

# Guidance for States Seeking Waivers for Food Stamp Limits

**December 3, 1996**

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

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

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

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

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

## General Issues

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

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

### **Waivers for Unemployment Rates Above 10 Percent**

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

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

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

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

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

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

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

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

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

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

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

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

### **Waivers for Areas Without Sufficient Jobs**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Applying for Waivers**

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

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

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

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

## Notes

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