

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

KARL A. RACINE
ATTORNEY GENERAL



September 17, 2020

Secretary George Ervin Perdue III
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, D.C. 20250

Administrator Pamilyn Miller
Food and Nutrition Service
Braddock Metro Center II
1320 Braddock Place
Alexandria, VA 22314

Dear Secretary Perdue and Administrator Miller:

We, the Attorneys General of the District of Columbia, California, Colorado, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, and the Corporation Counsel of the City of New York, write to urge the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) to reconsider recent denials of requests by state Supplemental Nutrition Assistance Program (SNAP) agencies for adjustments of SNAP operating procedures during the ongoing COVID-19 pandemic, to continue granting adjustment requests for the duration of the pandemic, and to publish guidance for SNAP agencies and the public.

The state SNAP agencies have been working tirelessly for many months now to ensure that SNAP recipients continue to receive their benefits in the midst of the current public health and economic crisis. Their success can be attributed in part to the operational adjustments that FNS has approved in the preceding months. State SNAP agencies have been able to continue to operate remotely, minimizing exposure to the coronavirus for both agency employees and SNAP recipients and ensuring that low-income households will not go hungry. These operational adjustments have been crucial in easing regulatory burdens on state SNAP agencies so that they can focus their resources on issuing SNAP benefits even as caseloads have increased drastically and state budget constraints prevent the agencies from hiring additional personnel.

Despite the success of the operational adjustments earlier in the pandemic, FNS has made several changes to the waivers that are now hampering operations and has not provided clear guidance to help SNAP agencies and the public understand the bases for the changes or FNS's

recent decisions. The process to request these adjustments has itself become time-consuming and burdensome, such that states are discouraged from applying for adjustments even as they continue to face enormous constraints in maintaining operations. The criteria for obtaining approval for operational adjustments appear to have become increasingly stringent, but there is no clear public guidance on how much or what kind of data states must provide to meet these criteria to have their adjustment requests approved. This absence of clear public guidance as well as FNS's lack of explanation for denials in the face of continued state and federal public health emergencies have left some states struggling to understand how to sufficiently demonstrate their need for adjustments. It has become difficult to ascertain why some states are receiving approvals for their adjustment requests while other states' requests are denied.

The burden of applying for operational adjustments on a monthly basis is particularly harmful to state agencies that are experiencing a significant backlog as a result of the pandemic. These backlogs have resulted from an increase in caseloads, limited resources, and operational constraints, and some state agencies simply will not be able to process all recertifications and applications by the deadline. The increasing restrictions on and denial of operational adjustments have created the untenable situation that some families may experience a gap in benefits until their recertifications and applications can be processed. FNS's vague promises of "provid[ing] technical assistance" and "work[ing] with the State agency in moving to operations that are consistent with SNAP regulations"¹ is not sufficient to alleviate this burden.

Instead of requiring applications for operational adjustments on a monthly basis, FNS could provide more options for readily approvable adjustments that are effective for several months at a time. FNS provided two such options to states in the most recent round of adjustment requests: Periodic Report Flexibility for Non-Extended Recertification Cases and the Core Verification and Interview Adjustment. However, FNS informed at least some states that they could only apply for one of these two adjustments, even if the state could demonstrate a need for both. Further, these adjustments provide limited utility to some states because the flexibilities are incompatible with the state's operational technical capacities. Such restrictive options for readily approvable waivers leave some states with only the option of going through the time-consuming process of applying for month-to-month adjustments and the uncertainty of whether those requests will be approved.

We urge FNS to increase the number of readily approvable adjustments without limitations on how many such adjustments may be requested. We also urge FNS to consider providing states with the option for readily approvable adjustments for extending certifications as it did in the early months of the pandemic, in addition to other commonly requested adjustments. Such adjustments should include certification period extensions between now and April for a sufficient number of cases to balance the recertification caseload during the coming year and in future years, as well as continuation of interview adjustment waivers that have been previously granted, including for initial application interviews, through March 2021. The Families First

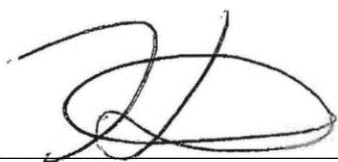
¹ See, e.g., Letter from FNS to District of Columbia Department of Human Services (Aug. 27, 2020), available at <https://fns-prod.azureedge.net/sites/default/files/resource-files/DC%20-%20SNAP%20-%20COVID%20-%20Recertification%20Requirements%20Adjustment%20-%20Denial.pdf>.

Coronavirus Response Act (FFCRA) does not constrain FNS to approving just a limited number of waivers, nor does it limit the number of waivers that state agencies can request.

