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Opportunity Solutions Project (OSP) strongly supports the U.S. Department of Agriculture's (USDA) efforts to move more able-bodied adults from welfare to work. The proposed rule is a critical step forward in promoting independence and self-sufficiency for able-bodied adults participating in the program. However, the proposal leaves in place certain loopholes that states will continue to exploit. In order to end these abuses, USDA should make technical corrections to ensure states are not waiving work requirements in areas that do not lack sufficient jobs.

Introduction

As part of the 1996 welfare reform overhaul, Congress passed—and Present Clinton signed—bipartisan legislation that implemented commonsense work requirements for able-bodied adults on welfare. As a result, able-bodied adults without dependents are now expected to work, train, or volunteer at least part-time as a condition of receiving food stamps.[1] Individuals who refuse to comply with the work requirement are limited to just three months of benefits in any three-year period.[2]

But not long after Congress adopted these work requirements, opponents of the work requirement launched an ongoing campaign to undermine the law, which continues to this day.[3] Although the law provided for a small amount of regulatory discretion in the rulemaking process, the resulting rules and subregulatory guidance have dramatically expanded the exemptions and waivers from the work requirement.[4]

States are abusing loopholes in current regulations

Federal law permits—but does not require—the Secretary to approve waivers of the work requirement for individuals in requested areas if those areas have unemployment rates above 10 percent or do not have a sufficient number of jobs.[5] However, current regulations have created massive loopholes that have allowed states to waive the requirement for as many able-bodied adults as possible.[6] In fact, officials from multiple states told auditors from the USDA Office of Inspector General that they were requesting "waivers in as many parts of the State as possible" to "minimize the areas" subject to the work requirement.[7]

States also often rely on software or analyses prepared by left-wing advocacy groups, including the Center on Budget and Policy Priorities.[8] These analyses are specifically designed to maximize the number of people states can exempt from the work requirement through waivers. The analyses have no connection to need, but simply seek to find the maximum number of individuals that can be included in the waiver.

Maximizing the number of individuals that can be included in the waiver is clearly not what Congress intended when they included a waiver option for high unemployment areas in the statute.

States continue to receive waivers, despite record-low unemployment

These waivers were intended to be used only in periods of economic crisis, not during periods of record economic growth. The national unemployment rate is hovering at its lowest point since 1969, with 12 consecutive months of unemployment at or below four percent.[9] Since June 2017, 19 states have hit new record-low unemployment levels, with unemployment rates as low as 2.4 percent in some states.[10]

Employers are also desperate for workers. The number of open jobs sits at 7.3 million—a record high—with more open jobs than people looking for work.[11] Average earnings have reached nearly $28 per hour—the highest

level ever recorded.[12] Employers are offering signing bonuses, student loan repayment, company cars, relocation fees, and more to find and retain talent—at all skill levels.[13]

But despite today's booming economy, 33 states and the District of Columbia waive the work requirement in some or all areas.[14] Of the more than 1,100 jurisdictions where work requirements are waived, just 23 have unemployment rates at or above 10 percent.[15] Virtually all of these jurisdictions had unemployment rates at or below six percent, while more than 800 had unemployment rates at or below five percent.[16] Nearly 200 waived jurisdictions had unemployment rates at or below three percent, including some with unemployment rates as low as zero.[17]

State waiver abuse is getting worse with the booming economy

A booming economy indicates that these waivers should be rapidly disappearing. But in many cases, the abuses have gotten worse over the last several years.

In fiscal year 2017, for example, Ohio waived the work requirement in 16 counties.[18] Its statewide unemployment rate at the time the waiver went into effect was 5.1 percent.[19] In fiscal year 2018, Ohio expanded its waiver to 26 counties, despite the fact that its statewide unemployment rate had dropped to 4.9 percent.[20-21] Then Ohio expanded its waiver again in fiscal year 2019 to exempt 38 counties from the work requirement, even as its statewide unemployment rate dropped to 4.6 percent.[22-23]

Similarly, state officials in Georgia have massively expanded the scope of the state's waiver, even as the economy continues to grow. In 2018, Georgia waived 66 counties from the work requirement.[24] At the time the waiver went into effect, the state's unemployment rate was 4.3 percent.[25] But state officials received federal approval to more than double the size of the waiver in 2019, with 135 counties now exempt from the requirement, even as the statewide unemployment rate has declined to 3.7 percent.[26-27]

There is no better time to crack down on waiver abuse than the present

Despite a booming economy, the number of able-bodied adults on food stamps remains near record highs.[28] More than a third of the country lives in an area with no work requirements and most able-bodied adults on food stamps do not work at all.[29-30]

The proposed rule is a meaningful first step to cracking down on waiver abuse and moving more able-bodied adults from welfare to work. But the proposed rule leaves in place certain loopholes that states will continue to exploit. A few small adjustments can help prevent future abuse and ensure more able-bodied adults are put on the path to self-sufficiency.

