



Food and
Nutrition
Service

December 4, 2019

Park Office
Center

SUBJECT: Supplemental Nutrition Assistance Program (SNAP) – Implementation of Regulatory Changes to Able-Bodied Adults Without Dependents (ABAWD) Waiver Standards and Discretionary Exemptions

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TO: State SNAP Directors
All Regions

On December 5, 2019, the Food and Nutrition Service (FNS) will publish the final rule, *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*. It is available today for public inspection at the [Federal Register](#).

The final rule changes the definition of the geographic areas that can be waived and other criteria under which an area may qualify for a waiver of the SNAP participation time limit for able-bodied adults without dependents (ABAWDs). The provisions related to waiver standards take effect April 1, 2020. In order to have a waiver as of April 1, 2020, and thereafter, States must request a waiver that meets the new standards in 7 CFR 273.24(f) and should submit that request as soon as possible to their respective FNS Regional Office contact(s) and copy snapcpbwaivers@usda.gov. FNS encourages States to submit these waiver requests no later than February 1, 2020, to ensure timely processing.

The final rule also limits the “carryover” of States’ unused ABAWD discretionary exemptions as described in 7 CFR 273.24(h). This change will take effect on October 1, 2020, the start of Federal fiscal year (FY) 2021.

The enclosure provides a summary of the rule’s provisions. We strongly encourage State agencies to review the final rule in full as it provides additional detail.

Please contact your respective FNS Regional Office with any questions about the final rule or its implementation. FNS will provide additional materials related to this final rule and plans to host webinars for States in the coming weeks.

Sincerely,

Sasha Gersten-Paal
Acting Director
Program Development Division

Enclosure

CHANGES TO ABAWD TIME LIMIT WAIVER STANDARDS: 7 CFR 273.24(f)

Under the final rule, States can continue to request FNS's approval to waive the ABAWD time limit for one or more geographic areas within their State and may request to start such waivers at any point in the fiscal year. States must support any such request with data or evidence that the requested area(s) have an unemployment rate over 10 percent or a lack of sufficient jobs. States must rely upon Department of Labor (DOL) Bureau of Labor Statistics (BLS) data unless such data is unavailable. FNS will generally approve waivers for 12-month periods, but may approve for less if requested by the State.

The final rule changes the definition of geographic areas that can be waived, the data and evidentiary standards for approval, and other requirements that State waiver requests must meet in order to qualify. These changes are described below.

Definition of Waiver Area

Under the final rule, States will no longer have the flexibility to define their own waiver area(s). The waiver area is strictly defined as an area considered a Labor Market Area (LMA) by DOL, the intrastate part of an interstate LMA, an Indian reservation area, or a U.S. Territory.

LMAs: A complete [list of LMAs](#) is published by BLS. LMAs are a non-overlapping and exhaustive level of substate geography, meaning all parts of every State and the District of Columbia are considered and designated. Some LMAs are single counties or county equivalents, while others are composed of groups of counties or county equivalents. States must support a waiver request for an LMA using its corresponding LMA unemployment data from BLS in order to qualify for approval. BLS currently publishes corresponding Local Area Unemployment Statistics ([LAUS data](#)) for all LMAs.

The intrastate part of an interstate LMA: Interstate LMAs are LMAs that cross State lines. In the case of an interstate LMA, the intrastate part of the LMA (e.g. the part of the LMA that is within the requesting State) may only qualify for a waiver based on data from the entire interstate LMA.

An Indian reservation area or a U.S. Territory: Indian reservation areas and U.S. territories are each considered to be an area for the purposes of waivers. A reservation area can also be waived as part of an LMA, to the extent that the entire reservation area is located within the LMA.

Core Standards for Waiver Approval

The final rule provides States with the following two core standards for waiver approval:

1. Data from BLS or a BLS-cooperating agency that shows an area has a recent 12-month average unemployment rate over 10 percent; or
2. Data from BLS or a BLS-cooperating agency that shows an area has a 24-month average unemployment rate 20 percent or more above the national rate for a recent 24-month

period, but in no case may the 24-month average unemployment rate of the requested area be less than 6 percent. For ease, this standard will be referred to as the “20 percent standard.”

State waiver requests that meet either of the two core standards will qualify for approval. State waiver requests that do not meet these standards will not qualify, except if standard BLS data or data from a BLS-cooperating agency is limited or unavailable for the requested area or in an exceptional circumstance, as explained in the next two sections.

