small. SNAP expenditures make up about 10 percent of all grocery expenditures nationwide,⁵⁹ and an even higher percentage in low-income areas where SNAP benefits are used for a greater portion of sales.⁶⁰ SNAP helps many food retailers operating on thin margins to remain in business, which improves food access for all residents. SNAP also creates jobs in rural areas and small towns, where it created and bolstered about 567,000 jobs in 2017, including almost 50,000 in agriculture.⁶¹ Non-grocery businesses also receive a boost from SNAP expenditures because individuals who use SNAP to purchase food then have greater purchasing power to buy other types of goods as well.⁶² This greater purchasing power also benefits State governments, which

⁵⁶ See generally Mark M. Zandi, *Assessing the Macro Economic Impact of Fiscal Stimulus 2008*, (Jan. 2008) <https://www.economy.com/markzandi/documents/Stimulus-Impact-2008.pdf>; Kenneth Hanson, “The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP,” U.S. Dep’t of Agric. (Oct. 2010), https://www.ers.usda.gov/webdocs/publications/44748/7996_err103_1_.pdf?v=41056; “The Benefits of Increasing the Supplemental Nutrition Assistance Program Participation in Your State,” U.S. Dep’t of Agric. (Dec. 2011), https://www.fns.usda.gov/sites/default/files/bc_facts.pdf; “Chart Book: SNAP Helps Struggling Families Put Food on the Table,” Center on Budget and Policy Priorities, (Mar. 2017), <https://www.cbpp.org/research/food-assistance/chart-book-snap-helps-struggling-families-put-food-on-the-table#part8>.

⁵⁷ Alan S. Blinder & Mark Zandi, “The Financial Crisis: Lessons for the Next One,” Center for Budget and Policy Priorities (Oct. 15, 2015), <https://www.cbpp.org/research/economy/the-financial-crisis-lessons-for-the-next-one>.

⁵⁸ *Id.* (showing that at the height of the last recession, in 2009, \$50 billion in SNAP benefits translated into \$85 billion in local economies); Kenneth Hanson, “The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP: Executive Summary,” U.S. Dep’t of Agric., Economic Research Serv. (Oct. 2010), https://www.ers.usda.gov/webdocs/publications/44748/8003_err103_reportsummary_1_.pdf?v=0 (finding that an additional \$1 billion in SNAP expenditures was estimated to increase economic activity (GDP) by \$1.79 billion. “In other words, every \$5 in new SNAP benefits generates as much as \$9 of economic activity.”).

⁵⁹ Elizabeth Wolkomir, “SNAP Boosts Retailers and Local Economies,” Center on Budget and Policy Priorities (Apr. 6, 2018), <https://www.cbpp.org/research/food-assistance/snap-boosts-retailers-and-local-economies>.

⁶⁰ Sarah Reinhardt, “SNAP is a Boon to Urban and Rural Economies—and Small-Town Stores May Not Survive Cuts.” Union of Concerned Scientists (May 14, 2018), <https://blog.ucsusa.org/sarah-reinhardt/snap-is-a-boon-to-urban-and-rural-economies-and-small-town-stores-may-not-survive-cuts>.

⁶¹ *Id.*

⁶² Wolkmoir, *supra* n.59.

see increased revenue from additional sales tax when more people are eligible for SNAP benefits.⁶³

The Proposed Rule threatens to harm the economy by terminating SNAP benefits for people who currently live in waived areas or who receive one of the “15-percent” exemptions. By the Administration’s own calculations, the Proposed Rule would take food away from at least 755,000 low-income Americans, resulting in a loss of at least \$15 billion in SNAP benefits over 10 years. As the Department itself notes, though, the number of individuals who stand to lose benefits under the Proposed Rule could be more than 850,000.⁶⁴ These cuts will have negative ripple effects throughout the nation’s economy, and will be particularly harmful should the economy enter a recession, as many economists predict will occur in the next two years.⁶⁵ Historically, SNAP has helped to shorten recessions and dampen the effects of an economic downturn. Carryover exemptions, in particular, permit States to accumulate exemptions when the economy is strong, and provide them with flexibility to extend SNAP benefits when there is a sudden economic downturn. Without the mitigating effects of SNAP benefits for ABAWDs who reside in waived areas or are eligible for an exemption, the impact of the next recession will escalate. In addition to inhibiting States’ ability to rapidly respond to changing economic conditions with waivers and exemptions from the ABAWD time limit, the Proposed Rule’s impact on the economy will affect all job seekers.