Cracking down on "area" abuse should be a top priority

Federal law allows the Secretary to approve waivers in requested areas that meet certain criteria.[31] However, the statute does not define the term "area" and current regulations have allowed states to gerrymander jurisdictions together for waiver purposes.[32] Allowing states to combine areas has led to widespread abuse, whereby states combine low unemployment counties with high unemployment counties as a means to waive the work requirement for as many able-bodied adults as possible.[33]

Illinois' waiver, for example, combines all counties except one into a single area, assuming there are only two economic regions in the state: DuPage county—a single suburban county in the Chicago metropolitan area—and the rest of the state.[34] Similarly, California's waiver combined all counties except three into a single area,

assuming that the state was divided into two regions: San Francisco, San Mateo, and Santa Clara—all part of the San Francisco metropolitan area—and the rest of the state.[35]

The proposed rule attempts to limit this abuse by only allowing states to combine jurisdictions for waiver purposes if the combined area forms a labor market area, as defined by the U.S. Department of Labor (DOL).[36] In proposing this change, USDA sought feedback on whether this restriction "will target waivers to jurisdictions with a demonstrable lack of sufficient jobs without including jurisdictions that do not lack sufficient jobs."[37] While this is a meaningful improvement over the status quo, it leaves in place numerous opportunities for states to exploit the process and receive waivers even in areas with a significant number of available jobs.

States should not be allowed to combine jurisdictions for waiver purposes

The proposed rule provides states with two major avenues to exploit when it comes to defining areas. Under the rule, states could continue to waive the work requirement in counties with sufficient jobs by combining them with other counties, provided that the combined area forms a labor market area that collectively meets waiver criteria.[38] As a result, some jurisdictions that would not independently qualify for waivers would continue to be waived.[39] Worse yet, in some instances, this restriction may actually encourage states to expand waivers to jurisdictions not waived today, in order to waive the work requirement in the rest of a labor market area that qualifies.[40]

But states are not prohibited from seeking waivers outside of the labor market area definitions. Under the proposed rule, states may continue to request waivers for single jurisdictions, even if it is located in a broader labor market area.[41] As a result, states will pick and choose whether and when to combine jurisdictions for waiver purposes in order to maximize the size and scope of the waivers. States will combine jurisdictions together for waiver purposes when it allows an otherwise non-waivable jurisdiction to qualify and will seek waivers for single jurisdictions when the broader labor market area would not collectively qualify for a waiver. Even worse, states would be allowed to continue to put both of these types of abuses into the same waiver request.

States should not be allowed to combine jurisdictions together for waiver purposes at all. Allowing states to combine jurisdictions for waiver purposes undercuts the targeted purpose of these waivers and allows some areas to continue to be waived even when they do not independently meet the waiver criteria. A county that does not meet the waiver criteria cannot—by definition—be considered an area that does not have sufficient jobs.

Additionally, USDA should define "area" to mean one specific type of jurisdiction—such as a county or county-equivalent—in order to avoid states maximizing the scope of their waivers by selecting varying levels of jurisdictions within the same waiver.

Jurisdictions should not qualify for waivers if there are sufficient jobs available within a reasonable commuting distance

Not only should USDA prohibit states from combining jurisdictions for waiver purposes, it should prohibit waivers in areas where there are sufficient jobs within a reasonable commuting distance. The proposed rule would allow states to pick and choose when to use the labor market area definition and when to apply for a single-jurisdiction waiver. This allows states to waive the work requirement in jurisdictions located in broader economic regions with sufficient available jobs.

But a county that may barely meet the waiver threshold is not—by definition—an area that lacks sufficient jobs if there are sufficient jobs within a reasonable commuting distance. This restriction would keep states from waiving the work requirement in jurisdictions located in broader economic regions that do not meet the waiver criteria and would ensure waivers would only be targeted to areas that actually lack sufficient jobs.

In effect, USDA should adopt a two-step approach to waiver review. First, it should determine whether there are sufficient jobs within the jurisdiction itself. If the jurisdiction does not lack sufficient jobs, the state should not be allowed to waive the work requirement there. But if there is a lack of sufficient jobs within the jurisdiction itself, USDA should determine whether there are sufficient jobs within a reasonable commuting distance. If the broader economic region does not lack sufficient jobs, the state should not be allowed to waive the work requirement for any jurisdictions within that region. USDA should only approve waivers where a state can demonstrate that there are not sufficient jobs within the jurisdiction itself and within commuting distance of the jurisdiction.

