

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL**

**KARL A. RACINE  
ATTORNEY GENERAL**



July 13, 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 Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, write to urge the U.S. Department of Agriculture (USDA) and the Food and Nutrition Service (FNS) to reconsider recent denials of requests by state SNAP agencies for waivers of SNAP operating procedures during the ongoing COVID-19 pandemic and to continue granting waivers for the duration of the pandemic. These waivers provide much-needed flexibility that have allowed state and local SNAP agencies to meet the influx in demand for SNAP benefits while operating remotely, which in turn has limited exposure to COVID-19 for both SNAP recipients and agency employees. Denying extensions of these waivers while the pandemic persists will require rapid adjustments in operating procedures that could delay the administration of SNAP benefits and pose a risk of infection for those agency employees and SNAP recipients who must visit service centers in-person to complete procedures like applications and certifications.

To limit exposure to COVID-19, and in compliance with the recommendations of the Centers for Disease Control and Prevention and the White House, as well as state-specific mandates and guidelines, state and local SNAP agencies have largely transitioned their staff to remote work, with only very limited staff working on-site at SNAP service centers. In doing so, these agencies revamped their information technology services to ensure both seamless continuation of the administration of SNAP benefits and improved remote accessibility to resources for SNAP recipients. Readjustments in operating procedures, as permitted in the Families First Coronavirus Response Act, Pub. L. 116-127, 134 Stat. 178, 188 (2020) (“Families

First Act”), were key to ensuring that state agency employees could continue to administer and SNAP recipients could continue to receive their benefits uninterrupted throughout the public health crisis, without fear of exposing themselves and their families to COVID-19.

Section 2302(a)(2) of the Families First Act allows for states to request adjustments to SNAP operating procedures “to be consistent with what is practicable under actual conditions” in areas affected by the COVID-19 pandemic. The provision requires the USDA to consider several factors in granting these waivers, including “the availability of offices and personnel in State agencies...and any health considerations that warrant alternative approaches.” *Id.* Examples of waivers include delays of recertifications and mid-certifications for six months and allowing agencies to forgo interviews normally required at the time of application.<sup>1</sup>

In response to Secretary Azar’s declaration of a national public health emergency, and in accordance with the Families First Act, FNS has granted waivers of these operational requirements, and extensions of these waivers, since March 2020. Throughout the ongoing pandemic, state agencies have supplied substantially similar data in their requests for waivers and for extensions, including in their most recent requests for waivers through July and August 2020. Although FNS made no changes to its guidance for information to be provided to support these requests, and although the national public health emergency is ongoing, FNS denied such requests or urged that applications be withdrawn for a number of states for July 2020. FNS provided no explanation for the denials, and agencies were notified of the denials only two days before these denials became effective on July 1.

Without justifications for the denials, it is unclear whether FNS adequately considered the factors required in the Families First Act. We therefore urge FNS to reconsider its denials of waivers (and to maintain waivers in the coming months) based on the following reasons:

- Congress intended for FNS to take into consideration the burdens that state agencies face in trying to operate in the midst of a pandemic and the potential health risks posed by reinstating pre-pandemic operational requirements. Despite herculean efforts to ensure continuity of operations, even as applications have increased dramatically, state and local agencies continue to face obstacles to completing their normal processes for tasks like certifications and recertifications. The operational flexibilities granted by FNS allowed state agencies to shift operations to a telework model within a very short period and focus on administering benefits during the public health crisis.
- The denials leave in doubt whether FNS considered “what is practicable” for SNAP recipients during the pandemic. Not all SNAP recipients have reliable access to the internet to remotely reapply for benefits, and some even lack access to telephones. Without the waivers, these individuals will likely have to go in-person to the service centers for interviews and to fulfill other paperwork requirements for their certifications and recertifications. SNAP recipients have been particularly susceptible to health complications from COVID-19 and should not have to needlessly risk exposure to reapply for benefits as the pandemic continues. Even those SNAP recipients who do have