The substantial diminution in States’ ability to seek waivers would also impose a heavy burden on States to find alternatives for nutrition. Without the flexibility permitted through the exemptions, States would find themselves in a difficult position when dealing with sudden economic downturns in a particular area or the loss of a certain industry. States’ medical, disability, and other systems will be further burdened when individuals who lose SNAP benefits due to the Proposed Rule are malnourished.⁶⁶ The Proposed Rule completely fails to account for these harms, and is thus arbitrary and capricious, in violation of the APA.

IV. The Proposed Rule Would Disproportionately Burden People of Color with No Justification.

The Proposed Rule is also arbitrary and capricious because the Department acknowledges that the changes would bear most heavily on protected classes – including racial minorities – with no justification. The USDA notes that while the proposed changes “have the potential for

⁶³ Scott Graves, “State Policymakers Could Be On the Verge of Boosting Basic Supports for Low-Income Seniors and People with Disabilities,” California Budget and Policy Center (May 23, 2018), <https://calbudgetcenter.org/blog/state-policymakers-could-be-on-the-verge-of-boosting-basic-support-for-low-income-seniors-and-people-with-disabilities/> (finding that a proposal to expand SNAP eligibility in California could boost the state’s revenue with \$3.5 million in additional sales tax).

⁶⁴ *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, Regulatory Impact Analysis* at 26, <https://www.regulations.gov/contentStreamer?documentId=FNS-2018-0004-6000&contentType=pdf>.

⁶⁵ See Taylor Telford, “Majority of economists think the U.S. will enter a recession by 2021, survey finds,” WASH. POST (Feb. 25, 2019), <https://www.washingtonpost.com/business/2019/02/25/most-economists-predict-us-recession-by-survey-finds/>.

⁶⁶ See, e.g., Berkowitz S., Seligman H, Rigdon J., et al., “Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults,” *JAMA INTERNAL MEDICINE* (2017; 177(11):1642-49)

disparately impacting certain protected groups due to factors affecting rates of employment of these groups, [it] find[s] that implementation of mitigation strategies and monitoring by the Civil Rights Division of FNS will lessen these impacts.” 84 Fed. Reg. 990. However, the USDA sheds no light on the mitigation strategies and monitoring that it will use. *See Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 932 (D.C. Cir. 2017) (agencies must “adequately analyze . . . the consequences” of their actions). Furthermore, given the deep-rooted employment issues already faced by protected groups, no mitigation strategy can adequately alleviate the greater likelihood of food insecurity and poverty that stricter time limit waiver requirements will have on protected classes.

Current employment statistics already underscore the disproportionate employment opportunities available to protected groups, especially racial minority groups. For example, the national unemployment rate in the first quarter of 2018 was 7.2 percent for Black or African American workers and 5.1 percent for Hispanic workers, compared to 3.4 percent for white workers.⁶⁷ In fourteen States and the District of Columbia, the unemployment rate for African Americans was more than double the unemployment rate for white workers.⁶⁸

Discriminatory hiring practices impede these individuals from being able to find adequate employment to fulfill the work requirement.⁶⁹ For those individuals who can find work, they are disproportionately forced into part-time work. A report from the Economic Policy Institute found that Hispanic and Black workers “are relatively much more likely to be involuntarily part-time (6.8 percent and 6.3 percent, respectively) than white workers, of whom just 3.7 percent work part time involuntarily.”⁷⁰ Hispanic and Black workers also represent a disproportionate amount of involuntary part-time workers, constituting 41.1 percent of all involuntary part-time workers.⁷¹ The greater amount of involuntary part-time employment among Black and Hispanic workers is due to their both having a greater inability to find full-time work and facing more work conditions where hours are variable and can be reduced without notice.⁷²

In addition, the unemployment rate as calculated by BLS in the monthly employment situation report fails to account for other measures of under-employment by Black and Hispanic workers as compared to white workers, such as workers who have searched for work in the past year but not in the past four weeks (known as “marginally attached” to the labor force) According to BLS data, Black workers “made up 13 percent of the civilian labor force, but 22 percent of people marginally attached to the labor force,”⁷³ whereas white workers represented

⁶⁷ Janelle Jones, “In 14 states and DC, the African American unemployment rate is at least twice the white unemployment rate,” ECONOMIC POLICY INST., (May 17, 2018) <https://www.epi.org/publication/state-race-unemployment-2018q1/>.

