

**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, STATE 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 EDWARD BOLEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

1. I am over the age of eighteen (18) years, competent to testify to the matters contained herein, and testify based on my personal knowledge and information.
2. I am a Senior Policy Analyst with the Center on Budget and Policy Priorities (CBPP). In this position, I focus on state and federal issues in the Supplemental Nutrition Assistance Program (SNAP), including SNAP Employment & Training (E&T) and waivers for able-bodied adults without dependents (ABAWDs). I have provided trainings to multiple states regarding their loss of waivers and have worked with advocates and state officials concerning issues in implementing ABAWD time limits. CBPP is a nonpartisan research and policy institute. We work to protect and strengthen programs that reduce poverty and inequality and increase opportunity for people trying to gain a foothold on the economic ladder. Federal

nutrition programs, including SNAP, are a core component of our organization's work. We have deep expertise on SNAP time limit policy, including waivers and individual exemptions. I base the analysis and estimates in this declaration on my work and the work of my colleagues at the Center.

3. I am aware that the federal government recently issued a final rule, "Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents," 84 Fed. Reg. 66,782 ("the rule"). I have reviewed the rule and am aware of its direct implications for the administration of SNAP, formerly known as the Food Stamp Program, within the states. I understand that this lawsuit challenges the rule.

4. Unemployed childless adults aged 18-49 not living with children are generally restricted to three months of SNAP benefits when they are not employed or in a training program for at least 20 hours per week. The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) has severely restricted the ability of states to waive this rule when unemployment is high or the state can document insufficient jobs for this population. SNAP recipients' benefits are generally cut off after three months irrespective of whether they are searching diligently for a job or willing to participate in a qualifying work or job training program.

I. The Final Rule Will Result in the Loss of SNAP Benefits for an Estimated 688,000 Low-Income Americans

5. Under USDA's final rule, the number of areas eligible for waivers would be dramatically reduced. Applying the criteria in the rule to the areas waived in 2018 yields the following results:

- Of the 985 counties (or county equivalents) waived in 2018, 639 counties (65 percent) in 28 states would have lost their waivers.
- Of the 309 towns waived in 2018, 285 towns (92 percent) would have lost their waivers.
- Of the 273 reservations waived in 2018, 170 reservations (62 percent) would have lost their waivers.¹

6. Under the final rule, I estimate that the share of the U.S. population living in waived areas would have declined by over 80 percent in 2018, from 36 percent to 6.1 percent. The rule will therefore dramatically reduce states' ability to waive areas from the time limit. As a result, an estimated 688,000 low-income Americans will lose their SNAP benefits after the rule is implemented.

7. The rule cuts SNAP benefits by approximately \$1.3 billion in 2021 and \$5.5 billion over the five years 2020-2024. This is a 1.8 percent reduction in federal SNAP benefit

¹ Based on CBPP internal analysis of unemployment data from the U.S. Bureau of Labor Statistics and the U.S. Census Bureau. The list of areas is included in Appendix B as "CBPP Summary of Areas That Would Have Lost Their Waivers from the SNAP Three-Month Time Limit in 2018 if the Proposed Rule Were Implemented in 2018."

spending over those five years. The spending reduction is achieved by cutting benefits for low-income childless adults, which will significantly weaken their food purchasing power. SNAP-authorized retailers will also see lower redemptions.

II. The Loss of Benefits Will Be Sudden for Most Affected ABAWDs

8. States that have ended waivers and reimposed the time limit have seen significant drops in SNAP participation after three months. That is because most individuals are unable to find work. Once an individual subject to the time limit receives three months of benefits and is unable to find a job, they are terminated from SNAP.

9. In 2013 Kansas and Oklahoma reimposed the time limit after several years of statewide waivers. Beginning three months after the time limit took effect, these states' caseloads dropped significantly. While caseloads had been slowly declining (as is typical when unemployment falls) even before reimposition of the time limit, the drop accelerated substantially three months after the time limit returned, when ABAWDs subject to the time limit who could not find jobs had received three months of benefits. These states did not offer workfare or job training slots to all non-disabled childless adults at risk of losing benefits.

10. I anticipate that most ABAWDs in areas that are currently waived but that fail to qualify under the new rules will lose benefits three months after the rule takes effect. For example, Kansas reimposed the time limit in October 2013, with the first childless adults losing eligibility in January 2014. The caseload decline expected due to the improving economy — about 3,000 to 4,000 participants per month — suddenly accelerated in January to about 15,000 individuals. That month was the fourth month after the waiver ended and ABAWDs who had been unable to find sufficient work would have exceeded their three-month limit. Subsequent months saw the caseload decline slow dramatically.

III. Individuals Subject to the Time Limit Are Poor and Face Higher Unemployment Than the General Unemployment Rate

11. ABAWDs that participate in SNAP tend to have very low incomes. While participating in SNAP, childless adults have average incomes of 33 percent of the poverty line — the equivalent of about \$4,000 per year for a single person in 2019. With extremely limited financial resources, these individuals rely on SNAP to purchase food.

12. Many of the ABAWDs subject to the time limit struggle to find employment even in normal economic times. They work in occupations like the service and retail sales fields, where underemployment, high job turnover, gaps in work, and higher unemployment rates are common. In addition, ABAWDs are more likely to face barriers to employment such as a physical or mental condition that affects their ability to work, housing instability, or lack of transportation.

13. States utilize waivers in part because they recognize that the general unemployment rate is a broad metric that masks differences in the labor market outcomes experienced by different groups. Some groups, such as African American workers, individuals

with no more than a high school education, and people living in rural areas, have consistently higher unemployment.

14. The Great Recession also demonstrated that less-advantaged groups fared more poorly in a downturn, losing more jobs and recovering more slowly. Employment opportunities for some groups remained scarce even after the recession. In 2017, for example, the number of jobs in rural areas was still below pre-recession levels.²

15. Many ABAWDs face barriers to employment due to lack of education. About a quarter of childless adults on SNAP have less than a high school education, and half have at most a high school diploma or GED.³ ABAWDs are more likely than other SNAP participants to lack basic job skills like reading, writing, and basic mathematics, according to the Government Accountability Office (GAO).⁴ Research shows that adults with less education have higher unemployment rates. Compared to workers with a bachelor's degree, for example, the unemployment rate in 2018 was twice as high for workers with no more than a high school education and two and a half times higher for workers with less than a high school education.⁵

16. FNS has long recognized that waivers are particularly important in some rural areas because residents are less likely to be employed, due to factors such as out-migration of younger workers, the aging of the remaining workforce, and declining infrastructure and investment. Beginning in the 1970s, the share of men with less than a high school education who are employed has declined more in rural areas than in urban areas. By 2016, only about 50 percent of these men with lower educational attainment were employed, about 15 percentage points lower than their counterparts in urban areas.⁶ While employment fell in both urban and rural areas from 2007 to 2010, urban areas recovered more quickly. Annual average job growth between 2010 and 2017 was about 1.8 percent in urban areas, compared to about 0.5 percent in rural areas. In 2017, average rural employment was 2 percent below its 2007 peak, while metro employment was over 7 percent above 2007 levels.⁷

² U.S. Department of Agriculture, "Rural America at a Glance: 2017 Edition," November 2017, <https://www.ers.usda.gov/webdocs/publications/85740/eib-182.pdf?v=43054>.

³ Steven Carlson, Dorothy Rosenbaum, and Brynne Keith-Jennings, "Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?" Center on Budget and Policy Priorities, February 8, 2016, <http://www.cbpp.org/research/food-assistance/who-are-the-low-income-childless-adults-facing-the-loss-of-snap-in-2016>.

⁴ "Food Stamp Employment and Training Program," United States General Accounting Office (GAO-3-388), March 2003, p. 17.

⁵ "Employment Status of the Civilian Population 25 Years and Over by Educational Attainment," Bureau of Labor Statistics, revised February 1, 2019, <https://www.bls.gov/news.release/empsit.t04.htm>.

⁶ James Ziliak, "Restoring Economic Opportunity for 'The People Left Behind': Employment Strategies for Rural America," Aspen Institute, revised 2019. <https://www.aspeninstitute.org/longform/expanding-economic-opportunity-for-more-americans/restoring-economic-opportunity-for-the-people-left-behind-employment-strategies-for-rural-america/>.

⁷ See U.S. Department of Agriculture, Economic Research Service, September 23, 2019, <https://www.ers.usda.gov/topics/rural-economy-population/employment-education/rural-employment-and-unemployment/>.

17. While adults may be exempt from the time limit if they are “medically certified as physically or mentally unfit for employment,”⁸ evidence suggests that many childless adult non-elderly SNAP participants have health conditions that serve as a barrier to employment but who are not determined to be exempt. These adults may not fit the state’s definition of “unfit for work,” may not be properly identified as exempt by the SNAP agency, or may struggle to understand the rules or document their condition in order to obtain an exemption.

18. Survey data indicate that among SNAP participants aged 18-49 who do not receive disability benefits, or have children in their household, about one-fifth report a health problem or disability that prevents them from working or limits the type of work they can do, report leaving their job or the labor force due to disability, or report not having worked in the last year due to disability.⁹ FNS itself reported that state caseworkers found multiple barriers to employment among individuals subject to the time limit as they worked to implement the 1996 welfare law’s time limits and work requirements. The most frequently cited barriers included medical or mental health issues or substance use disorders such as opioid addiction.¹⁰ These individuals risk losing SNAP under the rule.

19. A detailed study of ABAWDs who were subject to the time limit and were referred to a work experience program in Franklin County (Columbus), Ohio found that one-third reported that a mental or physical limitation affected their ability to work, including depression, post-traumatic stress disorder, mental or learning disabilities, or physical injuries.¹¹ A more recent study of participants in SNAP’s E&T program, which includes many childless adults aged 18-49, found that about 30 percent identified health issues as a barrier to employment.¹²

20. Research shows that adults with disabilities and other health issues tend to have higher unemployment rates and fewer employment opportunities. In 2018, the employment-population ratio (the proportion of the population that is employed) for people with a disability was just 19 percent, compared to 66 percent for people without a disability. The unemployment rate was more than twice as high for working-age adults with a disability as for working-age adults without a disability (8.7 percent versus 3.8 percent).¹³ Since 2008, the Bureau of Labor Statistics (BLS) has tracked unemployment among those who self-report as disabled, many of whom have incomes low enough to be eligible for SNAP and may not be found exempt from the time limit. In months when the unemployment rate averaged 7 percent, the disabled rate was 13 percent.¹⁴

⁸ 7 C.F.R. § 273.24(c)(2)

⁹ CBPP analysis of the March 2018 Current Population Survey.

¹⁰ John L. Czajka *et al.*, “Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation, Volume I,” U.S. Department of Agriculture, Food and Nutrition Service, September 2001, <https://fns-prod.azureedge.net/sites/default/files/abawd.pdf>.

¹¹ “A Comprehensive Assessment of Able-Bodied Adults Without Dependents and Their Participation in the Work Experience Program in Franklin County, Ohio,” Ohio Association of Foodbanks, revised 2015, <http://ohiofoodbanks.org/wep/WEP-2013-2015-report.pdf>.

¹² Gretchen Rowe, Elizabeth Brown, and Brian Estes, “SNAP Employment and Training (E&T) Characteristics Study: Final Report,” United States Department of Agriculture, Food and Nutrition Service, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPEandTCharacteristics.pdf>.

¹³ See <https://www.bls.gov/news.release/disabl.nr0.htm>.

¹⁴ CBPP analysis of BLS data, 2008-2018.

21. Several studies have documented that many childless adult SNAP participants lack access to stable housing and some experience homelessness. A USDA research report looking at individuals first subject to the time limit found that homelessness was among the barriers that case managers reported.¹⁵ A GAO study of E&T programs for childless adults also found that case managers reported housing difficulties as a barrier to work; for example, Colorado officials estimated that about 40 percent of their E&T participants experienced homelessness.¹⁶ Similarly, a more recent USDA study of E&T providers found that over two-fifths identified lack of stable housing as a barrier for at least a quarter of program participants, which include many adults targeted by the time limit.¹⁷

22. Many ABAWDs face difficulty in maintaining employment due to lack of transportation. The number of jobs within a typical commuting distance in major metro areas fell by 7 percent between 2000 and 2012. The losses were steeper for Latino and African American residents, for whom the number of jobs within a typical commuting distance fell by 17 and 14 percent respectively, and for residents with incomes below the poverty line, for whom the decline was 17 percent (compared to 6 percent for non-poor residents). The majority of Census tracts with high poverty rates or a majority of residents of color experienced losses in accessible jobs.¹⁸

IV. Over Two-Fifths of Childless Adult SNAP Participants Aged 18-49 Are African American or Latino — Groups Facing Higher Unemployment and More Employment Discrimination

23. Over 25 percent of childless adult SNAP participants targeted by the time limit are African American and approximately 20 percent are Latino.¹⁹ These groups, particularly African Americans, also have higher unemployment rates than white Americans and are more affected by recessions.

24. Black and Latino workers generally have higher unemployment rates than white Americans. According to BLS data, for example, the unemployment rate in the fourth quarter of 2018 was 3.2 percent for white workers but 4.3 percent for Latino workers and 6.1 percent for African American workers.²⁰ In fact, for about the past four decades, unemployment rates among

¹⁵ John L. Czajka *et al.*, "Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation, Volume I," U.S. Department of Agriculture, Food and Nutrition Service, September 2001. <https://fns-prod.azureedge.net/sites/default/files/abawd.pdf>.

¹⁶ "Food Stamp Employment and Training Program," United States General Accounting Office, revised March 2003, <https://www.gao.gov/assets/240/237571.pdf>.

¹⁷ Gretchen Rowe, Elizabeth Brown, and Brian Estes, "SNAP Employment and Training (E&T) Characteristics Study: Final Report," United States Department of Agriculture, Food and Nutrition Service, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPEandTCharacteristics.pdf>.

¹⁸ Elizabeth Kneebone and Natalie Holmes, "The Growing Distance Between People and Jobs in Metropolitan America," Metropolitan Policy Program at Brookings, March 2015, pp. 1-24, <https://www.brookings.edu/research/the-growing-distance-between-people-and-jobs-in-metropolitan-america/>.

¹⁹ CBPP analysis of FY 2017 USDA Household Characteristics data, the March 2018 Current Population Survey, and 2017 American Community Survey (ACS) one-year estimates.

²⁰ "Table E-16. Unemployment Rates by age, sex, race, and Hispanic or Latino ethnicity," Bureau of Labor Statistics, revised January 4, 2019, https://www.bls.gov/web/empsit/cpsee_e16.htm.

black workers have been about double those of white workers.²¹ This relationship is true even when comparing unemployment rates for those with similar education levels. Among workers with less than a high school education in 2018, the unemployment rate for African Americans was 10.4 percent, more than double the 5.1 percent rate for whites. Similarly, among high school graduates in 2018, African Americans' unemployment rate of 6.7 percent was nearly double whites' 3.5 percent rate.²²

25. Using national BLS data, there were 106 months since 1972 when the overall unemployment rate was between 6.5 percent and 7.5 percent. The average rate was 7.1 percent, about the threshold for a waiver under the new rule. But unemployment for African American and Latino workers was a much higher: 13.9 percent and 10.2 percent, respectively. White unemployment was 6.2 percent.

V. USDA Research Shows That the Loss of SNAP Due to the Time Limit Fails to Raise Income and Increases Hardship

26. USDA research has found that childless adults struggle after losing SNAP benefits. After the three-month time limit was enacted in 1996, USDA's Economic Research Service (ERS) joined with the U.S. Department of Health and Human Services to fund studies in four states (Arizona, Illinois, Iowa, and South Carolina) that examined the well-being of people who exited SNAP in the late 1990s after the time limit went into effect.²³ The studies included people who had left SNAP because of the three-month limit or for other reasons, for example, because they found a job or mistakenly believed they were no longer eligible. Even though the studies were not able to isolate the individuals who left SNAP *because of* the time limit, their findings regarding the hardship such individuals face suggest that the time limit has not spurred many to self-sufficiency, contrary to the stated rationale behind the rule.

- **Many were employed but had very low earnings.** Employment rates among SNAP “leavers” who were unemployed childless adults and thus potentially subject to the time limit ranged from 41 percent in Illinois to 76 percent in Iowa, “but earnings and incomes are low and their poverty rates are high.”²⁴
- **Most remain poor.** Regardless of work effort, between one-third and two-thirds of SNAP leavers had household incomes below the poverty line — well above the

²¹ Valerie Wilson, “Before the State of the Union, a fact check on black unemployment,” Economic Policy Institute, February 2019, pp. 1-4. <https://www.epi.org/blog/before-the-state-of-the-union-a-fact-check-on-black-unemployment/>.

²² “Labor Force Statistics from the Current Population Survey, Table 7. Employment status of the civilian noninstitutional population 25 years and over by educational attainment, sex, race, and Hispanic or Latino ethnicity,” Bureau of Labor Statistics, revised January 18, 2019, <https://www.bls.gov/cps/cpsaat07.htm>.

²³ Elizabeth Dagata, “Assessing the Self-Sufficiency of Food Stamp Leavers,” Economic Research Service, USDA, September 2002, <https://www.ers.usda.gov/publications/pub-details/?pubid=46645>, a summary of in-depth studies in Arizona, Illinois, Iowa, and South Carolina. See also individual reports for Iowa (https://lib.dr.iastate.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1013&context=card_staffreports), Illinois (<https://www.mathematica-mpr.com/our-publications-and-findings/publications/food-stamp-leavers-in-illinois-how-are-they-doing-two-years-later>), and South Carolina (<https://naldc.nal.usda.gov/download/45220/PDF>).

²⁴ Dagata, p. 2.

overall poverty rate of 13 percent at the time. Many of these households experienced severe poverty after leaving SNAP; about 40 percent of the Illinois and Iowa SNAP leavers had incomes below *half* of the poverty line.

- **Many had housing problems or had trouble paying their utility bills.** About 20 to 40 percent of SNAP leavers faced housing issues, including falling behind on the rent, moving in with relatives, or becoming homeless. Between 20 and 65 percent reported problems paying for utilities. These are all characteristics associated with much higher rates of unemployment.
- **Many struggled to afford adequate food.** Between 17 and 34 percent of the SNAP leavers reported very low food security — meaning they had to skip or reduce the size of their meals or otherwise disrupt their eating patterns at times during the year because they couldn't afford enough food — compared with 3 percent of all households without children.²⁵ The Arizona study found that the incidence of moderate or severe hunger was greatest among the ABAWD subgroup, at 34 percent, compared to 3.5 percent of all Arizona households. The Arizona study concluded by pointing out that individuals who might appear to be self-sufficient or better off after leaving SNAP, because they receive fewer public benefits and report less private support, might still be facing significant hardship:

“The high rate of food insecurity with hunger found among ABAWD exiters — 34 percent — is noteworthy. This incidence is more than twice the 1999 national rate of 14 percent estimated by USDA for households at or below 50 percent of the poverty level. The ABAWD finding highlights the importance of considering whether exiters who appear self-sufficient, in terms of their reduced reliance on public and private support, are able to avoid hardship and deprivation.”²⁶

This cautionary note is not acknowledged in the rule.

27. The studies also raise an important question about whether individuals with physical or mental health conditions were properly exempted from the time limit. “In two of the studies, the majority of nonworking [SNAP leavers] cited health problems as the reason they were not working. . . . [I]t is important to know whether the standards for being categorized as ‘able bodied’ are set appropriately.”²⁷

28. Research on work requirements in Medicaid shows that they do not help people find jobs. Arkansas imposed a 80 hour per month work reporting requirement that is similar to the SNAP rule. Only a small minority of those who lost coverage due to this requirement found jobs, state data show, many of whom would likely have found jobs anyway.²⁸ A study by Harvard researchers found no significant rise in employment, hours worked, or overall rates of community engagement activities among those subject to the work requirement — but it did find

²⁵ Dagata, p. 4. Food insecurity “with hunger” was how USDA then referred to the most severe form of food insecurity, where households had to skip or reduce the size of their meals or otherwise disrupt their eating patterns at times during the year because they couldn't afford sufficient food.

²⁶ Gregory Mills and Robert Kornfeld, “Study of Arizona Adults Leaving the Food Stamp Program, Final Report,” Dec. 2000, p. 94, <https://naldc.nal.usda.gov/download/45673/PDF>.

²⁷ Dagata, p. 5.

²⁸ See <https://www.cbpp.org/blog/new-arkansas-data-contradict-claims-that-most-who-lost-medicaid-found-jobs>.

sharp increases in uninsured rates.²⁹ Because the requirement and the population to which it applies are similar to the SNAP time limit, similar results can be expected in areas no longer eligible for a waiver of the SNAP time limit.

VI. The Final Rule Includes Restrictions Not Part of the Proposed Rule That Result in Some Areas Losing Eligibility for Waivers

29. Under the final rule, states can only request waivers for areas that BLS defines as Labor Market Areas (LMAs). Limiting waivers to LMAs, which are just one way to identify economically integrated areas, fails to reflect the actual employment opportunities available to SNAP participants. Also, because this part of the final rule was not in the proposed rule, some communities severely affected by this change did not have an opportunity to comment on it. For example, numerous areas that were waived in 2019 and would have been eligible in 2019 under the final rule based on their unemployment rates would *not* have been eligible under the final rule because the LMA in which they are located was not eligible. For example:

- The District of Columbia was eligible in 2019, but its LMA, the “Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area,” is not eligible under the final rule. In addition to DC, this LMA contains five counties in Maryland, 17 counties in Virginia, and one county in West Virginia.
- Caddo Parish, Louisiana was eligible in 2019 and has 5 percent of the state’s population, but its LMA, “Shreveport-Bossier City, LA Metropolitan Statistical Area,” is not eligible. This LMA contains four parishes.
- Baltimore, Maryland was eligible in 2019 (it has 10 percent of the state’s population), but its LMA, the “Baltimore-Columbia-Towson, MD Metropolitan Statistical Area,” is not eligible. This LMA contains seven counties.
- Sandoval and Valencia Counties, New Mexico, were eligible in 2019 and have nearly 7 percent and 4 percent of the state’s population, respectively, but their LMA, the “Albuquerque, NM Metropolitan Statistical Area,” is not eligible. This LMA contains four counties.
- Bronx County, New York was eligible in 2019, with 7 percent of the state’s population, but its LMA, the “New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area,” is not eligible. This LMA contains 12 counties in New York, 12 in New Jersey, and one in Pennsylvania.
- Philadelphia, Pennsylvania was eligible in 2019, with 12 percent of the state’s population, but its LMA, the “Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area,” is not eligible. This LMA contains one county in Delaware, one in Maryland, four in New Jersey, and five in Pennsylvania.

²⁹ Benjamin Sommers *et al.*, “Medicaid Work Requirements – Results from the First Year in Arkansas,” *New England Journal of Medicine*, September 12, 2019, <https://www.nejm.org/doi/full/10.1056/NEJMSr1901772>.

30. In addition, the final rule drastically limits SNAP's ability to respond quickly to worsening economic conditions. SNAP historically follows unemployment insurance as the most responsive federal program helping families and communities during economic downturns. The current rule is a key part of that responsiveness because states can qualify for waivers when they qualify for Extended Benefits to Unemployment Insurance (EB). While the proposed rule maintained that criterion, the final rule eliminates it. As a result, the final rule is far worse than the proposed rule and interested parties have had no opportunity to comment on the dramatic impact of this change. As a recession emerges, unemployment rates rise nearly everywhere, but under the final rule, many areas with high unemployment will not have been high enough for long enough to qualify for a waiver based on a 12- or 24-month average. Further, during a recession, areas with high unemployment may not qualify if the unemployment rate is not 20 percent above the national average. Applying the final rule during the Great Recession would have severely limited waivers. Between 2009 and 2013 over 90 percent of areas would have qualified under the proposed rule, while only about 40 percent would have qualified under the final rule. Worse, only 25 percent of counties would have been eligible throughout the recession.³⁰ The elimination of EB as a waiver criterion severely limits the ability of SNAP to mitigate hardship during tough economic times.

VII. States Face an Increased Administrative Burden Stemming from Implementation of the Rule

31. For the past 22 years, states have used the flexibility in grouping substate areas for waiver applications in part to improve efficiency in administering SNAP. States have used their discretion to define areas to help align the geographic scope of waivers with areas where they are unable to provide sufficient work or training opportunities to work registrants, including those subject to the time limit. A state that can only provide SNAP E&T slots in certain counties may request waivers for eligible counties where SNAP E&T slots are not available or guaranteed.

32. States sometimes adjust the regional alignment of programs to reflect changes to the labor force, resources, service delivery, and administrative capacity. Federal agencies may not be aware of these changing circumstances or able to make adjustments in a timely manner.

33. From two decades of experience reviewing state waiver requests, the Department is aware of how states use their existing flexibility to balance multiple priorities, resources, and policies, such as SNAP E&T policies and services, housing and transportation planning, and workforce and economic development strategies. The Department did not provide reasons for ignoring these considerations, making it difficult for the public to comment on the proposed changes.

34. States now face a tight timeframe in which to implement the rule's changes. The rule is scheduled to take effect April 1, 2020, which gives states an inadequate lead time to prepare for such a significant change.

³⁰ Lauren Bauer, Jana Parsons and Jay Shambaugh, "New SNAP Rule Change Just Made It Harder to Combat Future Recessions," The Hamilton Project, Dec. 4, 2019, https://www.hamiltonproject.org/blog/new_snap_rule_just_made_it_harder_to_combat_recession.

35. The USDA Inspector General found that the three-month time limit is complex and error-prone, states have difficulty implementing it, and improper implementation results in eligible ABAWDs losing benefits.³¹ States need to identify individuals newly subject to the time limit, provide adequate notice of the changing rules, screen for exemptions, and coordinate with counties and local agencies. This requires staff training, the reprogramming of computer eligibility and tracking systems, and the distribution of information notices. Indeed, a USDA research report noted that, when the ABAWD time limit went into effect, state officials informed USDA that “the ABAWD provisions were among the most difficult policy changes they ever had to administer,” partly due to the “tracking of the receipt of time-limited benefits.”³²

36. As observed by the Inspector General, states have found the implementation of the time limit to increase errors and require additional resources and additional attention by eligibility workers. More troubling, failing to screen each individual to ensure the time limit is imposed only upon those subject to it will result in individuals losing SNAP benefits despite being eligible.

37. The implementation date does not give E&T providers and community organizations time to prepare for the consequences of terminating benefits for so many destitute individuals.

38. Loss of SNAP benefits can also affect states’ administration of other benefits programs, including Medicaid. The Centers for Medicare and Medicaid Services of the Department of Health and Human Services, the agency that administers Medicaid, requires some alignment between SNAP and Medicaid work requirements. Specifically, states must count enrollment in SNAP as an automatic exemption from Medicaid work requirements since individuals enrolled in SNAP are either exempt from or complying with SNAP work requirements.³³ As a result, the rule’s changes to SNAP waiver and exemption policy would have a ripple effect on some individuals’ Medicaid eligibility and coverage. More people in states with Medicaid work requirements would be subject to those work requirements, and a large number would very likely lose Medicaid coverage. The per-person cost of health coverage often is higher than the monthly SNAP benefit.

39. SNAP helps reduce food insecurity and, in turn, is linked with reduced health care costs. The loss of SNAP under this rule therefore could contribute to increased health care costs for those losing benefits. Studies have found an association between SNAP participation and lower health care expenditures: on average, after controlling for factors expected to affect spending on medical care, low-income adults participating in SNAP incur about \$1,400 (nearly 25 percent) less in medical care costs in a year, including those paid by private or public

³¹ U.S.D.A. Office of Inspector General, “FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents,” Audit Report 27601-0002-31, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

³² Czajka, *supra*, at 141.

³³ CMS, Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries, Jan. 11, 2018, p. 5 (“Individuals enrolled in and compliant with a TANF or SNAP work requirement, as well as individuals exempt from a TANF or SNAP work requirement, must automatically be considered to be complying with the Medicaid work requirements.”), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf>.

insurance, than non-participants, one study found.³⁴ Studies also show that health care costs respond to changes in SNAP benefits. The number and cost of hospital admissions covered by Medicaid, for example, grew more slowly after the 2009 Recovery Act's SNAP benefit increase took effect and then accelerated when those benefits were cut.³⁵

VIII. USDA Did Not Adequately Address Issues Raised by Commenters

40. CBPP submitted a 237-page comment opposing the Proposed Rule on April 1, 2019. The comment extensively discussed the deficiencies of the proposed changes and provided the USDA with many pieces of evidence that undercut the Department's rationale for the proposed changes. The comment letter is attached as Exhibit A.

41. Following the announcement of the pre-publication version of the final rule, CBPP conducted an analysis of the information presented in our comment compared to the response provided by the USDA in the preamble and final rule. We found that the Department failed to address many of our comments, primarily:

- The rule's departure from waiver standards that have remained consistent for 22 years;
- Specific barriers to employment that ABAWDs face that are not captured in the unemployment rate; and
- Studies showing that work requirements in SNAP and other benefits programs do not increase employment.


A chart providing an overview of the comparison of the CBPP comments and the USDA's response is attached as Exhibit B.

³⁴ See, for example, Seth Berkowitz *et al.*, "Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults," *Jama Internal Medicine*, November 2017, <https://europepmc.org/article/MED/28973507>.

³⁵ Rajan A. Sonik, Susan L. Parish SL, Monica Mitra, "Inpatient Medicaid Usage and Expenditure Patterns After Changes in Supplemental Nutrition Assistance Program Benefit Levels," *Preventing Chronic Disease*, October 3, 2018, <https://europepmc.org/article/PMC/6178899>. These results, based on national data on hospital admissions, are consistent with earlier research based on admissions in Massachusetts following the Recovery Act increases. See Rajan A. Sonik, "Massachusetts Inpatient Medicaid Cost Response to Increased Supplemental Nutrition Assistance Program Benefits," *American Journal of Public Health Policy*, March 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4880217/pdf/AJPH.2015.302990.pdf>.

I declare under penalty of perjury that the forgoing is true and correct and of my own personal knowledge.

Executed on January 15, 2020 in Washington, DC.



Edward Bolen
Senior Policy Analyst
Center on Budget and Policy Priorities

**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.

Civ. Action No.

**EXHIBIT A TO DECLARATION OF EDWARD BOLEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

April 1, 2019

Ms. Sasha Gersten-Paal, Chief
Certification Policy Branch
Program Development Division
Food and Nutrition Service
3101 Park Center Drive
Alexandria, VA 22302

Re: Proposed Rule: Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents RIN 0584–AE57

Dear Ms. Gersten-Paal:

We are writing to provide comments on USDA’s Notice of Proposed Rule Making (NPRM) regarding the Supplemental Nutrition Assistance Program’s (SNAP) Requirements and Services for Able-Bodied Adults Without Dependents. The proposed rule would restrict longstanding state flexibility to waive areas from SNAP’s three-month time limit as well as limit states’ ability to exempt certain individuals from the time limit. As a result, USDA estimates that when fully implemented in a typical month some 755,000 individuals would lose food assistance benefits because they could not document an average of 80 hours per month of employment or that they qualify for an exemption. USDA does not provide any evidence to support its assertion that the policy would result in greater employment or earnings. This is likely because such evidence does not exist. Instead, there is an extensive body of research that suggests the very likely outcome of the proposed policy is that more individuals will experience hardship and poverty, including a risk of hunger. Moreover, given available research on work requirements and the labor market, the proposed policy is very likely to have even worse outcomes for African Americans, Native Americans, Latinos, and individuals with disabilities.

The Center on Budget and Policy Priorities is a nonpartisan research and policy institute. We pursue federal and state policies designed both to reduce poverty and inequality and to restore fiscal responsibility in equitable and effective ways. We apply our deep expertise in programs and policies that help low-income people in order to help inform debates and achieve better policy outcomes. We work to protect and strengthen programs that reduce poverty and inequality and increase opportunity for people trying to gain a foothold on the economic ladder. Our work on federal nutrition programs, including SNAP, is a core component of our organization’s work. Our food assistance analyst team includes nine people, including eight analysts and researchers who work on SNAP policy and operations. We have deep expertise on SNAP time limit policy including waivers and individual exemptions. Three members of our team, as well as our organization’s President,

have worked on SNAP for more than two decades, including during the time period when the law governing the time limit was enacted and the current regulations were proposed and codified.

We have deep concerns with the proposed policy and offer extensive comments to support our strong recommendation that USDA withdraw the NPRM and maintain current policy. In addition to causing harm to vulnerable individuals who are in between jobs or underemployed, the proposed policy runs counter to congressional intent. When legislating the time limit policy, Congress established a waiver authority that allows for states to waive the rule for areas with insufficient jobs for individuals subject to the rule. Given that individuals who fall into the group subject to the time limit face extreme difficulty in the labor market, a fact validated by extensive research, the proposed rule would undercut Congressional intent by setting arbitrary limits unrelated to the purpose of the waiver.

The proposed rule is also poorly argued, internally inconsistent, and wildly out of sync with extensive research findings. It offers little, and in some cases, no reasoning or evidence to support such a dramatic change in a longstanding federal policy that would have significant consequences on participants, states and other key stakeholders such as retailers and small business. The Department also provided flawed and contradictory analysis in the NPRM and did not include information available to the agency that would have informed the rulemaking process. USDA's rationale for such a sweeping and harmful change was cursory at best making it almost impossible to comment in a way that is responsive to its thinking. Because USDA did not make its reasoning transparent or provide evidence to support its position, we feel obligated to review and provide years of well-known research and data (some of which USDA funded) that provides evidence counter to USDA's proposed policy. We strongly encourage USDA to review these materials as we are concerned the Department is unaware of the overwhelming evidence that undermines their assertions and poorly formed conclusions in the proposed rule. This has resulted in lengthy comments in which we conclude that the best course of action for the proposed policy and under the rulemaking process would be for USDA to withdraw the NPRM. We strongly urge that course of action.

In this proposed rule, USDA proposed many damaging and ill-advised changes to waivers and individual exemptions from the three-month time limit. The major changes include:

- Mandating that areas must have a minimum of a 7 percent average unemployment rate over a two-year period in order to qualify for a waiver from the time limit;
- Restricting states' flexibility to define the area they wish to waive;
- Eliminating several waiver criteria that have been part of program rules for over 20 years, including a low and declining employment-to-population ratio;
- No longer allowing states to implement waivers that meet USDA's criteria while not requiring that USDA approve waivers in a timely manner;
- Requiring states to seek their governor's written consent; and
- Restricting states' ability to accumulate unused individual exemptions.

Our comments on the proposed regulation fall into several major categories:

Proposed Changes to Waiver Criteria

- Chapter 1: Overview of Waivers from the Three-Month Time Limit —Their Purpose and History
- Chapter 2: FNS Waiver Policy Has Been Consistent for the Last 22 Years
- Chapter 3: Setting a Floor for Waivers for Areas With 20% Above National Unemployment Is Inconsistent with Congressional Intent and Would Be Harmful to Vulnerable Individuals
- Chapter 4: Dropping Several Key Criteria from the Insufficient Jobs Criteria Is Inconsistent with the Statute
- Chapter 5: Restricting State Flexibility on Grouping Areas Is Counter to Evidence
- Chapter 6: Taking Away Food Benefits from Individuals Who Cannot Document 20 Hours a Week of Work Will Not Increase Labor Force Participation for This Population
- Chapter 7: Proposed Rule’s Requirement That State Waiver Requests Have the Governor’s “Endorsement” Violates Congressional Intent
- Chapter 8: Proposed Rule Would Make Implementing Time Limit Harder by Removing Provisions That Give States Certainty Around Approval

Proposed Changes to Individual Exemptions

- Chapter 9: Eliminating the Carryover of Unused Individual Exemptions Would Cause Hardship and Exceeds Agency Authority

Problems with the Proposed Rule Process

- Chapter 10: The Proposed Rule Fails to Provide Sufficient Rationale or Supporting Evidence for the Proposed Policy
- Chapter 11: The Proposed Rule’s “Regulatory Impact Analysis” Highlights FNS’ Faulty Justification and Includes Numerous Unclear or Flawed Assumptions
- Chapter 12: The Proposed Rule Would Disproportionately Impact Individuals Protected by Civil Rights Laws, Violating the Food and Nutrition Act’s Civil Rights Protections
- Chapter 13: The Proposed Rule Fails to Adequately Estimate the Impact on Small Entities

Appendix that includes all cited studies and references

Appendix A: CBPP Bios

Appendix B: Materials Cited in Comments

We strongly urge USDA to withdraw the rule and maintain current policy. If you have any questions regarding our comments, please do not hesitate to contact us.

Sincerely,



Stacy Dean, Vice President
Food Assistance Policy

**Center on Budget and Policy
Priorities Comments on Rin
0584-AE57:**

Supplemental Nutrition Assistance Program:

**Requirements and Services for Able-Bodied
Adults Without Dependents**

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Appendix that includes all cited studies and references

[Appendix A: CBPP Bios](#)

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Note, throughout these comments, we use the terms: Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), and “the Department” somewhat interchangeably. We are not aware of a particular convention and it is not our intent to suggest difference when we use one term vs. the other. In addition, when we refer to “state” or “states” we intend to include counties in their role administering the program in county-administered states.

Chapter 1: Overview of Waivers from the Three-Month Time Limit — Their Purpose and History

The time limit is one of the harshest rules in the Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program). Childless adults on SNAP are extremely poor. Like adults with children, childless adults often turn to SNAP for assistance when they are no longer able to make ends meet, especially as they lose jobs, their hours are cut, or their wages hover at the federal minimum. While participating in SNAP, their income averages 29 percent of the poverty line, the equivalent of about \$3,400 per year for a single person in 2016.¹ The U.S. Department of Agriculture (USDA), which administers SNAP, has established standards that have remained consistent over the last 20 years under which states can request a waiver of the time limit for areas with consistently high unemployment. States request waivers for multiple reasons, including to ease administrative burden, implement more effective work programs, and exempt vulnerable individuals who likely will struggle to find work. The proposed rule would severely weaken this flexibility, increasing administrative burden for states and hardship for SNAP participants who struggle to find work. This chapter describes the history of these waivers, Congressional intent and early implementation of waiver rules, and the reasons why states choose to waive areas in their state.

One of SNAP's harshest rules limits unemployed individuals aged 18 to 50 not living with children to three months of SNAP benefits in any 36-month period when they aren't employed or in a work or training program for at least 20 hours a week.² Under the rule, implemented as part of the 1996 welfare law, states are not obligated to offer affected individuals a work or training program slot, and most do not. SNAP recipients' benefits are generally cut off after three months irrespective of whether they are searching diligently for a job or willing to participate in a qualifying work or job training program. As a result, this rule is, in reality, a time limit on benefits and *not* a work requirement, as it is sometimes described.

In addition to being harsh policy that punishes individuals who are willing to work but can't find a job, the rule is one of the most administratively complex and error-prone aspects of SNAP law. Many states also believe that the rule undermines their efforts to design meaningful work requirements, as the time limit imposes unrealistic dictates on the types of job training that can qualify. For these reasons, many states and organizations that represent SNAP participants have long sought the rule's repeal.

The time limit law does provide states with the ability to seek waivers from USDA to temporarily suspend the three-month limit for individuals in areas with insufficient jobs. These waivers are the

¹ Steven Carlson, *et al.*, "Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?" Center on Budget and Policy Priorities, February 8, 2016, <http://www.cbpp.org/research/food-assistance/who-are-the-low-income-childless-adults-facing-the-loss-of-snap-in-2016>.

² For a more comprehensive discussion of the time limit rule, see: Ed Bolen *et al.*, "More Than 500,000 Adults Will Lose SNAP Benefits in 2016 as Waivers Expire," Center on Budget and Policy Priorities, updated March 18, 2016, <http://www.cbpp.org/research/food-assistance/more-than-500000-adults-will-lose-snap-benefits-in-2016-as-waivers-expire>.

primary subject of the proposed rulemaking along with states' authority to use flexible individual exemptions to exempt individuals of their choosing from the time limit. Since passage of the welfare law, many states have sought waivers for counties, cities, or reservations with relatively high and sustained unemployment. Every state except Delaware has sought a waiver at some point since the time limit's enactment.³

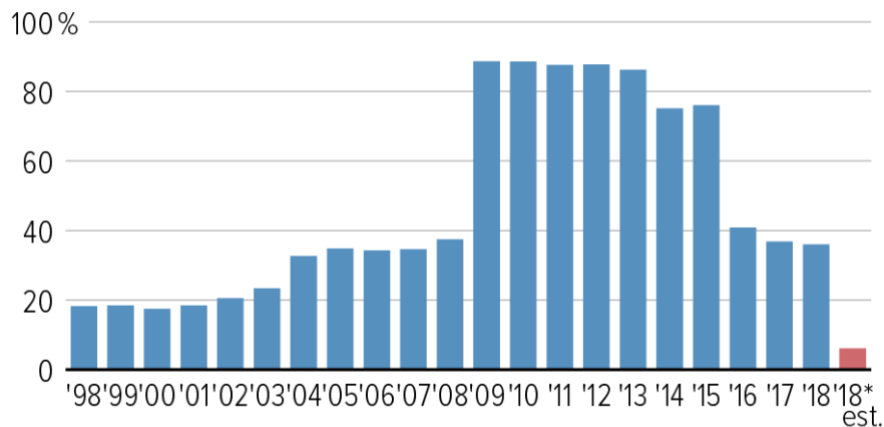
States can choose (or choose not) to request a waiver. In some cases, states with areas that have a persistently struggling labor market, such as the Central Valley in California or rural West Virginia, have sought waivers to avoid penalizing those who cannot find a 20-hour-per-week job within three months. In other cases, governors have sought waivers because extraordinary events have hurt their local labor markets, such as the 2010 Gulf of Mexico oil spill, Hurricane Katrina, or layoffs from a major local employer.

Many states also seek waivers from the time limit because they would prefer to devote the resources needed to implement the administratively complex time limit to implementing a more rational and appropriate work requirement tailored to their local economy and to available job training programs.

FIGURE 1

Estimated Impact of USDA Proposed Rule

Share of U.S. waived from SNAP's 3-month time limit



Note: Represents share of US population living in a waived area, i.e. county or city.

* Estimated share of US population living in a waived area under USDA proposed rule, if rule were in effect in 2018.

Source: CBPP analysis of state waivers; U.S. Census Bureau population estimates

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³ “FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents,” USDA Office of Inspector General, Audit Report 27601-0002-31, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

USDA's guidelines regarding waiver criteria, articulated in guidance and regulations, have set clear, consistent standards for waivers since soon after the statute adopted the time limit and waiver provisions in 1996. A review of waivers over the last 20 years shows that just over a third of the country (as measured by the share of the total population living in waived counties) is waived in a typical year.⁴ (See Figure 1.)

In the NPRM, USDA states that the current rate of waivers was unforeseen, which is inconsistent with the historical record that demonstrates that USDA's original estimate of the extent of waiver coverage under its rules was in line with current actual coverage. In the NPRM preamble, the Department states: "The proposed rule addresses these areas of concern and places safeguards to avoid approving waivers that were not foreseen by Congress and the Department, and to restrict States from receiving waivers in areas that do not clearly demonstrate a lack of sufficient jobs."⁵ This statement stands in contrast to USDA's own documents. USDA was fully cognizant that its original proposed waiver policy, which it later codified into final regulations, could result in more than a third of the country being waived. In an internal summary of waivers from April 23, 1997 entitled, "Time Limit Waivers for Able-bodied Food Stamp Participants," FNS staff wrote to Office of Management and Budget staff that "Thirty percent to 45 percent of the able-bodied caseload may be waived. However, USDA's best estimate is that the areas that have been waived represent approximately 35 percent of the able-bodied caseload in the nation as a whole."⁶ This was written at a time of relatively low unemployment and early in the implementation of waivers when take up of waivers was relatively low. This would suggest that current policy, which has resulted in 36 percent of the general population living in waived areas except during the Great Recession and its aftermath, is consistent with what USDA originally intended rather than something that has exceeded its vision. Moreover, the memo does not suggest any concern with the share of the country waived. And, these criteria were nearly exact to those codified in final rules.

Under USDA's proposed rule, however, areas eligible for waivers would be dramatically reduced. Our organization applied the proposed rule to the areas waived in 2018 and determined that:

- Of the 985 counties (or county equivalents) waived in 2018, 639 counties (65 percent of all waived counties) in 28 states would have lost their waivers.
- Of the 309 towns located outside of waived counties in 2018, 285 towns (92 percent of all waived towns) would have lost their waivers, including 259 New England towns.

⁴ During the recession and its aftermath, Congress made a large portion of the country temporarily eligible for a waiver in recognition of widespread elevated unemployment. Some have misinterpreted this temporary expansion of waivers as a permanent expansion of the policy or an Obama Administration-led effort to eliminate the time limit.

⁵ Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults without Dependents, 84 Fed. Reg. § 980 (proposed rule February 1, 2019) found at <https://www.federalregister.gov/documents/2019/02/01/2018-28059/supplemental-nutrition-assistance-program-requirements-for-able-bodied-adults-without-dependents#p-45>, hereafter we will refer to this as the "NPRM."

⁶ FNS White Paper, "Time Limit Waivers for Able-Bodied Food Stamp Recipients," April 23, 1997. Faxed from FNS to OMB analyst Lester Cash on April 25, 1997.

- 170 out of the 273 reservations (62 percent of all waived reservations) waived in 2018 would have lost their waivers.⁷

Under the proposed policy, we estimate that the share of the U.S. population living in waived areas would have declined by over 80 percent in 2018, from 36 percent to 6.1 percent of the U.S. population. The proposed rule would therefore result in a dramatic reduction in states' ability to waive areas from the time limit. Unfortunately, that appears to be USDA's goal rather than designing and implementing a policy consistent with the statute, i.e., setting waiver criteria and policy that would allow states to waive areas with insufficient job for individuals subject to the time limit.

A. Current Rules Governing Waivers for Areas With Insufficient Jobs for Individuals Subject to the Time Limit

The SNAP time limit provision is based in substantial part on an amendment successfully offered on the House floor on July 18, 1996, by Reps. Robert Ney and John Kasich. When considering the appropriateness of some of the proposals in the proposed rule, it is illuminating to example the floor debate to see what Congress did – and did not – think it was requiring.

The floor debate indicates that the amendment's co-sponsors believed that then food stamp workfare (participation in which would have exempted an individual from benefit termination) to be widespread and assumed that large numbers of those who cannot find a private-sector job would be offered a workfare slot. For example, Rep. Kasich stated on the floor: "...let me be clear what the amendment does so that there is no confusion. If you are abled-bodied, single, between the ages of 18 and 5-, and you get food stamps, we are saying you have to work If you cannot get a job, you go to a workfare program; 45 out of 50 states have a workfare program."⁸

The sponsors heatedly disputed the statements by opponents of the amendment that the amendment would cause substantial hardship by denying assistance to people who want to work but cannot find a job or a workfare slot. And, they emphasized that the amendment contains waivers and other means to avert such situations. For example:

- Rep. Ney stated: "... if we read the text, there are hardship exemptions. It can be waived. There are safeguards in this."⁹ Mr. Ney also noted: "... it is an amendment that provides some safety, it provides a course of a safety net [sic], it has the ability to have waivers from the State department of human services."¹⁰

⁷ Based on CBPP internal analysis of unemployment data from the U.S. Bureau of Labor Statistics and the U.S. Census Bureau. The list of areas is included in Appendix B as "CBPP Summary of Areas That Would Have Lost Their Waivers from the SNAP Three-Month Time Limit in 2018 if the Proposed Rule Were Implemented in 2018."

⁸ 142 Cong. Rec. H7905 (daily ed. July 18, 1996). In fact, only about ten states had food stamp workfare programs at that time, and most such programs were very small. Many of them operated in only a few counties in these states, and some were only open to families with children. Even today, SNAP workfare is unavailable to a great many people subject to the time limits.

⁹ 142 Cong. Rec. H7905(daily ed. July 18, 1996).

¹⁰ 142 Cong. Rec. H7905(daily ed. July 18, 1996).

- Rep. Kasich also addressed this issue. “It is *only* if you are able bodied, if you are childless, and you live in an area where you are getting food stamps *and there are jobs available*, then it applies. So, if you are able-bodied, you go and you have to work 20 hours to get your food stamps. The of course if you cannot find a job then you do workfare. That is what it is. But there are a number of exemptions in here for people who find themselves in particularly difficult circumstances...”¹¹

As their statements indicate, the amendment’s sponsors visualized the amendment largely as one under which people were prodded to look for work, were generally provided a workfare slot if a private sector jobs was not available and would be protected by a waiver if there were insufficient jobs and workfare slots for them. The sponsors did not see their amendment as one under which large numbers of individuals who want to work but cannot fund a job end up with neither work nor food stamps. It should be noted that the sponsors were not cognizant of the extremely limited number of food stamp workfare slots throughout the country.

In the final legislation Congress established that states could waive areas lacking jobs. USDA has established criteria to implement that authority that have been consistent for two decades. The rule was designed to permit states to seek waivers in areas where jobs aren’t available. To qualify for a waiver, states must provide detailed evidence of high unemployment in local areas, in accordance with rigorous requirements set by USDA. USDA has consistently used the same criteria to define high unemployment since the late 1990s.

The federal law gives states the option to request a waiver of the time limit if they can document that a given geographic area has an insufficient number of jobs (or has an unemployment rate over 10 percent). The standards that define how a state may document “insufficient jobs” were first outlined in FNS Guidance issued in December 1996.¹² In the guidance, USDA offered several reflections on its understanding of Congressional intent at the time. First, USDA shared its belief that Congress understood that this group of individuals could find it especially challenging to find permanent employment and that waivers are intended recognize this problem. “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 employed persons and the number of job seekers may be far larger than the number of vacant jobs. This may be especially so for person with limited skills and minimal work history.”

In addition, the guidance provided key background on some of the policy that USDA seeks to restrict in the NPRM. With respect to how states can set or define the area within the state that it seeks to waive, USDA said, “USDA will give States broad discretion in defining areas that best reflect the labor market prospects of program participants and administrative needs.”¹³ The guidance also recognized that the statute seeks to identify whether or not there are sufficient jobs for

¹¹ 142 Cong. Rec. H7905(daily ed. July 18, 1996) (emphasis added).

¹² U.S. Department of Agriculture, Food and Nutrition Service (FNS) “Guidance for States Seeking Waivers for Food Stamp Limits,” FNS guidance to states, December 3, 1996.

¹³ U.S. Department of Agriculture, Food and Nutrition Service (FNS) “Guidance for States Seeking Waivers for Food Stamp Limits,” FNS guidance to states, December 3, 1996. Copy included in the appendix.

individuals subject to the time limit. “The guidance that follows offers some examples of the types and sources of data available to States as the consider waiver requests for areas with insufficient jobs. Because there are not 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.”¹⁴

In its original NPRM that covered how USDA would regulate the waiver authority, FNS included the conceptual framework of the criteria detailed guidance but did not include all of the specifics in the actual regulation language.¹⁵ Commenters, including the Center on Budget and Policy Priorities comments that USDA should include and codify the details of the guidance into rule in order to prevent changes in how waiver policy was interpreted and applied, allowing for consistency¹⁶. Other commenters expressed appreciation for the substance of the waiver criteria as articulated in the guidance and provided for in the NPRM.¹⁷ USDA adopted the suggestion and included the guidance almost verbatim in the final rule. These criteria were modified only slightly in USDA’s final regulation waivers based on the experience learned during the waiver application and approval process (for example, states were allowed to apply to more recent time periods the criteria the Labor Department uses to identify Labor Surplus Areas in order to determine if an area qualifies for a waiver). The regulations were proposed by the Clinton Administration and fully codified in regulations under the Bush Administration in 2001. In setting the waiver criteria, USDA adhered to longtime Labor Department standards to identify areas with labor-market weakness. To qualify for the insufficient jobs standard, a state must demonstrate that a geographic area (as defined by the state) meets specified criteria.

Federal regulations deem waiver requests that are based on certain criteria as “readily approvable” — meaning USDA approves them once it confirms that the data are correct — because the data clearly establish high unemployment in the area. (In other words, USDA cannot arbitrarily deny a state that provides adequate documentation showing that the area’s unemployment rate would qualify it for a waiver.) These criteria are:

- Designation *as a Labor Surplus Area* — a criterion that several federal agencies use to prioritize government contracts or assistance.¹⁸

¹⁴ *Ibid.*

¹⁵ 64 Fed. Reg. No. 242, page 70920, RIN: 0584-AC39 (proposed rule December 17, 1999.)

¹⁶ CBPP Comments on 64 Fed. Reg. No. 242, page 70920, RIN: 0584-AC39, February 17, 2000.

¹⁷ Comments submitted by the Greater Upstate Law Project, Center for Civil Justice and the American Public Human Services Administration on 64 Fed. Reg. No. 242, page 70920, RIN: 0584-AC39, February 17, 2000.

¹⁸ U.S. Department of Labor, “Labor Surplus Area: Frequently Asked Questions,” updated August 21, 2015, https://www.doleta.gov/programs/lssa_faq.cfm.

- An average unemployment rate at least 20 percent above the national average over a recent 24-month time period. This standard tracks the Labor Department’s definition of a Labor Surplus Area but can use more recent data.
- An average 12-month unemployment rate over 10 percent.

In addition, waivers based on unemployment rates that meet the criteria to qualify for additional weeks of Extended Benefits (EB) under the Unemployment Insurance (UI) system may also be approved by USDA.¹⁹ States may also make the case for a waiver for a given area based on certain other criteria; approval of these waivers is left to the discretion of the Secretary of Agriculture. One example is a low and declining employment-to-population ratio,²⁰ a measure that labor economists use to capture weak labor markets in areas where there is a notable lack of jobs relative to the size of the working-age population. States have used this criterion sparingly, and USDA requires states to demonstrate additional evidence of weak labor markets for approval, such as a spike in unemployment or a significant company layoff that affects local labor markets.²¹ Typically, only a handful of rural counties and Indian reservations receive waivers under this criterion.

USDA has not issued major policy changes since the criteria were initially published via guidance in 1996, and state waiver requests have consistently been evaluated according to these criteria. The agency has provided guidance to states on the specifics of how to do the required calculations and what information to attach.²²

B. Congressional Action to Expand Waivers During the Great Recession

Waiver criteria have been consistent since 1996, with the exception of temporary expansions in response to the Great Recession. In response to the 2007 recession, Congress took action that had the effect of temporarily expanding the circumstances under which an area could qualify for a waiver. Some have mistakenly portrayed these temporary expansions as a permanent expansion of

¹⁹ The EB program has criteria in law under which unemployed workers in a state are eligible to receive extended unemployment benefits, and states can opt to offer EB benefits under certain additional criteria. (For more information, see “Conformity Requirements for State UI Laws,” Department of Labor, https://workforcesecurity.doleta.gov/unemploy/pdf/uilaws_extended.pdf.) Because these unemployment criteria (known as “triggers”) establish high unemployment, a state is eligible for a waiver if it meets the criteria under the triggers, even if the state does not elect to provide EB benefits under that trigger.

²⁰ The employment-to-population ratio is the share of the non-institutional, civilian adult population (over age 16) that is employed. The employment-to-population ratio provides useful information in assessing labor market conditions over the business cycle because it takes into account changes in labor market “slack” (insufficient jobs) due to changes in both unemployment and labor-force participation. For more information, see Sarah Donovan, “An Overview of the Employment-Population Ratio,” Congressional Research Service, May 27, 2015, <https://fas.org/sgp/crs/misc/R44055.pdf>.

²¹ U.S. Department of Agriculture, Food and Nutrition Service (FNS), “Supplemental Nutrition Assistance Program — Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016, <https://www.fns.usda.gov/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>.

²² For example, see: “SNAP - Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD)”: <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>

waiver authority. These temporary policies were the only two expansions in waiver criteria since the time limit took effect in 1996 — and both have ended.

- In recognition of the Great Recession’s impact on job loss and increased hardship for unemployed workers, Congress enacted the federal Emergency Unemployment Benefits (EUC) program in 2008. EUC, like the federal emergency unemployment insurance programs enacted in every major recession since 1958, was a temporary program that provided additional weeks of UI to qualifying jobless workers during periods when jobs were hard to find.²³ EUC established several “tiers,” with each tier making a specified number of additional weeks of UI benefits available to jobless workers in the state, depending on the state’s unemployment rate. Workers in states with higher unemployment rates would be in higher tiers and hence could receive more weeks of UI benefits. Because qualifying for higher tiers of benefits under EUC signified higher unemployment and a lack of jobs, the Bush Administration allowed states to qualify for a waiver based on qualifying for at least the second tier of EUC.²⁴

Congress extended and modified the EUC program several times, allowing it to operate through January 1, 2014.²⁵ Many states qualified for at least the second tier of EUC through December 2013. As a result, they qualified for waivers from the time limit into 2015 (since USDA approved waivers for up to one year from the date a state qualified for EUC).

- Meanwhile, the 2009 Recovery Act suspended the time limit nationwide for part of 2009 and all of fiscal year 2010. States had the option to retain the time limit if they offered work opportunities, such as job training and workfare, to all individuals subject to the rule. During this time, states didn’t have to request a waiver (though almost every state qualified for a statewide waiver due to the exceptionally high levels of unemployment across the country). The suspension of the time limit ended in September 2010. After that, most states continued to qualify for statewide waivers for a few years under EUC-related and other, longstanding USDA waiver criteria.

The requirement that states demonstrate to USDA that an area exceeds a high threshold of persistent unemployment in order to qualify for a waiver has limited the waivers’ scope. A review of waivers over the last 20 years shows that just over a third of the country (as measured by share of the total population living in waived counties) has been waived in a typical year.²⁶ Only during the

²³ Chad Stone, “Congress Should Renew Emergency Unemployment Compensation Before the End of the Year,” Center on Budget and Policy Priorities, November 21, 2013, <http://www.cbpp.org/research/congress-should-renew-emergency-unemployment-compensation-before-the-end-of-the-year>.

²⁴ USDA Memo, “SNAP-ABAWD Statewide Waivers – New Criteria for Unemployment Insurance Extended Benefits Trigger,” January 8, 2009, <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD%20Statewide%20Waivers.pdf>. When all states were eligible for both the first and second tiers of EUC, USDA required states to be eligible for at least the third tier to qualify for a waiver.

²⁵ U.S. Department of Labor, “Emergency Unemployment Compensation Expired on January 1, 2014,” updated July 1, 2015, http://ows.doleta.gov/unemploy/supp_act.asp.

²⁶ “SNAP Time Limits: Waivers from the Time Limit Are Back to Historic Norms,” Center on Budget and Policy Priorities, March 24, 2017, <http://www.cbpp.org/sites/default/files/atoms/files/3-24-17fa1.pdf>.

recession and its aftermath was more than half the county temporarily waived from the time limit, and that was due to widespread elevated unemployment. Some have mistakenly interpreted the temporary suspension of the time limit in 2009-2010, or the temporary expansion of waivers during the aftermath of the recession when job growth remained sluggish for some time, as a permanent expansion of the policy or an Obama Administration-led effort to eliminate the time limit.

C. Why Do States Seek Waivers?

Individual state decisions to seek a time-limit waiver have varied over time depending on states' leadership and the economic circumstances at the time of their request. Nevertheless, the reasons remain consistent with those put forward by USDA in their early guidance. USDA's Office of Inspector General documented states' motivation in a recent audit of this policy.²⁷ Because states waive the time limit to exempt individuals in areas lacking jobs and to ease administrative burden, the proposed rule would significantly increase the burden on states and make the time limit less reflective of areas lacking jobs, as we explain in greater depth later.

- **The time limit provision is very complicated and difficult to administer.** State administrators have expressed strong concern with the complexity of the time-limit provision since its passage in 1996. The rule requires them to track individuals with a level of specificity that is inconsistent with how they otherwise operate SNAP and other low-income assistance programs. States find the rule to be error-prone and believe that it can increase their payment error rate. Some states seek waivers, in part, to ease the administrative burden associated with the rule.
- **Waiving the time limit allows states to set a genuine work requirement.** Under the time limit, states are not required to offer a job or training program to every individual (or, for that matter, to *any* affected individuals), and they do not receive sufficient funds through the SNAP Employment and Training (E&T) program to do so. In addition, the law limits the types of slots a state can provide, making them expensive and out of sync with the needs of much of this population. As a result, very few states commit to offering work opportunities to all individuals subject to the time limit.

Waivers, by contrast, can make meaningful work requirements a reality. A state requesting a waiver of the three-month time limit can still require individuals to engage in work-related activities as a condition of receiving benefits through the SNAP E&T program. Every state operates a SNAP E&T program, through which the state can provide a wide range of employment-related activities to a broad range of individuals who are able to work. While there is little evidence that SNAP E&T requirements lead to long-term sustainable jobs, they do allow a state to require a SNAP participant to engage in work activities in order to remain eligible.

Some states require SNAP participants to participate in a job search program, as a way of testing an individual's willingness to work, to remain eligible. These job search programs are relatively inexpensive to operate. But stand-alone job search is explicitly prohibited from being a qualifying E&T activity for childless adults subject to the time limit. The only activities states are allowed to offer to individuals subject to the time limit are job training,

²⁷ "FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents."

education, and workfare programs, which typically are too expensive to offer to all such individuals.²⁸ Moreover, this population often isn't a state's priority for such investments.

In short, if a childless adult searches diligently for work but is unable to find a job or a slot in a work or training program, he or she loses benefits after three months, despite showing effort and willingness to work. Waivers, by contrast, allow states to ensure that they are denying benefits based only on bad conduct, not bad luck.

- **States wish to protect individuals living in relatively high unemployment areas.** Even in states with relatively low statewide unemployment rates, parts of the state may have significantly weaker labor markets, with few jobs available. The flexibility that allows states to apply for *area* waivers recognizes that parts of a state may have insufficient jobs for low-income workers. For example, some states may seek waivers for areas where a dominant industry is struggling.

States frequently use waiver authority for rural areas, where about three-quarters of adults say good jobs are hard to come by where they live.²⁹ Urban areas as a whole have fully recovered the jobs lost in the recession, while the number of jobs in rural areas continued to remain below pre-recession levels in 2017.³⁰

D. Current Waiver Authority Is Insufficient to Address Needs of Unemployed Workers

While a waiver offers a necessary, temporary reprieve from the time limit for individuals living in areas with high unemployment, both the waiver authority and the underlying time limit are not responsive to the immediate employment challenges that many people subject to the rule face, even in areas of more modest unemployment. That, in part, is why USDA's proposed rule to restrict states' ability to seek waivers is so surprising and ill-informed. Geographic waivers provide needed but inadequate protection for individuals subject to the time limit. While the underlying rule exempts some individuals from the time limit (such as people with physical or mental conditions and those caring for incapacitated individuals) and states can exempt a limited number of additional individuals in unique circumstances, the waiver flexibility allows states the option to fully exempt all individuals who face insufficient job opportunities for reasons other than area unemployment.³¹ As noted above, USDA indicated in their early guidance on waivers that the unemployment rate can mask the labor market realities for individuals subject to this rule.

Many of the individuals subject to the time limit struggle to find employment even in normal economic times. States utilize waivers in recognition of this fact, which also demonstrates why the

²⁸ Hours spent in job search can count toward an individual's required 20 hours per week, so long as they constitute less than half of the total number of hours spent in E&T activities.

²⁹ "The State of American Jobs," Pew Research Center, October 6, 2016, http://www.ledevoir.com/documents/pdf/etude_travail_pewresearch.pdf.

³⁰ U.S. Department of Agriculture, "Rural America at a Glance: 2017 Edition," November 2017, <https://www.ers.usda.gov/webdocs/publications/85740/eib-182.pdf?v=43054>.

³¹ Federal regulations identify certain individuals as exempt (see 7 C.F.R. § 273.24(c)) and states receive a limited number of individual exemptions they can use to exempt any individual subject to the rule, though these are underutilized in most states (see 7 C.F.R. § 273.24(g)).

proposed rule is so harsh. Those subject to this rule are extremely poor, tend to have limited education, and sometimes face barriers to work such as a criminal justice history or racial discrimination. While participating in SNAP, childless adults have average incomes of 33 percent of the poverty line — the equivalent of about \$4,000 per year for a single person in 2019. About a quarter have less than a high school education, and half have at most a high school diploma or GED.³² SNAP participants subject to the three-month cutoff are more likely than other SNAP participants to lack basic job skills like reading, writing, and basic mathematics, according to the Government Accountability Office.³³ As we will discuss in much greater depth, an extensive body of research shows why these adults likely face much higher unemployment rates than their area's unemployment rate and why the proposed rule would severely curtail waivers in areas where these individuals do not have access to adequate job opportunities.

A much preferable alternative to the USDA's proposed rule would have been an effort to make it more possible for states to waive the time limit for more individuals who live in areas with insufficient jobs for those subject to its eligibility restriction. Restricting this flexibility would be counter to the intent of the law, inconsistent with more than two decades of practice, and would not produce the stated outcomes USDA claims its proposal would achieve.

³² Steven Carlson, Dorothy Rosenbaum, and Brynne Keith-Jennings, "Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?" Center on Budget and Policy Priorities, February 8, 2016, <http://www.cbpp.org/research/food-assistance/who-are-the-low-income-childless-adults-facing-the-loss-of-snap-in-2016>.

³³ "Food Stamp Employment and Training Program," United States General Accounting Office (GAO-3-388), March 2003, p. 17.

Chapter 2: FNS Waiver Policy Has Been Consistent for the Last 22 Years

A. Current Rules Governing Waivers for Areas with Insufficient Jobs for Individuals Subject to the Time Limit

Congress established that states could waive areas lacking jobs, and U.S. Department of Agriculture (USDA) has established criteria that have been consistent for two decades. When the time limit was being debated in Congress as part of the 1996 welfare law, its proponents claimed that the proposed rule was not intended to take effect in areas where jobs weren't available. 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."³⁴ The rule was designed to permit states to seek waivers in areas where jobs aren't available. To qualify for a waiver, states must provide detailed evidence of high unemployment in local areas, in accordance with rigorous requirements set by USDA. USDA has consistently used the same criteria to define high unemployment since the late 1990s.

The federal law gives states the option to request a waiver of the time limit if they can document that a given geographic area has an insufficient number of jobs (or has an unemployment rate over 10 percent). The standards that define how a state may document "insufficient jobs" for individuals subject to the time limit were first outlined in FNS guidance issued in December 1996.³⁵ In the guidance, USDA offered several reflections on its understanding of Congressional intent at the time. First, USDA shared its belief that Congress understood that this group of individuals could find it especially challenging to find permanent employment and that waivers are intended to recognize this problem:

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 employed 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.

In addition, the guidance provided key background on some of the policy that USDA seeks to restrict in the NPRM. With respect to how states can set or define the area within the state that it seeks to waive, USDA said, "USDA will give States broad discretion in defining areas that best reflect the labor market prospects of program participants and administrative needs."³⁶ The guidance also recognized that the statute seeks to identify whether or not there are sufficient jobs for individuals subject to the time limit:

³⁴ Congressional 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>.

³⁵ U.S. Department of Agriculture, Food and Nutrition Service (FNS) "Guidance for States Seeking Waivers for Food Stamp Limits," FNS guidance to states, December 3, 1996.

³⁶ *Ibid.*

The guidance that follows offers some examples of the types and sources of data available to States as they consider waiver requests for areas with insufficient jobs. Because there are not 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.³⁷

These criteria were modified only slightly in USDA’s final regulation on waivers based on the experience learned during the waiver application and approval process (for example states were allowed to apply to more recent time periods the criteria the Labor Department uses to identify Labor Surplus Areas in order to determine if an area qualifies for a waiver.) The regulations were proposed by the Clinton Administration and fully codified in regulations under the Bush Administration in 2001. In setting the waiver criteria, USDA adhered to long-time Labor Department standards to identify areas with labor-market weakness. To qualify for the insufficient jobs standard, a state must demonstrate that a geographic area (as defined by the state) meets specified criteria.

Federal regulations deem waiver requests that are based on certain criteria as “readily approvable” — meaning USDA approves them once it confirms that the data are correct — because the data clearly establish high unemployment in the area. (In other words, USDA cannot arbitrarily deny a state that provides adequate documentation showing that the area’s unemployment rate would qualify it for a waiver.) These criteria are:

- *Designation as a Labor Surplus Area* — a criterion that several federal agencies use to prioritize government contracts or assistance.³⁸
- *An average unemployment rate at least 20 percent above the national average over a recent 24-month time period.* This standard tracks the Labor Department’s definition of a Labor Surplus Area but can use more recent data.
- *An average 12-month unemployment rate over 10 percent.*

In addition, waivers based on unemployment rates that meet the criteria to qualify for additional weeks of Extended Benefits (EB) under the Unemployment Insurance (UI) system may also be approved by USDA.³⁹ States may also make the case for a waiver for a given area based on certain

³⁷ *Ibid.*

³⁸ U.S. Department of Labor, “Labor Surplus Area: Frequently Asked Questions,” updated August 21, 2015, https://www.doleta.gov/programs/lssa_faqs.cfm.

³⁹ The EB program has criteria in law under which unemployed workers in a state are eligible to receive extended unemployment benefits, and states can opt to offer EB benefits under certain additional criteria. (For more information, see “Conformity Requirements for State UI Laws,” Department of Labor, https://workforcesecurity.doleta.gov/unemploy/pdf/uilaws_extended.pdf.) Because these unemployment criteria (known as “triggers”) establish high unemployment, a state is eligible for a waiver if it meets the criteria under the triggers, even if the state does not elect to provide EB benefits under that trigger.

other criteria; approval of these waivers is left to the discretion of the Secretary of Agriculture. One example is a low and declining employment-to-population ratio,⁴⁰ a measure that labor economists use to capture weak labor markets in areas where there is a notable lack of jobs relative to the size of the working-age population. States have used this criterion sparingly, and USDA requires states to demonstrate additional evidence of weak labor markets for approval, such as a spike in unemployment or a significant company layoff that affects local labor markets.⁴¹ Typically, only a handful of rural counties and Indian reservations receive waivers under this criterion.

USDA has not issued major policy changes since the criteria were initially published via guidance in 1996, and state waiver requests have consistently been evaluated according to these criteria. The agency has provided guidance to states on the specifics of how to do the required calculations and what information to attach.⁴²

B. Department Claims to Return to Original Policy Intent and That Current Waiver Standards are Inconsistent

In the 2019 NPRM, the Department declared its commitment to “implement SNAP as Congress intended,”⁴³ implying that waiver policy has diverged significantly from the original policy set in the 1996 welfare reform law. It also claims that the rule will “improve consistency across states,”⁴⁴ but fails to define what the current inconsistency is, why the current standards are causing such inconsistency, does not provide any evidence to support its claim of inconsistency, or explain why and how it is a problem. Two possible interpretations of the “inconsistency” claim are that current waiver standards do not apply consistently to all states, or that the current standards produce inconsistent waived areas across states. Neither of these claims holds up to scrutiny.

FNS Waiver Criteria Have Not Changed Significantly Since 1996

The Department’s suggestion that waiver policy has deviated from Congressional intent suggests that either the Department now knows something that it did not 22 years ago when it put forward guidance to implement the law or that the final regulations deviated from the original guidance set in December 1996.

⁴⁰ The employment-to-population ratio is the share of the non-institutional, civilian adult population (over age 16) that is employed. The employment-to-population ratio provides useful information in assessing labor market conditions over the business cycle because it takes into account changes in labor market “slack” (insufficient jobs) due to changes in both unemployment and labor-force participation. For more information, see Sarah Donovan, “An Overview of the Employment-Population Ratio,” Congressional Research Service, May 27, 2015, <https://fas.org/sgp/crs/misc/R44055.pdf>.

⁴¹ U.S. Department of Agriculture, Food and Nutrition Service (FNS), “Supplemental Nutrition Assistance Program — Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016, <https://www.fns.usda.gov/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>.

⁴² For example, see: U.S. Department of Agriculture, Food and Nutrition Service (FNS), “Supplemental Nutrition Assistance Program — Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016, <https://www.fns.usda.gov/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>.

⁴³ 2019 NPRM, p. 8.

⁴⁴ 2019 NPRM, p. 16.

On the first count, the Department provided no information or evidence from legislative history that would suggest that its knowledge or understanding of Congressional intent has improved since it issued its first guidance on waiver policy just a few short months after the welfare law passed. In fact, the NPRM does not provide any reference to legislative history to help reviewers understand why current policy is out of sync with the goal of the statute. It is impossible to respond to the Department’s reasoning other than to provide the available legislative history as we have in Chapter 1 (Overview of Waivers From the Three-Month Time Limit — Their Purpose and History) which explains how legislative history runs counter to the Department’s assertions.

Similarly, we observe no significant policy shift in the waiver policy that the Department originally set forth in its December 1996 guidance from current policy. In fact, comparing waiver standards from 1996 to the current standards can provide insight into how much waiver policy has significantly changed over the past two decades. The best evidence for this comes from FNS’ 1996 guidance, which describes in detail the waiver criteria that were available to states at the time. Table 2.1 below compares the key waiver criteria included in FNS’ December 1996 guidance to the current criteria described in FNS’ December 2016 guidance (which is the most recent articulation of the rules set forth in the 2001 federal regulations).

TABLE 2.1

FNS Waiver Policy Has Been Consistent Since 1996

	December 1996 FNS Guidance ⁴⁵	January 2001 Final Rule ⁴⁶	December 2016 FNS Guidance ⁴⁷
Waiver Eligibility Criteria			
Labor Surplus Area Designation (LSA)	Yes	Yes	Yes
LSA- Like: 24-month average unemployment rate 20 percent above the national average using more current data than LSA	No	Yes	Yes
Qualification for Extended Unemployment Benefits	Yes	Yes	Yes
12-month average unemployment rate over 10 percent	Yes	Yes	Yes

⁴⁵ U.S. Department of Agriculture, Food and Nutrition Service (FNS) “Guidance for States Seeking Waivers for Food Stamp Limits,” FNS guidance to states, December 3, 1996.

⁴⁶ 66 Fed. Reg., No. 11, 4438 (January 17, 2001).

⁴⁷ “SNAP - Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” FNS guidance issued December 2, 2016, <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>.

TABLE 2.1

FNS Waiver Policy Has Been Consistent Since 1996

	December 1996 FNS Guidance⁴⁵	January 2001 Final Rule⁴⁶	December 2016 FNS Guidance⁴⁷
Waiver Eligibility Criteria			
3-month average unemployment rate over 10 percent	Yes	Yes	Yes
Historical seasonal unemployment rate over 10 percent	Yes	Yes	Yes
Employment-to-Population Ratios	Yes	Yes	Yes
Demonstration of lack of jobs in declining occupations or industries	Yes	Yes	Yes
Demonstration of lack of jobs in an area	Yes	Yes	Yes
Other Waiver-Eligibility Policy			
Combining data for geographic and economic regions	Yes	Yes	Yes
Estimating unemployment rates for tribal lands	Yes	Yes	Yes
Requesting two-year waivers	No	No	Yes

Table 2.1 demonstrates that the waiver criteria set in the 1996 welfare reform law have remained remarkably consistent over the past two decades. For example, FNS' 1996 guidance indicated that high unemployment areas can be waived by being designated as Labor Surplus Areas (LSA), qualifying for extended unemployment benefits, or having average unemployment rates of over 10 percent. These are the same criteria described in current FNS guidance. Moreover, criteria that are seldom used by states, such as demonstrating historical seasonal unemployment or a lack of jobs in declining occupations are described in the 1996 guidance and remain the same today. The meaningful change was to allow states to use more recent unemployment data when considering whether an area met the LSA criteria of having average unemployment rates at least 20 percent above the national average for a recent 24-month period. This variation of the LSA criteria also permits areas to qualify with 24-month average unemployment rates below six percent. This criterion is informally known as "LSA-like." Using more recent unemployment data allows for a more current assessment of the unemployment situation of an area and is an enhancement of the LSA criteria, not a significant change. This was added in the early 2000s and is codified in current federal regulations.⁴⁸

⁴⁸ 66 Fed. Reg., No. 11, 4438 (January 17, 2001).

Similarly, the 1996 guidance included other waiver policies such as the ability to combine data and estimating unemployment rates for tribal lands, urging states to “consider areas within, or combinations of counties, cities and towns” and to “consider the particular needs of rural areas and Indian reservations.”⁴⁹ These policies remain in place in current guidance, with small changes made over the years.

The small changes that have occurred are largely refinements of the original criteria, not major additions to waiver policy. For example, FNS guidance issued in December 2004 revised the method for calculating average unemployment rates over 24-month periods.⁵⁰ Current FNS guidance also provides specific instructions on how to round 24-month average unemployment rates, and a standard methodology for estimating unemployment rates for Native American reservations.⁵¹ FNS also offered states “the option of two-year waiver approvals” in a February 2006 memorandum; while this was an addition to waiver policy at the time, it was not a major revision of waiver standards — the criteria for two-year waivers are more restrictive than those for shorter waivers.⁵² (See Chapter 8 for more.)

The final rule published in January 2001 offers clear evidence that the Department at the time intended to codify the waiver policies from its 1996 guidance, so that they would become a consistent set of rules that states use to determine their waiver eligibility in the future. In the final rule, the Department discussed the comments issued in response to its NPRM on the waiver policy, and why this influenced its codification of waiver criteria. It acknowledged that it did not include the 1996 guidance in its initial regulations, not because it deviated from the Department’s intent, but because “[the guidance] was extensive and detailed.”⁵³ The Department also explained that it “received several comments suggesting [the Department] include all or some of the guidance in the regulations. Commenters argued that unless the guidance is incorporated into the regulations, a subsequent administration could abolish it without public comment. Based on these comments, [it] decided to incorporate some of the more pertinent aspects of the guidance into the regulation. More specifically, [it] modified the regulations at 7 C.F.R. 273.24(f) to include a non-exhaustive list of the kinds of information a State agency may submit to support a claim of 10 percent unemployment or ‘lack of sufficient jobs.’”⁵⁴ The final rule goes on to list the same waiver eligibility criteria described in Table 2.1 as part of the December 2016 guidance, and shows that Department recognized at the

⁴⁹ U.S. Department of Agriculture, Food and Nutrition Service (FNS) “Guidance for States Seeking Waivers for Food Stamp Limits,” FNS guidance to states, December 3, 1996.

⁵⁰ “ABAWD Waivers – New Method for Calculating Average Unemployment Rates,” FNS Northeastern Region Food Stamp Regional Letter, April 28, 2004.

⁵¹ U.S. Department of Agriculture, Food and Nutrition Service (FNS), “Supplemental Nutrition Assistance Program — Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016, <https://www.fns.usda.gov/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>.

⁵² “FSP – 2-Year Approval of Waivers of the Work Requirements for ABAWDs under 7 CFR 273.24,” FNS memorandum issued February 3, 2006.

⁵³ 66 Fed. Reg., No. 11, 4438 (January 17, 2001).

⁵⁴ *Ibid.*

time that a consistent and predictable waiver policy would be an essential asset to states in the future.

This evidence demonstrates that current waiver criteria are not wildly out of step with the original intent of waiver policy at its inception. The original guidance set the flexibility that states currently have in waiving areas, contrary to the Department's claim in the proposed rule that they use their flexibility "in a way that was not likely foreseen."⁵⁵

Furthermore, the consistency in waiver policy over the decades has been important for states, which have relied on it for 20 years. The Department's claim that its proposed rule will allow "States to reasonably anticipate whether it would receive approval" ignores the reality that current waiver policy already accomplishes this goal. In reality, the rule would make it harder for states to obtain waivers and would disrupt their long-standing waiver implementation procedures.

The Proposed Rule Does Not Provide Evidence of Inconsistency in Current Waiver Standards

As noted earlier, the Department does not explain or justify in the rule its implication that current waiver standards are inconsistent, and reasonable interpretations of what it meant do not hold up to scrutiny. For example, the Department may have meant that there is not a consistent set of waiver standards that apply to all states. This is not the case, as waiver standards apply uniformly to all states. States might use different criteria to show their eligibility for waivers; for example, a state with unemployment well above 10 percent might request a waiver based on the 10 percent threshold, whereas another state with rapidly rising unemployment might request a waiver based on qualifying for extended unemployment benefits. The fact that states use different criteria reflects differences in their demographic composition and economies, among other factors. It does not mean, as the Department might be implying, that states do not have the option of using any of the criteria to show their waiver eligibility, particularly as their local economic conditions change over time.

Over the past two decades, FNS has regularly updated its guidance to states to inform them of their options as the economy changed. One of the strengths of the current rules and USDA's application of them is the extraordinary consistency with which USDA applied the rules across the years and states. Until 2017, states could predict with extreme accuracy whether the Department would approve a waiver based on the listed criteria and guidance. It was only after the current Administration took office that USDA began denying waivers that it had long approved – such as no longer approving two-year waivers for areas that met the standards set in guidance or for areas eligible under the Employment-to-Population ratio.⁵⁶ While there were not a lot of these types of requests historically, it was the new Administration that introduced uncertainty into the process. Similarly, waiver requests that would typically be approved in one to three months can now take upwards of six months to approve. This has resulted in USDA sometimes not approving waivers until after the requested start date. FNS regional and national office staff have not known what would and would not be approved or when. The political leadership at USDA has introduced

⁵⁵ NPRM, p. 7.

⁵⁶ U.S. Department of Agriculture, Food and Nutrition Service (FNS), "Supplemental Nutrition Assistance Program — Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD)," December 2, 2016, <https://www.fns.usda.gov/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>.

uncertainty and inconsistency in the review and approval process. Moreover, they have been inconsiderate of states' need for certainty and predictability in order to implement waivers after approval.

If the Department meant instead that the current waiver standards do not produce consistent waived areas across states, then it is making an unreasonable argument. The only inconsistency across states is the Department's own application of the flexibility afforded to it, not in USDA's application of the rules (until recently). It is incumbent upon USDA to define and demonstrate the inconsistency it observes given that this argument is a core element of its reason to re-regulate these long-standing rules.

The evidence shows how little of the Department's proposed rule is based on a clear knowledge of the waiver policy's history and an intimate understanding of the waiver standards' application to states. This clearly demonstrates the brittle nature of the Department's justifications of the changes to current waiver policy contained in the proposed rule.