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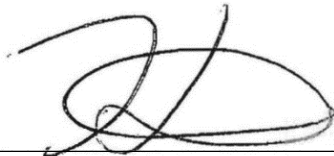
<sup>1</sup> See [fns.usda.gov/disaster/pandemic/covid-19/snap-application-waivers](https://fns.usda.gov/disaster/pandemic/covid-19/snap-application-waivers).

phone access may incur long wait times, and the agency employees more work, as recipients and agency employees exchange multiple calls to reach each other in real time and complete interviews. Particularly as staff is working remotely, completing phone interviews will add a layer of difficulty and administrative burden as well as potential expense for the state and local agencies. Moreover, the sudden and unexpected shift back to procedural requirements will cause a bottleneck effect with limited in-office staff working to implement remote and in-person interviews for all SNAP recipients, which could result in further delays and impair other functions at the state agencies.

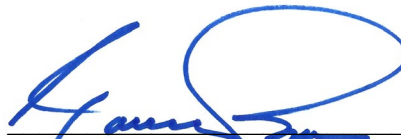
- Finally, with these denials, USDA is effectively pushing certain jurisdictions to reopen earlier than local officials have deemed safe. State and local governments have been evaluating the best approach to reopen economic activity while ensuring that residents are not needlessly exposed to the dangers of COVID-19. Public gatherings are still limited, and individuals are still encouraged to stay home as much as possible. Many states have seen a recent spike in COVID-19 cases, causing them to slow down or even step back their schedules for reopening. The pace of reopening is properly within the discretion of state governments. With the reinstatement of operational requirements, though, agency employees and SNAP recipients may have to violate the mandates of their local government leaders and leave their homes in the midst of a pandemic.

We urge USDA and FNS to reconsider these denials and to continue extending waivers of operating procedures while states determine what is in the best interest of public health and sequence an orderly and safe reopening. Ensuring continuity of services and the health and safety of our citizens should remain of the utmost importance, and continuing to grant waivers of SNAP operating procedures is an essential means of doing so.

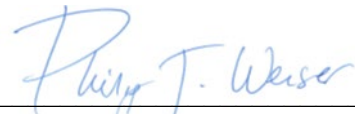
Sincerely,



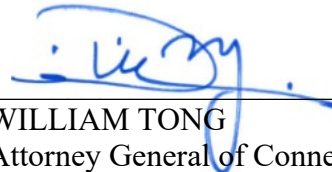
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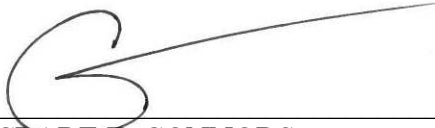
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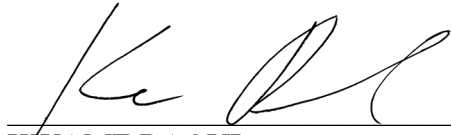
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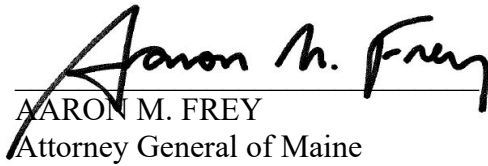
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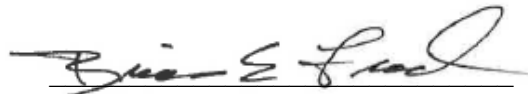
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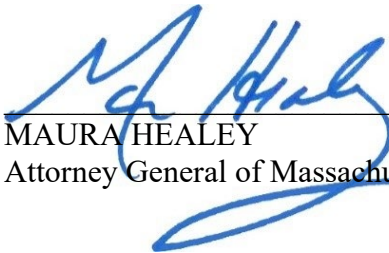
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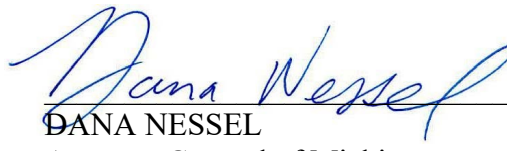
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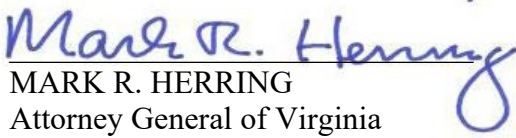
  
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