Local economic regions are better defined by commuting zones than labor market areas

The proposed rule uses labor market areas—as defined by DOL—in defining local economic regions for waiver purposes. But this definition is not a strong measure of whether there are sufficient jobs within commuting distance of a waived jurisdiction. Unfortunately, labor market areas typically reflect only metropolitan and micropolitan statistical areas, considering rural counties as distinct, independent economic regions.[42] Nearly 82 percent of the 2,274 labor market areas defined by DOL contain just a single county.[43] This definition would make it difficult for USDA to determine whether there are sufficient jobs within commuting distance—and therefore within the waived area—because it simply does not reflect actual or possible commuting flows.

Instead of relying on a definition of economic regions created by a separate department, USDA should look to a definition created within USDA itself: commuting zones. Facing an inadequate delineation of labor markets in rural areas, USDA researchers developed commuting zones to define local labor markets based on actual and possible commuting patterns in every corner of the country.[44-45] Instead of treating rural counties as isolated economic regions, USDA used commuting patterns to identify where people actually live and work. This process resulted in 709 different commuting zones across the country—fewer than seven percent of which contained just a single county.[46]

These delineations continue to receive widespread use in the economic literature. Researchers at the Massachusetts Institute of Technology, University of California, and National Bureau of Economic Research have called commuting zones a "logical geographic units for defining local labor markets" and indicated that these definitions were "particularly suitable for … analysis of local labor markets."[47-48] Researchers at the University of Minnesota, University of Northern Colorado, and Oregon State University concluded that commuting zones are a more accurate method of measuring "the set of labor market opportunities available" to individuals in a given area.[49] And USDA's Economic Research Service has labeled commuting zones its "preferred definition" of local labor markets when evaluating the food stamp program.[50]

Researchers at Pennsylvania State University, Ohio State University, University of Notre Dame, Purdue University, and many others have also relied on commuting zones to define local economic regions.[51-53] These delineations are also in use by researchers at the Federal Reserve and public policy organizations such as Urban Institute and the Foundation for Government Accountability.[54-60] Prohibiting waivers in jurisdictions located in commuting zones with plenty of available jobs would significantly curb state abuse and ensure waivers are truly targeted to areas that lack sufficient jobs.[61]

Setting an unemployment floor would help end waiver abuse

Although federal law defines high unemployment for waiver purposes as above 10 percent, current regulations interpreted the "lack of sufficient jobs" standard to mean an unemployment rate 20 percent above the national average with no minimum unemployment floor.[62-63]

But this metric has nothing to do with whether an area has a lack of sufficient jobs or few job openings. It merely indicates how an area's unemployment rate is performing relative to the national average. This guarantees at least some portion of the country will be granted waivers at any time, even during periods of unprecedented economic growth.

Congress made clear through both the statutory language and floor debate that these waivers were intended to be temporary and used only in areas with objectively high unemployment and a clearly demonstrated lack of jobs. If Congress wished to grant waivers in areas with unemployment rates marginally higher than the national average, it could have done so. Instead, it limited such waivers to areas that have unemployment rates above 10 percent or that do not have a sufficient number of jobs.[64] During the floor debate, the amendment's sponsors stated that these waivers could only be granted "in a state with high unemployment" and in states where "there is an unemployment rate over 10 percent."[65] Although the national unemployment rate is 1.3 percentage points lower today than when the work requirement was first enacted, 33 states waive the requirement in some or all areas.[66-67]

The proposed rule addresses this abuse by setting a minimum floor of seven percent unemployment in order for an area to qualify for waivers under this pathway.[68] USDA sought feedback on whether a seven percent threshold would be the most effective at ensuring waivers are not approved in areas that do not lack sufficient jobs, or whether alternative floors—set at six percent or ten percent—would be more effective.[69]

A seven percent threshold would only apply during periods with below average unemployment

When Congress adopted these work requirements, it made clear that the waivers would only be available to areas with objectively high unemployment and a clearly demonstrated lack of sufficient jobs. Setting a minimum unemployment rate floor at seven percent would only matter during periods of near full employment, as the threshold would only activate when the national unemployment rate fell below 5.8 percent for a sustained two-year window. According to the Congressional Budget Office, the natural rate of unemployment averaged 5.5 percent between 1949 and 2018.[70]

To put this in perspective, the 24-month unemployment rate has averaged 5.95 percent since 1948 and 6.02 percent since 2000, indicating that a seven percent threshold would only apply during periods of below-average unemployment.[71] In fact, nearly half of all months since 1948 have had a 24-month rolling average unemployment rate above 5.8 percent.[72] Because states would still have flexibility to choose which 24-month period to use as a benchmark, the likelihood of a seven percent threshold mattering in a typical year would be reduced even further.