Chapter 3: Setting a Floor for Waivers For Areas With 20 Percent Above National Unemployment Is Inconsistent With Congressional Intent and Would Be Harmful to Vulnerable Individuals

The most significant change of the proposed rule would drastically roll back waivers of the time limit by requiring states to show that areas meet an unemployment rate threshold of 20 percent above the national average (which the Department of Agriculture, or the Department, and we will refer to as the “20 percent standard”) and, if the 20 percent standard is below a specific threshold, meet this specific threshold, referred to as the “unemployment rate floor” to qualify for a waiver. We believe this proposal is out of sync with the goal and purpose of the underlying legislation. Furthermore, the Department did not discuss whether it considered a substantial body of relevant research that contradicts the claims it made in support of this change and provided little to no evidence to back up its proposal, making it difficult for us to comment on the process the Food and Nutrition Service (FNS) used to develop this regulation. Below we discuss each of the following reasons in detail that explain the flaws in this process:

- This proposal is contrary to Congressional intent, which clearly was to allow states flexibility to use a variety of metrics to demonstrate that the population subject to the time limit does not have access to enough jobs. Congress has rejected past proposals to impose an unemployment rate floor and otherwise restrict the current waiver criteria.
- Considerable evidence shows that the adults without dependent children potentially subject to the rule face overlapping labor market disadvantages, and therefore experience significantly higher unemployment rates than the general unemployment rate for their area. Because an area’s overall unemployment rate overstates job availability for the individuals subject to the time limit, imposing an unemployment rate floor would disqualify many areas from eligibility for a waiver where childless SNAP participants have very few job opportunities. The statute clearly gives states that want to the ability to waive the time limit for some or all individuals in areas where there aren’t enough jobs to employ these individuals.
- The Department misleadingly cites the unemployment rate floor used by the Department of Labor in establishing Labor Surplus Areas (LSAs) to support the proposal, without recognizing that LSAs are meant for different purposes, and that LSAs also include an unemployment rate ceiling.
- The Department uses the concept of a “natural rate of unemployment” to support the proposed unemployment rate floor of 7 percent, which is a misinterpretation of a macroeconomic concept that is not a fixed or precisely identifiable unemployment rate. Furthermore, the Department then suggests a significantly higher unemployment rate floor than what it states the natural rate is without explaining how the natural rate relates to the proposed unemployment rate floor of 7 percent. This lack of explanation for choosing the substantially higher rate of 7 percent demonstrates how this specific unemployment rate floor was chosen arbitrarily.
- While no specific rate of unemployment would properly reflect these individuals’ circumstances, evidence shows that 7 percent unemployment specifically is too high, given

that many of these individuals are often in groups that experience unemployment rates significantly above that level and they often face barriers to employment.

- The proposal would fail to adequately provide states with waiver coverage during times of rising unemployment, as the combination of the high unemployment rate with the lengthy 24-month lookback would preclude many states with rising unemployment from eligibility. The Department lacked transparency in not referencing whether they examined the potential impact of this proposal at other times in the business cycle besides the current moment.
- The Department attempts to support its proposed unemployment rate floor by explaining that such a floor would decrease the share of who it refers to as “ABAWDs” living in a waived area. This justification ignores Congressional intent and lacks transparency in the underlying assumptions and methodology used to estimate this metric.
- The Department also sought feedback on alternative unemployment rate floors of 6 and 10 percent, which are both unworkable and an inappropriate reading of the statute. Its proposal of these alternate floors demonstrates the arbitrariness of the proposed 7 percent floor, but also shows that it is impossible to designate a specific unemployment rate floor that would adequately interpret the law by accurately reflecting jobs available to childless adults.

In proposing an unemployment rate floor for waivers based on the 20 percent standard, the Department ignores the intent of Congress and uses misleading justifications with no transparent evidence to support its claims. While the current 20 percent standard may not perfectly represent areas that lack jobs for childless adults because the overall unemployment rate masks divergent labor market opportunities for sub-groups such as these individuals, the proposed rule would only exacerbate the shortcomings of current policy.

A. Unemployment Rate Floor Proposal Inconsistent With Congressional Intent

When Congress established the three-month time limit in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, it established that a state may seek a waiver for a geographic area. Congress gave states this authority in recognition that individuals may not have success in finding a job if there are limited job opportunities. When the House Committee on Budget reported the original bill, the report stated:

The committee understands that there may be instances in which high unemployment rates in all or part of a State or other specified circumstances may limit the jobs available for able-bodied food stamp participants between 18 and 50 years with no dependents. Therefore the Secretary, upon request from a State, is provided with the authority to waive job requirements in these circumstances or if unemployment rates are above 10 percent.⁵⁷

Congress created waiver authority to enable states to waive areas with “high unemployment rates” or “otherwise specific circumstances,” indicating that a range of circumstances may be indicative of depressed labor market conditions. The welfare reform law established that a state could seek a

⁵⁷ H.R. Report 104-651, Welfare and Medicaid Reform Act of 1996, <https://www.congress.gov/congressional-report/104th-congress/house-report/651>.

waiver for an area if it: “(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.”⁵⁸ (Herein, as with the current regulations, we will use “area” to refer to geographic areas, which generally refers to areas for which states generally seek waivers, such as counties, cities, towns, tribal areas, or metropolitan areas.)

Congress therefore created two distinct categories to establish the circumstances under which a State can request a waiver:

- The first criterion establishes that an area with an unemployment rate of 10 percent may qualify for a waiver. The unemployment rate measures the share of the labor force that is actively looking for work. Historically, a 10 percent unemployment rate is an indicator of severe labor market distress, such as during an economic downturn. Since the Bureau of Labor Statistics (BLS) began publishing monthly unemployment rates in 1948, the national unemployment rate has equaled or exceeded 10 percent only during the 1981-1982 recession and during the Great Recession of 2007-2009. Congress recognized that a local area with such a high unemployment rate likely would not offer adequate job opportunities so that people who are subject to the time limit could find work. With such high unemployment, even the most readily employable jobseekers will likely struggle to find work, and those who are more disadvantaged will face even more challenges. States that prefer to waive only areas with extremely high unemployment rates can also request waivers based on this criterion.
- The second criterion is focused on measuring employment opportunities for the *specific individuals* affected by the time limit. Congress recognized that while useful for measuring the health of a local labor market, the unemployment rate may not give a complete picture of job availability for all workers in that area, particularly for individuals facing labor market disadvantages. An area may not have a sufficient number of jobs because the share of jobseekers who are out of work is relatively high, as indicated by the employment rate. Even with a low unemployment rate, however, there can be instances where there aren't enough jobs to provide employment for specific individuals or groups. Even if there are enough jobs in number to match the number of jobseekers, the individuals' skills might not match the requirements of the available jobs, the jobs may be inaccessible due to geographic or transit limitations, or employers may discriminate against some jobseekers based on their race, work history, disability, or other characteristics, for example.

In its original interpretation, the Department recognized that Congress intended for the “insufficient jobs” criterion to include a range of metrics that are targeted towards the individuals subject to the time limit. The Department published guidance on December 3, 1996, which stated:

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.

⁵⁸ Food and Nutrition Act, 7 U.S.C. § 2015(o)(4). This language is identical to the language in P.L. 104-193, PRWORA.

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.⁵⁹

The Department therefore originally (in 1996) interpreted the intent of Congress in creating the second category for waiver authority as a recognition of the shortcomings of the unemployment rate for measuring job opportunities for the individuals subject to the time limit, and established that it could use flexibility in determining whether a State demonstrates a lack of jobs. In response to comments, when preparing the original final rule, the Department balanced the need to provide specific guidance that would be codified in regulation so that it would remain consistent across subsequent administrations with the need to retain the flexibility that the Department recognized that Congress had created in its original lawmaking. The final rule stated:

Based on these comments, we have decided to incorporate some of the more pertinent aspects of the guidance into the regulation. More specifically, we have modified the regulations at 7 CFR 273.24(f) to include a nonexhaustive list of the kinds of information a State agency may submit to support a claim of 10 percent unemployment or ‘lack of sufficient jobs.’⁶⁰

FNS’ original (2001) interpretation therefore was clear that in providing guidance about specific methods states can use to demonstrate a lack of jobs in an area, it was not precluding states from using other data or metrics to demonstrate insufficient jobs, given that it is a concept not easily shown by any one numeric quantity or metric.

By proposing an unemployment rate floor, the Department is proposing to restate the waiver criteria in a manner that is inconsistent with the intent of the statute. Currently, states can waive areas with insufficient jobs to employ a specific, more disadvantaged, population. The current 20 percent standard already has limitations in its ability to reflect jobs available for individuals subject to the time limit, who likely experience much higher unemployment rates than the overall unemployment rate in their area. As we discuss in detail below, areas with unemployment rates that are 20 percent above the national average may still lack jobs for those with barriers to unemployment. As we will explain, there are several reasons why current aspects of the 20 percent standard in the context of the current regulations allow for a greater ability to demonstrate a lack of sufficient jobs than the proposed regulation would allow. The proposed regulations would therefore significantly worsen the problem with the current 20 percent standard as a measure of “insufficient jobs.”

First, under the current regulation, an area with elevated unemployment compared to national unemployment can qualify for a waiver, without meeting a specific unemployment rate standard. Defining high unemployment at a relative level rather than a specific unemployment rate threshold allows for greater consideration of trends such as those in labor force participation, which may affect low unemployment rates, especially relevant for disadvantaged groups. If workers who are not

⁵⁹ USDA, “Guidance for States Seeking Waivers for Food Stamp Limits,” December 3, 1996.

⁶⁰ 66 Fed. Reg., No. 11, 4438 (January 17, 2001), p. 4462. <https://www.federalregister.gov/d/01-1025/p-205>

employed stop looking for work and therefore exit the labor force, measures of labor force participation will decline. Because the unemployment rate measures the share of the labor force that is not employed but is actively seeking work, lower labor force participation may be a signal of weak labor markets that is not reflected in the unemployment rate (for example, if discouraged workers stop looking for work).

Overall labor force participation has fallen over the last two decades, including particularly sharply during the Great Recession, and only began rebounding in about 2015. Labor force participation fell sharply among prime-age workers (thus less affected by population aging and retirement) with lower educational attainment from 2000 to 2015 and in 2018 were still below 2000 levels.⁶¹

Lower unemployment rates are thus less indicative of strong labor markets in recent years than in the past, and particularly so for a group that tends to fare worse in the labor market, such as those with lower levels of education. The 20 percent standard, which currently does not have a floor, relies on unemployment rates, which are an imperfect proxy of jobs available for this population. Because the current unemployment rate threshold needed to qualify for a waiver varies along with national trends, however, the current standard gives more flexibility to capture those trends. Not having a specific unemployment rate floor therefore allows for the 20 percent standard to better capture insufficient jobs than it would with a specific floor. In addition, currently states have the ability to group together counties to better represent local labor market opportunities, which the proposed rule would also restrict. (We discuss these changes in more detail in Chapter 5.) This flexibility also helps mitigate some of the shortcomings in the current 20 percent standard.

Second, the Department is also proposing to eliminate other criteria existing in current regulations that can serve as an alternative to measuring “insufficient jobs” in cases where the 20 percent standard does not adequately reflect job opportunities. In the context of these changes, the 20 percent standard takes on increasing importance as one of the sole methods to demonstrate a lack of sufficient jobs. The effect of these proposed changes largely results in a requirement that states demonstrate a specific unemployment rate threshold to qualify for a waiver under the “insufficient jobs” criterion, when Congress expressly intended for this criterion to encompass a broader range of metrics.

The Department proposes to eliminate most of the remaining alternatives to metrics based on the unemployment rate that current regulations at 7 C.F.R. § 273.24(f)(2)(ii) allow, such as the elimination of the option to demonstrate a “low and declining employment-population ratio” or to demonstrate declining industries. The Department would also sharply reduce the ability of states to request waivers for groups of neighboring counties, which may be useful in cases where the unemployment rate is a particularly poor proxy for labor market opportunities for individuals subject to the time limit. (We discuss the changes to employment-population ratio and other means of showing a lack of sufficient jobs in Chapter 4, and changes to grouping in Chapter 5.) With these changes, for the most part an area could only qualify for a waiver by demonstrating that it has a 12-month unemployment rate average of at least 10 percent, a two-year unemployment rate of at least 7

⁶¹ Audrey Breitwieser, Ryan Nunn, and Jay Shambaugh. “The recent rebound in prime-age labor force participation,” Brookings Institution, August 2, 2018. <https://www.brookings.edu/blog/up-front/2018/08/02/the-recent-rebound-in-prime-age-labor-force-participation/>

percent, or that it qualifies for extended unemployment insurance benefits, the eligibility for which is based on a recent three-month insured or total unemployment rate.

The proposal does allow for states to demonstrate “exceptional circumstances,” but even then suggests that it must support this claim with evidence, such as of a 10 percent unemployment rate: “the request must demonstrate that the exceptional circumstance has caused a lack of sufficient number of jobs, such as data from the BLS or a BLS-cooperating agency that shows an area has a most recent three-month average unemployment rate over 10 percent.”⁶² Under the proposed rule, states will largely be limited to demonstrating that an area meets a specific unemployment rate threshold to qualify for a waiver under the “insufficient jobs” category of waivers, which does not align with the intent of Congress to provide for multiple metrics under this category.

Congress regularly includes specific unemployment rate thresholds for policy purposes when that is its intent. Congress included 10 percent unemployment as one of the criteria to qualify for a waiver of SNAP’s three-month time limit, as stated above. Similarly, in the same legislation, Public Law 104-193, Congress created a specific definition of a “needy state” under the TANF program, which allows states additional weeks of job search and readiness. One of the qualifications for a “needy state” was a three-month unemployment rate of at least 6.5 percent that exceeds 110 percent of the unemployment rate for the same period in either of the last two years.⁶³ Congress clearly understood that unemployment rates may be an appropriate threshold in some instances, but chose to include a criterion that was more loosely defined and allowed for alternative economic measures to demonstrate a lack of jobs. Congress also chose to allow waivers based on economic circumstances that reflect jobs available for a targeted population, the individuals subject to the time limit. Had Congress intended to allow states to qualify for waivers only based on unemployment rates, it would have only included waiver criteria with those unemployment rate parameters, rather than including the second criteria targeted towards childless adult SNAP participants.

In the original final rule, published in 2001, the Department made clear that they interpreted the “lack of sufficient jobs” as encompassing a broad range of metrics and not exclusively tied to demonstrating a high unemployment rate. By proposing a specific unemployment rate threshold for the 20 percent standard, reducing the ability of states to group together areas, and eliminating most of the alternative criteria that would let states use alternative information, the Department has substantially changed its interpretation of how states can demonstrate that an area lacks jobs for the individuals subject to the time limit. In practice, except during times when states qualify for extended benefits, under the proposed regulation, states would largely be limited to showing that an area has a 7 percent unemployment rate over two years to show it lacks enough jobs to employ people subject to the time limit. The Department did not attempt to demonstrate that a specific unemployment rate threshold shows an area lacks jobs for these individuals, instead discussing the unrelated fact that the proposal would have the effect of narrowing the number of waived areas, which we explain below. The Department therefore provides no evidence that the changes in the rulemaking are aligned with the intent of the statute to allow waivers in areas lacking sufficient jobs, a broader concept than areas meeting specific unemployment rate thresholds.

⁶² NPRM, p.992.

⁶³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, § 403(b)(6), <https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf>.

Congress Recently Rejected Proposals to Limit Current Waiver-Approval Standards

Congress also has rejected attempts to narrow waiver-approval criteria to impose an unemployment rate floor for the “20 percent standard.” H.R. 2, the House Agriculture Improvement Act of 2018, as passed by the House on June 21, 2018, included a restriction similar to the Administration’s proposal, requiring an area to have an unemployment rate of at least 7 percent to qualify based on having a two-year unemployment average greater than the national average. The Senate did not include such a restriction on waivers. The Conference Committee adapted the Senate’s approach, which then passed and was signed into law. As Rep. Marcia Fudge, a conferee, noted in the Congressional Record:

The Conference Committee also rejected House provisions that would shorten SNAP’s three-month time limit to one month and expand the population subject to the rule to a broader group of recipients. We also rejected the House’s proposal to limit states’ flexibility to waive high-unemployment areas from the three-month limit.⁶⁴

Similarly, the Conference Report noted that Congress chose not to change the underlying statute:

The Managers also acknowledge that waivers from the ABAWD time limit are necessary in times of recession and in areas with labor surpluses or higher rates of unemployment. The Managers 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.⁶⁵

Congress therefore chose not to change the criteria by which states could request area waivers. While the Administration cited the House-passed version of the H.R.2 to support the proposed 7 percent unemployment floor, Congress ultimately rejected this proposal in favor of the Senate approach, demonstrating intent to keep the current interpretation of the “insufficient jobs” criterion intact.

B. Unemployment Rates Overstate Jobs Available to Childless Adult SNAP Participants

By proposing an unemployment rate floor for the “20 percent standard,” the Department argues that areas with unemployment rates below this threshold offer enough jobs so that those individuals can find work. For example, when describing its support for its proposed unemployment rate floor, the Department states, “The Department views the proposal as more suitable for achieving a more comprehensive application of work requirements so that ABAWDs in areas that have sufficient number of jobs have a greater level of engagement in work and work activities, including job training.”⁶⁶ The Department therefore states that areas with unemployment rates below its proposed

⁶⁴See the floor statement by Congresswoman Fudge, 164 Cong. Rec. H10149 (daily ed. December 12, 2018), <https://www.congress.gov/congressional-record/2018/12/12/house-section/article/H10142-3>.

⁶⁵ H.R. Rept. 115-1072, Agriculture Improvement Act of 2018, Title IV (3), <https://www.congress.gov/congressional-report/115th-congress/house-report/1072>.

⁶⁶ NPRM, p. 984.

floor of 7 percent over two years offer a sufficient number of jobs to the individuals subject to the time limit. This interpretation that areas with lower unemployment have enough jobs to employ adults without dependent children ignores the reality that overall unemployment rates overstate jobs available to disadvantaged individuals.

The Department states that the unemployment rate floor proposal would prevent areas with low unemployment from qualifying for a waiver but ignores evidence that the individuals subject to the time limit are in demographic groups that experience higher unemployment rates than their area's average. In explaining why it chose to propose an unemployment rate floor, the Department noted:

Based upon operational experience, the Department has observed that, without an unemployment rate floor, local areas will continue to qualify for waivers under the Department's 20 percent standard based on high unemployment relative to the national average even as local unemployment rates fall to levels as low as 5 to 6 percent (depending upon the national rate).

The Department is therefore stating that the floor is necessary to prevent areas with unemployment rates it considers "low" from qualifying for a waiver. Adult SNAP participants without dependent children, however, are likely to face barriers to employment that result in fewer jobs available for those individuals than for the general population. It is unrealistic to set a specific threshold that guarantees that the labor market creates a sufficient number of jobs to provide employment to this group, and any such threshold based on the overall unemployment rate in an area would guarantee that many areas where childless adult SNAP participants could not find work were ineligible. When it explained its position that it does not believe areas with low unemployment rates should qualify for waivers, the Department did not provide any research to support its position that areas with low unemployment rates provide enough jobs so that the individuals subject to the time limit can find work, nor did it address the extensive research that demonstrates that these individuals struggle to find work even when unemployment rates are low. Because the Department did not provide this information, it is difficult for commenters to understand how they are interpreting a specific unemployment rate as measuring job availability for this population and to respond to this reasoning.

The unemployment rate is a broad labor market metric that masks differences in the labor market outcomes experienced by different groups. Some groups, such as African American workers, have historically and consistently higher unemployment rates. The recent Great Recession also demonstrated how less-advantaged groups fared more poorly in the recession, losing more jobs and recovering more slowly.

Evidence shows that the adults targeted by the time limit often face barriers to work. While these low-income adults without dependents are a diverse group and there has been limited research on this specific population, the available evidence demonstrates that many face greater struggles to find work than the overall population. This group, while diverse, has many characteristics that, as we will explain below, are associated with worse labor market outcomes:

- Over three-quarters of this group have a high school diploma or less, and studies show that many lack skills sought by employers.

- This group is demographically diverse. Of adult SNAP participants aged 18 through 49 who do not receive disability income or have children in the household, about 53 percent are male, and 47 percent are female. About two-fifths are aged 18 through 29, one-quarter are aged 30 to 39, and one-third are aged 40 to 49. About two-fifths are white, over one-quarter are African American, and approximately 20 percent are Latino.⁶⁷ They live in a range of areas: about two-fifths live in urban areas, two-fifths live in suburban areas, and about 15 percent live in rural areas.⁶⁸
- Like most SNAP participants, this group largely works, but in low-wage jobs that provide little stability, and as a result, many move in and out of work and experience periods when they are out of work.
- Research indicates that many of these individuals face barriers to employment, including low skills, inconsistent work history, health conditions that limit their ability to work, inadequate access to transportation, criminal justice history, or unstable access to housing.

Because this population is distinct from the United States population, and faces greater disadvantages with regards to accessing employment, an overall unemployment rate or other overall labor force metric will largely overstate the jobs available to this group. The section below explains the research documenting the unique barriers to employment that childless adult SNAP participants face, and the higher unemployment rates associated with many of these characteristics.

Childless and Non-Custodial Parent Adult SNAP Participants Are Likely to Have Lower Levels of Educational Attainment, Which Is Associated With Higher Unemployment Rates and More Sensitivity to Labor Market Shocks

The majority of adult SNAP participants without dependents have a high school education or less. According to 2017 USDA Household Characteristics data, about one-quarter (24 percent) of non-disabled individuals aged 18 through 49 in households without children report having less than a high school education, and about 54 percent report a high school diploma or a GED. (Some 8 percent do not report educational attainment.)⁶⁹ They are more likely than other SNAP participants to lack basic job skills like reading, writing, and basic mathematics, according to a 2003 Government Accountability Office (GAO) study.⁷⁰ A more recent study of SNAP employment and training (E&T) participants, which includes many childless adults ages 18 through 49, but did not separately report results for that population, found that three-quarters of employment and training providers

⁶⁷ We looked at U.S. Agriculture Department’s fiscal year 2017 SNAP Households Characteristic data (QC), the 2017 American Community Survey (ACS) 1-year estimates, and the March 2018 Community Population Survey (CPS). Reporting of race/ethnicity is voluntary and is missing for 13 percent of ABAWDs in QC. About 12 percent of ABAWDs self-identified or were coded by an eligibility worker as “Latino or Hispanic”, but the share increased to 17 percent in high-reporting states (missing for less than 10 of SNAP participants). CPS and ACS capture more Hispanics than QC. Hispanics account for 22 percent of ABAWDs in CPS and 20 percent in ACS. Compared to ACS, the disability income questions are much more detailed and comprehensive in CPS.

⁶⁸ CBPP analysis of the March 2018 Current Population Survey. Some 12 percent are unknown.

⁶⁹ CBPP analysis of FY 2017 USDA Household Characteristics data.

⁷⁰ “Food Stamp Employment and Training Program,” United States General Accounting Office, revised March 2003, <https://www.gao.gov/assets/240/237571.pdf>.

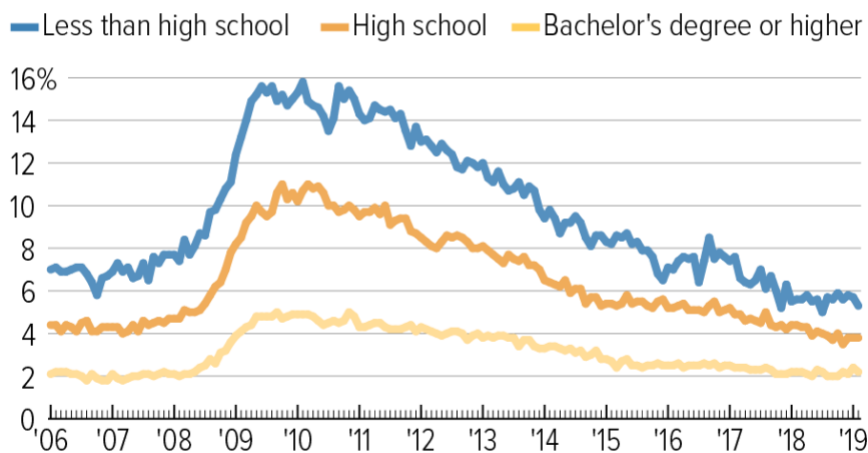
surveyed found that at least some of the E&T participants they serve lack basic skills when they enter the program, over half said some participants have low literacy levels or were high school dropouts, and over two-fifths cited that participants' skills were mismatched to industry needs or were out of date. Over one-quarter of E&T participants surveyed identified limited education as a barrier to employment.⁷¹ Caseworkers in a work experience program in Ohio found signs of functional illiteracy even among those with a high school degree.⁷²

Research shows that adults with lower educational attainment have higher unemployment rates than those with more education. (Figure 3.1.) For example, in 2018, while the unemployment rate for workers with a bachelor's degree or more was 2.1 percent, the unemployment rate for high school graduates was 4.1 percent, and for those with less than a high school education, 5.6 percent. African Americans with less than a high school diploma had an unemployment rate of 10.4 percent.⁷³

FIGURE 3.1

Unemployment Higher Among Those With Less Education

Monthly unemployment rate



Source: U.S. Bureau of Labor Statistics

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⁷¹ Gretchen Rowe, Elizabeth Brown, and Brian Estes, “SNAP Employment and Training (E&T) Characteristics Study: Final Report,” United States Department of Agriculture, Food and Nutrition Services, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPEandTCharacteristics.pdf>.

⁷² “A Comprehensive Assessment of Able-Bodied Adults Without Dependents and Their Participation in the Work Experience Program in Franklin County, Ohio,” Ohio Association of Foodbanks, revised 2014, <http://admin.ohiofoodbanks.org/uploads/news/WEP-2013-2014-report.pdf>.

⁷³ “Employment Status of the Civilian Population 25 Years and Over by Educational Attainment,” Bureau of Labor Statistics, revised February 1, 2019, <https://www.bls.gov/news.release/empsit.t04.htm>.

Workers with less education are more likely to lose jobs during an economic downturn and will recover more slowly in the aftermath of a recession. Researchers have found that an increase of one percentage point in the state unemployment rate leads to almost a two-percentage-point increase in unemployment for workers with less than a high school degree compared to less than 0.5-percentage-point increase for those with a college degree.⁷⁴ Workers with a high school diploma had lower employment rates in 2007 than college graduates: 55 percent for those with only high school education, compared to 72.5 percent for those with a bachelor's degree. Employment rates, or the share of the population with a job, fell more sharply for the group with lower levels of educational attainment, and in 2018 had yet to return to pre-recession levels.⁷⁵ Counties with large shares of workers with less than a high school degree also saw greater employment losses during the Great Recession.⁷⁶

Workers with less education may be hit harder by recessions in part because when unemployment rises, employers may raise the skill requirements for positions: one study found that a one-percentage-point increase in the local unemployment rate raises the fraction of jobs requiring a bachelor's degree by about 0.4 percentage points and the fraction of jobs requiring two or more years of experience by about 0.8 percentage points.⁷⁷ Evidence also suggests that for workers entering the labor market during a recession, the effects can be long-lasting: those workers had reduced earnings that persisted up to ten years into workers' careers, and the effect was most pronounced for those with less than a high school education, driven by greater losses in employment.⁷⁸

The majority of adult SNAP participants without dependents have a high school diploma or lower educational attainment. Evidence shows that workers with a high school diploma or less have higher unemployment rates, lower employment rates, experience greater employment losses during economic downturns, and recover more slowly. The overall unemployment rate therefore will significantly overstate the employment opportunities available to less-educated workers, particularly during a recession and the aftermath. FNS does not appear to have considered any of this research in developing this proposal. We urge FNS to carefully review this literature, which demonstrates that because adults with less education, typically have higher unemployment rates than the overall

⁷⁴ Hilary Hoynes, Douglas L. Miller, and Jessamyn Schaller, "Who Suffers During Recessions?" *Journal of Economic Perspectives* (Summer 2012), pp. 27-48. <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.26.3.27>

⁷⁵ Lauren Bauer and Jay Shambaugh, "Workers with Low Levels of Education Still Haven't Recovered From the Recession," The Hamilton Project (September 2018), pp. 1-4, http://www.hamiltonproject.org/blog/employment_rate_gap_workers_with_low_levels_of_education_still_havent_recovered.

⁷⁶ Brian Thiede and Shannon Monnat, "The Great Recession and America's Geography of Unemployment" *Demographic Research* (September 2016), pp. 891-928. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5486972/>

⁷⁷ Alicia Modestino, Daniel Shoag, and Joshua Balance, "Upskilling: Do Employers Demand Greater Skill When Skilled Workers are Plentiful?" Harvard Kennedy School Taubman Center for State and Local Government (May 2015), pp. 1-4. <https://www.hks.harvard.edu/sites/default/files/centers/taubman/files/Upskilling.pdf>

⁷⁸ Hannes Schwandt and Till von Wachter, "Unlucky Cohorts: Estimating the Long-Term Effects of Entering the Labor Market in a Recession in Large Cross-Sectional Data Sets," *Journal of Labor Economics*, Vol. 37, No. 51 (January 2019), S161-S198, <https://www.journals.uchicago.edu/doi/10.1086/701046>

average in their area, the proposed unemployment rate floor would be a much higher rate for adults with less education, the majority of childless adults.

Over Two-Fifths of Childless Adult SNAP Participants Aged 18-49 Are African American or Latino, Groups That Experience Higher Unemployment Rates and More Employment Discrimination

Over one-quarter of childless adult SNAP participants targeted by the time limit are African American and approximately 20 percent are Latino.⁷⁹ These groups, particularly African Americans, also have higher unemployment rates than white Americans and are more affected by recessions.

Black and Latino workers generally have higher unemployment rates than white Americans. According to data published by the BLS, in the fourth quarter of 2018, for example, the overall unemployment rate was 3.6 percent and 3.2 percent for white workers, but Latinos had an unemployment rate of 4.3 percent, and the unemployment rate for African Americans was 6.1 percent.⁸⁰ In fact, for about the past four decades, unemployment rates among black workers have been about double those of white workers.⁸¹ This relationship is true even when comparing unemployment rates for those with similar education levels. The unemployment rate among African American workers with less than a high school education in 2018 was 10.4 percent, more than double the unemployment rate of whites with the same education level, which was 5.1 percent. Black high school graduates had unemployment rates of 6.7 percent in 2018, close to double the unemployment rate for white high school graduates in 2018, of 3.5 percent.⁸²

These disparities are also found at the local level. Researchers have found significant racial disparities in labor force statistics within the same city, which may be explained in part by complex and deeply rooted factors such as industry concentration, investments in housing and infrastructure, and demographic trends. Chicago, San Francisco, Washington, and the borough of Manhattan all had relatively low black employment rates in 2015 (56, 53, 64, and 62 percent, respectively), and white employment rates that were at least 20 percentage points higher (83, 84, 88, and 85 percent, respectively).⁸³ It is unclear if the Department considered the consistently high unemployment rates among African American and Latino workers when proposing a minimum unemployment rate floor

⁷⁹ CBPP analysis of FY 2017 USDA Household Characteristics data, the March 2018 Current Population Survey, and 2017 American Community Survey (ACS) 1-year estimates.

⁸⁰ “Table E-16. Unemployment Rates by age, sex, race, and Hispanic or Latino ethnicity,” Bureau of Labor Statistics, revised January 4, 2019, https://www.bls.gov/web/empsit/cpsee_e16.htm.

⁸¹ Valerie Wilson, “Before the State of the Union, a fact check on black unemployment,” Economic Policy Institute, February 2019, pp. 1-4. <https://www.epi.org/blog/before-the-state-of-the-union-a-fact-check-on-black-unemployment/>.

⁸² “Labor Force Statistics from the Current Population Survey, Table 7. Employment status of the civilian noninstitutional population 25 years and over by educational attainment, sex, race, and Hispanic or Latino ethnicity,” Bureau of Labor Statistics, revised January 18, 2019, <https://www.bls.gov/cps/cpsaat07.htm>.

⁸³ Martha Ross and Natalie Holmes, “Employment by Race and Place: Snapshots of America,” Brookings Institution, February 2017, pp. 1-16. <https://www.brookings.edu/blog/the-avenue/2017/02/27/employment-by-race-and-place-snapshots-of-america/>.

of 7 percent, which would essentially be an unemployment rate that is close to 14 percent for African Americans.

Employment outcomes for African Americans are also more affected by the business cycle than white Americans. One study found that over the period of 1990 through 2004, as the unemployment rate increased by one percentage point, men were 0.16 percentage points more likely to become unemployed, but this rate rose to 0.27 percentage points for African American men. Black men were also less likely to transition from unemployment to employment than white men, though the researchers found that this relationship didn't change significantly during the business cycle, the same study found. These results control for differences in education and other characteristics.⁸⁴ Another study found that black and Latino workers are more likely to work part-time for economic reasons than white workers, even after controlling for other demographic and economic differences between the groups. This analysis found that this involuntary part-time work rose for all groups during the Great Recession, but recovered much more quickly for white men than for black men, with black men much less likely to transition from part-time to full-time work in the years following the recession than white men.⁸⁵

Multiple deep-rooted factors contribute to these employment disparities. For example, decades of discriminatory housing policies have contributed to unequal access to quality education for black children, which may affect employment opportunities later in life.⁸⁶ In addition to these complex causes, a large body of research also demonstrates that employer discrimination contributes to higher unemployment rates among African Americans, especially compared to white Americans.

Researchers have conducted dozens of field studies over the past three decades in which they have compared outcomes for otherwise identical job applications that differ only by racial or ethnic markers (such as identical resumes with distinct names). One meta-analysis of such studies found that white applicants receive 36 percent more callbacks than African Americans with the same qualifications, and 24 percent more callbacks than Latinos. They found there was little change in the callback disparities between white and black Americans over the 25 years studied, from 1990 to 2015, and a slight reduction in the disparities between Latino and white applicants, though barely statistically significant.⁸⁷ We strongly urge FNS to review all of these studies, as they help explain why an unemployment rate is an especially poor predictor of job availability for African American workers, who may not be hired for available jobs due to discrimination. For example:

⁸⁴ Kenneth Couch and Robert Fairlie, "Last Hired First Fired? Black-White Unemployment and the Business Cycle," *Demography* (February 2010), pp. 227-247. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3000014/>.

⁸⁵ Tomaz Cajner *et al.*, "Racial Gaps in Labor Market Outcomes in the Last Four Decades and over the Business Cycle," Federal Reserve Board, June 2017, pp. 1-33, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2996084.

⁸⁶ Richard Rothstein, "The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods – A Constitutional Insult," Economic Policy Institute, November 12, 2014, <https://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/>.

⁸⁷ Lincoln Quillian *et al.*, "Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time," *Proceedings of the National Academy of Sciences of the United States of America* (April 2017), pp. 1-6, <https://www.pnas.org/content/early/2017/09/11/1706255114>.

- Two field studies, in Milwaukee and New York City, found consistently higher callbacks for white applicants compared to African American applicants. Both studies had young men (ages 21 to 24) play the role of job applicants. They were matched with applicants with similar appearance and verbal and social skills, and presented with similar resumes demonstrating similar levels of education and job experience, and they received job interview training to be similarly prepared. In both Milwaukee and New York, white applicants received callbacks or job offers at roughly double the rate of African American applicants.⁸⁸
- Another field study found that black applicants were about half as likely to receive a callback as white applicants. This study also found that white applicants who were recently released from prison had similar levels of callbacks as black and Latino applicants: whites with criminal records obtained positive responses in 17.2 percent of job applications, compared to 15.4 percent for Latinos and 13.0 percent for blacks.⁸⁹
- One field experiment found that when comparing outcomes of identical resumes with names that were typically associated with white or black identities, white applicants had a 50 percent higher chance of being called back.⁹⁰

While they make up a small share of childless adults subject to the time limit, Native Americans are likely to be disproportionately affected by this proposed rule given the estimate that many tribal reservations may lose waiver eligibility, as outlined in Chapter 1. Native Americans also traditionally have higher unemployment rates and worse labor force outcomes than white Americans, in part due to sparse job opportunities on or near tribal and other rural areas and the legacy of historical factors contributing to lower educational attainment and other barriers to employment. (Figure 3.2.)⁹¹

⁸⁸ Devah Pager and Bruce Western, “Identifying Discrimination at Work: The Use of Field Experiments,” *Journal of Social Issues* (2012) pp. 221-237, http://scholar.harvard.edu/files/pager/files/identifying_discrimination_pager_western.pdf?m=1462807104.

⁸⁹ Devah Pager, Bruce Western, and Bart Bonikowski, “Discrimination in a Low-Wage Labor Market: A Field Experiment,” *American Sociological Review* (October 2009), pp. 777-799, <http://scholar.harvard.edu/files/bonikowski/files/pager-western-bonikowski-discrimination-in-a-low-wage-labor-market.pdf>.

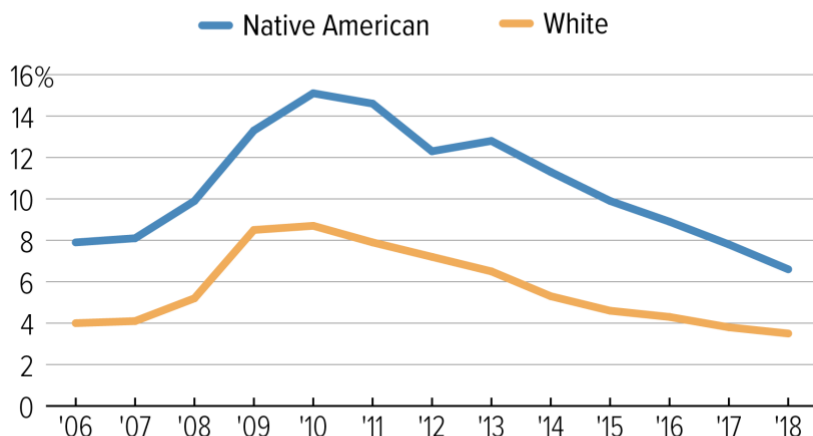
⁹⁰ Marianne Bertrand and Sendhil Mullainathan, “Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination,” *National Bureau of Economic Research* (July 2003), pp. 1-27 <https://www.nber.org/papers/w9873>.

⁹¹ Ed Bolen and Stacy Dean, “Waivers Add Key State Flexibility to SNAP’s Three-Month Time Limit,” Center on Budget and Policy Priorities, updated February 6, 2018, <https://www.cbpp.org/research/food-assistance/waivers-add-key-state-flexibility-to-snaps-three-month-time-limit>.

FIGURE 3.2

Native Americans Face High Unemployment

2006 - 2018 annual averages



Note: "Native American" refers to individuals identifying as American Indian or Alaska Native alone or in combination with some other racial category. "White" refers to individuals identifying as white alone. Both Native American and white data include Hispanics.

Source: U.S. Bureau of Labor Statistics, Current Population Survey.

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This evidence shows that black and Latino workers as well as Native American workers, have historically and consistently higher unemployment rates than white workers, and that these outcomes cannot be explained solely by differences in education or other characteristics. Significant numbers of individuals subject to the time limit therefore are in groups that experience unemployment rates that are significantly higher than that of their state or local area. An unemployment rate floor would therefore disallow states from requesting waivers from areas where black and Latino workers have few job opportunities, even if the general unemployment rate for their area is relatively low. If implemented, this proposal would therefore disproportionately harm black, Latino and Native American adults subject to the time limit. This disparate impact of this policy is therefore in conflict with 7 U.S.C. § 2020(c)(2), which establishes that program administration of SNAP must be consistent with existing civil rights law.

Childless Adult SNAP Participants Are More Likely to Work in Jobs With High Rates of Un- And Underemployment and Instability

The individuals who are targeted by the time limit do work, but in occupations where workers experience instability, including underemployment, gaps in employment, and higher unemployment rates. The general unemployment rate for the area therefore does not reflect the unemployment rates for workers such as those in service occupations, who are more likely to be unemployed at any given time than other workers.

SNAP participants who work generally work in service or sales occupations, such as cashiers, cooks, home health aides, janitors, or drivers.⁹² A recent study of SNAP E&T participants, which includes many childless adult SNAP participants ages 18-49, found that sales and service occupations, such as cashiers and food preparation workers, were among the most common reported by participants.⁹³

There are higher unemployment rates among workers in many of these occupations. People who report their occupation as a service occupation had unemployment rates about 23 percent higher than the general unemployment rate in 2018, with food preparation and serving workers reporting unemployment rates about 56 percent higher than the overall average.⁹⁴ One analysis that looked at working-age workers who did not receive disability income and did not have young children in the household found that unemployment rates among those individuals were especially high for cashiers, housekeepers, and laborers in 2017.⁹⁵

Low-skill and low-wage workers are also more likely to be working part time for economic reasons, and to cycle in and out of the labor force. For example, one study found that the share of workers in low-skill jobs (classified by the types of tasks required, which are manual and routine, as opposed to cognitive and non-routine) who were working part time involuntarily was about three times that of workers in the highest-skill occupations (11 percent versus 3 percent), and another found that involuntary part-time workers were concentrated in the retail trade and hospitality industries.⁹⁶ Another study observed a broader trend of workers cycling in and out of the labor force.⁹⁷

One of the reasons why these workers might have higher rates of un- and underemployment and non-labor force participation is higher turnover: because these occupations lack stability, workers are likelier to move in and out of jobs, and likelier to be unemployed or out of the labor force at a given time or take a part-time job when they would desire a full-time job. Low-paying jobs often have

⁹² “SNAP Helps 1 in 10 Workers in the United States Put Food on the Table,” Center on Budget and Policy Priorities, revised November 2018, https://www.cbpp.org/sites/default/files/atoms/files/factsheets_11-27-18fa_us.pdf.

⁹³ Gretchen Rowe, Elizabeth Brown, and Brian Estes, “SNAP Employment and Training (E&T) Characteristics Study: Final Report,” United States Department of Agriculture, Food and Nutrition Services, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPEandTCharacteristics.pdf>.

⁹⁴ “Labor Force Statistics from the Current Population Survey, Table 25, Annual Averages, Unemployed persons by occupation and sex,” Bureau of Labor Statistics, revised January 18, 2019, <https://www.bls.gov/cps/cpsaat25.htm>.

⁹⁵ Kristin Butcher and Diane Whitmore Schanzenbach, “Most Workers in Low-Wage Labor Market Work Substantial Hours, in Volatile Jobs,” Center on Budget and Policy Priorities, revised July 24, 2018, <https://www.cbpp.org/sites/default/files/atoms/files/7-24-18pov.pdf>.

⁹⁶ Maria E. Canon, Marianna Kudlyak, Guannan Luo, and Marisa Reed, “Flows To and From Working Part Time for Economic Reasons and the Labor Market Aggregates During and After the 2007-09 Recession,” *Economic Quarterly*, Vol. 100, No. 2, Second Quarter 2014, Pp.87-111. https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_quarterly/2014/q2/kudlyak.pdf; Lonnie Golden, “Still falling short on hours and pay,” Economic Policy Institute, December 5, 2016, <https://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/#epi-toc-8>.

⁹⁷ John Coglianese “The Rise of In-and-Outs: Declining Labor Force Participation of Prime Age Men,” Working Paper, February 28, 2018, <https://scholar.harvard.edu/coglianese/publications/rise-of-in-and-outs>.

irregular schedules that change from week to week. Workers in low-wage jobs are sometimes given little notice of schedule changes or are expected to be on call, and are more likely to work part-time hours when they would prefer a full-time schedule.⁹⁸ Low-wage jobs are also more likely to lack paid sick leave or other paid leave. For example, only 46 percent of workers in jobs with average hourly wages in the bottom 25 percent of the wage distribution had paid sick leave in 2016, compared to 91 percent of workers in the highest-paid jobs (and 72 percent overall).⁹⁹

Workers in jobs with lower wages, more volatility, and fewer benefits are more likely to experience turnover, research shows. For example, a study found that workers with access to paid sick leave or paid vacation were more likely to stay in their current job. This study found these effects even when controlling for other characteristics of workers, such as education level or income, or characteristics of jobs (such as the size of the firm and other benefits provided) that are associated with more job separations.¹⁰⁰ Another study that examined data from a large chain of retailers found that workers who earned lower wages and had more schedule volatility (which was driven by changes in consumer demand, not by employee choice) were more likely to leave their jobs; this study found that these effects were not due to worker ability.¹⁰¹

In addition to job conditions, the lack of key supports such as stable housing may also contribute to volatility or periods of joblessness among low-income workers. For example, recent research finds that low-income renters who experience a forced move (such as following an eviction) are more likely to be laid off from their jobs, compared to similar renters who did not experience a forced move.¹⁰²

At least in part because of these conditions, workers in low-wage jobs are more likely to be employed at jobs for shorter periods and to experience periods of non-work. Workers with lower levels of education (who are more likely to work in low-wage jobs) spend more weeks unemployed than those with more education and they experience less wage growth over the course of their lifetimes, according to studies by the Bureau of Labor Statistics that follow workers over time. These studies also find that younger workers with less education are more likely to have short-term jobs of

⁹⁸ For more information, see Brynne Keith-Jennings and Vincent Palacios, “SNAP Helps Millions of Workers,” Center on Budget and Policy Priorities, May 10, 2017, <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-low-wage-workers>.

⁹⁹ Bureau of Labor Statistics, Employee Benefits Survey, <https://www.bls.gov/ncs/cbs/benefits/2017/ownership/civilian/table32a.htm>. This survey constructs hourly wage percentiles by looking at average reported hourly wages for workers by occupation. (Because these averages are for occupations, workers may fall into a different percentile than their occupation as a whole if they earn more or less than the average for their occupation.)

¹⁰⁰ Heather Hill, “Paid Sick Leave and Job Stability,” *Work and Occupations*, Vol. 40, Issue 2, 2013, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3825168/>.

¹⁰¹ Saravanan Kesavan and Camelia Kuhnen, “Demand fluctuations, precarious incomes, and employee turnover,” working paper, May 2017, http://public.kenan-flagler.unc.edu/faculty/kuhnenc/research/kesavan_kuhnen.pdf.

¹⁰² Matthew Desmond and Carl Gershenson, “Housing and Employment Insecurity Among the Working Poor,” *Social Problems*, Vol. 63, Issue 1, February 2016, <https://academic.oup.com/socpro/article-abstract/63/1/46/1844105>.

six months or less, compared to workers of a similar age with more education.¹⁰³ Workers in jobs that tend to have low wages, such as in the leisure and hospitality industry and service occupations, also tend to stay at jobs for shorter lengths than workers in other jobs.¹⁰⁴ We strongly urge FNS to carefully review this research, which helps explain why unemployment rates may not capture the dynamic nature of work for low-wage workers, who comprise the vast majority of SNAP participants.

Working SNAP participants often work in occupations and industries with low wages and more volatility. Compared to all workers, a greater share of workers who participate in SNAP are employed in service occupations and in industries such as retail and hospitality, where jobs are more likely to pay low wages and have other features of low quality.¹⁰⁵ Childless adults are also likely to experience gaps in employment, despite being employed regularly. For example, one study that compared a snapshot, December 2013, with the 24-month period surrounding that month (January 2013 through December 2014), found that while three-quarters of childless adult SNAP participants were in the labor force at some point during this period, only about one-third consistently worked at least 20 hours per week throughout the entire period.¹⁰⁶ Because childless adult SNAP participants work in jobs that contribute to periods of non-employment, unemployment rates in their area likely do not capture their labor trends. The Department did not say whether it considered the unemployment rate floor in the context of the types of jobs that childless adults are likely to work in. Its lack of transparency makes it difficult to assess the claim that individuals subject to the time limit have access to a sufficient number of jobs in an area with 7 percent unemployment over a two-year period.

Many Childless Adult SNAP Participants Have Health Conditions That Limit Their Ability to Work

While adults are exempt from the time limit if they are “medically certified as physically or mentally unfit for employment,”¹⁰⁷ evidence suggests that many childless adult non-elderly SNAP participants have health conditions that serve as a barrier to employment. These adults may not fit the state’s definition of “unfit for work” or may struggle to understand the rules or document their condition in order to obtain an exemption. Research shows that adults with disabilities and other health issues tend to have higher unemployment rates and fewer employment opportunities than individuals without such conditions.

¹⁰³ Bureau of Labor Statistics, “America’s Young Adults at 29: Labor Market Activity, Education and Partner Status: Results from a Longitudinal Survey,” April 8, 2016, <https://www.bls.gov/news.release/nlsyth.nr0.htm>; Bureau of Labor Statistics, “Number of Jobs Held, Labor Market Activity, and Earnings Growth Among the Youngest Baby Boomers: Results from a Longitudinal Survey Summary,” August 24, 2017, <https://www.bls.gov/news.release/nlsoy.nr0.htm>.

¹⁰⁴ Bureau of Labor Statistics, “Employee Tenure in 2016,” <https://www.bls.gov/news.release/pdf/tenure.pdf>.

¹⁰⁵ Brynne Keith-Jennings and Vincent Palacios, “SNAP Helps Millions of Workers,” Center on Budget and Policy Priorities, May 10, 2017, <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-low-wage-workers>.

¹⁰⁶ Lauren Bauer, “Workers Could Lose SNAP Benefits Under Trump’s Proposed Rule,” The Hamilton Project, December 2018, http://www.hamiltonproject.org/blog/workers_could_lose_snap_benefits_under_trumps_proposed_rule.

¹⁰⁷ 7 C.F.R. § 273.24(c)(2)

Various sources illustrate the health conditions that many childless adult SNAP participants have. Survey data indicate that among individuals aged 18 through 49 who do not receive disability benefits or identify as disabled, nor have children in their household, about one-fifth report a health problem or disability that prevents them from working or limits the type of work they can do, report leaving the job or the labor force due to disability, or report not having worked in the last year due to disability.¹⁰⁸ Research funded by FNS reports that state caseworkers found multiple barriers to employment among individuals subject to the time limit as they worked to implement welfare reform's time limits and work requirements. The most frequently cited barriers included medical or mental health issues, or substance use disorders.¹⁰⁹ A detailed study of childless adults who were referred to a work experience program in Franklin County (Columbus), Ohio found that one-third have a mental or physical limitation, including depression, post-traumatic stress disorder, mental or learning disabilities, or physical injuries.¹¹⁰ A more recent study of characteristics of employment and training participants, which includes many childless adults ages 18-49, found that about 30 percent of E&T participants identified health issues as a barrier to employment.¹¹¹

Research finds that people with disabilities tend to face greater barriers to employment and have worse labor force outcomes than individuals without disabilities. The Bureau of Labor Statistics, for example, finds that the unemployment rate among working-age individuals with a disability (ages 16 to 64), was 10 percent in 2017, more than double the unemployment rate for working-age individuals without a disability, which was 4.2 percent.¹¹² Earlier BLS research describes some of the barriers to employment that individuals with disabilities identified. About half of the individuals who were out of the labor force or unemployed in May 2012 identified experiencing these challenges, with the most common being that their own disability limited their work ability, and with smaller shares identifying a lack of training, lack of transportation, or the need for accommodations.¹¹³ Other research has identified challenges jobseekers with disabilities face, such as difficulty finding appropriate jobs (which could include difficulty finding jobs that provide appropriate accommodations), lack of social networks to facilitate job connection, or lack of accessible

¹⁰⁸ CBPP analysis of the March 2018 Current Population Survey

¹⁰⁹ John L. Czajka, *et al.*, "Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation, Volume I," U.S. Department of Agriculture, Food and Nutrition Service, September 2001, <https://fns-prod.azureedge.net/sites/default/files/abawd.pdf>.

¹¹⁰ "A Comprehensive Assessment of Able-Bodied Adults Without Dependents and Their Participation in the Work Experience Program in Franklin County, Ohio," Ohio Association of Foodbanks, revised 2015, <http://ohiofoodbanks.org/wep/WEP-2013-2015-report.pdf>.

¹¹¹ Gretchen Rowe, Elizabeth Brown, and Brian Estes, "SNAP Employment and Training (E&T) Characteristics Study: Final Report," United States Department of Agriculture, Food and Nutrition Services, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPEandTCharacteristics.pdf>.

¹¹² "Economic News Release: Table 1, Employment status of the civilian noninstitutional population by disability status and selected characteristics, 2018 annual averages," Bureau of Labor Statistics, revised June 21, 2018, <https://www.bls.gov/news.release/disabl.t01.htm>.

¹¹³ "Persons With a Disability: Barriers to Employment, Types of Assistance, and Other Labor-Related Issues," Bureau of Labor Statistics, revised April 24, 2013, <https://www.bls.gov/news.release/pdf/dissup.pdf>.

transportation for job-seeking.¹¹⁴ Research has also documented that employers' attitudes may also harm jobseekers with disabilities, as employers may inadvertently underestimate the capacity of individuals with disabilities.¹¹⁵

Many childless adults report physical or mental health conditions that limit their ability to find a job and to work, and research shows that adults with disabilities face higher unemployment rates. While some of these individuals may be exempt from the time limit based on disability, others face difficulty documenting their health conditions, or have conditions that fall short of the "unfit for work" standard. Imposing an unemployment rate floor for 20 percent standard waivers would therefore cause many areas to lose waivers where individuals with health conditions are unable to find jobs. The Department did not address the disparate impact of the proposed rule on people with disabilities and other health conditions.

Childless Non-Elderly Adults Seeking Work May Face Geographic or Transportation Limitations With Respect to Available Jobs

As stated above, about two-fifths each of childless adult SNAP participants without disabilities live in urban or suburban areas, and about 15 percent live in rural areas. Many rural areas have stalled economic development, which may result in relatively few job opportunities available. Even in urban or suburban areas where jobs may be more plentiful, many workers face transportation limitations to access those jobs. Some childless adults may face obstacles to finding work based on geographic factors.

Individuals living in rural areas are less likely to be employed than other areas. Factors such as out-migration of younger workers and the aging of the remaining workforce, and declining infrastructure and investment have contributed to this trend. Beginning in the 1970s, the share of men with less than a high school education who are employed has declined more in rural areas than in urban areas. By 2016, only about 50 percent of these men with lower educational attainment were employed, about 15 percentage points lower than men without a high school diploma in urban areas.¹¹⁶ While both rural and urban counties saw steep employment losses that began recovering in 2010, the recovery stalled for rural counties, contributing to a significant employment gap between rural and urban counties, according to a 2014 USDA study. Counties with large share of African Americans saw greater impacts from the recession, which can only partially be explained by factors such as industry mix or educational composition of those counties, this study found.¹¹⁷

¹¹⁴ Pamela Loprest and Elaine Maag, "Barriers to and Supports for Work Among Adults with Disabilities: Results from the NHIS-D," The Urban Institute, January 2001, pp. 1-22, <https://www.bls.gov/news.release/pdf/dissup.pdf>.

¹¹⁵ Katrina Vornholt *et al.*, "Disability and Employment – Overview and Highlights," *European Journal of Work and Organizational Psychology* (2018), pp. 40-55, <https://www.tandfonline.com/doi/pdf/10.1080/1359432X.2017.1387536>.

¹¹⁶ James Ziliak, "Restoring Economic Opportunity for 'The People Left Behind': Employment Strategies for Rural America," Aspen Institute, revised 2019. <https://www.aspeninstitute.org/longform/expanding-economic-opportunity-for-more-americans/restoring-economic-opportunity-for-the-people-left-behind-employment-strategies-for-rural-america/>.

¹¹⁷ Tom Hertz *et al.*, "Rural Employment Trends in Recession and Recovery," U.S. Department of Agriculture, Economic Research Service, revised August 2014, https://www.ers.usda.gov/webdocs/publications/45258/48731_err172.pdf?v=0.

In addition to individuals living in rural areas may facing significant challenges to finding work, many individuals in all types of areas do not have access to available jobs, either because their skills do not align with the job requirements, or because transportation options to those jobs are inadequate. In these areas, the area unemployment rate is an especially poor proxy for jobs available to those individuals, if such jobs are inaccessible. We strongly urge FNS to carefully review all of the below studies, which are key to understanding why an unemployment rate for an area does not accurately portray the number of jobs available to the individuals subject to the time limit.

- The number of jobs within a typical commuting distance in major metro areas fell by 7 percent between 2000 and 2012, with steeper losses for Latino and African American residents, which fell by 17 and 14 percent respectively, and for residents with income below the poverty line, which fell by 17 percent, compared to 6 percent for non-poor residents. The majority of Census tracts with high poverty rates or a majority of residents of color experienced losses in accessible jobs.¹¹⁸
- In a number of metropolitan areas, low-income workers live far from available jobs, one recent study found by comparing the distance between the residence of low-wage jobseekers and job postings based on data from an online marketplace for hourly jobs. This study found, for example, that in 12 major metropolitan areas, within at least 9 percent of zip codes in each area, job postings far exceeded jobseekers in those zip codes.¹¹⁹ In some of these cities such as San Francisco, jobs may be clustered in areas of the city where housing costs are high, and low-wage job-seekers live farther away and have limited transit options. For example, in Boston, low-wage job postings far exceed the number of applicants in 41 percent of zip codes, and in New York, San Francisco, Chicago, Minneapolis, and Denver, available jobs far outnumber job seekers in about one-quarter or more of zip codes. There are also many pockets of metropolitan areas with the opposite issue, where many job seekers are clustered, but available jobs are far from where they live. This is the case for over half of the zip codes in Atlanta and Miami, where job applicants far outweigh open jobs (measured as zip codes in the bottom quintile of job seekers minus job postings within 6.3 miles of the zip code's center). In cities such as Columbus, Detroit, Austin, and Nashville, there are far more job applicants than there are available jobs in over one-quarter of zip codes. In many cities in the study such as Columbus, Nashville, Dallas, and Washington, D.C., sizable shares of zip codes have both problems, demonstrating the mismatch between the distribution of available jobs and workers.¹²⁰
- Increasing job accessibility, a measure of proximity to employment opportunities relative to other nearby jobseekers, significantly increases the chance of finding a job for African Americans and Latinos, a 2006 study that looked at jobseekers in three major metropolitan areas found. This shows how disparities in access to jobs contribute to disparities in labor

¹¹⁸ Elizabeth Kneebone and Natalie Holmes, "The Growing Distance Between People and Jobs in Metropolitan America," Metropolitan Policy Program at Brookings, March 2015, pp. 1-24, http://kedc.com/wp-content/uploads/2015/04/Brookings_JobCommuteDistance2015.pdf.

¹¹⁹ The researchers identified zip codes where job postings "far exceeded" jobseekers as zip codes that are in the top quintile of job seekers minus job postings within 6.3 miles of the zip code's population-weighted centroid, which is the average distance between job seekers and applicants in their dataset.

¹²⁰ Christina Stacy, Brady Meixell, and Serena Lei. "Too Far from Jobs: Spatial Mismatch and Hourly Workers," Urban Institute, February 21, 2019, <https://www.urban.org/features/too-far-jobs-spatial-mismatch-and-hourly-workers>

market outcomes. The authors identified several factors as contributing to this phenomenon, including that African Americans were more likely to live in central cities farther from suburban areas with more jobs and were less able to move to a new neighborhood due to housing segregation and residential discrimination; jobs were located in cheaper suburban areas due to land use policy; and that there was a lack of public transit options and lower car ownership rates among African Americans.

This study found that increasing accessibility by one standard deviation above the mean value would increase the probability of completing a job search within six months by 61 percent for black non-college graduates, while not increasing this effect for white workers with similar levels of education. Having access to a car, searching in a job-rich area, being able to accept a longer commute, having a higher-quality social network, and having more education were all associated with an increase in the probability of finding a job within six months, while being black or having child care concerns were associated with a decrease in this probability. The cumulative effects of spatial job search variables such as job accessibility or car ownership rates accounted for about 40 percent of the gap between the time it takes black and white jobseekers to find a job.¹²¹

- Increased job accessibility reduced the length of time it took recently laid-off workers in nine metropolitan areas to find a job. This study looked specifically at jobseekers who had been employed but laid off to ensure that these individuals were searching for reasons unrelated to characteristics associated with higher unemployment. It found that “an increase in one unit in job accessibility (from -0.5 to 0.5) is approximately equal to an increase from the 20th to the 80th percentile of job accessibility. Such an increase is associated with a 5.0 percent reduction in search duration for finding any job, and a 6.6 and 8.3 percent reduction for accessions to a new job with 75 and 90 percent of prior job earnings, respectively.” Black and Hispanic workers were more sensitive to job accessibility than were white workers.¹²²
- An analysis of job accessibility in the Chicago metropolitan area found that increasing job accessibility is linked with lower unemployment. At the mean, an increase in job accessibility of one standard deviation was associated with a 0.43-point reduction in the unemployment rate overall, a 0.57-point reduction in the African American unemployment rate, and a 0.47-reduction in the unemployment rate for low-income households.¹²³

Research shows how geographic factors can influence labor market outcomes such as employment for individuals in ways that are not readily apparent based on unemployment rates. An individual living in an area with a relatively low unemployment rate may not have access to jobs for which they are qualified due to transportation limitations. Some rural areas may have relatively low unemployment rates due in part to low labor force participation, and individuals living there may have relatively few job opportunities. We are concerned that when considering an unemployment

¹²¹ Rucker Johnson, “Landing a job in urban space: The extent and effects of spatial mismatch,” *Regional Science and Urban Economics* (February 2006), pp. 331-372, [https://www.ssc.wisc.edu/~gwallace/Papers/Johnson%20\(2006\).pdf](https://www.ssc.wisc.edu/~gwallace/Papers/Johnson%20(2006).pdf).

¹²² Fredrik Andersson *et al.*, “Job Displacement and the Duration of Joblessness: The Role of Spatial Mismatch,” *National Bureau of Economic Research* (April 2014), pp. 1-50. <https://www.nber.org/papers/w20066.pdf>.

¹²³ Jangik Jin and Kurt Paulsen, “Does Accessibility Matter? Understanding the Effect of Job Accessibility on Labour Market Outcomes,” *Urban Studies* (2018), pp. 92-115. <https://journals.sagepub.com/doi/abs/10.1177/0042098016684099>.

rate floor for the purposes of time limit waivers, the Department did not appear to consider whether job accessibility may limit the potential for childless SNAP participants to obtain a job, even if the area in which they live has a relatively low unemployment rate.

Childless Adult SNAP Participants Report Other Barriers That Are Associated With Higher Unemployment Rates

The unemployment rate for the area does not reflect the availability of jobs for adult SNAP participants because these individuals face many disadvantages compared to the overall labor force. In addition to some of the characteristics already discussed that are associated with higher unemployment rates and other worse labor force outcomes, many individuals face barriers to work that may make it more difficult to find available jobs, complete a job search, be selected by employers, or maintain a job once employed. Here again, FNS' proposed rule seemed to either ignore or dismiss without explanation the considerable research that finds that unemployment rates do not reflect job availability for the individuals subject to the time limit. We encourage FNS to carefully review these research, which demonstrates how barriers to employment limit job availability for people subject to the time limit even if the unemployment rate is low.

- **Housing instability and homelessness.** Several studies have reported that some childless adult SNAP participants lack access to stable housing and some experience homelessness. A USDA research report looking at individuals first subject to the time limit found that homelessness was among the barriers that case managers reported.¹²⁴ A GAO study that looked at employment and training programs for childless adults also found that some case managers reported housing difficulties as a barrier to work; for example, Colorado officials estimated that about 40 percent of their employment and training participants experienced homelessness.¹²⁵ Similarly, a more recent USDA study of employment and training providers found that over two-fifths of these providers identified a lack of stable housing as a barrier for at least a quarter of participants in these programs, which include many adults targeted by the time limit.¹²⁶

Barriers to work among individuals experiencing homelessness are well-documented, including limited skills and inconsistent work histories, lack of transportation, or physical or mental health conditions.¹²⁷ Those who are homeless may lack consistent access to resources needed to maintain personal hygiene and meet dress codes, and the sleep deprivation and stress of lacking housing may also affect these workers. People experiencing homelessness also lack access to a reliable mailing address and may not have consistent access to a phone or

¹²⁴ John L. Czajka *et al.*, "Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation, Volume I," U.S. Department of Agriculture, Food and Nutrition Service, September 2001. <https://fns-prod.azureedge.net/sites/default/files/abawd.pdf>.

¹²⁵ "Food Stamp Employment and Training Program," United States General Accounting Office, revised March 2003, <https://www.gao.gov/assets/240/237571.pdf>.

¹²⁶ Gretchen Rowe, Elizabeth Brown, and Brian Estes, "SNAP Employment and Training (E&T) Characteristics Study: Final Report," United States Department of Agriculture, Food and Nutrition Services, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPeandTCharacteristics.pdf>.

¹²⁷ David Long, John Rio, and Jeremy Rosen. "Employment and Income Supports for Homeless People," 2007 National Symposium on Homelessness Research," <https://aspe.hhs.gov/system/files/pdf/180356/report.pdf>.

computer for job application and communication needs.¹²⁸ Individuals who experience evictions are also more likely to be laid off, research finds.¹²⁹

- **Criminal records.** Some childless adult SNAP participants may face additional barriers to work due to having a criminal record. For example, a study of childless adults referred to a work experience program in Franklin County, Ohio found that about one-third reported having a criminal record.¹³⁰ Over half of SNAP E&T providers reported that a significant share of participants reported a criminal record as a barrier to work.¹³¹ An in-depth interview study of SNAP participants who experienced periods of time with no other income, approximately half of whom were ages 18 through 49 and who did not have dependent children, found that about one-fifth of study participants had a criminal record that served as a barrier to employment.¹³² While many of these studies have relatively small study populations and some are focused on populations who are more likely to have criminal justice records and are therefore not always representative samples, it is clear that there are individuals potentially subject to the time limit who have experience with the criminal justice system.

Formerly incarcerated individuals face steep barriers to work, and as a result, on average face periods of unemployment following release. Longitudinal studies that have tracked prisoners upon their release, for example, find that up to half remain without a job 12 months after release.¹³³ A recent CBPP paper summarizes some of this research.¹³⁴

- Studies document that the majority of individuals returning from incarceration face health conditions. For example, one study found that one-half of men and two-thirds of women had been diagnosed with chronic physical ailments such as asthma,

¹²⁸ “Taking Away Medicaid for Not Meeting Work Requirements Harms People Experiencing Homelessness,” Center on Budget and Policy Priorities, revised December 14, 2018, <https://www.cbpp.org/sites/default/files/atoms/files/4-18-18health.pdf>.

¹²⁹ Matthew Desmond and Carl Gershenson, “Housing and Employment Insecurity among the Working Poor,” *Social Problems* (January 2016), pp. 1-22. <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>.

¹³⁰ “A Comprehensive Assessment of Able-Bodied Adults Without Dependents and Their Participation in the Work Experience Program in Franklin County, Ohio,” Ohio Association of Foodbanks, 2014, <http://admin.ohiofoodbanks.org/uploads/news/WEP-2013-2014-report.pdf>.

¹³¹ Gretchen Rowe, Elizabeth Brown, and Brian Estes, “SNAP Employment and Training (E&T) Characteristics Study: Final Report,” United States Department of Agriculture, Food and Nutrition Services, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPeandTCharacteristics.pdf>.

¹³² Claire Wilson and Brian Estes, “Examining the Growth of the Zero-Income SNAP Caseload: Characteristics, Circumstances, and Dynamics of Zero-Income SNAP Participants,” U.S. Department of Agriculture, revised October 2014. <https://fns-prod.azureedge.net/sites/default/files/ops/ZeroIncome-Vol2.pdf>.

¹³³ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (Washington, DC: The National Academies Press, 2014), pp. 233-259. <https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

¹³⁴ Elizabeth Wolkomir, “How SNAP Can Better Serve the Formerly Incarcerated,” Center on Budget and Policy Priorities, revised March 16, 2018. <https://www.cbpp.org/sites/default/files/atoms/files/3-6-18fa.pdf>.

diabetes, hepatitis, or HIV/AIDS.¹³⁵ People leaving jail and prison are three to six times likelier than others to suffer from mental illness, another study found.¹³⁶

- Formerly incarcerated individuals also tend to lack education and training sought by employers. They have an average of fewer than 12 years of education and in some cases limited cognitive capacity, a history of behavioral problems, or a low level of functional literacy.¹³⁷ Furthermore, they miss out on opportunities to gain work experience while in prison, and often do not have access to training programs.¹³⁸
- Evidence also suggests that employers are more averse to hiring those with criminal convictions than any other disadvantaged group, and formerly incarcerated individuals can also face occupational licensing and other restrictions.¹³⁹

Unemployment Rates Significantly Overstates Jobs Available to Childless Adult SNAP Participants, Evidence Suggests

The preamble to the proposed rule suggests that adding an unemployment rate floor to qualify for a waiver is necessary because “the Department believes a floor should be set for the 20 percent standard so that areas do not qualify for waivers when their unemployment rates are generally considered to be normal or low.”¹⁴⁰ The Department proposes this unemployment floor to interpret the statute which provides that states can waive areas that lack a “sufficient number of jobs to provide employment for the individuals,” therefore suggesting that areas with unemployment rates below the proposed threshold *do* have enough jobs to provide employment for the individuals who are subject to the time limit.

A significant body of research, provided above, demonstrates why FNS’ reasoning is flawed and lacks transparency. The area unemployment rate is a poor proxy for employment opportunities available to adult SNAP participants without dependent children. These individuals on average are more likely than other workers to have limited education and skills, experience discrimination, lack geographic access to jobs, face housing instability, and experience other barriers to employment. Many of these individuals likely experience multiple barriers that affect their ability to find a job. For example, an African American worker with less than a high school education living far from available jobs with no reliable transportation options will likely have access to far fewer jobs than their area unemployment rate suggests. A rural area may have a low unemployment rate in part because of low labor force participation, where many have given up searching for work due to few

¹³⁵ Kamala Mallik-Kane and Christy A. Visher, “Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration,” Urban Institute Justice Policy Center, revised February 2008. <https://www.urban.org/sites/default/files/publication/31491/411617-Health-and-Prisoner-Reentry.PDF>.

¹³⁶ Henry J. Steadman *et al.*, “Prevalence of Serious Mental Illness Among Jail Inmates,” *Psychiatric Services* (June 2009), pp. 1-5. <https://ps.psychiatryonline.org/doi/pdf/10.1176/ps.2009.60.6.761>.

¹³⁷ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (Washington, DC: The National Academies Press, 2014), pp. 233-259. <https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

¹³⁸ Bruce Western, “Collateral Costs: Incarceration’s Effect on Economic Mobility,” The Pew Charitable Trusts, revised 2010. https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf.

¹³⁹ Elizabeth Wolkomir, “How SNAP Can Better Serve the Formerly Incarcerated,” Center on Budget and Policy Priorities, revised March 16, 2018. <https://www.cbpp.org/sites/default/files/atoms/files/3-6-18fa.pdf>.

¹⁴⁰ NPRM, p.984.

job opportunities. Not only did FNS not provide any evidence on whether it considered research showing how the unemployment rate overstates jobs available based on different demographic characteristics, it also did not provide research that shows how these economic conditions may interact with each other and affect the opportunities to find work for the very disadvantaged population that is subject to the time limit.

Because these adults are in many groups that have significantly higher unemployment rates than the overall unemployment rate for their area, the proposed unemployment rate floor would likely disqualify many areas where these individuals have few opportunities. The unemployment rate among the group of individuals subject to the time limit in a county with a 7 percent unemployment rate is likely much higher than 7 percent. Under the proposed regulation, states would be much less effective at identifying areas where there are not enough jobs for the individuals subject to the time limit, as many of these areas would have overall unemployment rates below the proposed threshold. The Department did not discuss how the unemployment rate relates to job availability for individuals subject to the time limit. It appears FNS ignored the considerable research that shows how the individuals subject to the time limit belong to demographic groups with much higher unemployment rates than the average or face barriers to accessing jobs. Without this research, it is difficult to understand how it came to the conclusion that a 7 percent two-year unemployment rate (or a one-year unemployment rate of 10 percent) accurately captures the number of jobs available to this population.

C. Citation of Labor Surplus Area Unemployment Floor Inappropriate for this Population

The Department cites the fact that the Department of Labor (DOL) has an unemployment floor in its classification of Labor Surplus Areas (LSAs) as support for its proposal to impose a similar floor for the purposes of waiver criteria, implying its approach is consistent with DOL's. The Department, however, proposes a higher floor than DOL uses without providing evidence, when research suggests if anything the floor for this population would be substantially lower than DOL's. The Department also fails to acknowledge that DOL uses a 10 percent ceiling in its identification of LSAs, demonstrating that its citation of LSAs is either misleading or based on incomplete information.

In the preamble for the rule, the Department explained how the DOL has an unemployment rate floor for Labor Surplus Areas, implying that implementing an unemployment rate floor for an area to qualify for a waiver based on having unemployment rates 20 percent above the national average would be appropriate to be consistent with DOL's approach.¹⁴¹ Labor Surplus Areas are areas that DOL identifies as having a "surplus of labor" based on having an unemployment rate of 20 percent higher than the national average for a designated 24-month period. Federal, state, and local agencies use LSA designations for multiple purposes. Executive Order 12073 required executive agencies to "emphasize procurement set asides in order to strengthen our Nation's economy."¹⁴² DOL lists several other agencies that use Labor Surplus Areas, such as "The Small Business Administration

¹⁴¹ NPRM, p.983.

¹⁴² Executive Order 12073, Federal procurement in labor surplus areas, 43 FR 36873, 3 C.F.R., 1978 Comp., p. 216, <https://www.archives.gov/federal-register/codification/executive-order/12073.html>.

uses the LSA list for bid selections for small business awards in Historically Underutilized Business Zones (HUBZones).”¹⁴³

DOL has an unemployment rate floor so that the minimum unemployment rate used for identification of LSAs is at least 6 percent. DOL also has an unemployment rate ceiling; when national unemployment is high enough that 20 percent above the national average exceeds 10 percent unemployment over two years, DOL will designate LSAs that have unemployment rates above 10 percent.¹⁴⁴ DOL also allows states to demonstrate that areas meet alternative criteria to demonstrate an exceptional circumstance, such as a recent three-month unemployment rate at the threshold required for LSA designation.

The Department established identification of Labor Surplus Areas as one of a non-exhaustive list of methods of demonstrating “insufficient jobs” in its original 1996 guidance, and it was codified as an example in the final 2001 regulation.¹⁴⁵ The guidance and final rule also allowed states to use similar data demonstrating unemployment rates that are 20 percent above the national average for a 24-month period.

FNS decided, in its 1996 guidance and 2001 regulation, to include LSA designation as one of many ways that states can demonstrate that an area lacks sufficient jobs. This decision likely reflects the fact that unemployment rates are readily available on a monthly basis and are statistically reliable for sub-state areas. There are few alternative measures available at the state and local level that states can use to demonstrate a lack of jobs. For example, at the national and state level there are measures such as “alternative measures of labor underutilization,” a broader set of metrics that include “discouraged workers,” who are workers who want a job but have not recently searched for work because they believe no jobs are available to them, as well as others such as workers who would like to work full time but can only find a part-time job.¹⁴⁶ Those metrics cannot be reliably calculated at the sub-state level. It is reasonable to use metrics developed by DOL for the express purposes of identifying areas with excess labor compared to jobs, given that these metrics can facilitate the process for states. It is also reasonable, however, to adapt these criteria to more accurately capture the intent of the law, which is to capture jobs available for a sub-population. Current regulations make such an adaptation by adopting the “20 percent standard” without a floor.

In proposing to use a similar unemployment floor to that used by DOL in the LSA designation, the Department does not consider that while a specific floor may be appropriate for DOL’s purposes in establishing LSAs, the waiver criteria are meant to represent a fully distinct concept from LSAs and therefore adapting them to the different purpose of waiver criteria is necessary and appropriate. The Department correctly notes that waiver criteria do not currently require an area to

¹⁴³ U.S. Department of Labor, “Labor Surplus Areas: Frequently Asked Questions,” https://www.doleta.gov/programs/lsa_faq.cfm.

¹⁴⁴ *Ibid.*

¹⁴⁵ USDA, “Guidance for States Seeking Waivers for Food Stamp Limits,” December 3, 1996 and Federal Register, Vol. 66, No. 11, January 17, 2001. P. 4462. <https://www.federalregister.gov/d/01-1025/p-205>.

¹⁴⁶ Bureau of Labor Statistics, “Alternative Measures of Labor Underutilization for States, 2018 Annual Averages.” <https://www.bls.gov/lau/stalt.htm>

meet a specific threshold if the area's unemployment rate is above the national average, unlike the LSA criteria.

These measures are meant to serve different purposes, however:

- The suggested criteria for waivers of the time limit are meant to establish a lack of “sufficient jobs” for a specific sub-population, childless adult SNAP participants, which faces labor market disadvantages. As noted in section B above, childless adult SNAP participants belong to groups that have higher unemployment rates than their local area, which makes defining a specific unemployment rate at which those individuals have access to enough jobs difficult, if not impossible. For example, since this group may experience unemployment rates that are double the rates of their area, a 6 percent or 7 percent unemployment rate “floor” would mean a 12 or 14 percent unemployment rate for this group of individuals. At any unemployment rate threshold, it is likely that large groups of childless adult SNAP participants would not have access to available jobs given their serious barriers to work. Given the uncertainty and difficulty in establishing whether there are jobs available for this population, not requiring a specific unemployment rate threshold appropriately allows for greater flexibility in determining areas with insufficient jobs.
- LSAs, on the other hand, establish the economic condition of an area to enable prioritization of procurement contracts and economic development purposes. In creating the threshold for LSAs, DOL does not need to consider whether jobs are available for specific types of individuals, and instead is focused on understanding the macroeconomic conditions of an area in order to direct economic stimulus. It therefore may be reasonable for the Department of Labor to establish specific thresholds that meet those criteria for those purposes, given that the criteria attempt to establish levels at which economic stimulus is needed.

In citing Labor Surplus Areas as a reason to implement an unemployment rate floor, the Department also fails to acknowledge the unemployment rate ceiling that DOL uses in LSA designation. Not only does DOL have an unemployment rate floor of 6 percent unemployment in its criteria for LSA designation, it also has an unemployment rate *ceiling* of 10 percent unemployment. This means that when designating LSAs, the unemployment rate threshold DOL uses is 20 percent above the national average but not more than 10 percent. The Department not only does not acknowledge this fact, it suggests this unemployment rate as a *possible floor* for the time limit:

The Department would also like to receive comments on establishing a floor of 10 percent for the 20 percent standard. A 10-percent floor would allow for even fewer waivers than the other options and would result in the work requirements being applied in almost all areas of the country.¹⁴⁷

DOL establishes this unemployment rate ceiling for LSA designation in recognition that a sustained level of unemployment at 10 percent is adequately high to demonstrate that an area has severe labor market weakness. These criteria ensure that during times of widespread elevated

¹⁴⁷ NPRM, p.984.

unemployment, areas can qualify without having exceptionally high unemployment rates. For example, the LSA list in fiscal year 2012 was based on unemployment rates between January 2009 and December 2010, during the height of the Great Recession when national unemployment was 9.5 percent, and 20 percent above that would have been 11.4 percent.¹⁴⁸ Areas were also eligible in fiscal year 2013 and fiscal year 2014 with 10 percent unemployment for the same reason.¹⁴⁹ Without a ceiling, many areas that were struggling during the height of the recession and recovery would have been ineligible for LSA designation.

FNS therefore is proposing to pick and choose which features of LSA designation to adapt to the proposed regulation without discussion of why it made this choice, or even acknowledgement of this choice. The Department proposes on one hand to implement an unemployment rate floor for an area to qualify under the “20 percent standard,” but does not propose a similar unemployment rate ceiling. In fact, the Department proposes what DOL recognizes as a sufficiently high unemployment rate to qualify for a ceiling, 10 percent unemployment, as a possible unemployment rate floor. The Department therefore proposes to ensure that unemployment rates in an area must meet a standard to demonstrate they are high but is not proposing a means of limiting this threshold during a recession to ensure that the unemployment rate threshold does not provide too high a bar that it would substantially bar areas suffering from a recession. The Department does not explain why it chose to adopt an unemployment rate floor similar to that used in LSA criteria but not an unemployment rate ceiling, and it does not mention the LSA ceiling. This oversight is particularly perplexing given our research review which indicates if anything, the LSA criteria as is are very stringent for waiver criteria given the barriers to employment childless adult SNAP participants face, which would recommend no floor or a very low floor if any at all.

Without any explanation, it appears that by imposing a floor and not a ceiling for the 20 percent standard, the Department considers for the purposes of measuring whether an area lacks adequate jobs for childless adult SNAP participants that there is a level of unemployment that is low enough to ensure that adequate jobs are available, but not a level high enough to signify that there likely are not enough jobs. Again, without this information, it is difficult to assess the evidence that the Department used in proposing an unemployment rate floor, especially given that the Department’s choice seems to contradict all available economic evidence indicating that unemployment rates are a poor proxy for jobs for this population.

D. Citation of “Natural Rate of Unemployment” Incorrectly Assumes This Is a Fixed and Accurately Measurable Concept

The Department uses the macroeconomic concept of the “natural rate of unemployment” to justify its proposed unemployment rate threshold. This use of this concept inappropriately applies a macroeconomic concept and inaccurately displays economic consensus. The preamble states:

¹⁴⁸ Department of Labor, “Labor Surplus Area Classification under Executive Orders 12073 and 10582 2012,” https://www.doleta.gov/lsa/Archived/2011-2012/Federal_Register_2012_Final.pdf

¹⁴⁹ Department of Labor, “Labor Surplus Area Classification under Executive Orders 12073 and 10582 2013” https://www.doleta.gov/lsa/Archived/2012-2013/Federal_Register_2013_Final.pdf; Department of Labor, “Labor Surplus Area Classification under Executive Orders 12073 and 10582 2014,” https://www.doleta.gov/lsa/Archived/2013-2014/2013-2014_LSA_Federal_Register_Notice.pdf

The Department believes a floor should be set for the 20 percent standard so that areas do not qualify for waivers when their unemployment rates are generally considered to be normal or low. The “natural rate of unemployment” is the rate of unemployment expected given normal churn in the labor market, with unemployment rates lower than the natural rate tending to result in inflationary pressure on prices. Thus, unemployment rates near or below the “natural rate of unemployment” are more indicative of the normal delay in unemployed workers filling the best existing job opening for them than a “lack of sufficient jobs” in an area. Generally, the “natural rate of unemployment” hovers around 5 percent. The Department believes that only areas with unemployment rates above the “natural rate of unemployment” should be considered for waivers.¹⁵⁰

The Department appears to be suggesting that the natural rate of unemployment is a specific unemployment rate figure that can be used in setting a waiver floor to examine job opportunities for childless adult SNAP participants. This reasoning is deeply flawed.

First, the so-called natural rate of unemployment is not a known or even an observable jobless rate. It is a concept that derives from the theoretical construct that there exists an unemployment rate that is consistent with stable inflation. If unemployment falls below this “natural rate,” inflation would rise, and vice versa. More colloquially, too low an unemployment rate, where “too low” means the actual rate is below the natural rate, and the economy will overheat; too high a jobless rate relative to the natural rate and inflation will fall.

In theory, an estimate of the natural rate should be derivable from observing the (negative) correlation between changes in the rate of unemployment and that of inflation. However, because this correlation appears to have moved toward zero over time, our ability to reliably identify a policy-relevant natural rate, meaning one that could fruitfully be referenced as the Department suggests in terms of their proposal, is much diminished.

Note, for example, a recent article about this problem by economics journalist Neil Irwin. In the article, former Fed Vice-Chairman Alan Blinder notes that the “confidence interval” — the band of statistical uncertainty around the estimate — is such that the concept cannot be usefully employed as a policy benchmark: “If your range is 2.5 to 7, that doesn’t tell you anything.”¹⁵¹

Figure 3.3 below reveals the problem using a standard statistical procedure to measure the inflation/unemployment correlation. The figure represents the coefficient from a regression of core inflation on lagged inflation and the gap between the unemployment rate and the Congressional Budget Office’s estimate of the natural rate. The estimates are made using “rolling regressions,” meaning we estimate the model over 20-year periods, beginning with 1959-79, and advance the sample one year at a time. We then plot the coefficient on the unemployment gap variable.