In addition, the data reference period for the 20 percent standard has a specific limit. In order for the 24-month data period to be approvable, there must not be more than 21 months from the end of the last month of the 24-month data period through the last month that the waiver would be effective. To clarify, the number of months cannot exceed 21 months, but could be less than 21 months, as shown in the table below.

Last Month of Waiver	Jan '21	Feb '21	Mar '21	Apr '21	May '21	Jun '21	Jul '21	Aug '21	Sep '21	Oct '21	Nov '21	Dec '21
Last month of the 24-Month Data Period	Apr '19	May '19	Jun '19	Jul '19	Aug '19	Sep '19	Oct '19	Nov '19	Dec '19	Jan '20	Feb '20	Mar '20

- For example, a State requests a 12-month waiver for April 2020 through March 2021. The State provides a 24-month data period from July 2017 through June 2019 showing that the requested area meets the 20 percent standard. The data period would be acceptable, since the number of months from the end of June 2019 through the end of March 2021 equals 21 months.

Areas with Limited Data or Evidence

Waiver requests for an area for which standard BLS data or data from a BLS-cooperating agency is limited or unavailable, such as a reservation area or U.S. Territory, are not required to meet the core standards or conform to the criteria for approval that is required of other areas. Consistent with current practice, the supporting data or evidence provided by the State must be recent and must correspond to the requested area. The final rule provides examples of alternative data or evidence that may be used (but does not limit States to these examples).

Waivers Requested Based on an Exceptional Circumstance

Additionally, FNS may approve waiver requests if the request demonstrates an exceptional circumstance in an area has caused a lack of sufficient jobs or an unemployment rate over 10 percent, 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. In addition, the request must demonstrate that the impact of the exceptional circumstance is ongoing at the time of the request. Supporting unemployment data provided by the State must rely on standard BLS data or methods.

The final rule provides the following examples of an exceptional circumstance: the disintegration of an economically and regionally important industry, the prolonged impact of a natural disaster, or a sharp continuing economic decline. Other events could also constitute an exceptional circumstance. FNS will carefully evaluate any request made based on an exceptional circumstance and will approve only those requests that are supported by compelling data and/or evidence of the criteria described above.

Other Waiver Requirements in the Final Rule

The final rule requires that any State ABAWD waiver request be supported by the chief executive officer in the State. States must indicate that the request has the support of the chief executive officer, but may do so in whatever method they see fit.

The final rule also provides that FNS will generally approve waivers for one year, but may approve waivers for a shorter period at the State agency's request.

Implementation Date for the Final Rule's Waiver Provision

The final rule's waiver standards take effect April 1, 2020. New waivers requested after the publication of the final rule may be approved under pre-April 1, 2020 waiver standards, but such waivers will not be in effect beyond March 31, 2020, unless the requests meet the final rule's waiver standards. In other words, if a State submits a new waiver request after the publication of the final rule but before April 1, 2020, the new waiver request must meet the final rule's waiver standards in order to qualify for approval beyond March 31, 2020. For waivers existing as of April 1, 2020, State agencies must have received a new waiver approval under the final rule's waiver standards in order to waive the time limit.

Waivers that are currently in place will not be in effect beyond March 31, 2020, or their current expiration date, whichever occurs sooner.

CHANGES TO ABAWD DISCRETIONARY EXEMPTIONS: 7 CFR 273.24(h)

The final rule does not change how FNS estimates the number of discretionary exemptions allotted to each State because the calculation is set in statute. The final rule changes the method FNS will use to adjust the number of exemptions available for each fiscal year. The change in the adjustment calculation results in a new limit on the number of unused discretionary exemptions that a State can carryover (retain) from one fiscal year to the next. Please see the examples provided in the final rule for more details.

The final rule also codifies FNS's longstanding discretionary exemptions overuse policy, which allows States 1 year to offset a negative balance using the new exemptions estimated by FNS for the subsequent fiscal year. If the negative exemption balance is not fully offset, FNS will hold the State liable for the remaining negative balance.

Implementation Date for the Discretionary Exemptions Changes: October 1, 2020

The changes to discretionary exemptions go into effect October 1, 2020, and the Department will make its first exemptions adjustment at the next scheduled adjustment in FY 2021, likely in the month of February 2021. States can use any of the discretionary exemptions they have available for FY 2020, including carryover, during FY 2020.