

April 1, 2019

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

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

To the Certification Policy Branch:

The Colorado Center on Law and Policy submits these comments in response to the Department of Agriculture's (USDA or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) Able-Bodied Adults Without Dependents (ABAWDs) in the Supplemental Nutrition Assistance Program (SNAP).¹ We write to express our strong opposition to the proposed changes and urge the Department to withdraw the proposed rule in its entirety.

CCLP is a nonprofit, nonpartisan organization that advocates at the state legislative level as well as in administrative and legal proceedings to advance the needs and legal rights of Coloradans facing economic insecurity. Economic insecurity is the condition of not always having enough money to afford basic needs, like adequate nutrition, safe housing, necessary medical care, transportation, and childcare. We understand that social and economic forces – such as systemic racism and stagnant wages – are at the root of economic insecurity, which in turn negatively impacts health and further diminishes social and economic wellbeing. We pursue policy objectives that mitigate the effects of poverty, support the health and economic security of Coloradans struggling to make ends meet, and move our state toward greater equity. Working toward equity requires correcting for the influence of racism and other forms of oppression in our institutions and systems so that all people have a fair and just opportunity to live healthy and fulfilling lives.

As outlined in these comments, we oppose the proposed rule because it will cause substantial harm to Coloradans facing economic insecurity and to populations already targeted by racial bias. As a result of the proposed rule, some of the most vulnerable members of the SNAP population will face increased hunger and insecurity. The proposed rule will also result in loss of state discretion and flexibility in serving this population, and will have a negative economic impact on our state.

The ABAWD Population in Colorado

¹ <https://www.federalregister.gov/documents/2019/02/01/2018-28059/supplemental-nutrition-assistance-program-requirements-for-able-bodied-adults-without-dependents>

Nearly one in eleven (9.2%) Coloradans struggle to put food on the table, including many able-bodied, working adults who may be struggling due to a job loss, lack of available full-time hours, or minimum-wage pay.² In 2016, an estimated 41,000 SNAP enrollees in Colorado fell into the ABAWD category, making them subject to the harsh time limit on benefits under existing law.³

Colorado is a “Pledge State,” which means that the state has opted to receive federal funds to implement programs designed to move more SNAP recipients into the workforce, including ABAWDs. Federal funding for the program has remained flat and is currently insufficient to meet demand.⁴ Although the USDA’s proposal states that ABAWDs do not want to work, this is contradicted by the evidence. Most ABAWDs who can work do so; however, the Colorado Department of Human Services has observed that this population faces significant challenges in finding and maintaining employment, such as: (1) lack of a high school diploma or its equivalent; (2) no significant/relevant work history; (3) felony convictions; (4) substance abuse; (5) mental and physical health problems; (6) housing problems; and (7) transportation problems.⁵ A recent analysis by Mathematica Policy Research reveals that a greater share of ABAWD SNAP participants live in poverty nationally compared to other SNAP participants, and often at a deeper level of poverty – at or below 50 percent of the federal poverty guideline.⁶ Colorado has exercised its discretion and used its 15% ABAWD exemptions for the most vulnerable members of this group, most notably the homeless; however, the 2018 Farm Bill reduced the exemption amount from 15% to 12%.

Furthermore, the Colorado Office of Economic Security has noted that while Colorado has a low unemployment rate overall, the number of clients receiving SNAP benefits has not declined from the levels reached during the 2008 recession.⁷ This indicates that the wages and/or hours of work available to working Coloradans are not sufficient to raise them out of poverty or eliminate the need for public assistance. In short, Coloradans are working more but not financially advancing to self-sufficiency.

Reduction of State Discretion

The Department asserts that it and the states “share a responsibility to help SNAP participants – especially ABAWDs – find a path to self-sufficiency.” This proposal contains no methods for achieving this. In fact, by curtailing access to needed benefits and reducing Colorado’s discretion in how it assists its ABAWD population, the proposal will make it more difficult for Colorado to help ABAWDs attain self-sufficiency.

² <https://www.ers.usda.gov/webdocs/publications/90023/err-256.pdf?v=0>

³ http://coemploymentfirst.org/wp-content/uploads/2017/01/Colorado-SNAP-E_T-State-Plan-FFY17.pdf

⁴ SNAP Employment and Training Plan, Federal Fiscal Year 2018, Colorado Office of Economic Security, Division of Employment & Benefits, http://coemploymentfirst.org/wp-content/uploads/2018/06/FY18-CDHS-EF-SP-Revised-_11.27.17-_Final.pdf

⁵ http://coemploymentfirst.org/wp-content/uploads/2018/06/FY18-CDHS-EF-SP-Revised-_11.27.17-_Final.pdf

⁶ <https://mathematica-mpr.com/our-publications-and-findings/publications/proposed-changes-to-the-supplemental-nutrition-assistance-program-waivers-to-work-related-time>