In this area of economics, the measure is considered to be the slope of the Phillips Curve, which is the curve that plots the unemployment/inflation tradeoff. The two lines surrounding the estimate represent the bounds of a 95 percent confidence interval around the estimate. When these lines

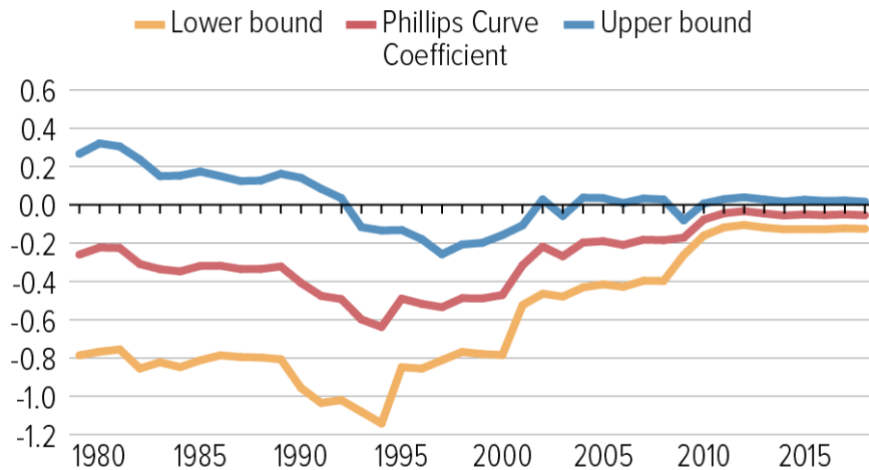
¹⁵⁰ NPRM, p.984.

¹⁵¹ Neil Irwin, “How Low Can Unemployment Really Go? Economists Have No Idea,” *New York Times*, Feb. 28, 2018, <https://www.nytimes.com/2018/02/28/upshot/how-low-can-unemployment-really-go-economists-have-no-idea.html>.

include zero, as they do for most of the figure, the estimate of the slope is insignificant. In other words, in these years, the “natural rate” cannot be reliably distinguished from a range of rates that includes zero.

FIGURE 3.3

The “Natural Rate” of Unemployment is Not Identifiable



Source: CBPP Analysis of Congressional Budget Office, Bureau of Labor Statistics, and Bureau of Economic Analysis Data

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In other words, at least by this conventional approach, the Department cannot reliably use 5 percent (or any other level) as an estimate of the natural rate, because the diminished correlation between unemployment and inflation renders such an estimate statistically insignificant.

Department Proposes Arbitrary Unemployment Rate Floor

Not only does the Department improperly support its proposed unemployment rate floor with a flawed discussion of the “natural rate of unemployment,” it proposes a floor that is arbitrarily and significantly higher than what it states is the unemployment rate consistent with the natural rate of unemployment. The Department proposes an unemployment rate floor that is 40 percent above what it states is “generally” considered the natural rate of unemployment, of 5 percent. This difference is not insignificant. With a labor force of about 160 million people, a difference of 2 percentage points is equivalent to more than 3 million people nationwide, employed or not. In a recent 24-month period of January 2017 through December 2018, 795 counties (or equivalent entities) had unemployment rates above 5 percent, while only 155 counties had 24-month unemployment rates above 7 percent.

Considering the difference between those two metrics, it is not clear how the Department used the concept of the natural rate in developing this floor. These two unemployment rates, 5 and 7 percent, are so different that it is difficult to understand how they are linked without more information. Furthermore, if the Department were actually basing the proposed unemployment rate

floor on a concept that describes the level of unemployment at which inflation increases, it would need to demonstrate how this concept relates to the specific population or the purpose of establishing waiver criteria, which is to interpret the “insufficient jobs” criterion in the law targeted towards a disadvantaged group of individuals.

The Department’s proposal for this 7 percent unemployment floor therefore suggests that it did not in fact use the natural rate of unemployment to develop the 7 percent unemployment rate floor proposal. Either the Department used economic data relating the goals of the unemployment rate floor to the natural rate, in which case it lacked transparency by not providing this research, or the rate is an arbitrary selection unrelated to the statute that the rule is interpreting, in which case the discussion of the natural rate is irrelevant to the actual proposal. Without an explanation of how and why the Department used the natural rate concept to come up with a 7 percent unemployment rate floor that is related to the purposed of the underlying statute, it is impossible to meaningfully comment.

E. Evidence Suggests That a 7 Percent Unemployment Floor Is Inappropriately High for This Population

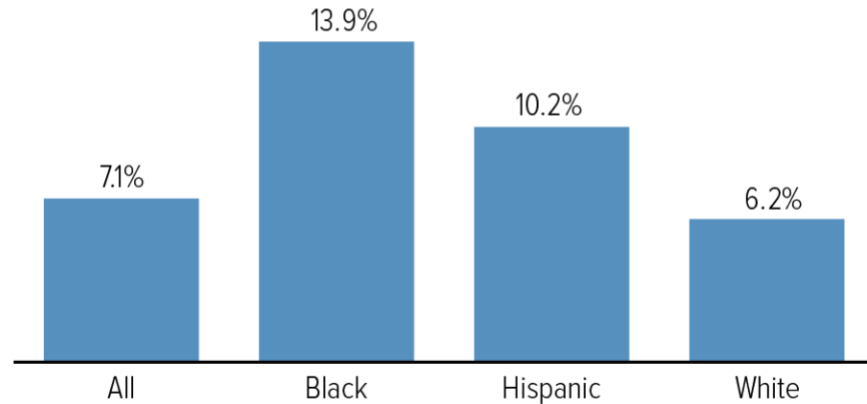
Not only does the Department not provide economic evidence to support its proposed 7 percent floor, evidence shows why this floor would be inappropriate for this population. While this comment argues that we cannot assume that any particular unemployment floor will provide the necessary labor market opportunities to some groups of workers, the proposed floor of 7 percent is surely too high. As Figure 3.4 below shows, using national BLS data, there were 106 months since 1972 when the overall unemployment was between 6.5 and 7.5 percent. The average rate was 7.1 percent, about the level of the proposed floor. But unemployment for African American and Latino workers was a much higher 13.9 percent and 10.2 percent. White unemployment was 6.2 percent.¹⁵²

¹⁵² The results are very similar: blacks, 13.5 percent; Hispanics, 10 percent — when looking at minority unemployment rates conditional on the two-year average of overall unemployment centered on 7 percent to more closely simulate the proposed rule.

FIGURE 3.4

A 7 Percent Unemployment Floor is Substantially Higher for Black and Latino Workers

Unemployment rates by race/ethnicity when national unemployment is between 6.5 and 7.5 percent



Source: Bureau of Labor Statistics, 1972-2018

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Consider that at the depth of the Great Recession (2009-10), broadly recognized as the deepest recession since the Depression, the overall unemployment rate hit 10 percent. This was widely, and correctly, seen as evidence of a huge, negative demand shock, one requiring an aggressive response from both fiscal and monetary authorities. And yet, the proposal suggests an unemployment floor that corresponds historically to a black unemployment rate well above the overall rate at the worst of the recession.

Other rates that have been floated suffer from the same problem that even in the best of overall labor markets, certain groups face a much less welcoming set of job opportunities. Table 3.1 below shows the results from a simple regression of total rates on a constant and rates for black and Latino workers. Even at 5 percent unemployment, the African American jobless rate is predicted to be almost 10 percent, and the Latino rate is at 7 percent. At rates above 7 percent, both black and Latino workers have jobless rates close to and in double digits.

TABLE 3.1

Unemployment Rates and Predicted Black and Latino Unemployment

Unemployment	Predicted Unemployment Rates	
	Black	Latino
5%	9.6%	7.0%
7%	13.2%	9.8%
10%	18.5%	13.9%

Note: Black and Latino unemployment rates are predicted by regressing total unemployment rate on race-specific rates.

Turning from minorities to other less advantaged groups in the labor market reveals similarly wide disparities between their unemployment rates and the floor in the proposed rule.

- Since 2008, the BLS has tracked unemployment among those who self-report as disabled. In months when the unemployment rate averaged 7 percent, the disabled rate was 13 percent.
- Doing the same comparison by education level (for job seekers 25 and older, per BLS published data), yields jobless rates of 11 percent for those with less than high school degrees.

F. Local Areas With High Unemployment Rates for Sub-Groups

We can also see how in local areas, when the overall unemployment rate is 5, 6, or 7 percent, some sub-groups face much higher unemployment rates. Of the 239 large labor market areas (metropolitan areas) with average overall unemployment rates below 7 percent,¹⁵³ 85 have unemployment rates that are at least 14 percent for particularly vulnerable groups, such as adults ages 25 to 64 with very low education, people with self-reported disabilities, and/or black and Latino residents. The data this analysis includes are published Census Bureau figures from the American Community Survey and average together five years of data from 2013 through 2017 in order to increase reliability.¹⁵⁴

15 metropolitan areas in 2013-2017 had unemployment rates of 7 percent or less overall but at least 14 percent for the least educated workers. For example, in the **Springfield, IL** metro area, for example, the overall unemployment rate was 6.7 percent, but was 21.2 percent for those with less than a high-school diploma. (Table 3.2.)

TABLE 3.2.

Metropolitan Areas With 5-year Average Unemployment Rates Less Than 7 Percent Overall but Greater Than or Equal to 14 Percent for Workers With Less Than a High School Education

State	Metropolitan Area	Overall Unemployment Rate for Population 16 Years and Over	Unemployment Rate for Workers With Less Than High School Education
FL	Pensacola-Ferry Pass-Brent, FL	6.9	16.3
ID	Pocatello, ID	6.3	15.2
IL	Springfield, IL	6.7	21.2
IL	Peoria, IL	6.6	15.6
IN	Kokomo, IN	6.5	14.2
KY	Elizabethtown-Fort Knox, KY	6.7	16

¹⁵³ U.S. Census Bureau, American Community Survey Table S2201. The United States has 389 metropolitan areas overall, without regard to unemployment rate.

¹⁵⁴ To further increase reliability, we impose two additional requirements on the comparisons. First, subgroup unemployment rates in a given metropolitan area are only included in our analysis if they are statistically significantly higher than the overall unemployment rate for the area. Second, we only include estimated unemployment rates that are at least twice as large as their margins of error.

TABLE 3.2.

Metropolitan Areas With 5-year Average Unemployment Rates Less Than 7 Percent Overall but Greater Than or Equal to 14 Percent for Workers With Less Than a High School Education

State	Metropolitan Area	Overall Unemployment Rate for Population 16 Years and Over	Unemployment Rate for Workers With Less Than High School Education
MI	Kalamazoo-Portage, MI	6.6	17.2
MI	Monroe, MI	5.9	16.7
MO-IL	St. Louis, MO-IL	6.3	14.7
NY	Syracuse, NY	6.6	14.4
NY	Elmira, NY	5.3	14.5
OH	Canton-Massillon, OH	6.6	15.7
OH-PA	Youngstown-Warren-Boardman, OH-PA	6.9	14.1
VA	Blacksburg-Christiansburg-Radford, VA	5.2	15.5
WV	Parkersburg-Vienna, WV	6.1	17.3

59 metro areas in 2013-2017 had unemployment rates of 7 percent or less overall but at least 14 percent for workers with any disability. For example, in the Peoria, IL metro area, the overall unemployment rate was 6.6 percent, but was 18.4 percent for those with any disability. (Table 3.3.)

TABLE 3.3

Metropolitan Areas With 5-year Average Unemployment Rates Less Than 7 Percent Overall but Greater Than or Equal to 14 Percent for Workers With Any Disability

State	Metropolitan Area	Overall Unemployment Rate for Population 16 Years and Over	Unemployment Rate for Workers With a Disability
AL	Florence-Muscle Shoals, AL	6.7	16.3
AL	Decatur, AL	6.6	17.6
AL	Birmingham-Hoover, AL	6.8	15.4
AL	Daphne-Fairhope-Foley, AL	5.5	14.3
CA	Santa Maria-Santa Barbara, CA	6.6	14.5
CA	Salinas, CA	6	14.4
CA	Napa, CA	5.4	16
CT	Hartford-West Hartford-East Hartford, CT	6.8	15.6
DE	Dover, DE	6.7	14.9

TABLE 3.3

Metropolitan Areas With 5-year Average Unemployment Rates Less Than 7 Percent Overall but Greater Than or Equal to 14 Percent for Workers With Any Disability

State	Metropolitan Area	Overall Unemployment Rate for Population 16 Years and Over	Unemployment Rate for Workers With a Disability
FL	Deltona-Daytona Beach-Ormond Beach, FL	6.7	15.6
FL	Gainesville, FL	6.7	14.4
FL	Pensacola-Ferry Pass-Brent, FL	6.9	15.1
FL	Tampa-St. Petersburg-Clearwater, FL	6.8	16.2
FL	Orlando-Kissimmee-Sanford, FL	6.8	15.1
FL	North Port-Sarasota-Bradenton, FL	6.1	14.9
ID	Pocatello, ID	6.3	15.3
IL	Springfield, IL	6.7	17.4
IL	Peoria, IL	6.6	18.4
IL	Champaign-Urbana, IL	5.2	14.2
IN	Fort Wayne, IN	5.9	14
KY-IN	Louisville/Jefferson County, KY-IN	6	14
LA	Houma-Thibodaux, LA	6.5	16.2
LA	Shreveport-Bossier City, LA	6.8	15.6
LA	Baton Rouge, LA	6.7	14.9
MA-CT	Worcester, MA-CT	6.3	14.5
MD	Baltimore-Columbia-Towson, MD	6	14.8
ME	Lewiston-Auburn, ME	5.2	15.2
ME	Bangor, ME	6.5	18.1
MO	Springfield, MO	5.2	14
MO-IL	St. Louis, MO-IL	6.3	14.2
MO-IL	Cape Girardeau, MO-IL	5.4	14.7
NC	Burlington, NC	6	15.2
NC	Greensboro-High Point, NC	6.6	15.2
NC	Durham-Chapel Hill, NC	6	14.1
NY	Utica-Rome, NY	6.5	17.2
NY	Syracuse, NY	6.6	15.4
NY	Rochester, NY	6.3	14.8
NY	Ithaca, NY	4.8	14
NY-NJ-PA	New York-Newark-Jersey City, NY-NJ-PA	6.9	14.5
OH	Canton-Massillon, OH	6.6	14.9
OH-KY-IN	Cincinnati, OH-KY-IN	5.8	14

TABLE 3.3

Metropolitan Areas With 5-year Average Unemployment Rates Less Than 7 Percent Overall but Greater Than or Equal to 14 Percent for Workers With Any Disability

State	Metropolitan Area	Overall Unemployment Rate for Population 16 Years and Over	Unemployment Rate for Workers With a Disability
OH-PA	Youngstown-Warren-Boardman, OH-PA	6.9	14.5
OR	Corvallis, OR	6.7	14.1
OR-WA	Portland-Vancouver-Hillsboro, OR-WA	6.2	14.5
PA	Pittsburgh, PA	5.7	14.4
PA-NJ	Allentown-Bethlehem-Easton, PA-NJ	6.7	14.1
RI-MA	Providence-Warwick, RI-MA	6.9	15.9
TX	Sherman-Denison, TX	6.5	14.7
TX	Tyler, TX	6.5	15.8
TX	Waco, TX	5.2	14.7
VA	Richmond, VA	6.3	14.3
VA	Roanoke, VA	5.4	14.6
VA	Blacksburg-Christiansburg-Radford, VA	5.2	16.1
WA	Walla Walla, WA	6.1	14
WA	Kennewick-Richland, WA	5.9	15.1
WI	Sheboygan, WI	4.4	15.4
WI	Janesville-Beloit, WI	6.4	14.1
WI-MN	La Crosse-Onalaska, WI-MN	4.4	14.9
WV-KY-OH	Huntington-Ashland, WV-KY-OH	6.6	16

29 metro areas in 2013-2017 had unemployment rates of 7 percent or less overall but at least 14 percent for African American residents. For example, in the **Canton-Massillon, OH** metro area, the overall unemployment rate was 6.6 percent, but was 16.9 percent for black workers. (Table 3.4.)

TABLE 3.4

Metropolitan Areas with 5-year Average Unemployment Rates Less Than 7 Percent Overall but Greater Than or Equal to 14 Percent for Black/African American Subgroup

State	Metropolitan Area	Overall Unemployment Rate for Population 16 Years and Over	Black/African American Unemployment Rate
AR	Jonesboro, AR	5.9	14.3
IA	Dubuque, IA	3.9	17
IA	Waterloo-Cedar Falls, IA	4.9	19.7
IL	Springfield, IL	6.7	16.4
IL	Peoria, IL	6.6	18.1
IN	Elkhart-Goshen, IN	5.6	15
IN	Terre Haute, IN	6.9	16.9
IN	Fort Wayne, IN	5.9	15.2
IN-MI	South Bend-Mishawaka, IN-MI	6.6	14.3
KY	Owensboro, KY	6.1	15.6
MA	Pittsfield, MA	6.8	19.6
ME	Lewiston-Auburn, ME	5.2	17.7
ME	Bangor, ME	6.5	28.9
MI	Kalamazoo-Portage, MI	6.6	15.3
MN	Mankato-North Mankato, MN	4.2	23.3
MN	Rochester, MN	3.9	20.2
MN	St. Cloud, MN	4.5	17.2
NY	Utica-Rome, NY	6.5	15.2
NY	Syracuse, NY	6.6	15.1
NY	Rochester, NY	6.3	14.8
OH	Canton-Massillon, OH	6.6	16.9
OH-PA	Youngstown-Warren-Boardman, OH-PA	6.9	17.2
PA	Altoona, PA	5.2	18.7
PA	Scranton-Wilkes-Barre-Hazleton, PA	6.4	19.2
PA	Pittsburgh, PA	5.7	14.1
PA	Williamsport, PA	6.2	23
WI	Janesville-Beloit, WI	6.4	17
WI	Green Bay, WI	4.4	18.1
WV-OH	Wheeling, WV-OH	6.1	15.8

Six metro areas had unemployment rates of 7 percent or less overall but at least 14 percent for Hispanic or Latino adults. For example, in the **Bloomsburg-Berwick, PA** metro area, the overall unemployment rate was 4.9 percent, but it was 26.9 percent for Hispanic/Latino workers (who may be of any race). (Table 3.5.)

TABLE 3.5

Metropolitan Areas With 5-year Average Unemployment Rates Less Than 7 Percent Overall but Greater or Equal to 14 Percent for Latino/Hispanic Subgroup

State	Metropolitan Area	Overall Unemployment Rate for Population 16 Years and Over	Hispanic or Latino Unemployment Rate
NY	Utica-Rome, NY	6.5	15.5
OH	Canton-Massillon, OH	6.6	20.1
PA	Bloomsburg-Berwick, PA	4.9	26.9
PA	Erie, PA	6.5	15.8
PA	Chambersburg-Waynesboro, PA	5.7	14.8
PA	Lebanon, PA	5.8	14.2

Fourteen percent unemployment, averaged over five years, is a strikingly high rate that matches the unemployment rate estimated for the overall labor force in 1937 during the Great Depression.¹⁵⁵ Under the proposed rule, some communities would be ineligible for a waiver where some individuals subject to the time limit are likely to face unemployment rates of this level.

A recent analysis by the Center on Poverty and Social Policy at Columbia University also demonstrates how sub-populations face significantly higher unemployment rates than the area average. This analysis looked at over 200 metropolitan areas that could potentially lose waiver eligibility: areas with unemployment rates 20 percent above the national average, but below 7 percent unemployment rates. As the authors stated:

The median unemployment rate for non-white individuals is closer to 10 percent, and in some metro areas the unemployment rate is greater than 20 percent for non-white individuals. For those with a high school education or less, over three quarters of all metropolitan areas have a higher unemployment rate than the 7-percent floor, which is a particularly dire statistic for the relevant population of “lower-skilled” workers. Given that close to three-quarters of “ABAWDs” have a high school education or less and close to half are non-white, this evidence suggests that the proposed rule would disqualify many areas where the individuals subject to the time limit face substantially higher unemployment rates than 7 percent.

This analysis also looked at complementary labor force metrics, finding that non-white individuals and workers with a high school education or less had significantly lower employment-population ratios, with over half of individuals with less education living in areas with employment-population

¹⁵⁵ The U.S. Department of Labor estimates 7.7 million persons (or about 14.2 percent) were unemployed in 1937 out of a labor force of 54.0 million. U.S. Department of Labor, “Labor Force, Employment, and Unemployment, 1929-39: Estimating Methods,” Technical Note, *Monthly Labor Review*, July 1948, <https://www.bls.gov/opub/mlr/1948/article/pdf/labor-force-employment-and-unemployment-1929-39-estimating-methods.pdf>.

ratios lower than 50 percent. This research shows how the unemployment rate hides the variation for sub-groups.¹⁵⁶ We strongly encourage FNS to review these data.

Given this evidence, the proposal to restrict states' ability to waive areas except with very high overall unemployment rates will have a disproportionate impact on subgroups with rates much higher than overall unemployment, including groups belonging to protected classes under 7 U.S.C. § 2020(c).

Many “Distressed Communities” Have Relatively Low Unemployment

Another way of considering how areas with relatively low unemployment may provide insufficient jobs for individuals subject to the time limit is to look at other economic indicators, which provide other information that could indicate a paucity of jobs. The non-profit organization Economic Innovation Group calculates a measure of community well-being called the “Distressed Community Index” that combines seven metrics for the 2012-2016 period: the share of adults ages 25 and up without a high school diploma; the percent of habitable housing that is unoccupied; the share of the prime-age (25-64) population that is not employed; the poverty rate; median household income as a percent of the state's median households income; the change in employment; and the change in business establishments.

While these measures do not strictly measure job availability, they do provide a snapshot of economic health, and present a snapshot of how divergent the economic conditions are, and recovery from the Great Recession has been, at the local level. For example, most of the job growth from 2007 to 2016 has occurred in the zip codes in the top quintile of the index. Over two-thirds of zip codes in that quintile, termed “prosperous,” added jobs since 2007 (adding an average of 1,300 jobs); meanwhile, over two-thirds of zip codes in the lowest quintile, called “distressed,” have fewer jobs since 2007, and those that did add jobs only added an average of 400 over the period studied. While about one-fifth of prime-age adults were out of work in “prosperous” zip codes, that share was double for adults in “distressed” zip codes.¹⁵⁷

We looked at counties that had a waiver in 2018 but would not have qualified if the proposed rule were in place because they did not meet the 7 percent unemployment rate threshold. Of these over 600 counties, over 100 were considered “distressed.” Todd County, South Dakota, for example, had a 6.6 unemployment rate for the January 2016-December 2017 period. According to this index, *nearly half* of the residents in this county lived in poverty in the 2012-2016 period, and close to half of prime-age adults were not employed. The number of jobs in this county declined by over two-fifths from 2012 to 2016, and the number of business establishments also declined by over 5 percent. Another example is Stewart County, Georgia, where over one-third of adults have less than a college degree, household median income is only about *two-fifths* of the state's median income, and over two-

¹⁵⁶ Robert Paul Hartley, Christopher Wimer, and Jane Waldfogel, “Limiting States’ Ability to Waive Federal SNAP Work Requirements: A Closer Look at the Potential Implications,” Columbia University Center on Poverty and Social Policy Research Brief, Vol.3 No.4, March 25, 2019. <https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5c9a2d43652dea22023c9492/1553608003521/Poverty+%26+Social+Policy+Brief+3+4+SNAP+Work+Requirements+and+Unemployment.pdf>.

¹⁵⁷ Economic Innovation Group, “From Great Recession to Great Reshuffling: Charting a Decade of Change Across American Communities,” October 2018, <https://eig.org/wp-content/uploads/2018/10/2018-DCL.pdf>.

thirds of prime-age adults are not employed. Stewart County also lost both jobs and business establishments between 2012 and 2016.

While an area’s unemployment rate may mask differences between unemployment rates within that area, it also may fail to reflect economic conditions more broadly, which may contribute to job availability for the individuals potentially subject to the time limit. Here again, we are concerned that FNS did not appear to offer any evidence to support its contention that unemployment rates are a reliable predictor of jobs available for low-income individuals.

Underemployment Rates Also Higher For Sub-Groups

Along with the impossibility of identifying an unemployment rate that reliably implies the absence of available jobs, it is also the case that the unemployment rate is an insufficient indicator of labor market slack. For one, it leaves out those who have left the labor market, in some cases due to slack labor demand or to personal labor market barriers, including skill deficits and discrimination. Second, the unemployment rate leaves out a significant group of part-time workers who would prefer to be full-timers. Such workers are literally *under*-employed, as they want to work more hours than their current job offers them. For families with low incomes, working too few hours can put pressure on family budgets and lead to nutritional hardship.

Table 3.6 shows underemployment rates associated with unemployment rates of 5, 7, and 10 percent for all workers and by race/ethnicity (see note under the table for methodology). At the proposed rule’s suggested level of 7 percent unemployment, overall underemployment is predicted to be 12.5 percent, with rates of about 20 and 18 percent for African American and Latino workers, respectively. In other words, the rule suggests that SNAP waivers should be disallowed in places where about a fifth of black and Latino workers could be un- or underemployed.

Higher unemployment of course corresponds to even higher underemployment rates, but even at 5 percent unemployment, black and Latino underemployment is around 15 and 13 percent, respectively.

TABLE 3.6

Predicted Underemployment Rates at Different Unemployment Rates, by Race/Ethnicity

Unemployment	Predicted Underemployment			
	All	White	Black	Hispanic
5%	9.1%	7.4%	14.9%	13.0%
7%	12.5%	10.2%	20.4%	17.9%
10%	17.7%	14.4%	28.8%	25.2%

Note: Rates for “all” are derived from regression of u-6 underemployment rate on the overall unemployment rate. Racial underemployment rates are then derived from ratios of the overall unemployment to underemployment rates by race using Economic Policy Institute data from 1994-2018

While the “20 percent standard” currently uses unemployment rates, which do not capture aspects such as labor force participation or part-time work, FNS proposes making these criteria even less

responsive to economic conditions by requiring a specific unemployment rate. Given the severe racial disparities that exist in labor force measures, the fact the Department did not address whether it considered how an unemployment rate varies in relation to other labor force metrics is another reason why we cannot comment on how it supported this rule.

G. Unemployment Rate Floor of 7 Percent Fails to Protect Areas During Recessions

The Department does not discuss how the 7 percent unemployment rate floor would affect waiver eligibility during an economic downturn, or at any other point in the business cycle besides a time of relatively low unemployment. An unemployment rate of 7 percent is relatively high for any area; for example, during the 2001 recession, the national unemployment rate never reached 7 percent.¹⁵⁸ An area with a 24-month unemployment rate averaging at least 7 percent signifies that an area has experienced a prolonged depression. The Department does not acknowledge the unemployment rate of 7 percent in relation to other economic indicators, but also does not discuss how the length of time its proposal would require such a high unemployment rate to qualify for a waiver would affect states entering an economic recession.

When unemployment rates rise rapidly when the economy is entering into a recession and jobs are quickly declining, individuals likely face many challenges finding or keeping work. By requiring a very high two-year average unemployment rate, the proposed rule, however, would keep many areas from qualifying for a waiver during this time. The proposed rule would continue to allow an area to qualify for a waiver when it qualifies under any of the criteria (including optional criteria) for Extended Benefits (EB) in the Unemployment Insurance program, which would often allow states with rapidly rising unemployment to qualify for a waiver.¹⁵⁹ Among other criteria, under EB, states can qualify for a waiver if they meet optional indicators that include a three-month unemployment rate of 6.5 percent that is at least 110 percent of the same three-month period in either of the previous two years.¹⁶⁰ We agree with the Department's proposal to continue to allow states to request waivers when they qualify for EB, as these are times when unemployment rates are high and rising and individuals likely have difficulty finding jobs. Because the 7 percent unemployment rate floor is so high and because the NPRM would prohibit states from requesting statewide waivers based on the 20 percent standard, many states would experience a gap between when their unemployment rates begin to rise during a recession and when they qualify for a waiver based on meeting the EB criteria.

For example, consider the experience of two states, South Carolina and Oregon, who would have been left with a gap between their unemployment rates rising and their qualification for a waiver based on the EB criteria in the beginning of the Great Recession. During the beginning of the Great Recession, which officially started in December 2007, these states both had unemployment rates that

¹⁵⁸ "National Bureau of Labor Statistics, U.S. Business Cycle Contractions and Expansions," <https://www.nber.org/cycles.html>. Monthly unemployment rates are from BLS.

¹⁵⁹ NPRM, p.992.

¹⁶⁰ While the criteria mentioned are the criteria to establish additional weeks of Extended Benefits under an optional trigger (called the Total Unemployment Rate trigger), FNS guidance establishes that states only have to qualify based on the unemployment measures, even if the state chooses not to provide EB benefits under these criteria.

were rising and would have qualified for 2007 statewide waivers under the existing 20 percent standard (as in, without the 7 percent unemployment rate floor).¹⁶¹ These states, like others, would have had to wait several months before they would have qualified for a waiver under Extended Benefits: South Carolina qualified for a waiver based on Extended Benefits beginning in August 2008 and Oregon qualified for a waiver based on Extended Benefits in November 2008.¹⁶² Under the proposed rule, they could not have requested statewide waivers based on the “20 percent standard,” as we discuss in Chapter 5, as the rule would only allow statewide waivers based on EB. Even if they could have requested statewide waivers, however, these states would have been well into the recession before they qualified for a waiver based on having 24-month unemployment rates above 7 percent. Therefore, under the proposed rule, at least some areas in both states would have been ineligible for a waiver at a time when unemployment was high and rising.

The Department repeatedly explains how its rulemaking would prevent states from requesting waivers when unemployment is low. For example, it states:

Right now, nearly half of ABAWDs live in areas that are covered by waivers despite a strong economy. The Department believes waiver criteria need to be strengthened to better align with economic reality. These changes would ensure that such a large percentage of the country can no longer be waived when the economy is booming and unemployment is low.¹⁶³

The Department has clearly considered the role of waivers at a time when national unemployment is low, though this analysis of course does not take into account the fact that unemployment rates can vary across the country and even with low unemployment rates, individuals subject to the time limit may lack available jobs. Even more concerning, however, is that the Department did not indicate whether it considered the effect of the proposed rule at different parts of the business cycle, such as entering into a recession, and how climbing unemployment rates affect job availability. (The Regulatory Impact Analysis also fails to include analyses of the impact of the provision using historical data to assess how it would fare differently in different economic times.) Without such a discussion, it is impossible to assess the economic considerations it made in proposing a policy that would result in many areas remaining ineligible for waivers at a time of rising unemployment.

¹⁶¹ Oregon would not have qualified for a 2008 waiver.

¹⁶²In November 2008, Congress passed a temporary expansion of Extended Benefits, called the Emergency Unemployment Compensation program, that in January 2009 the Bush Administration stated could qualify states for a 1-year statewide waiver. These states would have qualified for statewide waivers immediately then, as both qualified beginning with the first EUC trigger notice November 23, 2008 (https://oui.doleta.gov/unemploy/euc_trigger/2008/euc_112308.pdf). In addition, Congress passed the American Recovery and Reinvestment Act (ARRA), which waived all states statewide beginning in April 2009. Because these are both temporary measures requiring action by Congress, there is no guarantee under the proposed rule that they would be available in the future, and as we note, they weren't available in the beginning of the recession in early 2008.

¹⁶³ NPRM, p.981.

H. Department Does Not Explain Claim That Suggested Floor Is “Designed Specifically for ABAWDS”

The Department proposes a 7 percent unemployment floor for areas to qualify for a waiver under the 20 percent standard, significantly higher than the floor used by Labor Surplus Areas. The Department suggests this floor would be more “targeted” towards the specific individuals subject to the time limit, but provides no evidence to support this assertion. The preamble states:

The Department believes that amending the waiver regulations to include an unemployment floor is a critical step in achieving more targeted criteria. While the 20 percent standard is similar to the calculation of an LSA, the Department believes it is appropriate to request public comment to explore a floor that is designed specifically for ABAWD waivers.¹⁶⁴

The Department suggests that having a higher unemployment rate floor than that used by DOL in its identification of LSAs would be more appropriate for this population than the general LSA floor of 6 percent unemployment. Evidence shows that the childless adult SNAP participants face labor market disadvantages, and likely experience higher unemployment rates than their area. This evidence would recommend against a specific unemployment rate floor, given the difficulty in assessing a specific rate that would reflect available jobs for this population. For example, a city or county may have an unemployment rate of 7 percent, but the unemployment rate for childless adult SNAP participants is 12 or 14 percent. The difficulty in establishing available jobs is especially true in local areas where local labor market conditions may yield differing opportunities for this population for different levels of unemployment. For example, even if two areas had the same unemployment rate, an area where individuals live close to jobs that match their skills will have more opportunities than an area where there is considerable spatial mismatch.

Given this evidence, if the Department did want a floor “designed specifically for ABAWD waivers,” it would follow that they would want to explore a floor that is considerably *lower* than that used by the Department of Labor in designating Labor Surplus Areas. By suggesting that a higher floor would be “designed specifically for ABAWD waivers,” the Department is suggesting that unless unemployment is at a relatively high level, substantially higher than what the Department of Labor considers sufficiently high in designating Labor Surplus Areas, there are sufficient jobs available for childless adult SNAP participants. All available evidence suggests the opposite is true: unemployment has to fall to very low levels before more disadvantaged workers can find jobs. The Department does not provide any evidence to support its conclusion that a 7 percent unemployment rate bears any relationship to available jobs for this specific population. By referencing that such a floor would be “targeted,” the Department indicates that there are considerations that it took when establishing a floor substantially higher than the LSA floor. Without any discussion of those considerations, however, it is impossible to follow the Department’s logic and thus meaningfully comment on it. The robust review we did to understand the availability of jobs as related to the unemployment rate finds that the unemployment substantially overstates job opportunities for the individuals subject to the time limit, which would recommend flexibility, not imposing a specific unemployment rate floor. The Department is claiming an opposite finding without providing any evidence to support its conclusions.

¹⁶⁴ NPRM, p.984.

I. Reasoning for Specific Unemployment Rate Floor Not Consistent With Congressional Intent

The Department's stated rationale for proposing the 7 percent unemployment rate floor for waivers for areas with unemployment rates 20 percent above the national average is to ensure that time limit waivers cover a reduced population compared to current standards. This rationale is inconsistent with the intent of Congress. Congress intended for FNS to develop criteria to measure a lack of jobs, and did not specify intended limits to the usage of waivers, provided they reflect economic conditions.

In the preamble, the Department establishes that the justification for the proposed rule is not based on an analysis of the relationship of the unemployment rate floor to job availability for childless adult SNAP participants. The Department states it instead weighed the effect of the proposal on the breadth of waiver coverage:

The Department seeks to establish a floor that is in line with the Administration's effort to encourage greater engagement in work and work activities. The Department believes that the 7 percent floor for the 20 percent standard would strengthen the standards for waivers so that the ABAWD work requirement would be applied more broadly and fully consider the "lack of sufficient jobs" criteria in the statute.¹⁶⁵

The Department therefore states that the goal of the NPRM is to apply the time limit to more childless adults. The Department states that applying the time limit to more unemployed adults would "fully consider the 'lack of sufficient jobs' criteria in the statute," but does not explain how restricting areas would better reflect employment opportunities for this population. Moreover, this reasoning is completely contrary to Congressional intent, which was to allow states to waive areas with insufficient jobs without imposing limits on the share of areas covered by waivers by state or nationally. We are confused as to why FNS believes it has the authority to purposefully expose more people to the time limit as a rationale.

Available evidence suggests that restricting waivers to only areas with very high unemployment would actually make waivers less likely to reflect available jobs for this population, given that it would exclude from eligibility many areas where these individuals lack jobs (such as an area with an unemployment rate of 6.7 percent, but unemployment rates well above 10 percent for childless adult SNAP participants).

Congress intended for the Administration to develop economic criteria to measure job opportunities for childless adult SNAP participants. Congress did not propose any measure to limit waivers based on the number or share of individuals subject to the time limit. If Congress had intended for waivers to be limited so that a specific share of childless adults live in an area with a waiver, it could have written legislation to achieve that goal. For example, in the 2017 Tax Cuts and Jobs Act (P.L. 115-97), Congress created Opportunity Zones, which are low-income Census tracts designated by the chief executive of a state that are eligible for tax incentives for investment. While Congress created several criteria to identify areas that are nominated, such as the poverty rate or median family income, Congress also limited the number of potential eligible Opportunity Zones

¹⁶⁵ NPRM, p.984.

each state is allowed to designate based on the total number of low-income communities in the state. For example, in areas with over 100 low-income census tracts, no more than 25 percent of the number of those low-income tracts can be designated as Opportunity Zones.¹⁶⁶ This law serves as an example of one way that Congress can establish criteria to limit a particular sub-state designation, if that is indeed its intent. In establishing waiver criteria in the welfare reform law, Congress did not establish any mechanism to limit the scope of waivers, which it could have done by various means, had that been its goal. Instead, the law allows for the DEPARTMENT to develop measures to evaluate available jobs for childless adult SNAP participants, which are not limited in scope. The number of areas lacking jobs can expand or contract with economic conditions, and Congress allowed for states to waive areas in response to these changing economic conditions. Congress has not changed this approach since the original 1996 legislation.

Furthermore, the Department uses provisions of the House-passed version of H.R. 2 to support its proposed unemployment rate floor, ignoring that Congress ultimately rejected such provisions. In providing support for the 7 percent unemployment rate floor, the preamble states, “Furthermore, this aligns with the proposal in the Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. § 4015 (as passed by House, June 21, 2018).”¹⁶⁷ While this bill did contain a similar provision, the Senate bill did not include this provision, and the Conference Committee chose to align with the Senate version, passing both chambers without any restrictions on waivers. While the Department may consider Congressional bills, offering this as support while ignoring that these provisions were ultimately excluded from the final bill, the Department is offering an incomplete interpretation of Congressional intent.

Department Provides Little Explanation to Support Stated Goal to Limit Waiver Coverage

The Department establishes that its intent is to limit waiver coverage and therefore expand the time limit to the extent possible. The Department does not explain how this goal is related to the intent of the statute to identify areas that lack jobs for childless adults. Even if it had clarified how its stated goal related to the underlying statute it is interpreting, the Department also does not provide clear explanation of the assumptions used in determining the metric used repeatedly to support its conclusions, the share of “ABAWDs” living in a waived area. Without any explanation of the analysis used to understand what it believes the relationship between the unemployment rate floor and waiver coverage is, and how waiver coverage relates to the “insufficient jobs” law, the Department has limited our ability to comment on these specific assertions.

The Department explains that the principal criteria it considered when proposing the specific 7 percent unemployment rate floor was not based on an economic argument about the relationship between the general unemployment rate and jobs available for disadvantaged individuals, but rather a desire to limit waivers of the time limit:

As stated previously, the Department seeks to make the work requirements the norm rather than the exception to the rule because of excessive use of ABAWD time limit waivers to date. Using the proposed rule’s 7 percent floor for this criterion and eliminating waiver approvals

¹⁶⁶ Congressional Research Service, “Tax Incentives for Opportunity Zones: In Brief,” R45152, November 20, 2018, <https://fas.org/sgp/crs/misc/R45152.pdf>.

¹⁶⁷ NPRM, p.984.

based on an LSA designation (as well as utilizing the proposed limit on combining areas discussed below), an estimated 11 percent of ABAWDs would live in areas subject to a waiver. Currently, approximately 44 percent of ABAWDs live in a waived area. The Department views the proposal as more suitable for achieving a more comprehensive application of work requirements so that ABAWDs in areas that have sufficient number of jobs have a greater level of engagement in work and work activities, including job training.¹⁶⁸

The Department suggests that not only would limiting waivers be preferable to keeping the current regulations, but also suggests that the more the rules result in limited waivers, the more SNAP participants will be led towards self-sufficiency. (The Department also makes the claim that current waiver coverage is “excessive without providing explanation of the criteria used to judge appropriate waiver coverage.”) It states that a 7 percent floor, which it indicates would result in a decline from 44 percent of “ABAWDs” living in a waived area to 11 percent, would be “more suitable” than the current rules. In the proposed rule, the Department asks for feedback on alternative floors to the 7 percent unemployment rate floor of 6 percent or 10 percent (see Section I, below), explaining how the higher the unemployment rate floor, the more preferable according to their standards:

Based on the Department’s analysis, nearly 90 percent of ABAWDs would live in areas without waivers and would be encouraged to take steps towards self-sufficiency if a floor of 7 percent was established. In comparison, a 6 percent floor would mean that 76 percent of ABAWDs would live in areas without waivers and a 10 percent floor would mean that 98 percent of ABAWDs would live in areas without waivers. A higher floor allows for the broader application of the time limit to encourage self-sufficiency.¹⁶⁹

The Department therefore believes that expanding the time limit to more people is a desirable outcome. The Department states that the greater the unemployment rate threshold, the fewer childless adults will live in waived areas, suggesting that its goal is to minimize waiver coverage to the extent possible. Setting aside the issue that there is no evidence that applying the time limit more broadly encourages self-sufficiency, which we address comprehensively in Chapters 6 and 11, the Department leaves several unanswered questions with regards to how this rulemaking will further the intent of the law in defining areas with insufficient jobs:

- The Department does not explain how imposing a higher unemployment rate floor would better approximate a lack of jobs. The purpose of the regulation is to define areas that lack “a sufficient number of jobs to provide employment” to childless adult SNAP participants. To interpret this regulation, it would follow that the specific waiver criteria the Department develops would best allow states to identify areas lacking jobs, and best enable the Department to approve those waivers based on consistent criteria. Operating under the framework that these regulations interpret the statute, the appropriate amount of waiver coverage is related to the share of this population facing limited employment opportunities (i.e., a lack of sufficient jobs) in their area. For example, if about one-third of counties did not have sufficient job opportunities for childless adults, then about one-third of counties would be eligible for a waiver, if there were a way to perfectly capture job availability for this

¹⁶⁸ NPRM, p.984.

¹⁶⁹ NPRM, p.984.

population. If this share rises during a recession to 75 percent, then the share of the country eligible for a time limit waiver could also rise accordingly.

The Department is therefore proposing an alternative interpretation of the statute, though it is not clear what this interpretation is or what the authority it has to drastically change this interpretation. The Department does not explain whether it believes that there is an economic argument supporting limiting waivers, or instead if it believes that the goal of limiting waivers is separate from establishing areas with insufficient jobs, and if so, the authority under which it can establish new criteria for waivers that are not found in the statute. Without more explanation as to why its goal for limiting waivers is relevant to this rulemaking, it is difficult to assess the merits of the underlying arguments.

- The Department does not explain whether there are any parameters to its stated goal of limited waivers, and under what criteria it judges the appropriate level of waiver coverage. In regard to the proposed 6 percent unemployment rate floor, the preamble states that “the Department is concerned that too many areas would qualify for a waiver of the ABAWD time limit with a 6 percent floor and that too few individuals would be subject to the ABAWD work requirements.”¹⁷⁰ The language of “too many” or “too few” implies that there is a desired level of waiver coverage, and that the waiver coverage that they estimate a 6 percent unemployment rate floor would yield (24 percent of “ABAWDs” living in waived areas) is too high. The Department therefore has implicit criteria by which it is judging an appropriate share of individuals living in a waived county that it does not explain. While it is not clear how the share of “ABAWDs” living in a waived area is relevant to the rulemaking, even if it were, the Department does not allow commenters the ability to provide input on this metric without establishing the criteria it is using to judge the appropriate level.
- Relatedly, the Department does not explain if it believes that limiting waivers would be an equally important goal during an economic recession, when the share of areas with limited jobs would expand considerably. Again, if the Department states that 24 percent of “ABAWDs” in waived areas is “too high,” would that also be true during an economic recession, if most areas of the country offered few jobs to those individuals, and a majority of childless adults lived in an area covered by a waiver? Without explaining how its stated goal of limiting waivers is related to assessing the economic conditions in an area, it is impossible to tell if the Department considers this goal to be a relative goal (as in, it believes it is acceptable to expand the time limit in response to higher unemployment), or if it believes there is a desired percentage of “ABAWDs” living in waived areas regardless of economic conditions.
- Finally, the Department’s calculation of the share of “ABAWDs” living in a waived area does not take several important factors into account.
 - When the Department calculates the share of what it terms “ABAWDs” living in waived areas under the different scenarios it lays out, it is not clear if it is considering how this share will change as the overall denominator changes and what other assumptions are embedded in its analysis. In a time when fewer areas are waived, childless adults will be more disproportionately concentrated in waived areas, as they will lose benefits in non-waived areas. At any time, childless adults include a combination of participants who are living in waived areas; exempt from the time limit (but who the data does not allow us to identify as exempt); in their first three months of SNAP participation; or working or

¹⁷⁰ NPRM, p.984.

complying with the requirements through training. Other variables at the local level, such as state or county implementation of the time limit, the composition of childless adults (for example, in some areas, there may be proportionately more disadvantaged individuals), and the amount of job or training opportunities that are suitable for childless adults, will also affect how likely childless adults are to continue participating in SNAP in non-waived areas. Therefore, what share of childless adult SNAP participants living in waived areas is not just a function of the share of counties covered by a waiver, but also how they are distributed among those counties. It is not clear if the Department is using this statistic as a proxy for measuring overall waiver coverage, or if it is meant to convey an analysis modeling these dynamic variables.

Consider a simplified example. Here, we will look to see how the distribution of childless adults living in certain waived areas changes as overall nationwide waiver coverage changes, using eight states, Guam and Virgin Islands that had statewide waivers in 2017, and 13 states that had statewide waivers at least from 2010 through 2013 but had dropped them by 2017. (This illustrative analysis therefore is not looking at childless adults living in all waived areas, but rather choosing to look at states when they had a statewide waiver or no waiver in 2017 to simplify the analysis.) In 2010, almost all areas of the country were waived in the aftermath of the Great Recession, which prompted Congress to include a provision in the Recovery Act (P.L. 111-5) that waived the time limit nationwide. (About five states continued to implement the time limit in parts of their state, but they offered work opportunities for individuals subject to the time limit.) About 89 percent of the general population lived in an area that was waived.¹⁷¹

Because of this widespread waiver coverage, the share of childless adult SNAP participants living in waived areas would be expected to be very similar to the share of all SNAP participants living in those areas. To the extent that this distribution differed, it would likely be due to compositional differences, such as areas with greater shares of children or elderly individuals. Waiver coverage would not be the main driver of differences, as waiver coverage was similar nationwide. Indeed, in 2010, about 20 percent of the total U.S. population lived in states that had statewide waivers continuously through 2017, and a slightly smaller share, 17 percent, of SNAP participants lived in those states. (This may be because these states' populations had slightly smaller shares of individuals with income below SNAP's income eligibility limits, reduced access to SNAP, or increased barriers for eligible people, or other reasons.) The share of all adults ages 18-49 in childless households who lived in those states in 2010 was similar to the distribution of SNAP participants; about 18 percent of childless adults lived in those eight states. Similarly, for states that had earlier had statewide waivers, but dropped them by 2017, the share of childless adults living in those states was similar to the share of SNAP participants living in those states in 2010. Those states had about 24 percent of the total U.S. population, but a slightly higher share of SNAP participants (26 percent), and a slightly higher share of childless adults (28 percent). (Table 3.7.)

¹⁷¹ Center on Budget and Policy Priorities, "States Have Requested Waivers from SNAP's Time Limit in High Unemployment Areas for the Past Two Decades," <https://www.cbpp.org/research/food-assistance/states-have-requested-waivers-from-snaps-time-limit-in-high-unemployment>.

TABLE 3.7

Distribution of Childless Adults Living in Waived Areas Changes as Overall Waiver Coverage Changes

	Total Population (millions)	Share of Total Population	SNAP Participants (program data, millions)	Share of SNAP Participants	SNAP Participants Ages 18-49, Without Disabilities, in Childless Households (millions)	Share of Participants Ages 18-49, Without Disabilities, in Childless Households
Fiscal Year 2010: 89% of U.S. Population Lives in Waived Area						
States with statewide waivers in at least 2010-2013 and no waivers 2017	72.9	24%	10.4	26%	1.1	28%
States with statewide waivers in at least 2010-2013 and 2017	62.1	20%	6.7	17%	0.7	18%
Total all states	309.3	100%	40.3	100%	3.9	100%
Fiscal Year 2017: 36% of U.S. Population Lives in Waived Area						
States with statewide waivers in at least 2010-2013 and no waivers 2017	77.0	24%	10.6	25%	0.6	19%
States with statewide waivers in at least 2010-2013 and 2017	64.7	20%	8.3	20%	0.9	29%
Total all states	325.1	100%	42.1	100%	3.2	100%

Notes: The states with statewide waivers from the time limit in 2013 but no waivers at all in 2017 (which represented about a quarter of SNAP participants in 2013) were Alabama, Arkansas, Florida, Indiana, Iowa, Kansas, Maine, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, and Wisconsin. The states with statewide waivers in both 2013 and 2017 (which represented about 20 percent of SNAP participants) included Alaska, California, District of Columbia, Illinois, Louisiana, Nevada, New Mexico, Rhode Island, Guam, and Virgin Islands.

Sources: CBPP analysis of FY2010 and FY2017 SNAP household characteristics data; USDA program data; Census population estimates as of July 1st 2010 and 2017

By 2017, the share of waived areas had declined dramatically as the economy improved. About 36 percent of the U.S. population lived in an area that was waived.¹⁷² Given that

¹⁷² *Ibid.*

the eight states who continued to waive the time limit statewide were the only states remaining with statewide waivers and overall waiver coverage was much lower, it would be likely that childless adults would be disproportionately living in states that continued to be waived statewide, as they would be more likely to be subject to the time limit in other states with partial or no waivers. Similarly, we would expect the share of childless adults living in states without waivers to have declined relative to the share of all SNAP participants in those states. As table 3.7 shows, the share of childless adult SNAP participants who lived in states with statewide waivers (29 percent) was about 50 percent greater than the share of overall SNAP participants who lived in those areas (19 percent). This share also represents a significant increase from the 2010 share of 18 percent. We see the opposite trend for states that had no waiver by 2017: while in 2010, states that had no waivers by 2017 had a slightly greater share of SNAP participants and childless adults than they did of overall U.S. population, by 2017, proportionately fewer childless adults lived in those states. While about 25 percent of SNAP participants lived in those states in 2017, only 19 percent of childless adults lived in states with the time limit statewide in 2017.

The distribution of childless adults essentially flipped between these two groups of states between 2010 and 2017, as the overall number of areas waived declined and childless adults became more concentrated in states with waivers and much less so in areas without waivers.

It is not clear if the Department incorporated these factors into its analysis, or assumed a more static relationship. The complexity of analyzing childless adults in waived areas raises the question of why the Department chose this particular statistic to measure waiver coverage, particularly given that it provided little explanation of some of these assumptions behind this calculation. Without more information, it is difficult to evaluate how relevant this statistic is to their overall point, which is to measure childless adults in a waived area as a measure of the proposed rule's effect.

- Similarly, as we explain in our comments on the Regulatory Impact Analysis in Chapter 11, the term “ABAWD” lacks specificity, particularly when describing changes in waiver coverage. The data do not allow us to tell which of the larger group of adults without dependent children, ages 18 to 49, without disabilities, might be exempt from the time limit, so many of these adults are not subject to the time limit. Others are only subject to the time limit if they live in an area without a waiver. When fewer areas are waived, more of these adults will be subject to the time limit and lose benefits, and the overall number of these adults participating in SNAP will decline. Therefore, when the Department describes how 11 percent of “ABAWDs” would live in a waived area with a 7 percent floor and 24 percent would live in a waived area with a 6 percent floor, it is unclear if the Department is considering the decline in overall childless adults participating in SNAP that would occur with the reduction in waivers.
- As we also discuss in our comments on the Regulatory Impact Analysis in Chapter 11, it is unclear why the Department used the number of participants in non-public assistance households in the FNS-388 form as a proxy for childless adults in estimating the share of “ABAWDs” living in waived areas under different scenarios.

Instead of providing evidence that the Department’s proposal will interpret the statute in a more effective manner by improving on the measurement of jobs available for low-income childless adult SNAP participants, the Department instead uses a confusing and unexplained metric to support its proposal, the share of childless adults living in an area covered by a waiver. This metric is seemingly unrelated to the intent of the statute. Because the Department provided little evidence to support the assumptions made in estimating this metric and to explain why it is relevant to the underlying law, it is impossible to provide more detailed discussion.

J. Proposed Alternative Unemployment Rate Floors Also Problematic

In addition to the Department’s preferred unemployment rate floor of 7 percent, the Department also sought comment on unemployment rate floors of 6 or 10 percent. Both of these proposals are flawed, demonstrating why selecting a specific unemployment rate floor to reflect available jobs for this population is a misguided approach.

Department’s Proposed 6 Percent Floor Demonstrates Why No Specific Unemployment Rate Floor Is Appropriate

The Department explains that a 6 percent unemployment rate floor would both be consistent with Labor Surplus Areas and bears a similar relationship to what it erroneously considers to be the natural rate of unemployment, stating “As previously noted, the “natural rate of unemployment” generally hovers around 5 percent, meaning that 20 percent above that rate is 6.0 percent.”¹⁷³ The Department therefore at least provides evidence that is somewhat more consistent with current standards such as relying on Department of Labor criteria, though undermines its 7 percent unemployment rate proposal, for which it does not provide any such evidence.

This unemployment rate floor would still exclude many areas where childless adult SNAP participants face considerably higher unemployment or underemployment rates and where they will not have access to jobs, however. As stated above, even at 5 percent unemployment rates, black and Latino workers nationally face unemployment rates of 9.6 percent and 7 percent, respectively, and underemployment rates of 14.9 percent and 13 percent, respectively. Some local metropolitan areas had 2013-2017 average unemployment rates below 6 percent, but unemployment rates for sub-populations well above 14 percent, the unemployment rate of the Great Depression. (See Tables in Section E above.) For example, Monroe, MI, had an unemployment rate of 5.9 percent, but workers without a high school degree faced unemployment rates of 16.7. In Fort Wayne, Indiana, the area unemployment rate was 5.9 percent, but workers with a disability had unemployment rates of 14 percent. In the Pittsburgh, PA metro area, while the unemployment rate was 5.7 percent, the unemployment rate among African American workers was 14.1 percent. Again, these figures demonstrate why it is impossible to set a specific unemployment rate threshold at which it can be reasonably assured that childless adults subject to the time limit can readily find a job with steady hours. Evidence shows that this group is likely to face unemployment rates much higher than their local area, and the unemployment rate floor is an inadequate proxy to measure jobs available to them.

¹⁷³ NPRM, p.984.

The Department's suggestion that a 10 percent unemployment rate floor is in any way a reasonable proposal highlights many of the internal inconsistencies and inadequate explanations in this proposed rule.

10 Percent Floor Inconsistent with Congressional Intent and Based on Obscure and Inconsistent Reasoning

Congress clearly designated a 10 percent unemployment rate as one way for a state to qualify for a waiver, and a second, more flexible and targeted criterion of "insufficient jobs" as an alternative to demonstrating a 10 percent unemployment rate. Had Congress intended for 10 percent unemployment to be the only way for a state to qualify for a waiver, it would not have included an alternative. This proposal therefore runs afoul of Congressional intent.

The Department also ignores the LSA standard's 10 percent ceiling, demonstrating how its reasoning is inconsistent. As explained elsewhere, the Department picks and chooses when and how it will aim to be consistent with the DOL's approach in assessing unemployment. The Department of Labor clearly considers 10 percent to be a sufficiently high level of unemployment that an area with 10 percent unemployment over 24 months demonstrates a surplus of labor. The Department ignores this fact by proposing a 10 percent unemployment rate floor for the 20 percent standard, while also citing the LSA standard as support for the unemployment rate floor concept in general.

As with the proposed 7 percent floor, the Department suggests that the 10 percent standard would achieve its goal of greatly curtailing waiver coverage, which as explained above, is a goal not aligned with the intent of the underlying statute and for which it does not offer a transparent rationale. The Department states, "the Department estimates that a 10-percent floor would reduce waivers to the extent that approximately 2 percent of ABAWDs would live in waived areas."¹⁷⁴ While the Department may consider reducing the population of "ABAWDs" living in waived areas a priority, the Department provides little explanation of how this priority relates to the underlying statute and identifies areas lacking jobs for childless adults. It also provides little transparency with regards to the assumptions used in estimating the effects of these unemployment rate floors on the population living in waived areas.

10 Percent Floor Would be Duplicative of Existing 10 Percent Criteria

This proposal would also be largely duplicative of existing criteria. The Department does discuss how the time frame used would be different from the existing regulations regarding waivers based on 10 percent unemployment rates: "the 10-percent unemployment floor would be attached to the 20 percent standard, which would mean an area would require an average unemployment rate 20 percent above the national average for a recent 24-month period and at least 10 percent for the same period; the other similar, but separate standard requires an area to have an average unemployment rate of over 10 percent for a 12-month period."¹⁷⁵ Ten percent unemployment is extremely high at the national level. Only during a deep recession, such as immediately following the Great Recession, would 20 percent above the national average be close to or above 10 percent, which would require the national average to be at least 8.4 percent for a 24-month period. Since the BLS began tracking

¹⁷⁴ NPRM, p.984.

¹⁷⁵ NPRM, p.984.

monthly unemployment statistics since 1948, out of 830 total 24-month periods there have been only 64 24-month periods when the national average would have met this standard. There were 28 periods from November 1980 through January 1985, during and following the 1981-1982 recession, and 36 24-month periods around the Great Recession of 2007-2009 and its long, slow recovery, from May 2008 through March 2013.

For most of the time barring these prolonged economic crises, then, this regulation would simply extend the time frame for demonstrating 10 percent unemployment, essentially eliminating the 20 percent standard most of the time. There may be some areas that are recovering from a deep economic shock that have more recent unemployment rates just below 10 percent, but unemployment over the past two years high enough over that rate to nudge the average up above 10 percent. Because 10 percent is such a high level of unemployment, however, it is unlikely that many areas would qualify that would not have otherwise qualified under the 10 percent criterion.

For example, we analyzed all 12-month time periods that a state could use to examine waiver eligibility based on either having a 12-month unemployment rate over 10 percent or a 24-month unemployment rate 20 percent above the national average but at least 10 percent from 2008 to 2019. With the exception of the years capturing peak unemployment rates immediately following the Great Recession, from 2014 to 2016, when capturing a longer time frame allowed for more months during peak unemployment, only a handful of counties would qualify under the 24-month average but not the 12-month average. (Even during those years from 2014-2016, fewer than 150 counties, or less than 5 percent of counties, would have qualified under the 24-month but not the 12-month standard.)

It is not clear if the Department more fully considered the practical differences between these measures, such as comparing how many areas would have qualified in past years based on having 12 months of 10 percent unemployment or 24 months of 10 percent unemployment. Its rationale for essentially replacing the 20 percent standard, which measures high unemployment relative to the national average, with additional criteria for the 10 percent standard, is therefore not transparent.

Department's Alternative Floors Highlight Arbitrary Choice of 7 Percent Floor

The Department's discussion of alternate unemployment rate floors also demonstrates how its proposed floor of 7 percent is an arbitrary figure. When proposing the 6 percent and 10 percent floors as alternatives to the 7 percent floor, the Department gives little discussion of the relevance to these floors to the underlying statute, which is to identify areas where individuals subject to the time limit do not have access to enough jobs. For example, the Department could have provided economic evidence that indicates how these specific unemployment rates relate to job availability for childless adult SNAP participants. The only such discussion Department includes is when it explains a relationship between the natural rate of unemployment and the 6 percent floor by stating that it the 6 percent floor is roughly 20 percent above 5 percent, which the Department inaccurately states is consistent with the "natural rate of unemployment" concept.¹⁷⁶ The Department therefore uses no economic discussion to support its proposed 7 percent floor but gives some discussion to explain the 6 percent floor, which is its alternate proposal. The discussion of the relationship of the 6 percent floor to the natural rate of unemployment therefore undermines the Department's proposal

¹⁷⁶ NPRM, p.984.

for the 7 percent floor, as it demonstrates that the Department either did not consider any economic evidence, or did not provide any evidence to allow us to meaningfully comment.

The only discussion the Department gives to justify choosing the 7 percent floor (or to support the alternative of 10 percent) is to limit the share of the population covered by a waiver, which as discussed above, is not what Congress intended when creating the waiver authority. Without any discussion to explain how the 7 percent unemployment rate is an appropriate measure of available jobs for the individuals subject to the time limit, the 7 percent floor appears to be a completely arbitrary choice.

The Department proposes alternative unemployment rate floors for the “20 percent standard.” These proposed floors would also be problematic, as would any specific unemployment floor, because it is impossible to demonstrate that an area with an unemployment rate below a specific threshold lacks jobs for the individuals subject to the time limit.

K. Conclusion: Proposal for Unemployment Rate Floor Is Deeply Flawed

The Department proposes to change one of the most frequently used standards for waiver approval, the “20 percent standard,” to require a minimum unemployment rate. With this proposal, a state could request a waiver with an unemployment rate 20 percent above the national average for a 24-month period only if it was above this unemployment rate floor. The Department proposed an unemployment rate floor of 7 percent, but also sought input on proposed floors of 6 or 10 percent.

The Department provides little economic evidence to support the claim that imposing this floor would better interpret the statute, which allows states to request waivers for areas that lack “a sufficient number of jobs to provide employment” for the individuals subject to the time limit. The Department instead appears to work backwards from its stated goal of applying the time limit to more SNAP participants by limiting waivers, and proposes an unemployment rate floor as a means of achieving this goal. The Department does not explain how this goal relates to the purpose of the law it is interpreting, or how the specific floors it proposes would better reflect available jobs for participants.

Research shows that the childless adults who may be subject to the time limit if they are not exempt or living in a waived area tend to have many characteristics that are associated with higher unemployment rates. The majority have lower levels of educational attainment, they are disproportionately people of color, many have health conditions or barriers such as unstable housing that limit their ability to work, and many likely experience spatial mismatch and lack access to the jobs that are available in their communities. Because of these features, it is difficult to find a labor force metric that accurately portrays the job opportunities available to these individuals. Current regulations allow states to show that an area has elevated unemployment compared to the national average. The current “20 percent standard” therefore *already* disqualifies many areas with unemployment similar to or below the national average where there are not enough jobs for these individuals to find employment that are not reflected in the unemployment rate.

While current regulations could be improved, this proposal would substantially worsen the existing inadequacies. The proposal would require an area has an unemployment rate consistent with weak labor markets for the overall labor force, 7 percent, to qualify for a waiver. Given that the unemployment rates for the group of these individuals are likely substantially higher than their area,

this proposal would disqualify many areas where individuals face much higher rates than 6 or 7 percent unemployment. The proposal would not align with Congressional intent, which purposefully did not specify a specific unemployment rate to signify that an area lacks jobs in recognition that the unemployment rate cannot capture job availability for this specific group.

States frequently request waivers based on the current “20 percent standard,” given that data are readily available and consistent across states, and FNS standards for approval are transparent and consistently applied. While the current standard falls short of accurately reflecting jobs available for this population, we believe the proposed unemployment rate floor would be inconsistent with the intent of Congress and would make the current criteria substantially less effective at measuring insufficient jobs. We therefore urge FNS to drop the unemployment rate floor proposal, keep the 20 percent standard as it is, and explore metrics based on evidence that would more effectively reflect jobs available to the population in recognition of the likely substantially higher unemployment rates they face.

Chapter 4. Dropping Several Key Criteria From Waiver Criteria Is Inconsistent With the Statute

The NPRM proposes several significant changes to longstanding SNAP policy that would restrict states to one limited measure of labor market conditions, the unemployment rate, when providing evidence of lack of sufficient jobs. It would eliminate the ability of states to use valuable, readily available labor market indicators, such as a low and declining employment-to-population ratio, a lack of jobs in a declining industry, or an academic study or other publication(s) that describes an area's lack of jobs. The NPRM fails to provide reasons for limiting states' ability to use widely accepted labor market measures to support requests for waivers, to discuss the implications of relying on a single measure of labor market conditions, or to acknowledge the valuable information provided by other measures. Without knowing what evidence justifies this change in longstanding policy and an adequate discussion of alternative methods for assessing labor market conditions, it is impossible to assess the potential impact of the changes on SNAP participants and their ability to achieve self-sufficiency. The sections below provide an overview of existing statutes, regulations, and guidance, address limitations of the general unemployment rate, and discuss alternative measures of labor market conditions.

A. Current Statute, Regulations, and Guidance Acknowledge That There Is No Perfect Measure of an Area's "Lack of Sufficient Jobs"

According to the statute, a state may waive the applicability of the work requirement "to any group of individuals in the state if the Secretary makes a determination that the area in which the individuals reside has an unemployment rate above 10% or does not have a sufficient number of jobs to provide employment for the individuals." The statute does not limit the type of information that can be used to support a claim of lack of sufficient jobs.

According to the current rule (7 C.F.R. § 273.24 (f)(2)(ii)), states are not limited to using unemployment rates to support a claim of lack of sufficient jobs. States may provide evidence that an area has a low and declining employment-to-population ratio, has a lack of jobs in declining occupations or industries, or is described in an academic study or other publications as an area where there are lack of jobs. In the preamble to the current rule, FNS stated that "State agencies could submit requests with no limit on the supporting documentation, and every request would be weighed on its own individual merits." The final rule included a non-exhaustive list of the kinds of information a state agency may submit to support a claim of "lack of sufficient jobs."

Below are excerpts from FNS guidance and rulemaking that give states flexibility in using other types of data to provide evidence of a lack of sufficient jobs, acknowledging that unemployment rates may not adequately capture the local labor market prospects of individuals subject to the time limit.

- **December 3, 1996 guidance:** According to FNS, 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.”¹⁷⁷

“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....

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.”

- **1999 proposed rule:** In the preamble, FNS noted that “the legislative history does not provide guidance on what types of waivers the Department should approve under this standard, and there are no standard data or methods to make the determination of the sufficiency of jobs. States requesting waivers are therefore free to compile evidence and construct arguments to show that in a particular area, there are not enough jobs for individuals who are affected by the time limit.”¹⁷⁸ FNS reiterated that one possible indicator that an area has insufficient jobs is a falling ratio of employment-to-population, but that “no particular approach is required.”
- **August 2006 guidance:** “Waivers may also be submitted based on the following criteria: 1) areas having a low and declining employment-to-population ratio; 2) areas having a lack of jobs in declining occupations or industries; 3) 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.”¹⁷⁹
- **December 2016 guidance:** FNS provided additional detail on “other potential types of waiver requests” beyond those based on the LSA designation or unemployment rates:¹⁸⁰

A low and declining employment-to-population ratio. Employment-to-population (ETP) ratio can be a meaningful economic indicator for an area where the unemployment rate

¹⁷⁷ USDA, “Guidance for states Seeking Waivers for Food Stamp Limits,” December 3, 1996.

¹⁷⁸ Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; 64 Federal Register 242, p. 70946 (December 17, 1999) (to be codified at 7 C.F.R. pts. 272 and 273).

¹⁷⁹ USDA, “Guidance on Requesting ABAWD Waivers,” August 2006.

¹⁸⁰ USDA, “Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016.

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. Historically, low and declining ETP data have been used successfully to waive Indian reservations or tribal lands where unemployment statistics and other economic data are limited or unavailable. ETP data can also be used to request waivers for non-tribal areas, such as counties, but it is uncommon because BLS unemployment data is readily available for these areas. 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 four-year reference period, ending no earlier than two years prior to the year in which the waiver is effective; and
- Complemented by a recent 24-month unemployment rate at least 10 percent 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.

B. The Proposed Rule Would Restrict the Evidence to Support Lack of Sufficient Jobs to a Single, Imperfect Measure of Labor Market Conditions

The NPRM says the proposed core standards would not include other labor market information, such as a low and declining employment-to-population ratio, a lack of jobs in a declining industry, or an academic study or other publication(s) that describes an area’s lack of jobs. It would eliminate the ability of states to support a waiver request using other available information about the labor market, unless BLS unemployment data for the area is limited or unavailable, such as a reservation area or U.S. territory. FNS proposes to eliminate these other criteria on the grounds that they are “rarely used, sometimes subjective, and not appropriate when other more specific and robust data are available,” but does not provide further substantiation of this claim.

The proposed rule would replace an approach that allows for multiple measures to capture labor market conditions experienced by individuals subject to the time limit with a single, limited, and imperfect measure, the unemployment rate. FNS has stated in its guidance that using the unemployment rate is an imperfect measure for the job prospects for individuals subject to the time limit. Labor market researchers routinely use other labor market measures in addition to, or instead of, the unemployment rate, such as the employment-to-population ratio.

Other Measures, Including the Employment-To-Population Ratio, Provide Important Information About Labor Market Conditions That the General Unemployment Rate Does Not

The employment-to-population ratio is a well-defined and widely used measure that is far from subjective. The employment-to-population ratio is the proportion of the civilian noninstitutional population aged 16 and over that is employed. As the 1996 guidance describes, employment data for areas is available from BLS. Population estimates for areas are available from the Bureau of Census. The calculation of the employment-to-population ratio is a standard BLS procedure, which is a measure it reports on a regular basis at the regional and state level.¹⁸¹ In many instances, researchers use employment-to-population ratio as a more appropriate measure for labor market conditions for low-skill workers who face serious barriers to employment.

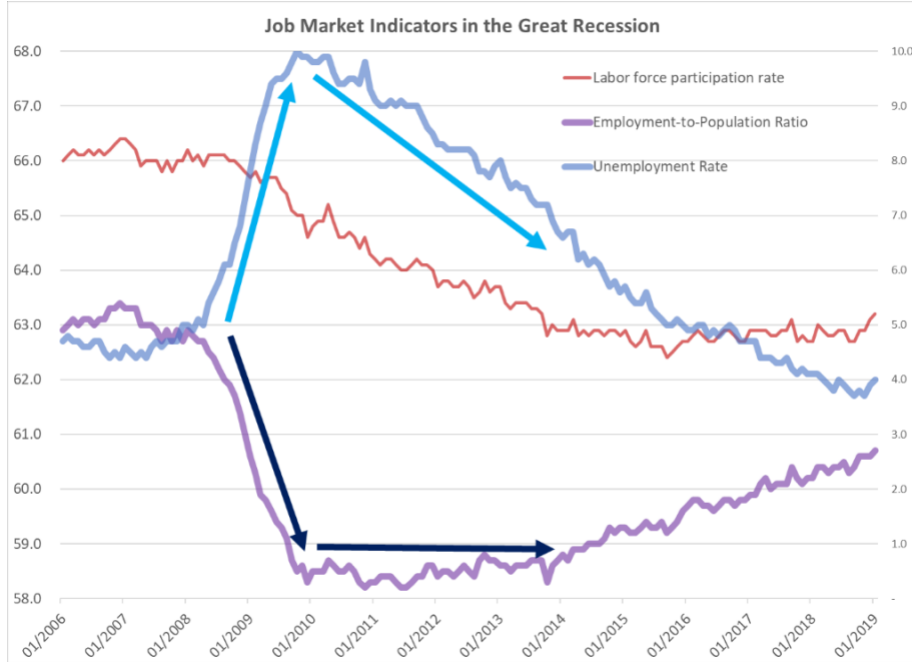
Current regulations allow states to demonstrate that an area lacks sufficient jobs by showing that it has a low and declining employment-to-population ratio. The rule proposes eliminating this criterion as a means for an area to qualify for a waiver. This would be a mistake, as it would throw away valuable information about the state of the labor market and the likely availability of jobs that cannot be gleaned from the unemployment rate alone. The unemployment rate is the number of people actively looking for a job as a percentage of the labor force (the number of people who have a job plus the number of people who don't have a job but are actively looking for one). In a job market with limited job opportunities for any of a number of reasons, such as weak demand due to a national economic recession, a local business slump, or the closing of a major plant, there could be a number of people who would like to work but for reasons such as discouragement due to a failed job search, experience with discrimination, or a general sense that their job prospects are limited haven't looked recently enough to be counted as in the labor force but unemployed.

These individuals are classified as “marginally attached to the labor force” and are included in broader measures of labor market underutilization, including the U-6 measure, which includes the unemployed, the marginally attached to the labor force, and those who are working part-time but want to be working more hours.¹⁸²

¹⁸¹ See for instance: <https://www.bls.gov/news.release/srgune.nr0.htm>

¹⁸² See for instance “How the Government Measures Unemployment,” Bureau of Labor Statistics, online at https://www.bls.gov/cps/cps_htgm.htm#unemployed

Figure 4.1. Job Market Indicators in the Great Recession



In a national recession, a local economic slump, or in localities with limited job opportunities, the unemployment rate can paint a very incomplete picture of the availability of jobs. This was illustrated dramatically at the national level in the Great Recession. Between the start of the recession in December 2007 and early 2010, the share of the population with a job (the employment-to-population ratio) fell sharply. That was mostly due to the sharp rise in the unemployment rate, but some of it reflected a drop in labor force participation as the number of people marginally attached or otherwise not in the labor force rose.

The unemployment rate then began a long decline but the labor force participation rate continued to fall as well. As a result, the share of the population with a job remained depressed and did not begin to rise again until 2014 (see Figure 4.1, above).

The U-6 measure of unemployment came down more slowly than the official unemployment rate as jobs, especially full-time jobs, remained scarce. Even as the unemployment rate dropped below 7 percent, the employment-to-population ratio remained well below where it was at the start of the recession.

Researchers Routinely Use Employment-to-Population Ratio to Measure Local Labor Market Conditions

Researchers routinely use the employment-to-population ratio in addition to, or instead of, the unemployment rate to measure labor market conditions. According to Bartik, it is “unclear whether the availability of labor is best measured by employment-to-population ratios or employment to

labor force ratios.”¹⁸³ Bartik finds that employment-to-population ratios are more strongly related to job growth than employment to labor force ratios.¹⁸⁴

For individuals subject to the time limit, the employment-to-population ratio may be more appropriate than the unemployment rate. According to Western and Pettit, for groups who are weakly attached to the labor market and who face significant barriers to labor force participation, like young men with little education, economic status is often measured by the employment-to-population ratio. This measure counts as jobless those who have dropped out of the labor market altogether. The unemployment rate is more restrictive and does not account for individuals who are not currently in the labor force.¹⁸⁵ A study by Cadena and Kovak illustrates this approach, using employment-to-population ratios to estimate the probability of employment in the less-skilled labor market.¹⁸⁶

An improved (or deteriorating) unemployment rate does not directly correspond to an improvement (or deterioration) of the employment situation, because it does not take into account changes in the labor force participation rate due to the movement of discouraged jobseekers in and out of the labor market. Only a stable participation rate allows for unambiguous conclusions from a rising (or falling) unemployment rate. Unemployed people who have been adversely affected by economic restructuring may give up hope of working again and withdraw from the labor force. Job booms may only be a boom for certain kinds of workers. Watson argues that a more useful indication of the quantity of employment in the economy is provided by employment-to-population ratios, which remove the confounding influence of labor force participation and give a more accurate indication of the amount of employment available to the population.¹⁸⁷

Hoynes estimated the effect of local labor markets on Aid to Families with Dependent Children participation in California using several measures of labor market conditions, including unemployment rates, log of employment, employment-to-population ratios, and earnings. Results showed that higher unemployment rates, lower employment growth, lower employment-to-population ratios, and lower wage growth are associated with longer welfare spells and shorter periods off welfare. Models that controlled for labor market conditions using employment-based measures, such as employment-to-population ratios, performed better than unemployment rates.

¹⁸³ The unemployment rate can be derived from the employment to labor force ratio by subtracting the latter from 1.

¹⁸⁴ Timothy J. Bartik, “How Do the Effects of Local Growth on Employment Rates Vary with Initial Labor Market Conditions,” Upjohn Institute Staff Working Paper 09-148 (Nov. 4, 2006), pp. 1-35, <https://www.econstor.eu/bitstream/10419/64401/1/607052678.pdf>.

¹⁸⁵ Bruce Western and Becky Pettit, “Incarceration and Social Inequality,” *Daedalus Journal of the American Academy of Arts & Sciences* (Summer 2010), pp. 8-19, https://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00019%20.

¹⁸⁶ Brian C. Cadena and Brian K. Kovak, “Immigrants Equilibrate Local Labor Markets: Evidence From the Great Recession,” National Bureau of Economic Research (August 2013), <https://www.nber.org/papers/w19272.pdf>.

¹⁸⁷ Ian Watson, “Beyond the Unemployment Rate: Building a Set Indices to Measure the Health of the Labour Market,” *Australian Bulletin of Labour* (September 2000), pp. 175-190, <http://www.ianwatson.com.au/pubs/health%20of%20labour%20market.pdf>.

“Unemployment rates are less desirable measures of labor market opportunities because they fluctuate not only with employment but also with changes in labor force participation.”¹⁸⁸

Dranove, Garthwaite, and Ody used employment-to-population ratio to examine the impact of the economic slowdown that began in 2007 on the rate of growth in health spending. They used the employment-to-population ratio, rather than unemployment rate, because it is not affected by decisions to enter the labor force and instead provides a local measure of changes in economic activity resulting from the slowdown. Their results were broadly consistent with results using the local unemployment rate instead of employment-to-population ratio.¹⁸⁹

The General Unemployment Rate May Not Adequately Measure Weak Labor Demand at the State and Sub-State Level

During this period when the national employment-population ratio was flat, there were many local and regional labor markets where labor market conditions remained weak even as the general unemployment rate fell.

In a 2017 speech that partially focused on the geographical variance of labor markets across the country (and on policies to ameliorate such differences), then Federal Reserve Chair Janet Yellen, pointed out the following:¹⁹⁰

While the job market for the United States as a whole has improved markedly since the depths of the financial crisis, the persistently higher unemployment rates in lower-income and minority communities show why workforce development is so essential. For instance, unemployment rates averaged 13 percent in low- and moderate-income communities from 2011 through 2015, compared with 7.3 percent in higher-income communities.... The challenges for workers in minority communities are even greater. The average unemployment rate across all census tracts where minorities made up a majority of the population averaged 14.3 percent from 2011 through 2015.

Labor economist Danny Yagan added an important insight about the geographical dispersion of employment conditions following the historically large, negative demand shock from the Great Recession.¹⁹¹ As Figure 4.2 below shows, states that were harder hit by the downturn saw significantly larger losses in employment rates, even years after the recession was over. Yagan argues

¹⁸⁸ Hilary W. Hoynes, “Local Labor Markets and Welfare Spells: Do Demand Conditions Matter?” *The Review of Economics and Statistics* (August 2000), pp. 351-368, <https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-RESTAT-2000.pdf>.

¹⁸⁹ David Dranove, Craig Garthwaite, and Christopher Ody, “Health Spending Slowdown is Mostly Due to Economic Factors, not Structural Change in the Health Care Sector,” *Health Affairs* (Aug. 2014), pp. 1399-1406, <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2013.1416>.

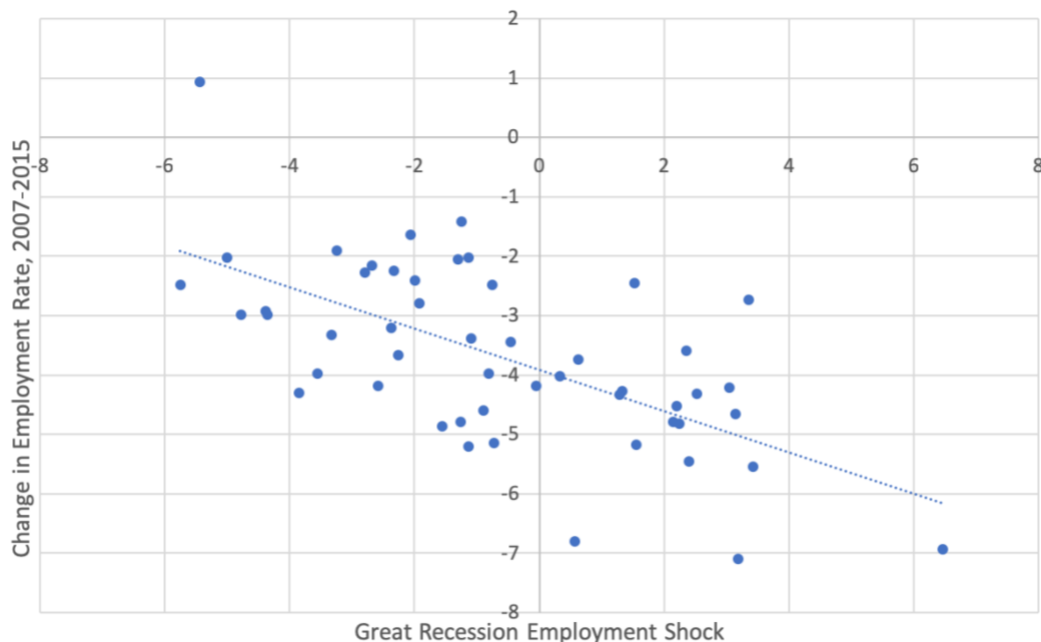
¹⁹⁰ Janet Yellen, “Addressing Workforce Development Challenges in Low-Income Communities,” Federal Reserve Board of Governors, March 28, 2017, <https://www.federalreserve.gov/newsevents/speech/files/yellen20170328a.pdf>.

¹⁹¹ Danny Yagan, “Employment Hysteresis from the Great Recession,” NBER Working Paper No. 23844, August 2018, <https://www.nber.org/papers/w23844>.

that his findings provide evidence of “hysteresis,” meaning lasting economic damage to persons and communities from periods of economic weakness. As he summarizes, “These findings reveal that the Great Recession imposed long-term employment and income losses even after unemployment rates signaled recovery.”¹⁹²

As shown in the next section, even at low rates of national and regional unemployment (meaning rates well below 7 percent), there are areas of the country where economic weakness persists. Yagan’s findings suggest that these areas may suffer from more lasting damage to workers’ ability to find gainful jobs. In the context of the proposed rule, such dynamics speak to the importance of taking a much more nuanced approach to the waiver process, examining local labor markets from both the demand side (i.e., the extent of job availability, both quantity and quality) and the supply side (i.e., the skills and abilities of members of the local workforce to respond to labor demand).

Figure 4.2. State-Level Great Recession Employment Shocks and 2007-2015 Employment Rate Changes



Note: Yagan defines employment shocks as the sum of state-level employment growth forecast errors for 2008 and 2009. These forecast errors represent the difference between each state's actual employment growth and its predicted employment growth based on pre-recession trends. Values on the x-axis represent the inverse of 2007-2009 employment growth forecast errors.

