

September 17, 2020

ATTORNEY GENERAL RAOUL URGES USDA TO REMOVE BARRIERS THREATENING SNAP BENEFITS DURING PANDEMIC

Chicago — Attorney General Kwame Raoul today joined a coalition of 21 states and New York City in urging the federal government to permit states to expedite the distribution of Supplemental Nutrition Assistance Program (SNAP) benefits to residents during the COVID-19 pandemic.

[In a letter](#) to the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA), Raoul and the coalition make clear that adjustments to administering SNAP – like allowing virtual interviews with SNAP recipients and extensions on reporting deadlines – help tens of thousands of SNAP recipients receive food assistance by allowing states to safely and efficiently recertify eligibility and process applications. While the FNS approved these waivers at the beginning of the pandemic, the agency has recently started denying some requests without sufficient explanation. Raoul and the coalition urge the federal government to provide guidance on what is required for approvable waivers, to expand the flexibility of waiver options, and to continue granting waivers during the COVID-19 pandemic.

“The SNAP program helps to ensure that families in need have access to nutritious meals, which is particularly critical during the COVID-19 pandemic,” Raoul said. “As a result of the pandemic, hunger is affecting more Americans – some who have not previously experienced food insecurity – and I urge the federal government to take steps to ease burdensome requirements to allow states to expedite the delivery of this vital service to residents.”

SNAP, commonly known as “food stamps,” is the country’s most important anti-hunger program and a critical part of federal and state efforts to help lift people out of poverty. The program provides people with limited incomes the opportunity to buy nutritious food that they otherwise could not afford.

In March 2020, as states began declaring public health emergencies, the FNS approved waiver requests that helped ease regulatory burdens on state SNAP agencies so they could focus their resources on issuing SNAP benefits even as caseloads drastically increased and state budget constraints prevented the agencies from hiring additional personnel. These waivers included allowing virtual interviews with SNAP recipients instead of requiring in-person meetings and providing extensions on reporting deadlines.

However, in a move to return to pre-pandemic operations, the FNS recently told states that waivers would be approved only on more limited bases. The criteria for obtaining waiver approvals appears to have become increasingly strict, and it is unclear how the FNS is evaluating these criteria for states applying for a waiver. A lack of clear, public guidance on the criteria and the FNS’ lack of explanation for denials have left some states scrambling to formulate requests. Without waivers, states cannot process large backlogs of applications and eligibility recertifications in time to prevent families from temporarily losing benefits.

Raoul and the coalition urge the FNS to help states secure longer-term waivers by:

- **Posting clear guidance and criteria for how waivers are approved:** The FNS has not posted guidance on its website about what information states should include in waiver requests despite being required to do so by the Families First Coronavirus Recovery Act, enacted in March 2020. Without this guidance, states cannot easily determine why some states’ requests have been approved while others have been denied. Posting this guidance publicly will allow states to see what

data must be supplied to request adjustments and whether the FNS is fairly assessing the economic and public health conditions in those states.

- **Increasing duration and flexibility of waiver options:** The FNS is currently requiring states to apply for most of the available waivers on a monthly basis even though all states and the federal government continue operating under public health emergency declarations, and the pandemic is likely to continue for many more months. This requirement for monthly applications has placed a significant regulatory burden on the states at a time when most state SNAP agencies are overwhelmed with increased caseloads. The coalition urges the FNS to allow states to liberally apply for multiple multi-month waivers of all commonly requested adjustments.

Joining Raoul in the letter are the attorneys general of California, Colorado, Connecticut, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Wisconsin, as well as the corporation counsel of the city of New York.

**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

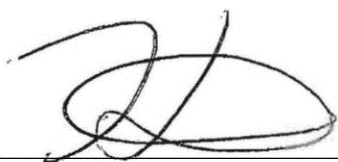
¹ See, e.g., Letter from FNS to District of Columbia Department of Human Services (Aug. 27, 2020), available at <https://fns-prod.azureedge.net/sites/default/files/resource-files/DC%20-%20SNAP%20-%20COVID%20-%20Recertification%20Requirements%20Adjustment%20-%20Denial.pdf>.

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.

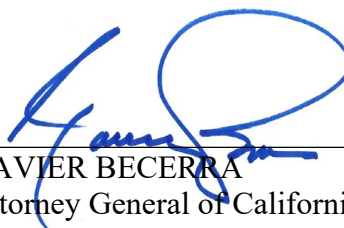
In addition to increasing options for operational adjustments, we also urge FNS to post guidance on adjustment requests to its website. Although FNS has been posting approvals and denials of adjustment requests, it does not appear that FNS has posted its guidance regarding such adjustments. Similarly, 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.

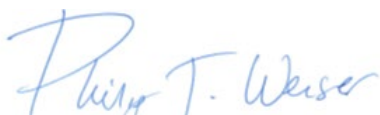
Sincerely,



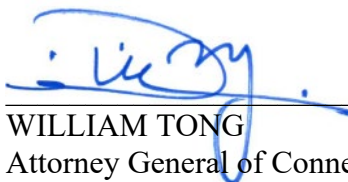
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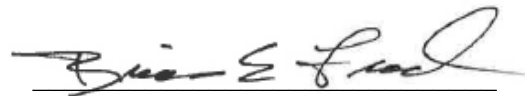
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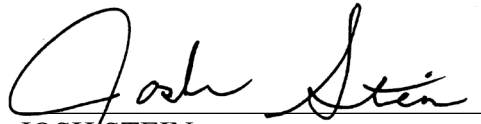
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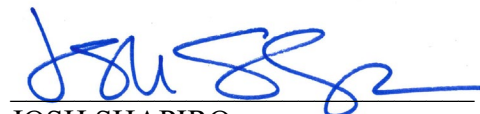
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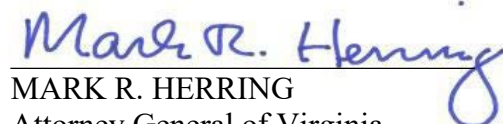

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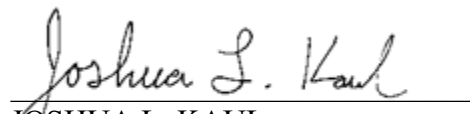

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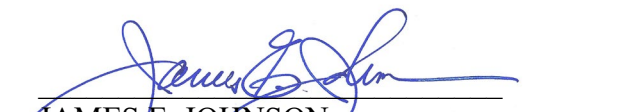

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