⁷ Colorado SNAP E&T State Plan, Federal Fiscal Year 2017, Colorado Office of Economic Security, Division of Employment & Benefits, http://coemploymentfirst.org/wp-content/uploads/2017/01/Colorado-SNAP-E_T-State-Plan-FFY17.pdf

As demonstrated above, Colorado has been in the forefront of encouraging SNAP recipients to achieve self-sufficiency. Since the Great Recession, Colorado has also been sparing in its use of geographic waivers. Currently there are only three areas of the state covered by a waiver: Huerfano County, the Ute Mountain Reservation, and a low-income section of the city of Northglenn. Under the proposal, Huerfano County and Ute Mountain would both lose their waiver status, despite having unemployment rates that are higher than the federal rate and the Colorado rate. Huerfano County qualifies for a waiver based on its designation as a Labor Surplus Area by the Department of Labor, which the proposal would eliminate from consideration. Ute Mountain, which by some indicators has an unemployment rate of 19-40%,⁸ would be eliminated based on the exclusion of the state's ability to use alternative sources of data to prove unemployment higher than that determined by the Bureau of Labor Statistics, and a reliance on the use of Labor Market Areas (LMAs) to determine whether areas of unemployment are economically tied. The use of LMA data would allow areas of lower unemployment inside the tract to mask higher unemployment rates in other areas, even when these areas are out of reach of ABAWD recipients who lack access to personal or public transportation. In fact, the proposal specifically states that economic dislocations that can have devastating impacts on a community, such as a short-term plant closure, would not be exceptional enough for the state to issue a time limit waiver. States are in the best position to determine the needs of their populations and should not have their discretion overridden from Washington.

Discriminatory Effect of the Proposal

The Department's proposal establishes an arbitrary "floor" for unemployment of 7% before time limits on receipt of benefits could be waived, and an equally arbitrary measure of "natural rate of unemployment" of 5%. These are national averages that do not take into account local differences or the rates of unemployment experienced by different groups. They also appear to be based on a single definition of unemployment, the U-3 measure.

The official U-3 national unemployment rate in 2018 was 3.9%⁹. This number represents the total of unemployed people in the civilian labor force. The U-6 measure, which represents the total number of unemployed people, plus marginally attached workers and total workers employed part-time for economic reasons, was 7.7%. The U-6 measure provides a more accurate picture of unemployment as applied to the ABAWD population, which as documented above experiences more barriers to employment than the average workforce and is more likely to be economically marginalized. If the Department used the U-6 measure instead of the U-3 measure in waiver decisions, more than two-thirds of U.S. states would have an unemployment rate of more than 7 percent, even in what appears to be a strong economy.

Furthermore, Black and Hispanic households suffer from food insecurity at a rate nearly twice that of the national average¹⁰ and unemployment rates for these workers are also

⁸ <http://hpwren.ucsd.edu/IndianRes/12%20Colorado.pdf>; Ute Mountain Utes Awarded \$8M for Job Training, The Journal, April 1, 2016, <https://the-journal.com/articles/1566>

⁹ <https://www.bls.gov/lau/stalt.htm>

¹⁰ "Trends in U.S. food security: Trends in food insecurity by race and ethnicity, 2001-17." Economic Research Service. U.S. Department of Agriculture. Sep. 5, 2018. <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/interactive-charts-and-highlights/>.

correspondingly higher than for white households¹¹. The proposed rule threatens to disproportionately affect these already-struggling groups. While the Department concedes that the proposed changes “have the potential for disparately impacting certain protected groups due to factors affecting rates of employment of these groups, [it] find[s] that implementation of mitigation strategies and monitoring by the Civil Rights Division of FNS will lessen these impacts.” There is no description of what mitigation strategies and monitoring will be employed, or what, if any, remedies would be proposed in response to findings of disparate impact. Unless and until a mitigation plan is established and adequately funded, the Department’s proposed changes should not be implemented.

The Department’s Proposal Exceeds the Scope of Congressional Approval

The 2018 Farm Bill weakened states’ ability to exempt certain vulnerable ABAWDs from time limits by lowering the 15% caseload exemption to 12%¹². It did not change the waiver regulatory structure, however. During hearings, USDA Secretary Sonny Perdue indicated that the Department did not have the authority to reject or alter state ABAWD waiver requests without a statutory change made by Congress.¹³ The 2018 Farm Bill did not give the Department this authority. The finalization of this rule therefore would go against congressional intent and represent an Administrative overreach.

Conclusion

For the foregoing reasons, we urge the Department not to finalize this rule. . If you have any questions, please contact Sara Lipowitz, Public Benefits Attorney at the Colorado Center on Law and Policy, 303-573-5669, slipowitz@cclponline.org.

Respectfully submitted,
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¹¹ <https://www.bls.gov/opub/reports/race-and-ethnicity/2017/home.htm>

¹² <http://frac.org/wp-content/uploads/2018-farm-bill-conference-report-analysis.pdf>

¹³ https://republicans-agriculture.house.gov/uploadedfiles/115-13_-_28728.pdf