⁶⁸ *Id.*

⁶⁹ *See* Lincoln Quillian, et al. “Hiring Discrimination Against Black Americans Hasn’t Declined in 25 Years.” HARVARD BUS. REV. (Oct. 11, 2017), <https://hbr.org/2017/10/hiring-discrimination-against-blackamericans-hasnt-declined-in-25-years> (discussing a study that found that “[s]ince 1990 white applicants received, on average, 36% more callbacks than black applicants and 24% more callbacks than Latino applicants with identical résumés”).

⁷⁰ Lonnie Golden, “Still Falling Short on Hours and Pay,” ECONOMIC POLICY INST. (Dec. 2016), <http://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/>.

⁷¹ *Id.*

⁷² *Id.*

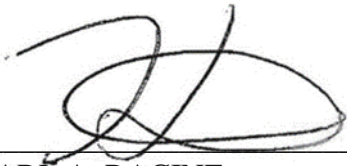
⁷³ Bureau of Labor Statistics, “Labor force characteristics by race and ethnicity, 2017,” (Aug. 2018)

“78 percent of the labor force versus 67 percent of the marginally attached.”⁷⁴ The exclusion of marginally attached workers, involuntary part-time workers, and other data points from the unemployment rate suggests that the proposed core standard for determining lack of sufficient jobs—unemployment data—disproportionately impacts protected classes. Waivers should not be determined predominantly by the unemployment rate.

V. Conclusion

We urge you to reconsider the Proposed Rule as it is plainly contrary to the law and the intent of Congress. Moreover, the Department does not present any facts that justify the need to dramatically decrease ABAWD SNAP participants; rather available evidence suggests the contrary. At no point does the Department demonstrate that it considered the multitude of costs and harms this rulemaking would have on the States or protected groups. To the contrary, the evidence presented in the rule itself militates against its adoption. For all of the above reasons, we urge the Department to withdraw the Proposed Rule in its entirety.

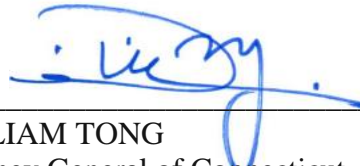
Sincerely,



KARL A. RACINE
Attorney General for the District of Columbia



XAVIER BECERRA
Attorney General of California



WILLIAM TONG
Attorney General of Connecticut



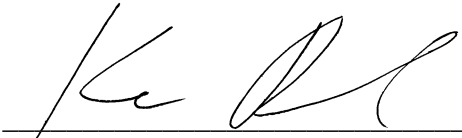
LEEVIN TAITANO CAMACHO
Attorney General of Guam



CLARE E. CONNORS
Attorney General of Hawaii

<https://www.bls.gov/opub/reports/race-and-ethnicity/2017/home.htm>.

⁷⁴ *Id.*



KWAME RAOUL
Attorney General of Illinois



TOM MILLER
Attorney General of Iowa



ANDY BESHEAR
Attorney General of Kentucky



BRIAN E. FROSH
Attorney General of Maryland



MAURA HEALY
Attorney General of Massachusetts



DANA NESSEL
Attorney General of Michigan



KEITH ELLISON
Attorney General of Minnesota



AARON D. FORD
Attorney General of Nevada



GURBIR S. GREWAL
Attorney General of New Jersey



HECTOR BALDERAS
Attorney General of New Mexico



LETITIA JAMES
Attorney General of New York




ELLEN ROSENBLUM
Attorney General of Oregon



JOSH SHAPIRO
Attorney General of Pennsylvania



PETER F. NERONHA
Attorney General of Rhode Island



THOMAS J. DONOVAN, JR.
Attorney General of Vermont



BOB FERGUSON
Attorney General of Washington