Geographical Variation of Weak Labor Demand, Even at Low Unemployment

Echoing the Yagan findings referenced above, a recent paper by Austin *et al.* illustrates that labor demand, particularly for low-wage workers, varies significantly from place to place.¹⁹³ In their recent

¹⁹² *Ibid.*

¹⁹³ Benjamin Austin, Edward Glaeser, and Lawrence Summers, “Jobs for the Heartland: Place-Based Policies in 21st Century America,” March 8, 2018, https://www.brookings.edu/wp-content/uploads/2018/03/AustinEtAl_Text.pdf.

analysis of regional disparities, these authors find pockets of persistently weak labor markets across America, citing what they label: “a hardening of America’s geographic divisions.” Their paper identifies three findings particularly germane to the shortcomings of the new rule: “the decline of geographic mobility,” “increased sorting by skills across space,” and “persistent pockets of nonemployment.” The combination of these three negative developments imply a larger share of lower-wage workers stuck in various locations without enough work. We find these disparities very much present in the labor market over the current expansion, even at historically low rates of unemployment.

Many labor economists consider the prime-age employment rate to be a proxy for labor demand. As part of their “Distressed Community Index,” the Economic Innovation Group (EIG) provides county-level data on non-employment rates, or 1 minus the employment rate. Thus, higher non-employment rates correspond to weaker labor demand.

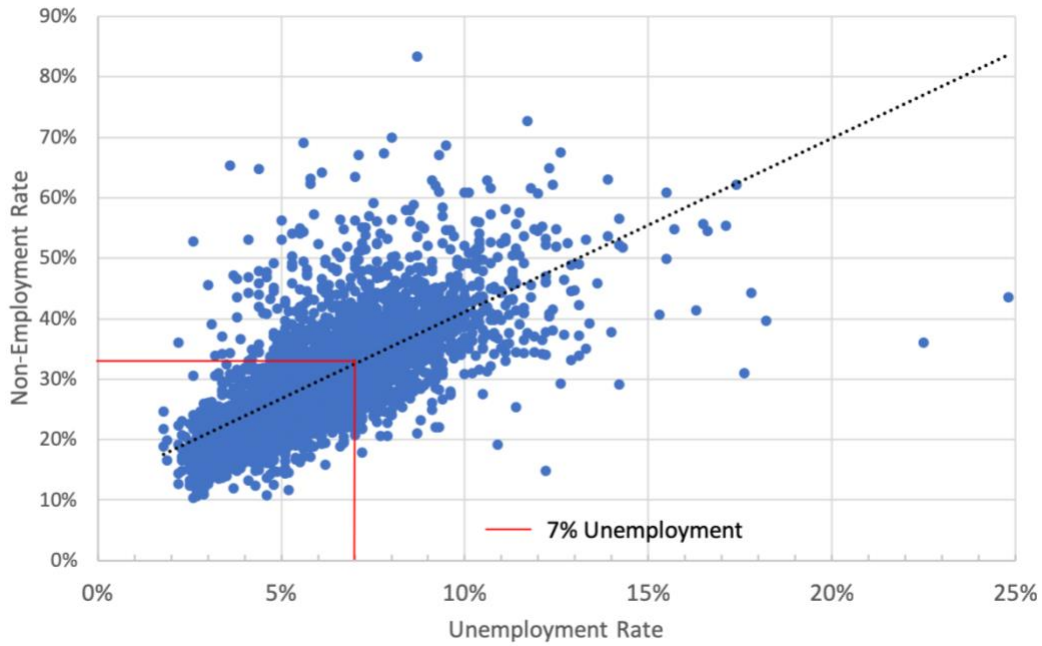
Between 2012 and 2016, the average national non-employment rate for prime-age workers was 23 percent, meaning 77 percent of such workers had jobs. EIG’s data, to which we appended county-level unemployment data from the BLS, reveal that in counties with unemployment rates between 6.5 and 7.5 percent, the average non-employment rate for prime-age adults was about 34 percent, more than 10 percentage points above the national average.¹⁹⁴ Note that even at the worst of the Great Recession, the non-employment rate peaked at about 25 percent.¹⁹⁵

The scatterplot in Figure 4.3 below shows the correlation between un- and non-employment at the county level. Note that the scatterplot expands at higher unemployment, implying greater dispersion of labor demand across counties at higher rates of unemployment. For example, the plot shows that at 10 percent county unemployment, there are some counties with quite low non-employment rates and some with very high rates. This dispersion further underscores the need to avoid the single number approach proposed in the rule. Second, the scatterplot shows that at 7 percent unemployment, as noted above, non-employment is above 30 percent.

¹⁹⁴ To be clear, employment (and non-employment) rates are mechanically correlated as higher unemployment means lower employment. Our focus here, however, is on the levels of these variables and what they imply for labor demand.

¹⁹⁵ EIG and BLS have slightly different definitions for “prime-age” – BLS uses adults 25-54, and EIG uses adults 25-64.

Figure 4.3. County-Level Unemployment and Non-Employment



Using the same procedure employed in the previous section, a regression of county-level non-employment rates on the county’s unemployment rate, predicts that at 5, 7, and 10 percent unemployment rates, county-level non-employment rates would range from 27 to 41 percent. (Table 4.1.) In other words, such high levels of non-employment demonstrate significant labor market slack at the jobless rates proposed by the Department.

TABLE 4.1

Predicted County-Level Prime-Age Non-Employment Rate

Unemployment Rate	Predicted Prime-Age Non-Employment Rate
5%	27%
7%	33%
10%	41%

Note: County-level prime-age non-employment rates are predicted by regressing county-level unemployment rates on non-employment rates.

The Federal Reserve recognized that there was still considerable “slack” in the labor market not captured by the unemployment rate and kept short-term interest rates effectively at zero until December 2015 before it began to raise them cautiously in small increments.

C. Information About Declining Occupations or Industries Can Help Identify Smaller Areas Experiencing a Lack of Sufficient Jobs

According to current regulations and guidance, states can support a claim of lack of sufficient jobs by providing evidence of a lack of jobs in declining occupations or industries. This can be especially true in smaller, rural areas in which the loss of a single job provider, such as a major manufacturing plant or mining industry, can have a major effect on local job availability. In the December 1996 guidance, FNS suggested that states could use BLS monthly data published in the “Employment and Earnings” report on state and sub-state employment figures by major industry.¹⁹⁶ 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.

Although states have not frequently used occupation or industry employment data to support claims of lack of sufficient jobs, FNS has approved them on a limited case-by-case basis. For example, FNS approved waivers for a county (Polk) in Arkansas and a county (Coos) in New Hampshire that were significantly affected by plant closures during the recession that started in 2001. The state agencies provided evidence of the adverse labor force impacts due to a major factory or plant closing, such as the number of workers affected by layoffs and rapidly increasing unemployment rates (10 percent and higher) over a short period of time. The impact of a plant closure may not show up in 24-month unemployment rates until several months, or even a year, have passed. Information indicating the decline of particular industries, such as significant plant closures, gives states the ability to quickly adapt their waiver policy to respond to rapidly deteriorating labor market conditions.

D. Eliminating Criteria of Three-Month Average Unemployment Rate Over 10 Percent and Historical Seasonal Unemployment Rate Over 10 Percent Is Inconsistent With the Statute

The proposed rule would restrict states’ ability to use an unemployment rate over 10 percent as the basis for waiver approval. It would limit the use of the criterion of a recent three-month average unemployment rate over 10 percent to “exceptional circumstances” and eliminate the criterion of an historical seasonal unemployment rate over 10 percent.¹⁹⁷ This would leave just one criterion — having a 12-month average unemployment rate over 10 percent — as the basis for approval using an average unemployment rate over 10 percent. These changes are inconsistent with the statute and regulations that clearly establish that areas with an unemployment rate over 10 percent qualify for a waiver. If the Department proceeds to publish a final rule it must reject these changes to be consistent with the statute.

According to the statute, a state may waive the applicability of the work requirement “to any group of individuals in the state if the Secretary makes a determination that the area in which the individuals reside has an unemployment rate above 10% or does not have a sufficient number of jobs to provide employment for the individuals.”¹⁹⁸ The statute clearly establishes the 10 percent

¹⁹⁶ <https://www.bls.gov/opub/ce/home.htm>

¹⁹⁷ NPRM, p. 985, 987.

¹⁹⁸ Food and Nutrition Act, 7 U.S.C. § 2015(o)(4). This language is identical to the language in P.L. 104-193, PRWORA.

unemployment rate criterion as a basis for approval. The statute does not specify requirements regarding the duration of time that an area must have an unemployment rate above 10 percent.

Three-Month Average Unemployment

In guidance issued in December 1996 and then reinforced in the preamble of the 1999 proposed rule,^{199 200} the Department stated that it would not require a 12-month average to approve a waiver because of two shortcomings. “A 12-month average will mask portions of the year when the unemployment rate rises above or falls below 10 percent. In addition, requiring a 12-month average before a waiver could be approved would necessitate a sustained period of high unemployment before an area became eligible for a waiver.” To address these shortcomings and to ensure that waivers are granted as quickly as possible where needed, the Department explained that “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).”²⁰¹

In the preamble to the proposed rule, the Department expressed its preference that waivers reflect current economic conditions.²⁰² Yet by eliminating the ability of states to use a recent three-month average unemployment rate over 10 percent as the basis for waiver approval, it is eliminating one of the criteria that most closely aligns with current economic conditions and signals deteriorating labor market conditions in an area.

Historical Seasonal Unemployment

In guidance issued in December 1996 and in the preamble of the 1999 proposed rule,^{203 204} the Department confirmed the applicability of waivers to “areas with predictable seasonal variations in unemployment.” The Department provided a detailed example:

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 currently 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.

¹⁹⁹ USDA, “Guidance for states Seeking Waivers for Food Stamp Limits,” December 3, 1996.

²⁰⁰ Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; 64 Federal Register 242 (December 17, 1999) (to be codified at 7 C.F.R. pts. 272 and 273).

²⁰¹ USDA, “Guidance for states Seeking Waivers for Food Stamp Limits,” December 3, 1996.

²⁰² NPRM, p. 986.

²⁰³ USDA, “Guidance for states Seeking Waivers for Food Stamp Limits,” December 3, 1996.

²⁰⁴ Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; 64 Federal Register 242 (December 17, 1999) (to be codified at 7 C.F.R. pts. 272 and 273).

Aligning the Period Covered by the Waiver and the Period of Projected High Unemployment Does Not Require Data of a Particular Duration

The 2001 final rule codified criteria related to unemployment rates over 10 percent at 7 C.F.R. § 273.24 (f)(2)(i) and provided flexibility to meet these criteria using data of varying duration. “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.”

The intent of current regulations was to align the period covered by the waiver to the period when unemployment is high, rather than designate an arbitrary duration requirement: Therefore, the Department is proposing that in general, 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 must show that the basis for the waiver is not a seasonal or short term aberration.²⁰⁵

In the preamble of the NPRM, the Department arbitrarily adds a duration requirement of 12 months to the 10 percent criterion.²⁰⁶ Only areas with a recent, 12-month average unemployment rate over 10 percent would be considered for approval. Under the proposed rules, the Department may approve a waiver for an area with a recent three-month average unemployment rate over 10 percent only if an “exceptional circumstance has caused a lack of sufficient number of jobs.”²⁰⁷ The Department does not discuss the rationale for restricting the 10 percent criterion to a 12-month duration. It does not adequately explain what represents an exceptional circumstance and what economic measures might signal this circumstance. It does not discuss what economic measures a state might be able to use as an alternative to the three-month average unemployment rate, which it has described as a “reliable and relatively early signal of a labor market with high unemployment” in past guidance.

The Department argues for eliminating the historical unemployment rate criterion because it does not demonstrate “prolonged” lack of sufficient jobs, that it is “limited to a relatively short period of time each year,” and that it is “cyclical rather than indicative of declining conditions.”²⁰⁸ The Department acknowledges that, by definition, historical seasonal unemployment is contradictory with prolonged duration. Rather than drop the newly introduced and contradictory requirement on duration (which is inconsistent with existing statute and regulation), the Department argues for the elimination of the historical seasonal unemployment criterion (which is upheld in existing statute and regulations).

The Department also proposes to eliminate the historical seasonal unemployment criterion because it has not approved a waiver using this criterion. This is not sufficient ground for the proposed change, as the Department has no way of knowing if states intend to use this criterion in

²⁰⁵ Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; 64 Federal Register 242 (December 17, 1999) (to be codified at 7 C.F.R. pts. 272 and 273).

²⁰⁶ NPRM, p. 983.

²⁰⁷ NPRM, p. 985, 992.

²⁰⁸ NPRM, p. 987.

the future. To maintain consistency with the statute, we urge the Department to leave the regulation as is and retain the three-month average unemployment rate over 10 percent and historical seasonal unemployment rate over 10 percent as criteria for waiver approvals.

E. We Recommend Rejecting Proposed Changes That Would Ignore Important Information About Labor Market Conditions Not Captured by the General Unemployment Rate

These studies and analyses illustrate how the unemployment rate alone may not tell the full story of how abundant or scarce jobs are in the labor market. FNS would be mistaken to rely solely on unemployment rates as the basis for demonstrating that an area has a lack of sufficient jobs. The unemployment rate does not account working-age persons who may have dropped out of the labor force altogether. Other labor force measures, such as the employment-to-population ratio or industry-specific employment data, complement unemployment rates in capturing the labor market conditions faced by individuals subject to the time limit, who often face significant barriers to labor force participation. In the Great Recession a low or depressed employment-to-population ratio was often a better measure of labor market slack and lack of job opportunities than the unemployment rate. Thus, a low or falling employment-to-population ratio is a valuable indicator and data are available for local areas.

The proposed rule is based on insufficient reasons to change current regulations by prohibiting states from using average unemployment rates over 10 percent and other available information about labor market conditions, except for areas that have limited or unavailable unemployment data from BLS or a BLS-cooperating agency. It fails to discuss the reasons why it is restricting the use of average unemployment rates over 10 percent during periods of acute or seasonal high unemployment or the limitations of the general unemployment rate in assessing the labor market conditions, particularly those faced by individuals subject to the time limit. It does not acknowledge the valuable information that will be lost if measures such as the employment-to-population ratio are excluded as evidence of lack of sufficient jobs. Given the lack of supporting information, the public has an insufficient opportunity to comment meaningfully on the proposed rule and we recommend rejecting the proposed changes to the rules.

Chapter 5. Restricting State Flexibility on Grouping Areas Is Counter to Evidence

The NPRM proposes several significant changes to longstanding SNAP policy that would significantly restrict state flexibility to develop and implement waiver policy that aligns with state operations, priorities, and resources. The NPRM fails to provide reasons for limiting states' ability to consider relevant factors when grouping areas covered by waivers, fails to acknowledge decades of state discretion in grouping areas (including statewide areas) for waivers, and fails to identify the data and evidence that justify the elimination of statewide waivers and the use of one narrow, inflexible, federally prescribed method for grouping areas. Without knowing what evidence justifies such a drastic change in longstanding policy and an adequate discussion of alternative methods for grouping, it is impossible to assess the potential impact of the changes on SNAP participants and their ability to achieve self-sufficiency. The sections below provide an overview of existing statutes, regulations, and guidance, and discuss factors that states consider when grouping areas, alternative grouping methods used by states to group areas, and limitations of the method for grouping proposed by the Department.

A. States Have Had Broad Discretion to Define Areas for More Than Two Decades

Since the passage of the 1996 welfare law (P.L. 104-193) and the three-month time limit, FNS has given states broad discretion to determine which geographic areas the state would like to waive from the three-month time limit, including an area spanning the entire state or sub-state areas. While every state-defined area as a whole must meet the waiver eligibility criteria as set forth in 7 C.F.R. § 273.24 (f), states may define areas that best align with local and regional labor force conditions, resources, and administrative needs. The federal rules do not limit waivers to specific sub-state areas, such as cities or counties. As states define areas to request waivers for, they often consider a range of factors within geographic regions, such as labor market characteristics, job opportunities, availability of SNAP Employment and Training (E&T) services, housing and transportation, workforce and economic development resources and strategies, and SNAP agency administrative capacity.

States have had discretion to define areas in accordance with the law, regulation, and guidance over the past 22 years. For nearly as long, USDA has approved waivers for entire states or those that group sub-state areas.²⁰⁹ The proposed rule would take flexibility away from states to define what areas they wish to waive and restrict states to one narrow, inflexible, federally prescribed criteria. The proposed criteria are likely outdated and disconnected from local and regional factors that states consider when developing and implementing policies to connect low-skilled workers to job and training opportunities. By prohibiting states from grouping areas according to their needs, FNS would hamper their ability to deliver integrated support to SNAP participants in gaining the skills and work experience needed to secure jobs leading to self-sufficiency. The proposed rule would severely restrict, and potentially eliminate, state flexibility to define areas for waivers, without providing evidence that the changes would help increase self-sufficiency among SNAP participants.

²⁰⁹ In 2000, FNS approved a waiver requested by Florida for the combined area of Broward and Dade Counties, which belong to the same Metropolitan Statistical Area.

According to the statute, a state may waive the applicability of the work requirement “to any group of individuals in the state if the Secretary makes a determination that the area in which the individuals reside has an unemployment rate above 10% or does not have a sufficient number of jobs to provide employment for the individuals.” The statute does not identify or require a geographic definition of “area.” The 2018 farm bill did not change this and the House bill proposal that sought to limit states’ ability to define areas was rejected.

According to the current rule (7 C.F.R. § 273.24 (f)(6)), “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.” The current rule gives states broad discretion in defining regions, requiring only that the data and analysis that states submit to support the waiver request correspond to the defined area.

Below are excerpts from USDA guidance and rulemaking that uphold state flexibility in defining areas:

- **December 3, 1996 guidance:** The initial USDA guidance on waivers from the three-month time limit gives states flexibility to define areas and goes a step further by encouraging states to consider combining sub-state areas. “USDA will give states broad discretion in defining areas that best reflect the labor market prospects of program participants and state administrative needs.”²¹⁰ While USDA encouraged states to consider sub-state waivers over statewide, the flexibility was left completely to states.
- **1999 proposed rule:** In the preamble, USDA noted its intent to “balance the competing goals of ensuring consistent national application of these requirements, and providing state agencies with appropriate implementation flexibility” to implement the time limit.²¹¹ “The Department is allowing states broad discretion in defining areas that best reflect the labor market prospects of Program participants and state administrative needs. In general, the Department encourages states to consider requesting waivers for areas smaller than the entire state. 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. The Department also urges states to consider the particular needs of rural areas and Indian reservations. Although the Department is proposing to allow states flexibility in defining areas to be covered by waivers, the supporting data must correspond to the requested area (e.g., a county-wide waiver must be supported by county-wide data). In other words, states may define areas to be covered by waivers, but the data and analysis used to support the waiver must correspond to the defined area.” [Emphasis added.]
- **2001 final rule:** In the preamble of the final rule, USDA noted that it had “proposed that state agencies have complete discretion to define the geographic areas covered by waivers so long as they provide data for the corresponding area” and that most of the comments received supported this proposal. USDA explained that, “for simplicity sake, we encourage states to

²¹⁰ USDA, “Guidance for states Seeking Waivers for Food Stamp Limits,” December 3, 1996.

²¹¹ Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; 64 Federal Register 242 (December 17, 1999) (to be codified at 7 C.F.R. pts. 272 and 273).

define areas for which corresponding data exists. We believe this is very easily done, especially since unemployment data goes down to the census tract level.”²¹²

- **August 2006 guidance:** “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 (BEA) is one source that can be used to identify economic areas. This data may be found at the website www.bea.gov/region/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.”²¹³ The guidance also provided an example illustrating the use of the Department of Commerce economic areas to create groups of counties in Montana. It also explained that “the state could request a waiver for all counties or a sub-area of the economic areas as long as the data for the combined area meets the waiver criteria.”
- **December 2, 2016 guidance:** In its most recent guidance on waivers, USDA repeated that “the state agency has discretion to define the area(s) in which it requests to waive the time limit.” According to this latest guidance, “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. 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.”²¹⁴

USDA provided guidance on how states could combine areas. The guidance requires that combined areas must be contiguous or must belong to an economic region. The guidance provides flexibility in defining an economic region. “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. 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. 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

²¹² Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; 66 Federal Register 11 (January 17, 2001). (to be codified at 7 C.F.R. pts. 272 and 273).

²¹³ USDA, “Guidance on Requesting ABAWD Waivers,” August 2006.

²¹⁴ USDA, “Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016.

sources, methods, or rationale to support that areas share an economic region may also be considered.” The guidance repeated the example from the August 2006 guidance of using BEA economic areas as a guide for grouping counties.

Without providing justification or rationale, the proposed rule would end over two decades of consistent guidance and support for state flexibility to determine the geographic scope of waivers that best aligns with state SNAP policies and capacity, training and workforce service delivery, funding and resources, and regional planning and strategies. The Department did not discuss or reference over two decades of consistent regulation and guidance it has issued on grouping areas. The Department did not go back to review the comments it received on the 1999 proposed rule supporting the proposal to give states complete discretion to define areas. The Department did not elaborate on any shortcomings it believes exist with the current flexibility that states have to define geographic areas. This makes it difficult for people who wish to comment to critique the Department’s proposal to restrict the ability of states to define areas they would like to waive from the three-month time limit.

The proposed rule significantly restricts the ability of states to waive groups of areas. Without providing a discussion, the Department arbitrarily eliminates the ability of states to waive the entire state even when statewide unemployment rates have risen significantly during an economic downturn, except for situations when the state qualifies for extended unemployment benefits.

The Department introduces a specific definition of labor market areas as the only acceptable method for grouping areas and does not acknowledge past guidance it has issued that encouraged states to explore different sources and methods for grouping areas. It proposes these labor market areas to ensure that grouped areas are economically tied, yet this approach only captures one way (commuting patterns) that areas might be economically tied. This proposal ignores all the other ways areas may be economically integrated, such as through workforce development initiatives, economic development investments, employer recruiting practices, and migration patterns.

For example, guidance issued in 2006 and 2016 both use the BEA economic areas (either entire economic areas or sub-areas) to illustrate how a state can combine unemployment data to support a waiver for grouped areas. The guidance suggests that states explore other sources or methods for combining areas, including economic regions defined by state or local labor departments. Even if the Department had provided reasons for requiring a very specific method for combining areas, it is difficult for the public to understand why the Department would disregard or minimize other economic or administrative factors, such as SNAP E&T service provision, that it currently gives great consideration to in other aspects of program operations.

B. States Use the Current Flexibility to Align SNAP Policies With Administrative Needs, Job Opportunities, Training Funding and Resources, and Economic and Workforce Development Strategies

States consider multiple factors when grouping areas for waivers to align resources, administrative policies and capacity, and service delivery. A state may consider a range of local, sub-state (regional), and statewide factors:

- SNAP E&T service delivery

- TANF work programs
- Workforce Innovation and Opportunity Act (WIOA) regional workforce development funding and strategies
- Office locations (SNAP, workforce development centers)
- Community college locations
- Employer and industry recruiting patterns
- Regional economic development funding and strategies
- Commuting patterns
- Housing and transportation patterns

Aligning With SNAP E&T Coverage

By limiting state flexibility to define areas, the proposed rule would restrict a state's ability to allocate and coordinate SNAP E&T resources and service delivery to meet the needs of its SNAP participants. States have used their discretion to define areas to help align the geographic scope of waivers with areas where they are unable to provide sufficient work or training opportunities to work registrants, including those subject to the time limit. A state that can only provide SNAP E&T slots in certain counties may request waivers for (eligible) counties where SNAP E&T slots are not available or guaranteed. As Maryland was preparing to lose its statewide waiver in January 2016, the state agency requested a waiver for multiple sub-state areas, including the nine-county Eastern Shore recognized by the state as an economic region. In areas not covered by waivers, Maryland offered SNAP E&T services to individuals subject to the time limit.²¹⁵ Similarly, Colorado operated a mandatory SNAP E&T program for all work registrants, including individuals subject to the time limit, in 40 of its 64 counties. Individuals in the remaining counties were not subject to the time limit because of waivers or the use of individual exemptions, but could still participate in the E&T program on a voluntary basis.²¹⁶

Aligning With Workforce and Economic Development Regions

Restricting or eliminating waivers for grouped areas would deny states the ability to align SNAP and Workforce Innovation and Opportunity Act (WIOA) regional service delivery, funding, and planning efforts. Coordinating service delivery with WIOA can help SNAP agencies make more qualified work activities available to SNAP participants because participation in a WIOA program is considered a qualifying activity for purposes of meeting work requirements for individuals subject to the time limit.

²¹⁵ Maryland Department of Human Resources, "Maryland Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Program: state Plan of Operations," Revised September 22, 2015, [https://dhr.maryland.gov/documents/Data%20and%20Reports/FIA/YR2016%20SNAP%20E&T%20State%20Plan%20of%20Operations%20\(revised\).pdf](https://dhr.maryland.gov/documents/Data%20and%20Reports/FIA/YR2016%20SNAP%20E&T%20State%20Plan%20of%20Operations%20(revised).pdf).

²¹⁶ Colorado Department of Human Services, "Colorado SNAP E&T State Plan: Federal Fiscal Year 2017," 2016, http://coemploymentfirst.org/wp-content/uploads/2017/01/Colorado-SNAP-E_T-State-Plan-FFY17.pdf.

Both USDA and the Department of Labor (DOL) recognize the opportunity to coordinate these two programs to integrate services and resources and avoid duplication. In a joint letter issued in March 2016, USDA and DOL encouraged SNAP and the workforce system to work together to develop shared strategies to better connect SNAP participants, specifically individuals subject to the time limit, to job and training services through WIOA American Job Centers (AJCs).²¹⁷ The letter cited the shared goal of helping low-skilled, low-income, or low-wage individuals find work through training activities and workforce programs.

A state may want to align its waivers and SNAP E&T service delivery with WIOA regions, workforce development regions, or economic development regions in order to best plan and coordinate service delivery related to training and job opportunities for the population subject to the time limit. States may be able to maximize administrative capacity by aligning service delivery, case management, and data tracking by multi-county regions, such as WIOA Local Workforce Development Areas.

For example, Tennessee SNAP E&T services are delivered through the workforce system. SNAP E&T participants are referred to the WIOA program for training provided through partnerships with technical and community colleges. SNAP participants have access to on-the-job training (OJT) opportunities not available outside of the WIOA-SNAP E&T partnership.²¹⁸ Tennessee organizes its workforce activities into three regions: East, Middle, and West. These regions are further broken down into Local Workforce Development Areas (LWDAs). In 2007, before Tennessee eventually became eligible for a statewide waiver during the most recent recession, the state requested waivers for groups of counties belonging to the same LWDAs (known as Local Workforce Investment Areas before the passage of WIOA in 2014).

States sometimes adjust the regional alignment of programs to reflect changes to the labor force, resources, service delivery, and administrative capacity. Federal agencies may not be aware of these changing circumstances or be able to make adjustments in a timely manner. In 2018, Tennessee realigned its LWDAs by consolidating 13 areas into nine.²¹⁹ The Tennessee Workforce Development Board realigned the LWDAs to match the regional organization of other programs, such as the Tennessee Department of Economic and Community Development base camps, Tennessee Reconnect Communities, and Tennessee Pathways regions.²²⁰

²¹⁷ U.S. Department of Agriculture and U.S. Department of Labor, “Partnering to Help Connect Low-Income Able-bodied Adults to the Public Workforce System,” March 31, 2016, <https://fns-prod.azureedge.net/sites/default/files/snap/USDA-DOL-joint-ABAWD-letter.pdf>.

²¹⁸ U.S. Department of Agriculture, “SNAP to Skills: Policy Brief 8,” June 2018, https://snaptoskills.fns.usda.gov/sites/default/files/2018-06/Brief_June2018_508comp.pdf.

²¹⁹ Tennessee Department of Labor and Workforce Development, “Map of Realignment of Local Workforce Development Areas,” 2018, <https://www.tn.gov/content/dam/tn/workforce/documents/ProgramManagement/RealignmentMaps.pdf>.

²²⁰ “TN Realigns Workforce Development Areas,” *The Chattanooga*, June 28, 2018, <https://www.chattanooga.com/2018/6/28/371092/TN-Realigns-Workforce-Development-Areas.aspx>.

Alignment With Other Regional Factors

Beyond the alignment opportunities between SNAP E&T and WIOA, there are many other reasons why a state might group sub-state areas. States may combine different streams of funding to delivery SNAP E&T services regionally. Some funding opportunities may be available as regional grants, such as some CDBG grants or workforce development grants. In Portland, Oregon, the regional Workforce Development Board integrates WIOA, SNAP E&T, Community Development Block Grant, and other funding streams, to provide workforce development activities serving SNAP recipients and others in the Portland region.²²¹

States may have administrative reasons for grouping areas. According to a 2016 report by the USDA Office of Inspector General, the requirements related to the time limit are difficult to implement.²²² Some state officials said that waivers can help reduce the burden of tracking individuals subject to the time limit. A state may request a waiver to cover areas that have reduced administrative capacity and give areas more time to acquire staff, training, or upgrade case management or data systems. For example, San Francisco County in California used the time while it was covered by the waiver to upgrade its data systems and secure new E&T partnerships.²²³

States may want to align waivers with the geographic scope of other resources. A state may align Information Technology (IT) systems, such as eligibility, case management, or data tracking systems within geographic regions. Counties in California are grouped into eligibility system consortia (with 40 counties belong to the CalACES consortium and 18 counties belonging to the CalWIN consortium). Within each consortium, counties are further organized into regions (eight CalACES regions and four CalWIN regions). Each of these consortia systems support TANF work programs, SNAP E&T activities, and county-specific employment programs. Waivers for groups of counties could be organized by consortia regions to help align service delivery, case management, and data tracking.

The Department did not explain why it was eliminating states' ability to use relevant methods for grouping areas, such as workforce development service delivery, to inform how they group areas covered by waivers. From two decades of experience reviewing state waiver requests, the Department is aware of how states use their existing flexibility to balance multiple priorities, resources, and policies, such as SNAP E&T policies and services, housing and transportation planning, and workforce and economic development strategies. The Department did not provide reasons for ignoring these other considerations, making it difficult for the public to comment on the proposed changes. As a federal agency, USDA may not be aware of all the local and sub-state factors that impact the development and delivery of employment and training services. The proposed rule makes sweeping and arbitrary changes that will hamper states' ability to integrate and coordinate resources to provide employment and training to SNAP recipients. By prohibiting states

²²¹ U.S. Department of Agriculture, "SNAP to Skills: Policy Brief 8," June 2018, https://snaptoskills.fns.usda.gov/sites/default/files/2018-06/Brief_June2018_508comp.pdf.

²²² U.S. Department of Agriculture, Office of Inspector General. "FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents," Audit Report 27601-0002-31, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

²²³ U.S. Department of Agriculture, "State Highlights: California," Retrieved Feb. 15, 2019, <https://snaptoskills.fns.usda.gov/state-highlights/state-highlights-california>.

from grouping sub-state areas, the agency would limit states' ability to coordinate and align SNAP ABAWD policies with training opportunities and resources, workforce and economic development strategies, and other factors within the state.

C. Eliminating a State's Ability to Adjust to Rising Unemployment Across the State

The proposed rule would eliminate statewide waivers when sub-state unemployment data is available, except for situations when a state qualifies for extended unemployment benefits. The Department provides no discussion of the rationale for eliminating this flexibility, other than asserting that the use of sub-state unemployment data helps target particular areas with high unemployment. This ignores the statistical principle of weighted averages — in order for an entire state to qualify under current rules, unemployment rates throughout the states must have risen dramatically, particularly in the most populous areas of the state.

While we commend the Department for retaining the qualification of a state for extended unemployment benefits (EB) as a core standard for approval, this criterion does not adequately detect states with high unemployment rates that are not rising rapidly. States must meet both the minimum three-month unemployment threshold of 6.5 percent and have rising unemployment over at least one year in order to qualify for extended benefits. States that only meet one of these conditions would not be able to obtain a waiver. For example, a state with a consistent unemployment rate of 8 percent over time would not qualify for extended benefits because its rate, by definition, is not rising. Similarly, a state with rapidly rising unemployment, but whose rate has not yet reached 6.5 percent, would also not qualify. In both examples, states can have high or worsening unemployment and would not be able to obtain a waiver to help SNAP participants working in these economic conditions.

To illustrate this, consider the experience of South Carolina and Oregon in 2007, prior to the Great Recession. These states had high unemployment in the months preceding the recession, but under the proposed rule would have had no options for statewide waivers until well into the recession. South Carolina qualified for extended benefits in August 2008, eight months into the recession that started in December 2007. Had the state sought a waiver for 2007 based on statewide unemployment rates,²²⁴ it would have qualified based on 24-month average unemployment rates that ranged between 6.6 and 6.8 percent for the various periods relevant for such a waiver. Similarly, the state would have qualified for a 2008 statewide waiver under existing rules, based on 24-month average unemployment rates that ranged between 6.1 and 6.6 percent for the various periods relevant for such a waiver.

Oregon qualified for extended benefits in November 2008, 11 months after the start of the recession. Had Oregon sought a waiver for 2007 based on statewide unemployment rates,²²⁵ it would have qualified based on 24-month average unemployment rates that hovered between 5.8 and 6.7 percent for the relevant period.

²²⁴ South Carolina had a two-year statewide waiver that expired in February 2009.

²²⁵ Oregon was waived under a two-year statewide waiver that ended in April 2008.

The proposed rule only allows waivers for sub-state geographies, and not the entire state, until statewide labor market conditions become so dire that the state qualifies for extended benefits. The Department argues that statewide unemployment figures may include areas in which unemployment rates are relatively low and that eliminating statewide waivers will help target areas in which unemployment rates are high. The Department does not discuss the dynamic nature of labor market conditions across time and across geographic areas. Unemployment rates do not change uniformly within a state. A state may include areas with persistently high unemployment, areas with relatively low but rapidly rising unemployment rates, areas with high unemployment rates that are slowly creeping higher, as well as areas with relatively low unemployment rates.

Current rules allow a state to detect deteriorating economic conditions across the state even before it qualifies for extended unemployment benefits. The Department makes an arbitrary decision to eliminate statewide unemployment analysis because of potential variation in unemployment rates within the state. Variation in unemployment rates exists at all geographic levels, including at small scale Census tract and Census block group levels. The Department's failure to provide a robust assessment of the impact of this change on the ability of states to cushion the blow of deteriorating economic conditions across their borders makes it difficult to comment on the proposed rule.

Arbitrary Standard for Grouping Areas

The proposed rule would limit the ability of states to request waivers for groups of geographic areas, such as multi-county areas, except for areas that are “economically tied.” The Department provides a limited definition of an “economically tied” area based on commuting patterns — an area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. The preamble says that “existing general conditions for grouping of areas — that the areas must be either contiguous and/or share the same economic region — were intended to ensure that the areas grouped together are economically tied.” Yet in statutes, regulations, and guidance over the past two decades, USDA has given states broad discretion to define areas and has never expressed the requirement of that grouped areas be “economically tied” based solely on commuting patterns. The proposed rule arbitrarily imposes this requirement without providing justification or acknowledging the many other ways areas can be economically tied apart from commuting patterns, such as employer recruiting practices, regional workforce development strategies, and regional economic development and investment patterns.

More specifically, the proposed rule would limit grouping to areas that are designated labor market areas (LMAs) based on a narrow statistical definition used by the Bureau of Labor Statistics (BLS). USDA has requested public comment on whether it should be even more restrictive and prohibit grouping entirely. USDA proposes taking away state discretion to define areas, arguing that the application of waivers on a more limited basis will encourage more individuals subject to the time limit to take steps towards self-sufficiency, but does not explain how restricting the grouping of areas will help achieve this goal. USDA did not offer any other alternative frameworks for grouping areas for discussion, even the Bureau of Economic Analysis economic areas that it has used as an example for grouping in past guidance.

D. Using a Narrow, Statistical Definition of Labor Market Areas

The Department uses the BLS definition of a labor market area, which is an area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.²²⁶ It defines an “economically tied area” the same way. By using the same definition for “labor market area” and “economically tied area,” the Department is conflating the two concepts and makes it confusing and challenging for the public to respond. The Department appears to be taking the BLS definition of labor market areas and applying it to the more general concept of “economically tied” areas. Using the relatively narrow definition of labor markets to also define economically tied areas ignores the various ways areas can be connected economically beyond commuting patterns. For example, areas can share economic ties through investment patterns, service delivery models, and migration patterns.

The proposed rule establishes BLS labor market areas as the only standard by which sub-state areas may be grouped together and covered by a waiver from the three-month time limit. To delineate the entire United States into mutually exhaustive and exclusive labor market areas, BLS uses a narrow operational definition that relies solely on measures of population size and commuting flows between counties. BLS LMAs include both the metropolitan and micropolitan areas defined by the Office of Management and Budget (OMB) and the small labor market areas maintained by the BLS Local Area Unemployment Statistics (LAUS) program.

Major labor market areas include Core Based Statistical Areas (CBSAs), which can be either Metropolitan Statistical Areas or Micropolitan Statistical Areas. Metropolitan Statistical Areas have at least one urbanized area with a population of 50,000 or more, along with adjacent territory that has a high degree of social and economic integration with the core (as measured by commuting patterns). Micropolitan Statistical Areas have at least one urban cluster with a population of at least 10,000 but less than 50,000, along with adjacent territory that has a high degree of social and economic integration with the core (as measured by commuting patterns).

An outlying county is combined with the central county or counties of the CBSA if it meets the following commuting requirements:

- At least 25 percent of the workers living in the county work in the central county or counties of the CBSA; or
- At least 25 percent of the employment in the county is accounted for by workers who reside in the central county or counties of the CBSA.

Metropolitan and Micropolitan Statistical Areas are delineated in terms of whole counties (or equivalent entities) and counties can only belong to one CBSA.²²⁷

²²⁶ Bureau of Labor Statistics, “Local Area Unemployment Statistics Geographic Concepts: Labor Market Areas,” 2018, <https://www.bls.gov/lau/lauggeo.htm#geolma>.

²²⁷ Office of Management and Budget, Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas, 2015. <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2015/15-01.pdf>

For counties that do not belong to metropolitan or micropolitan areas, counties are combined into a small LMA if either or both of the following conditions are met:²²⁸

- At least 25 percent of the employed residents of one county commute to work in another county; and
- At least 25 percent of the employment (persons working) in one county are accounted for by workers commuting from another county.

Labor market areas can vary in geographic scope, ranging from a single county to multi-county metropolitan areas. LMAs can also span multiple states and in New England, they are composed of cities and towns. The proposed rule requires states to group all areas within an LMA together (leaving no areas out), but multi-state LMAs would require states to treat areas within their state borders separately from the rest of its LMA.

Based on the conditions described earlier, the BLS labor market area definition only considers aggregated commuting patterns between county of residence and county of employment — and does not take into account sub-county variations by industry or by an individual’s socioeconomic and demographic characteristics. It also does not take into account the many other dynamics beyond commuting patterns that may impact an individual’s ability to find and secure a job, such as housing and transportation, the location of new or future employment opportunities, the location of training providers (such as community colleges), industry-specific recruitment practices, or regional workforce or economic development strategies. It also does not reflect the ability of some individuals to relocate within a state to pursue a job opportunity.

According to OMB guidance, the purpose of the Metropolitan and Micropolitan Statistical Area standards is to provide nationally consistent delineations for collecting, tabulating, and publishing federal statistics for a set of geographic areas. OMB establishes and maintains these areas solely for statistical purposes and does not take into account or attempt to anticipate any non-statistical uses that may be made of the delineations, nor will OMB modify the delineations to meet the requirements of any nonstatistical program. OMB cautions that Metropolitan Statistical Area and Micropolitan Statistical Area delineations should not be used to develop and implement federal, state, and local non-statistical programs and policies without full consideration of the effects of using these delineations for such purposes.²²⁹ While this does not preclude the Department or states from using LMAs to inform the grouping of areas covered by waivers, the Department did not explain the rationale for, and effect of, using LMAs as the *only* framework for grouping areas and its reasons for excluding other methods for grouping.

In the following section, we discuss some of the other approaches for grouping areas that capture regional dynamics that BLS LMAs don’t account for and that FNS did not explain whether it

²²⁸ Bureau of Labor Statistics, “Local Area Unemployment Statistics Geographic Concepts: Labor Market Areas,” 2018, <https://www.bls.gov/lau/lauggeo.htm#geomla>.

²²⁹ Office of Management and Budget, “Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas,” 2015, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2015/15-01.pdf>.

considered. We also discuss how FNS failed to address why it believes LMAs are preferable to the many possible alternatives.

BLS LMA Definition Based on Outdated Data

BLS LMAs are limited in their ability to capture current and local workforce dynamics. They are relatively static and do not account for sub-county variation. The BLS LMAs are revised each decade following the census. The current list of BLS LMAs are based on population data from the 2010 Census and commuting data from the American Community Survey five-year dataset for 2006-2010 (issued on February 28, 2013, through [OMB Bulletin No. 13-01](#)).²³⁰ In other words, current BLS LMAs reflect population data from nine years ago and commuting data from nine to 14 years ago. The BLS LMAs are not updated frequently enough to capture current or recent labor market trends and may not line up with more current labor force patterns.

The BLS LMAs are based on population and commuting data aggregated at the county level. The commuting patterns between counties may vary depending on the industry or type of occupation. For instance, commuting flows for workers working at an automotive assembly plant (which may be relatively focused around the plant location) will tend to vary from commuting flows for workers in food retail (relatively dispersed). Goetz and Han note that a given county may belong to multiple commuting sheds and give the example of a commuter county on the east coast with residents who commute to Washington, D.C., Philadelphia, and Baltimore and may be located in the border region between the cores of multiple LMAs.²³¹ Another example is Mercer County, Pennsylvania, which could be considered part of Philadelphia's LMA or New York's LMA based on the commuting patterns of residents. In these situations, it is not obvious which commuting regions or labor market areas the county should be considered a part of and will vary depending on the industry or type of worker.

Some BLS LMAs include areas from more than one state. For example, the Philadelphia LMA includes counties belonging to Pennsylvania, New Jersey, Delaware, and Maryland. The proposed regulatory language says that "the state agency may only combine data from individual areas that are collectively considered to be a Labor Market Area by DOL."²³² The Department did not discuss how states should handle multi-state LMAs, making it difficult for the public to comment on the implications of using only BLS LMAs to group areas. Consider an LMA that spans two states, but with 90 percent of its population residing in one state. Suppose the county with 10 percent of the population has an unemployment rate that is slightly lower than the threshold needed to qualify for a waiver, but the unemployment rate for the entire LMA exceeds the threshold needed to qualify. Would that county qualify for a waiver, recognizing that the LMA that it belongs to may lack sufficient jobs?

²³⁰ Office of Management and Budget, "Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas," 2013, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2013/b13-01.pdf>.

²³¹ Stephan J. Goetz and Yicheol Han, "Identifying Labor Market Areas Based on Link Communities," paper prepared for presentation at the 2015 Agricultural & Applied Economics Association and Western Agricultural Economics Association Annual Meeting, San Francisco, CA, July 26-28, 2015, <https://aese.psu.edu/nercrd/publications/published-papers/identifying-labor-market-areas-based-on-link-communities>.

²³² NPRM, p.992

Alternative Definitions of Labor Market Areas

Unlike a county or state, which are political and administrative units with defined borders, a labor market area is an analytical concept and the definition used by BLS is only one of several ways that labor economists and other researchers approximate labor market areas. “Researchers examining labor markets in the United States often turn to one of several standard geographic definitions that are widely known and compatible with publicly available economic data, including: states, metropolitan areas, and counties.”²³³ Definitions of labor market areas that are based on single or multiple counties, such as the one used by BLS, have the advantage of having unemployment data readily available. However, the political or administrative boundaries that are used to delineate labor market areas may not always align well with the notion of a labor market as “a set of relationships between employers and workers that are spatially bounded by places of work and residence.”^{234 235}

For example, a definition of a local labor market area that attempts to better capture an area in which individuals both live and work is the Commuting Zone (CZ). CZs group counties based on commuting flow data and hierarchical cluster analysis.²³⁶ Noting that there is no consensus definition of LMAs, economists at the Economic Research Service, Scherpf *et al.*, tested multiple definitions of LMAs (BLS LMAs, Commuting Zones, and Workforce Innovation Areas) in their examination of the relationship between labor market area conditions and length of SNAP participation spell.²³⁷ Their preferred definition of LMAs used the CZ definition and had the largest estimated effects. They found that a 10 percent increase in county-level employment raised the share of recipients who finished their SNAP spell in 12 months or less by about 5.3 percentage points (or about 8.8 percent). Using alternative definitions of labor market areas resulted in smaller, but still positive, estimated effects: a 10 percent increase in county-level employment raised the probability that a SNAP recipient would finish a spell in 12 months or less by between 1.5 and 2 percentage points (or between 2 and 3 percent).

Although CZs are delineated using more sophisticated analytical methods, they share a similar limitation to BLS LMAs. Like BLS LMAs, CZs are based on commuting patterns and do not account for other administrative or economic factors a state would like to consider when grouping

²³³ Andrew Foote, Mark J. Kutzbach, and Lars Vilhuber, “Recalculating... How Uncertainty in Local Labor Market Definitions Affects Empirical Findings,” Center for Economic Studies Working Paper CES 17-49, August 2017, <https://www2.census.gov/ces/wp/2017/CES-WP-17-49.pdf>.

²³⁴ Erik Scherpf *et al.*, “Participation in USDA’s Supplemental Nutrition Assistance Program (SNAP): Effect of Local Labor Market Conditions in Oregon,” *United States Department of Agriculture* (September 2018), pp. 1-50, <https://www.ers.usda.gov/webdocs/publications/90038/err-257.pdf?v=0>.

²³⁵ Charles M. Tolbert and Molly Sizer, “U.S. Commuting Zones and Labor Market Areas: A 1990 Update, AGES-9614,” U.S. Department of Agriculture, Economic Research Service, 1996, <https://usa.ipums.org/usa/resources/volii/cmz90.pdf>.

²³⁶ Hierarchical cluster analysis is a method for exploring similarities between objects. An algorithm is used to group similar objects into a cluster. Each cluster is distinct from other cluster and the objects within each cluster share similar features.

²³⁷ Erik Scherpf *et al.*, “Participation in USDA’s Supplemental Nutrition Assistance Program (SNAP): Effect of Local Labor Market Conditions in Oregon,” *United States Department of Agriculture* (September 2018), pp. 1-50, <https://www.ers.usda.gov/webdocs/publications/90038/err-257.pdf?v=0>.

areas covered by waivers. In proposing the BLS LMAs as the only acceptable framework for grouping areas, the Department did not discuss alternative frameworks for grouping and the implications of using a framework based on commuting data to shape SNAP policy.

Commuting Patterns Are Not the Only Factor Connecting Labor Markets

BLS LMAs only look at commuting patterns and ignore other economic factors that may be related to spatial correlation of unemployment. Spatial correlation is a measure of the relationship between “close” spatial units, such as neighboring counties. Using county-level monthly price data from the real estate service Zillow, Fogli, Hill, and Perri examined trends in housing prices across geographic areas. They observed that the housing price decline from early 2007 to early 2009 appeared to follow the same spatial patterns as unemployment.²³⁸ Looking at the example of Florida, they show that early 2007 prices fell in scattered locations around the coasts and over time prices fell in nearby locations until they reached a uniformly low level across the state. Spatial diffusion of housing prices and unemployment were strikingly similar across the whole period of housing boom and bust, suggesting that housing prices might be one of the factors that states may implicitly or explicitly consider when grouping areas.

The Department did not provide an explanation why it is restricting states from considering other rationale that might be relevant to their SNAP population when requesting waivers. We strongly encourage the Department to review the research we have outlined in this chapter related to commuting patterns and to explain its rationale relative to the evidence that demonstrates the flaws of this approach.

WIOA Regions

As discussed earlier, states may seek to align SNAP waivers with workforce development regions. Under WIOA, states are required to identify regions for regional workforce planning. States shall identify regions after consultation with elected officials and Local Workforce Development Boards and take into account the following factors:

1. The extent to which regions are consistent with labor market areas in the state;
2. The extent to which regions are consistent with regional economic development areas in the state; and
3. An assurance that regions have available the federal and non-federal resources necessary to effectively administer activities under subtitle B and other applicable provisions of the WIOA, including whether the areas have the appropriate education and training providers, such as institutions of higher education and area career and technical education schools.

Under WIOA, states have discretion to define regions and are encouraged to take an integrated approach to account for a range of different factors. States are encouraged to use LMAs as the starting point for determining workforce development regions, but also need to consider workforce and economic development framework, funding streams, and service (training) delivery.

²³⁸ Alessandra Fogli, Enoch Hill, and Fabrizio Perri, “The Geography of the Great Recession,” National Bureau of Economic Research Working Paper 18447, October 2012, <https://www.nber.org/papers/w18447.pdf>.

E. States Have Used Their Discretion to Create Groupings Informed by Multiple Factors

States use grouping methods, such as BLS LMAs and WIOA Local Workforce Development Areas, as the starting point for developing workforce development plans and policy, but modify them based on multiple additional factors. Below are some examples of how and why states group areas using a variety of factors.

- When designating areas for workforce development planning, the Virginia Board of Workforce Development considers the BLS LMAs, regional economic development areas, funding streams and service providers for training, community college regions, and industry- and sector-specific strategies.²³⁹
- Rhode Island has treated the entire state as a region for the purposes of workforce development planning. The state considered geographic boundaries, LMA analysis, and funding and resource realities in determining the geographic scope of its workforce development plan. From its labor market area analysis, it found that of the 39 cities and towns in Rhode Island, 36 fell within the “Providence-Warwick, RI-MA Metropolitan NECTA” LMA as determined by the Bureau of Labor Statistics. One additional community was its own LMA due to the fact it is an island, and two additional communities fall outside of the Providence-Warwick, RI-MA Metropolitan NECTA. The governor concluded that the entire state will be a single planning region for workforce development purposes.²⁴⁰
- As discussed earlier, Tennessee implements SNAP E&T in coordination with WIOA and Local Workforce Development Areas. The delineation of these areas is different from the BLS LMAs. For instance, Lauderdale County, located on the western border of Tennessee north of Memphis, is its own BLS LMA, but is grouped with Shelby, Fayette, and Tipton Counties into the Greater Memphis Local Workforce Development Area.

The Department did not explain why it was taking away states’ ability to consider multiple factors when grouping areas covered by waivers. It did not discuss how the use of BLS LMAs would improve states’ ability to meet the needs of individuals subject to the time limit and help move them to self-sufficiency.

BEA Economic Areas

In two separate guidance memoranda (August 2006,²⁴¹ December 2016²⁴²), the Department provided an example of grouping based on BEA economic areas, yet the 2019 NPRM preamble did not offer this framework for grouping areas for consideration. In the example provided, the

²³⁹ Virginia Board of Workforce Development, “Designation of Regions and Planning Requirements,” June 2016, <https://virginiacareerworks.com/wp-content/uploads/Policy-200-06-Designation-of-Regions-and-Planning-Requirements-FINAL-Signed.pdf>.

²⁴⁰ Rhode Island, Governor’s Workforce Board, “Regional Planning Policy,” March 16, 2017, <https://gwb.ri.gov/wp-content/uploads/2017/06/17-01-3-16-2017.pdf?189db0>.

²⁴¹ USDA, “Guidance on Requesting ABAWD Waivers,” August 2006.

²⁴² USDA, “Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016.

Department explained that Montana could group the counties of Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Phillips, Pondera, Teton, and Toole that comprise the North Central Montana Economic Area (or Area 65: Great Falls, MT Economic Area) and analyze the data to see if the grouped area would qualify for a waiver. The guidance also suggested that the state could consider grouping a sub-area such as Glacier, Liberty, and Toole. The Department did not explain why it is eliminating this grouping approach, even though this was a grouping policy it has suggested that states could use in the past.

Requiring Areas to Be Contiguous Ignores the Reality That Proximity to Job Opportunities Is Decreasing

The proposed rule establishes BLS LMAs as the only scenario where states can request waivers for combined geographic areas (counties). In doing so, the agency seeks to limit waivers that combine areas that are not contiguous. This suggests an assumption that individuals will only respond to job opportunities in their county or in counties adjacent to their county of residence. From the perspective of workers in search of job opportunities, requiring contiguity of geographic areas is an assumption that does not hold up under empirical scrutiny. Using county-level data for eight states between 1969 to 1994, Khan, Orazem, and Otto found that local county population responded to economic growth within the county, in adjacent counties, and even two counties away.²⁴³ The effect decreased as the distance from the reference county increased. Workers look beyond their county and adjacent counties for job opportunities.

Other research has found that proximity to jobs has decreased in metropolitan areas in recent years and that poor, minority residents experienced a bigger decline in proximity to jobs compared to non-poor white resident. Kneebone and Holmes looked at the number of jobs within a typical commuting distance (median within-metro commuting distance) for residents of the 96 largest metropolitan areas and found that the number of jobs within a typical commuting distance declined by 7 percent between 2000 and 2012.²⁴⁴ Poor residents experienced a 17 percent decline in nearby jobs compared to 6 percent for non-poor residents. Hispanic residents had a 17 percent decline and black residents had a 14 percent decline compared to 6 percent for white residents. Individuals have to look farther from their local neighborhoods for job opportunities, requiring longer commutes.

Requiring Areas to Be Contiguous or to Comprise Entire LMAs Ignores the Reality That Unemployment Rates Rise and Fall at Different Rates Even in Neighboring Areas

The general unemployment rate does not account for variations in unemployment rates for sub-populations and for variations in the increase or decrease in unemployment rates across geographic areas. The proposed rule would require that states request waivers for BLS LMAs in their entirety, without omitting certain areas. The Department offers no rationale for proposing this and no discussion of the implications of this arbitrary requirement. This requirement prevents states from responding to variations in unemployment patterns within an LMA.

²⁴³ Romana Khan, Peter F. Orazem, and Daniel M. Otto, “Deriving Empirical Definitions of Spatial Labor Markets: The Roles of Competing Versus Complementary Growth,” *Journal of Regional Science* (2001), pp. 735-756.

²⁴⁴ Elizabeth Kneebone and Natalie Holmes, “The Growing Distance Between People and Jobs in Metropolitan America,” *Metropolitan Policy Program at Brookings* (March 2015), pp. 1-24, <https://www.brookings.edu/research/the-growing-distance-between-people-and-jobs-in-metropolitan-america/>.

Fogli, Hill, and Perri examined how the relationship in unemployment in neighboring areas changes over time as a recession starts and ends.²⁴⁵ The relationship in unemployment between neighboring areas (spatial correlation) is high overall, falls at the start of the recession, increases sharply during the recession, and then stabilizes at the end of the recession. They found that unemployment does not increase in all counties simultaneously, but initially increases in a few specific counties, not necessarily located close to each other. As the recession deepens, the geographic distribution of unemployment follows an epidemic pattern, with unemployment tending to increase in counties that are closer to counties initially hit with high unemployment, so that unemployment is high in some concentrated areas and relatively low in others, and this results in an increase in the degree of spatial correlation and of spatial dispersion. As the recession reaches its peak, high unemployment is spread all over the country and both the degree of spatial correlation and spatial dispersion stabilize (and eventually decline).

The Department does not discuss the implications of requiring that states request waivers for BLS LMAs in their entirety, without omitting areas. This requirement ignores variations in labor market conditions within a labor market area. Consider an LMA that does not qualify for a waiver, but has high unemployment everywhere except for one county. The proposed rules would prevent a state from requesting a waiver for a sub-area of the LMA that lacks sufficient jobs, even if most of the residents in that LMA reside in that sub-area and the sub-area had unemployment rates that met or exceeded the threshold to qualify for a waiver. Even if the LMA qualified for a waiver, the state may have reasons why it only wants to waive a sub-area of the LMA. For instance, the state may be able to guarantee SNAP E&T slots in most areas of the LMA, but wants to request a waiver to cover counties in the LMA where it cannot guarantee enough slots. Even if the areas the state wants to waive qualified for a waiver based on unemployment rates, because it comprises only a part of the LMA, it would not be eligible for a waiver.

F. Conclusion: We Recommend Rejecting Proposed Changes That Restrict State Flexibility to Waive Groups of Areas

The proposed rule is based on insufficient reasons to change current regulations by prohibiting states from seeking statewide waivers and from grouping areas, except for areas that are designated as BLS labor market areas. It fails to discuss the ways that states have used existing flexibility to align waiver policy with state operations, policy, and resources. It does not discuss the implications and limitations of its proposed framework for grouping, nor does it address alternative methods for grouping, including those suggested by the Department in past guidance. Given the lack of supporting information, the public has an insufficient opportunity to comment meaningfully on the proposed rule and we recommend rejecting the proposed changes to the rules.

²⁴⁵ Alessandra Fogli, Enoch Hill, and Fabrizio Perri, “The Geography of the Great Recession,” National Bureau of Economic Research Working Paper 18447, October 2012, <https://www.nber.org/papers/w18447.pdf>.

Chapter 6. Taking Away Food Benefits from Individuals Who Cannot Document 20 Hours a Week of Work Will Not Increase Labor Force Participation for This Population

USDA offered little rationale for changing the decades-old criteria for requesting waivers of the time limit. The primary reasoning it provided is that fewer waivers will result in more individuals subject to the time limit. The agency believes that if the state threatens to withhold food benefits from these individuals, they will work more and have higher participation rates in meaningful work activities. The NPRM often describes this as a “belief.” For example, the NPRM states, “the Department *believes* the local unemployment floor should be set at 7 percent to best meet its goals of promoting self-sufficiency”²⁴⁶ (emphasis added). But the NPRM provides no evidence to support the belief that taking away food from unemployed individuals will result in higher labor force attachment or greater participation in job training. Because the NPRM includes no supporting data or research, commentators are left to accept as unequivocally true that the time limit has an instrumental role in moving “ABAWDs” from non-work to work.

Yet the claim that subjecting additional individuals to the time limit will result in more meaningful work activities is wildly out of synch with what we know from the evidence. Research shows that a significant share of individuals subject to the time limit work when they can find employment (including while on SNAP) and will work after leaving SNAP even in the absence of the time limit. The claim also ignores research showing that time limits generally fail to encourage employment. And, the NPRM does not account for the particular challenges facing this population — barriers and challenges to employment that differ from those faced by the general public and justify the current approach to providing waivers and individual exemptions to unemployed childless adults. Because the agency did not provide any evidence that would demonstrate the time limit is likely to increase employment, earnings, or self-sufficiency, the agency’s claim that the time limit should be applied to more individuals in order to increase labor force attachment is without merit. We offer findings from numerous studies to illustrate our points. We strongly recommend that the Department review and reflect on each of these studies before moving forward with a final rule.

A. Individuals Subject to the Time Limit Already Have Significant Work Effort, Raising Doubt as to Whether the Rate Can Be Increased by Withholding Food

The NPRM repeatedly claims that a primary goal of the proposed changes is to subject more individuals to the time limit. Terminating food assistance to more people (some 755,000 more, by the agency’s own estimates), the NPRM argues, will increase work effort, job placement, and earnings among those subject to the rule. But it fails to include any information about the employment of individuals subject, or potentially subject, to the time limit either while on SNAP or before or after participation in the program. The absence of any information is striking because research shows that many low-income adults without children who receive SNAP in any given

²⁴⁶ NPRM p. 984.

month work while on SNAP or soon after, regardless of the existence of the time limit. Other factors, such as personal circumstances and local economic conditions, play important roles in an individual's employment, but are not taken into account by FNS in this proposed change.

In this section, we review the research that describes both the significant work effort of childless adults without disabilities, as well as the unique challenges they face in the labor market. Because workers turn to SNAP during periods of unemployment, employment rates among childless adults while receiving SNAP might be expected to be relatively low. Still, in a typical month, almost a third and perhaps as many as half of all SNAP households with childless adults work. USDA's administrative data show that 31 percent of all SNAP households with non-disabled childless adults worked in a typical month of 2017.²⁴⁷ USDA's administrative data may underestimate earnings because some work may not be required to be reported for SNAP, either because it is irregular or not expected to continue or because, under SNAP's "simplified reporting" rules, changes in circumstances need only be reported at six-month intervals unless they raise household income above 130 percent of the poverty level. Work that households aren't required to report for SNAP purposes may be captured by the other data but not the SNAP data.

In fact, data from other sources suggest the work rate could be closer to 50 percent. Tabulations generated by CBPP from the Census Bureau's 2008 Panel of the Survey of Income and Program Participation (SIPP) show employment rates for SNAP households with non-disabled childless adults close to 50 percent in a typical month between 2011 and 2013.²⁴⁸

The 2017 data from USDA does not identify whether a childless adult is subject to the time limit or not (because he or she is exempt or living in a waived area). But work rates among this population have been consistent, even as the percentage of the country covered by waivers has varied widely. Comparing 2017 data (when 37 percent of the population lived in a waived area) to 2014 data (when 75 percent of the population did) shows very similar levels of employment. In 2014, when the national unemployment rate was over 6 percent, 35 states had statewide waivers and 9 had areas waived. That year, 27 percent of all SNAP households with non-disabled adults and no children worked in a typical month.²⁴⁹ That is close to the 31 percent of non-disabled adults without children who were working in 2017, when far more of the country had the time limit in place. This suggests factors other than waivers or the time limit itself play a more important role in the ability of adults without children to find work.

Even more important, childless adults have high work rates prior to and after a spell on SNAP, but the NPRM fails to account for how subjecting more individuals to the time limit would impact this. About 72 percent of SNAP households with a childless, working-age adult worked in the year

²⁴⁷ Food and Nutrition Service, Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2017, Tables A.14 and A.16.

²⁴⁸ Center on Budget and Policy Priorities, "Unemployed adults without children who need help buying food only get SNAP for three months," <https://www.cbpp.org/unemployed-adults-without-children-who-need-help-buying-food-only-get-snap-for-three-months>.

²⁴⁹ See Food and Nutrition Service, Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2014, Table A.16.

before or after receiving SNAP.²⁵⁰ And many of those not working while receiving SNAP were actively looking for work. USDA’s administrative data suggest that, in a typical month in 2017, close to half (46 percent) of all childless adults on SNAP who were not working were looking for work (and of those who reported not participating in the labor force, many likely had health conditions or other barriers to employment that prohibited labor force participation). Although this statistic should be viewed with caution as the data may not be sufficiently reliable to draw firm conclusions, it’s noteworthy that Urban Institute researchers, using National Survey of American Families data, found that three-quarters of all low-income, able-bodied adults without dependents (not just those on SNAP) worked in 1997 and 86 percent were in the labor force (that is, either working or actively looking for work).²⁵¹

Given the consistent evidence of work among individuals likely to be subject to the time limit regardless of waiver status or general unemployment rates, the claim that the time limit itself leads to increased employment is not supported. Instead, it suggests that the rule’s sole purpose is to take away food assistance from struggling unemployed or underemployed workers.

Further undermining the assertion that the time limit is necessary to increase work effort among SNAP participants, most childless adults on SNAP who work have substantial work. Among SNAP households that worked in a typical month while receiving SNAP or worked at some point during the following year, nearly half (49 percent) worked full time (at least 35 hours a week) for six months or more of the following year. Twelve percent worked at least 20 hours per week for six or more months. Another 24 percent worked full time in at least one month over that period. Only about 15 percent worked 20 or more hours per week for less than six months or worked fewer hours than that.²⁵²

Nonetheless, childless adults participating in SNAP are generally low-income, low-skill workers with limited job prospects. More than 80 percent have no more than a high school education or GED. They are more likely than other SNAP participants to lack basic job skills like reading, writing, and basic mathematics.²⁵³ A work experience program in Ohio designed to help individuals subject to the time limit find work or qualifying work activities found signs of functional illiteracy

²⁵⁰ Center on Budget and Policy Priorities, “Unemployed adults without children who need help buying food only get SNAP for three months,” <https://www.cbpp.org/unemployed-adults-without-children-who-need-help-buying-food-only-get-snap-for-three-months>.

²⁵¹ See Stephen Bell and Jerome Gallagher, “Prime-Age Adults without Children or Disabilities: The ‘Least Deserving of the Poor’ — or Are They? Assessing the New Federalism Policy,” Urban Institute, February 2001, <https://www.urban.org/sites/default/files/publication/61286/310269-Prime-Age-Adults-without-Children-or-Disabilities.PDF>.

²⁵² Steven Carlson *et al.*, “Who Are the Low Income Childless Adults Facing the Loss of SNAP in 2016?” Center on Budget and Policy Priorities, February 8, 2016, p. 9, <https://www.cbpp.org/sites/default/files/atoms/files/2-8-16fa.pdf>. An updated analysis that looked at all SNAP households with an adult without disabilities (with and without children), found similar rates of full- and part-time work among the broader group that the earlier analysis found. See Brynne Keith-Jennings and Raheem Chaudhry, “Most Working-Age SNAP Participants Work, But Often in Unstable Jobs,” March 15, 2018, <https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>.

²⁵³ “Food Stamp Employment and Training Program,” United States General Accounting Office (GAO—3-388), March 2003, p. 17, <http://www.gao.gov/assets/240/237571.pdf>.

even among those with a high school degree.²⁵⁴ As a result, wages of childless working-age adults on SNAP are quite low: one study found that 90 percent of those aged 25-49 earned less than twice the minimum wage, compared to 47 percent of all workers aged 25-49.²⁵⁵

USDA did not provide any information or analysis in the NPRM that suggested it had reviewed this evidence. Nor did it offer any research to the contrary — and we believe no such research exists. That leaves us to wonder whether the Department was aware that the work rates for individuals subject to the time limit appear to be similar whether or not they live in a waived area.

B. The NPRM Fails to Account for the Distinct Characteristics of Unemployment Childless Adults on SNAP

Because the group of individuals subject to the rule are, when compared to the general public, poorer, less educated, and more likely to have medical conditions or other factors affecting their ability to find employment, states have long found the three-month time limit in statute harsh and unfair. To mitigate the harm caused by taking food assistance away from this group, states have routinely relied on the option to request a waiver based on demonstrating a lack of sufficient jobs for the individuals affected by the time limit.

The NPRM seeks to restrict this state option in order to end food assistance for unemployed adults without children in the hope that this will result in increased employment among this group. The NPRM offers no information about the individuals affected by the rule — whether they have the skills, training, and support to find and keep employment, and whether they disproportionately face barriers to work like undiagnosed health conditions, a lack of transportation, or a criminal history. The NPRM neglects to address research findings from multiple sources, including USDA itself, showing that this population does face a different labor market environment than the general public. We are surprised that USDA did not draw upon this wide body of research and urge the agency to review the studies we cite — all of which are included in the appendix.

We review the research to show that the job prospects for these individuals are not accurately captured by the general unemployment rate. Even when unemployment is low due to a strong economy, adult SNAP participants without children face a very different labor market than higher-income adults. This population is also underserved by other support programs, often lacks stable housing, and struggles to be hired into stable jobs. States wisely use the flexibility provided by law to assess the availability of jobs for this population and request waivers when there are insufficient jobs.

Childless adults on SNAP are extremely poor. Like many others, childless adults often turn to SNAP for assistance when they are no longer able to make ends meet, especially if their jobs are lost,

²⁵⁴ See “A Comprehensive Assessment of Able-Bodied Adults Without Dependents and Their Participation in the Work Experience Program in Franklin County, Ohio,” Ohio Association of Foodbanks, 2014, <http://admin.ohiofoodbanks.org/uploads/news/WEP-2013-2014-report.pdf>.

²⁵⁵ Stephen Bell and Jerome Gallagher, “Prime-Age Adults without Children or Disabilities: The ‘Least Deserving of the Poor’ — or Are They? Assessing the New Federalism Policy,” Urban Institute, February 2001, <https://www.urban.org/sites/default/files/publication/61286/310269-Prime-Age-Adults-without-Children-or-Disabilities.PDF>.

hours are cut, or wages hover at the federal minimum. While participating in SNAP, their income averages 33 percent of the poverty line, the equivalent of about \$4,000 per year for a single person in 2019. Average incomes are even lower — just 18 percent of poverty — for those not working 20 or more hours a week, who are most likely to be cut off due to the three-month limit.²⁵⁶

The struggles of poor adults are vividly portrayed in *\$2.00 a Day: Living on Almost Nothing in America*, which draws detailed portraits of households with little access to substantial employment and public benefits.²⁵⁷ The descriptions illustrate the complexities of poverty – the psychological and emotional costs, the uncertainty and lack of options available, and the work effort of those in poverty. We strongly urge the Department to familiarize itself with the real lived experiences of those portrayed in the book.

Unemployed childless adults have few resources other than SNAP to rely on while looking for work. In general, adults without children are not eligible for most government assistance. In the past, state General Assistance programs have provided small monthly cash allotments to single adults to meet basic shelter and other needs, but these programs have weakened considerably. Few childless adults qualify for unemployment insurance, and childless adults are ineligible for Medicaid in states that haven't adopted the Affordable Care Act's Medicaid expansion. In addition, childless workers are the only demographic group that the federal tax system taxes into, or deeper into, poverty, in part because they are eligible only for a tiny Earned Income Tax Credit (EITC). Federal income and payroll taxes pushed about 7.5 million childless workers into or deeper into poverty in 2015.²⁵⁸ Given how little federal support is available to the group subject to the time limit, it is surprising that USDA believes the group is able to survive while avoiding work. Their SNAP benefits are minimal to meet basic food needs, let alone housing, health, and other basic expenses.

Many childless adults have disabilities that make working difficult or impossible but don't meet the severe disability standard for receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). If not identified as having a physical or mental condition that prevents them from working 20 or more hours per week, they would be subject to the time limit, yet unable to realistically find work in many cases.

There's more evidence that people subject to the time limit face multiple challenges to independence and self-sufficiency, including homelessness, physical and mental health limitations, language barriers, unstable employment histories, and criminal records. A detailed study of

²⁵⁶ CBPP analysis of FY 2017 USDA SNAP Household Characteristics data adjusted to FY 2019 dollars.

²⁵⁷ Kathryn J. Edin and H. Luke Shaefer, *\$2.00 a Day: Living on Almost Nothing in America*, 2015, Houghton Mifflin Harcourt. We especially highlight descriptions of the struggles of finding and keeping work (pp. 42-47 and 112-114), the challenges facing people of color in the job market (pp.52-56), and barriers to employment like transportation (pp. 51-52, 138-139).

²⁵⁸ Chuck Marr *et al.*, "Lone Group Taxed Into Poverty Should Receive a Larger EITC," Center on Budget and Policy Priorities, April 19, 2016, <https://www.cbpp.org/research/federal-tax/childless-adults-are-lone-group-taxed-into-poverty>.

individuals identified by the local SNAP agency as ABAWDs subject to the time limit who were referred to a work experience program in Franklin County (Columbus), Ohio found that:²⁵⁹

- Many have extremely unstable living situations, evidenced by residence in short-term shelters or with friends and family and limited telephone service.
- One-third have a mental or physical limitation, including depression, post-traumatic stress disorders, mental or learning disabilities, or physical injuries. Some of these disabilities, though not severe enough to qualify for federal disability benefits, may still limit a person's ability to work more than 20 hours a week.
- Nearly one-quarter are non-custodial parents, and 13 percent are caregivers for a parent, relative, or friend.
- More than 40 percent lack access to reliable private or public transportation; 60 percent lack a valid driver's license.
- Fifteen percent need supportive services like language interpretation or help with transportation to obtain employment.
- Nearly one-quarter have been dismissed from a job in the past and others have gaps in their employment records — both of which can deter potential employers. More than one-third have felony convictions, making it hard to find jobs and pass background checks.

These individuals face daunting challenges in finding employment even when general unemployment rates are low. The Ohio study illustrates why Congress gave states the option to waive the time limit in areas where there are insufficient jobs for those subject to the rule. Without providing any evidence to the contrary, the NPRM proposes to limit the ways in which a state can demonstrate a lack of sufficient jobs for the individuals subject to the time limit. It does this by eliminating Labor Surplus Areas, low and declining employment-to-population ratios, seasonal unemployment and requiring recent unemployment rates to be at least 7 percent. But the Department fails to explain how it determined that the proposed new standards relate to employment opportunities for those subject to the rule, particularly given the characteristics outlined in the list above.

One reason states were given flexibility to define the areas which could be waived due to a lack of sufficient jobs for the individuals subject to the rule is that even in the late 1990s, a growing body of research showed that the labor market situation for low-skilled workers had grown worse over time, and that low-skill workers faced limited employment options. As summarized by a report commissioned by USDA in 1998, “a relatively large body of research indicates that the labor market situation of the low-skilled has become considerably worse in recent decades and that their current employment prospects are limited. This suggests that even if ABAWDs are willing to work, they

²⁵⁹ See “Comprehensive Report on Able-Bodied Adults Without Dependents, Franklin County Ohio Work Experience Program,” Ohio Association of Foodbanks, 2015, http://admin.ohiofoodbanks.org/uploads/news/ABAWD_Report_2014-2015-v3.pdf. The Ohio Association of Foodbanks gathered the information for the report as a result of a partnership with the county SNAP agency to help place individuals identified as subject to the time limit in qualifying work activities after screening them.

may be unable to do so because there are not enough jobs for low-skilled workers.”²⁶⁰ The report, which reviewed studies on the employment prospects of low-income adults fitting the “ABAWD” description (but not necessarily participating in SNAP), also found that:

- Job prospects for ABAWDs do not look promising, due to changes in the U.S. economy that have resulted in the decline of industries and skill types in which ABAWDs are concentrated.
- Many ABAWDs face a spatial mismatch between their residence and the location of low-skill jobs, as well as a skills mismatch, especially for urban residents.
- The job prospects of ABAWDs depend significantly on local economic conditions, tied not to county-level unemployment but to the location of employers needing low-skill workers and the quality and availability of local institutions supporting workforce development.²⁶¹

The Department’s commissioned reports as well as other research paint a clear picture of individuals in this targeted group who have common characteristics that distinguish the group from other unemployed adults. These characteristics — including high poverty rates, health issues, and few supports — make finding and keeping employment a unique challenge. The Department simply asserts that the time limit will increase employment for this population but does not acknowledge its own research showing that this is not the case. While all aspects of the rule strike us as arbitrary, this disconnect between the agency’s basic knowledge of the affected population and the assertions about how the proposed policy would increase employment is particularly surprising. This is one of numerous reasons why the proposed rule should be withdrawn.

C. Reports Commissioned by USDA Show Subjecting More Individuals to the Time Limit Will Not Increase Their Likelihood of Gaining Employment

In order to understand the impact of the time limit on individuals’ well-being, USDA, along with the U.S. Department of Health and Human Services, funded studies in four states: Arizona, Illinois, Iowa, and South Carolina. While the studies varied in scope and focus and were not able to identify individuals who left SNAP because of the time limit, they do reveal the policy’s limited impact on employment outcomes, coupled with low earnings and increased hardship.

A 2001 study of individuals leaving SNAP in Illinois showed that far more families than ABAWDs left SNAP due to increased earnings, even though the time limit was in effect. The study found that the percentage of ABAWDs who left SNAP and remained off the program and employed did not vary between counties that had waivers and counties that did not.²⁶²

²⁶⁰ Michael Stavrianos and Lucia Nixon, *The Effect of Welfare Reform on Able-Bodied Food Stamp Recipients*, Mathematica Policy Research, Inc., July 1998, pp. 56-57.

²⁶¹ Michael Stavrianos and Lucia Nixon, *The Effect of Welfare Reform on Able-Bodied Food Stamp Recipients*, Mathematica Policy Research, Inc., July 1998, p. 56-57.

²⁶² See Exhibit ES-1, page ES-4, Philip Richardson *et al.*, *Food Stamp Leavers Research Study – Study of ABAWDs Leaving the Food Stamp Program in South Carolina*, <https://naldc.nal.usda.gov/download/45220/PDF>.

The study looked at those who left SNAP in areas where the time limit was in effect and areas where it was not (due to a waiver). It found that in the sample who left SNAP in 1998-1999, a majority of individuals (53 percent) were off SNAP in 2001 and not working or back on SNAP. Of those that were working after leaving SNAP, the study did not attempt to identify the role of the time limit in employment gains. In fact, the study shows that employment rates among ABAWDs leaving SNAP were highest in areas *exempt* from the time limit due to high unemployment rates — higher than the employment rates in areas using the individual exemptions and areas in which the time limit was in effect.²⁶³ This shows that factors other than the time limit have more impact on employment outcomes for ABAWDs. FNS fails to address this in the NPRM. Here we again recommend that FNS review and consider this research.

The Arizona study commissioned by USDA to understand the outcomes of people leaving SNAP showed that ABAWDs had worse outcomes on a number of employment-based metrics. They were less likely to have achieved self-sufficiency, less likely to have improved their employment situation, and more likely to be at risk of hardship or deprivation. The study grouped SNAP participants in Arizona in 1997 into three categories: ABAWDs, non-ABAWD individuals on TANF, and non-ABAWD, non-TANF adults. Upon leaving SNAP, employment rates for each subgroup were over 50 percent, but by one year later, ABAWDs who had been cut off SNAP had experienced the greatest drop in employment.²⁶⁴ This suggests that: (1) the three-month time limit may not be an important factor in causing employment, since SNAP participants not subject to the time limit had similar levels of employment as those subject to the time limit when leaving SNAP; and (2) ABAWDs struggle to maintain employment. The report identifies several reasons why the ABAWD group might see a sharp decline in employment. In a survey of ABAWDs who were no longer on SNAP and not working, more than 60 percent reported being ill or having health problems or a disability — circumstances not identified by the SNAP agency as qualifying an individual to an exemption.²⁶⁵

Across all four studies, many who lost SNAP benefits were employed but had low earnings. Between 41 and 76 percent of the former recipients in the four states were working after leaving SNAP, but earnings were low and many remained in poverty.²⁶⁶ Most of those who were not working in Arizona and Illinois were in poor health or caring for a family member in poor health. Given the complexity of

²⁶³ See Exhibit IV-I, Philip Richardson *et al.*, Food Stamp Leavers Research Study – Study of ABAWDs Leaving the Food Stamp Program in South Carolina Final Report, page IV-2, <https://naldc.nal.usda.gov/download/45220/PDF>.

²⁶⁴ See Exhibit 2-6, Covered Employment, in Gregory Mills and Robert Kornfeld, Study of Arizona Adults Leaving the Food Stamp Program, Final Report, Dec. 2000, page 36, <https://naldc.nal.usda.gov/download/45673/PDF>.

²⁶⁵ Gregory Mills and Robert Kornfeld, Study of Arizona Adults Leaving the Food Stamp Program, Final Report, Dec. 2000, page 51, <https://naldc.nal.usda.gov/download/45673/PDF>. Individuals with a medically certified physical or mental condition that prevents them from working are exempt from the three-month time limit, but states have struggled with correctly identifying these individuals. The study did not look at whether some of the ABAWDs who left SNAP should have been exempt from the time limit.

²⁶⁶ Elizabeth Dagata, “Assessing the Self-Sufficiency of Food Stamp Leavers,” Economic Research Service, USDA, September 2002, <https://www.ers.usda.gov/publications/pub-details/?pubid=46645>.

SNAP's rules governing work effort, disability, and time limits, some may not have realized that they may again qualify for SNAP and failed to reapply for benefits.²⁶⁷

While the studies of individuals leaving SNAP looked at all types of individuals, the studies yielded important results for ABAWDs that are relevant to this proposed rule but do not appear in the Department's rationale for the NPRM. For example, in Illinois in 1997, the single largest category of individuals losing benefits was ABAWDs. The impact varied widely among groups. For example, two-thirds of the ABAWDs leaving the program were African American, well above the percentage of all leavers (which was 50 percent).²⁶⁸ As discussed more fully in Chapter 12, the NPRM acknowledges the proposed rule would have a disparate impact by noting the "potential for disparately impacting certain protected groups due to factors affecting rates of employment of members of these groups."²⁶⁹ But the Food and Nutrition Act makes clear that the regulations implementing Title VI and other civil rights statutes are fully applicable to SNAP. These regulations prohibit actions in federal programs that have disparate impacts on members of protected groups as well as intentional discriminatory acts. Therefore, the proposed rule's disparate impact on these individuals, as demonstrated by the research and acknowledged in the NPRM itself, is inconsistent with the Act. Given the requirement under 7 U.S.C. § 2020 (c)(2)(D) that the Department ensure the protections of Title VI of the Civil Rights Act of 1964 apply to all SNAP households, we are stunned that the Department did not review its own research results that clearly suggest that the proposed policy would have widely disparate impacts on African Americans.

D. The Loss of SNAP Due to the Time Limit Fails to Raise Income and Increases Hardship

Childless adults who lose SNAP benefits struggle without food assistance benefits. As noted, USDA's most comprehensive assessment of former SNAP recipients in four states in the early 2000s suggests that their life circumstances are quite difficult.²⁷⁰ A significant minority don't find work, and among those who are employed after leaving SNAP, earnings are low. Most remain poor. Many struggle to acquire enough food to meet their needs, lack health insurance, experience housing problems, and/or have trouble paying their bills. (These studies include people who leave SNAP because of the three-month time limit or for other reasons, for example, because they found a job or mistakenly believed they were no longer eligible.)

Despite relatively high levels of work effort, between one-third and roughly two-thirds of SNAP leavers in the four states had household incomes below the poverty line — well above the overall

²⁶⁷ Elizabeth Dagata, "Assessing the Self-Sufficiency of Food Stamp Leavers," Economic Research Service, USDA, September 2002, <https://www.ers.usda.gov/publications/pub-details/?pubid=46645>.

²⁶⁸ Anu Rangarajan and Philip M. Gleason, *Food Stamp Leavers in Illinois: How Are They Doing Two Years Later?*, Mathematica Policy Research, Inc., January 2001, p. 21, <https://www.mathematica-mpr.com/our-publications-and-findings/publications/food-stamp-leavers-in-illinois-how-are-they-doing-two-years-later>.

²⁶⁹ NPRM, p. 990.

²⁷⁰ Elizabeth M. Dagata, "Assessing the Self-Sufficiency of Food Stamp Leavers," Economic Research Service, USDA, September 2002, https://ageconsearch.umn.edu/record/262256/files/31106_fanrr26-8_002.pdf. This is a summary of in-depth studies in Arizona, Illinois, Iowa, and South Carolina.

poverty rate of 13 percent. Many of these households experienced *severe* poverty after leaving SNAP: about 40 percent of the leavers in two states were below *half* of the poverty line.

Many struggled to acquire adequate food. Between 17 and 34 percent of the SNAP leavers in the four states reported very low food security (meaning they had to skip or reduce the size of their meals or otherwise disrupt their eating patterns at times during the year because they couldn't afford enough food), compared with 3 percent of all households without children.