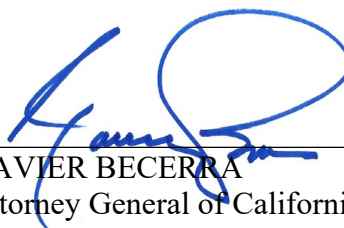
In addition to increasing options for operational adjustments, we also urge FNS to post guidance on adjustment requests to its website. Although FNS has been posting approvals and denials of adjustment requests, it does not appear that FNS has posted its guidance regarding such adjustments. Similarly, certain approvals reference supplementary evidence and data provided by the requesting state, but do not detail what this data or evidence entailed. Section 2302(b)(3) of the FFCRA requires FNS to post guidance regarding flexibilities and adjustments on its website. Having this guidance publicly available will allow states and their residents to see what data must be supplied to request adjustments and whether FNS is making fair determinations of what actual circumstances require in those states.

The end of the pandemic is not yet in sight. All states and the federal government still have active emergency declarations related to this public health emergency. States will have to deal with the long-term effects of the pandemic for the foreseeable future: caseloads will likely continue to remain high, and state agencies will continue to struggle with large backlogs. Moreover, it is possible that infection rates will begin to rise again, and caseloads will increase. It is also unclear when state agencies will receive the necessary funding to hire more staff and obtain additional resources to help with day-to-day operations. Because returning to “normal” will likely take many months, it is unreasonable to expect that any state agency can shift their operations back to pre-pandemic status at this time. We therefore urge FNS to provide more long-term, readily approvable operational adjustments to assist states in prioritizing helping SNAP recipients provide food to their families while coping with the longer-term operational constraints caused by the pandemic.

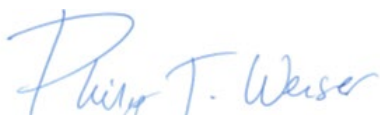
Sincerely,



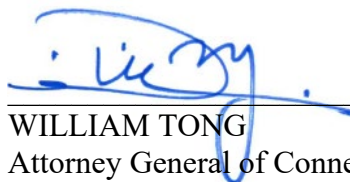
KARL A. RACINE
Attorney General for the District of Columbia



XAVIER BECERRA
Attorney General of California



PHIL WEISER
Attorney General of Colorado



WILLIAM TONG
Attorney General of Connecticut



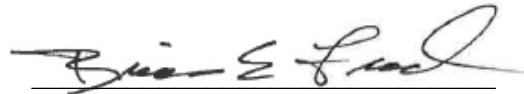
CLARE E. CONNORS
Attorney General of Hawaii



KWAME RAOUL
Attorney General of Illinois



AARON M. FREY
Attorney General of Maine



BRIAN E. FROSH
Attorney General of Maryland



MAURA HEALEY
Attorney General of Massachusetts



DANA NESSEL
Attorney General of Michigan



KEITH ELLISON
Attorney General of Minnesota



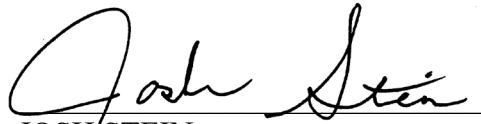
AARON D. FORD
Attorney General of Nevada



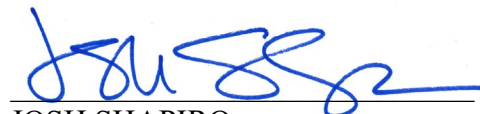
HECTOR BALDERAS
Attorney General of New Mexico





LETITIA JAMES
Attorney General of New York

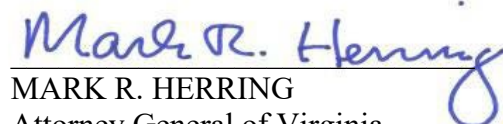

JOSH STEIN
Attorney General of North Carolina



ELLEN F. ROSENBLUM
Attorney General of Oregon

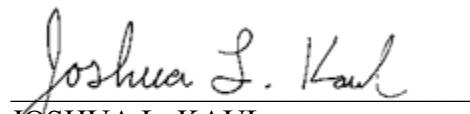

JOSH SHAPIRO
Attorney General of Pennsylvania

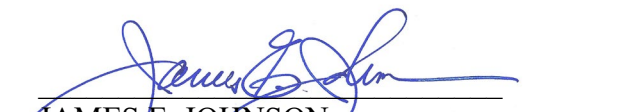

PETER F. NERONHA
Attorney General of Rhode Island


THOMAS J. DONOVAN, JR.
Attorney General of Vermont


MARK R. HERRING
Attorney General of Virginia


BOB FERGUSON
Attorney General of Washington


JOSHUA L. KAUL
Attorney General of Wisconsin


JAMES E. JOHNSON
Corporation Counsel of the City of New York