USDA's study of adults in Arizona leaving SNAP found that the incidence of moderate or severe hunger was greatest among the ABAWD subgroup, at 34 percent, compared to 23 percent for the TANF subgroup and 18 percent for the non-TANF subgroup.²⁷¹ By comparison, 3.5 percent of all Arizona households were classified as facing moderate or severe hunger. The Arizona study concludes by pointing out that individuals who might appear to be self-sufficient or better off after leaving SNAP, because they receive fewer public benefits and report less private support, might still be facing significant hardship:

The high rate of food insecurity with hunger found among ABAWD exiters — 34 percent — is noteworthy. This incidence is more than twice the 1999 national rate of 14 percent estimated by USDA for households at or below 50 percent of the poverty level, even though most ABAWDs have incomes above the poverty level. The ABAWD finding highlights the importance of considering (in this and other exit studies) whether exiters who appear self-sufficient, in terms of their reduced reliance on public and private support, are able to avoid hardship and deprivation.²⁷²

This cautionary note is not found in the NPRM. The agency simply asserts that it believes expanding the number of individuals subject to the time limit will improve their self-sufficiency, without acknowledging what the agency-funded research revealed — that the outcome for ABAWDs leaving because of the time limit may be increased hunger and hardship.

The studies also showed that many lacked health insurance, had housing problems, or had trouble paying their utility bills. About 30 to 40 percent of the SNAP leavers in the four states faced housing issues, including falling behind on rent, moving in with relatives, or becoming homeless. Between 20 and 65 percent reported problems paying for utilities. Just over half of the SNAP leavers in two of the states were uninsured.²⁷³ These are all characteristics, as we illustrate elsewhere in the comments, associated with much higher rates of unemployment. We continue to be baffled about how or whether USDA factored its own research into the NPRM. It would appear that the Department ignored its own studies.

²⁷¹ Gregory Mills and Robert Kornfeld, Study of Arizona Adults Leaving the Food Stamp Program, Final Report, Dec. 2000, page 85, <https://naldc.nal.usda.gov/download/45673/PDF>.

²⁷² Gregory Mills and Robert Kornfeld, Study of Arizona Adults Leaving the Food Stamp Program, Final Report, Dec. 2000, page 94, <https://naldc.nal.usda.gov/download/45673/PDF>.

²⁷³ Elizabeth M. Dagata, "Assessing the Self-Sufficiency of Food Stamp Leavers," Economic Research Service, USDA, September 2002, <https://www.ers.usda.gov/publications/pub-details/?pubid=46645>. This is a summary of in-depth studies in Arizona, Illinois, Iowa, and South Carolina.

E. Evidence From Other Benefit Programs Shows That Time Limits Do Not Increase Employment and Have a Disproportionate Impact on Certain Populations

The stated rationale for proposing a change to the long-standing waiver process is to expose more individuals to the time limit, in the belief that this will result in increased labor market attachment. The NPRM provides no evidence to support this assertion. But, research on the Temporary Assistance for Needy Families (TANF) program, which imposes both work requirements and a time limit for benefits, undermines the claim that work requirements and time-limited benefits increase employment.

A review of the many studies on families whose TANF monthly direct financial support was reduced or taken away due to work requirements shows that these policies harm individuals and families, most of whom face significant obstacles to employment, while producing few lasting gains in employment. While the studies described in this section are about families with children — often single-mother-headed households — the findings are relevant because they review the circumstances of very poor households, similar in important respects to households on SNAP. In addition, many ABAWDs are parents of non-minor children or have children not in the SNAP household. TANF and SNAP households live in similar circumstances and face similar challenges finding employment, so the outcomes from one group can inform the likely outcomes for the other.

A time limit ignores the fact that public assistance recipients often vary in their needs and circumstances; many often live with one or multiple significant barriers to employment. Those barriers range from low cognitive functioning, to mental and physical health problems, to criminal justice issues, to low measures of human capital. These barriers make it hard to find or keep a job or fulfill other work requirements. Extensive research on the effect of time limits in TANF, which provides modest cash assistance and requires a portion of the caseload to engage in work activities, shows that the time limit did not notably increase employment, but it did result in increased hardship. We strongly recommend that USDA read these studies and consider the findings when developing final regulations. We are confident the results demonstrate the problems with the proposed policy.

F. Most Low-Income People Sanctioned From Public Assistance Due to Work Requirements Face Barriers Finding Employment

Studies show that many parents who lose TANF benefits due to work requirements have significant employment barriers. Those losing benefits are more likely than other TANF parents to have physical, mental health, or substance use issues; to be fleeing domestic violence; to have low levels of education and limited work experience; or to face significant logistical challenges, such as lack of access to or funds to pay for child care and transportation.²⁷⁴ Below are summaries of several TANF studies finding that many adults losing assistance due to sanctions face significant employment barriers:

²⁷⁴ LaDonna Pavetti, Michelle K. Derr, and Heather Hesketh, “Review of Sanction Policies and Research Studies,” Mathematica Policy Research (March 2003).

- A 2007 study of regional variation of full-family sanctioning practices in Florida’s TANF cash assistance program gives evidence that sanctions are significantly related to various barriers to employment. TANF parents with lower income and lower levels of education were more likely to be sanctioned than those with higher income and education levels. For example, recipients with a high school degree were more likely to be sanctioned than those with more education — however, sanctions were the most common among those with less than a high school degree. Community traits can matter too: families were more likely to be sanctioned in counties with higher poverty rates than other counties, after controlling for other characteristics.²⁷⁵
- A 2006 study of women in Wisconsin receiving TANF found that the state was more likely to sanction mothers with lower levels of education. Specifically, mothers with at least a high school diploma or equivalent were less likely to be sanctioned than mothers with less than a high school diploma, and those with education beyond high school were even less likely to be sanctioned, even when controlling for how long each individual received TANF grants. The study also concluded that those “who may be least able to succeed in the labor market are most likely to be sanctioned.” Specifically, the authors examined sanction activity against the mothers’ employment status in the two years preceding entry to the TANF program. The authors’ estimates show a monotonic trend with the number of quarters of work: those with no work in the past two years were most likely to be sanctioned, those with 1-4 quarters of employment were less likely to be sanctioned, those with 5-7 quarters of employment were even less likely to be sanctioned, and mothers who had been employed for all eight quarters were the least likely to be sanctioned.²⁷⁶
- A 2002 comparison of sanctioned and non-sanctioned TANF recipients in Boston, Chicago, and San Antonio found sanctioned recipients were less likely than other TANF recipients to have a high school degree or its equivalent, a working telephone at home, or a car. They were more likely to report being in fair or poor health, have a substance use issue, or have a partner who interfered with their employment, training, or schooling. They also had less work experience, lived in neighborhoods with undesirable qualities (such as abandoned houses, assaults and muggings, gangs, and open drug dealing), and reported living in housing of poor quality.²⁷⁷
- A study of women in Michigan receiving TANF shows that those with educational barriers to employment were more likely to be sanctioned than those without such barriers. Women with less than a high school education were 2.06 times more likely to be sanctioned than women with higher levels of formal education.²⁷⁸

²⁷⁵ Richard C. Fording, Joe Soss, and Sanford F. Schram, “Devolution, Discretion, and the Effect of Local Political Values on TANF Sanctioning,” *Social Service Review* (June 2007), pp. 285-316.

²⁷⁶ Chi-Fang Wu *et al.*, “How Do Welfare Sanctions Work?,” *Social Work Research* (March 2006), pp. 33-50.

²⁷⁷ Andrew J. Cherlin *et al.*, “Operating within the Rules: Welfare Recipients’ Experience with Sanctions and Case Closings,” *Social Service Review* (September 2002), pp. 387-662.

²⁷⁸ Ariel Kalil, Kristin S. Seefeldt, and Hui-chen Wang, “Sanctions and Material Hardship under TANF,” *Social Service Review* (December 2002), pp. 642-662.

- The same study of women in Michigan receiving TANF shows those with transportation-related barriers to employment were more likely to be sanctioned than those without such barriers. Specifically, recipients who lacked either a car or a driver's license were disproportionately sanctioned relative to recipients without these transportation barriers. In addition, those with trauma-related barriers to employment were more likely to be sanctioned than those without such barriers. Specifically, women who reported experiencing severe domestic violence (being hit, kicked, shoved, etc.) within the past year were disproportionately sanctioned relative to recipients who did not report experiences of that type.²⁷⁹
- A California study of a random sample of CALWORKs (TANF) recipients in four counties (two large urban counties and two large semirural counties) found that recipients without a car were roughly 1.5 times more likely to incur sanctions than recipients who owned a car. Recipients who were sanctioned were less likely to own a car (39 percent of respondents) in comparison to non-sanctioned recipients (52 percent of respondents).²⁸⁰
- In Illinois, parents who had ever been sanctioned were significantly less likely than those never sanctioned to have a high school diploma or its equivalent and more likely to have limited recent work experience. They also were significantly more likely to be dealing with a physical or mental health issue, to have been arrested multiple times, and to have experienced a child care issue. In South Carolina, parents ever sanctioned were significantly more likely to have a physical health problem, show signs of a learning disability, and have a family member or friend with a health care issue or special need.²⁸¹
- A study of 656 TANF leavers from the 1999 and 2002 data of the National Survey of America's Family (NSAF) found that TANF leavers who reached their lifetime limits had a higher chance of having problems with employment due to work barriers or vulnerable characteristics such as old age, physical or mental health problems. They experienced greater hardship because they had less income and less EITC receipt, most had experienced a cutoff of SNAP, and fewer received child care assistance. The author concluded that time limits can lead low-income families to endure greater economic hardships.²⁸²
- A study that examined time limits on the receipt of welfare in both the United States and British Columbia, Canada found that time limits are an ineffective policy tool as they increase barriers to employment and result in recipients needing more support and access to specific programs. Recipients who exhausted their benefits struggled financially and had a difficult time finding a job. While some recipients had several barriers to work, others who had fewer

²⁷⁹ Ariel Kalil, Kristin S. Seefeldt, and Hui-chen Wang, "Sanctions and Material Hardship under TANF," *Social Service Review* (December 2002), pp. 642-662.

²⁸⁰ Yeheskel Hasenfeld, Toorjo Ghose, and Kandyce Larson, "The Logic of Sanctioning Welfare Recipients: An Empirical Assessment," *Social Science Review* (June 2004), Vol. 78, No. 2, pp. 304-319, http://repository.upenn.edu/spp_papers/88/

²⁸¹ LaDonna Pavetti *et al.*, "The Use of TANF Work-Oriented Sanctions in Illinois, New Jersey, and South Carolina," Mathematica Policy Research (April 2004).

²⁸² Kyoung Hag Lee, "Effect on Lifetime Limits and Differences between TANF Leavers Who Had Reached Their Lifetime Limits and Those Who Had Exited Voluntarily," *Poverty & Public Policy* (2010), pp. 1-22.

barriers were still unable to find a job. Low cognitive functioning, limited education, and physical and mental health problems were some of the barriers that recipients faced.²⁸³

- A 2006 study of Minnesota’s TANF program explored in detail the circumstances of those at or near 60 months, the federal time limit. It found about 16 percent of cases had a case head with an IQ of less than 80, about 20 percent were caring for ill or incapacitated family members, and about 21 percent were ill or incapacitated themselves for 30 days or more. Long-term TANF recipients also had mental illness (which is often untreated or inadequately treated), were developmentally disabled or learning disabled, were leaving domestic violence situations, or were otherwise “unemployable.” Some recipients suffered from chronic and debilitating health problems because they had worked physically demanding jobs.²⁸⁴
- Another report on Minnesota’s TANF program shows the percent of persons with a severe mental health diagnosis at 60 months, the federal time limit, to be about 52 percent and those with a chemical dependency diagnosis to be 27 percent. Among American Indian recipients, about 60 percent of those near the time limit had a mental health diagnosis and/or a chemical dependency diagnosis.²⁸⁵
- A more recent Washington State study compared families who left TANF due to time limits and those who left for other reasons. The state found that time-limited families were more likely to be unstably housed in the year prior to losing assistance. They were also more likely to have chronic health issues and visit the emergency room. And, they were more likely to have a range of behavioral health needs, from mental health issues to substance abuse disorders.²⁸⁶
- In a survey of 276 West Virginia TANF recipients cut off due to time limits, respondents identified several barriers to employment. Most of the respondents were unemployed after leaving TANF. More than half (56.2 percent) of respondents were not working because of a physical or mental illness or disability problem; more than a third (37.1 percent) had no transportation; a third (32.6 percent) did not have the right education; and a little less than a third (29.8 percent) simply could not find a job. Most of these respondents had multiple barriers to employment.²⁸⁷

²⁸³ Dean Herd, Ernie Lightman, and Andrew Mitchell, “Welfare Time Limits: Symbolism and Practice”, *U-Toronto: Social Assistance in the New Economy (SANE) Project* (2008), pp. 1-26.

²⁸⁴ LaDonna Pavetti and Jacqueline Kauff, “When Five Years Is Not Enough: Identifying and Addressing the needs of Families Nearing the TANF Time Limit in Ramsey County, Minnesota,” *Mathematica Policy Research* (March 2006), pp. 1-24, <https://www.mathematica-mpr.com/our-publications-and-findings/publications/when-five-years-is-not-enough-identifying-and-addressing-the-needs-of-families-nearing-the-tanf-time-limit-in-ramsey-county-minnesota>.

²⁸⁵ Dana DeMaster, “At the Limit: December 2006 Minnesota Family Investment Program (MFIP) Cases that Reached the 60 Month Time Limit,” Minnesota Department of Human Services (January 2008), pp. 1-18, <https://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-5092B-ENG>.

²⁸⁶ Christina McHugh and J. Taylor Danielson, “TANF Time Limit Analysis Comparing Cases Closed Due to Time Limits with Other Case Closures,” Washington State Department of Social and Health Services (February 2019).

²⁸⁷ Robert Jay Dilger *et al.*, “WV WORKS 2003: Perspectives of Former Recipients Who Have Exhausted Their 60 Months of Program Eligibility,” *West Virginia University Interdisciplinary Task Force on Welfare Reform* (Summer 2004), pp. 1-24.

- A California study of the cases that reach the time limit found families often struggle with one major barrier to work and often multiple barriers. One-third of respondents cited major health issues as a big barrier to work. A smaller share said they were caring for a family member with a major health issue. More than one-fifth of respondents said they suffered from depression or anxiety or had experienced at least one stressful event in the past year. About 11 percent experienced a domestic violence situation. More than half of all respondents noted having at least one barrier and 28 percent cited having two or more barriers. Forty-three percent said they had trouble paying rent; 54 percent said they had trouble paying utility bills; 39 percent reported having trouble paying for food; and 40 percent noted they had to use a food bank.²⁸⁸

G. Imposing Time Limits and Sanctions for Failure to Meet Work Requirements Has a Disparate Impact on Communities of Color

States' application of work requirements in the TANF cash assistance program has exacerbated racial inequities, research shows. On the whole, research on TANF suggests that policies to take away SNAP from individuals who are not working or participating in work activities for a specific number of hours each month will hurt, not help, the individuals most in need of assistance. Nearly every study comparing the race and ethnicity of sanctioned and non-sanctioned TANF recipients finds that African Americans are significantly more likely to be sanctioned than their white counterparts.²⁸⁹ For example:

- A 2011 study of Minnesota TANF recipients found that the state sanctioned a disproportionate number of American Indian or Alaskan Native recipients and sanctioned them more often than other racial groups during a 24-month observation period. While American Indian or Alaskan Natives only comprised around 10.9 percent of the families receiving TANF in Minnesota, they made up 12.2 percent of all families that the state sanctioned. Further, the average number of sanctions was 3.54 for American Indian and Alaskan Native families, while it was only 3.18 for White, non-Hispanic families.²⁹⁰
- A 2007 study of Florida's TANF program showed black families were more likely to be sanctioned than White families after several months of continuous TANF receipt. Specifically, the study estimated that among families who received TANF benefits for at least nine months continuously, black families were 22 to 35 percent more likely to be sanctioned than White families.²⁹¹

²⁸⁸ Rebecca A. London and Jane G. Mauldon, "Time Running Out: A Portrait of California Families Reaching the CalWORKs 60-Month Time Limit in 2004," Welfare Policy Research Project (November 2006), pp. 1- 6. <http://escholarship.ucop.edu/uc/item/37g3510z>.

²⁸⁹ LaDonna Pavetti, Michelle K. Derr, and Heather Hesketh, "Review of Sanction Policies and Research Studies," Mathematica Policy Research (March 2003).

²⁹⁰ Anita M. Larson, Shweta Singh, and Crystal Lewis, "Sanctions and Education Outcomes for Children in TANF Families," *Child & Youth Services* (September 2011), pp. 180-199.

²⁹¹ Richard C. Fording, Joe Soss, and Sanford F. Schram, "Devolution, Discretion, and the Effect of Local Political Values on TANF Sanctioning," *Social Service Review* (June 2007), pp. 285-316.

- A 2006 study of women in Wisconsin receiving TANF found that black women were more likely to be sanctioned than their white counterparts. This result was statistically significant under both a simple analysis and an analysis that took into account the duration of each individual's receipt of TANF grants.²⁹²
- A 2002 study of women receiving TANF in Michigan found that black women were disproportionately sanctioned compared to white women. The authors found similar results under two different specifications. One analysis, looking at mean differences, found that black women made up a disproportionate number of the total number of women that the state sanctioned. The other model, a multivariate logistic regression, provided similar evidence: African American women were 1.73 times more likely to be sanctioned than White women.²⁹³
- A 2011 study of TANF recipients in Maryland found evidence that African Americans were more likely to lose benefits due to sanctions compared to other recipients. The study found that African Americans were disproportionately represented among families that had been sanctioned as a result of work requirements relative to respondents of other races.²⁹⁴
- A New Jersey study found that among TANF recipients entering the program between July 2000 and June 2001, 36 percent of African American recipients had their TANF grants reduced and 16 percent had their grant eliminated due to a work-related sanction; the comparable figures for white recipients were 27 percent and 10 percent, respectively.²⁹⁵

Data from the Wisconsin Department of Workforce Development shows a consistent pattern of racial and ethnic discrepancies in TANF sanctions. Statewide, 42 percent of African American participants and 45 percent of Hispanic participants were sanctioned, compared to just 24 percent of white participants.²⁹⁶ Researchers in several states have looked at the demographics of the share of their caseload approaching or at the time limit. In a number of examples, including a national survey, families and recipients of color — and particularly black recipients — are more likely to lose benefits due to the time limit. This evidence suggests that expanding time limits in other programs will disproportionately affect black recipients. Other research cited below highlight the unique challenges African Americans face in the labor market. Loss of assistance, paired with the difficulty of securing or maintaining a job, could make the hardship experienced by this group even worse.

- The Minnesota TANF agency found that black women, including African Americans, Somali immigrants, and other African immigrants, made up about half of the adult recipients who

²⁹² Chi-Fang Wu *et al.*, “How Do Welfare Sanctions Work?,” *Social Work Research* (March 2006), pp. 33-50.

²⁹³ Ariel Kalil, Kristin S. Seefeldt, and Hui-chen Wang, “Sanctions and Material Hardship under TANF,” *Social Service Review* (December 2002), pp. 642-662.

²⁹⁴ Sarah Williamson, “Full-Family Sanctions & Economic Recession,” University of Maryland Family Research and Training Group (January 2011). <https://familywelfare.umaryland.edu/reports1/sanctionsbrief.pdf>

²⁹⁵ LaDonna Pavetti *et al.*, “The Use of TANF Work-Oriented Sanctions in Illinois, New Jersey, and South Carolina,” Mathematica Policy Research (April 2004).

²⁹⁶ Wisconsin Department of Workforce Development, “Wisconsin Works (W-2) Sanctions Study,” (December 2004).

reached 60 months, the federal time limit. African Americans in particular were the most likely to reach the federal time limit.²⁹⁷

- A study in Maryland found most of the caseload consisted of black women and they were the most likely of any racial group to reach the time limit.²⁹⁸
- In Virginia, black families were more likely to reach the limit than white families.²⁹⁹
- In Washington State, families cut off by the time limit tended to be black or American Indian.³⁰⁰
- Using the Women's Employment Study for one Michigan urban county, researchers analyzed factors associated with increased time on TANF. They found that black women were far more likely to have accumulated more months, and thus be closer to the time limit, than white women.³⁰¹

SNAP participants of color also face discrimination when looking for work. Investigations in job discrimination uncovered strong employer preferences for white candidates over candidates of color. One study found that resumes with white-sounding names are more likely to get call-backs than resumes with equal qualifications but with black-sounding names. Other research shows that generally, those with a criminal record are less likely to get call-backs or requests for interviews from employers. Furthermore, black applicants without criminal records are less likely to receive favorable treatment than white applicants without criminal records, but white applicants with a criminal record are more likely to receive favorable treatment than black applicants with no criminal history.³⁰²

H. Households That Lose TANF Benefits Because of Sanctions or Time Limits Experience Higher Levels of Material Hardship and Increased Hardship

People with incomes low enough to qualify for SNAP also often have few or no assets to lean on in difficult times and a limited amount of cash to meet basic needs like rent and utilities, clothes,

²⁹⁷ Dana DeMaster, "At the Limit: December 2006 Minnesota Family Investment Program (MFIP) Cases that Reached the 60 Month Time Limit," Minnesota Department of Human Services (January 2008), pp. 1-18, <https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5092B-ENG>.

²⁹⁸ Pamela Ovwigho, Kathryn Patterson, and Catherine E. Born, "The TANF Time Limit: Barriers & Outcomes among Families Reaching the Limit," Family Welfare Research and Training Group (November 2007), pp. 1-34, https://familywelfare.umaryland.edu/reports1/tl_barriers.pdf.

²⁹⁹ Anne Gordon *et al.*, "Experiences of Virginia Time Limit Families After Case Closure: An Interim Report," Mathematica (2002), pp. 1 – 177, <https://www.mathematica-mpr.com/-/media/publications/pdfs/expvafinal.pdf>.

³⁰⁰ Christina McHugh and J. Taylor Danielson, "TANF Time Limit Analysis Comparing Cases Closed Due to Time Limits with Other Case Closures," Washington State Department of Social and Health Services (February 2019).

³⁰¹ Kristin S. Seefeldt and Sean M. Orzol, "Watching the Clock Tick: Factors Associated with TANF Accumulation," *National Poverty Center Working Paper Series* (May 2005), <http://www.npc.umich.edu/publications/workingpaper04/paper9/04-09.pdf>.

³⁰² Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* (2003), pp. 937-975.

personal care items, and gas or bus fare, among other things. SNAP helps meet food costs, but when that assistance is taken away, individuals struggle to make ends meet and some are unable to avoid a downward spiral. Studies examining sanctioned TANF families show that many people experience increased hardships after facing a sanction: a 2004 longitudinal study of TANF recipients in Illinois found that sanctioned families who faced grant reductions had higher levels of food hardship after being sanctioned than those who did not have their grants reduced by sanctions. Researchers defined food hardship as sometimes or often not having enough to eat. Recipients who had sanctions in the period January 1999 to March 2001 reported between February 2002 and September 2002 a higher incidence of food hardship and perceived overall hardship than other TANF recipients who did not experience grant reductions resulting from sanctions during the period. A multivariate analysis conducted with the same data indicated respondents who had their grants reduced due to sanctions were over three times more likely to report food hardship in the final period of the study (after the sanction) compared to those who were never sanctioned during the study, after controlling for demographic and other factors.³⁰³

A 2004 longitudinal study of TANF recipients in Illinois found those who had their grants reduced due to sanctions reported higher levels of perceived overall hardship. Perceived overall hardship was determined by the extent to which respondents agreed with statements like, “I worry about having enough money in the future.” Respondents who saw grant reductions as a result of sanctions between January 1999 and March 2001 showed more perceived overall hardship following the sanctions (between February and September 2002) than those who were never sanctioned during the former, 51-month period.³⁰⁴

A 2002 study of women in Michigan receiving TANF suggests those who were sanctioned were more likely to experience hardship and have to prioritize hardship-mediating activities than those who were not sanctioned. Specifically, 21 percent of sanctioned families (compared to 9 percent of non-sanctioned families) reported having their gas or electricity turned off in the previous year because they could not afford to make their utility payments.³⁰⁵ Researchers found that 34 percent of sanctioned families (compared to 14 percent of non-sanctioned families) had resorted to hardship-mitigating activities such as pawning, stealing food, searching in trash cans, or begging.³⁰⁶

The 2002 study of Michigan TANF households suggests women who were sanctioned are more likely to expect future hardship — such as inadequate housing, food, or medical care in the next two months — than those who were not sanctioned. Women who were sanctioned were 2.41 times

³⁰³ Bong Joo Lee, Kristen S. Slack, and Dan A. Lewis, “Are Welfare Sanctions Working as Intended? Welfare Receipt, Work Activity, and Material Hardship among TANF-Recipient Families,” *Social Service Review* (September 2004), pp. 370-403.

³⁰⁴ Bong Joo Lee, Kristen S. Slack, and Dan A. Lewis, “Are Welfare Sanctions Working as Intended? Welfare Receipt, Work Activity, and Material Hardship among TANF-Recipient Families,” *Social Service Review* (September 2004), pp. 370-403.

³⁰⁵ Ariel Kalil, Kristin S. Seefeldt, and Hui-chen Wang, “Sanctions and Material Hardship under TANF,” *Social Service Review* (December 2002), pp. 642-662.

³⁰⁶ Ariel Kalil, Kristin S. Seefeldt, and Hui-chen Wang, “Sanctions and Material Hardship under TANF,” *Social Service Review* (December 2002), pp. 642-662.

more likely to expect future hardship compared to women who were not sanctioned, the researchers found.³⁰⁷

There is evidence from a study of people who frequented a food pantry in upstate New York that people who lost TANF benefits due to sanctions were more likely to experience hardship than others. Specifically, it was more common for people who had been sanctioned — relative to those who had not been sanctioned — to report having more difficulty in the past six months paying for food, rent, adult health care, and other bills. Similarly, the number of sanctioned respondents who indicated they had moved within the past six months due to inability to pay rent was disproportionately high relative to the responses from those who were not sanctioned. Access to a telephone told a similar story of increased hardship, with a disproportionate number of sanctioned people lacking access to a phone, relative to those who were not sanctioned.³⁰⁸

A study using data from the Fragile Families and Child Wellbeing survey, which surveys mothers from 20 cities in 15 states, evaluated the level of hardship among those who had been sanctioned in the prior 12 months and non-sanctioned mothers who received TANF. Researchers found that those who had been sanctioned in the prior 12 months were 85 percent more likely to report any material hardship compared to non-sanctioned mothers receiving TANF (42 percent of those sanctioned reported one or more material hardships, compared to 27 percent of those not sanctioned). Researchers found that those sanctioned were 63 percent more likely than non-sanctioned mothers to report maternal or child hunger and 76 percent more likely to report having their utilities shut off in the 12 months prior to the interview. The study also found that sanctioned mothers were 79 percent more likely to report being unable to receive medical care, for either themselves or a child, due to cost. The study controlled for sociodemographic factors known to be associated with being sanctioned and controlled for hardship levels mothers faced prior to being sanctioned.³⁰⁹

A Washington State study using predictive modeling to identify the factors likeliest to cause a new spell of homelessness for TANF parents found that sanctioned recipients were about 20 percent more likely than non-sanctioned parents to begin a new spell of homelessness in the next month.³¹⁰

Underlying the NPRM's proposal to restrict waivers is the claim that subjecting more individuals to the three-month time limit will increase employment. But research on public benefit programs that have time limits demonstrates that arbitrary time limits do not lead to self-sufficiency. Instead, some research finds families cut off TANF because of time limits have significant barriers to

³⁰⁷ Ariel Kalil, Kristin S. Seefeldt, and Hui-chen Wang, "Sanctions and Material Hardship under TANF," *Social Service Review* (December 2002), pp. 642-662.

³⁰⁸ Jean Oggins and Amy Fleming, "Welfare Reform Sanctions and Financial Strain in a Food-Pantry Sample," *The Journal of Sociology & Social Welfare* (June 2001), pp. 101-123, <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=2725&context=jssw>.

³⁰⁹ Nancy E. Reichman *et al.*, "TANF Sanctioning and Hardship," *Social Service Review* (June 2005) Vol. 79 No. 2, pp. 215-236.

³¹⁰ Melissa Ford Shah *et al.*, "Predicting Homelessness among Low-Income Parents on TANF," Washington State Department of Social & Health Services (August 2015).

employment and experience hardship. Without cash, the challenge for parents to support their children becomes even harder and a downward spiral emerges. Finding employment becomes even harder when parents need to scramble to make ends meet. The studies below offer examples of time-limited families unable to maintain stable housing and/or pay their bills and, in some instances, afford enough food.

- A Washington State study comparing families who left TANF due to time limits and those who left for other reasons found that time-limited families were more likely to be unstably housed one month after losing assistance.³¹¹
- According to a survey of 276 former West Virginia TANF recipients cut off because of time limits, 59 percent reported that they were either worse off or much worse off financially since leaving WV WORKS; 65 percent did not have enough money to pay the electric, gas, or water bill; and 51 percent did not have enough money to pay for heat. These percentages were much lower when the recipients were on WV WORKS. After losing assistance because of the time limit, 61 percent of respondents reported that the amount of stress in their lives was either worse or much worse since being removed from WV WORKS. They were also more pessimistic about their own personal and financial futures. These financial burdens stem from their very low level of employment: only 26.9 percent of recipients were employed and more than half of the employed were working part-time.³¹²
- A survey of dozens of Maine TANF recipients cut off by the time limit found that families experienced increased reliance on food banks, inability to pay utilities and other bills, and overcrowded housing conditions or reliance on homeless shelters.³¹³

I. Work Requirements in TANF Do Not Work

The rationale for reducing or eliminating benefits for not meeting a work requirement is that this will compel unemployed adults to find work. Evidence suggests that work requirements (along with other policy changes that accompanied TANF's implementation) contributed to a modest increase in employment during the late 1990s, but that work often was not steady, a pattern reflected in recent studies as well.

Research on adults who lost TANF due to sanctions for failure to meet a work requirement found that these individuals have trouble finding employment after their exit. The personal, family, or community barriers that kept them from finding a job while on TANF also prevent these parents from finding work after TANF. Findings from TANF suggest that even if the NPRM intends to impose work requirements only on "work able" individuals, substantial numbers of SNAP recipients who face personal or family challenges would likely fall through the cracks and have their benefits

³¹¹ Melissa Ford Shah *et al.*, "Predicting Homelessness among Low-Income Parents on TANF," Washington State Department of Social & Health Services (August 2015).

³¹² Robert Jay Dilger *et al.*, "WV WORKS 2003: Perspectives of Former Recipients Who Have Exhausted Their 60 Months of Program Eligibility," *West Virginia University Interdisciplinary Task Force on Welfare Reform* (Summer 2004), pp. 1-24.

³¹³ Sandra Butler, "TANF Time Limits and Maine Families: Consequences of Withdrawing the Safety Net," *Maine Equal Justice Partners* (April 2013), pp. 1-16, <http://www.mejp.org/sites/default/files/TANF-Study-SButler-Feb2013.pdf>.

reduced or taken away. Evidence from studies that show that employment rates tend to be lower for these populations include the following:

- A 2004 longitudinal study of TANF recipients in Illinois found that those respondents who were sanctioned during the study period were more likely to be unemployed after the study period than those who were not sanctioned and had, on average, significantly lower levels of earnings post-sanction than those who were not sanctioned. More specifically, respondents who received sanctions that reduced cash grants between January 1999 and March 2001 were 44 percent less likely to be engaged in formal work during the period April 2001 through September 2001 than the respondents who did not receive sanctions during the preceding period, even after controlling for previous work experience and other characteristics associated with employment. And, TANF families receiving sanctions that were carried out through grant reductions between January 1999 and March 2001 had lower average earnings during the next six months than those respondents who were not sanctioned.³¹⁴

The study also helps explain why those sanctioned had worse outcomes and were less likely to be working. Working-age adults who have their grants reduced due to sanctions had higher barriers to employment than those who were not sanctioned. The group had higher levels of engagement in job training and other work activities and had a higher incidence of participation in informal work such as babysitting and odd jobs in the final period of the study than those with no grant reductions due to sanctions. This indicates the lower levels of formal employment among sanctioned respondents is not easily attributed to an unwillingness to work, since this population engages more heavily than those who did not experience grant reductions from sanctions in job training and informal work. A stronger explanation is that those who are sanctioned have more significant barriers to formal employment than those who are not.³¹⁵

- A 2011 study of Maryland TANF recipients who were sanctioned found that these recipients had consistently lower post-exit employment rates relative to those who left TANF for reasons other than work sanctions, throughout the nine-year post-exit period that the study covered. Similarly, the average earnings for the group that left due to work sanctions was lower than the average earnings of those who left for other reasons.³¹⁶
- A 2018 study of state-collected data on the employment of Kansas parents leaving TANF cash assistance due to work-related sanctions and time limits between October 2011 and March 2015 indicates that a lower share of these parents worked in the year after their exit compared to families exiting TANF for other reasons. They also found it more difficult to find steady work compared to the other families exiting the program. In the average quarter

³¹⁴ Bong Joo Lee, Kristen S. Slack, and Dan A. Lewis, “Are Welfare Sanctions Working as Intended? Welfare Receipt, Work Activity, and Material Hardship among TANF-Recipient Families,” *Social Service Review* (September 2004), pp. 370-403.

³¹⁵ Bong Joo Lee, Kristen S. Slack, and Dan A. Lewis, “Are Welfare Sanctions Working as Intended? Welfare Receipt, Work Activity, and Material Hardship among TANF-Recipient Families,” *Social Service Review* (September 2004), pp. 370-403.

³¹⁶ Sarah Williamson, “Full-Family Sanctions & Economic Recession,” University of Maryland Family Research and Training Group (January 2011), <https://familywelfare.umaryland.edu/reports1/sanctionsbrief.pdf>.

of the year after exiting, only 49 percent and 47 percent of the sanctioned and time-limited families, respectively, were working, compared to 72 percent of families exiting due to the income limit and 53 percent for all other reasons. Moreover, only about a quarter of the sanctioned and time-limited families worked between seven and nine quarters in the year before and after their exit, compared to a third of families overall.³¹⁷

- A 2001 study of people who frequented a food pantry in upstate New York found that employment rates were lower for people who had lost TANF benefits due to sanctions. Among those surveyed in 1997, 13 percent of those sanctioned reported having had wage earnings in the previous six months, while 22 percent of unsanctioned respondents reported earnings over the same period. Moreover, because of the effects of sanctions, sanctioned respondents were far more likely to report being disconnected both from work and from TANF benefits. A full quarter of the sanctioned sample in 1997 reported no work and no TANF benefits, compared with 3 percent reporting the same in the unsanctioned sample.³¹⁸
- A three-year study of TANF recipients in two California counties provides evidence that employment rates are lower for those with significant barriers to employment. The study excluded individuals who received disability benefits and focused on mental health issues such as major depression, generalized anxiety disorder, panic attacks, social phobia, or posttraumatic stress disorder. Those who reported functional impairment over the previous month were far more likely not to have worked over the previous year. In the first follow-up year, 54.2 percent of functionally impaired respondents had worked in the previous year, compared to 75.2 percent of those without such difficulties. In the second follow-up year, 58.5 percent of those with functional impairments worked in the previous year, compared to 79.2 percent of those without such difficulties. The researchers found a statistically significant association between having a mental health issue and having no earned income over the previous year. The most reasonable interpretation of this result is not that the respondents who were not working had some other source of support, but that they were unable to secure work due to their significant barrier to employment.³¹⁹
- A California study of CALWORKS recipients found that recipients who had been sanctioned were much less likely to report obtaining full-time employment over three years (38 percent of respondents) compared to non-sanctioned clients (60 percent of respondents). Researchers measured employment history by asking respondents about previous full- or part-time

³¹⁷ Tazra Mitchell, LaDonna Pavetti, and Yixuan Huang, "Life After TANF in Kansas: For Most, Unsteady Work and Earnings Below Half the Poverty Line," Center on Budget and Policy Priorities (February 2018), <https://www.cbpp.org/research/family-income-support/life-after-tanf-in-kansas-for-most-unsteady-work-and-earnings-below>.

³¹⁸ Jean Oggins and Amy Fleming, "Welfare Reform Sanctions and Financial Strain in a Food-Pantry Sample," *The Journal of Sociology & Social Welfare* (June 2001), pp. 101-123, <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=2725&context=jssw>.

³¹⁹ Daniel Chandler *et al.*, "Mental Health, Employment, and Welfare Tenure," *Journal of Community Psychology* (September 2005), pp. 578-609.

employment, and whether they were without work throughout the three years prior to the survey.³²⁰

- Studies consistently find lower employment rates among TANF leavers whose cases were closed due to a work-oriented sanction than among families that left TANF for other reasons. For example, in Arizona, 40 percent of sanctioned leavers were working in the first quarter after exit, compared to 55 percent of non-sanctioned leavers.³²¹
- In Maryland, 6 months after exit, 38 percent of sanctioned leavers were employed, compared to 58 percent of non-sanctioned leavers.³²²
- A study of TANF recipients nationwide using the Census Bureau's Survey of Income and Program Participation indicates those who are disconnected from both work and cash assistance are more likely to have a significant barrier to employment than those who either work or receive cash assistance. Those who had both no household earned income or any cash assistance during the survey month were about twice as likely to report having a physical or mental health condition that limits one's ability to work compared to those who either worked or received cash assistance. Results were consistent across geographic regions. In southern states, 15.8 percent of disconnected respondents reported a physical or mental health work-limiting condition, while only 7.4 percent of non-disconnected respondents had such a condition; in non-southern states, 24.3 percent of disconnected respondents had a work-limiting condition, while among non-disconnected respondents, 10.4 percent reported having such a condition. It should be noted that these respondents with physical and mental health conditions were not receiving support from SSI; SSI recipients (and those who reported school as their major activity) were excluded from the sample.³²³

Most TANF Recipients Who Lose Benefits Due to Time Limits Do Not Find Steady Employment

Cutting off families because they have reached some arbitrary time limit ignores whether they can actually support themselves or if the job market is welcoming to them. Several studies have found that parents cut off of TANF due to the time limits have trouble finding employment. The health, familial, and behavioral circumstances that kept them from finding a job while on TANF also prevent these parents from finding work after TANF. Black families are not only the most likely to be cut off by time limits, but also very likely to be discriminated against in the job market, the evidence shows. In some instances, parents who can find work may be working inconsistently and thus still fall short of a stable income.

³²⁰ Yeheskel Hasenfeld, Toorjo Ghose, and Kandyce Larson, "The Logic of Sanctioning Welfare Recipients: An Empirical Assessment," *Social Science Review* (June 2004), Vol. 78, No. 2, pp. 304-319, http://repository.upenn.edu/spp_papers/88/.

³²¹ Karen L. Westra and John Routley, "Arizona Cash Assistance Exit Study," Arizona Department of Economic Security Office of Evaluation (January 2000).

³²² Catherine Born, Pamela Caudill, and Melinda Cordero, "Life After Welfare: A Look at Sanctioned Families," University of Maryland School of Social Work (November 1999).

³²³ Andrea Hetling, "The Importance of Region and State Welfare Rules for Disconnected Single Mothers," *University of Kentucky Center for Poverty Research Discussion Paper Series* (September 2011).

- In Washington State, time-limited parents were less likely to be employed in the year before leaving TANF.³²⁴
- Researchers from the University of Maryland’s School of Social Work found that compared to other people leaving TANF, those leaving because they reached the time limit had less employment history while on TANF and worked fewer quarters in the year after leaving assistance.³²⁵
- Other researchers of Maryland’s TANF program found that recipients who reported having a criminal record were more likely to reach the time limit than those who did not report having a criminal background. While recipients with a criminal conviction are as likely to be employed as other recipients, their employment is more unstable. These women are often more likely to have other barriers as well, such as human capital deficits and situational barriers.³²⁶
- An analysis of the Building Wealth and Health Network pilot program found depression is often a barrier to employment among TANF recipients, and that adverse childhood experiences (ACEs) and exposure to community violence are often associated with depression. The study investigated how resilience affects the relationship between ACEs, community violence, and depression. TANF families have a high prevalence of health impediments and significant barriers to employment, such as domestic violence, food insecurity, utility shut offs, homelessness, child hospitalizations, and child developmental risks.³²⁷

Most TANF Recipients Who Lose Benefits Due to Sanctions Do Not Find Steady Employment

The rationale for reducing or eliminating benefits for not meeting a work requirement is that this will compel parents to find work. Evidence suggests that work requirements (along with other policy changes that accompanied TANF’s implementation) contributed to a modest increase in employment during the late 1990s, but that work often was not steady,²⁸ a pattern reflected in recent studies as well.

Another consequence of work requirements in TANF raises concerns about the NPRM’s goal of subjecting more unemployed adults to SNAP’s time limit. As it has become harder for single

³²⁴ Christina McHugh and J. Taylor Danielson, “TANF Time Limit Analysis Comparing Cases Closed Due to Time Limits with Other Case Closures,” Washington State Department of Social and Health Services (February 2019).

³²⁵ Andrea Hetling, Kathryn Patterson, and Catherine Born, “The TANF Time Limit: Comparing Long-Term and Other Welfare Leavers,” Family Welfare Research and Training Group (February 2006) pp. 1-19, <https://familywelfare.umaryland.edu/reports1/timelimitleavers.pdf>.

³²⁶ Valerie Head, Catherine Born, and Pamela Ovwigho, “Criminal History as an Employment Barrier for TANF Recipients,” Family Welfare Research Training Group (March 2009), pp. 1-39. https://pdfs.semanticscholar.org/2c12/a0663bd8249586c000a82122cc2e6c796e23.pdf?_ga=2.3188080.1987654092.1552314136-1225174621.1551994502.

³²⁷ Seth L. Welles, Falguni Patel, and Mariana Chilton, “Does Employment-Related Resilience Affect the Relationship between Childhood Adversity, Community Violence, and Depression?” *Journal of Urban Health* (2017), Vol. 94, pg. 233-243, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5391326/>.

mothers to get direct financial assistance when they cannot find work, the number with neither jobs nor TANF has grown substantially over time. In 1995, the number of families receiving cash assistance in an average month exceeded the number of jobless single mothers by about a million. By 2016, the number of families receiving cash assistance in an average month was roughly 2 million below the number of jobless single mothers. As a result, work requirements in TANF fueled an increase in deep poverty (measured as income at or below half of the poverty line).

J. Evidence from Medicaid Work Requirements Shows Beneficiaries Lose Benefits But Don't Gain Employment

Additional evidence that taking benefits away from individuals who are unable to meet strict work requirements does not lead to increased work rates comes from the recent state waivers to apply such policies in Medicaid. In June 2018, Arkansas became the first state to condition receipt of Medicaid benefits on meeting a work requirement. Certain beneficiaries must participate in and report 80 hours of work or work-like activity each month.³²⁸ Those that fail to meet the requirement for three months in a calendar year lose coverage.³²⁹

In 2018, over 18,000 Arkansas Medicaid beneficiaries — nearly 25 percent of the total population the state identified as potentially subject to the work requirement — lost coverage for failing to meet the requirement.³³⁰ This far exceeds the population that the state's articulated policy intended to target with the requirement: beneficiaries who were able to work but were not working. Many individuals who qualified for an exemption for being unable to work or who were working are among those who lost coverage. Many beneficiaries were unaware of the requirement, did not understand what they had to do to meet the requirement, or were unable to navigate the reporting requirement.³³¹

Moreover, there is no evidence that the work requirement has led to increased employment. Although the state has cited data from the New Hire Database as evidence that beneficiaries are starting new jobs, it has not provided any evidence that the work requirement caused these new hires; low-income workers frequently begin new jobs or change jobs. Further, the data source includes individuals who worked for only a few hours or one day, doesn't show if the job is

³²⁸ In 2018, non-disabled adult beneficiaries ages 30 through 49 who do not have minor children in their homes were subject to the work requirement in Arkansas. The state has begun phasing in the requirement for beneficiaries 19 through 29 in 2019.

³²⁹ Jennifer Wagner, "Commentary: As Predicted, Eligible Arkansas Medicaid Beneficiaries Struggling to Meet Rigid Work Requirements," Center on Budget and Policy Priorities, July 30, 2018, <https://www.cbpp.org/health/commentary-as-predicted-eligible-arkansas-medicaid-beneficiaries-struggling-to-meet-rigid>.

³³⁰ Jennifer Wagner, "Medicaid Coverage Losses Mounting in Arkansas From Work Requirement," Center on Budget and Policy Priorities, January 17, 2019, <https://www.cbpp.org/blog/medicaid-coverage-losses-mounting-in-arkansas-from-work-requirement>.

³³¹ Jennifer Wagner, "4,109 More Arkansans Lost Medicaid in October for not Meeting Rigid Work Requirement," Center on Budget and Policy Priorities, October 16, 2018, <https://www.cbpp.org/blog/4109-more-arkansans-lost-medicaid-in-october-for-not-meeting-rigid-work-requirements>.

temporary (such as seasonal work around the holidays), and doesn't indicate if the employee had been previously unemployed as opposed to just recently changed jobs.³³²

In fact, other evidence from state Medicaid administrative data indicates that at most a few hundred people may have found jobs due to the federal waiver. Most Medicaid beneficiaries don't face monthly reporting requirements, mainly because they're already working or qualified for exemptions. Only the remaining group, which has to report hours of work each month, faces any new work incentive due to the new policy. And of that group, only a few hundred each month have met the requirement by reporting some work hours, the state reports. What's more, many of them likely would have found jobs anyway.³³³

These data are consistent with focus group interviews showing that the work requirement isn't changing Medicaid beneficiaries' behavior. Beneficiaries already had enough reasons to work: they need to pay their bills. But they often struggle with unstable work hours, live in rural areas with few jobs, or face other barriers to employment — and the state hasn't invested any new money in job training programs, services to address barriers, or supports like transportation to help beneficiaries connect to jobs.³³⁴

Meanwhile, the work requirement has even proved counterproductive for some. News reports describe working beneficiaries who struggled with the reporting requirement and lost Medicaid coverage. Consequently, some have gone without needed medication, worsening their health and in some cases costing them their jobs. Moreover, any small increase in employment must be viewed in light of the 18,000 beneficiaries who lost coverage.³³⁵

Numerous other states are in the process of implementing Medicaid work requirements, and estimates show similar coverage losses are likely. For example, the waiver in Michigan may lead up to 27 percent of the state's Medicaid expansion population to lose coverage the first year.³³⁶ Kentucky's own projections say its work requirement, which has been challenged in court, would cause 95,000 enrollees to lose coverage in five years.³³⁷ A group of health care providers and advocates filed an amicus brief in the Kentucky litigation pointing out that its work requirement will worsen health and won't promote work.³³⁸

³³² Jennifer Wagner, "Fact Checking Arkansas Governor's Claims About Jobs and Medicaid Waiver," Center on Budget and Policy Priorities, January 28, 2019, <https://www.cbpp.org/blog/fact-checking-arkansas-governors-claims-about-jobs-and-medicaid-waiver>.

³³³ *Ibid.*

³³⁴ *Ibid.*

³³⁵ *Ibid.*

³³⁶ Cindy Mann and April Grady, "Potential Enrollment Impacts of Michigan's Medicaid Work Requirement," Manatt Health, February 6, 2019, https://www.manatt.com/Manatt/media/Media/Images/White%20Papers/Manatt_MI-Work-Req-Estimates_20190206-Final.pdf.

³³⁷ Phil Galewitz, "Judge Blocks Kentucky Medicaid Work Requirement," Kaiser Health News, June 29, 2018, <https://khn.org/news/judge-blocks-kentucky-medicaid-work-requirement/>.

³³⁸ *Steward v. Azar* amicus brief, January 24, 2019, <https://www.psychiatry.org/File%20Library/Psychiatrists/Directories/Library-and-Archive/amicus-briefs/amicus-2019-Steward-v-Azar-DC-No18-152.pdf>.

The experience thus far with Medicaid work requirements demonstrates that such policies take coverage away from large portions of beneficiaries, including those who are working or qualify for an exemption but cannot navigate the red tape of the requirement. At the same time, they fail to lead to increased work activity or employment.

Chapter 7: Proposed Rule’s Requirement That State Waiver Requests Have the Governor’s “Endorsement” Violates Congressional Intent

The proposed rule would require that state requests to waive the time limit in areas with insufficient jobs “be *endorsed* by the State’s Governor”³³⁹ (emphasis added). This change is in direct violation of Congressional intent, as clearly expressed less than two months before publication of the proposed rule. If FNS proceeds to publish a final rule it must reject this change and conform to the intent of Congress.

Current regulations regarding state requests to waive the three-month time limit say simply that such requests are made to FNS “on the request of the State agency.”³⁴⁰ The presumption is that state agencies will be acting under the direction of their political leadership, including the Governor. CBPP has worked with states on their waiver requests for more than 20 years. We cannot remember ever working with a state agency that knowingly sought a waiver against the wishes of the Governor. It is true, however, that Governors are not typically aware of every detailed policy option and choice that their cabinet Secretaries adopt for SNAP. Similarly, Governors do not typically sign waivers, review nutrition education plans, or even personally review large scale procurements. Governors serve as chief executives rather than detailed policy implementers.

The House-passed 2018 farm bill sought to require the “*approval* of the chief executive officer of the State”³⁴¹ for waiver requests (emphasis added). The final conference agreement on the 2018 farm bill rejected the House approach, and instead requires “the *support* of the chief executive officer of the state” (emphasis added).³⁴² The 2018 farm bill, The Agriculture Improvement Act of 2018, passed the Congress in mid-December and was signed by the President on December 20, 2018.

The conferees in the conference report that accompanied the bill were very clear about their intent in making this change:

The Managers 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. In response to concerns that have been raised by some Members that State agencies have not fully communicated to the chief executive their intent to request a waiver under section 6(o), the Managers have included a provision to encourage communication between the State agency and the chief executive officer of the State. The Managers agree that State agencies should have the *support* of these officials in their application for waiver, ensuring maximum State coordination. *It is not the Managers’ intent that USDA*

³³⁹ NPRM, p. 992.

³⁴⁰ 7 C.F.R. § 273.24(f).

³⁴¹ Section 4015 of House-passed H.R. 2, <https://www.congress.gov/115/bills/hr2/BILLS-115hr2eh.pdf>.

³⁴² Section 4005 of H.R. 2 as enacted, <https://www.congress.gov/115/bills/hr2/BILLS-115hr2enr.pdf>.

undertake any new rulemaking in order to facilitate support for requests from State agencies, *nor should the language result in any additional paperwork or administrative steps* under the waiver process.³⁴³ (Emphasis added.)

Thus, the conferees were clear that they did not intend for FNS to engage in new rule-making based on the change and did not want to introduce any new “paperwork or administrative steps.” State Administrators are left on their own to ensure that they have the support of their Governor. The change in statute simply clarifies this practice for those who were unduly concerned that state agencies were acting against the wishes of the Governor.

By requiring the “endorsement” of the state’s governor in the proposed rule, FNS ignored this expressed intent of Congress and went too far. The only explanation FNS gives in the NPRM is a short sentence in the preamble:

The Department proposes clarifying that any State agency’s waiver request must have the Governor’s endorsement to ensure that such a critical request is supported at the highest levels of State government.³⁴⁴

The *Merriam Webster’s Collegiate Dictionary* definition of “endorsement” suggests that the term implies a signature, which would necessarily require additional paperwork. Such a step would directly contradict Congressional intent. From other aspects of the NPRM it is clear that FNS was aware of the passage of the 2018 farm bill.³⁴⁵ So the only reasonable conclusion is that FNS chose to ignore Congressional intent and intends to add paperwork burden and steps to the process.

³⁴³ Conference Report to accompany H.R. 2, pp. 616-617, <https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf>.

³⁴⁴ NPRM, p. 983.

³⁴⁵ See, for example, p. 987 of the NPRM: “The proposed rule would end the unlimited carryover and accumulation of ABAWD percentage exemptions, previously referred to as 15 percent exemptions before the enactment of the Agriculture Improvement Act of 2018. Upon enactment, Section 6(o)(6) of the Act provides that each State agency be allotted exemptions equal to an estimated 12 percent of “covered individuals...”

Chapter 8: Proposed Rule Would Make Implementing The Time Limit Harder by Removing Provisions That Give States Certainty Around Approval

The proposed rule would eliminate the ability of states to implement a waiver at the time a request is submitted, requiring FNS approval prior to any waiver implementation. The proposed rule would also remove language that identifies waivers that meet certain standards as “readily approvable.” Currently, these two provisions give states certainty of approval that enables them to better plan for waiver implementation while waiting for approval. Given that FNS can substantially delay approval (and recently has done so), this proposal would put an undue burden on states preparing for the complex and error-prone process of implementing the time limit. FNS also failed to articulate a need for these changes, making it difficult for commenters to weigh in on any potential benefit. We therefore urge the Department to keep current regulations at 7 C.F.R. § 273.24(f)(3) and 7 C.F.R. § 273.24(f)(4), which establish the “readily approvable” standard and allow states to implement waivers upon submission of the waiver request in some instances.

Current regulations have two provisions that give states more certainty in the waiver approval process. These provisions allow them time to prepare for implementation of the time limit while waiting for FNS approval. The first provision, at 7 C.F.R. § 273.24(f)(3), establishes that waivers that meet certain standards are “readily approvable.” A readily approvable waiver includes data from the Bureau of Labor Statistics showing a 12-month unemployment rate of 10 percent, a 24-month unemployment rate 20 percent above the national average, or designation as a Labor Surplus Area (LSA) by the Department of Labor’s Employment and Training Agency. The final rule, published in 2001, stated that the Department decided to designate that it would approve those waivers “to facilitate the waiver process.”³⁴⁶ The second provision, at 7 C.F.R. § 273.24(f)(4), allows states to implement waivers based on having either a 12-month unemployment rate of 10 percent or LSA designation for the current fiscal year upon waiver submission, rather than waiting for FNS approval. With those two provisions, states can plan on implementing the waiver submitted under the first provision while awaiting FNS approval, and can actually implement prior to approval if it is one of the waivers specified in 7 C.F.R. § 273.24(f)(4). (FNS can contact the state to modify the waiver if needed.)

A. Certainty About Waiver Approval Process Is Crucial Due to Lengthy State Implementation Process

With a reasonable amount of certainty about FNS waiver approval, states can begin to plan earlier than if they had to wait for FNS to process waiver approval, which can take months and substantially delay planning. Having time to plan for implementation is crucial for states because of the demands of thoroughly implementing the time limit. As several documents from USDA — including memos, guidance, and a report from USDA’s Office of the Inspector General (OIG) — make clear, before a state can implement the time limit in a new area, states must:

³⁴⁶ 66 Fed. Reg., No. 11, 4438 (January 17, 2001).

- Identify individuals subject to the time limit: as one FNS memo explains, “Prior to waiver expiration, states must review case file information to identify individual ABAWDs and determine whether or not the ABAWD is subject to the time limit.”³⁴⁷
- Inform individuals subject to the time limit: state agencies have minimum requirements for notifying people who are subject or potentially subject to the time limit (such as an individual a state has identified as likely subject to the time limit based on age and other characteristics, but who may be eligible for an exemption). As one memo explains, states must “inform ABAWD and potential ABAWD households of the time limit, exemption criteria (including exemptions from the general work requirements), and how to fulfill the ABAWD work requirement,” as well as the requirement to report when work hours fall below 20 hours per week.³⁴⁸ The law requires caseworkers to explain these rules during the individual’s eligibility interview, but given the complexity of the policy, FNS recommends providing written notice to clients at least 30 days before the waiver ends. FNS encourages states to write notices in clear, understandable language, develop public information materials for websites and waiting rooms, and leverage partnerships in the community such as service providers.³⁴⁹ To properly implement the time limit, states must therefore train staff to ensure they can effectively explain the requirements to individuals subject to the time limit, develop written notifications, and use other resources such as community partnerships — all well before a waiver ends.
- Develop policies: States must develop policies for many aspects of the time limit, such as whether they will use a fixed or rolling clock, what procedures they will use to screen individuals for exemptions and what verifications are required, whether they will count unpaid or volunteer work towards the requirement, and how they will use 15 percent exemptions, among many others.³⁵⁰ States must also communicate these policies to caseworkers and other relevant staff, and ensure that computer systems reflect their policy choices. While some of these policy decisions may not change depending on the waiver outcome if the state has developed these policies for areas that already have the time limit, states or counties preparing

³⁴⁷ U.S. Department of Agriculture, Food and Nutrition Service, “Supplemental Nutrition Assistance Program – Expiration of Statewide ABAWD Time Limit Waivers,” March 4, 2015, <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Expiration-of-Statewide-ABAWD-Time-Limit-Waivers.pdf>

³⁴⁸ U.S. Department of Agriculture, Food and Nutrition Service, “SNAP – Requirements for Informing Households of ABAWD Rules,” April 17, 2017, https://fns-prod.azureedge.net/sites/default/files/snap/Requirements_for_Informing_Households_of_ABAWD_Rules.pdf

³⁴⁹ U.S. Department of Agriculture, Food and Nutrition Service, “SNAP - Best Practices and Resources for Informing Households of ABAWD Rules,” May 25, 2018, <https://fns-prod.azureedge.net/sites/default/files/snap/BestPracticesforInformingABAWDS.pdf>.

³⁵⁰ USDA Office of Inspector General, *FNS Controls Over SNAP Benefits For Able-Bodied Adults Without Dependents*, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>; U.S. Department of Agriculture, Food and Nutrition Service, “Supplemental Nutrition Assistance Program – Expiration of Statewide ABAWD Time Limit Waivers,” March 4, 2015, <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Expiration-of-Statewide-ABAWD-Time-Limit-Waivers.pdf>; <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Expiration-of-Statewide-ABAWD-Time-Limit-Waivers.pdf>; U.S. Department of Agriculture, Food and Nutrition Service, “Guide to Serving ABAWDs Subject to Time-limited Participation, 2015 https://fns-prod.azureedge.net/sites/default/files/Guide_to_Serving_ABAWDs_Subject_to_Time_Limit.pdf”; U.S. Department of Agriculture, Food and Nutrition Service, “Supplemental Nutrition Assistance Program - ABAWD Time Limit Policy and Program Access,” November 19, 2015, <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf>.

to implement the time limit for the first time will need time to ensure that policies are ready for implementation prior to the expiration of a waiver.

- Ready computer systems for tracking: as the OIG report explains, “Each month, the States are responsible for tracking an ABAWD’s status; countable months; fulfillment of the work requirement; exemption status with respect to age, pregnancy, and mental or physical capacity to perform work; 15 percent exemption status; and good cause for not meeting the work requirement.”³⁵¹ Setting up computer systems to accurately perform this complex monthly tracking, which may require states to work with contractors to re-program systems and test for errors, can be a time-consuming process.
- Train caseworkers: states must build in adequate time to ensure that eligibility workers thoroughly understand and can implement related policies, which may take months. For example, workers must be prepared to follow procedures to assess individuals’ fitness for work in order to screen for exemptions from the time limit³⁵² and must be prepared to explain the requirements to those individuals during the eligibility interview,³⁵³ among other tasks instrumental to implementing the time limit. The OIG report states, “FNS national officials informed us that the ABAWD provisions were very complex and that it takes months of extensive training for new staff to fully understand the ABAWD requirements. A State official said the ABAWD laws and regulations are the ‘most complicated SNAP policy in existence’ and are ‘fraught with the potential for case errors.’³⁵⁴
- Identify providers for qualifying work activities: Most states are not required to provide individuals subject to the time limit with spots in work programs that can fulfill the 20 hour a week requirement (called “qualifying activities”). The exceptions are “pledge states,” which receive additional funding for employment and training (E & T) programs if they commit to providing a work training spot to individuals subject to the time limit in their last month of SNAP benefits. FNS has in the past encouraged states to provide qualifying activities to individuals subject to the time limit.³⁵⁵ States that do wish to provide these services must

³⁵¹ USDA Office of Inspector General, *FNS Controls Over SNAP Benefits For Able-Bodied Adults Without Dependents*, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

³⁵² USDA Office of Inspector General, *Supplemental Nutrition Assistance Program – Able-Bodied Adults without Dependents (ABAWD) Questions and Answers – June, 2015*, <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-June%202015.pdf>.

³⁵³ U.S. Department of Agriculture, Food and Nutrition Service, “SNAP – Requirements for Informing Households of ABAWD Rules,” April 17, 2017, https://fns-prod.azureedge.net/sites/default/files/snap/Requirements_for_Informing_Households_of_ABAWD_Rules.pdf.

³⁵⁴ USDA Office of Inspector General, *FNS Controls Over SNAP Benefits For Able-Bodied Adults Without Dependents*, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

³⁵⁵ U.S. Department of Agriculture, Food and Nutrition Service, “Supplemental Nutrition Assistance Program - ABAWD Time Limit Policy and Program Access,” November 19, 2015, <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf>.

identify current E & T providers that can offer work placements for participants, and/or develop new relationships with providers to offer placements.³⁵⁶

Preparing for implementation is therefore a lengthy and difficult process, given that states must identify and notify individuals subject to the time limit, develop policies and guidance to support implementation, train workers, ready computer systems, and (if they choose) develop slots in work programs. Ensuring that local offices are ready to implement when a waiver changes or when a state or county implements the time limit for the first time is important not only to ensure that needy individuals don't mistakenly lose access to food assistance, but also to prevent incorrect implementation of the time limit from causing case errors.

Unclear if Proposed Rule's Core Standards Are Different From "Readily Approvable" Standard

The proposed rule would weaken both provisions that currently provide states with more certainty of FNS approval. First, the NPRM would remove the language establishing that waivers with certain criteria are "readily approvable." The preamble to the NPRM explains that the waivers requested under the "core standards" are likely to be approved, stating: "These revisions would include the establishment of core standards that would allow a State to reasonably anticipate whether it would receive approval from the Department."³⁵⁷ While the preamble therefore suggests that states may understand that waivers requested under the "core standards" can be reasonably be expected to be approved (provided they include the correct data and are calculated accurately), the actual rule lacks the specificity of the "readily approvable" language in current regulations at 7 C.F.R. § 273.24(f)(3). The proposed rule states: "(2) Core standards. FNS will approve waiver requests under (1)(i) and (ii) that are supported by any one of the following." If these core standards are indeed "readily approvable," then clarifying that USDA will approve waiver based on those standards would enable states to continue to plan for implementation.

The proposed rule would also eliminate the current provision at 7 C.F.R. § 273.24(f)(4) that allows states to implement the waiver upon submission. The preamble states:

The proposed rule would bar States from implementing a waiver prior to its approval. Though rarely used, current regulations allow a State to implement an ABAWD waiver as soon as the State submits the waiver request based on certain criteria. By removing the current pertinent text in 273.24(f)(4), the proposed rule would require States to request and receive approval before implementing a waiver. This would allow the Department to have a more accurate understanding of the status of existing waivers and would provide better oversight in the waiver process. It would also prevent waivers from being implemented until the Department explicitly reviewed and approved the waiver.³⁵⁸

³⁵⁶ U.S. Department of Agriculture, Food and Nutrition Service, "Guide to Serving ABAWDs Subject to Time-limited Participation, 2015, [https://fns-prod.azureedge.net/sites/default/files/Guide to Serving ABAWDs Subject to Time Limit.pdf](https://fns-prod.azureedge.net/sites/default/files/Guide%20to%20Serving%20ABAWDs%20Subject%20to%20Time%20Limit.pdf).

³⁵⁷ NPRM, p. 983.

³⁵⁸ NPRM, p. 987.

The Department's rationale for eliminating this provision is unclear given that the proposed rule also establishes "core standards" and current regulations require states to submit a detailed waiver request before implementing. The Department claims that eliminating the provision would allow the Department to "have a more accurate understanding of the status of existing waivers," but the Department does not explain why it lacks this clarity under current rules (given that states must submit waiver requests with the proposed waiver date of implementation) and cannot instead clarify requirements around informing FNS about implementation, rather than limit states' ability to implement a waiver while waiting for FNS approval. The Department also states that removing this provision would allow the Department to "provide better oversight in the waiver process," but again does not explain what current issue this proposal would address. If states can only submit waivers based on very clear criteria with clear methods, and FNS has the ability to modify the waiver, why does the Department suggest it currently lacks oversight in this process? The provision does not remove the ability of FNS to review and approve waivers, but instead moves up the timeline to give states the ability to more effectively implement waivers they know will be approved. FNS does not explain what need or deficit this proposal seeks to remedy, which makes it very difficult for comments to respond.

Department Does Not Address Impact of Its New, Lengthy Approval Process on State Implementation

The most problematic aspect of the Department's proposal to remove the ability of states to implement waivers prior to approval is that the Department does not make any proposal that will ensure that the Department approves waivers in a timely enough fashion to give states the certainty they need to properly implement the time limit. Current regulations and guidelines require waivers to be based on recent economic data, which by definition narrows the window of time between a state's waiver submission and the implementation date.

For example, as recent guidance explains, for waivers based on a 12-month unemployment rate of 10 percent, the data must include at least one month in the year prior to implementation; therefore 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."³⁵⁹ Local unemployment data is generally available with a lag of about two months, so January 2017 data would be available in early March 2017 or so.³⁶⁰ In addition, annual revisions from BLS that typically occur in April can substantially change recent estimates of unemployment and thus substantially alter waiver eligibility, so states often have to confirm waiver requests submitted before the April revision to ensure that the waiver request reflects the most up-to-date data.³⁶¹ The state would therefore have at most ten months total (or nine months if waiting for the BLS update) to: analyze the data, prepare a waiver request, receive approval through the state's internal process (a process that the deeply flawed proposal to require the Governor's endorsement could substantially lengthen), submit the waiver

³⁵⁹ U.S. Department of Agriculture, Food and Nutrition Service, "Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD)," December 2, 2016, <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>

³⁶⁰ For reference, on March 15, 2019, the BLS website stated it would release February 2019 state data on March 22 and local data (such as counties and metropolitan areas) on April 3, 2019, a typical lag of around two months for local unemployment data. <https://www.bls.gov/lau/>, accessed March 15, 2019.

³⁶¹ BLS updates sub-state data annually, typically in April. <https://www.bls.gov/lau/launews1.htm>

request to FNS (including through the regional office, which must review and then forward it to the national office), receive approval from FNS after its review, and prepare for implementation of the waiver by taken the steps outlined above, such as identifying and notifying participants, programming computer systems, and training caseworkers.

Given that the waiver preparation and internal review process may take at least a month or two within a state, if FNS review extends into several months, that can leave states with very little time for preparation given the complexities of implementation outlined above. The certainty that they can implement the requested waiver allows states to plan more effectively, while also allowing FNS time to review and issue an approval, knowing that its review does not hinder the state from preparing for implementation. Given that FNS seeks to eliminate the provisions that currently allow states this certainty without committing to approval within a certain timeframe, this proposed rule will instead make it harder for states to plan effectively.

One recent example of why this ability helps states is California's experience with its 2018 waiver, which the state began to implement prior to approval when waiting for an extensive and lengthy FNS review process. As mentioned in Chapter 2, any uncertainty has arisen due to the most recent Administration substantially delaying the waiver review process. In September 2017, California submitted a waiver request for areas with unemployment rates 20 percent above the national average (one of the categories of "readily approvable" areas), with an implementation date of September 2018. Given that California was transitioning off a statewide waiver and implementing the time limit for the first time in several years in some counties, and given the complexities with a large, county-administered state, the state needed at least six months to prepare for waiver implementation. By February 2018, about five months after the state had submitted the request, FNS still had neither approved nor denied the request. California wrote FNS that it would prepare to implement based on its waiver request, given that the request was based on data that fit the "readily approvable" standard, and requested that FNS advise the state by March 2018 if it wished to modify the waiver. Though FNS approval took over five months in this instance, the "readily approvable" standard enabled the state to properly plan for implementation. Unless FNS plans to impose deadlines on its own review and approval process that will ensure a timely response to states via the regulation, taking away these provisions will result in substantially less certainty for states as they await FNS approval.

The Department claims that the NPRM would improve consistency in the waiver approval process, but eliminating these provisions would introduce more uncertainty and inconsistency. The Department several times makes clear that one of the motivating factors for the NPRM is to improve consistency, such as stating, when introducing "core standards," that "The Department proposes updating criteria for ABAWD time limit waivers to improve consistency across States."³⁶² Reducing the ability of States to predict approvals and await FNS approval, therefore cutting into implementation planning time, would result in states' planning becoming more contingent on the length of time that various steps in the waiver preparation and approval process take. Factors such as the length of the approval process within the state and the length of FNS approval would have even more weight on the length of time states have to implement. A state waiting six months for approval would have significantly less effective implementation time than a state waiting three months. It is not clear if the Department considered the effect of the elimination of these provisions

³⁶² NPRM, p. 983.

on the consistency of time limit implementation outcomes. If so, the Department did not explain how eliminating these provisions could affect implementation and how it weighed those costs against what it perceived to be the benefits of improved oversight, for which it did not articulate a need.

FNS proposes substantially limiting the ability of states to plan for implementation while waiting for waiver review. In proposing this change, FNS makes statements about the intended effect of the proposal to increase oversight without explaining why this change is necessary or acknowledging the substantial burden it could impose on states and clients subject to the time limit. We recommend that FNS keep the current language in regulation that gives states more certainty around approval, which lets states better plan for waivers.

B. Proposed Implementation Date Would Cause Severe Burden for States

The Department also proposes that the rule take effect in October 2019, only six months after the end of the comment period for the NPRM — an extremely short period following the final rule’s publication. The preamble states:

The Department proposes that the rule, once finalized, would go into effect on October 1, 2019, which is the beginning of federal fiscal year 2020. All waivers in effect on October 1, 2019, or thereafter, would need to be approvable according to the new rule at that time. Any approved waiver that does not meet the criteria established in the new rule would be terminated on October 1, 2019. States would be able to request new waivers if the State’s waiver is expected to be terminated.³⁶³

The Department clearly is not considering the length of time states need to prepare a waiver request, the time it takes states and FNS to review and approve waivers, or the substantial time it takes states to ensure that they can prepare for implementation and properly notify individuals subject to the time limit. Given that the comment period ends in April 2019, it is not plausible that there would be anywhere near enough time for any one step of this process, let alone all of them. In the past, when many states have waivers due at the same time, this has substantially delayed FNS review; with this rule implementation, at least 30 states would likely attempt to submit a waiver request at the same time. FNS does not acknowledge the additional resources it would need to designate to review these requests, which would need to happen within a very short time frame. Nor does FNS acknowledge the burden this proposal would place on states, which would need to devote resources to quickly analyzing the data to put forward new requests and to implementing the time limit in new areas, and on the participants who would be harmed by a likely chaotic implementation in many states.

In addition, FNS does not put forward any need that would justify this short timeline. As we have explained, the current regulations changed little since the 1996 guidelines; in practice, then, states have been operating under current waiver criteria for more than 20 years. FNS proposes to make significant changes to longstanding policy without articulating a need for this change, but also proposes an extremely short timeline that it does not attempt to justify. The lack of explanation for the proposed implementation date suggests that in proposing this rule, the Department did not fully grapple with the realities of implementing these changes. Without any explanation of why such a

³⁶³ NPRM, p. 983.

drastic change would be necessary under such a short timeline, and without any consideration of the downside of forcing states to implement the time limit in new areas with very little preparation time, the Department leaves us with little opportunity to address the unstated need motivating this change. Withdrawing the proposed rule would be the best solution to avoid a rushed implementation of an ill-considered and harmful policy.

C. Limiting the Duration of Certain Waivers to the Fiscal Year in Which They Are Implemented is Unnecessarily Restrictive

The Department proposes that waivers based on the 20 percent standard outlined in paragraph (f)(2)(ii) would not be approved beyond the fiscal year in which the waiver is implemented. Since most waivers are currently and likely would continue to be requested under the criteria specified in 7 C.F.R. § 273.24(f)(2)(ii), it's likely that this shift would mandate that most waivers shift to a fiscal year cycle.

As of March 2019, 36 states (including Guam and the Virgin Islands) have ABAWD time limit waivers. Nine states are on the federal fiscal year 2019 cycle, 19 states are on the calendar year 2019 cycle, and eight states are covering parts of both fiscal year 2018 and 2019. This grouping of waivers around calendar year and fiscal year is a relatively new phenomenon that is an outgrowth of two pieces of legislation that motivated states to pursue waivers along those time cycles:

- The American Recovery and Reinvestment Act (ARRA) of 2009. That legislation suspended the time limit, with a state opt out, through FY2010.
- The Emergency Unemployment Compensation program (EUC) that operated through December 2015. Many states sought statewide waivers through their eligibility for Extended Benefits (EB) under EUC.

As the statutory suspension of the time limit (set under a fiscal year cycle) expired and as state eligibility for waivers under EUC phased out in 2016 (set under a calendar year cycle), states sought to renew their waivers using alternative criteria but according to the new time cycles. Prior to the passage of ARRA and EUC, states waiver cycles were spread throughout the year with many running from April to May.

In the NPRM, FNS claims that the proposed rule would prioritize recent data by preventing states from requesting to implement waivers late in the federal fiscal year. This proposal would actually have a different outcome because states would have fewer recent periods of data available to use under this criterion. Under the proposed rule waivers beginning in fiscal year 2020 can use unemployment data starting no earlier than January 2017, so approximately five 24-month time periods would be available to states. In contrast, for a waiver starting in January 2020, states would have eight 24-month time periods of unemployment data to use (including three more recent than under the fiscal year calendar scenario). Shifting states to a fiscal year waiver calendar removes the current option that states have to avail themselves of the most recent data.

For example, states typically submit waiver requests three to six months prior to the waiver implementation date to give FNS sufficient time to process waiver requests. For a waiver to begin on October 1, states are recommended to submit the waiver in June, when approximately five 24-

month time periods would be available. For a waiver to begin on January 1, states would have about three additional and more recent time periods to use.

The proposed rule would also force states to have short waivers under some circumstances. States are permitted to submit a waiver at any point during the year. This is an important feature in times of rising unemployment when states may wish to submit new waivers for newly eligible areas. If a state wants to request a new waiver or modify a waiver after October 1 based on more recent unemployment data, a waiver would need to be approved for less than a year under the proposed rule. This would impose additional paperwork for waiver renewals on states during an economic downturn because states that submit new waivers during the fiscal year would not get a 12-month approval regardless of how distressed their local labor market is.

Also, this limitation does not give states sufficient time to plan and implement waivers. As noted above, states typically submit waiver requests well in advance of their start date to allow for needed implementation planning as well as FNS' slow processing. States do not know their eligible areas until late April when BLS revises historical estimates for substate areas from the Local Area Unemployment Statistics (LAUS) program. These revisions reflect new population estimates from the Census Bureau, updated input data, and estimation.³⁶⁴ If states need to submit a waiver in June (for an October 1 start), they would only have one to two months to plan and request the subsequent waivers. This would likely be particularly challenging for states pursuing a thoughtful and thorough implementation of the new waiver.

Consider states that have to shift from a statewide waiver using the EB criteria (which would not be limited to a fiscal year cycle under the proposed rule) to a 20 percent above the national average criterion (which would operate on a fiscal year cycle only under the proposed rule). For example, consider a state that has a statewide waiver based on the EB criteria running from September to August. For the next waiver (which would likely be based on the criteria listed in paragraph (f)(2)(ii)), the waiver could only be for one month because the fiscal year runs through September. If the state wanted continuous waiver coverage, it would have to request a 1 one-month waiver for the month of September, then a one-year waiver starting in October. These multiple requests would create additional administrative work for states and FNS.

Moreover, FNS does not have enough capacity to process waivers if they are all on the fiscal year cycle. And, as we comment elsewhere, the Department is not imposing a timely review on itself which has resulted in delayed approvals. These delays would only grow worse if virtually all waivers were on the same cycle for review.

This proposal is flawed and should not be included in the final rule.

D. Limiting Waivers to One Year Would Impose an Unnecessary Administrative Burden on states

The proposed rule would limit the duration of waiver approvals to one year. We believe this would impose an additional administrative burden on states that is unjustified and unnecessary. In the NPRM, the Department asserts that limiting waivers to one year would ensure that the waiver

³⁶⁴ Bureau of Labor Statistics, Annual Revisions, <https://www.bls.gov/lau/launews1.htm>

request reflects current economic conditions, but it provides no evidence or discussion to support this assertion. This makes it difficult to comment on the proposed change and its potential impact on both the alignment of waivers with current labor market conditions and state agencies. This section provides an overview of existing requirements for two-year waivers and explains why the proposed change is unnecessary.

Existing Requirements for Two-Year Waivers Are Already Restrictive

The Department generally approves waivers for one year. Existing regulations state that the Department reserves the right to approve a waiver for a longer period if the reasons are compelling.³⁶⁵ In previous guidance, the Department acknowledged the role of two-year waivers in minimizing administrative burdens on states from preparing annual requests for waivers covering areas with chronic high unemployment.³⁶⁶ Areas that qualify for two-year waivers are those that have had chronic high unemployment and are likely to continue to experience high unemployment. Two-year waivers have also been used to cover states and sub-state areas hit hard by the Great Recession of 2007 to 2009.

The data requirements to support a request for a two-year waiver are much more restrictive than those required for a one-year waiver. The area must satisfy at least one of the following:

- Have an unemployment rate above 10 percent for the two-year period immediately prior to request;
- Be designated as a Labor Surplus Area for at least two consecutive years; or
- Have an unemployment rate more than 20 percent above the national average for a 36-month period ending no earlier than three months prior to the request.

The data requirements are more restrictive in several ways. First, an area eligible for a two-year waiver must have evidence of high unemployment sustained over a significantly longer period of time than that required for a one-year waiver. For instance, under the third criterion above, the area must have elevated unemployment over a period that is 50 percent longer than that required to support a one-year waiver (36 months compared to 24 months). These are areas with persistent, chronic high unemployment and are likely to continue to experience adverse labor market conditions. As we saw during the Great Recession, areas eligible for two-year waivers included those that experienced a rapid rise in unemployment rates before the rest of the country or experienced slower recovery.

Second, a request for a two-year waiver must be supported by very recent data. To be eligible under the third criterion above, the 36-month period must end no earlier than three months prior to the request. Given that there already is a time lag of one to two months before BLS Local Area Unemployment Statistics becomes available at the sub-state level, this is a very restrictive requirement.

³⁶⁵ 7 C.F.R. § 273.24(f)(5).

³⁶⁶ USDA, “2-Year Approvals of Waivers of the Work Requirements for ABAWDs under 7 CFR 273.24,” February 3, 2006. USDA, “Guidance on Requesting ABAWD Waivers,” August 2006. USDA, “Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016.

To support a one-year waiver requested on October 2018, for example, a state could submit data for the period January 2016 to December 2017. This corresponds with the time period used to compile the LSA list for FY 2019. To request a two-year waiver, the state would have to submit data no older than June 2018 and the 35 previous months, a period that starts July 2015. Data supporting a two-year waiver incorporates data both earlier and later than what is required for a one-year waiver. To qualify, the area would have to have chronic high unemployment and be likely to continue having it within the time frame of a two-year waiver.

Use of Two-year Waivers Has Been Very Limited

Under existing rules and guidance, waivers longer than one year in duration have only been requested and approved under limited circumstances, reflecting their more restrictive and extensive data requirements. Over the two decades of waiver approvals, FNS has approved approximately 900 waiver requests.³⁶⁷ Of those approved requests, only about 6 percent (50 waiver requests) were based on the 36-month unemployment rate criteria.³⁶⁸ Nearly half of the 50 waiver approvals were in effect during Federal Fiscal Years 2007 to 2009, helping states that were hit hard by the Great Recession, like Alaska, Mississippi, Oregon, and South Carolina, weather the economic downturn.³⁶⁹

States have also requested two-year waivers to cover jurisdictions and Native American tribal areas that have had chronic high unemployment. For example, Nebraska prepared, applied for, and received two-year waivers for tribal areas in FFY 2002 (waiver in effect May 2002 to April 2004), FFY 2004 (waiver in effect May 2004 to April 2006), FFY 2006 (waiver in effect May 2006 to April 2008), and FFY 2008 (waiver in effect May 2008 to April 2010). Had the proposed rule been in effect, Nebraska would have had to apply for one-year waivers for these tribal areas every year. The Nebraska state agency only had to apply four times instead of eight times to cover these areas with chronic high unemployment from May 2002 to April 2010.³⁷⁰

The Department has also approved waivers longer than a year on a case-by-case basis to accommodate states facing unusual administrative constraints. For example, it approved a 17-month waiver (from May 2007 to September 2008) for Utah to ease administrative burdens while the state was transitioning to a new eligibility system.

³⁶⁷ A waiver request includes one or more jurisdictions in a state and may even cover the entire state. Each approved waiver request is given a distinct waiver serial number by FNS. States may not implement waivers in all areas approved by FNS.

³⁶⁸ A waiver request includes one or more jurisdictions in a state and may even cover the entire state. Each approved waiver request is given a distinct waiver serial number by FNS. Based on CBPP internal records and summary of two-year waivers from SNAP three-month time limit. Prepared in March 2019.

³⁶⁹ A table with the states that have had 2-year waivers from the time limit is included in Appendix B as, “Center on Budget and Policy Priorities. Summary of 2-Year Waivers from SNAP Three-Month Time Limit.”

³⁷⁰ The American Recovery and Reinvestment Act went into effect April 1, 2009, suspending the time limit in all states through September 30, 2010 unless state agencies chose to impose specific work requirements.

Limiting Waiver Duration to One Year Is Inefficient

Given the more restrictive data requirements, areas eligible for a two-year waiver are experiencing chronic high unemployment and would likely be eligible for one-year waivers in two or more consecutive years. By prohibiting waivers longer than a year, the Department would be requiring states to prepare and submit waiver requests twice over the course of a two-year period, instead of submitting a request once. Our analysis finds that most areas approved for two-year waivers in FFY16-17 would have qualified for the second year,³⁷¹ so requiring the state to submit — and FNS to review — the information would have been inefficient and burdensome.

The existing data requirements for a two-year waiver capture high unemployment using data that is very current. The Department did not substantiate its assertion that a one-year time frame would ensure that waiver requests reflect current economic conditions. Nor did it discuss why the proposed change is warranted given that it would add administrative burdens both to state agencies preparing waiver requests and the Department itself. The option to request a two-year waiver is already very restrictive and limited in use. We therefore recommend that the Department abandon its proposal to limit waivers to one year and keep the existing rules allowing two-year waivers as they are.

³⁷¹ The Department approved two-year waivers covering 19 jurisdictions (7 states, 1 island, and 11 Indian reservations) in Federal Fiscal Years 2016 and 2017. Of the 19 jurisdictions, 17 would have been eligible for back-to-back one-year waivers.

Chapter 9. Eliminating the Carryover of Unused Individual Exemptions Would Cause Hardship and Exceeds Agency Authority

In addition to significantly restricting the ability of states to request waivers of the three-month time limit, the NPRM proposes to eliminate the accrual of unused individual exemptions for more than one fiscal year. As a result, some individuals who might otherwise be exempted from the time limit would lose SNAP benefits and the program's integrity would be undermined as states would be less able to judiciously exempt particularly vulnerable individuals. The NPRM fails to define a problem it is addressing with this proposal, incorrectly reads the intent of Congress, and proposes a less effective alternative.

Under current law, states can exempt a limited number of individuals who are, or would be, subject to the time limit. Each year, FNS is required to estimate the number of exemptions available to each state, based on a percentage (currently 12 percent as revised from 15 percent in the 2018 Agricultural Improvement Act) of "covered individuals." These "covered individuals" are SNAP participants subject to the time limit during the fiscal year or individuals denied eligibility in SNAP because of the time limit.

It is disconcerting to note that the NPRM incorrectly describes the way in which exemptions are calculated. The preamble describes "covered individuals" as "the ABAWDs who are subject to the ABAWD time limit in the State in Fiscal Year 2020 and each subsequent Fiscal Year." But this is not a correct description of "covered individuals." Section 6(o)(6)(A)(ii) of the Food and Nutrition Act (7 U.S.C. § 2015(o)(6)(A)(ii)) defines a "covered individual" as "a member of a household that receives [SNAP], or *an individual denied eligibility for [SNAP] benefits solely due to paragraph (2)*" (emphasis added), with several additional clarifications. As we discuss in our comments on the Regulatory Impact Analysis, the imprecise use of "ABAWD" makes it unclear whether the NPRM is accurately describing the group of SNAP participants who form part of the pool that is used to determine the number of exemptions, but the NPRM also fails to include individuals denied eligibility due to failure to meet the time limit requirements. As most "ABAWDs" subject to the rule lose benefits over time, this can be a significant number of individuals.

A. There Is No Statutory or Legislative Support for the Claim That Unused Exemptions Cannot Be Kept By States

The NPRM suggests that Congress did not explicitly intend for states to maintain and accrue unused exemptions, but this is not supported by the record. The NPRM describes the accrual of unused exemptions as an "unintended outcome of the current regulations."³⁷² It further expresses concern that "such an outcome is inconsistent with Congressional intent to limit the number of exemptions available to States each year." The NPRM does not provide any evidence supporting this claim of Congressional intent. We are unable to find any record of Congressional intent to limit the carryover of unused exemptions. The historical evidence and recent actions by Congress show the opposite.

³⁷² NPRM, p. 987.

Congressional history shows that exemptions were enacted in legislation approximately one year after the time limit was enacted precisely due to concerns that the policy was too harsh and states did not have enough tools to mitigate the impact of the time limit for vulnerable individuals living outside of waived areas. Adding this resource gave states an additional way to protect vulnerable residents not specifically identified in the exemptions from the time limit provided under 7 U.S.C. § 2015(o)(3), based on the priorities and concerns of the state or local agency.

The Balanced Budget Act of 1997 contained two major changes in SNAP to ameliorate the impact of the three-month time limit. One was an increase in funding for ABAWD training slots in the Employment and Training (E&T) program. The other was providing states with the authority to exempt a limited number of individuals from the time limit.³⁷³ Commonly referred to as hardship exemptions, these gave states the ability to continue to provide SNAP to individuals subject to the time limit who could not find jobs or training slots after three months of participation. Just after passage of this change, FNS clarified in an October 1997 guidance to states that unused exemptions could be carried over or saved for future use.³⁷⁴

The current individual exemption policy has been in place for over 20 years. Congress did recently intend to limit exemptions, but not in the way proposed in the NPRM. Instead Congress reduced the percentage of exemptions created each year, but explicitly left the longstanding accrual policy in place. In the 2018 farm bill, Congress reduced the annual percentage of exemptions from 15 percent to 12 percent, but notably did not propose ending the practice of accruing unused exemptions. In fact, the Conference Report to accompany H.R. 2, the Agricultural Improvement Act, clarified that “States will maintain the ability to exempt up to 12% of their SNAP population subject to ABAWD work requirements, down from 15%, and *continue to accrue exemptions and retain any carryover exemptions from previous years, consistent with current law.*”³⁷⁵ (emphasis added). Congressional intent as recently as several months ago shows a deliberate expectation that states can carryover an unlimited number of unused exemptions.

The Statute Clearly Allows States to Accrue Unused Exemptions

By drastically reducing the way in which states that choose not to use exemptions in the year in which they are issued are able to accrue these exemptions, the NPRM suggests that the current policy is an interpretation of the intent of the underlying statute. However, the statute is less confusing than it appears. It authorizes states to exempt up to 12 percent of the caseload (formerly 15 percent) but does not mandate that states use the exemptions over any particular time period. It then, separately, authorizes the Secretary to adjust the number of exemptions based on the state’s use of exemptions in the prior fiscal year. Under the provision, if a state does not use all exemptions, the Secretary increases the number of exemptions available in the current year. If the state overuses exemptions, then the Secretary reduces the number of exemptions available in the current year. The statute reads:

³⁷³ Section 1001 of P.L. 105-33.

³⁷⁴ U.S. Department of Agriculture, Food and Nutrition Service, “Implementation of the Provisions of the Balanced Budget Act of 1997 Relating to Exemptions for Able-Bodied Adults without Dependents (ABAWDs),” October 27, 1997.

³⁷⁵ House of Representatives, Conference Report to Accompany H.R. 2, December 10, 2018, p. 616, <https://www.agriculture.senate.gov/imo/media/doc/CRPT-115hrpt1072.pdf>.

. . . the Secretary shall increase or decrease the number of individuals who may be granted an exemption by a State agency under this paragraph to the extent that the average monthly number of exemptions in effect in the State for the preceding fiscal year under this paragraph is lesser or greater than the average monthly number of exemptions estimated for the State agency for such preceding fiscal year under this paragraph.

The language sets out that the Secretary adjusts one way for one circumstance (too many exemptions used), and in another way for the other condition (fewer exemptions used than issued). The Secretary shall increase the number of individual exemptions to the extent that the average monthly number used in the previous year is less than then number estimated for that year. Similarly, the Secretary shall decrease the number of individual exemptions to the extent that the average monthly number used in the previous year is more than the number estimated for that year.

Note that the Secretary is required to adjust the number of exemptions, but that the use of exemptions remains a state option (“individuals who may be granted an exemption”). And, if the state uses fewer exemptions than allotted in the previous fiscal year, the Secretary should increase the number of exemptions in the following year. The provision requires the Secretary to “increase or decrease” exemptions depending on whether the state’s use of exemptions is “lesser or greater than” the allotment for the previous year. So, it’s an increase if the state uses fewer exemptions and a decrease if the state uses more exemptions than allotted. This makes sense. By decreasing the allotment to a state that overuses the exemptions, the statute ensures that states cannot routinely use more than the yearly allotted amount. But that means that a state does increase its allotment each year that it does not use that year’s amount. States that repeatedly underuse allotments will accrue a bank of exemptions. This approach, codified in the current regulations, is a straightforward and fair reading of the statute’s directive.

The proposed rule, in contrast, makes several unsupported assertions. First, it claims without support, that the intent was not to accrue exemptions for more than one year. Second, by eliminating the existing supply of unused exemptions, it treats them as having no value to the state even though many states have accessed these accrued exemptions for a variety of allowable and sensible reasons. Third, it fails to explain why the current procedure to adjust exemptions each year is a flawed reading of the underlying statute.

Legislative History Demonstrates That Congress Fully Understood and Approved of the Uncapped Accrual of Exemptions

The guidelines explaining the calculation and use of individual exemptions were first promulgated in the September 3, 1999 interim rule implementing two SNAP provisions in the Balanced Budget Act of 1997.³⁷⁶ In that interim rule, the Department outlined how it would comply with the statutory requirement that the Secretary adjust the number of individuals who may be granted an exemption to account for any difference between the average of exemption used and the number estimated by the Agency for the preceding fiscal year. If a state uses more exemptions than estimated, the state’s

³⁷⁶ U.S. Department of Agriculture, Food and Nutrition Service, “Food Stamp Program: Food Stamp Provisions of the Balanced Budget Act of 1997,” Interim rule, Federal Register Vol. 64, No. 171, Sept. 3, 1999, p.48246, <https://www.govinfo.gov/content/pkg/FR-1999-09-03/pdf/99-23017.pdf>.

subsequent allocation is reduced. Likewise, if a state uses fewer exemptions than estimated in the previous year, the state's subsequent allocation is increased by the amount not used. As the Department explained "if this level of exemptions is not used by the end of the fiscal year, the State may carry over the balance."³⁷⁷

This longstanding implementation of the statutory directive is clear, reasonable, and fair to states. It addresses the reasonable concern that an annual allotment of exemptions could be either overused or underused. The continual overuse of individual exemptions has an impact on overall program integrity because individuals not eligible under an exemption are issued benefits, which is an overissuance and error. To address this, the regulation treats this issue in a sensible way, by reducing future exemptions. The continual underuse of individual exemptions does not create the same problem, and the regulation's treatment is similarly reasonable.

The statute does not direct the Secretary to make adjustments beyond a one-year period. In other words, the statute does not give the Secretary the authority to adjust the number of exemptions issued more than one year prior ago. Combining the requirement that the Secretary adjust exemptions from the previous fiscal year with the limitation on looking further back to adjust exemptions based on use means that a state can accrue unused exemptions in multiple years, and these exemptions can accrue over multiple years.

States Have Relied on Current Policy: USDA Has Never Emphasized the Need to Use Exemptions Each Year

The Department has not, in the past, suggested that unused exemptions would not accrue. Developing a reasonable exemption policy is difficult — states must identify the circumstances when an individual exemption should be used, the procedures for identifying when that circumstance has occurred, and a tracking mechanism to ensure that the usage does not exceed the allotment. This implementation challenge has discouraged states from experimenting with ways of using the exemptions. But it does not indicate that states have no need for them. Instead of eliminating earned-but-unused exemptions, the Department could provide guidance to states on effective ways to use them. The Department could take steps to understand states' concerns or problems with using exemptions. Such a response would be much more in keeping with Congressional intent and the law. Instead, via the NPRM, the Department has taken sweeping measures to curtail a state resource counter to the law.

States Have Compelling Reasons to Accrue Individual Exemptions

The recent statutory change from 15 percent to 12 percent makes the banked or unused exemptions more important for some states. While not every state uses its annual allotment of exemptions, some states do or come close to doing so. Many states use the ability to rollover exemptions to build a "bank" that gives states options that would be unavailable if exemptions expired.

³⁷⁷ U.S. Department of Agriculture, Food and Nutrition Service, "Food Stamp Program: Food Stamp Provisions of the Balanced Budget Act of 1997," Interim rule, Federal Register Vol. 64, No. 171, Sept. 3, 1999, p.48249, <https://www.govinfo.gov/content/pkg/FR-1999-09-03/pdf/99-23017.pdf>.

States use individual exemptions for a variety of purposes, as the original provision intended. Some identify certain vulnerable populations, such as victims of domestic violence, veterans, young adults aging out of foster care, or those with acute barriers to employment like a lack of education or limited proficiency in English. States have also used exemptions to allow individuals in limited areas to remain eligible for SNAP, often because of circumstances that are not reflected in a way that qualifies the area for a waiver or due to administrative demands. In all cases, states must estimate the number of individuals who would receive an exemption and for how long in order to ensure that the state does not exceed the number of available exemptions. Building up some unused exemptions gives states important flexibility and confidence to implement these targeted approaches without running afoul of overissuing exemptions. The buffer provided by accrued exemptions is critical in that process.

Because of the recent change in the percentage of exemptions made available to states, these states that are using exemptions would be at risk of exceeding their allotment and being subject to error determinations and overpayments under the NPRM. Between 2014 and 2017, 28 states used more exemptions than they had been issued for the fiscal year, meaning they used at least some of the exemptions they had accrued in previous years. During that time period, some states did so for more than one year. Several of the states used all of their multi-year exemptions which demonstrates the importance of accruing exemptions over several years.

For example, Washington used 28,886 exemptions in fiscal year 2016.³⁷⁸ It had earned no exemptions in the prior year (because it had a statewide waiver in 2015). It had accrued 11,530 exemptions in previous years. It did not overuse exemptions because it was allocated 26,784 exemptions that year (meaning that it started 2017 with over 9,000 unused exemptions). The state relied on exemptions that year because it was transitioning off of the statewide waiver and was developing training programs and operational procedures for childless adults subject to the rule. Other states used banked exemptions in a similar way. For example, in 2016, Maryland earned no exemptions for the year (based on having a statewide waiver in 2015) but issued 18,871 exemptions to aid in its transition to the time limit. It could do so only because it had a “bank” of unused exemptions from prior years of 18,915. Under the proposed rule, neither state would have had been able to take this approach.

The three-month time limit is complex and difficult to administer, as is documented in the USDA Inspector General’s report.³⁷⁹ A majority of states have used individual exemptions to ensure that particularly vulnerable individuals are not inappropriately terminated from the program. Allowing states to keep unused exemptions enables states to plan in advance and prepare for major events affecting the unemployed childless adult population on SNAP (such as an area transitioning from waived to unwaived status).

³⁷⁸ U.S. Department of Agriculture, Food and Nutrition Service, “SNAP – FY 2017 Allocations of 15 Percent Exemptions for ABAWDs – Totals Adjusted for Carryover,” March 15, 2017, <https://fns-prod.azureedge.net/sites/default/files/snap/FY2017-ABAWD-15%25-Exemption-Totals.pdf>.

³⁷⁹ U.S. Department of Agriculture, Office of Inspector General, “FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents,” September 2016.

Congress Knows How to Limit Carryover and Has Repeatedly Declined to Do So for Unused Exemptions

Congress has the authority and ability to limit the carryover of allocated resources in the legislation it crafts. This authority is exercised frequently, in order to prevent unused funds or resources from accruing. In fact, the Food and Nutrition Act demonstrates that Congress, when it deems it appropriate, can limit or reallocate resources, though it has not done so for individual exemptions. For example, in allocating funding for SNAP Employment and Training program, Section 16(h) (7 U.S.C. § 2025(h)) reads:

(C) Reallocation—

(i) In General.—If a State agency will not expend all of the funds allocated to the State agency for a fiscal year under subparagraph (B), the Secretary shall reallocate the unexpended funds to other States (during the fiscal year or the subsequent fiscal year) as the Secretary considers appropriate and equitable.

Here, Congress not only directs the Secretary to reallocate unspent funds but indicates when such reallocation occurs. Further subsections provide more detail on the mechanics of the reallocation.

There is no similar provision in the Food and Nutrition Act indicating that Congress intended to limit the accrual of unused exemptions, or indeed, any directive for the states once exemptions are provided.³⁸⁰

B. The Proposed Rule Change Fails to Provide a Legitimate Reason for the Change

The NPRM states that the change would result in administering the program more efficiently and to further the Department's goal to promote self-sufficiency. However, the NPRM provides no explanation or information on how the proposed change would achieve either goal. The current exemption policy has worked well for 20 years and FNS has never identified issues with the efficiency of the policy. Nothing in the proposed replacement policy would make it easier for state to administer. Indeed, because the safety valve of a bank of exemptions is eliminated, states will find it more difficult to fine-tune policies that authorize the use of exemptions.

For example, a state may decide to provide an exemption to any individual who is working, but not enough hours to meet the 20-hour-per-week requirement for those subject to the time limit. It can estimate the number of individuals, and hence the number of exemptions. But inaccuracies in the calculation of the estimate or changes in the composition of the group can significantly change the number of exemptions needed. The existing policy provides states with a pool of unused exemptions a way to adjust; the proposed rule almost completely eliminates this ability to adjust. As a result, every state would be more at risk of exceeding its annual allocation of individual exemptions.

³⁸⁰ Section 6(o) (7 U.S.C. § 2015(o)) of the Act does direct the Secretary to make limited adjustments to exemptions each year, but these are limited to changes in caseload and not based on whether or not a state used the exemptions issued. The E&T funding, by contrast, is adjusted based on state decisions to spend the allocation.

In the NPRM, the Department references the September 2016 report from the Office of Inspector General to support the proposed change in the accrual of unused exemptions. While it is true that the report notes the large number of accrued exemptions, the report very explicitly declines to recommend any change in current policy. The report states “OIG generally agrees that FNS has the discretion to interpret and implement the exemption provisions as it has done, so we do not have a recommendation for FNS with respect to exemptions.”³⁸¹

The Proposed Method of Calculating Exemptions and Adjusting From Prior Years Will Discourage States From Using Them and Increase the Potential for Errors

The proposed adjustment procedure in the NPRM is needlessly confusing, will discourage the use of exemptions and is likely to increase errors. The varied exemption use example provided in the NPRM (Example 2 on page 988) shows how this proposed approach would discourage the use of allocated exemptions and contradicts the statutory requirements. In 2021, the state uses eight exemptions.³⁸² In 2022, use plummets to two. In 2023, use quadruples to eight, and in 2024, it drops again to two. While the math works out to meet the proposed rule, the implementation of a policy that varies this widely in scope is hard to conceive. The state must be able to estimate the number of exemptions that would be used each year, design a policy and the procedures to implement to meet that target number, correctly train staff, and actually implement and track. Then, the following year, the state must design a policy that uses four times fewer (or greater) the number of exemptions, retrain staff, and properly implement. The NPRM offers no assurance that a state could successfully redesign important program elements on a yearly basis. The history of state administration of SNAP also offers no assurance.

In 2022, the state does not have its yearly allocation available, because in the prior year it tapped into previously earned exemptions. The state is paying back exemptions despite not overusing the total available exemptions in any year in the example. That conflicts with the statutory authority granting states exemptions in each year in which individuals are subject to the time limit or ineligible because of it. And, averaging over two years so that the average is equal to 12 percent of the “ABAWDs” does not fulfill the statutory requirement that states can allocate an average of 12 percent per year.

³⁸¹ USDA Office of Inspector General, *FNS Controls Over SNAP Benefits For Able-Bodied Adults Without Dependents*, September 2016, p. 11.

³⁸² NPRM, p. 988.

Chapter 10. The Proposed Rule Fails to Provide Sufficient Rationale or Supporting Evidence for the Proposed Policy Change

The NPRM proposes several significant changes to long-standing SNAP policy that would affect an estimated 1.1 million low-income Americans, including 755,000 who would lose food assistance and face increased financial and food insecurity. Despite the far-reaching impact of the proposed rule, and contrary to requirements in the rulemaking process, the NPRM fails to provide a meaningful rationale for most of the proposed changes and fails to identify or summarize any research and data to support the rationale for such sweeping and consequential changes. Without knowing what evidence justifies such a drastic change in long-standing policy, it is impossible to assess the validity of the claim or the soundness of the evidence used to support it.

The goal of the Department's proposed changes in policy appears to be to subject more people to the time limit by shrinking the portion of the country that can request waivers from it. To achieve this goal, the proposed rule would prohibit waivers of the time limit to those that are based on a general unemployment rate of at least 7 percent and at least 20 percent above the national average and would restrict the ways in which a state can define the area it seeks to waive. In addition, the NPRM eliminates several ways in which a state can demonstrate a locale has an insufficient number of jobs for those subject to the rule and ends the ability of states to save unused exemptions to the time limit. In each case, the Department fails to identify a desired goal or outcome (such as a certain percentage of the target group gaining employment) or explain how the proposed rule would lead to the desired goal, and consistently fails to provide any empirical support for the proposal. These failures prevent the public from understanding why the existing rule needs to be modified so drastically.

A. The Proposed Rule Fails to Support the Justification for New Rulemaking — That Too Many Unemployed Adults on SNAP Are Not Subject to the Time Limit

The preamble to the proposed rule states that the Department now believes that the time limit for unemployed adults was intended to apply to more individuals than it currently does. The Department thus believes that too many individuals live in areas that are waived by states and not subject to the rule. But the Department fails to make several important connections to justify the need for new rulemaking.

The Department fails to show that the intent of Congress was to subject the Department's preferred number of individuals to the time limit. In fact, the NPRM fails to establish that Congress had any interest in subjecting a target number of individuals to the rule. Rather, the goal was to allow states to protect individuals in areas without a sufficient number of jobs, regardless of how many individuals that would be. We are unable to identify any statutory reference to a policy goal of protecting only a certain percentage of individuals subject to the rule.

The legislative record does not reveal congressional debate over the appropriate percentage of individuals subject to the rule. In fact, the members of Congress introducing the proposed time limit emphasized that adequate protections were included to ensure that individuals were not cut off

of SNAP if opportunities for work or workfare were not available. Representative Robert Ney, one of the authors, stated on the floor of the House of Representatives that his amendment “provides some safety; it provides a course of a safety net [sic], it has the ability to have waivers from the State department of human services.”³⁸³ Representative John Kasich clarified that the key was that the time limit applied only in areas where jobs were available to those subject to the time limit — otherwise, the time limit would not apply. “It is only if you are able-bodied, if you are childless, and you live in an area where you are getting food stamps, and there are jobs available, then it applies.” The key issue, of course, is whether jobs are available for these individuals, as the statute requires.

We address the serious concerns with the way in which the NPRM incorrectly interprets the standard that waivers are available in places with insufficient jobs for the individuals subject to the rule in Chapter 3. Here, we simply note that the authors of the original legislation did not have a targeted number of individuals they thought should be subject to the rule; nor did Congress establish, or even debate, a targeted percentage of individuals to be subject to the rule. Instead, the co-authors of the original legislation were careful to point out that there were adequate protections for all individuals if jobs were not available. Given this clear history, it is incumbent upon the Department to substantiate its claim that the legislative history somehow suggests that the current regulations must be changed because too many individuals live in waived areas. Without explaining the underlying claim, the rule leaves commenters with little ability to meaningfully respond.

We would also note that the temporary nature of setting such a coverage goal strongly suggests such a goal is not intended or practical. As economic circumstances change, the ability of ABAWDs subject to the time limit to find work will change, meaning that at different points in the economic cycle, the portion of individuals subject to the rule who are able to find 20 hours of work per week will change significantly, as will the portion of individuals living in areas eligible for waivers under any set of criteria. And other factors, besides the existence of a waiver, affect an individual’s participation in SNAP, such as the accessibility of the application process, other eligibility rules and processes, and the availability of training opportunities for unemployed adults.

B. Despite Claiming That General Unemployment Rates Are the Best Available Measure of Job Sufficiency for Low-Income Adults on SNAP, the Proposed Rule Fails to Support the Claim with Evidence

The proposed rule asserts that low general unemployment rates indicate sufficient jobs are available for those subject to the time limit. But it offers no reason why a general unemployment rate of 7 percent is a good proxy measure for establishing that there are sufficient jobs for the individuals subject to the rule. This lack of an explanation makes it difficult for interested parties to critique the Department’s conclusion that no waivers should be permitted below 7 percent. In contrast, as discussed in Chapter 3, there is a deep body of research that shows unemployment rates are much higher for groups that make up SNAP’s ABAWD caseload.

Current regulations allow waiver requests that demonstrate a recent local unemployment rate significantly above the national average but do not set a minimum unemployment rate. The NPRM fails to explain why the reasoning behind the current rule no longer applies, and why it believes another rulemaking process would result in a justifiable change. Indeed, for the most substantial

³⁸³ 142 Congressional Record, H7904 (daily ed. July 18, 1996).

proposed change — to prohibit waivers for areas with unemployment below 7 percent — the NPRM seeks input for changing the number to 6 or 10 percent but does not explain why those thresholds are of particular importance, aside from noting that a larger or smaller group of individuals might be protected at the different levels. It does not explicitly seek input on other levels, such as 5 or 8 percent. The rule offers a very weak explanation, unsupported by research, for the 7 percent that is proposed or the alternatives for which it seeks comment. Since interested stakeholders do not have adequate information to determine why the unemployment rate floor is set where it is, it is difficult to provide useful feedback on the appropriateness of the proposed threshold. In the rulemaking process, an agency that promulgates a rule change needs to explain why the original rationale is no longer sufficient when proposing to change the rule.

The Proposed Rule Makes Arbitrary Changes to Long-Standing Regulations That Were Initially Promulgated Based on Sound Reasons

Until this proposed rule, FNS has always acknowledged that the statute requires several different ways for states to document a lack of sufficient jobs for the individuals subject to the time limit. In its original guidance, the Department noted, “[t]he statute recognizes that the unemployment rate alone is an imperfect measure of the employment prospects of individuals with little work history and diminished opportunities.”³⁸⁴ It then proceeds to describe the use of Labor Surplus Areas (LSAs) as a reliable waiver criteria. However, without providing a reason or evidence that LSAs are not a useful measure, the proposed rule eliminates LSAs as a possible way of qualifying for a waiver. We are at a loss as to why a measure relied upon for so long by so many states is simply eliminated.

Areas designated as LSAs by the Department of Labor have been eligible for waivers because in order to qualify as an LSA, an area must have sufficiently high unemployment (120 percent of the national average so long as the area rate is at least 6 percent). LSAs are recognized as weak labor markets. Federal, state, and local government use LSAs to target contracts and allocate employment-related assistance and training. LSAs provide a reasonable indicator that there is a lack of sufficient jobs for unemployed SNAP participants, who disproportionately struggle to overcome barriers to employment.

To support the inclusion of LSAs as a way to demonstrate a lack of sufficient jobs for the unemployed adults subject to the rule, the original 1999 rulemaking process established that LSAs were a reasonable measure of labor market weakness and were based on sound and relevant data from a trusted source (the Bureau of Labor Statistics). The original 1996 guidance explained one reason why:

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

³⁸⁴ U.S. Department of Agriculture, Food and Nutrition Service, “Guidance for States Seeking Waivers for Food Stamp Limits,” Dec. 3, 1996.

unemployment) can be identified. *This feature also makes the classification potentially useful to identify areas for which to seek waivers [emphasis added].*³⁸⁵

The original rulemaking process emphasized the importance of relying on BLS data (much as the NPRM does). But the original rulemaking identified LSA status as a reliable indicator of insufficient jobs based on BLS data and as recent enough to be used to meet the waiver criteria. In fact, the preamble to the final rule noted that an LSA designation was reliable enough to allow for “immediate implementation of waivers for areas where the Employment and Training Administration, U.S. Department of Labor (ETA), has designated such areas as LSAs.”³⁸⁶ In other words, the Department made a reasoned decision to allow states to immediately implement (before approval by FNS) any waiver based on an area’s designation as an LSA. The proposed rule both eliminates the LSA criteria and the immediate implementation of certain waivers without explaining why the current process is flawed or could be improved.

The proposed rule drops LSAs but provides no explanation for why this change is needed; nor does it identify deficiencies in the current criteria (aside from determining that there should be a 7 percent unemployment floor). Because we do not know what faults the Department now believes exist with the use of LSAs as credible indicator of a lack of sufficient jobs for the individuals subject to the time limit, we are unable to assess the validity of the claim. It is unclear what information the Department now has that invalidates its decision of more than 20 years ago — a decision the Department has followed and subscribed to until very recently. This prevents the public from providing relevant information that supports or refutes the reasons behind the proposed rule.

The Proposed Rule Attempts to Achieve Through Regulation A Policy That Congress Explicitly Rejected

The Administration’s aim with this rule appears to be to do through rule-making what Congress rejected through legislation. The Trump Administration proposed restricting waivers from the time limit through legislation in its fiscal year 2018 budget proposal and promoted exposing more people to the time limit throughout the 2018 Farm Bill process.³⁸⁷ In the budget, the Administration proposed restricting waivers to just areas with an average unemployment rate of 10 percent. In that proposal, the Administration described current policy as, “States can request waivers from the ABAWD time limit that cover the entire State, or only parts of the State where unemployment is particularly high. States decide whether or not to request a time limit waiver, and generally make this assessment annually.” The proposed policy was described as, “This proposal limits ABAWD waivers to counties with an unemployment rate greater than 10 percent averaged over 12 months.” While this proposed legislative policy would be stricter than the policy in the proposed rule, the actual near-term impact of a 7 percent floor would be similar as there are very few counties in the country with average unemployment rates between 7 and 10 percent.

³⁸⁵ U.S. Department of Agriculture, Food and Nutrition Service, “Guidance for States Seeking Waivers for Food Stamp Limits,” Dec. 3, 1996.

³⁸⁶ 66 Fed. Reg., No. 11, 4438, “Food Stamp Program: Personal Responsibility Provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” January 17, 2001, p. 4463.

³⁸⁷ Food and Nutrition Service, 2018 Explanatory Notes for the FY2018 President’s Budget, pages 32-92 to 32-93 <https://www.obpa.usda.gov/32fnsexnotes2018.pdf>.

Throughout the farm bill process, the President and Secretary Perdue were quoted in the press as saying that they were frustrated that Congress would not expose more individuals to the time limit or “work requirement.”³⁸⁸ At the 2018 Farm Bill signing ceremony, the President remarked that he wanted to implement policy counter to what Congress had decided. He said, “Therefore, I have directed Secretary Perdue to use his authority under the law to close work requirement loopholes in the food stamp program. Under this new rule, able-bodied adults without dependents will have to work, or look for work, in order to receive their food stamps. Today’s action will help Americans transition from welfare to gainful employment, strengthening families and uplifting communities. And that was a difficult thing to get done, but the farmers wanted it done; we all wanted it done. And I think, in the end, it’s going to make a lot of people very happy. It’s called “work rules.” And Sonny is able, under this bill, to implement them through regulation.”³⁸⁹ As noted, the farm bill legislation which the President refers to as “the bill”, did not provide any new authority to the Secretary to change waiver policy.

Congress expressly rejected the Administration’s proposal to substantially limit waivers in favor of the Senate approach, demonstrating intent to keep the current interpretation of the “insufficient jobs” criterion intact. Given that the agency did not put forward a coherent evidenced-based argument, we are left to believe that the goal of this rule is to defy Congressional intent and the agency’s own rulemaking to achieve a failed legislative effort.

C. The Failure to Provide a Relevant Explanation or Supporting Data to Justify a Change in Current Regulations Occurs Repeatedly Throughout the Proposed Rule

Under the NPRM, USDA would simply eliminate several existing criteria for requesting waivers because the Department claims they are “rarely used, sometimes subjective and not appropriate when more specific and robust data is available.” Under the proposed rule, waivers would not be available for areas with low and declining employment-to-population ratios, a lack of jobs in declining occupations or industries, or a lack of jobs as demonstrated by an academic study or other publication. The claim that the data available is not rigorous enough to support a request is not explained, given that states can submit a wide range of data to support a request.

Especially concerning is the elimination of the employment-to-population (E:P) ratio standard. It is a well-established metric that has several features that make it preferable to general unemployment rates in assessing the health of the labor market. In some ways and under some circumstances, particularly in rural areas, the E:P ratio may be a better measure of the availability of sufficient jobs

³⁸⁸ Emily Birnbaum and Julie Grace Brufke, “Trump Attacks Dems on farm bill”, The Hill, September 13, 2018, <https://thehill.com/homenews/administration/406561-trump-calls-out-dems-for-opposing-farm-bill-over-work-requirements>

Phillip Brasher, “Farm Bill Delayed, but Perdue signals administration support”, Agripulse, December 3, 2019, <https://www.agri-pulse.com/articles/11703-farm-bill-delayed-but-perdue-signals-administration-support>

³⁸⁹ Remarks by President Trump at Signing of H.R. 2, the Agriculture Improvement Act of 2018. <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-2-agriculture-improvement-act-2018/>

for low-income adults participating in SNAP. The Department fails to establish that the E:P ratio relies on questionable or non-specific data. The proposed rule insists that sound data be used in supporting waiver requests, emphasizing that data from BLS is the standard to be used in requesting waivers.

The employment-to-population ratio has not been widely used, but that, by itself, is not a sufficient reason to eliminate the option for states. As BLS itself notes, the ratio is “especially useful for evaluating demographic employment trends.”³⁹⁰ In particular, it is important to rural areas, which often have less dynamic job creation and fewer resources available for the types of training activities that allow ABAWDs subject to the time limit to meet the 20-hour requirement. For example, South Dakota has waived both whole counties and reservations under the employment-to-population criteria. Even in the last few years, other states, like New York and Maryland have waived counties. The option may not be frequently used, but it represents an important measure of labor market weaknesses in some areas and should remain available to states. The NPRM does not explain why frequency of request is a meaningful reason to keep or drop criteria.

Finally, the Department offers no insight into whether it considers the employment-to-population ratio to be “sometimes subjective.” Under each of the listed concerns used to justify dropping the employment-to-population criterion (that it is rarely used, sometimes subjective, and not appropriate if more specific and robust data is available), the NPRM provides no explanation or information that allows the general public to respond to the proposal.

D. The Public Input Resulting From Last Year’s Advanced Notice of Proposed Rulemaking Does Not Appear to Inform This Proposed Rule

In March 2018, the Department issued an Advanced Notice of Proposed Rule Making (ANPRM), seeking public input on “potential regulatory changes or other changes that might better support states in accurately identifying ABAWDs subject to the time limit and providing meaningful opportunities for them to move towards self-sufficiency.”³⁹¹ Tens of thousands of comments were submitted, but the agency makes only a cursory reference to a subset of the comments and does not adequately recognize or summarize the public input. While the preamble of the NPRM contains a brief and inconclusive summary of the submitted comments, the Department provides no explanation for how the ANPRM informed the policy making process or whether the Department chose to ignore input provided through the public process. Potential commenters are at a loss for how the ANPRM informed the development of the proposed rule, what the public response to the ANPRM was, or how to engage without any information about the comments.

The failure to respond to ANPRM raises serious concerns about the current rulemaking proposal. We are left to wonder whether the bulk of the comments sought, or did not seek, a change in policy. There is no summary of the reasons for supporting a change. Nor is there a summary of the input from commentators who opposed a change in policy, or a response from the agency as to why it concluded that these commentators were incorrect.

³⁹⁰ Carol Boyd Leon, The employment-population ratio: its value in labor force analysis, Bureau of Labor Statistics, Monthly Labor Review, February 1981, pp. 36-45, <https://www.bls.gov/opub/mlr/1981/02/art4full.pdf>.

³⁹¹ Fed. Reg., Vol. 83, No. 37, “Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents; Advance Notice of Proposed Rulemaking,” February 23, 2018, p. 8013.

The ANPRM asked numerous questions about helping ABAWDs gain work. But the NPRM only references the questions about waivers. This is deeply misleading as it suggests comments were focused only on that question.

The failure to adequately respond to the ANPRM also raises concerns that the current rulemaking process will fail to take the comments on the NPRM into account as the Department decides whether to proceed with the current proposed rule or change or withdraw it. If the public's input was ignored or outright dismissed in the previous process, why should the public have confidence that the NPRM will not yield the same result?

E. Alternatives to the Proposed Rule Are Not Discussed

Under the rulemaking process, USDA is obligated to explain why the particular policy is proposed and why alternative approaches are inadequate. Given that the agency estimates 755,000 people will lose benefits and provides no estimate for how many will gain employment, less harmful alternatives exist and the Department has an obligation to consider these alternatives.

In establishing 7 percent unemployment as a floor under which no area can qualify for a waiver, the Department claims this is “more suitable for achieving a more comprehensive application of work requirements so that ABAWDs in areas that have sufficient number of jobs have a greater level of engagement in work and work activities, including job training.”³⁹² No information is provided as to why current policies are not comprehensive and what the current level of engagement in work and work activities is, much less what a “greater level of engagement” would look like. This makes it difficult for commenters to provide input on these unsupported assertions.

The claim that a 7 percent floor strengthens the work requirement is repeated throughout the preamble. As discussed in detail [below], the NPRM fails to adequately support the proposed floor. Without knowing what research or data the Department relied upon to conclude that 7 percent was the appropriate floor, the public is unable to directly comment on the validity of the Department's action.

The Department does seek input on setting the unemployment floor — at 7, 6, or 10 percent — but offers no explanation why 6 or 10 percent are the two alternatives rather than, say, 5 or 8 percent. Aside from a cursory mention of the natural rate of unemployment, no discussion or information is provided to inform the public's comments.

Other alternatives to grouping areas together also exist. For example, the proposed rule limits waiver requests that group sub-state areas together to those based entirely on BLS Labor Market Areas (LMAs). There are serious limitations to relying solely on LMAs as the basis of such waivers, as discussed in more detail in Chapter 5. LMAs rely on older data, use a narrow definition of a labor market area that does not reflect the challenges facing low-income SNAP participants, and do not account for other factors relevant to ABAWDs subject to a three-month time limit — such as the availability of training programs. In fact, one of the key components of the current grouping policy — that states largely define the area of the waiver request — is largely eliminated with no explanation

³⁹² NPRM, p. 984.

or evidentiary support. Other alternatives do exist, but the NPRM fails to provide any reason why these alternatives are not appropriate and why the proposed grouping change is the best available option.

The proposed rule is based on insufficient reasons to change current regulations, fails to provide evidence supporting the change, and lacks any discussions of alternatives considered in developing the proposed rule. Given this lack of supporting information, the public has an insufficient opportunity to comment meaningfully on the proposed rule.

Chapter 11. The Proposed Rule’s “Regulatory Impact Analysis” Highlights FNS’ Faulty Justification and Includes Numerous Unclear or Flawed Assumptions

The Regulatory Impact Analysis (RIA)³⁹³ that accompanies the proposed rule contradicts the Department’s justification for the proposed rule. The Department repeatedly asserts in the preamble that the proposed rule would “encourage more ABAWDs to engage in work” and would “promote self-sufficiency.” But the RIA finds instead that 755,000 individuals would be cut from SNAP in 2020 for “failure to engage meaningfully in work or work training,”³⁹⁴ and it provides no evidence or estimates that other individuals would be induced to work because of the proposed changes or would experience any benefit from the changes.

In addition, the methodology for deriving the impact of the proposed rule ignores available research evidence, uses imprecise terms, includes numerous unclear or inappropriate assumptions, and excludes all together any explanations for several other key assumptions. The information that is provided in the RIA is fundamentally flawed, imprecise, incomplete, and incoherent.

The result is that the proposed rule does not provide the analytical or conceptual information needed to justify the policy change and to evaluate the proposed rule’s likely impacts. Because of the deficiencies in reasoning and analysis of the RIA, the proposed rule fails to answer basic questions related to the impact of the change and the people whom the proposed rule would affect, and so does not contain the information and data necessary to fully evaluate the proposed rule or to comment on key aspects on the Department’s justification for the rule.

No agency could explain every nuance and assumption, but the RIA that accompanies the proposed changes in this NPRM is so deeply flawed that we cannot comprehend the basic reasoning behind it. Because individuals who wish to comment on the changes cannot understand or follow the agency’s justification, this rulemaking and comment process is compromised.

A. The RIA Does Not Provide Any Evidence to Support the Proposed Rule’s Stated Rationale

The NPRM argues repeatedly that “the Department is confident that these changes would encourage more ABAWDs to engage in work or work activities,”³⁹⁵ implying that, as a result of the changes proposed, individuals newly subject to SNAP’s three-month time limit in areas no longer qualifying for waivers would be likely to work more, have higher earnings, or otherwise be better off. But the NPRM provides no evidence to support these assertions, and no estimates of any

³⁹³ The Regulatory Impact Analysis (RIA), which includes the detailed cost-benefit analysis and information about the methodology, is included in a separate online document here: <https://www.regulations.gov/document?D=FNS-2018-0004-6000>, p. 4-7 and 18-31. The NPRM includes only a short summary of the analysis. Hereafter in citations we will refer to the Regulatory Impact Analysis as the “RIA.”

³⁹⁴ NPRM, p. 989; RIA, pp. 4, 26, 27.

³⁹⁵ NPRM, pp. 981, 982, 987.

quantifiable benefits for any individuals resulting from the changes. The NPRM's failure to justify the stated rationale is a serious deficiency and makes it impossible for commenters to assess the impact of the proposed rule or to comment on the Department's justification.

The RIA, which is included as supplementary materials accompanying the NPRM, contradicts the Department's stated rationale. The analysis in the RIA provides that the only benefit of the rule is budgetary savings from lower SNAP benefits resulting from 755,000 individuals "not meeting the requirements for failure to engage meaningfully in work or work training."³⁹⁶ The RIA does not claim that any individuals would be induced to find work or have increased earnings as a result of the proposed rule. The RIA does provide a confusing assertion that a higher share of "ABAWDs" would be working in 2020 (34 percent) than in 2016 (26 percent), and estimates the impact under a different scenario where that increase does not occur.³⁹⁷ According to the RIA, however, the assumed increase in employment (from 26 percent with any earnings to 34 percent working at least 20 hours a week) is "based on the projected decline in the unemployment rate" in the President's 2019 budget forecast, not on more work among low-income households because of the regulatory change.

The loss of SNAP benefits as a result of fewer areas qualifying for waivers from the time limit is included in the RIA as a benefit because of the reduction in federal spending, but the RIA does not quantify any benefits to individuals from the change. There is only a small mention in the RIA of the harm, or cost that might occur for low-income individuals who lose SNAP:

To the extent that ABAWDs newly subject to the time limit are unable to find work or otherwise meet work requirements, and thus lose SNAP there may be increases in poverty and food insecurity for this group. However, those ABAWDs who become employed will *likely* see increased self-sufficiency and an overall improvement in their economic well-being. The Department *believes* that a number of those affected by strengthened work requirements are able to secure employment in a wide range of different industries.³⁹⁸ [Emphasis added.]

Thus, the analysis included in the RIA asserts that that the Department believes people are likely to get jobs because of the rule, but provides no evidence to support that belief and quantifies only the federal budgetary savings from the estimated reduction in SNAP benefits associated with individuals' "failure to engage meaningfully in work or work training."³⁹⁹ It further mentions, but does not quantify, the secondary effects on SNAP retailers from lower SNAP redemptions,⁴⁰⁰ and on community-based organizations (i.e., food banks and others that provide emergency assistance) from increased demand for food and services.⁴⁰¹

³⁹⁶ NPRM, p. 989.

³⁹⁷ RIA, pp. 4, 26.

³⁹⁸ RIA, p. 28.

³⁹⁹ NPRM, p. 989.

⁴⁰⁰ NPRM, p. 990.

⁴⁰¹ RIA, p. 28.

Because the RIA and its cost-benefit analysis are lacking in internal logic or transparency, the public cannot see clearly how the Department arrived at its conclusions about the need for the proposed regulation or its impact.

B. Available Research Evidence Contradicts the Articulated Aims of the Proposed Rule

The research evidence that is available on the question of the effects of policies that take food assistance or other benefits away from individuals who don't meet rigid work requirements is not mentioned in the RIA. This is a serious omission and constrains the public from being able to adequately assess and comment on the potential impacts of the proposed rule.

The loss in benefits, and the related increase in poverty and hardship that results from policies that take away food assistance or other benefits from individuals who do not meet rigid work requirements is well-documented in the research. The research also finds very little gain in longer-term employment as a result of such policies. In other words, the research supports the findings of the RIA that many individuals would be cut off SNAP as a result of fewer areas qualifying for waivers from the time limit under the proposed rule, but does not support the overall stated purpose of the regulatory change.

The proposed rule ignores strong research evidence from independent researchers that contradicts the stated justification for the proposed change. Below we discuss the available relevant research on the impact of taking benefits away from individuals who are unable to meet rigid work requirements.

The NPRM Ignores Research That Finds That the Characteristics of the Low-Wage Labor Market Contribute to Periods of Unemployment

The proposed rule implicitly assumes that taking away food assistance will cause people not currently working to get jobs. But this assumption ignores research evidence about the realities of the low-wage labor market that contribute to periods of unemployment and mischaracterizes the work patterns of many people who need and receive assistance.

Features of the Labor Market Contribute to Periods of Unemployment

The basic characteristics of low-wage jobs are well-documented: low-paid jobs often don't last; low-wage industries that employ workers with limited education or work experience tend to expand and shrink their workforces frequently based on demand, resulting in part-time jobs that have unstable hours and high turnover; and low-paid workers often lack the health coverage, paid leave, and reliable child care that can help a worker keep her job. These realities help explain why many workers in low-wage jobs need assistance while they are working and when they are in between jobs. The nature of low-wage jobs can make it hard for a worker to meet rigid work requirements.

Recent work by economists Kristen F. Butcher and Diane Whitmore Schanzenbach used the Census Bureau's Current Population Survey to show that the occupations of SNAP or Medicaid recipients who work at least part of the year feature instability and low wages overall (not just for SNAP or Medicaid recipients). These occupations include personal care and home health aides, maids and housekeepers, dishwashers, food preparers, and laundry and dry cleaning workers. Looking at *all workers* in the ten occupations most prevalent among SNAP recipients, the researchers found that these workers faced more periods of joblessness and were less likely to be stably

employed from year to year than better-paid workers in other occupations. The researchers conclude, “Together, these results suggest that it will be difficult for individuals who work and participate in benefit programs to meet proposed work requirements in the private sector alone. Although employment levels are high among many of these types of workers, employment volatility is also quite high. Much of this volatility reflects characteristics of these types of occupations and is not necessarily due to decisions made by the workers.”⁴⁰²

Another study of the jobs that are common among SNAP participants found that, “because SNAP participants work in many industries (such as retail and hospitality) and occupations (such as service and sales) where features such as involuntary part-time work and irregular scheduling are common, they may participate in SNAP to supplement their low incomes due to insufficient or fluctuating hours. Similarly, because workers often cycle in and out of these jobs, workers may participate in SNAP during periods of unemployment or underemployment.”⁴⁰³

In addition, there is evidence that low-wage jobs have higher turnover and are far less likely to have access to paid sick leave or paid family leave.

- According to a 2018 study by the Economic Policy Institute, “the monthly rate of churn into and out of employment for low-wage workers is roughly twice as high as it is for the typical worker in the middle of the wage distribution.”⁴⁰⁴
- Data from the Bureau of Labor Statistics shows that low-wage workers are far less likely to have access to paid sick leave or paid family leave.⁴⁰⁵

The Rationale of the NPRM Ignores Research on The Work Patterns of People Who Are Low-Skilled, Low-Wage Workers Subject to The Time Limit

The NPRM states that “The application of waivers on a more limited basis would encourage more ABAWDs to take steps towards self-sufficiency.”⁴⁰⁶ Secretary of Agriculture Sonny Perdue on February 28, 2019 in testimony before the Senate Agriculture Committee defended the proposed

⁴⁰² Kristen F. Butcher and Diane Whitmore Schanzenbach, “Most Workers in Low-Wage Labor Market Work Substantial Hours, in Volatile Jobs,” Center on Budget and Policy Priorities, July 24, 2018, <https://www.cbpp.org/research/poverty-and-inequality/most-workers-in-low-wage-labor-market-work-substantial-hours-in>.

⁴⁰³ Brynne Keith-Jennings and Vincent Palacios, “SNAP Helps Millions of Low-Wage Workers,” Center on Budget and Policy Priorities, May 10, 2017, <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-low-wage-workers>.

⁴⁰⁴ David Cooper, Lawrence Mishel, and Ben Zipperer, Economic Policy Institute, April 2018, <https://www.epi.org/publication/bold-increases-in-the-minimum-wage-should-be-evaluated-for-the-benefits-of-raising-low-wage-workers-total-earnings-critics-who-cite-claims-of-job-loss-are-using-a-distorted-frame/>.

⁴⁰⁵ Bureau of Labor Statistics, “National Compensation Survey: Employee Benefits in the United States, March 2017,” *Bulletin* 2787, September 2017.

⁴⁰⁶ NPRM, p. 981.

rule, saying that “We think the purpose is to help people move to independency.... We should help people when they are down but that should not be interminably.”⁴⁰⁷

The belief that unemployed adults who participate in SNAP are dependent on SNAP for long periods ignores research that finds that large numbers of recipients who are not working at a point in time have recently worked or will work soon. A CBPP analysis of SNAP recipients shows that in a typical month in mid-2012, some 52 percent of adult recipients not receiving disability benefits were working, but that 74 percent worked in the year before or after that month.⁴⁰⁸

The analysis examined adults who weren’t receiving disability benefits and who participated in SNAP for at least a month in a period of almost 3.5 years. This allowed us to observe their work both while they participated in SNAP and in the months when they did not, and to observe employment among SNAP recipients over a longer period.

The adults in the analysis worked the majority of the months in the analysis, but they were more likely to participate in SNAP in the months when they were out of work and their income was lowest. They participated in SNAP in about 44 percent of the months that they were working and in 62 percent of the months in which they were not working. This helps explain why an analysis that only looks at work in a single point-in-time month while people are receiving SNAP will show them working less than they do over time: many of them are workers who temporarily receive SNAP when they are between jobs.⁴⁰⁹

While these figures apply to all adults, not just those without children in the household, the research finding about the difference between point-in-time employment and employment over several years is still relevant and the NPRM does not address it. While individuals subject to the time limit may, in any given month, not have sufficient work hours to pass a rigid work test, many will be working (or working more hours) within a short time, with or without a work requirement. Moreover, when SNAP participants are working, it’s often unstable work with low wages that does not lead to self-sufficiency, contrary to the framing included in the NPRM.

Research From the TANF Program Found That Employment Impacts Are Modest and Fade Over Time

The rigorous random-assignment evaluations of programs that imposed work requirements on cash assistance (AFDC/TANF) recipients in the late 1990s contradicts the stated rationale for the proposed rule, but supports the finding from the RIA that under the proposed rule one would not expect to see increased employment or earnings. While these evaluations generally found modest,

⁴⁰⁷ “Perdue Reiterates Need to Restore Original Intent of SNAP: A Second Chance, Not a Way of Life, Food and Nutrition Service, USDA, Press Release USDA 0025.19, February 28, 2019, <https://www.fns.usda.gov/pressrelease/2019/usda-002519>.

⁴⁰⁸ For similar households with just childless adults, 46 percent were working in a typical month and 72 percent worked within a year before or after that month. <https://www.cbpp.org/unemployed-adults-without-children-who-need-help-buying-food-only-get-snap-for-three-months>

⁴⁰⁹ Brynne Keith-Jennings and Raheem Chaudhry, “Most Working-Age SNAP Participants Work, But Often in Unstable Jobs,” Center on Budget and Policy Priorities, March 15, 2018.

statistically significant increases in employment early on, the effects faded over time, and people with significant barriers to employment were not helped. In fact, many were hurt.

- In Portland, Oregon, the site of the largest earnings impact among the evaluations, the share of recipients with stable employment (defined as being employed in 75 percent of the calendar quarters in years three through five after the pilot project began) rose only from 31.2 to 38.6 percent.⁴¹⁰
- Within five years, employment among people subject to and *not* subject to work requirements was about the same in nearly all the programs evaluated.⁴¹¹
- Even when the programs provided specially tailored services, the vast majority of participants facing significant employment barriers did not find employment as a result of work requirements.⁴¹²
- The California GAIN program, the so-called “Riverside Miracle,” which focused on getting recipients into any job as quickly as possible, was outperformed in the long run by programs that focused on increasing participants’ skills and building their human capital.⁴¹³

One TANF expert researcher commented on the House Agriculture Committee’s work requirement proposals from the 2014 farm bill, which would have expanded the existing approach for SNAP for childless adults to adults with children, that, “[t]here is no credible evidence to suggest that the specific work requirements developed by the House Agriculture Committee would ‘work.’ In fact, they are not likely to do much in the way of promoting employment and could push millions of families/individuals deeper into poverty.”⁴¹⁴

On balance, as we discuss in more detail in Chapter 6, this rigorous research supports the findings of the RIA that many people lose benefits when required to comply with work requirements, but contradicts the stated purpose of the proposed rule to increase self-sufficiency.

Strong Evidence That Many Subject to the Time Limit Face Employment Barriers and Would Lose Needed Help

Based on the TANF experience from the 1990s, as well as the existing experience with the time limit in SNAP and the early experience from Arkansas (the only state so far to terminate Medicaid

⁴¹⁰ Gayle Hamilton *et al.*, “National Evaluation of Welfare-to-Work Strategies: How Effective Are Different Welfare-to-Work Approaches? Five-Year Adult and Child Impacts for Eleven Programs,” Manpower Demonstration Research Corporation, December 2001, Appendix Table C-6.

⁴¹¹ *Ibid.*, Table C.1.

⁴¹² Dan Bloom, Cynthia Miller, and Gilda Azurdia, “Results from the Personal Roads to Individual Development and Employment (PRIDE) Program in New York City,” MDRC, July 2007.

⁴¹³ V. Joseph Hotz, Guido Imbens, and Jacob Klerman, “Evaluating the Differential Effects of Alternative Welfare-to-Work Training Components: A Reanalysis of the California GAIN Program,” *Journal of Labor Economics*, Volume 24 Number 3, 2006, pp. 521-566.

⁴¹⁴ Peter Germanis, “Who Killed Work Requirements for SNAP in the Farm Bill? Answer: Conservative Ideologues,” January 1, 2019, <https://mlwiseman.com/wp-content/uploads/2019/01/Farmbill.120118.pdf>.

for individuals who fail to document that they are meeting Medicaid work requirements), many people subject to work requirements would lose benefits, and poverty and hardship would increase. This, again, is consistent with the analysis in the RIA, but not with the justification for the proposed rule.

- Research shows that many of the people who would be newly subject to the time limit have circumstances that may limit the amount or kind of work that they can do. A large share face physical or mental health conditions or a cognitive impairment that would be difficult for state agencies to identify or for individuals to obtain paperwork to prove.⁴¹⁵
- Research shows that many TANF recipients who lost financial assistance due to work requirements had serious barriers to employment. They were likelier than other recipients to have physical or mental health issues, have substance use disorders, be victims of domestic violence, have low education and skill levels, have prior criminal justice records, or lack affordable child care.⁴¹⁶
- The rigorous experiments from the 1990s that required cash assistance recipients to participate in work-related activities found that the resulting loss in benefits raised “deep poverty” rates (the share of households with income below half the poverty line).⁴¹⁷ Similar results were found with careful non-experimental analyses of leaver studies and household survey data. Moreover, studies of TANF recipients whose assistance was taken away found that they were likelier to experience serious hardship, such as seeing their utilities shut off, becoming homeless, or lacking adequate food.⁴¹⁸ In line with these findings, numerous scholars using a variety of data and methods have concluded that cash assistance has weakened as a guard against deep poverty under TANF,⁴¹⁹ and that some families are worse off as a result.⁴²⁰

⁴¹⁵ Rachel Garfield, Robin Rudowitz, and Anthony Damico, “Understanding the Intersection of Medicaid and Work,” Kaiser Family Foundation, January 5, 2018; MaryBeth Musumeci, Julia Foutz, and Rachel Garfield, “How Might Medicaid Adults with Disabilities Be Affected By Work Requirements in Section 1115 Waiver Programs?” Kaiser Family Foundation, January 26, 2018; Bauer, Schanzenbach, and Shambaugh; Keith-Jennings and Chaudhry.

⁴¹⁶ LaDonna Pavetti, Michelle K. Derr, and Heather Hesketh, “Review of Sanction Policies and Research Studies: Final Literature Review,” Mathematica Policy Research, March 10, 2003.

⁴¹⁷ Stephen Freedman *et al.*, “National Evaluation of Welfare-to-Work Strategies — Evaluating Alternative Welfare-to-Work Approaches: Two-Year Impacts for Eleven Programs,” Manpower Demonstration Research Corporation, June 2000; Pavetti, Derr, and Hesketh; Marianne Bitler, Hilary Hoynes, and Jonah Gelbach, “What Mean Impacts Miss: Distributional Effects of Welfare Reform Experiments,” *American Economic Review*, Volume 96, Number 4, 2006, pp. 988-1012.

⁴¹⁸ Ariel Kalil, Kristin Seefeldt, and Hui-chen Wang, “Sanctions and Material Hardship under TANF,” *Social Service Review*, December 2002, pp. 642-662; Melissa Ford Shah *et al.*, “Predicting Homelessness among Low-Income Parents on TANF,” Washington State Department of Social and Health Services, August 2015, <https://www.dshs.wa.gov/sites/default/files/SESA/rda/documents/research-11-224.pdf>; Andrew Cherlin *et al.*, “Sanctions and Case Closings for Noncompliance: Who Is Affected and Why,” Johns Hopkins University, Policy Brief 01-1, 2001.

⁴¹⁹ Gene Falk, “Temporary Assistance for Needy Families (TANF): Size of the Population Eligible for and Receiving Cash Assistance,” CRS Report No. R44724, Congressional Research Service, Washington, D.C., January 3, 2017.

⁴²⁰ Ron Haskins, “Welfare Reform at 20: Work Still Works,” *Journal of Policy and Management* 35(1), 2016, 223–224; Robert A. Moffitt, “The Deserving Poor, the Family, and the U.S. Welfare System,” *Demography* 52(3), 2015, 729–749; Hilary W.

- Research has shown that African American TANF recipients are far likelier to have their benefits taken away than white recipients.⁴²¹ Caseworkers' decisions about when to impose a sanction involve some discretion; one study, using fictitious case examples, showed that caseworkers were likelier to sanction African American recipients than white recipients. Recipients of color may also be likelier to be sanctioned because they face greater challenges in the labor market, including discrimination.
- Evidence from SNAP and Medicaid shows that administrative hurdles can lead people to lose assistance even when they are working or may qualify for an exemption, because they do not understand or cannot comply with the requirement or because the state agency fails to properly process the paperwork.⁴²²
- Recent evidence from Arkansas's implementation of work requirements for Medicaid is sobering. Arkansas is taking Medicaid coverage away from certain adult beneficiaries who fail to report at least 80 hours of work or work-related activities per month for three months. More than 18,000 Arkansans have lost coverage after just seven months of implementation, and thousands more are at risk over the coming months. Data from the state show that a very small share of those required to report hours of participation (many beneficiaries are exempt from the reporting requirement) have reported their hours, with very few successfully navigating the exemption and "good cause" processes.⁴²³

Hoynes and Diane W. Schanzenbach, "Safety Net Investments in Children," March 8, 2018, Brookings BPEA Article, <https://www.brookings.edu/bpea-articles/safety-net-investments-in-children/>; James P. Ziliak, "Temporary Assistance for Needy Families," 2015 NBER Working Paper 21038; Kristin S. Seefeldt and Heather Sandstrom, "When There Is No Welfare: The Income Packaging Strategies of Mothers Without Earnings or Cash Assistance Following an Economic Downturn," 2015. *Russell Sage Foundation Journal of the Social Sciences* 1(1), 139–158; H. Luke Shaefer, Kathryn Edin, and Elizabeth Talbert, "Understanding the Dynamics of \$2-a-Day Poverty in the United States." (2015) *Russell Sage Foundation Journal of the Social Sciences* 1(1), 120–138; Christina Paxson and Jane Waldfogel, "Welfare Reforms, Family Resources, and Child Maltreatment," *Journal of Policy Analysis and Management* 22(1), 2003, 85–113.

⁴²¹ Sanford F. Schram *et al.*, "Deciding to Discipline: Race, Choice, and Punishment on the Frontlines of Welfare Reform," *American Sociological Review*, January 2009; Kalil *et al.*; Richard C. Fording, Joe Soss, and Sanford F. Schram, "Devolution, Discretion, and the Effect of Local Political Values on TANF Sanctioning," *Social Service Review*, June 2007, pp. 285-316; Chi-Fang Wu, Maria Cancian, and Daniel R. Meyers, "Sanction Policies and Outcomes in Wisconsin," *Focus*, Volume 23, Number 1, Winter 2004, <https://www.irp.wisc.edu/publications/focus/pdfs/foc231f.pdf>; Pavetti 2004.

⁴²² Rachel Garfield, Robin Rudowitz, and MaryBeth Musumeci, "Implications of a Medicaid Work Requirement: National Estimates of Potential Coverage Losses," Kaiser Family Foundation, June 27, 2018; Nader S. Kabbani and Parke E. Wilde, "Short Recertification Periods in the U.S. Food Stamp Program," *Journal of Human Resources*, Volume 38, 2003; David Ribar, Marilyn Edelhoach, and Qiduan Liu, "Watching the Clocks: The Role of Food Stamp Recertification and TANF Time Limits in Caseload Dynamics," *Journal of Human Resources*, Volume 43, Number 1, 2008, pp. 208-238; Mark Edwards *et al.*, "The Great Recession and SNAP Caseloads: A Tale of Two States," *Journal of Poverty*, Volume 20 Issue 3, December 11, 2015; Colin Gray, "Why Leave Benefits on the Table? Evidence from SNAP," Upjohn Institute Working Paper 18-288, May 21, 2018; Food and Nutrition Service, U.S. Department of Agriculture, "Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP)," November 2014.

⁴²³ Jennifer Wagner, "Commentary: As Predicted, Arkansas' Medicaid Waiver Is Taking Coverage Away From Eligible People," Center on Budget and Policy Priorities, updated March 12, 2019, <https://www.cbpp.org/health/commentary-as-predicted-arkansas-medicaid-waiver-is-taking-coverage-away-from-eligible-people>

The RIA Cites Only One Study, Which Does Not Support the Proposed Rule

As mentioned, the NPRM cites no research to support that the proposed rule would achieve its purported goal: i.e., that taking food assistance away from certain low-income childless adults would encourage more self-sufficiency and employment. The one study referenced in the entire RIA document instead examines the relationship between the duration of unemployment and future employment and earnings.⁴²⁴ The study finds that long-term unemployment has a negative effect on the likelihood of future employment and that the fact that someone experiences long-term unemployment is the main reason (as opposed to inherent characteristics of individuals who experience long-term unemployment.) Strangely, the study offers little support for the NPRM and raises important cautionary notes suggesting that the proposed rule would worsen, not improve, outcomes for the targeted population.

- **The one study cited in the RIA does not support the proposed rule.** The RIA suggests that because longer unemployment spells are associated with a lower likelihood of future employment, the proposed rule is justified. But the study does not mention SNAP and does not address whether taking food assistance away from low-income individuals would either decrease unemployment spells or directly increase the likelihood of future employment. In fact, it is difficult to understand what connection could be made. The RIA estimates that 755,000 individuals would lose SNAP under the proposed rule, but provides no estimate for increased employment. Much of the research in this area shows that those individuals will face increased hardship and may have a more difficult time finding work.
- **The population studied is not the population subject to the SNAP policy.** The study cited looked at long-term bouts of unemployment by looking at a sample of *all* workers in state unemployment insurance systems. But the childless adult population subject to the SNAP time limit is a distinct group that includes many individuals not included in the study group because many adults who participate in SNAP do not receive unemployment compensation, even if they are working or had worked. A study of ABAWDs subject to the time limit in Ohio found that nearly 80 percent had never been eligible for unemployment benefits.⁴²⁵ More importantly, as discussed in detail elsewhere in these comments, other research shows that most childless adults who receive SNAP work when they can find employment. Based on Census Bureau SIPP data, about 75 percent of SNAP households with a childless, working-age adults worked in the year before or after receiving SNAP. Many of these individuals would not be in the pool of adults considered long-term unemployed in the study, so the conclusions drawn in the cited study do not directly apply to ABAWDs as a group and do not justify a policy change directed at them.
- **Finally, the study's findings suggest that support for individuals to improve their skills or participate in work programs would be a better approach.** The study finds that “the longer-term unemployed experience substantially worse employment and earnings losses than the short term unemployed.” The methodology, “allows us to rule out the ‘bad apple’

⁴²⁴ Katharine G. Abraham et al., “The Consequences of Long-term Unemployment: Evidence from Linked Survey and Administrative Data,” National Bureau of Economic Research, Working Paper 22665, September 2016, <http://www.nber.org/papers/w22665>. The citation appears on p. 3 of the RIA.

⁴²⁵ Ohio Association of Food Banks, “Franklin County Comprehensive Report on Able-Bodied Adults Without Dependents, 2014-2015,” October 14, 2015, p. 15, http://admin.ohiofoodbanks.org/uploads/news/ABAWD_Report_2014-2015-v3.pdf.

explanation for why the long-term unemployed fare worse...and [is] consistent with duration dependence as the explanation for their poorer outcomes.” This means that it is not the characteristics of the individuals that cause them to be long-term unemployed that are behind the results, but rather the fact of their long-term unemployment. So, if FNS were serious about wanting to help improve the longer-term outcomes for individuals who experience long-term unemployment, it would focus on helping to improve their education and skills or providing slots in work experience programs that allow them to demonstrate their desire to work, rather than cut their food assistance.

C. Reports That Purport to Find Positive Effects From the Time Limit Are Deeply Flawed

The only studies that claim to find substantial positive impacts when low-income individuals are faced with losing food assistance or other benefits if they do not meet rigid work requirements are deeply flawed. FNS does not cite this research either, but we include here some discussion of why FNS should not rely on these kinds of assertions in any future policy development. The faulty results come from the researchers making causal claims without a random-assignment design (or other analytically sound comparison-group methods), ignoring program participants’ work experience prior to receiving assistance, and excluding the impact on households of losing benefits.⁴²⁶ Below we explain how two such reports, citing data from Kansas and Maine, have inaccurately touted the alleged success of reimposing a three-month time limit on SNAP participation for childless adults.⁴²⁷

When the recession decimated the labor market and unemployment spiked, most states, including Kansas and Maine, requested the time limit be waived statewide. Kansas reimposed the time limit statewide beginning in October 2013 and Maine reinstated the time limit statewide in October 2014, even though both states qualified for a statewide waiver at the time the time limit returned.

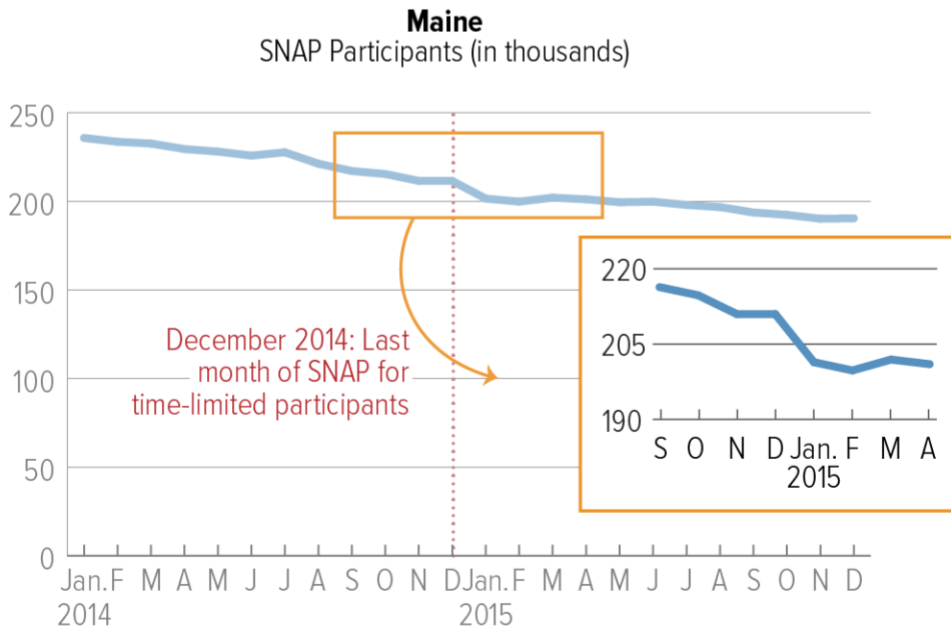
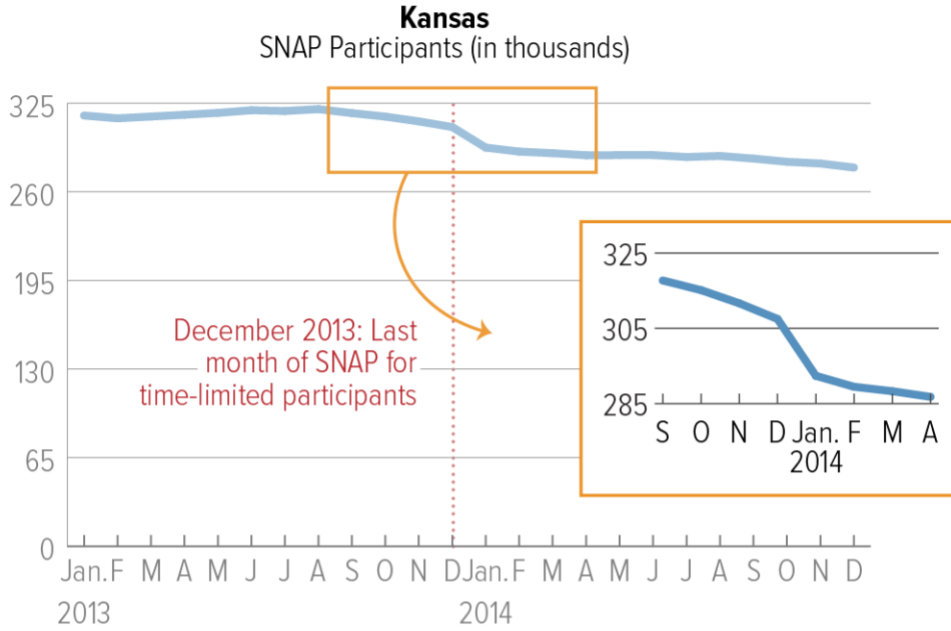
In both states total SNAP caseloads already were declining, but they dropped significantly four months after the time limit was put in place, as Figure 11.1 shows. Data from Kansas and Maine that are limited to the childless adults who were potentially subject to the time limit show that SNAP participation fell among that group by 70 to 80 percent after the time limit returned.

⁴²⁶ Dottie Rosenbaum and Ed Bolen, “SNAP Reports Present Misleading Findings on Impact of Three-Month Time Limit,” Center on Budget and Policy Priorities, December 14, 2016; Tazra Mitchell, LaDonna Pavetti, and Yixuan Huang, “Study Praising Kansas’ Harsh TANF Work Penalties Is Fundamentally Flawed,” Center on Budget and Policy Priorities, updated February 20, 2018.

⁴²⁷ See Jonathan Ingram and Nic Horton, “The Power of Work, How Kansas’ Welfare Reform is Lifting Americans Out of Poverty,” The Foundation for Government Accountability, February 16, 2016, <https://thefga.org/wp-content/uploads/2016/02/Kansas-study-paper.pdf>; Maine Office of Policy and Management, “Preliminary analysis of work requirement policy on the wage and employment experiences of ABAWDs in Maine,” April 19, 2016, http://www.maine.gov/economist/opm/pub/ABAWD_analysis_final.pdf; and accompanying Maine Department of Health and Human Services May 11, 2016 press release and other related materials.

FIGURE 11.1

States Implementing SNAP Time Limit Experienced Sudden Drops in SNAP Participation



Source: Agriculture Department SNAP participation data.

The reports assert that, as a result of the SNAP time limit, work rates and wages have increased dramatically and the individuals subject to the time limit are better off. The reports, however, misrepresent or omit data and, as a result, make claims about the impact of the time limit on work and earnings that the facts do not support.⁴²⁸ The analyses also rest on faulty assumptions about why some childless adults receiving SNAP are not working.

The reports' three largest problems are:

- **They do not take into account that many SNAP recipients already work, or would work soon even without the time limit.** The studies attribute rising work rates and earnings to the return of the time limit even though most, if not all, of the changes would have happened without it. The authors fail to acknowledge that many SNAP recipients who are subject to the time limit were working already, or would soon be working, and as a result, their work rates and wages would likely have risen without the time limit. They make claims that can only be identified through a rigorous evaluation that isolates the impacts of the time limit from what would have happened without it (see box below).
- **They do not consider the potentially severe impact of the time limit on those cut off SNAP.** The studies fail to discuss the circumstances of the individuals who are subject to the time limit and the consequences for increased hardship and food insecurity when they lose SNAP benefits. Without addressing this side of the equation, the studies misrepresent the effect of reinstating the time limit on the well-being of those cut off SNAP. Their figures on the average income of those cut off SNAP are highly misleading because they do not include the loss of SNAP benefits. They do not discuss or attempt to assess what happens to individuals who lose their food assistance and are unable to find employment, who are a large share of those cut off.
- **They do not adequately consider the likely explanations for why childless SNAP participants may not work.** The authors advance the theory that individuals are avoiding work and remaining in poverty *in order to* qualify for modest SNAP benefits of only about \$5 a day. But research and experience in states with the time limit in effect offer evidence of alternative explanations. Many such individuals do work when they can, but they often face significant barriers to work, such as low education and skills or physical or mental health issues.

A careful look at the data presented in the reports, taking these factors into account, strongly suggests that not much changed related to work and earnings when the time limit took effect, but the time limit did cause thousands of the states' poorest residents to lose essential SNAP benefits.

⁴²⁸ Peter Germanis has also written extensively on the methodological shortcomings of these types of studies. Peter Germanis, "How Do the Foundation for Government Accountability's Evaluations of Welfare Reform Measure Up? A Report Card (Hint: The FGA Fails)," June 24, 2018, <https://mlwiseman.com/wp-content/uploads/2016/05/Evaluating-Welfare-Reform.pdf>.

Conventional Evidence-Based Research Uses a “Comparison Group”

One of the central tenets of sound, evidence-based research is the need to have a “comparison group” so that the results can properly account for what would have happened in the absence of a change.

For example, consider researchers who are testing the efficacy of a new medicine designed to speed recovery from the common cold. The researchers would need to know how fast people would have gotten better without the medicine. Without a comparison group there would be no way to know what to make of results that showed, for example, that 30 percent were better after two days and 85 percent were better after five days. Many, perhaps all, of these people would have gotten better without the medicine.

The gold standard for comparison groups is “random assignment,” an experimental approach where people who are otherwise the same are randomly assigned to different “treatment” groups and the effects of the change are measured on each group so the study can isolate the effect of the “treatment.” These types of studies are expensive, though some are underway in SNAP, funded by the 2014 farm bill.

In the case of low-income childless adults, two important factors are critical for interpreting the information in the Kansas and Maine reports. First, many low-skill, low-wage workers do work, but they work in high-turnover jobs with low job security and often experience sporadic employment. SNAP acts as a safety net, providing assistance during periods of unemployment or when work hours are cut. It is common for SNAP recipients to have higher employment and wages in the future. Second, both Kansas’ and Maine’s economies were improving between 2013 and 2015, the period in which the two states implemented the time limit and purport to measure the results. Without controlling for these factors, it is difficult to isolate the effects of the time limit on employment.

The authors of the reports for Kansas and Maine could have established less complicated and less costly alternative “comparison groups” by conducting the same analysis in the year before the cutoff to observe the work rates and earnings for similar SNAP recipients during a period when the time limit was not in effect. Such an approach would not have been perfect — it would be impossible to take the differences in the labor market and all other factors into account — but it would have been a more informative comparison than these reports provide.

Reports Don’t Acknowledge That Many SNAP Recipients Subject to the Time Limit Already Work

The studies from Kansas and Maine assert that reimposition of the time limit resulted in higher work rates and earnings for individuals who lost SNAP benefits after exhausting three months of eligibility.

- For Kansas, the authors claim, “These reforms immediately freed nearly 13,000 Kansans from welfare on December 31, 2013. Nearly 60 percent of those leaving food stamps found employment within 12 months and their incomes rose by an average of 127 percent per year.”⁴²⁹
- For Maine, the Department of Health and Human Services’ press release reported that among the individuals whose SNAP was cut off, “Incomes rose 114 percent within a year of leaving the program,” and “nearly half (48%) worked at least one quarter in 2015.”

⁴²⁹ Ingram and Horton, *op. cit.*, p. 2.

These reports, however, dramatically overstate the increase in work rates and wages that resulted from the reimposition of the time limit because many of the SNAP recipients affected were working, or would have started working anyway, albeit mostly in low-wage jobs with high turnover. Moreover, both states reimposed the time limit when their unemployment rates were dropping and unemployed individuals were somewhat more likely to be able to find work or higher wages as a result.⁴³⁰

Kansas Report Misrepresents Several Key Indicators

The authors of the Kansas report overstate the degree to which work rates increased after the time limit and misrepresent the effect of the time limit on numerous outcomes for SNAP recipients while they are receiving SNAP.

Work Rates Were Essentially Unchanged Before and After the Time Limit Returned

The Kansas authors claim that “nearly 60 percent of those leaving [SNAP after the three-month time limit went into effect] found employment within 12 months.” (The authors’ estimate of 60 percent is the share who had ever worked in any quarter of 2014.) The claim implies that the policy change reimposing the time limit was the reason that these people found work, but it’s misleading, as explained below.

However, work rates before and after the time limit were very similar, as Figure 11.2 shows. Almost 40 percent of those whose SNAP was cut off *already* worked in each of the last two quarters before the time limit returned (the third and fourth quarters of 2013).⁴³¹ The share working each quarter in the year after the time limit was implemented rose slightly, to just over 40 percent. This modest increase could be explained by two factors: (1) low-wage workers are more likely to apply for and participate in SNAP when they lose a job or their incomes drop, so they often experience improvements in the future as their employment situation improves; and (2) Kansas’ economy was improving during 2014, so a slightly larger share of recipients may have been able to find jobs or higher pay. The time limit does not appear to have dramatically affected work rates for the group subject to it.

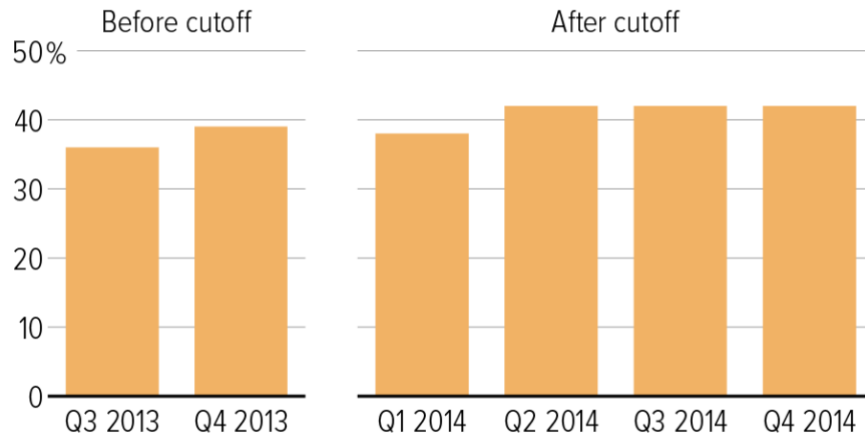
⁴³⁰ In Kansas, where the time limit went into effect in October 2013, the overall unemployment rate fell from 5.3 percent in 2013 to 4.6 percent in 2014 and 4.2 percent in 2015. In Maine, where the time limit was reimposed one year later, the unemployment rate fell from 5.6 percent in calendar year 2014 to 4.4 percent in calendar year 2015. For SNAP recipients, especially those with the lowest education and skills, employment opportunities are highly sensitive to economic conditions and the availability of jobs. See Hilary Hoynes, Douglas Miller, and Jessamyn Schaller, “Who Suffers During Recessions?” NBER Working Paper No. 17591, March 2012, <http://www.nber.org/papers/w17951.pdf>.

⁴³¹ CBPP calculates that almost 40 percent of the people who left the program on December 31, 2013 worked in the two quarters just before the cutoff based on data on average wages per person from table 8 of the Kansas report. (The same calculation is used to estimate the shares working in the later quarters as well.) Instead of reporting these accurate data, the authors misleadingly report *lower* rates from national data sources as though they applied to the Kansas group. See p. 6: “Currently few able-bodied adults receiving food stamps actually work. ... In 2013 just one-quarter of childless adult households receiving food stamps had any earned income. ... An analysis of food stamp recipients conducted when work requirements first went into effect found that fewer than five percent of all able-bodied childless adults on the program were meeting those requirements.” This latter 5 percent is extremely misleading because it excludes a large number of individuals who were working more than 30 hours a week as “exempt” from the time limit. If the authors included the share of non-disabled childless adults who were working, the figure would be larger.

FIGURE 11.2

Kansas Work Rates Nearly the Same Before and After Time Limit

Share of non-disabled childless adults cut off SNAP who earned wages in each quarter (Q) of a calendar year



Note: CBPP derived the share with wages from information on average quarterly wages among those cut off SNAP from table 8 of Ingram and Horton.

Source: Jonathan Ingram and Nic Horton, "The Power of Work, How Kansas' Welfare Reform is Lifting Americans Out of Poverty," The Foundation for Government Accountability, February 16, 2016; Table 8

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The authors, however, reached the opposite conclusion — that work rates grew significantly after the time limit returned. Instead of comparing the average work rates in each quarter for this population before and after the policy change, they report the share of individuals whose SNAP was ended after December 2013 who *ever* worked in a quarter over the following year. This captures typical movement in and out of the labor force — given that this group tends to work in high-turnover jobs, in any quarter some people lose jobs and some get new jobs, so the share that ever worked increases — rather than an isolated impact of the policy change. The trends in the share who ever worked likely followed a very similar pattern in earlier years when the time limit was not in effect (though the authors do not present such data). As discussed below, other research about labor force participation among childless adults who receive SNAP finds work rates over time similar to those in the Kansas report.

Improvements for SNAP Recipients Reflect SNAP Caseload Changes, Not Improved Circumstances

The Kansas report presents highly misleading information about other changes among individuals subject to the time limit who receive SNAP. For example:

[S]ince restoring work requirements, the employment rate among able-bodied adults on food stamps has doubled. As a result their incomes have more than doubled on average, they are spending less time on welfare, and the need for assistance has significantly declined.⁴³²

These claims, which the report makes across a range of measures, are misleading because the childless adults who remained as SNAP participants after the time limit went into effect were significantly different from those who participated before *because* of the policy change. The state cut off SNAP those participants who were not working at least 20 hours a week, so the work rates, average earnings, and other characteristics of those who *remained* SNAP participants after the return of the time limit were better, not because those individuals *became* better off, but because they were better off to begin with and were the only ones still eligible for and participating in SNAP.

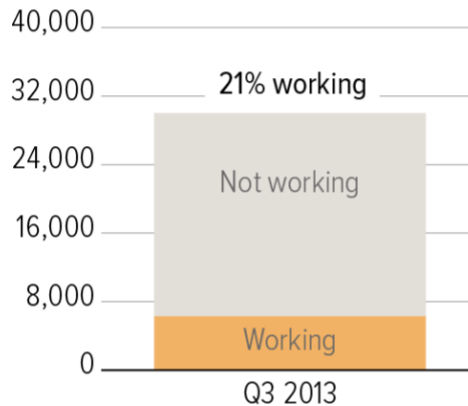
Those who may still participate in SNAP are more likely to have earnings and, as a result, lower SNAP benefits and appear better off on a range of other characteristics. In fact, the number of childless adult SNAP recipients working at least 20 hours a week, and thus the only non-exempt childless adult SNAP recipients eligible for the program, dropped

FIGURE 11.3

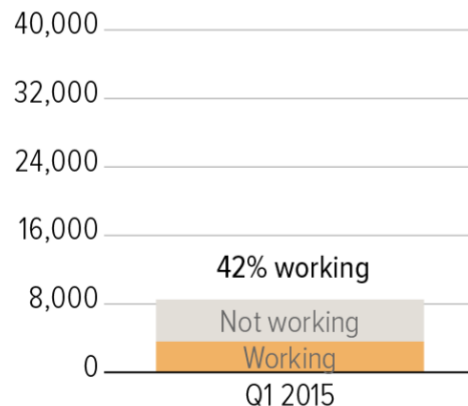
Kansas SNAP Benefit Cutoff Did Not Boost Work

Non-disabled childless adult SNAP participants before and after January 2014 cutoff of those not working 20+ hours per week

Number of such SNAP participants who worked fell...



...but the work rate rose only because there were fewer such SNAP participants overall



Source: Jonathan Ingram and Nic Horton, "The Power of Work, How Kansas' Welfare Reform is Lifting Americans Out of Poverty," The Foundation for Government Accountability, February 16, 2016; Tables 1 - 3

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⁴³² Ingram and Horton, *op. cit.*, p. 8.

modestly in the year after the time limit took effect.⁴³³

As an example of this misleading representation, consider the authors' assertion that, "[p]rior to restoring work requirements, just 21 percent of childless adults on food stamps were working at all. Two-fifths were working less than 20 hours per week. But since work requirements have gone back into effect, that employment rate has risen to nearly 43 percent."⁴³⁴ The change was driven by a drop in the number of SNAP recipients who are childless adults subject to the time limit, not an increase in the number of recipients who are working. The number of such SNAP recipients who were working fell by more than 40 percent (from 6,300 to 3,600), as those who were working less than 20 hours a week were cut off, while the total number of non-disabled childless adults receiving SNAP dropped by more than 70 percent (from almost 30,000 to 8,500). (See Figure 11.3.)

Maine Also Inappropriately Attributes Changes to the Policy Change That Likely Would Have Occurred Anyway

Maine's data on work rates and wages among individuals who lost SNAP are similar in magnitude to Kansas, and, as in the Kansas report, the authors of the Maine report and the accompanying materials from the state's Department of Health and Human Services overstate the impact of the time limit by failing to take into account the fact that changes would have occurred even without it.

As Figure 11.4 shows, before the reimposition of the time limit in October 2014, about 30 percent of the childless adults whose SNAP was cut off were working. That proportion peaked in the months after the time limit went back into effect at 36 percent in the third quarter (the summer, a time when employment in Maine tends to be higher). But, though the report includes these quarterly rates, like for Kansas, the Maine report and accompanying materials emphasize a different figure: that 48 percent had wages some time in 2015 and 58 percent had wages at some time ever in 2014 or 2015. But again, like for Kansas, the higher numbers count any time anyone had worked in any quarter, and thus largely reflect employment instability at a time that the state's economy was improving, rather than a change that could be attributed to the reimposition of the time limit.

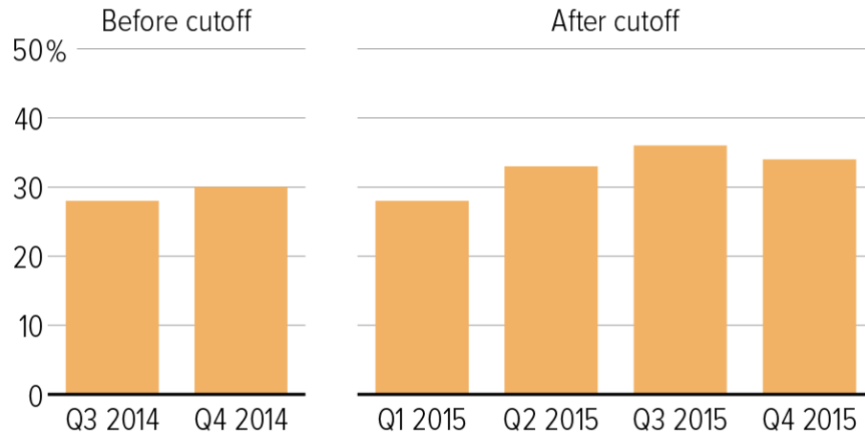
⁴³³ The drop in the number of childless adults who worked at least 20 hours a week and received SNAP could have occurred because those individuals who qualified for SNAP (because they were working at least 20 hours a week) had recently been cut off SNAP (at a time when they were not working at least 20 hours a week) and did not know they would be eligible if they reapplied.

⁴³⁴ Ingram and Horton, *op. cit.*, p. 9.

FIGURE 11.4

Maine Work Rates Nearly the Same Before and After Time Limit

Share of non-disabled childless adults cut off SNAP who earned wages in each quarter (Q) of a calendar year



Source: Maine Office of Policy and Management, "Preliminary analysis of work requirement policy on the wage and employment experiences of ABAWDs in Maine of Health and Human Services," April 19, 2016; figure 1

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No Consideration of the Well-Being of Those Cut Off or the Support SNAP Provides

The one-sided pictures in these reports fail to discuss the well-being of the individuals whose SNAP benefits were cut off. But research suggests that many childless adults who lose SNAP as a result of the time limit continue to struggle after losing SNAP, in contrast to the reports' portrayals of circumstances for recipients who lost benefits. The most comprehensive assessment of former SNAP recipients in four states in the early 2000s suggests that their life circumstances are quite difficult. A significant minority don't find work, and among those who are employed after leaving SNAP, earnings are low. Most remain poor. Many struggle to acquire enough food to meet their needs, lack health insurance, experience housing problems, and/or have trouble paying their bills.⁴³⁵

In a serious omission the Kansas and Maine reports do not consider the impact of the time limit on the large number of people who lost SNAP and are among the nation's very poorest adults.

- In Kansas the number of non-disabled childless adults receiving SNAP dropped by 75 percent (from about 30,000 in late 2013 to about 7,500 in late 2015).

⁴³⁵ Elizabeth M. Dagata, "Assessing the Self-Sufficiency of Food Stamp Leavers," Economic Research Service, USDA, September 2002, <https://www.ers.usda.gov/publications/pub-details/?pubid=46645>, a summary of in-depth studies in Arizona, Illinois, Iowa, and South Carolina. These studies include people who leave SNAP because of the three-month time limit or for other reasons, for example, because they found a job or mistakenly believe they are no longer eligible.

- The Maine report does not present comparable numbers, but an earlier Heritage Foundation report cited Maine Department of Health and Human Services data showing that the number of “able-bodied adults without dependents on food stamps” dropped by 80 percent (from about 13,300 in late 2014 to 2,700 in March 2015).⁴³⁶

The individuals whose SNAP was cut off lost about \$5 a day, or \$150 to \$170 per person per month in SNAP benefits for purchasing food. Many of them worked in the year after losing benefits, but for some their wages were low enough that they could have continued to qualify for SNAP benefits, which could have helped them make ends meet. Some others with no earnings for some or all of the subsequent year may have had virtually no resources available for food after they were cut off SNAP.

The Kansas and Maine reports cite average income figures for the year after recipients lost SNAP, but they fail to account for the lost SNAP benefits. To accurately compare income for a household that used to be on SNAP to income after losing SNAP, the lost value of the SNAP benefits must be included. When they are accounted for, total income does not increase substantially (or actually decreases slightly).

In Kansas, the authors rest their claim that SNAP recipients were better off after the cutoff on a point that the group’s income rose by 127 percent between before the time limit took effect and one year later. There are three problems with this claim:

- First, as discussed above, it implies that the time limit was responsible for the earnings increase, when most, if not all, of it likely would have occurred anyway;
- Second, it excludes the value of SNAP benefits from the calculation. Total resources available to the household were higher *before* the time limit because the household received SNAP benefits; and,
- Third, the authors picked a low comparison quarter prior to the time limit returning to exaggerate the increase — wages for the group cut off were more than 30 percent lower two quarters before the cutoff (third quarter of 2013, the quarter used in the report) than they were in the quarter immediately preceding the cutoff (the fourth quarter of 2013). They do not explain why they chose this particular quarter as the baseline.

It is not possible to adjust for the first issue without a rigorous evaluation (see above box), but even adjusting only for the other two issues makes a large difference. If \$178 a month in SNAP benefits (the average SNAP benefit among those cut off in December 2013) is included in the base period, and if we compare the quarter immediately before the cutoff (the fourth quarter of 2013) as the base period instead of the quarter earlier, the total resources (including earnings and SNAP benefits) available to SNAP participants who were cut off was 3 percent *lower* a year after the cutoff, rather than 127 percent higher.

⁴³⁶ Robert Rector, Rachel Sheffield, and Kevin D. Dayaratna, “Maine Food Stamp Work Requirement Cuts Non-Parent Caseload by 80 percent,” The Heritage Foundation, Background No. 3091, February 8, 2016, <http://www.heritage.org/research/reports/2016/02/maine-food-stamp-work-requirement-cuts-non-parent-caseload-by-80-percent>.

Had the SNAP recipients who remained income-eligible been able to keep receiving SNAP (rather than being cut off by the time limit) more of them would be better off because they could have received SNAP while working (though their SNAP benefits would be lower because income counts in determining SNAP benefit levels).

A similar contrast applies to the Maine report. The press release that accompanied the report claims that total income for those cut off rose by 114 percent within a year. However, if the state had included the value of SNAP benefits in the base, the increase would be much smaller — only about 10 to 20 percent.⁴³⁷

No Consideration of Factors Affecting SNAP Participants' Ability to Work

If a better picture of the data shows that the time limit doesn't have a strong role getting people into work, what do we know about why this group struggles to find employment? The research that exists on this population shows that adults who participate in SNAP work when they can, but often in jobs with high turnover and low job security, and most struggle with multiple barriers to employment, as discussed above.

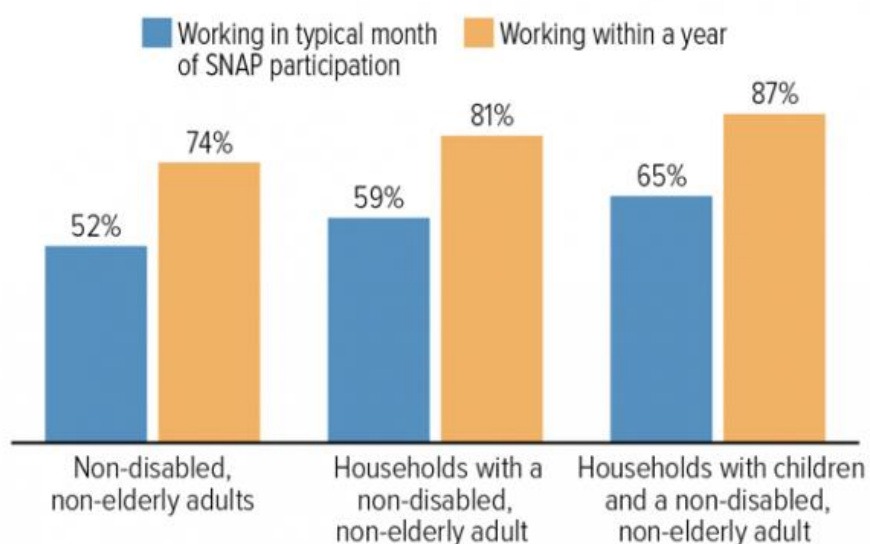
Adults on SNAP work when they can. However, the work tends to be low wage and unstable, with individuals cycling through periods of work and unemployment. Nearly three-quarters of non-disabled adults who participate in SNAP in a typical month work either that month or within a year of that month. Over half of individuals who were participating in SNAP in a typical month in mid-2012 were working in that month. Furthermore, 74 percent worked in the year before or after that month.⁴³⁸ (See Figure 11.5.) Limited education, lack of training, and a sporadic work history make it difficult to compete for anything other than low-skill, low-wage jobs that do not lift them out of poverty.

⁴³⁷ The Maine report does not include information about the average SNAP benefits received by childless adults who were cut off, so the 10 to 20 percent range reflects a lower (\$150 a month) and higher (\$180 a month) assumption. As with Kansas, we cannot account for the large portion of the effect that would have happened anyway and we are not including any SNAP benefits for the workers who would have income low enough to continue participating in SNAP were there no time limit.

⁴³⁸ Brynne Keith-Jennings and Raheem Chaudhry, "Most Working-Age SNAP Participants Work, But Often in Unstable Jobs," Center on Budget and Policy Priorities, March 15, 2018. As mentioned above, for similar households with just childless adults, 46 percent were working in a typical month and 72 percent worked within a year before or after that month. <https://www.cbpp.org/unemployed-adults-without-children-who-need-help-buying-food-only-get-snap-for-three-months>

FIGURE 11.5

Most SNAP Participants and Households Work



Note: Individuals and households include those who were participating in SNAP in a typical month in mid-2012. A working household refers to a household in which either the household head or spouse worked. Individuals include any non-disabled adult who reported participating in SNAP.

Source: CBPP analysis of SIPP data from 2011-2013

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Childless adults on SNAP face barriers. Many low-income childless adults face multiple challenges to independence and self-sufficiency, including homelessness, physical and mental health limitations, language barriers, unstable employment histories, and criminal records. A detailed study of childless adults who were referred to a work experience program in Franklin County (Columbus), Ohio found that:⁴³⁹

- Many have extremely unstable living situations, illustrated by residence in short-term shelters or with friends and family and limited telephone service.
- 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 a person's ability to work at least 20 hours a week.
- About a quarter have less than a high school education, and more than half have only a high school diploma or GED.

⁴³⁹ See "Comprehensive Report on Able-Bodied Adults Without Dependents, Franklin County Ohio Work Experience Program," Ohio Association of Foodbanks, 2015, http://admin.ohiofoodbanks.org/uploads/news/ABAWD_Report_2014-2015-v3.pdf. The Ohio Association of Foodbanks gathered the information for the report as a result of a partnership with the county SNAP agency to help place individuals identified as subject to the time limit in qualifying work activities after screening them.

- Nearly one-quarter are non-custodial parents, and 13 percent are caregivers for a parent, relative, or friend.
- More than 40 percent lack access to reliable private or public transportation; 60 percent lack a valid driver's license.
- Fifteen percent need supportive services like language interpretation or help with transportation to obtain employment.
- More than one-third have felony convictions, making it hard to find jobs and pass background checks.

D. FNS' Research, Policies, and Practices Show FNS Knows but Ignored That Impact of the Proposed Rule Is Out of Line With the Stated Rationale

FNS' Own Research from 1998 on the Employment Prospects of "ABAWDs" Contradicts the Stated Justification of the NPRM

In 1998 FNS published a study called, "The Effect of Welfare Reform on Able-Bodied Food Stamp Recipients" to provide information that "[I]s critical to informing policy decisions, issuing guidance to states, implementing new policies, as well as estimating effects of the [new provisions.]" It concluded in the forward to the study, "the report offers a sound picture of what able-bodied adult recipients without children look like and what will happen to them—they are an extremely poor population with limited employment prospects and few sources of support outside the Food Stamp Program."⁴⁴⁰ This research directly contradicts the stated justification for the proposed rule.

The study used SNAP QC household characteristics data and the Census Bureau's Survey of Income and Program Participants (SIPP) to describe the characteristics of individuals subject to the time limit, including their limited educational attainment and workplace skills, their high poverty rates, and their patterns of SNAP participation prior to the time limit going into effect. It also estimated how many at that time had likely hit the time limit and been cut off SNAP.

The study also included information about the research available at that time on the employment prospects of "ABAWD" SNAP participants, which is summarized as follows:

Research indicates that the employment prospects of adults who are demographically similar to ABAWDs are not promising, and so we can assume the same to be true for ABAWDs. Largely for two reasons, job opportunities for less-educated job seekers are severely limited, especially for non-whites and in urban areas, where most ABAWDs live. First, recent research suggests that many large employers of low-skill workers have moved out of the cities to the suburbs. Therefore, many ABAWDs will face a "spatial mismatch" between the location of their residence and the location of low-skill jobs. Second, since employment in inner cities has

⁴⁴⁰ Michael Stavrianos and Lucia Nixon, "The Effect of Welfare Reform on Able-Bodied Food Stamp Recipients," prepared by Mathematica Policy Research for the USDA, Food and Nutrition Service, July 23, 1998, <https://fns-prod.azureedge.net/sites/default/files/finalrep.pdf>.

become increasingly concentrated in high-skill jobs, ABAWDs will also likely face a “skills mismatch” between what employers require and what ABAWDs can offer.⁴⁴¹

As we review in Chapter 3, while the nature of spatial mismatch has changed, more recent literature has found that there still exists mismatch between low-wage jobs and where low-wage workers live, particularly with regards to transportation access.

The 1998 FNS study also points out that low-skilled job seekers in many places may have difficulty finding employment even when the national unemployment rate is low:

Implicit in PRWORA’s work requirement is the assumption that there are enough employment opportunities for ABAWDs — that is, they can find work if they seek it... However, a relatively large body of research indicates that the labor market situation of the low-skilled has become considerably worse in recent decades and that their current employment prospects are limited. This suggests that even if ABAWDs are willing to work, they may be unable to do so because there are not enough jobs for low-skilled workers.⁴⁴²

Despite arguing repeatedly in the preamble and RIA that the low national unemployment rate justifies the proposed rule,⁴⁴³ FNS does not refute this earlier research it published in 1998, nor address whether the landscape has changed in the intervening 20 years to justify the change in waiver policy.

USDA Research on Individuals Who May Have Been Cut off SNAP Because of the Time Limit Does Not Support the Assertion That the Time Limit Improves Self-Sufficiency

After the three-month time limit was enacted in 1996, USDA’s Economic Research Service (ERS) joined with the U.S. Department of Health and Human Services to fund studies in four states (Arizona, Illinois, Iowa, and South Carolina) that examined the well-being of people who exited SNAP in the late 1990s after the time limit went into effect.⁴⁴⁴ The studies included people who had left SNAP because of the three-month time limit or for other reasons, for example, because they found a job or mistakenly believe they no longer are eligible. Even though the studies were not able to isolate the individuals who left SNAP *because* of the time limit, the picture they offer of the

⁴⁴¹ *Ibid*, p. xii and pp. 51-69.

⁴⁴² *Ibid*, p. 56-57.

⁴⁴³ NPRM, p. 981, 982, 983; RIA, p. 2, 10.

⁴⁴⁴ Elizabeth Dagata, “Assessing the Self-Sufficiency of Food Stamp Leavers,” Economic Research Service, USDA, September 2002, <https://www.ers.usda.gov/publications/pub-details/?pubid=46645>, a summary of in-depth studies in Arizona, Illinois, Iowa, and South Carolina.

https://lib.dr.iastate.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1013&context=card_staffreports – Iowa

<https://www.mathematica-mpr.com/our-publications-and-findings/publications/food-stamp-leavers-in-illinois-how-are-they-doing-two-years-later> - Illinois

<https://nalcd.nal.usda.gov/download/45220/PDF> - South Carolina.

hardship such individuals face suggest that the time limit has not spurred many to self-sufficiency, or even resulted in their life circumstances improving modestly, and contradict the stated rationale behind the proposed rule.

- **Many were employed but had very low earnings.** In the four states, employment rates among the individuals who were unemployed childless adults potentially subject to the time limit who left SNAP (or “leavers”) ranged from 41 percent in Illinois to 76 percent in Iowa, “but earnings and incomes are low and their poverty rates are high.”⁴⁴⁵
- **Most remain poor.** Despite relatively high levels of work effort, between one-third and two-thirds of SNAP leavers in the four states had household incomes below the poverty line — well above the overall poverty rate of 13 percent at the time. About 40 percent of the Illinois and Iowa SNAP leavers had income below half the poverty line.
- **Many struggled to afford adequate food.** “Between 17 and 34 percent of the [SNAP leavers in the four states] reported food insecurity with hunger, compared with 11 percent of U.S. low-income childless households.”⁴⁴⁶
- **Many had housing problems, or had trouble paying their utility bills.** About 20 to 40 percent of SNAP leavers faced housing issues, including falling behind on the rent, moving in with relatives, or becoming homeless. Between 20 and 65 percent reported problems paying for utilities.

Finally, the studies raise an important question about exemptions from the time limit. “In two of the studies, the majority of nonworking [SNAP leavers] cited health problems as the reason they were not working...it is important to know whether the standards for being categorized as ‘able bodied’ are set appropriately.”⁴⁴⁷

FNS’ SNAP Employment and Training Best Practices and the Department’s SNAP to Skills Initiative Do Not Promote Cutting People Off SNAP

FNS’ position that taking food assistance away from people who do not meet rigid work requirements will lead to stable employment and self-sufficiency also conflicts with the agency’s approach to employment and training (E&T). For more than 30 years, since the mid-1980s, SNAP has included an employment and training (E&T) component, “for the purpose of assisting members of households participating in the supplemental nutrition assistance program in gaining skills, training, work or experience that will...increase the ability of the household members to obtain regular employment.”⁴⁴⁸ States operate the program within federal rules and FNS oversight, but have substantial flexibility about which non-exempt SNAP recipients they serve in the program, the services they offer participants, and whether the program primarily recruits volunteers who are interested in help finding a job or improving their education and skills, or whether the program is

⁴⁴⁵ Dagata, p. 2.

⁴⁴⁶ Dagata, p. 4. Food insecurity “with hunger” was how USDA then referred to the most severe form of food insecurity where households had to skip or reduce the size of their meals or otherwise disrupt their eating patterns at times during the year because they couldn’t afford sufficient food.

⁴⁴⁷ Dagata, p. 5.

⁴⁴⁸ The Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2015 (d)(4)(A)(i).

mandatory, meaning individuals will lose SNAP benefits (i.e., be subject to sanction) if they do not comply with the state's assigned E&T activity.

E&T Best Practices Research Review Does Not Include Sanctions or Cutting People Off SNAP

While over the years Congress has amended and modified the focus of SNAP E&T somewhat, it has always included a state option for programs that are mandatory and include sanctions for non-compliance. According to a 2016 FNS-sponsored literature review of SNAP E&T best practices, the only time FNS conducted a rigorous study of the effectiveness of SNAP E&T, was in the late 1980s and early 1990s. At the time, SNAP E&T was primarily “a high-volume, ‘light-touch’ program to encourage mandatory work registrants to find jobs quickly, primarily by requiring participation in job search and job-search training components,”⁴⁴⁹ that is, it consisted primarily of components that included taking SNAP benefits away from individuals who did not meet the program's requirements. The 2016 literature review described the findings from the study that was published in 1994 as follows:

[I]here was no evidence that the SNAP E&T program—in its high participation/low investment per-participant model—increased the likelihood of participants finding jobs. It also found the program had no significant effects on the hourly wages, hours worked per week, or length of job retention for those who did find employment...

The observed effect of a statistically significant decrease in the level of food stamp benefits receipt was described as most likely the result of ‘voluntary withdrawals and administrative sanctions’ rather than of any increase in household income or earnings...

[A]lthough some members of the treatment group did find jobs, members of the control group were also able to obtain similar job search assistance and find employment.⁴⁵⁰

Thus, the only rigorous evaluation FNS has ever conducted of policies that take food assistance away from individuals who are unable to meet work requirements found no improvement in participants finding jobs or increases in wages or hours worked, but did find a significant decrease in food assistance benefits. The literature review quoted here was published in 2016, so was certainly available to FNS as it formulated the proposed rule, but FNS ignored its findings. FNS promulgated the proposed rule that would take food assistance away from people who do not comply with rigid work requirements without ever again testing or studying the effectiveness of such an approach in a rigorous random assignment study. Moreover, the E&T pilots from the 2014 farm bill, which do incorporate a rigorous random assignment evaluation, include three states with mandatory SNAP E&T approaches, but FNS promulgated this regulation without waiting for the results of those pilots.

⁴⁴⁹ Deborah Kogan *et al.*, “Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Best Practices Study: Final Report,” prepared by Social Policy Research Associates for the U.S. Department of Agriculture, Food and Nutrition Service, November 2016, <https://www.fns.usda.gov/snap/snap-employment-and-training-et-best-practices-study-final-report>.

⁴⁵⁰ *Ibid*, p. III-1.

Overall, the 2016 SNAP E&T best practices report had as its objective providing “Congress, FNS, and individual States with information that can be used to shape the services provided by the SNAP E&T program and thereby improve the employability, self-sufficiency, and well-being of individuals receiving nutrition support from SNAP.”⁴⁵¹ These are the very same goals as the stated intention and justification of the proposed rule in the NPRM, and yet the SNAP E&T best practices report does not mention taking SNAP benefits away from individuals who are unable to meet work requirements as an effective strategy. The report includes an annotated bibliography of 160 relevant studies from the literature review. The best practices report recommendations are summarized in the executive summary:

The findings from the research synthesized in this report suggest that SNAP recipients will benefit most from SNAP E&T-funded services if the services offered by State programs

- Are based on an individualized assessment of the workforce-related strengths and weaknesses of SNAP clients;
- Comprehensively address an individual’s need for skills training, basic skills education, and overcoming barriers to employment;
- Help participant earn credentials valued by employers in their chose industry or sector; and
- Develop skills that are closely linked to labor market demands in the local area...

In view of these findings...States that enroll a relatively large number of mandatory work registrants in SNAP E&T services or that emphasize self-reported job search as the most frequently prescribed program activity are less likely to see an increase in self-sufficiency among SNAP participants.⁴⁵²

Thus, the most recent research available to FNS about what works for SNAP E&T for meeting the objectives of increasing employment, self-sufficiency, and well-being does not include sanctions or cutting people off SNAP. But FNS ignored this evidence in promulgating the regulation. We urge FNS to consider its own best practices study.

FNS’ Most Recent E&T Efforts Also Have Not Promoted Sanctions or Cutting People Off SNAP

Moreover, in the past several years FNS has placed a new emphasis on SNAP E&T. It has created an Office of Employment and Training with several additional staff members, brought on consultants and collaborated with other partners, formed a “learning academy,” produced new training materials, and provided additional technical assistance to select states. The cornerstone of the E&T efforts has been a “SNAP to Skills” initiative that follows closely the recommendations from the SNAP E&T best practices report cited above.

Under a “Why SNAP to Skills” section of its website, FNS makes the following case for its SNAP to Skills approach:⁴⁵³

⁴⁵¹ *Ibid*, p. ES-1.

⁴⁵² *Ibid*, p. ES-4.

⁴⁵³ U.S. Department of Agriculture, “Why SNAP to Skills,” <https://snaptoskills.fns.usda.gov/why-snap-to-skills>

The need of Supplemental Nutrition Assistance Program (SNAP) participants to secure the education and training required to transition to economic self-sufficiency is growing increasingly urgent. The vast majority of jobs in the future will require at least some education beyond high school...yet many SNAP participants have not reached this level of educational attainment. Without the skills to meet rapidly changing labor market demand, the chances of SNAP participants getting a good job and reducing their need for SNAP are extremely low...

The SNAP Employment & Training (SNAP E&T) program, a skills and job training program for SNAP participants administered by the U.S. Department of Agriculture's Food and Nutrition Service (FNS), is a key resource States and their partners can utilize to help SNAP participants meet this urgent need for skills and better jobs. SNAP E&T has historically been under-utilized, but a renewed focus on the program amid greater urgency for job training for SNAP participants has created new momentum for states seeking to build bigger, better, and stronger E&T programs.

There is no more opportune, or critical, time for states to build robust, job-driven SNAP E&T programs. "Job-driven" means that programs are responsive to employer demand so that they place ready-to-work participants in good, available jobs or provide skills training and credentials participants require to obtain these jobs. SNAP E&T is increasingly recognized as a critical part of each state's skilled workforce strategy. USDA and other policy makers herald SNAP E&T as an important part of the national conversation about the need to invest in building a skilled workforce while addressing the nation's growing economic inequality.⁴⁵⁴

Like the best practices report cited earlier, FNS' signature Employment and Training initiative does not include sanctions or cutting individuals off of SNAP as an effective strategy for increasing employment or earnings.

E. FNS Knows That Research and Experience Shows That People Newly Subject to the Time Limit Won't Get a Job or Be Better Off, But It Promulgated the Proposed Rule Nonetheless

As we have laid out in this section, there is a large body of research evidence that finds that policies that take benefits away from individuals who do not meet rigid work requirements result in lost benefits and increased poverty and hardship, but very little gain in longer-term employment. The realities of the low-wage labor market, including high turnover and lack of sick time and other benefits contribute to individuals' turning to SNAP during temporary periods of unemployment. Many other individuals face various employment barriers.

FNS has for more than 20 years supported the waiver policy currently in regulation, and there is no new research that contradicts or provides new information. The RIA conspicuously lacks any countervailing research evidence to justify that the narrowing of waivers will improve individuals' work rates or earnings, and the impact analysis included in the RIA assumes that 755,000 individuals will lose SNAP benefits under the change, but there will be no quantifiable increases in earnings or work.

⁴⁵⁴ *Ibid.*

We believe that the only conclusion one can draw is that contrary to the stated rationale in the NPRM, FNS knows that the primary effect of the regulatory change, if it were finalized, would be that a large number of individuals would lose SNAP assistance, with no, or very little positive impact. We strongly urge FNS to review the research summarized here and included in the Appendix B.

F. The Proposed Rule Uses an Imprecise Definition of “ABAWDs,” and the RIA Includes Numerous other Unsubstantiated Assumptions

In addition to the fact that the proposed rule is not supported by available research, the analysis that is included in the RIA includes numerous imprecise, illogical, and unsubstantiated assumptions, starting with the use of the term “ABAWDs.” Since shortly after the passage of the 1996 welfare law, FNS has described the group of SNAP participants whose eligibility is at issue because of the three-month time limit as “ABAWDs,” or able-bodied adults without dependents. The proposed rule uses this term throughout, but never defines it, and seems to include in it many individuals who are exempt from the time limit, who live in an area that is under a waiver, or who are participating in SNAP during periods when they are eligible (for example, in their first three months or when they are working or participating in a qualifying employment and training program.) The methodology for assessing the impact of the proposed rule indefensibly treats everyone who is an “ABAWD” by this broad definition as though they would be subject to the time limit under the proposed rule (i.e., that they live in an area that would no longer qualify for a waiver.) The rule also excludes from the analysis individuals who are “ABAWDs” subject to the time limit, but who are no longer SNAP recipients because they have been cut off.

The imprecise use of the undefined term “ABAWD” is confusing and makes it difficult for readers to understand and comment on the described impacts of the proposed rule. It also appears that the Department in its estimates of the impact of the regulation has derived percentages for this entire population of SNAP recipients potentially subject to the time limit and then applied those percentages to individuals who would be newly subject to the time limit under the proposed rule, resulting in a methodology that cannot be substantiated.

This section will first explain the analytical problem in the way the RIA defines and categorizes “ABAWDs,” and then provide additional examples of specific assumptions in the methodology that cannot be substantiated, often because of the imprecise use of the term “ABAWD.”

Use of the Undefined Term “ABAWD” Is Confusing and Misleading

Section 6(o) (7 U.S.C. § 2015(o)) of the Food and Nutrition Act limits SNAP eligibility for certain non-exempt adults who are aged 18-49 to three months of SNAP benefits in any 36-month period if they are not working 20 hours a week or participating in a qualifying employment and training program, and if the area they live in is not waived from the rule because of insufficient jobs.⁴⁵⁵ Because of the rule’s complexity, the individuals subject to the time limit cannot be identified in SNAP or Census Bureau data because much of the information that would need to be known is not available in the data. Analysts often have modeled SNAP eligibility for these individuals to the best of their ability and then described the individuals as “potentially subject to the time limit,” because

⁴⁵⁵ Individuals who have been cut off SNAP can qualify for a second three months of eligibility if they work at least 80 hours (or participate in a qualifying program) for a month and reapply for SNAP.

only state eligibility workers have access to the information that is needed to make a full assessment. In a 2016 paper we explained:

About 4.7 million non-elderly, non-disabled adults aged 18-49 in childless households participated in SNAP in fiscal year 2014. All were “subject” to the time limit in the sense that all could, in theory, have lost benefits after three months of participation. The number affected by the time limit in practice, however, is much smaller.⁴⁵⁶

We also explained in the 2016 paper the various reasons why the larger figure, which we represent as individuals potentially subject to the time limit based on existing data, applies to “the characteristics of the larger group of childless adults, all of whom would face the time limit if their circumstances or local labor market conditions change.”⁴⁵⁷

In estimates that FNS published in the years immediately following passage of the 1996 welfare law, it is clear that the agency understood both the limitations in the data (“The QC database does not contain all the information needed to determine whether an individual loses eligibility under the able-bodied provisions of PRWORA”⁴⁵⁸) and the distinction between those potentially subject to the time limit and those who would actually be affected (“the QC-based estimates presented in this chapter may overstate the number of people subject to the three-month time limit.”⁴⁵⁹)

But the NPRM, RIA, and Agriculture Department materials that accompanied the December posting of the proposed rule portray this larger group that is potentially subject to the time limit as the number who actually would be newly subject under the proposed rule. This mis-identification is confusing and results in unsubstantiated assumptions. It identifies as newly subject to the time limit many individuals who are exempt, complying with the time limit, or living in an area that is under a waiver from the time limit, and it excludes individuals who would qualify for SNAP but have been cut off after three months in areas that are not under a waiver from the time limit.

The Department asserts that “[i]n 2016 there were 3.8 million individual ABAWDs on the SNAP rolls.”⁴⁶⁰ We are able to reproduce this number using the public use 2016 SNAP Household

⁴⁵⁶ In the 2016 paper CBPP used this methodology and included a box explaining the difference between the larger number potentially subject to the time limit and the smaller number affected by the time limit in practice. See, Steven Carlson, Dorothy Rosenbaum, Brynne Keith-Jennings, “Who are the Low-Income Childless Adults Facing the Loss of SNAP in 2016,” February 8, 2016, <https://www.cbpp.org/sites/default/files/atoms/files/2-8-16fa.pdf>, p. 4.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ Mike Stavrianos, *et al.*, “Characteristics of Childless Unemployed Adult and Legal Immigrant Food Stamp Participants: Fiscal Year 1995,” prepared by Mathematica Policy Research for the USDA, Food and Nutrition Service, February 13, 1997, p. 6.

⁴⁵⁹ *Ibid.*, Stavrianos, p. 6.

⁴⁶⁰ U.S. Department of Agriculture, “Regulatory Reform at a Glance, Proposed Rule: SNAP Requirements for ABAWDs,” December 2018, <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWDSFactSheet.pdf>. We believe this 3.8 million is the starting point for all of the estimates in the RIA regarding the number of “ABAWDs,” but the RIA does not make that clear, as we discuss later in our comments.

Characteristics Quality Control (QC) file,⁴⁶¹ and below recreate how we believe FNS derived the number. (See Table 11.1)

TABLE 11.1

CBPP Understanding of FNS' Estimate That 3.8 million SNAP Recipients Were "ABAWDs" in 2016

	Number	Percent of Total SNAP Participants
FNS' 3.8 million "ABAWD" estimate		
Total SNAP Participants	43.5 million	100%
Age 18-49	15.0 million	34.4%
Not receiving disability benefits ^a	12.8 million	29.5%
No minor children in household	3.8 million	8.8%
Other factors that need to be taken into account for an individual to be subject to the time limit that were not factored into FNS' estimate:		Is this information available in the QC data?
Is the individual:		
• in his or her first three months of SNAP participation out of 36?		Variable not reliable ^b
• physically or mentally unfit for employment?		Variable not reliable ^c
• living in a waived area?		Variable not reliable ^b But may be knowable if state was under a statewide waiver
• working 20 hours a week or more?		Can be estimated using earnings or other variables
• participating in a qualifying E&T activity?		Variable not reliable ^d
• pregnant?		Not available
• otherwise exempt from employment and training?		Variable not reliable ^c
• exempted by an individual exemption?		Variable not reliable ^b
• in a second three-month period after requalifying?		Variable not reliable ^b

Sources: CBPP analysis of FY 2016 USDA SNAP Household Characteristics data and Mathematica Policy Research, "Technical Documentation for the Fiscal year 2016 [or other year] Supplemental Nutrition Assistance Program Quality Control Database and the QC Minimodel, October 2017.

^a The SNAP QC data set includes a personal-level disability variable (DISi). An algorithm is used to identify individuals with disabilities based on SSI receipt, medical expenses, age, work registration status, and other factors. The technical

⁴⁶¹ The 2016 public use Quality Control Data are available at <https://host76.mathematica-mpr.com/fns/>. All figures we cite based on this data are for an average month in the fiscal year.

TABLE 11.1

CBPP Understanding of FNS' Estimate That 3.8 million SNAP Recipients Were "ABAWDs" in 2016

Number	Percent of Total SNAP Participants
documentation flags that "DISi likely underestimates the number of non-elderly individuals with disabilities" and therefore, the 3.8 million likely overestimates the number of adults without disabilities.	
^b The SNAP QC data includes an individual-level variable called "ABWDSTi" that is intended to collect this information, but the technical documentation "[recommends] caution when using...due to inconsistencies."	
^c For the variable intended to capture exemptions for disability and other factors ("WRKREGi") the documentation states, "we found continued evidence...of likely miscoding of this variable."	
^d The variable intended to capture participation in employment and training ("EMPRGi") is also among the variables the documentation "recommend[s] using with caution."	

As Table 11.1 shows, there are many eligibility factors that the Department's analysis did not take into account when estimating the number of people who are subject to the time limit. As a result, the 3.8 million individuals the Department classifies as "ABAWDs" includes many individuals who, in fact, are not subject to the time limit. The Department's analysis also excludes many individuals who would be SNAP recipients except they have been cut off because of the time limit, so they do not appear in SNAP data because they are not SNAP recipients.⁴⁶² These are individuals who do not live in waived areas but are subject to the time limit because they did not meet any of the other criteria in Table 11.1.

The Department's imprecise use of the term "ABAWD" results in a lack of transparency. It is difficult to determine what point FNS (in the NPRM and RIA), and the Administration more broadly, in its materials about the proposed rule, are making when they call individuals "ABAWDs" when they are not, in fact, subject to the time limit, or when they are complying with the time limit. They are implying that far more SNAP participants are subject to the time limit and not in compliance with it than in fact is the case, and they are not counting people who have been cut off because of the time limit.

In addition, several of the major assumptions in the RIA's methodology for assessing the impact of the proposed rule rely on shares of this larger "ABAWD" group, as defined nationwide using the 2016 data, but apply those shares to individuals who would be newly subject to the time limit because of the proposed changes in the rules for areas to qualify for waivers. For example, the RIA's assumption about the share of "ABAWDs" who are working is derived from the SNAP data for 2016 including both waived areas and not-waived areas. Using shares that are derived from a group that includes many individuals who are not subject to the time limit, and that excludes many individuals who have been cut off SNAP in areas that were not waived in 2016 is extremely

⁴⁶² Stavrianos and Nixon (1998, p. 4) and Czajka *et al.* (2001, p. 30) both include flow charts that makes clear FNS had information available that made clear which "ABAWDs" would be subject to the time limit and the various reasons individuals who might be identified in the data as "ABAWDs" might not be affected by the time limit.

misleading and illogical. The denominator for these percentages matters for assessing the soundness of using certain percentages for deriving or estimating the impact of the proposed changes.

To help elucidate the problem, we conducted an analysis comparing the number and share of SNAP participants for two different categories of states regarding waivers from the time limit in two different fiscal years. The two types of states were those with statewide waivers in fiscal year 2013, but no waivers in fiscal year 2017 and those with statewide waivers in both years.⁴⁶³ The difference between the two years for the two types of states can help explain how the denominator changes when many people are cut off as a result of the time limit. We will use figures from this analysis to help explain some of the serious methodological problems with the RIA’s analysis of the impact of the proposed rule. It is easier to see the issue when considering these two types of states, but it is present in other states that have had different patterns and scope of waivers.

We use fiscal 2017 instead of fiscal year 2016 for this analysis because many states reimplemented the time limit beginning on January 1, 2016, which means that for fiscal year 2016 the time limit was in effect for just the latter six months of the fiscal year (April through September, once the three months of eligibility for January to March are taken into account.) By fiscal year 2017 those states had no waiver the entire fiscal year. Under the definition of “ABAWD” that FNS appears to use, the 3.8 million national figure cited in the FNS materials and that we recreate above in Table 11.1 fell to 3.2 million in fiscal year 2017.

Table 11.2, shows the number of SNAP participants in the two types of state in each year and the number and share that are “ABAWDs” under our understanding of how FNS is defining ABAWDs for purposes of the RIA — as SNAP participants aged 18-49, with no disability benefits and no minor children in the household.

⁴⁶³ The states with statewide waivers from the time limit in 2013 but no waivers at all in 2017 (which represented about a quarter of SNAP participants in 2013) were Alabama, Arkansas, Florida, Indiana, Iowa, Kansas, Maine, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, and Wisconsin. The states with statewide waivers in both 2013 and 2017 (which represented about 20 percent of SNAP participants) included Alaska, California, District of Columbia, Illinois, Louisiana, Nevada, New Mexico, Rhode Island, Guam, and Virgin Islands.

TABLE 11.2

Waivers Affect the Number and Share of SNAP “ABAWDs”**Fiscal Years 2013 and 2017 by whether the state had a statewide waiver**

	Total SNAP Participants (in 000s)	Total “ABAWDs” (in 000s)	ABAWDs as a Share of Total Participants
Fiscal Year 2013			
Participants residing in states with statewide waivers in 2013 and no waivers in 2017	12,439	1,496	12%
Participants residing in states with statewide waivers in both 2013 and 2017	8,346	953	11%
Total participants all states ^a	47,098	4,943	10%
Fiscal Year 2017			
Participants residing in states with statewide waivers in 2013 and no waivers in 2017	10,325	609	6%
% change 2013 to 2017	-17%	-59%	
Participants residing in states with statewide waivers in both 2013 and 2017	8,164	927	11%
% change 2013 to 2017	-2%	-3%	
Total participants all states ^a	41,491	3,221	8%
% change 2013 to 2017	-12%	-35%	

Source: CBPP analysis of FY 2013 and FY 2017 USDA SNAP Household Characteristics data

^a Includes participants in the two types of states identified above, as well as participants residing in other states.

Table 11.2 shows:

- The number of both SNAP recipients and “ABAWDs” declined in both types of states between 2013 and 2017 but fell substantially more in states that had reimposed the time limit by 2017. The number of “ABAWDs” potentially subject to the time limit fell by 59 percent in states that reimposed the time limit, from 1.5 million in 2013 to 600,000 in 2017. The economy may have been stronger in these states, and there may be other reasons for a larger drop, but the fact that eligibility rules changed and many people in this group could not participate for more than three months was likely a major factor in the larger drop.
- The share of total SNAP participants who were “ABAWDs” in the states that reimposed the time limit by 2017 fell from 12 percent to 6 percent but was flat at 11 percent in the states that had a statewide waiver in both years. So, although the number and share of “ABAWDs” fell substantially in states that reimposed the time limit by 2017, 6 percent of SNAP participants

still fit into the “ABAWD” category as defined by the RIA. These individuals likely meet one of the eligibility criteria in Table 11.1 and so were not cut off.

The share of “ABAWDs” working also changes as the denominator changes when individuals are cut off SNAP. In Table 11.3 we compare the work rates among SNAP participants who were “ABAWDs” under the FNS’ definition in the same two types of states as above for the same two years.

TABLE 11.3

Waivers Affect the Number and Share of SNAP “ABAWDs” Who Are Working Fiscal Years 2013 and 2017 by whether the state had a statewide waiver

	Total “ABAWDs” (in 000s)	“ABAWDs” working (in 000s)	Share of “ABAWDs” working	“ABAWDs” working at least 20 hrs/wk (in 000s)	Share of “ABAWDs” working at least 20 hrs/wk
Fiscal Year 2013					
States with statewide waivers in 2013 and no waivers in 2017	1,496	331	22%	187	13%
States with statewide waivers in both 2013 and 2017	953	165	17%	63	7%
Total all states ^a	4,943	1,087	22%	587	12%
Fiscal Year 2017					
States with statewide waivers in 2013 and no waivers in 2017	609	207	34%	138	23%
States with statewide waivers in both 2013 and 2017	926	219	24%	111	12%
Total all states ^a	3,221	897	28%	534	17%

Source: CBPP analysis of FY 2013 and FY 2017 USDA SNAP Household Characteristics data.

^a Includes participants in the two types of states identified above, as well as participants residing in other states.

In the states that had reimposed the time limit by 2017, although the number of ABAWDs dropped between 2013 and 2017, the share of “ABAWDs” working went up substantially, from 22 percent in 2013 to 34 percent in 2016, and the share estimated to be working at least 20 hours a week nearly doubled, from 13 percent to 23 percent. In part this could be a function of a stronger economy in these states, or other factors, but the fact that many people who were not working were cut off also contributed significantly to the change in work rate. In the states that had statewide waivers both years, the share working went up, but by less, from 17 percent to 24 percent, and the share estimated to be working at least 20 hours a week went from 7 percent to 12 percent.

Between 2013 and 2017 the number of “ABAWDs” in areas without waivers went down in large part because individuals were cut off of SNAP in areas without waivers. And because individuals

could continue to receive SNAP if they were working more than 20 hours a week, the share of ABAWDs working at least 20 hours a week went up in areas without waivers, in large part because the denominator used in calculating the share (the number of ABAWDs who received SNAP) went down. In a 2016 report responding to a misleading report that claimed the circumstances of SNAP recipients in Kansas improved after they reinstated the time limit we explained this math as follows:

...the childless adults who remained as SNAP participants after the time limit went into effect were significantly different from those who participated before because of the policy change. The state cut off SNAP those participants who were not working at least 20 hours a week, so the work rates, average earnings, and other characteristics of those who remained SNAP participants after the return of the time limit were better, not because those individuals became better off, but because they were better off to begin with and were the only ones still eligible and participating in SNAP.⁴⁶⁴

The RIA methodology includes numerous imprecise, confusing, inaccurate, or misleading assumptions, some that push in opposite directions. We cannot tell if FNS has intentionally produced an analysis that inflates (or deflates) the results or if the individuals charged with producing the RIA do not understand the policy and therefore were unable to produce a coherent analysis of the population subject to the current policy and what the impact of the proposal would be. Either way, the lack of transparency and coherency in the RIA raises serious questions about the validity of the NPRM process.

The RIA Does Not Explain the Claim That There Would Be 3.4 Million “ABAWDs” in 2020

The methodology evidently assumes that there would be 3.4 million “ABAWDs” in 2020 under current law, but never explains where that figure comes from. This is a serious omission because this is the starting point FNS uses for all of the subsequent assumptions about the number of individuals who would be affected by the proposed changes in waiver rules. Excluding information on this foundational point compromises all that follows.

The only time the 3.4 million figure is mentioned, on page 25 of the RIA, the document says, “As noted previously, the Department estimated that approximately 44 percent of the projected 3.4 million ABAWDs...would live in waived areas in FY 2020 if waiver authority were unchanged.” It is possible that the figure comes from the 3.8 million from the SNAP QC data for 2016 cited above, adjusted to reflect the FNS’ baseline number of participants for 2020 compared to the number of participants in 2020, but we cannot comment on this figure as the RIA provides no justification for it whatsoever.

If the 3.4 million is the 3.8 million from 2016 adjusted only for baseline changes, then the FNS has made no further adjustments to account for the fact that states qualified for and applied for waivers for fewer areas in 2018 and 2019 than in 2016 and will likely qualify for still fewer waivers in 2020 even without any changes to the waiver rules.

⁴⁶⁴ Dorothy Rosenbaum and Ed Bolen, “SNAP Reports Present Misleading Findings on Impact of Three-Month Time Limit,” Center on Budget and Policy Priorities, December 14, 2016, <https://www.cbpp.org/sites/default/files/atoms/files/12-14-16fa.pdf>.

The RIA Assumption That 44 Percent of “ABAWDs” Are in Waived Areas Is Based on a Proxy That Is Indefensible

As one step in its estimate of the impact of the proposed rule, the analysis in the RIA assumes that 44 percent of the 3.4 million “ABAWDs,” or 1.5 million individuals, would live in waived areas in FY 2020 if the regulation were unchanged. According to RIA (page 19):

The Department used State-reported data from form FNS-388A to estimate the number of non-public assistance SNAP participants living in currently waived areas. Since the FNS 388A does not report ABAWD participation separately, non-public assistance SNAP participants are used as a proxy when estimating the proportion of ABAWDs living in waived areas.

The RIA does not explain what the form FNS-388A is or why it is appropriate to use it and what its shortcomings might be. Based on a review of the July 2018 data that states submitted, it appears that the 388A does not include all SNAP participants (Oregon and Vermont are missing) and that there are no county-level data for several states, including all of New England, Alaska, Idaho, Missouri, Montana, Nebraska, New York, Utah, Washington, and Wisconsin.⁴⁶⁵

But even if the 388A included county data for all states, it does not make sense to use the number of participants in non-public assistance households (those that do not receive TANF cash assistance, Supplemental Security Income, or General Assistance) as a proxy for the number of ABAWDs. ABAWDs are much more likely to be subject to the time limit and cut off SNAP than non-public assistance households overall. ABAWDs are a small fraction of non-public assistance households (less than 15 percent) and their distribution across counties will depend on whether the time limit is in effect.

To show that the time limit matters for the distribution of ABAWDs across counties, we again used the SNAP QC data for 2013 and 2017 and again compared the states that had a statewide waiver in 2013 and not in 2017 to states that had a statewide waiver in both years. As can be seen in Table 11.4, in 2013 when both types of states had statewide waivers, the share of non-public assistance participants was not a bad proxy for the share of ABAWDs — their shares differed by only 2 to 3 percentage points. But in 2017 using the share of non-public assistance individuals as a proxy for ABAWDs would overstate the share in areas that were not waived — because many ABAWDs had been cut off in 2017 — and understate the number in waived areas. The share of ABAWDs in states with statewide waivers in 2017 was ten percentage points higher in 2017 than the share of non-public assistance SNAP participants (29 percent vs. 19 percent.) Thus, the methodology in the RIA is likely to have substantially underestimated the share of ABAWDs living in waived areas in 2016, and projected to live in waived areas in 2020.

⁴⁶⁵ U.S. Department of Agriculture, Supplemental Nutrition Assistance Program Data, <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>.

TABLE 11.4

Waivers Affect the Number and Share of Non-PA SNAP Participants Fiscal Years 2013 and 2017 by whether the state had a statewide waiver

	Non-PA Participants (in millions)	Share of National Non- PA Participants	ABAWDs (in millions)	Share of ABAWDs
Fiscal Year 2013				
States with statewide waivers in 2013 and no waivers in 2017	10.9	28%	1.5	30%
States with statewide waivers in both 2013 and 2017	6.4	16%	1.0	19%
Total all states	39.0	100%	4.9	100%
Fiscal Year 2017				
States with statewide waivers in 2013 and no waivers in 2017	9.1	26%	0.6	19%
States with statewide waivers in both 2013 and 2017	6.6	19%	0.9	29%
Total all states	35.2	100%	3.2	100%

Source: CBPP analysis of FY 2013 and FY 2017 USDA SNAP Household Characteristics data.

Note: "Non-PA" means not pure public assistance (PA) household. A household is considered to be pure PA if each member of the household receives Supplemental Security Income, a cash TANF benefit, or General Assistance income.

FNS' Methodology for Determining the Share of Areas That Would Lose Eligibility for Waivers Is Incomplete and Confusing

The RIA includes FNS' estimate of the number and share of currently waived areas that would no longer qualify for a waiver under the proposed rule (755 areas, representing 76 percent of areas currently waived), and the share of the impact that is attributable to each of the major proposed changes to waiver rules. It also provides an explanation of its methodology for deriving these estimates. However, the explanations are incomplete, confusing, and misleading. FNS omits fundamental information needed to assess the integrity of its analysis. For example, it bases the analysis on inconsistent periods of time, and provides unclear explanations of its methodological assumptions. Understanding which areas and how many areas would lose waivers under the proposal is central to understanding the impact of the proposed changes, but the analysis FNS included in the RIA has significant flaws and lacks sufficient explanation to allow commenters to understand the analysis.

The proposed rule makes three major changes to the existing rules for determining waiver eligibility:

1. **It sets a minimum unemployment rate of 7 percent as a floor for waiver eligibility.** It makes areas with average unemployment rates below this floor ineligible for a waiver, even if their unemployment rates are 20 percent above the national average unemployment rate. In contrast, there is no floor under current federal regulations. (See Chapter 3 for more.)
2. **It restricts states' flexibility to define combined areas, making federally designated labor market areas the only geographical groups that can be eligible for a waiver.** In contrast, under current regulations states have the discretion to combine areas into larger geographic regions that are eligible for a waiver if the regional unemployment rates still meet the eligibility thresholds.⁴⁶⁶ (See Chapter 5 for more.)
3. **It narrows the allowable criteria for states to request statewide waivers.** Under current federal regulations and FNS guidance, states can request statewide waivers based on average state-level unemployment rates that are 20 percent above the national average over a recent 24-month period; average statewide unemployment rates above 10 percent for a recent three-month or 12-month period; or based on qualifying as a state for extended unemployment benefits.⁴⁶⁷ In contrast, the proposed rule permits to states to request statewide waivers only when they qualify for extended unemployment benefits. (See Chapter 4 for more.)

The problems with FNS' estimates fall into two main categories: first, the methodology is confusing and incomplete, and second, the discussion of the relative impact of the different changes on areas' eligibility for waivers is misleading.

The Methodology Is Confusing and Incomplete.

Below are specific problems with the RIA's methodology that call into question the reliability of its estimated impact of the rule provisions on waived counties.

- **FNS' use of the term "currently" is inconsistent; as a result it is not clear what year FNS used for the analysis.** Under both current law and the proposed rule an area's eligibility for a waiver for a given fiscal year is based on whether the area's unemployment rate for a specific earlier time period exceeds a threshold that applies to that same time period. Throughout the RIA's discussion of the methodology for determining the impact of the proposed changes, FNS uses the term "currently" to refer to the year on which it is basing its estimates. For example, on page 20, where FNS discusses its estimates of the number of areas that would lose eligibility for waivers under the proposed rule, FNS asserts that "975 counties and county-equivalents *currently* have a time limit waiver" (emphasis added).⁴⁶⁸ Since FNS issued the NPRM on February 1, 2019, the start of the fifth month of fiscal year 2019, it

⁴⁶⁶ USDA, "Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD)," December 2, 2016," page 10.

⁴⁶⁷ 7 C.F.R. § 273.24 (f) (2), and FNS guidance, "Supporting Requests to Waive the Time Limit for Able-Bodied Adults Without Dependents," December 2016, <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>.

⁴⁶⁸ RIA, p. 20.

would be reasonable to assume that the term “currently” refers to fiscal year 2019. However, nine pages later in a discussion of “uncertainties” associated with all the estimates in the RIA, FNS notes that “these estimates are based on current waiver eligibility as of FY 2018.”⁴⁶⁹ Moreover, as discussed below, it appears that the time period FNS used for the data on local area unemployment rates is the time period that applies to waiver eligibility for FY 2019.

FNS’ lack of clarity about the year for which it estimated the change in waiver eligibility calls into question whether it is assessing accurately the impact of the proposed changes.

• **There are inconsistencies in FNS’ methodology to estimate of the number of counties that would lose waivers under the proposed rule.** The analysis reveals inconsistencies in the methodology:

1. According to current and proposed waiver rules,⁴⁷⁰ the calculation to determine whether an area is eligible for a waiver for a given fiscal year looks at the area’s 24-month average unemployment rate over a defined earlier time period and compares it to 20 percent above the national average for the same earlier 24-month period.⁴⁷¹ States have to compare their areas’ unemployment rates for a 24-month period to an unemployment threshold calculated over *the same 24-month period*. In addition, states need to use a 24-month time period that falls within an earlier window that is consistent with the year for which the waiver will be implemented.⁴⁷² Contrary to its own guidance, FNS fails to use consistent periods in its analysis:
 - a. The 24-month period FNS says it used for the unemployment data is inconsistent with the year FNS says it calculated the number of waived areas. On page 21, FNS notes that it obtained data “for the 24-month period from January 2016 to December 2017 for 3,077 counties and county-equivalents.” As mentioned, elsewhere the RIA asserts that it based its estimates on eligibility for waivers in 2018, but the 24-month period used for the unemployment data is not the correct period for a waiver implemented in 2018. The January 2016 through December 2017 period that the Department used applies to waivers implemented in 2019. The correct period of unemployment data that applied to areas eligible for 2018 waivers is January 2015 through December 2016. If FNS is estimating eligibility for waivers in 2018, it should have used unemployment data that is applicable to that year.

⁴⁶⁹ RIA, p. 29.

⁴⁷⁰ 7 C.F.R. § 273.24(f)(2)(ii).

⁴⁷¹ The proposed rule would add the additional condition that the area’s unemployment rate under this calculation be at least 7 percent.

⁴⁷² USDA, “Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD), December 2, 2016,” page 7.

- b. The Department notes on page 21 that it used unemployment data “to identify currently-waived counties [that] did not have a 24-month [unemployment rate] that exceeds the current waiver threshold.” This threshold is calculated as 20 percent above the national average unemployment rate for a 24-month period. FNS did not specify which 24-month period it used to calculate this “current” threshold. This creates additional confusion, given that it is already unclear which year the Department is using for waived counties and the potential inconsistency with the period for which the unemployment data were collected. This also matters because the thresholds are different depending on the waiver year FNS is analyzing. For the 24-month period of January 2016 through December 2017, which corresponds to a 2019 waiver, the threshold is 5.5 percent. For the 24-month period of January 2015 through December 2016, which corresponds to a 2018 waiver, the threshold is higher at 6.1 percent. If FNS is comparing county unemployment data that apply to a 2019 waiver to the threshold for a 2018 waiver, instead of the lower threshold for a 2019 waiver, then it is potentially underestimating the number of waived counties that would lose eligibility as a result of restricting area combinations. Although as mentioned above, it should have been using data for a 2018 waiver if it is evaluating eligibility for 2018.
2. FNS only collected unemployment data for a single 24-month period, but states are allowed to use any 24-month period that is later than the 24-month period FNS used. FNS’ estimate assumes that all states would use the same period of data as the basis of their requests, and that this period is representative of the other periods of data that states could use. This is unlikely to be the case as unemployment trends change over the course of a year, and the first 24-month period is unlikely to accurately represent unemployment conditions in other periods that states could use for a waiver request. In addition, the decline in unemployment rates in recent years means that the threshold for eligibility in subsequent 24-month periods generally decreased over the course of 2018. As a result, the restriction of area combinations would result in fewer waived counties losing eligibility than would be estimated under a single 24-month period. The Department’s omission of multiple periods means that it is potentially overestimating the number of waived counties that would lose eligibility as a result of restricting area combinations.
3. Both inconsistencies create opposite biases, the net effect of which FNS could demonstrate if it had taken them into account. The fact that it ignores these factors and does not provide a rationale for doing so shows the serious lack of rigor in its analysis.

- **FNS fails to adequately explain its exclusion of certain areas from its analysis.**

Footnote 8 on page 21 indicates that FNS excluded five New England states (Connecticut, Maine, Massachusetts, New Hampshire, and Vermont) when it compiled the unemployment data from the Bureau of Labor Statistics (BLS), but FNS does not indicate if it also excluded these states from the list of areas that it is counting as currently waived. FNS also does not mention these states in the rest of its analysis. As a result of these exclusions, its estimate of the number of currently waived areas is too low.

The same footnote further explains that FNS excluded these five states because New England counties (also known as NECTAs) are conceptually dissimilar to counties in the rest of the United States. However, Rhode Island, which contains the Providence-Warwick, RI-MA NECTA, does not appear on the list of excluded states. The Department fails to mention why it included Rhode Island, which shares the same New England dissimilarities with the other states.⁴⁷³ It briefly notes that “some NECTAs are quite small” and “BLS data was not consistently available for these areas,” which appears to be a reference to the BLS’ discontinuation in 2018 of unemployment data for all cities and towns with populations below 1,000 for all New England states.⁴⁷⁴ As Rhode Island does not contain towns with populations below 1,000, BLS data would be available for all areas. If this were the reason for its inclusion in the FNS analysis, this would be consistent with its rationale. But FNS provides no information to help understand its rationale.

In addition, the Department does not explain how it treats Guam and the Virgin Islands in its analysis. Although the Bureau of Labor Statistics does not produce employment data for these U.S. territories, these areas were also waived in 2018 but it is unclear if they are included in the number of currently waived areas or in the number that would lose waivers under the proposed rule.

- **FNS fails to adjust the number of waived areas for 2020, the year in which the proposed rule would be in effect if implemented.** FNS unrealistically assumes no changes in waivers in future years. It fails to adjust for the fact that the number of areas is likely to be lower in FY 2020, the year in which the proposed rule would first apply if implemented. As unemployment rates have declined, states have applied and qualified for fewer areas in 2017, 2018, and 2019. It would be realistic to assume a decline in waived areas in 2020 and later years as well.
- **FNS only examined the impact of the proposal in a year when unemployment rates declined.** FNS only examined the impact of its proposal in 2018, a year in which the unemployment rates declined. It did not analyze the proposal’s impact during a time of rising unemployment rates, such as prior to or during a recession. FNS did not offer any rationale for this exclusion. Expanding its analysis to many periods with rising and decreasing unemployment trends would have provided a fuller understanding of the impact of the proposed rule in different economic conditions.
- **FNS does not explain its estimation of the number of areas losing eligibility due to the narrowing of statewide waivers.** FNS provided no details about its methodology for

⁴⁷³ U.S. Census Bureau, “New England City and Town Areas (NECTA) Maps,” <https://www.census.gov/geo/maps-data/maps/nectas.html>.

⁴⁷⁴ U.S. Bureau of Labor Statistics, “Local Area Unemployment Statistics,” <https://www.bls.gov/lau/laueo.htm>.

estimating the effect of narrowing the criteria that can be used for statewide waivers, beyond noting that it “estimated the number of counties and county-equivalents that would lose waiver eligibility due to the elimination of Statewide waivers.”⁴⁷⁵ It identified an additional 39 counties eligible only because of a statewide waiver and subtracted those from its total of waived areas that would still be eligible under the rule after already eliminating the areas that were eligible only based on states’ ability to combine data. Based on the explanations in the analysis, it is unclear why FNS needed to subtract out these 39 counties since all of them would already be ineligible for waivers under the rule because their data could not be combined with the data of other areas in the state. The description of the methodology is confusing. It is possible that FNS was estimating the impact of the narrowing of statewide waivers separately from the impact of combining data or the 7 percent threshold. Table 3 on page 22 of the RIA presents the results as if FNS included the narrowing of statewide waivers as one step within the estimation. If that is not the case, then the methodology is poorly explained.

On the other hand, if the narrowing of statewide waivers is a step in its overall estimation, then it appears that FNS subtracted the same counties twice. The elimination of counties that did not meet the waiver threshold (described in the second paragraph on page 21) would already have removed counties that are ineligible based on their own unemployment rates. This would not leave any counties that are eligible based only on being in a state with a statewide waiver. This additional subtraction would inflate FNS’ estimate of counties that would lose their waivers due to narrowing of statewide waivers.

- **FNS ignores extended benefits as a standard for qualifying for statewide waivers.** FNS does not mention that some states would remain eligible for statewide waivers under the proposed rule, based on qualifying for extended unemployment benefits (EB). Under current FNS guidance on qualifying for a waiver based on qualifying for EB, which the proposed rule does not change, states can request statewide waivers that start no later than one year after the date that the state qualified for EB.⁴⁷⁶ Alaska and the District of Columbia qualified for EB in January 2018, and therefore would have been able to request statewide waivers in 2018 (and 2019). For either year these two areas count as an additional nine county-equivalents. FNS omission of this factor also inflates the estimate of counties that would lose their waiver under the proposed rule because these two areas would not have lost their waivers.
- **FNS does not analyze the impact of its rules on Native American reservations or on New England towns.** FNS does not provide any analysis of the impact of the proposed rule on Native American reservations or on New England towns and cities. This is a glaring omission, because Native American reservations tend to have high poverty rates well above the national average, and over 200 reservations were waived or were located inside a waived area in 2018. This is an important segment of the population that FNS analysis ignores completely.

Similarly, 281 towns and cities in the New England states of Connecticut, Massachusetts, New Hampshire, Vermont, and Rhode Island were waived in 2018, constituting nearly a quarter of all towns in these states. Although the Bureau of Labor Statistics has stopped publishing

⁴⁷⁵ RIA, p. 21.

⁴⁷⁶ USDA, “Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016, page 3.

unemployment data for New England towns with populations below 1,000 people, it continues to provide data for towns above 1,000 people. It is unclear why the Department does not examine the rule's impact on those towns with higher populations.

The methodological problems listed above cast serious doubt on the reliability of the FNS overall estimate of the impact of the proposed rule on "currently waived" areas.

FNS' Estimates of the Relative Impacts of the Rule Provisions on Waived Areas Is Misleading

In Table 3 on page 22 of the RIA, FNS indicates that the three different changes in the proposed rule result in a cumulative 76 percent reduction in the number of waived areas. FNS then describes the relative impact of the three different changes in the proposed rule, asserting that the change to restrict area combinations reduces the number of areas waived by 36 percentage points, the change to statewide waivers reduces the number by 4 percentage points, and the 7 percent unemployment rate floor reduces the number by 37 percentage points. However, the order FNS uses for these calculations presents misleading results.

FNS' presentation suggests that the proposed change to restrict area combinations and the 7 percent floor have a roughly equal impact. The presentation is misleading, however, because, although restricting the ability to combine areas would have a substantial impact by itself relative to current rules, the 7 percent floor has a far larger effect on areas' eligibility for waivers because 7 percent is substantially higher than the national average unemployment threshold. As a result, all of the areas that would lose because they cannot be combined with adjacent areas would also lose under a 7 percent floor. An example using FNS' own numbers (despite their flaws) can be helpful to understand why:

Under FNS' estimates, out of 975 counties currently waived, 220 have "a 24-month [unemployment average] of at least 7 percent and would continue to qualify for a waiver under the proposed waiver criteria."⁴⁷⁷ That means 755 waived counties, or 76 percent of all counties currently waived would lose their waiver due solely to the 7 percent floor. The additional impact of restricting area combinations would be zero at that point.

This occurs because 7 percent is higher than the 20 percent above the national 24-month average threshold (which would be 6.1 percent for 2018 or 5.5 percent for 2019, though as discussed above, it's not clear which year FNS used for the analysis.) Implementing a 7 percent minimum unemployment rate automatically eliminates any waived counties with rates below 5.5 and 6.1 percent, and the waived counties with rates above 5.5 and 6.1 percent but below 7 percent. The impact of the floor is therefore greater, as it eliminates counties that are eligible based on their own 24-month average unemployment rates but do not meet the floor, in addition to the counties waived through area combinations.

⁴⁷⁷ RIA, p. 22.

The RIA Assumes That All ABAWDs in Areas That Lose Waivers Will Lose SNAP; An Assumption That Ignores That Many Will Be Exempt or Able to Participate for Other Reasons

As mentioned above, in determining the impact of the change in waivers on SNAP participants, the RIA assumes that 1.5 million ABAWDs would live in areas that would be waived under current rules. Under the proposed changes, the RIA assumes that:

Because waived areas are estimated to be reduced by 76 percent under the revised waiver criteria, the department assumes that 76 percent of currently-waived ABAWDs would be newly subject to the time limit. This equals approximately 1.1 million of the estimated 1.5 million currently waived individuals.⁴⁷⁸

Under this assumption, *no* individuals who are defined as “ABAWDs” (using the Department’s definition) in the areas that lose waivers would be:

- exempted from the time limit because of being physically or mentally unfit;
- pregnant;
- participating because they are eligible during the first three months of participation or qualify for a second three-month period;
- exempt using individual “percentage” exemptions;
- participating in a qualifying work program; or
- working (or complying with a qualifying work program), for less than the required 20 hours per week.

This assumption defies logic and ignores the evidence from other states that have a time limit in effect. In every state without waivers there are “ABAWDs” who are able to continue to participate for these reasons. As we showed above, in Tables 11.1 and 11.2, in the states that reinstated the time limit by 2017, the number of “ABAWDs” declined substantially, from 1.5 million in 2013 to 600,000 in 2017, but even if we subtract out the number of “ABAWDs” who were working at least 20 hours a week (138,000), that still leaves almost half a million “ABAWDs” participating in SNAP in 2017 after the time limit went back into effect.

The assumption that none would continue to participate for any of these reasons is a glaring error in the RIA methodology. As a result, the public is left not knowing how many people who are potentially subject to the time limit will be able to continue to participate and for which reasons, and whether the Department knows or cares.

⁴⁷⁸ RIA, p. 25.

The RIA's Assumption That One-Third (34 Percent) of ABAWDs Subject to the Time Limit in Areas That Lose Waivers Will Remain Eligible Because They Would Be Working 20 Hours a Week Is Flawed

Of the 1.1 million “ABAWDs” the Department estimates would be newly subject to the time limit under the proposed rule, the RIA assumes one-third would be working and two-thirds would “lose their eligibility for SNAP for failure to engage meaningfully in work or work training:”

Using FY 2016 QC data, approximately 26 percent of ABAWDs were working. The Department assumes that this proportion would increase to about 34 percent in FY 2020 if the UR [unemployment rate] declines as projected in the 2019 President’s Budget and that these individuals will work at least 20 hours per week. Under this scenario, the Department estimates that approximately one-third of ABAWDs newly subject to the time limit will work and maintain their SNAP eligibility. The remaining two-thirds (755,000 individuals) would lose their eligibility for SNAP for failure to engage meaningfully in work or work training.⁴⁷⁹

This assumption is flawed for several reasons:

- First, the assumption being used (the 26 percent working in 2016, rising to 34 percent in 2020) was derived from the entire SNAP population of “ABAWDs” nationally, including both areas that currently are waived and those that are not waived. As we demonstrated above, the work rates of SNAP participants who live in areas without waivers are higher simply because many people who are not able to find jobs or document their work have been cut off. It is confusing to apply a percentage derived from the entire caseload, where many states have a large share of individuals who live in area without waivers, to areas with waivers.
- Second, in 2017 only 12 percent of “ABAWDs” in states that had statewide waivers in 2017 were working at least 20 hours a week — the threshold for individuals subject to the time limit to remain eligible for SNAP. The RIA assumes a share almost triple that (34 percent) would be able to meet the 20 hours a week threshold, with no explanation for why or how that would occur.

The RIA's Assumes That All Individuals Who Lose Eligibility Will Reapply Every Three Years

When estimating the effect of the change on federal spending the RIA assumes the impact will be felt over only nine months in 2020 and 2023, presumably based on an assumption that people who have been cut off because of the three-month time limit will reapply immediately when they become eligible again after three years, but it provides no evidence that this occurs. To the contrary, a study FNS published in 2001 of state implementation of the time limit found:

Many ABAWDs who left the program have not returned. ABAWDs who used up their time-limited benefits in 1997 became eligible again in 2000, creating the potential for a sharp

⁴⁷⁹ RIA, p. 26.

upswing in participation, yet the trend in participation shows no such change.⁴⁸⁰ (Bold emphasis in original.)

G. The RIA Lacks Transparency About the Reasons Individuals May Lose SNAP and Other Possible Impacts If Waivers Are Narrowed

As noted, the proposed rule's fundamental rationale is that taking away (or threatening to take away) food assistance will cause people not currently working to get jobs. The NPRM asserts that "these changes would encourage more ABAWDs to engage in work or work activities if they wish to continue to receive SNAP benefits,"⁴⁸¹ and, "[t]he application of waivers on a more limited basis would encourage more ABAWDs to take steps towards self-sufficiency."⁴⁸²

However, the only impact that FNS quantifies in the RIA comes from the estimated, "755,000 individuals...[who] would not meet the requirements for failure to engage meaningfully in work or work training." The rationale and the estimated impact are inconsistent. Moreover, the assessment lacks transparency about what the impact would be and it over-simplifies the possibilities. Other FNS materials indicate that FNS is aware that when the time limit is in effect it results in different outcomes for different groups of people. Many people participate in SNAP for a period of time and then leave when their circumstances change. But, when faced with a time limit there are a range of possible outcomes and impacts. For example:

- Some individuals may find work or additional hours and as a result their SNAP benefits may go down as a result of income they would not have otherwise had.
- Others may wish to comply but be unable to find a job. For these individuals there is a question of whether a qualifying slot in an Employment and Training program would be available. If there is no slot then that individual would likely lose SNAP. If there is, FNS and states would potentially incur a cost for the E&T services. FNS does not contemplate any changes in E&T that might be caused by the proposed rule.
- Other individuals may qualify for an exemption for "unfitness for work," or another reason, but may lose SNAP if they don't realize they could qualify for an exemption because it was not properly explained to them, or if they are unable to get documentation of their health issue because they lack medical coverage.
- Others may actually be working, but not comply with paperwork requirements to document their hours of work.
- And, although unlikely, other individuals who are able to work may intentionally choose not to comply with the time limit and lose SNAP benefits.

⁴⁸⁰ John L. Czajka *et al.*, "Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation: Final Report," prepared by Mathematica Policy Research for the USDA, Food and Nutrition Service, September 4, 2001, <https://fns-prod.azureedge.net/sites/default/files/abawd.pdf>, p. xxv.

⁴⁸¹ NPRM, p. 981.

⁴⁸² NPRM, p. 981.

This list is not exhaustive. But FNS guidance in recent years makes clear that it is aware of both the range of possible outcomes and the fact that the distribution of outcomes can be influenced by state implementation choices. For example, in November 2015, FNS issued guidance that reminded states that in addition to tracking months of participation, “States must also carefully screen for exemption from the time limit and connect ABAWDs to the information and resources necessary to maintain eligibility consistent with Federal requirements.”⁴⁸³ The guidance covered several areas where state implementation could affect individuals’ eligibility, for example:

- “Screening for Exemptions and Fitness for Work”;
- “Maintaining Eligibility through Work Programs and Workfare”;
- “Maintaining Eligibility through Unpaid or Volunteer Work”; and
- “Good Cause for Failure to Meet the ABAWD Work Requirement.”

Another FNS guidance focused on states’ responsibilities to adequately notify individuals who are potential ABAWDs on the details of the time limit, work requirement, exemptions, and their responsibility to report changes in work hours.⁴⁸⁴ FNS followed this with another guidance that outlined best practices and provided model language to “help State agencies effectively inform Supplemental Nutrition Assistance Program (SNAP) households of the requirements for able-bodied adults without dependents (ABAWD) and to enrich training for eligibility workers.”⁴⁸⁵

The RIA oversimplifies the various impacts of the rule. Research has found, and FNS is aware, that in practice work requirements result in individuals experiencing benefit cuts for a variety of reasons, including when they cannot find jobs, when they should have been found exempt from the requirement, and when they are working but fail to comply with paperwork requirements. FNS failed to adequately reflect the various possible reasons why individuals would lose SNAP under the proposed rule and as a result failed to adequately explain or consider its impact.

H. The RIA’s Estimate of No Impact From Eliminating the Carryover of Exemptions Is Confusing and Misleading

The proposed rule would eliminate states’ ability to “carry over” exemptions that go unused in one year into future years. The RIA includes two confusing and misleading assumptions about state use of exemptions — one about current state use of exemptions and the other about how states would use exemptions under the proposed rule.

⁴⁸³ U.S. Department of Agriculture, Food and Nutrition Service, “Supplemental Nutrition Assistance Program - ABAWD Time Limit Policy and Program Access,” November 19, 2015, <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf>.

⁴⁸⁴ U.S. Department of Agriculture, Food and Nutrition Service, “SNAP – Requirements for Informing Households of ABAWD Rules,” April 17, 2017, https://fns-prod.azureedge.net/sites/default/files/snap/Requirements_for_Informing_Households_of_ABAWD_Rules.pdf.

⁴⁸⁵ U.S. Department of Agriculture, Food and Nutrition Service, “SNAP - Best Practices and Resources for Informing Households of ABAWD Rules,” May 25, 2018, <https://fns-prod.azureedge.net/sites/default/files/snap/BestPracticesforInformingABAWDS.pdf>.

The RIA dramatically overstates the number of exemptions states have used in recent years. The RIA methodology includes an assumption that “states use approximately 65 percent of their earned exemptions in an average year.” This assumption implies that many states use a large share of their annual exemptions each year. This is a significant misrepresentation of the pattern of state use of exemptions.

A closer look at the data FNS posts about the pattern of state use and accrual of exemptions⁴⁸⁶ shows that the actual pattern is that:

- many states have not used any exemptions in most years;
- some states have used a small share of the exemptions they earned for that year;
- a few states have used the majority of the exemptions they earned for that year;
- a few states have not earned exemptions for a year but have dipped into their accrued exemptions; and
- a handful of states have used more exemptions than they earned in a given year.

The last two categories result in the number of used exemptions as a share of earned exemptions for that year exceeding 100 percent in that state. Across all states this will raise the total share of exemptions used because the denominator for the percentage is the number of exemptions earned for that year (as it appears to be for the FNS assumption.) See Table 11.5, below, for the distribution of states across these categories. You can see that the small number of states in the last two categories is playing an outsized role in raising the total share across all the states.

TABLE 11.5

State use of exemptions 2014-2018

Number of States:	2014	2015	2016	2017	2018^a
Using no exemptions	43	41	21	19	N/A
Using less than 50% of earned exemptions	4	7	15	26	N/A
Using 51-100% of earned exemptions	1	2	0	5	N/A
Using more than 100% of earned exemptions	2	0	2	1	N/A
Used exemptions but earned none for that year	3	3	15	2	N/A
Average exemptions used as a share of earned	93%	27%	149%	23%	N/A
Total exemptions used	230,000	115,000	730,000	300,000	1,300,000

⁴⁸⁶ U.S. Department of Agriculture, ABAWD 15 Percent Exemptions Data, <https://www.fns.usda.gov/snap/abawd-15-percent-exemptions>.

Source: CBPP analysis of FNS-posted data on exemptions <https://www.fns.usda.gov/snap/abawd-15-percent-exemptions>.

^a According to the RIA (p. 23), “In FY 2019 state carried over approximately 6.1 million unused exemptions from the prior year.” Since, according to FNS data, states carried 7.4 million exemptions into FY2018 they must have used about 1.3 million exemptions in FY 2018 (7.4 million – 1.3 million = 6.1 million.)

Thus, FNS’ statement that “States use approximately 65 percent of their earned exemptions in an average year” is highly misleading. In fact, across all states and the four years between 2014 and 2017 only eight states used between 51 and 100 percent of their exemptions. The vast majority used none, some used less than 50 percent, and a handful used more than 100 percent.

FNS’ assumption that eliminating the exemption carryover would have no impact is indefensible. FNS estimates the number of exemptions that would be taken away from states and concludes that the rule would eliminate 6.6 million case-months of carryover exemptions the first year (FY 2020) and 160,000 to 180,000 a year in later years.

FNS estimates no impact from the proposed change to eliminate states’ past and future exemptions from prior years, saying:

It is difficult to estimate the impact of such a change on transfer spending because there is no historical record to support an estimate of if and when such a “run on the bank” may occur. Current practice by the states suggests that elimination of the carryover will have no change on transfers as the exemptions that will expire represent exemptions that were not distributed to covered individuals (i.e., no transfer is occurring, so no transfer can be reduced.) However, elimination of the carryover will give the Federal government greater predictability over potential spending requirements because the number of exemptions subject to the sole discretion of the states is smaller.⁴⁸⁷

The assumption of no change in federal spending from eliminating so many exemptions is highly misleading and contrary to the experience of the last 23 years. Virtually every state has used waivers at some point since 1996, and most states have used exemptions in some years, making clear that in some economic situations and under some political leadership states wish to shield some SNAP recipients who are subject to the time limit from losing SNAP.

Some states have used exemptions to suspend the time limit in areas where no E&T services are available or to transition counties from waiver status to non-waiver status and give the area time to establish or expand employment and training opportunities to meet the needs of individuals subject to the time limit. Other states have used exemptions to continue to provide SNAP to certain SNAP participants who would be cut off because of the time limit but who they determine should continue to receive SNAP, such as individuals who are working, but less than 20 hours in a particular month, or individuals who recently have been released from incarceration.

The information that FNS makes public about exemption usage in recent years shows that as many areas have no longer been waived in recent years, states have increased their use of exemptions. It seems highly likely that if the rule went into effect and states faced losing waivers for a large share of the counties in their state with the highest unemployment rates, many would opt to

⁴⁸⁷ RIA, p. 24.

draw down more exemptions, and, over time, to draw down the balances of their exemptions that they have been allowed to carry over.

Another example of when states may use exemptions is when the political leadership in a state changes to be more sympathetic to the harshness of the time limit. In that case states might establish a policy that begins to use exemptions and use them at a higher rate than the number that are accrued each year. The carryover exemptions would allow such a state to sustain a larger exemption policy for several years.

The assumption that no carried over exemptions would ever be used is indefensible, especially in combination with the changes the proposed rule would make to the share of the United States that could qualify for waiver.

I. The RIA Fails to Accurately Reflect the Impact of the Proposed Rule on Medicaid and Health Coverage and Other Secondary Impacts

The Centers for Medicare and Medicaid Services of the Department of Health and Human Services, the agency that administers the Medicaid program, has required some alignment between SNAP and Medicaid work requirements. Specifically, states must count enrollment in SNAP as an automatic exemption from Medicaid work requirements since individuals enrolled in SNAP are either exempt from or complying with SNAP work requirements.⁴⁸⁸

As a result, the proposed rule's changes to SNAP waiver and exemption policy would have a direct ripple effect on individuals' Medicaid eligibility and coverage. More people in states with Medicaid work requirements would be subject to those work requirements, and a large number would very likely lose Medicaid coverage. The per-person cost of health coverage often is higher than the monthly SNAP benefit. The federal budget savings and the impact on individual's health coverage from this direct link between SNAP and Medicaid under the Administration's policies should have been reflected in the RIA's cost-benefit analysis. The RIA's failure to mention and quantify these effects is a serious oversight that fails to accurately reflect the full impact of the proposed rule.

Moreover, the RIA does not mention nor quantify several secondary effects that SNAP benefit cuts could have. For example:

- **SNAP benefits are one of the fastest, most effective forms of economic stimulus when the economy is weak.** Low-income individuals generally spend all of their income meeting daily needs such as shelter, food, and transportation, so every dollar in SNAP that a low-income family receives enables the family to spend an additional dollar on food or other items. Moody's Analytics estimated that every \$1 increase in SNAP benefits during 2009, when the economy was in a recession, generated about \$1.70 in economic activity.

⁴⁸⁸ State Medicaid Director Letter, January 11, 2018, <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf>.

- **SNAP has been found to improve some recipients' health outcomes.** SNAP is associated with better health and lower health care costs, according to a growing body of evidence.⁴⁸⁹

⁴⁸⁹ Steven Carlson and Brynne Keith-Jennings, "SNAP is Linked with Improved Nutritional Outcomes and Lower Health Care Costs," Center on Budget and Policy Priorities, January 17, 2018, <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>.

Chapter 12. The Proposed Rule Would Disproportionately Impact Individuals Protected by Civil Rights Laws, Violating the Food and Nutrition Act’s Civil Rights Protections

According to FNS estimates, under the proposed rule some 755,000 individuals would lose eligibility for SNAP because of a “failure to engage meaningfully in work or work training.”⁴⁹⁰ As described in detail in Chapter 3, evidence from the research on the impact of work requirements and time limits, as well as the disparities in unemployment in the labor market make clear that the cuts to SNAP eligibility from the proposed rule would fall disproportionately on African Americans, Latinos, and people with disabilities. In addition, Native Americans also would experience a disproportionate impact from the proposed rule because individuals who are Native American, whether or not they reside on Indian reservations, also have poverty and unemployment rates well above the national average, and many of the over 200 reservations that were waived or were located inside a waived area in 2018 would likely lose their waivers under the proposed rule.

In the civil rights impact analysis included in the NPRM, FNS recognizes the disproportionate impact, citing the rule’s “potential for disparately impacting certain protected groups due to factors affecting rates of employment of members of these groups.”⁴⁹¹ But the analysis finds that “the implementation of mitigation strategies and monitoring by the Civil Rights Division of FNS will lessen these impacts,” without providing any evidence or examples of how that mitigation could occur. It is not clear how the Civil Rights Division of FNS could mitigate an eligibility policy that inherently results in a disproportionate impact on certain groups. We cannot comment on the potential effectiveness of such efforts when the NPRM does not provide any information about what they might be and no similar interventions have occurred in the history of the program. If FNS envisions giving the Civil Rights Division a role in determining eligibility for waivers — which the Division apparently has not had to date — it says nothing about that in the NPRM and we cannot readily imagine how that would work. Even if it did, without anything in the rule varying the effects of the new standards it imposes, states would be unlikely to request the kinds of waivers that might mitigate the rule’s disparate impact on members of protected groups.

Moreover, even if mitigation of the disparate impact were possible, the fact that the proposed rule still would have a disproportionate impact on these protected groups directly violates Section 11(c)(2) of the Food and Nutrition Act (7 U.S.C. § 2020(c)(2)). In the 2008 farm bill Congress reasserted its commitment to nondiscrimination and made clear that certain civil rights laws apply to SNAP.⁴⁹²

(c) CIVIL RIGHTS COMPLIANCE.—

⁴⁹⁰ NPRM, p. 989.

⁴⁹¹ NPRM, p. 990.

⁴⁹² The Food, Conservation, and Energy Act of 2008 (P.L. 110-246), section 4117.

(1) IN GENERAL.—In the certification of applicant households for the supplemental nutrition assistance program, there shall be no discrimination by reason of race, sex, religious creed, national origin, or political affiliation.

(2) RELATION TO OTHER LAWS.—The administration of the program by a State agency shall be consistent with the rights of households under the following laws (including implementing regulations):

(A) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(B) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(C) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(D) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).⁴⁹³

Of particular note is that, under this amended language, the regulations implementing Title VI and other civil rights statutes are fully applicable to SNAP. These regulations prohibit actions in federal programs that have disparate impacts on members of protected groups as well as intentional discriminatory acts. Therefore, the proposed rules' disparate impact on these individuals, as demonstrated by the research and conceded in the NPRM itself, is inconsistent with the Act. Key members of Congress made unmistakably clear that this is what the 2008 amendments sought to accomplish.

In his floor statement on the 2008 farm bill, Representative Joe Baca, who at the time was the ranking member of the House Agriculture Subcommittee on Departmental Operations, Oversight, Nutrition and Forestry, explained:

... this legislation makes clear that the [Agriculture] Department's civil rights regulations are among those which have the full force of law and which households have the right to enforce. Discrimination is not acceptable in any form or at any point in the food stamp certification process. Households should not be assisted, or not assisted, approved or denied for any reason other than an individual assessment of their need for help or their eligibility by the state.⁴⁹⁴

Senator Dick Durbin, a leading member of the Senate Judiciary Committee, in his floor statement on the 2008 farm bill similarly stated that "This legislation also makes explicit that various civil rights laws are binding in the Food Stamp Program. This is not a change — these laws and their regulations have applied since they were written, and both have been intended to be fully enforceable."⁴⁹⁵

⁴⁹³ Section 11(c) of the Food and Nutrition Act of 2008, 7 U.S.C. § 2020(c).

⁴⁹⁴ Congressional Record, May 22, 2008, p. H3814, <https://www.govinfo.gov/content/pkg/CREC-2008-05-14/pdf/CREC-2008-05-14-pt1-PgH3801-3.pdf#page=13>.

⁴⁹⁵ Congressional Record, May 22, 2008, p. S4747, <https://www.congress.gov/crec/2008/05/22/CREC-2008-05-22-pt1-PgS4743-3.pdf>.

Given this clear expression of Congressional intent, FNS may not by regulation exacerbate discrimination within SNAP based on race, ethnicity, or disability. Since FNS recognizes that the proposed rule would have discriminatory effects, it must withdraw the rule.

Chapter 13. The Proposed Rule Fails to Adequately Estimate the Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. § 601-612) requires agencies to analyze the impact of a proposed rule specifically on small businesses and entities through an initial regulatory flexibility analysis. The Regulatory Flexibility Act specifically mandates that the analysis must contain a series of arguments including, but not limited to: why action by the agency is being considered, what the legal basis is for the proposed rule, and an estimate to the number of small entities to which the rule would apply.⁴⁹⁶ The FNS failed to undertake the necessary research regarding the impact of this rule on all small entities, with the proposed rule offering only a brief impact report with minimal analysis that fails to accurately or adequately assess the impact of the proposed rule.

The FNS claims that aside from program participants, the proposed rule would primarily impact state agencies. This assessment leaves out a key group of impacted stakeholders — small SNAP retailers, who rely on SNAP purchases for consistent and dependable revenue. The Department incorrectly assumes that after losing benefits, people would replace their monthly SNAP allotment with cash. The individuals impacted by this NPRM are a very low-income group, as approximately 70 percent of all “ABAWD’s” are below half of the federal poverty line.⁴⁹⁷ They do not tend to have disposable income, and taking away their SNAP benefits would take away their ability to purchase food. Additionally, SNAP benefits normally run out for most households before the end of the month.⁴⁹⁸ Many households spend their benefits rapidly because they are funds designated specifically for food. Cash cannot be used to replace SNAP because these dollars are needed to pay other expenses such as rent, clothing, gasoline, and many other necessities.⁴⁹⁹ The Department’s primary and false assumption that SNAP is supplemental rather than essential lays an untrue foundation for the argument that small retailers would not be disproportionately impacted.

Additionally, the NPRM includes an inaccurate estimate of the number of small retailers that would be impacted. This leaves the public and stakeholder groups ill-informed about the potential implications of the rule. A small retailer at risk of being significantly harmed by the proposed rule would not understand the importance of the issue solely by reading the NPRM and Regulatory Impact Analysis due to the failure to scale the estimation exclusively to the impacted areas. This section will review which pieces of the Regulatory Flexibility Act were not adequately covered, the impact and magnitude of the inaccurate estimation of impacted small businesses in the NPRM, and which areas would be disproportionately or significantly impacted across the United States.

⁴⁹⁶ Regulatory Flexibility Act, 5 U.S.C. § 603, <https://www.sba.gov/advocacy/regulatory-flexibility-act>.

⁴⁹⁷ Center on Budget and Policy Priorities, “Unemployed adults without children who need help buying food only get SNAP for three months,” <https://www.cbpp.org/unemployed-adults-without-children-who-need-help-buying-food-only-get-snap-for-three-months>.

⁴⁹⁸ Dottie Rosenbaum, “Many SNAP Households Will Experience Long Gap Between Monthly Benefits Despite End of Shutdown,” Center on Budget and Policy Priorities, revised February 4, 2019, <https://www.cbpp.org/research/food-assistance/many-snap-households-will-experience-long-gap-between-monthly-benefits>.

⁴⁹⁹ *Ibid.*

A. Inadequately Addressed Sections of the Regulatory Flexibility Act

The primary area of concern within the Regulatory Flexibility Act (R.F.A.) is §603 – Initial regulatory flexibility analysis.⁵⁰⁰ According to the R.F.A §603, an agency publishing an NPRM is required to do the following:⁵⁰¹

- (b) Each initial regulatory flexibility analysis required under this section shall contain —
- (1) a description of the reasons why action by the agency is being considered;
 - (2) a succinct statement of the objectives of, and legal basis for, the proposed rule;
 - (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
 - (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
 - (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.
- (c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as —
- (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 - (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
 - (3) the use of performance rather than design standards; and
 - (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

The provided regulatory flexibility analysis in the NPRM fails to include a detailed description required by §603(b)(1) and §603(b)(2), as the analysis includes no legal basis for the proposed rule or why the agency is considering the action. Additionally, §603(b)(3) mandates an estimate of the number of small entities impacted. The agency provides an estimate, but that estimate is flawed as we show below.⁵⁰²

⁵⁰⁰ Regulatory Flexibility Act, 5 U.S.C. § 603, <https://www.sba.gov/advocacy/regulatory-flexibility-act>.

⁵⁰¹ *Ibid.*

⁵⁰² CBPP Internal Analysis of U.S. Department of Agriculture, Food Environment Atlas Data 2018.

By inaccurately estimating the number of small entities that would be impacted by the proposed rule, the Department assumed it was not required to satisfy other requirements in the Act. For example, §609(a)(1) states that when a rule is introduced that will have a significant economic impact on small entities; the respective agency must provide a statement or notice to the effect on small entities.⁵⁰³ Providing an imprecise estimate, the Agency is able to argue that no significant impact will be made, keeping small entities uninvolved with the rulemaking process. In addition, §603(c) of the RFA requires a description of potential alternatives to the proposed rule. The NPRM fails to provide any possible alternatives because the proposed rule inaccurately asserts that there is no disproportionate impact on small entities, falsely excusing them from additional requirements. Incorrectly estimating the number of small businesses not only represents a lack of specificity, it more importantly exempts the Agency from providing an advanced notice to small entities, allowing them to submit comments and address concerns in the NPRM.

B. Impact of the NPRM on Small SNAP Retailers

Perhaps the most troubling of the agency's regulatory flexibility analysis is the inadequate estimate of the total number of small SNAP retailers. The NPRM does accurately estimate that there are nearly 200,000 retailers that fall under the Small Business Administration's gross sales threshold, but it is imprecise to assume that all of these stores would be impacted by the proposed rule.⁵⁰⁴ As a result, the lost sales per store are too low, failing to signal to small entities the magnitude of their losses from the NPRM. An internal analysis at the Center on Budget and Policy Priorities has shown that a total of 639 counties across 28 states would be impacted by the proposed rule.⁵⁰⁵ Within these counties, there are only a total of about 67,000 SNAP retailers of all sizes.⁵⁰⁶ If the same percentage of these businesses were considered to be small entities under the Small Business Administration gross sales threshold used in the NPRM (76 percent), then it can be estimated that a total of nearly 51,000 small entities would be impacted, significantly less than the NPRM's estimate of 200,000.⁵⁰⁷

By making an estimate based off the total number of small SNAP retailers in the United States (200,000) versus the number of small retailers impacted by the NPRM (51,000), FNS has artificially lowered the average of the sales lost by four times.⁵⁰⁸ FNS has conducted a cursory analysis regarding the impact of the proposed rule on small businesses. Using an estimate of nearly four times the true number of stores potentially impacted minimizes the reality that small SNAP retailers would face from the NPRM.

⁵⁰³ Regulatory Flexibility Act, 5 U.S.C §609(a)(1) <https://www.sba.gov/advocacy/regulatory-flexibility-act>.

⁵⁰⁴ NPRM, Regulatory Flexibility Act <https://www.federalregister.gov/d/2018-28059/p-118>.

⁵⁰⁵ CBPP Analysis of BLS Unemployment data, 2019.

⁵⁰⁶ U.S. Department of Agriculture, Food Environment Atlas Data 2018 <https://www.ers.usda.gov/data-products/food-environment-atlas/data-access-and-documentation-downloads/>.

⁵⁰⁷ CBPP Internal Analysis of U.S. Department of Agriculture, Food Environment Atlas Data 2018.

⁵⁰⁸ CBPP Internal Analysis, of U.S. Department of Agriculture, Food Environment Atlas Data 2018.

According to the NPRM, SNAP benefit payments are expected to be reduced by about \$1.7 billion per year.⁵⁰⁹ By conducting the same calculation as FNS in the NPRM while including a more accurate estimate of the amount of impacted small businesses (\$1.7 billion x 15% redeemed at small retailers / 51,000 stores losing waivers / 12 months), we can estimate that the loss of revenue per small store on average each month would be \$417, compared to the NPRM estimate of \$106.⁵¹⁰ The NPRM subsequently states that the average small store redeemed \$3,800 in SNAP each month in 2017, making the NPRM estimate representative of 3 percent of monthly store sales.⁵¹¹ In evaluating the impact on small stores with the true loss of revenue per store (\$417/month), the average small store would realistically face an 11 percent reduction in the amount of SNAP benefits redeemed at each store. Not only is 11 percent a significant portion of a store's SNAP revenue, more importantly it is nearly four times greater than the estimated impact from the initial regulatory flexibility analysis of 3 percent in the NPRM.⁵¹² Using the more accurate estimate would have properly signaled the implications of the rule to small entities, allowing them the opportunity to comment on the proposed rule.

Small Businesses Located in Rural Areas Will Be Disproportionately Impacted

The small business impact assessment in the NPRM claims that small retailers are not expected to be disproportionately impacted by the proposed rule. This is not correct. Using 2018 as an illustrative year, a total of 639 counties or county-equivalents would have lost access to the waiver across 28 states.⁵¹³ Of those impacted areas (which include counties, reservations, and small cities), 405 areas have a population of fewer than 50,000 people, where the Census Bureau defines the cutoff for urbanized areas.^{514,515} Research has shown that rural areas with lower population levels often rely on corner and convenience stores for food, many of which are individually owned small businesses.⁵¹⁶ When nearly two-thirds of the counties impacted by an arbitrary rule depend on small businesses for SNAP purchases, the rule is certain to have a substantial impact on small business in the impacted areas. As a result, the claim that small entities will not be substantially impacted is incorrect.

⁵⁰⁹ NPRM, Regulatory Flexibility Act <https://www.federalregister.gov/d/2018-28059/p-118>.

⁵¹⁰ *Ibid.*

⁵¹¹ *Ibid.*

⁵¹² *Ibid.*

⁵¹³ CBPP Analysis of BLS Unemployment data, 2019.

⁵¹⁴ U.S. Department of Agriculture, Food Environment Atlas Data 2018, <https://www.ers.usda.gov/data-products/food-environment-atlas/data-access-and-documentation-downloads/>.

⁵¹⁵ Michael Ratcliffe *et al.*, "Defining Rural at the U.S. Census Bureau," United States Census Bureau, U.S. Department of Commerce, Dec 2016, pp. 1-8, https://www2.census.gov/geo/pdfs/reference/ua/Defining_Rural.pdf.

⁵¹⁶ Joseph Sharkey *et al.*, "Association between neighborhood need and spatial access to food stores and fast food restaurants in neighborhoods of Colonias," *International Journal of Health Geographics*, 2009, pp. 1-17.

Individuals living in rural areas must travel longer distances to supermarkets and grocery stores than their urban or suburban counterparts.⁵¹⁷ As a result, they visit corner and convenience stores frequently for their daily food and nutrition needs.⁵¹⁸ A study conducted by USDA found that new-entrant SNAP households along with SNAP households that had participated in the program for less than six months lived, on average, four miles from a grocery store and 1.6-1.8 miles from a convenience store.⁵¹⁹ While this may not appear to be a substantial difference in distance, individuals living in rural areas are less likely to have access to public transportation and a private vehicle.⁵²⁰ Because lack of transportation is a common issue across low-income rural areas, residents rely on the closest store to spend their monthly SNAP benefits.⁵²¹ As mentioned, these closest stores are typically convenience stores or small businesses, offering a limited selection of foods.

In addition to many of the impacted counties being rural and facing issues around food access, a significant portion of the impacted counties suffer from extremely low access to food.⁵²² Sixty-three counties (10 percent of those impacted by the proposed rule) have five or less SNAP retailers across the county.⁵²³ While the impact of the proposed rule on retailers across all rural counties would be considerable, these 63 counties with such few SNAP vendors would be disproportionately impacted. In these cases particularly, rural residents are often required to travel longer than the previously mentioned average distances to access a supermarket or superstore.⁵²⁴ Table 13.1 shows some of the impacted rural counties with few or lone SNAP retailers:

⁵¹⁷ Joseph Sharkey, “Measuring Potential Access to Food Stores and Food-Service Places in Rural Areas in the U.S.,” *American Journal of Preventive Medicine*, April 2009, pp. S151-S155.

⁵¹⁸ Renee Walker, Christopher Keane, and Jessica Burke, “Disparities and access to healthy food in the United States: A review of food deserts literature,” *Health & Place*, 2010, pp. 876-884.

⁵¹⁹ James Mabli, “SNAP Participation, Food Security, and Geographic Access to Food,” Food and Nutrition Service, Office of Policy Support – U.S. Department of Agriculture, March 2014, pp. 1-50.

⁵²⁰ Kevin Matthews *et al.*, “Health-Related Behaviors by Urban-Rural county Classification – United States, 2013,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, February 2017, pp. 1-12.

⁵²¹ C. Pinard *et al.*, “An integrative literature review of small food store research across urban and rural communities in the U.S.,” *Preventive Medicine Reports*, April 2016, pp. 324-332.

⁵²² Lisa Powell *et al.*, “Food store availability and neighborhood characteristics in the United States,” *Preventive Medicine* (2007), pp. 189-195.

⁵²³ CBPP Internal Analysis of U.S. Department of Agriculture, Food Environment Atlas Data 2018.

⁵²⁴ C. Pinard *et al.*, “An integrative literature review of small food store research across urban and rural communities in the U.S.,” *Preventive Medicine Reports*, April 2016, pp. 324-332.

TABLE 13.1

Examples of Rural Counties Disproportionately Impacted by the NPRM

State	County	SNAP Participants as of July 2018⁵²⁵	Average Monthly SNAP Retailers in 2016⁵²⁶
North Dakota	Eddy County	167	1
Kentucky	Robertson County	290	2
Virginia	Charles City County	827	2
South Dakota	Mellette County	655	3
Nevada	White Pine County	1,131	5
West Virginia	Doddridge County	1,187	5

Source: CBPP Internal Analysis of U.S. Department of Agriculture, Food Environment Atlas Data, 2018

Table 13.1 shows that rural counties impacted by the NPRM with few SNAP retailers, or a single SNAP retailer, would face significant harm if sales were lost. These are solely a few illustrative examples of the counties impacted. These examples validate the potential of the NPRM on rural counties with minimal SNAP retailers. A loss of sales for any of these isolated SNAP retailers would inhibit their ability to provide for the surrounding community. A much more robust nationwide assessment ought to have been included in the NPRM in order to meet the requirements of the law and to allow small entities the opportunity to meaningfully engage on what the proposed rule might mean to their sales and business. It is not representative of the Department to ignore its own research and knowledge of the location of small businesses impacted by the rule. This failure and lack of discussion on the impact of small businesses leaves that constituency and others unable to comment effectively on the proposed rule.

Small Retailers in Urban Areas Will Be Significantly Impacted

While many of the counties that will lose waivers under the proposed rule are rural, a noteworthy portion of the counties that would no longer be eligible to be waived is considered urban. Some of the counties with the highest population in the country would be impacted, subjecting a great number of recipients in a condensed area to the proposed rule. The following are a few of the impacted urban counties and cities:

⁵²⁵ U.S. Department of Agriculture, SNAP State Issuance and Participation Estimates (FNS-388 & FNS-388A), data as of July 2018, <https://www.fns.usda.gov/sites/default/files/pd/SNAP-FNS388A.zip>.

⁵²⁶ USDA, Food Environment Atlas, last updated on March 27, 2018, <https://www.ers.usda.gov/data-products/food-environment-atlas/data-access-and-documentation-downloads/>.

TABLE 13.2

Examples of Urban Locales Significantly Impacted by the NPRM

State	County	Primary City	SNAP Participants as of July 2018 ⁵²⁷	Statewide Share of “ABAWD” Population	Estimated “ABAWD” Population*	Estimated Monthly “ABAWD” Benefits**
CA	Los Angeles County	Los Angeles	1,055,314	11.3%	120,000	\$19,444,000
IL	Cook County	Chicago	813,465	12.3%	100,000	\$16,295,000
MI	Wayne County	Detroit	416,321	11.4%	47,000	\$7,685,000
NV	Clark County	Las Vegas	352,675	13.9%	49,000	\$7,984,000
PA	Philadelphia County	Philadelphia	473,269	6.6%	31,000	\$5,040,590

Source: CBPP analysis of USDA SNAP Household Characteristics data, FY 2017, where the average monthly “ABAWD” benefit is \$162.4

*Estimated “ABAWD” Population is derived from share of “ABAWDs” in each state applied to county caseload.

**Estimated Monthly “ABAWD” Benefit is calculated from average “ABAWD” benefit and ABAWD share of population.

The cities shown in Table 13.2 represent some of the largest cities impacted by the proposed rule. Across the five cities listed, an internal analysis estimates a total of 347,000 “ABAWDs” residing within these cities. While not all of these individuals are necessarily subject to the proposed rule due to exemptions and other factors, it is critical to recognize that the average “ABAWD” SNAP monthly benefit in FY2017 was \$162.4, or an estimated annual contribution of \$677,383,000 in SNAP benefits from “ABAWDs” to the combined economies of these cities.⁵²⁸

Similar to rural residents, individuals living in low-income urban areas often depend on convenience stores for groceries because of the lack of accessibility to full-sized supermarkets and grocery stores.⁵²⁹ In 2009, a study found that “ZIP codes representing low-income areas had only 75% as many chain supermarkets available as ZIP codes representing middle-income areas.”⁵³⁰ With some urban-dwelling SNAP recipients essentially being forced to redeem benefits at small retailers because of the lack of access, the argument that urban small retailers would not be impacted by the proposed rule is representative of the lack of consideration that FNS has presented.

⁵²⁷ U.S. Department of Agriculture, FNS 2018 County level SNAP data.

⁵²⁸ “Characteristics of Able-bodied Adults without Dependents,” Food and Nutrition Services, United States Department of Agriculture, 2016, <https://fns-prod.azureedge.net/sites/default/files/snap/nondisabled-adults.pdf>.

⁵²⁹ Melissa Nelson Laska *et al.*, “Healthy food availability in small urban food stores: a comparison of four US cities,” *Public Health Nutrition*, December 2009, pp. 1031-1035.

⁵³⁰ Nicole Larson, Mary Story, and Melissa Nelson, “Neighborhood Environments: Disparities in Access to healthy Foods in the U.S.,” *American Journal of Preventive Medicine*, 2009, pp. 74-81.

There have been additional studies conducted concerning food access in individual cities that would be impacted by the proposed rule. For example, the food environment of Philadelphia has a wealth of research demonstrating food access issues across the city. A study from 2014 interviewed hundreds of low-income individuals in Philadelphia and found that residents often shopped at convenience stores because of “easy parking, accommodation of physical disabilities or special needs, and the integration of food shopping into other daily activities.”⁵³¹ With potentially impacted cities having published information about how their residents rely on small food retailers, it is remiss of the literature that exists in the field to argue that small retailers would not be unduly impacted by the proposed rule.

Conclusion

As demonstrated, the NPRM fails to adequately address the disproportionate and significant impact on small entities across the country. First, significant portions of the Regulatory Flexibility Analysis were either not completed or completed incorrectly, failing to signal to small entities the importance of the NPRM. Second, the analysis in the proposed rule incorrectly calculates the number of impacted small entities, suggesting that small entities would face an impact four times smaller than the reality of what the NPRM would prescribe. Lastly, both the rural and urban areas impacted by the rule would see significant losses. Rural small retailers would see disproportionate losses in sales, while urban small retailers would experience substantial losses in sales. Until FNS conducts further research regarding the impact of the proposed rule on small entities and the communities that house these businesses, implementation of this rule would be unwarrantable and detrimental to those who reside within the impacted areas.

⁵³¹ Carolyn Cannuscio *et al.*, “The social dynamics of healthy food shopping and store choice in an urban environment,” *Social Science & Medicine*, October 2014, pp. 13-20.

Appendix A: Center on Budget and Policy Priorities’ Contributors to Our Public Comments

For more than three decades, the Center on Budget and Policy Priorities has been at the forefront of national and state debates to protect and strengthen programs that reduce poverty and inequality and increase opportunity for people trying to gain a foothold on the economic ladder. The Center is a high-caliber strategic policy organization that shapes critical policies for low-income families and individuals. To these ends, we conduct highly skilled strategic and analytic work to develop and advance specific, actionable proposals, to achieve the maximum possible policy gains, and to ensure their effective implementation on the ground. We also build effective partnerships and help a diverse array of organizations and constituencies to engage more effectively in these debates.

As part of this overall mission, we work to strengthen policies and programs that reduce hunger and poverty and improve the lives of the nation’s poorest families and individuals. Since our founding in 1981, we have worked on federal nutrition programs, most notably the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps. We have extensive experience in and knowledge of SNAP’s three-month time limit and state waiver authority within that rule. Examples of our efforts on this front include:

- Issuing reports and analyses on the time limit and the population impacted by the rule, as well as policy options available to states via waiver and individual exemption policies;
- Assisting states in assessing which areas of their states are eligible for waivers and developing waiver requests that meet the federal criteria. The Center has supported an average of 30-40 states each year, completing or assisting with a total of over 600 waiver applications since the late 1990s;
- Educating anti-hunger nonprofits and other community organizations about the time limit rule, including about the availability of waivers based on the underlying unemployment trends in the state and individual exemptions; and
- Training state agency officials as well as local anti-hunger and poverty advocates about judicious practices in implementing the time limit policy. For years we have worked to help state officials implement the time limit in a way that conforms with federal law and protects as many individuals with low incomes as possible and avoids (to the degree possible) cutting off individuals who are not actually subject to the limit.

Over time, the Center’s work on waivers and time limit policy has evolved into a multi-faceted and complex approach. The Center has provided in-person trainings and direct supervision to state officials in nearly ten states, while providing support to advocates and working on issues of implementation for many more. The Center has also given multiple presentations to FNS staff at several regional meetings across the United States regarding waivers, along with a series of annual presentations to the American Association of SNAP Directors. Additional support from the Center has included assistance regarding program integrity and payment accuracy implications, writing of manuals for dozens of states, and constantly monitoring all 50 states’ statuses and ability to apply for “ABAWD” waivers. The food assistance team’s experience in combination with the economic

expertise of other members of the Center provides CBPP with the greatest amount of experience and knowledge concerning “ABAWD” waivers and the implications of the proposed rule.

Below is a listing of the individuals at CBPP who contributed to these comments:

Jared Bernstein joined the Center on Budget and Policy Priorities in 2011 as a Senior Fellow. From 2009 to 2011, Bernstein was the Chief Economist and Economic Adviser to Vice President Joe Biden, Executive Director of the White House Task Force on the Middle Class, and a member of President Obama’s economic team. Bernstein’s areas of expertise include federal and state economic and fiscal policies, income inequality and mobility, trends in employment and earnings, international comparisons, and the analysis of financial and housing markets.

Prior to joining the Obama Administration, Bernstein was a senior economist and the director of the Living Standards Program at the Economic Policy Institute in Washington, D.C. Between 1995 and 1996, he held the post of Deputy Chief Economist at the U.S. Department of Labor. Bernstein holds a Ph.D. in Social Welfare from Columbia University.

He is the author and coauthor of numerous books for both popular and academic audiences, including *Getting Back to Full Employment: A Better Bargain for Working People*, *Crunch: Why Do I Feel So Squeezed?*, nine editions of *The State of Working America*, and his latest book, *The Reconnection Agenda: Reuniting Growth and Prosperity*. Bernstein has published extensively in various venues, including the *New York Times* and *Washington Post*. He is an on-air commentator for the cable stations CNBC and MSNBC, contributes to the *Washington Post’s PostEverything* blog, and hosts *On The Economy* (jaredbernsteinblog.com).

Thompson Bertschy received his Master’s in Social Work from the University of North Carolina and began working with the Center as an intern in 2019. In North Carolina, Thompson worked with the Carolina Farm Stewardship Association to advocate for sustainable and equitable food policy while organizing food policy councils across the state. At CBPP, Thompson focuses on research and analysis regarding “ABAWD” exemptions and state legislative proposals around SNAP, TANF, and Medicaid.

Ed Bolen joined the Center in 2010 as a Senior Policy Analyst. At the Center, Ed focuses on SNAP Employment & Training and “ABAWD” waivers. He has provided trainings to multiple states regarding their loss of waivers, including Alabama, California, Michigan, Illinois, Alaska, and Mississippi. Additionally, Ed has given presentations to Food and Nutrition Service staff at the Northeast and Mid-Atlantic regional meetings. Since 2011, Ed has consistently worked with advocates and state officials concerning implementation issues in Georgia, Illinois, Michigan, California, and other states. He has also presented to the American Association of SNAP Directors for four consecutive years and created a toolkit on implementing the “ABAWD” time limit including technical writing on implementation issues. He has had many interactions with media and has written multiple blog posts and papers concerning “ABAWDs.” Throughout his time at the Center, Ed has written multiple pieces concerning Employment and Training for SNAP recipients.

Prior to joining the Center, Bolen was a Senior Policy Analyst at California Food Policy Advocates. While there, he advocated for administrative and legislative improvements to food assistance programs and provided training and technical assistance to community-based organizations. He also has worked in public health law, most recently consulting on legal strategies

to combat childhood obesity with the National Policy and Legal Analysis Network. Prior to that, Bolen was senior staff attorney at the Child Care Law Center, specializing on licensing, subsidy and legislative issues affecting low-income families in child care and early education settings.

Kathleen Bryant is a Research Assistant in the Federal Fiscal team at the Center on Budget and Policy Priorities. Previously, she interned for EMILY's List, the Economic Policy Institute, and the Center's Legislative Affairs team. She also conducted independent research on school segregation for her honors thesis and was selected as a fellow in the Advanced Empirical Research on Politics for Undergraduates Program for this research by the Society for Political Methodology. Kathleen has a B.A. in Public Policy from The College of William & Mary.

Ashley Burnside is a Research Assistant with the Center's Family Income Support division. Before joining the Center, she was an Emerson National Hunger Fellow with the Congressional Hunger Center, where she advocated for anti-hunger and anti-poverty solutions, led voter registration and community engagement efforts for food pantry clients, and conducted research on tax credit programs. Burnside has also served as a public policy fellow at AIDS United, a national HIV/AIDS advocacy organization. She holds a B.A. in Social Theory and Practice from the University of Michigan.

Lexin Cai is a Research Analyst with the Center's Food Assistance Division, where she focuses on data analysis for nutrition assistance programs. Lexin first joined the Center in May 2015 as an intern. Prior to joining the Center, she interned with the World Wildlife Fund, focusing on international agricultural trade. At the Center, Lexin conducts analyses, compiles historical data and records, and uses mapping and modeling to support states with the waiver application process.

Over the last several years, Lexin has worked with Catlin Nchako in completing waiver applications for multiple states and providing assistance with the process to others, helping an average of 32 states per year. She holds a Master of Science in Social Policy from the University of Pennsylvania and a Bachelor of Management from Renmin University of China.

Steven Carlson provided background research for these comments as a consultant to CBPP. He was a federal employee at the Food and Nutrition Service for 37 years. During his time there, he led their Office of Analysis and Evaluation and oversaw research studies and analysis on SNAP.

Maritzelena Chirinos is a recent graduate of Meredith College and began working with The Center as an intern in 2019 on The State Fiscal Project Team. She holds a B.A. in Criminology and Sociology. She previously worked at The Indivisible Project and Democrats For Education Reform.

Stacy Dean is the Vice President for Food Assistance Policy at the Center on Budget and Policy Priorities. She directs CBPP's food assistance team, which publishes frequent reports on how federal nutrition programs affect families and communities and develops policies to improve them. Dean's team also works closely with program administrators, policymakers, and non-profit organizations to improve federal nutrition programs and provide eligible low-income families with easier access to benefits. She brings her deep programmatic and operational knowledge along with a strong strategic sense to help advance CBPP's priorities.

Dean has over 20 years of experience in working in great detail with the USDA and dozens of states concerning "ABAWD" waivers. In 1997, she began writing and distributing information to a

majority states regarding specific Labor Surplus Areas in the state and their ability to apply for a waiver. She has written multiple papers on “ABAWDs” and waiver requests dating back to the early 2000s. In addition to writing the papers, Dean has worked closely with many states providing supervision, training, and general policy support for both application and implementation.

In addition to her work on federal nutrition programs, Dean directs CBPP efforts to integrate the delivery of health and human services programs at the state and local levels. Dean has testified before Congress and spoken extensively to national and state non-profit groups. She has been quoted in such publications as the *New York Times*, *Washington Post*, *Wall Street Journal*, and *Politico*, as well as the Associated Press. Dean joined CBPP in 1997 as a Senior Policy Analyst working on national policy issues such as the federal budget, SNAP, and benefits for immigrants.

Previously, at the Office of Management and Budget, Dean served as a budget analyst for food stamps. In this role, she staffed the White House work on the 1996 food stamp program changes, reviewed and cleared the ABAWD waiver guidance, and worked on policy development, regulatory and legislative review, and budgetary process and execution for a variety of income support programs.

Ife Floyd joined the Center in June 2011 as a Research Associate with the Family Income Support Division, and is now Senior Policy Analyst.

Prior to joining the Center, Floyd served as an AmeriCorp VISTA with Culture Connect, Inc. and developed a cultural competency workshop series for professional workplaces in the Atlanta area. In addition, she also worked with the Atlanta Community Food Bank’s Prosperity Campaign as a benefits screener to increase access to programs like SNAP, TANF, and Medicaid for low-income families. Floyd holds a B.A. in Sociology from Northwestern University and a M.P.P. degree from Georgia State University.

Brynne Keith-Jennings obtained her Master’s in Public Policy from the University of Southern California and joined the Center in June 2011. Her work focuses on federal and state SNAP policies and research. As a Senior Policy Analyst, Brynne works closely with the USDA and regularly offers guidance with ABAWD waiver policy. She provides states with technical assistance regarding waiver requests and has developed a suite of products around the farm bill, SNAP, and employment. Since 2013, Keith-Jennings has been one of the primary food assistance team members concerned with “ABAWD” waivers, assisting with the process of completing or assisting with 30-40 waivers each year.

Prior to joining the Center, she worked as an educator and policy analyst for Witness for Peace and as a consultant for other NGOs in Nicaragua. She has also worked at the Public Welfare Foundation supporting human rights and criminal justice reform organizations, at the Government Accountability Office, and at the Tomas Rivera Policy Institute, where she analyzed language access policies and other issues affecting Latino communities in Southern California.

Joseph Llobrera is a Senior Policy Analyst on the Food Assistance team. As a research associate at the Center between 2002 and 2007, Llobrera supported the Food Assistance, State Fiscal, and Housing Policy teams. During these years, Joseph managed the Center’s “ABAWD” waiver support process through data analysis and extraction, assisting nearly 150 states with the waiver process. He also interacted with and provided operational support to state advocates and agencies. Before

returning to the Center in 2019, he served as an Associate Director of Learning and Improvement at Insight Policy Research, providing technical assistance and training to federal, state, and local human service agencies that administer SNAP and the Temporary Assistance for Needy Families program. During this time, Llobrera reviewed notices that states would send to SNAP recipients who were subject to the time limit. He also worked as a researcher at IMPAQ International and the Urban Institute, focusing on food assistance policy, workforce development, and health policy.

Currently at the Center, Llobrera provides operational support and technical assistance to advocates and state agencies in an effort to streamline the SNAP and Medicaid enrollment process. Llobrera holds a Ph.D. in Nutrition from the Friedman School of Nutrition Science and Policy at Tufts University, a master's degree in Geography from the University of Washington (Seattle), and a bachelor's degree in Mathematics and Urban Studies from Brown University.

Rachel Mbassa is an intern with the Data team. She graduated with a Master of Public Health in Biostatistics from Loma Linda University. She then went on to work at the University of California San Francisco Medical Center, conducting epidemiological/clinical research centered on the effects of cumulative psychosocial stressors on cardiovascular disease outcomes. She recently moved to Washington, D.C. to transition into a career in policy data analysis. She has a strong interest in health economics and policy and hopes to pursue a terminal degree in this field.

Tazra Mitchell joined the Center in 2016 as a Policy Analyst in the Family Income Support Division. Previously she worked as a State Policy Fellow and Policy Analyst with the North Carolina Budget & Tax Center, where she conducted analysis of work and income supports as well as fiscal and economic policies that enable low-income people and disadvantaged communities to thrive. In addition, she worked as a Research Assistant in the non-partisan Fiscal Research Division of the North Carolina General Assembly where she analyzed legislative proposals to determine the fiscal impact on state government resources and worked directly with legislators to develop the state budget.

Mitchell holds a B.A. in Political Science from North Carolina State University and an M.P.P. from the Sanford School of Public Policy at Duke University.

Catlin Nchako joined the Food Assistance Division as a Research Associate in November 2013. His work focuses on data analysis and research for the food stamp, school meals, and WIC programs. Over the last several years, Nchako has worked with Lexin Cai in completing waiver applications for multiple states and aiding with the process to others, helping an average of 32 states per year. He has also tracked employment benefit trigger notices for all states and territories, notifying areas when they qualify for an exemption. He has completed multiple analyses and contributed to many of the Center's papers concerning "ABAWDs."

Nchako worked for the Center as a Food Assistance intern prior to joining the organization on a full-time basis. He previously interned for the Center for Law and Social Policy. He also worked for several years as a labor researcher for the United Food and Commercial Workers Union, where he evaluated wage proposals during labor contract negotiations, analyzed companies' financial performance, and provided campaign research support. He holds a Master's in Public Policy from Georgetown University and a B.A. in Africana Studies from Cornell University.

LaDonna Pavetti is the Vice President for Family Income Support Policy at the Center on Budget and Policy Priorities. In this capacity, she oversees the Center's work analyzing poverty trends and assessing the nation's income support programs, including the Temporary Assistance for Needy Families (TANF) program. For the last several years, she has been working on a special initiative to identify opportunities to build executive function and self-regulation skills in TANF and other work programs.

Before joining the Center in 2009, Dr. Pavetti spent 12 years as a researcher at Mathematica Policy Research, Inc., where she directed numerous research projects examining various aspects of TANF implementation and strategies to address the needs of the hard-to-employ. She has also served as a researcher at the Urban Institute, a consultant to the U.S. Department of Health and Human Services on welfare reform issues, and a policy analyst for the District of Columbia's Commission on Social Services. Across these positions, Dr. Pavetti conducted research on how states were implementing TANF, how sanctions were implemented, and conducted a study in St. Paul, Minnesota analyzing which populations were primarily impacted by TANF work requirements. In recent years, she has worked with Vermont, New York, Minnesota, Colorado, California, Connecticut, New Jersey, Pennsylvania, and Oregon.

In addition, for several years she was a social worker in Chicago and Washington, D.C. Dr. Pavetti has an A.M. in social work from the University of Chicago and a Ph.D. in public policy from Harvard University's Kennedy School of Government.

Dottie Rosenbaum is a Senior Fellow who joined the Center in 2000. She has worked extensively on federal and state issues in SNAP as well as issues that involve the coordination of SNAP and other state-administered health and income security programs, such as Medicaid, TANF, and child care. In addition, Rosenbaum has expertise on the federal budget and budget process. With over more than 20 years of experience with SNAP, she written multiple papers regarding SNAP and SNAP Employment and Training.

Before joining the Center, Rosenbaum was a budget analyst at the Congressional Budget Office. In this role, she conducted the cost estimate of the 1996 Personal Responsibility and Work Opportunity Act which included the time limit. She projected federal spending and provided Congress with cost estimates for a variety of programs including: SNAP, Medicaid, the State Children's Health Insurance Program, Child Nutrition, and Elementary and Secondary Education. Rosenbaum holds a Master's in Public Policy from Harvard University's Kennedy School of Government.

Andrew Scanlan is a recent graduate of Brown University and began working with the Center as an intern in 2019 on the Family Income Security team. At Brown, he worked as a research assistant in the political science department and received a combined degree in philosophy and mechanical engineering. He previously worked in the Rhode Island state government and the New York City government.

Arloc Sherman's work focuses on family income trends, income support policies, and the causes and consequences of poverty. He has written extensively about the effectiveness of government poverty-reduction policies, the influence of economic security programs on children's healthy development, the depth of poverty, tax policy for low-income families, welfare reform, economic inequality, material hardship, parental employment, and the special challenges affecting rural areas.

He is a member of the National Academy of Sciences Committee on National Statistics Panel to Review and Evaluate the 2014 Survey of Income and Program Participation's Content and Design. Prior to joining the Center in 2004, Sherman worked for 14 years at the Children's Defense Fund and was previously at the Center for Law and Social Policy. His book *Wasting America's Future* was nominated for the 1994 Robert F. Kennedy Book Award.

Chad Stone is Chief Economist at the Center on Budget and Policy Priorities, where he specializes in the economic analysis of budget and policy issues. Stone has conducted notable research around measures of economic slack that are indicative of a weaker labor market, primarily concerning labor force participation and the employment population ratio. He was the acting executive director of the Joint Economic Committee of the Congress in 2007 and before that staff director and chief economist for the Democratic staff of the committee from 2002 to 2006. He was chief economist for the Senate Budget Committee in 2001-02 and a senior economist and then chief economist at the President's Council of Economic Advisers from 1996 to 2001.

Stone has been a senior researcher at the Urban Institute and taught for several years at Swarthmore College. His other congressional experience includes two previous stints with the Joint Economic Committee and a year as chief economist at the House Science Committee. He has also worked at the Federal Trade Commission, the Federal Communications Commission, and the Office of Management and Budget. Stone is co-author, with Isabel Sawhill, of *Economic Policy in the Reagan Years*. He holds a B.A. from Swarthmore College and a Ph.D. in economics from Yale University.

Jennifer Wagner joined the Center in 2015 as a Senior Policy Analyst with the health team. She focuses primarily on Medicaid eligibility and implementation of the Affordable Care Act (ACA), including analyzing opportunities to align Medicaid with other low-income support programs for greater access and efficiency.

Before joining the Center, Wagner served for five years as an Associate Director with the Illinois Department of Human Services. In that capacity, she oversaw SNAP and cash assistance policy as well as the local offices throughout the state that determined eligibility for cash, SNAP, and medical assistance. She assisted Illinois with Medicaid expansion under the ACA and improved customer service through business process re-engineering in the local offices. Prior to that, she was a staff attorney at the Sargent Shriver National Center on Poverty Law, where she focused on public benefits.

Wagner received her B.S. from the University of Wisconsin – Madison and her J.D. from the Northwestern University School of Law.

Appendix B: Materials Cited in Comments

Appendix B includes all of the resources and materials cited in these comments to help ensure that the Department will have complete and simple access to the relevant research. The documents in Appendix B are listed in alphabetical order by first author's last name or entity where appropriate. In the electronic submission version of our comments, Appendix B is broken into 32 documents due to the file size restrictions on the federal register website.

This list indicates which materials (by author or entity) are included in each electronic file.

1. Attachment B1 (1 - BLS)
2. Attachment B2 (BLS - BRE)
3. Attachment B3 (BUT - CEN)
4. Attachment B4 (CEN - CHE)
5. Attachment B5 (CHE - DRA)
6. Attachment B6 (ECO)
7. Attachment B7 (ECO)
8. Attachment B8 (EDI-FED)
9. Attachment B9 (FOG)
10. Attachment B10 (FOG)
11. Attachment B11 (FOO-GOR)
12. Attachment B12 (GRA-HEA)
13. Attachment B13 (HER)
14. Attachment B14 (HER)
15. Attachment B15 (HER-HOY)
16. Attachment B16 (ING-KAL)
17. Attachment B17 (KEI-LAS)
18. Attachment B18 (LEE-LOP)
19. Attachment B19 (MAB-MAR)
20. Attachment B20 (MAR-MCH)
21. Attachment B21 (MIL-OGG)
22. Attachment B22 (OHI-POW)
23. Attachment B23 (QUI-RHO)
24. Attachment B24 (RIB-ROS)
25. Attachment B25 (ROS-SCH)
26. Attachment B26 (SCH-STO)
27. Attachment B27 (TEN-USD)
28. Attachment B28 (USD-USD)
29. Attachment B29 (USD-VIR)
30. Attachment B30 (VOR-WU)
31. Attachment B31 (WU)
32. Attachment B32 (YAG-ZIL)

**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.

Civ. Action No.

**EXHIBIT B TO DECLARATION OF EDWARD BOLEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Comparison of CBPP Comments on Proposed Rule on Time Limit Waivers to Preamble and Final Rule

Dec. 13, 2019

CBPP has done an initial review to determine if the preamble and final rule restricting waivers of the three-month time limit address the comments CBPP made to the proposed rule. Our intent was to identify claims we make that are not adequately addressed in the final rule, suggesting that the agency overlooked relevant public comment.

This is structured as follows. For each chapter of our comments, we identified the arguments, claims and research findings we made, noted the page number, and then indicated where (if at all) the Final Rule discusses the comment. We characterized the agency response as either no mention in the preamble or rule, just summarized but not directly responded to, or discussed but not sufficiently. We highlight some of the key shortcomings of the proposed rule for most, but not all, of the chapters.

Our cites to the Final Rule are to the pre-publication, double-spaced version.

CBPP Comments Section 2: FNS Waiver Policy Has Been Consistent for the Last 22 Years

Key issues

- The preamble includes at least 10 references to its “operational experience” (sometimes “20 years of operational experience”), listed below, to defend both the rulemaking itself and specific provisions of the rule. The preamble does not give any more information to explain its understanding of Congressional intent in PRWORA and where the Department believes interpretation of the law has veered away from that intent. The preamble also states that the core standards will provide “consistency” but does not explain if they believe that current rules allow for inconsistent waivers, though they no longer state the belief that the rule will improve or increase consistency.
- When the Department cites this experience in the preamble, it is usually to explain how it has observed that current regulations allow states to qualify for waivers (or use exemptions) in ways that are inconsistent with PRWORA based on subjective and unspoken criteria. For example, they state that implementing an unemployment rate floor will prevent areas that “that do not clearly lack sufficient jobs” from qualifying, without explaining what criteria they are using to judge whether an area “clearly” lacks sufficient jobs. Similarly, the preamble argues that the current flexibility around grouping together geographic areas gives states “too much flexibility”, without explaining on what basis they are judging what level of flexibility is appropriate.

Page of our comments	CBPP said:	Page of their response	USDA responded:	Other Notes
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19-21	Proposed rule implied that waiver practice is a departure from original intent of statute, but waiver standards have been consistent for 22 years. Department did not give any evidence such as legislative history to explain why they think 1996 guidance strayed from legislative intent, nor can they point to any major changes since then, including in the most recent 2016 guidance.	100-101	Did not respond to this argument, and instead relied on its “more than 20 years of operational experience overseeing the States’ administration of the ABAWD time limit” (p.7) as justification for the rule itself and for specific provisions. The Department does not explain specifically if they think any particular guidance (1996 on) departed from Congressional intent or provide any more evidence of what they believe Congressional intent is.
22-24	Current waiver policy provides consistency for states and the Department did not explain why they thought more consistency was needed. (The preamble to the NPRM had stated it would “improve consistency across states”, but does not explain what the Department thinks is currently inconsistent.) Only inconsistency is from new Administration that began denying waivers that were long approved or delaying.	77	The preamble did not address this argument, and in fact stated that the Department “has been committed to responding to waiver requests prior to the State’s requested implementation date and has met this commitment consistently” (in regards to the implementation before approval provision, p.77). The preamble no longer makes reference to “improving” or increasing consistency, however.

CBPP Comments Section 3: Setting a Floor for Waivers 20% Above National Unemployment is Inconsistent with Congressional Intent and would be Harmful to Vulnerable Individuals

- The preamble to the final rule acknowledges but does not meaningfully respond to comments explaining why an unemployment rate floor (for a waiver demonstrating an area has an unemployment rate 20 percent above the national average for a 2-year period) would not provide an accurate picture of whether there are a sufficient number of jobs in a given area to employ the individuals subject to the time limit. These arguments discussed extensive research demonstrating that the individuals subject to the time limit face more barriers to employment than the general population and therefore that the overall area unemployment rate is a poor indicator of available jobs for this group. The preamble briefly summarizes most of these comments, but dismisses them all in a single paragraph that the Administration is “resolute” that setting an unemployment rate floor will “accurately” reflect available jobs and to prevent areas with “low” unemployment rates from qualifying, without explaining how they came to this conclusion.
- The Department acknowledges arguments made against the 7 percent unemployment floor in the proposed rule and states that they took these into account in changing the unemployment rate floor to 6 percent in the final rule, but does not acknowledge nor respond to

arguments made against the 6 percent floor. For example, we cited evidence that some subgroups face very high unemployment rates with an overall area unemployment rate of 6 percent.

- This section raises concerns about how the proposed waiver criteria would protect states during an economic recession, which the preamble to the final rule only partially acknowledges. The preamble acknowledges these arguments in the context of the proposed 7 percent unemployment floor, which they changed in the final rule to 6 percent. The preamble does not otherwise discuss how requiring a 2-year unemployment rate of at least 6 percent would prove difficult for states during a time of rapidly rising unemployment, which is especially significant given that the final rule will eliminate waivers based on qualifying for extended unemployment insurance benefits, which would also suffer from the same problem. The final rule preamble also doesn't address the general point made in our comments about the importance of understanding the impact of the rule throughout the business cycle (of peaks and troughs in unemployment).

Page of our comments	CBPP said:	Page of their response	USDA responded:	Other Notes
27	Congress intended for “insufficient jobs” to be a separate criterion than the unemployment rate	26	Acknowledged comment, but argued that statute gives Secretary discretion to define “lack of sufficient jobs”	
28	Current 20 percent has limitations because unemployment rates don't reflect jobs available for this population; this proposed rule would worsen problem by removing any flexibility.	28	Acknowledged arguments but didn't respond in depth (“some commenters noted that unemployment relative to the national average is an important signal that the economic conditions warrant waiving work requirements....These commenters argued that adding an unemployment rate floor to the 20 percent standard provides less flexibility for States to capture insufficient jobs for the ABAWD population. The Department appreciates this information provided by commenters, but disagrees that a relative unemployment rate is a sufficient indicator of a lack of sufficient jobs in and of itself.”)	
29	One of the reasons tying to the national UR instead of unemployment rate floor is beneficial is because of declining labor force		Didn't respond to this specific point but did in response to arguments about the E:P ratio criterion (“Commenters pointed to the fact	

	participation nationally, which makes unemployment rate less helpful		that labor market participation has not recovered since the Great Recession, even though unemployment rates have. "); also summarized general arguments that a relative rate is sufficient	
29	Department is proposing to eliminate other non-UR means of demonstrating "insufficient jobs", which would mean unemployment rates are only way to show that, and it's taking away flexibility by imposing a floor. Also moving farther from congressional intent to have "insufficient jobs" be a broad metric—Congress regularly legislates unemployment rates for policy purposes and chose not to do so here.	26	Not sure they responded to this specific point. They did discuss Congressional intent: "Commenters also suggested that, if Congress intended to include an unemployment rate threshold for the 'sufficient number of jobs' criteria, Congress would have done so."	
30-31	House proposed similar measures in Farm Bill as 7 percent floor, and rejected it, showing how this goes against Congress	18	Mentioned this criticism but didn't respond specifically to this point. "Some commenters pointed to the justification provided in the proposed rule that a 7 percent floor aligns with a proposal in the [Farm Bill]. These commenters argued that this rationale is invalid because Congress ultimately did not include that provision..."	Ultimately rejected 7 percent floor citing other evidence
32	Because ABAWDs face more barriers to work than general population, unemployment rate floor will overstate jobs available	21-24	"Many commenters opposed setting an unemployment floor because they argued unemployment rates fail to accurately capture the availability of jobs specifically for ABAWDs who face particular barriers to employment...notwithstanding the issues raised by these comments, the Department is resolute that establishing an unemployment rate floor within the 20 percent standard is necessary to ensure that the standard is	USDA fails to explain its definition for "lack of jobs," so it is unclear why an unemployment floor would "accurately" reflect a lack of sufficient jobs.

			designed to accurately reflect a lack of sufficient jobs in a given area”	
33-35	SNAP participants without dependents have low levels of education and research shows often lack skills; workers with low attainment have higher unemployment rates and are more likely to lose jobs during recession	22/24	They acknowledge the comment in general but again dismiss in same paragraph on p. 24 (“notwithstanding the issues raised...”), They don’t explain how given evidence for workers with low levels of education, they still think it’s appropriate to use an unemployment rate to measure “insufficient jobs”.	
36-38	Childless adults disproportionately Black and Latino; have higher unemployment rates even when controlling for education; disparities exist at local level; affected more by recessions; lots of studies demonstrate racial discrimination. Native Americans also have higher rates of unemployment.	23/24	Mentioned but dismissed with same paragraph as above (“notwithstanding the issues raised...” p.24). Again, this paragraph didn’t address specific argument—it didn’t explain why given this evidence they still believe that an unemployment rate reflects available jobs for ABAWDs. For example, there is literature showing how full employment narrows racial disparities in unemployment.	
39-41	Childless adults and other SNAP participants work in jobs with volatility and experience spells of unemployment; unemployment rates don’t capture those trends.	23/24	“commenters suggested that ABAWDs are more likely to have part-time work...”; again dismissed in paragraph on p. 24 but did not explain why they think their interpretation of “insufficient jobs” is appropriate given this info	
42-44	Many ABAWDs have health conditions that limit their ability to work which are not reflected in unemployment rates		They mentioned general barriers (e.g. “Many commenters opposed setting an unemployment floor because they argued unemployment rates fail to accurately capture the availability of jobs specifically for ABAWDs who face particular barriers to employment” P.22) but did not specifically mention this barrier	

44-46	Many childless adults face geographic or transportation limitations to work; people in rural areas have lower employment rates; unemployment rate may not reflect whether individuals can get to available jobs; research shows that increasing job accessibility increases employment	23/24	Very limited mention (but a bit more in LMA section); did not specifically address why they think unemployment rate floor is still appropriate given that workers may not have access to available jobs	
47-48	Other barriers including housing instability and homelessness and criminal records make it harder for some ABAWDs to find jobs even with low employment, meaning unemployment rate poor indicator of available jobs	23/24	Mentioned but did not address specifically (other than the “notwithstanding the issues raised in these comments...”	
50-52	Rule uses LSA as justification for unemployment rate floor, but those are for different purposes; waivers show lack of jobs for specific ABAWD population and LSAs are focused on macroeconomic conditions. Doesn’t make sense to have a floor, if they have it	22	Mentioned somewhat (“Commenters argued that ABAWDs should not be subject to the unemployment rate floor used in designating LSAs because ABAWDs face labor market disadvantages that the general public does not.”) but they don’t address whether they differently interpret the “insufficient jobs” criterion to mean whether there are enough jobs so that ABAWDs can get a job vs. the general population.	
56-63	Evidence suggests that with unemployment rates specifically at 7 percent (or 6 or 5 percent), some groups such as people of color face substantially higher unemployment rates	18-19	“Some commenters asserted that jobs are not widely available to all who may seek them when unemployment is below 7 percent...these commenters noted that unemployment rates for ABAWDs, as a distinct group, would generally be higher than the official unemployment rate because many ABAWDs share demographic characteristics with subpopulations that have relatively high unemployment rates.”	Didn’t acknowledge that these analyses found similar issues with 6 percent/5 percent

64-65	Many “distressed” communities have unemployment rates below 7 percent	19	“One commenter provided data analysis showing that many areas considered “distressed communities” according to a series of economic metrics would not have met the 7 percent unemployment rate threshold. This commenter argued that the 7 percent floor fails to capture the economic realities of regions, and that this divergence highlights the shortcomings of a 7 percent unemployment rate floor.	
65	Underemployment rates are higher for black and Hispanic workers than whites at 5,7, and 10% unemployment; “the rule suggests that SNAP waivers should be disallowed in places where about a fifth of black and Latino workers could be un- or underemployed”		Don’t think they addressed this specific point.	
66-67	Requiring a 2-year unemployment rate of 7 percent would result in a gap between when unemployment starts to climb and a state qualifies for extended unemployment benefits (EB), though the final rule eliminates EB as a criterion for a waiver.	19	“Commenters also suggested that the proposed 7 percent floor would not adequately provide States with waiver coverage during times of rising unemployment because the combination of an unemployment rate floor with the lengthy 24-month data reference period would prevent many areas with rising unemployment from qualifying for waivers.”	USDA overlooks implications of eliminating EB as criterion, despite lowering unemployment floor to 6 percent. Not having EB as a criterion at all is much worse than having a gap before it would be triggered.
66	“We agree with the Department’s proposal to continue to allow states to request waivers when they qualify for EB, as these are times when unemployment rates are high and rising and individuals likely have difficulty finding jobs.”	34	“Although the Department did not receive many comments with regard to retaining the extended unemployment benefits standard, some commenters supported the proposal to retain the extended unemployment benefits standard, arguing that this standard is an appropriate indicator that a State lacks sufficient jobs....Although the Department	

			appreciates these comments in support of the criterion, the Department has decided not to adopt the rule as proposed because the Department is concerned that the extended unemployment benefits criterion would allow States to receive statewide waivers even when there is not a lack of sufficient jobs within certain areas of the State.”	
67	The Department’s rationale does not take into account the fact that unemployment rates can vary across the country and even with low unemployment rates, individuals subject to the time limit may lack available jobs. Also, “the Department did not indicate whether it considered the effect of the proposed rule at different parts of the business cycle, such as entering into a recession, and how climbing unemployment rates affect job availability.”	43	Final rule says they can approve waivers in “exceptional circumstances” and they give an example of rising unemployment, but does not address whether they’ve considered the importance of waivers to provide support during recessions. Given they’re taking away EB criteria, does not seem like they have.	
68	The Department suggests that the 7 percent floor is “designed specifically for ABAWD waivers” but all available evidence suggests that if anything a floor for ABAWDs would be lower than the floor used for LSAs	25	“As discussed in the previous section, the Department finds the 20 percent standard with a 6 percent floor to be one of the most objective and defensible ways of determining a lack of sufficient jobs, as it aligns with a longstanding DOL measure of job insufficiency.”	USDA decided to align with LSA standards and failed to address the argument that floor should be <i>lower</i> than LSA standards if there is one
69-75	Department stated its goal is to minimize waiver coverage, when statute says it should be to approve waivers in areas with insufficient jobs; doesn’t explain what criteria they’re judging appropriate waiver coverage; doesn’t explain whether this goal applies during a recession; calculation of	26	Mentioned this criticism (“Commenters stated that Congress did not intend for lack of sufficient jobs criteria to be based on whether there are too many or too few waivers that result from the criteria – Congress did not establish a desired level of waiver coverage....) but reiterate they want an	In this preamble, USDA does not emphasize as much how the rule will limit waiver coverage as they did in the proposed rule.

	“ABAWDs living in waived area” doesn’t make sense.		unemployment rate floor, now framed in terms of preventing “the misapplication of waivers to areas with unemployment rates that do not demonstrate a lack of sufficient jobs”.	
76	6 percent unemployment floor is more consistent with LSAs, which makes their choice of 7 percent floor even more arbitrary since they did not give any evidence to support it, but “would still exclude many areas where childless adult SNAP participants face considerably higher unemployment or underemployment rates and where they will not have access to jobs”	15/24	Did not address arguments against 6 percent floor; but did include comment about it being more consistent with LSA (p. 15) and other positive arguments. They also addressed arguments about not having any floor (“notwithstanding the issues raised in these comments...”)	

CBPP Comments Section 4: Dropping Several Key Criteria From Waiver Criteria Is Inconsistent With the Statute

USDA summarizes comments discussion the shortcomings of the general unemployment rate but argues for the use of the measure because of the availability of standardized data at the substate level. The Department seems to be upholding availability/consistency of data measures as its main reason for selecting criteria rather than how well the measure(s) empirically reflect the lack of jobs for individuals subject to the time limit. USDA does not explain why the general unemployment rate is the only measure it will accept.

Page of our comments	CBPP said:	Page of their response	USDA responded:	Other Notes
81-82	Long legislative history (statute, regulations, and guidance) acknowledging that there is no perfect measure of an area’s “lack of sufficient jobs”	N/A	No mention.	

84-85	Other measures, such as the employment-to-population ratio and U-6 measure, provide important information on labor market conditions	31	Cursory response. “While these comments about alternative unemployment measures are appreciated, the Department also recognizes that there is not measure available for precisely determining the number of available jobs specifically for SNAP ABAWDs in a given area.”	USDA dismisses alternative measures by focusing on the lack of sub-state data for one particular measure (U-6). Other measures (employment-to-population ratio) can be calculated for sub-state areas
87-90	General unemployment rate may not adequately measure weak labor demand at the state and sub-state level	N/A	No mention.	
91	Information about declining occupations or industries can help identify smaller areas experiencing a lack of sufficient jobs	39-40	Cursory response. “However, information about declining industries or occupations, and academic studies are not as standardized and reliable as unemployment data...” “...the arguments made by commenters were not sufficiently compelling...”	
92	Eliminating historical seasonal unemployment rate over 10% is inconsistent with statute	79	Cursory response. “Despite these comments, the Department is maintaining the elimination of the historical seasonal unemployment criterion as proposed. The Department believes that the historical seasonal unemployment criterion was not appropriate, as an area could receive a waiver for up to 12 months, even though it only demonstrated a few months of high unemployment per year.”	USDA does not acknowledge its guidance that allows for waivers of a shorter duration to align with seasonal high unemployment.

CBPP Comments Section 5: Restricting State Flexibility on Grouping Areas Is Counter to Evidence

USDA asserts its authority to narrowly define the concept of “area,” using DOL’s Labor Market Area as the only acceptable framework for grouping substate areas. The language in the preamble suggests that the Department is adopting a strict and restrictive definition of “area” because it is philosophically against using grouping of substate areas to reduce the number of areas that are subject to the time limit (for example, see p. 59-60) and that states has historically “misused” their flexibility. USDA does not explain why it is eliminating the extended unemployment benefit criterion in this final rule, even though it had not proposed this in the proposed rule.

Page of our comments	CBPP said:	Page of their response	USDA responded:	Other Notes
95-98	2 decades of legislative history of state discretion in defining areas	51-52	Summarized, but no direct response. “The Department is within its authority...”	
99-101, 108-109	States may use grouping to align with SNAP E&T, WIOA, and other regional factors	55	Summarized, but no direct response. “The Department is not compelled by arguments that E&T services or other work program availability should be factored in...”	
102-103	Arbitrary decision to eliminate statewide waivers, except for extended unemployment benefits	34-35, 64	Final is worse than proposed. “... the Department has decided not to adopt the rule as proposed...”	
104-105	USDA is proposing to use one specific and narrow definition of labor market area (based on aggregated commuting patterns between counties)	49	Summarized, but no direct response. “The Department is not compelled by the commenters’ suggestions described in the preceding paragraphs...”	
106	DOL/BLS Labor Market Area definition may be outdated	54	Cursory response. “However, after assessing alternative options, the Department has not identified any other labor market definition that uses more recent data...”	USDA does not need to restrict grouping to the concept of labor market areas
108	Commuting patterns are not the only factor connecting labor market areas	49	Summarized, but no direct response.	

			“The Department is not compelled by the commenters’ suggestions described in the preceding paragraphs...”	
110	Requiring areas to be contiguous ignores reality that proximity to jobs is decreasing	49	Summarized, but no direct response. “The Department is not compelled by the commenters’ suggestions described in the preceding paragraphs...”	
110-111	Requiring areas to be contiguous ignores differential rise/fall in unemployment rates in neighboring areas	N/A	No mention.	

CBPP Comments Chapter 6: Taking away food benefits will not increase labor force participation, despite being the stated goal of the proposed change

The Final Rule summarizes comments that included research supporting this claim, but generally did not respond, asserting instead that too high a percentage of ABAWDs live in waived areas. We didn’t directly address this claim, but it, too, is misleading. ABAWDs in areas without waivers are cut off the program so we would expect most ABAWDs on SNAP to be in waived areas regardless of how many waived areas there are.

Page of our comments	CBPP said:	Page of their response	USDA responded:	Other Notes
112	NPRM offers a belief that time limit increases work, but no evidence that it does	98 and others	Summarize but did not respond. Commentators “very critical of the Department’s assertion that a broader application of time limits . . . would help adults find work.”	
112	ABAWDs already have significant work effort, with no evidence that the work rate, job placement and earnings can be increased by withholding food. -NPRM provides no information about existing work among ABAWDs, misleading	99	Summarized but did not respond.	

	readers about their labor market attachment.			
115	NPRM fails to account for the barriers facing ABAWD population	99	Summarized but did not respond.	
115	General unemployment rate does not reflect the job prospects for this population	25	Doesn't directly address, but claims that the new standard is "one of the most objective and defensible ways" of determining a lack of sufficient jobs.	
118-120	USDA's own studies of people leaving SNAP show time limit did not increase employment.	101	Summarized but no direct response. Cites 20 years of implementation and that current regulations lack "certain important limitations" to protect against misapplication of waivers. Department believes that who can should work or seek work, though "acknowledges that the rule does not in and of itself provide ABAWDs with additional job opportunities."	
120-121	Studies show loss of SNAP due to time limit increases hardship	N/A	Did not directly summarize or respond.	
122	Time limits in other programs do not increase employment and have a disproportionate impact on certain populations	98	Summarized but did not respond.	
126	Time limits and sanctions have disparate impact on communities of color	108	Did not discuss but in Civil Rights Impact Analysis section notes it did a comprehensive analysis and that monitoring and mitigation strategies by the FNS Civil Rights Division "may lessen these impacts."	

CBPP Comments Section 8: Proposed Rule Would Make Implementing Time Limit Harder by Removing Provisions that Give States Certainty Around Approval

- The preamble to the final rule does not respond to comments that, in discussing proposed changes such as taking away the “readily approvable” language and not allowing states to implement the waiver prior to approval, highlight the need for the Department to commit to approving waivers in a timely manner. Our comments gave an example of a lengthy delay for approval for a California waiver, which the Department does not acknowledge and instead states the Department has consistently approved waivers on time.
- The preamble acknowledged comments critical of the proposal to shorten waivers to one year or less, but did not substantially respond to these arguments. For example, our comments explain that current guidelines require very recent unemployment data for 2-year waiver approval, but in explaining why the final rule limits waivers to one year or less, the Department still suggests that a shorter waiver approval is necessary to ensure “the waiver request reflects recent economic conditions”.

Page of our comments	CBPP said:	Page of their response	USDA responded:	Other Notes
144	While the preamble therefore suggests that states may understand that waivers requested under the “core standards” can reasonably be expected to be approved (provided they include the correct data and are calculated accurately), the actual rule lacks the specificity of the “readily approvable” language in current regulations at 7 C.F.R. § 273.24(f)(3).		Didn’t clarify whether core standards are the same as “readily approvable”; regulation language states “Core standards. FNS will approve waiver requests...”	
146	FNS does not make any commitment to approving waivers in a timely fashion, but eliminating “readily approvable” language and ability to implement prior to approval will give states more uncertainty. Gave example of CA waiting over 5 months for 2018 waiver approval and implementing prior to approval.	76-77	It states this is current practice and does not include any new language to guarantee FNS approval in a timely fashion (“Because the Department has been committed to responding to waiver requests prior to the State’s requested implementation date, and has met this commitment consistently...). Also notes waivers don’t “waive States’ responsibility to identify ABAWDs (screen household members for the exceptions from the time limit at § 273.24(c) or to measure and track the 36-month period”	
147-148	Proposed implementation date of Oct. 1 would present severe burden for states and they do not justify such a short timeline	82-84	Responded to concerns about time needed for implementation and changed date to April 1,	

			2020, but did not explain why they included such a short timeline to begin with	
150-152	Existing requirements for 2-year waivers already require states to demonstrate high, sustained unemployment; reflect “current” conditions because states use data that ends 3 months prior to waiver implementation; have been used sparingly, and mostly during the Great Recession, which helps states’ manage administrative costs	68	Acknowledged comments but didn’t respond to arguments in them regarding the fact that states must use current data and allowing 2-year waivers reduces burden for areas with sustained high unemployment, stating “The Department believes that a 1-year waiver term allows sufficient predictability for States to plan and implement the waiver. At the same time, a 1-year waiver term ensures that the waiver request reflects recent economic conditions.”	

CBPP Comments Chapter 9: Eliminating the Carryover of Unused Individual Exemptions Would Cause Hardship and Exceeds Agency Authority

- The statutory language directs the agency to adjust exemptions in one direction when states use too many (by reducing carryover) and in another direction when using too few (by allowing unused exemptions to accrue). There is no further directive in statute to make further adjustments.
- Final Rule dismisses recent changes to the exemption process in the 2018 Farm Bill.

Page of our comments	CBPP said:	Page of their response	USDA responded:	Other Notes
153	NPRM incorrectly describes way in which exemptions are calculated, which makes it hard to comment on actual impact of rule.	N/A	No mention.	
154	Congress recently acted to adjust exemption policy, but not in way NPRM proposes	86	Department views the indefinite carryover of exemptions as an unintended result of current regulations and inconsistent with Congressional decision to limit the number of exemptions in a given fiscal year, in Sec. 6(o)(6)(C), (D) and (E).	

154-55	Statutory language clearly lays out how to address unused exemptions – NPRM contradicts this.	N/A	No mention.	
155-56	Legislative history demonstrates that Congress approved of uncapped accrual of exemptions	86	Department views the indefinite carryover of exemptions as an unintended result of current regulations and inconsistent with Congressional decision to limit the number of exemptions in a given fiscal year, in Sec. 6(o)(6)(C), (D) and (E).	
156	Agency has never raised issues with accruing exemptions over multiple years.	N/A	No mention.	
156	States have compelling reasons to accrue exemptions, agency never explains why these are not legitimate reasons.	89	Final rule modifies the proposed carryover limits, to one year’s worth. Department agrees with comments that exemptions are important but no convincing evidence that they should be carried over indefinitely.	
157	Congress knows how to limit the carryover of unused resources but has not done so here.	N/A	No mention.	
158	NPRM fails to provide a legitimate reason for the change	86	Department views the indefinite carryover of exemptions as an unintended result of current regulations and inconsistent with Congressional decision to limit the number of exemptions in a given fiscal year, in Sec. 6(o)(6)(C), (D) and (E).	
159	Proposed method of calculating exemptions and adjusting will discourage states from using them and increase errors.	89	Modified the proposal so that states can carryover exemptions for 12 percent of covered individuals. Department does not believe final rule will increase likelihood of errors.	

CBPP Comments Chapter 10: The Proposed Rule Fails to Provide Sufficient Rationale or Supporting Evidence for the Proposed Policy Change

Page of our comments	CBPP said:	Page of their response	USDA responded:	Other Notes
160	<p>Department claims that waivers cover too many individuals but provides no justification that there is a target number of people to be waived.</p> <ul style="list-style-type: none"> - No evidence of legislative intent either - Fails to acknowledge that economic circumstances, and thus number of ABAWDs, will change 	N/A	Reasserts the claim made in the proposed rule but does not provide any legislative intent or other information to explain why this is a valid reason to change existing policy.	
161	Fails to provide evidence that general unemployment rates are the best available measure of job sufficiency for ABAWDs	25	Doesn't directly address, but claims that the new standard is "one of the most objective and defensible ways" of determining a lack of sufficient jobs.	
161-162	<p>Lack of rationale provided for setting floor at 7 percent, or why other options (6 or 10 percent) would be better or worse.</p> <ul style="list-style-type: none"> - Makes it impossible to comment on validity of proposal. 	25	Brief mention that Department finds the 6 percent floor to be "one of the most objective and defensible ways" of determining a lack of sufficient jobs. Mentions that it aligns with longstanding DOL measure of job insufficiency (need to check this claim)	
162	<p>Makes arbitrary changes to long-standing regulations for which sound reasons were provided at the time they were promulgated.</p> <ul style="list-style-type: none"> - Eliminates LSAs which the agency indicated were useful in initial guidance 	8	No explanation for why long-standing policy must change except mentions reviewing rules and deciding states have "taken advantage of these weaknesses" to request waivers in areas "where it is questionable as to whether" there are insufficient jobs. This claim is repeated throughout the Final Rule.	
163	Agency ignores recent Congressional rejection of this policy	N/A	Don't directly address, but claim that current waiver policy has veered from original intent.	
164	Sole reason for eliminating some criteria (E:P, declining industries, academic study)		Rejects E:P because it provides "ambiguous" information about job availability. Rejects	

	for waivers is that they are rarely used, sometime subjective or not appropriate if other data is available. -claim that data is not rigorous is not explained given that states can submit a wide range of data.		academic studies as not the best available data.	
165	Public input from ANPR does not appear to inform this proposed rule - Not clear if comments to ANPR justify proposed rule change	N/A	Did not mention.	
166	Alternatives to the proposed rule are not discussed. - 7, 6 and 10 percent are offered but not explained - Alternatives to LMAs not discussed, reason for dropping LSA not sufficient	30-33	Summarized comments on alternatives, then says there's "no measure available for precisely determining the number of available jobs specifically for ABAWDs". Dismisses setting a fluctuating floor as administratively difficult and is not persuaded by any others.	

CBPP Comments Chapter 11: Regulatory Impact Analysis (RIA) highlights faulty Justification and Includes Unclear or Flawed Assumptions

- We said the RIA contradicts USDA's justification for the rule because they say their goal is to encourage work and promote self-sufficiency, but the RIA (and the preamble) provides no evidence of such effects and instead finds that 755,000 individuals would be cut from SNAP for "failure to engage meaningfully in work or work training." The final RIA does not explicitly acknowledge this comment, or respond to it, or provide any additional evidence, beyond saying "a review of existing evidence...was not sufficient" and citing KS and ME studies we had addressed as flawed in our comments.
- There is a new issue that was not in the proposed rule because USDA did not propose eliminating the Unemployment Insurance Extended Benefit (EB) trigger in the proposed rule.
The final rule shows that USDA does not understand the impact of eliminating the EB trigger during any future recession. On p. 29 and p. 55 USDA mentions that because of the EB trigger being eliminated some areas may not qualify for waivers as quickly during an economic downturn. But USDA doesn't seem to understand that many areas with high unemployment wouldn't qualify AT ALL during and after recessions when national unemployment is high, because an area's unemployment rate must be *both* over 6% AND

20% above the national average. So an area with 9% unemployment wouldn't qualify if the national average unemployment rate was 8%. This will result in far, far fewer areas qualifying for waivers during and after recessions. This could be an important example of something they might have learned from public comments had they proposed eliminating the EB trigger, but since they didn't propose it no one commented about the impacts and they completely misrepresent them in the final rule.

- They tie themselves to using Department of Labor criteria in terms of justifying both the 6% floor (as being the Labor Surplus Area (LSA) criteria) and the Labor Market Area (LMA) as being the appropriate area for consideration of waivers, but they reject the EB trigger, which is the Labor Department's measure of insufficient jobs during the period when unemployment is rising rapidly, as occurs during a recession.
- They were so focused on the period we currently are in of low unemployment and ensuring that low employment areas never get waived that they have completely disregarded Congressional intent for what should happen when unemployment is rising or objectively high.

Page of our comments	CBPP said:	Page of their response (in RIA)	USDA responded:	Other Notes
168-170, p. 213-214	<p>The RIA contradicts USDA's justification. They say the changes would encourage work and promote self-sufficiency, but RIA just says (755k) people will be cut off for failure to comply, with no evidence of any increased work.</p> <ul style="list-style-type: none"> - No assumption about E&T - No discussion of state implementation choices having an impact or other complexities of the impacts. 	23	<ul style="list-style-type: none"> - They did not mention this comment nor provide any evidence. - Mentions not enough evidence on E&T to estimate the magnitude state response. 	
170-195	<p>Specifically, we cite research evidence on:</p> <ul style="list-style-type: none"> - Characteristics/realities of labor market 	23 RIA, 97+ preamble	RIA - A review of existing evidence ¹⁷ on the behavior of ABAWDs following a re-imposition of time limits was not sufficient to	Footnote in RIA references FGA

	<ul style="list-style-type: none"> - Work patterns and SNAP - TANF impacts modest and fade - Barriers faced, sanction rates - One study they cite doesn't support rule - FGA reports that "find" positive effects are flawed - FNS's own research and FSET contradicts the rationale 		<p>permit us to reasonably estimate employment rates that are likely to result from this rule.</p> <p>Preamble – mention various studies. "this does not change the statutory work requirements established by Congress...policy changes are in line with the intent of Congress when passing PRWORA."</p>	KS study paper and ME study.
195-	<p>The term "ABAWD" is never defined and USDA's use of it is confusing and leads them to faulty assumptions in their methodology. They seem to include many people who would not be affected by the change.</p> <p>p. 198 – They imply more people would be affected than is the case.</p>	10, 20	<p>Mention. Recognize complex issue. Say it was addressed in baseline discussion.</p> <p>p. 20-21 – discussion, but still way too few people assumed able to participate compared to the experience in other states.</p>	
p.198-201	<p>Several assumptions in the methodology rely on shares of this larger "ABAWD" group inappropriately. i.e., share working. It is misleading to include individuals who are not subject to the time limit because the denominator matters. We did analysis to explain this point in detail.</p>		<p>Mentioned. See below on share in waived areas and work rates.</p>	
p. 202	<p>They assume there would be 3.4 million "ABAWDs" in 2020 but never explain where that number came from. This is the starting point for all the estimates, so it's important.</p>	11, 20-21	<p>Not sure if the mention about projections for future years is in response to this.</p> <p>p. 22 – Assume share "ABAWDs" constant at 7.3% of baseline in all years.</p>	
p. 203	<p>They assume 44% of "ABAWDs" are in waived areas based on an assumption that uses all non-PA participants by county, which is indefensible because "ABAWDs"</p>	2, 8, 22	<p>p. 2- New assumption is "more than half of ABAWDs currently live in areas in which the time limit is waived."</p>	

	are a small fraction of non-PA participants. Moreover, their distribution will depend on whether the time-limit is in effect. So it overstates the share in areas that are not waived and understates the share in waived areas.		p. 7-8- Defend what they did but also agree ABAWDs are a small share of overall SNAP caseload. For the final rule they use, "SNAP QC data counts of ABAWDs by county," which I don't really understand because there is no county identifier in the QC and the sample sizes would likely be too small. Result is 53.3% of ABAWDs live in waived areas, dropping very slightly because of unemployment rate rising in baseline, so fewer areas waived.	
P. 203-	<p>The methodology for determining the share of areas losing waivers is incomplete and confusing:</p> <ul style="list-style-type: none"> - Use term "currently" inconsistently, so not clear what year was used for analysis – both the time periods examined and the waiver period. - Inconsistencies in the 24-month period and thresholds used (p. 206) - Only used 1 24-month period. - Fails to explain treatment of New England states and excludes Guam and VI. (p. 208) - Fails to adjust number of waived areas for 2020 when there likely will be fewer waived areas. (p. 208) - Did not analyze a period when unemployment rates are rising. (p. 208) - Didn't explain estimation of areas losing due to narrowing of statewide waivers. May have subtracted out twice (p. 208) 	11, 43-47	<p>Mention that a commenter said the methodology was confusing.</p> <ul style="list-style-type: none"> - Currently – replace with a reference year for clarity. See p. 44-45. - They do not agree. Think we did not understand. Add clarifying details. - Not mentioned. - Added clarifying discussion. (See p. 43 fn and p. 47.) - Acknowledge did not fully explain that did adjust. Added details. - Acknowledges that impact different during downturn and includes a qualitative discussion. - Disagrees. Thinks p. 21 discussion describes and includes similar. 	

	<ul style="list-style-type: none"> - Omits EB as a standard. (p. 209) - Does not analyze impact on Native Americans on reservations or New England towns. (p. 209) 		<ul style="list-style-type: none"> - Agrees not clear, but no effect. - Mention comment. Added clarifying discussion. See p. 43 and 47 and p. 31 for reservations. 	
p. 210	<p>And the discussion of the relative impact of the three changes is misleading: The presentation suggests 7% floor and restriction to combine areas are roughly the same size, when the impact of the inability to combine areas is subsumed in the 7% floor change. All who are no longer eligible because of not being able to combine areas are also ineligible because of the 7% floor.</p>	24-43 and 45-47, 55	<p>Fn 25 on p. 46 says the impact would vary depending on the order, which sort of addresses this point. They eliminated EB as a criteria and say there would be no effect in the 2020-2024 window, which is misleading. They mention there would be a delay in areas qualifying for a waiver during an economic downturn, implying that all areas with unemployment over 6.5% would qualify, which is misleading since they would have to ALSO have unemployment more than 20% above the national average, and so many/most would NOT qualify if national unemployment rate also had risen. Also see p. 55 regarding changes in economy.</p>	<p>Note- p. 55 they say they expect the “exceptional circumstances” provisions may alleviate the issue of fewer areas qualifying quickly during a recession.</p>
p. 211	<p>RIA assumes all “ABAWDs” in areas that would lose waivers would lose SNAP, which ignores that many will be exempt or able to participate for other reasons. None would be:</p> <ul style="list-style-type: none"> - exempted for being unfit - pregnant - participating in first (or 2nd) 3 months - exempt because of discretionary exemptions - participating in E&T - working for less than 20 hours a week 	9-10, 23	<p>Mention that a commenter noted that the proposed rule RIA did not take into account that some ABAWDs in unwaived areas may receive exemptions for pregnancy or unfitness for work. Appreciates the comment and has included assumptions regarding such exemptions in the final rule. (The comment included others.) Assume 8% of ABAWDS in newly unwaived areas will receive an exemption for pregnancy or unfit for work based on data from 6 states. States will use banked exemptions in 2020 and 5% of ABAWDs will be exempt under discretionary exemptions after that.</p>	<p>8% unfit or pregnant seems way too low.</p>

p. 212	RIA assumption that 1/3 of “ABAWDs” subject to the time limit would be working is flawed because it was derived from the entire population, which includes non-waived areas where a higher share are working. Only 12% of “ABAWDs” in non-waived areas were working in 2017. No explanation for how this would triple.	7, 22	Mention, combine with point about questioning whether work requirements increase work, and say they “found comments regarding the ABAWD employment rate to be compelling and has adjusted that assumption.” Use 23.8% from current partial or statewide waiver.	Assumed all who are working at all would make it to 20+ hours a week. Provide no evidence.
p. 212	RIA assumes all individuals who lose eligibility will reapply every three years. There is no evidence of this, and a 2001 FNS study suggests it is not true.	10	Mention and say, “the Department does not find this argument to be compelling.” SNAP participation rates have increased dramatically since 2001 for this group from 54% to 85%. So not clear that study would still apply.	
p. 214	Treatment of discretionary exemptions confusing and misleading. <ul style="list-style-type: none"> - Assumption that “states use approximately 65% of their earned exemptions in an average year” is overstated. - Assumption that eliminating carry-over has no impact is indefensible. 	13, 24-25, 42-43, 48-49.	Mentioned 2 nd , not first <ul style="list-style-type: none"> - Not mentioned. - Notes provision has changed and includes discussion. They now assume fewer people cut off in 2020 because many states will use banked exemptions before they are rescinded. 	
p. 217	RIA fails to reflect impact on Medicaid and health coverage (because of work requirements alignment) and other secondary impacts (on economy and health outcomes).	6	Mentions “Commenters noted specific potential costs that they did not believe were addressed in the RIA.” Including <ul style="list-style-type: none"> - “Costs to U.S. and local economies in generating economic activity and acting as an economic stabilizer” and - “Healthcare costs related to increases in food insecurity and poverty.” 	

			<p>“In response to these comments, this RIA includes expanded qualitative and quantitative discussion of these potential impacts where appropriate.” Says they can’t estimate them, though.</p>	
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