A six percent threshold would rarely apply and lead to continued abuse

Setting a minimum unemployment rate floor of six percent would matter even less, applying on during periods of full employment. This threshold would only activate when the national unemployment rate fell below five percent for a sustained two-year period—half of a percentage point below the natural rate of unemployment. A whopping 69 percent of all months since 1948 have had a 24-month rolling average unemployment rate above five percent, indicating that such a low threshold would only serve as a floor in rare periods of major economic growth.[73]

If this unemployment rate floor had been in effect over the last decade, it would have had little effect on waivers. Although the Great Recession ended in 2009, this threshold would not have kicked in until fiscal year 2019, as the 24-month rolling average unemployment rate did not fall below five percent until April 2017 and states have extended lookback periods to qualify for waivers.[74-75] Setting the floor at six percent simply would not be effective at ensuring only areas that lack sufficient jobs receive waivers, as it would continue to allow waivers in areas with

unemployment rates below the level economists peg at full-employment with available jobs for virtually all who want one.

A ten percent threshold would more effectively target waivers to appropriate areas

Setting a minimum unemployment rate floor of ten percent would effectively target waivers to areas that lack sufficient jobs, consistent with Congressional intent. This threshold would activate when the national unemployment rate fell below 8.3 percent for a sustained two-year period, covering approximately 90 percent of months since 1948.[76] This level is still below the ten percent unemployment threshold set by statute, but it would nevertheless address much of the abuse in a typical year.

Fixing exemption loopholes would further strengthen the rule

The proposed rule represents a significant improvement over the status quo, but it leaves in place exemption loopholes that exist solely to undermine the work requirement. Three days before leaving office, the Clinton administration issued regulations that created a new class of exemptions for able-bodied adults who were not parents or caretakers, but who resided in households with children.[77] These regulations also created a new exemption for 50-year-old able-bodied adults who would otherwise be subject to the work requirement under the statute.[78] These exemptions conflict with the plain meaning of the food stamp statute, Congressional intent, prior interpretation by state agencies, and even USDA's own interpretation of the same terms in other contexts within the food stamp program.

Current regulations unlawfully exempt able-bodied adult siblings from work

When Congress enacted the work requirement, it created an exemption for parents and other caretakers "with responsibility for a dependent child."[79] But regulations issued in 2001 unlawfully broadened this exemption to apply to able-bodied adults who were neither parents nor caretakers. Although the regulation adopted an exemption for parents, it created another exemption out of thin air for anyone "residing in a household where a household member is under age 18," regardless of whether the individual is responsible for or caring for the child.[80]

This interpretation conflicts with the plain meaning of the food stamp statute, which limits the exemption to individuals "with responsibility for a dependent child."[81] It also conflicts with how USDA interprets similar language in work registration provisions and how most state agencies had interpreted the provision prior to 2001.[82] As a result, states exempt nearly 650,000 able-bodied adults who would otherwise be subject to the work requirement.[83]

USDA should eliminate this additional exemption altogether and realign the rule to exempt only parents or other adults who demonstrate that they are responsible for caring for dependent children. This change would help realign the proposed rule with the exemption policies required by statute.

Current regulations unlawfully exempt able-bodied 50-year-olds from work

USDA's 2001 regulation also created a new exemption for 50-year-old able-bodied adults without dependents. When Congress enacted the work requirement, it created an exemption for able-bodied adults who are "over" 50 years old—meaning individuals 51 years of age and older.[84] But current regulations unlawfully broadened this exemption to apply to able-bodied adults who are "50 years of age or older."[85]

A plain reading of the term "over" in the statute would not include 50-year-olds, as "over" is typically defined as "higher than," "more than," "above," or "beyond" a specific number.[86] Indeed, that is how USDA has interpreted

the same term in other parts of the food stamp statute. For example, USDA regulations interpreted "over the age of 15" to mean 16 years old or older, consistent with the plain meaning of the term.[87] Indeed, USDA researchers even initially modeled the impact of the reform as if the work requirement applied to 50-year-old able-bodied adults.[88]

This interpretation also conflicts with the way Congress has generally written statutes when intending a section to be inclusive of a certain age, with the way the Supreme Court and other courts have used the term "over" in relation to specific ages, and with the way several state agencies had interpreted the term prior to the 2001 regulations.[89] The Office of Inspector General has also raised concerns about USDA's interpretation of "over 50 years of age" because it conflicts with the plain meaning of the statute and is internally inconsistent with its interpretation of the same term in other provisions.[90]

As a result of this loophole, states exempt more than 200,000 able-bodied adults who would otherwise be subject to the work requirement.[91] USDA should realign the rule to exempt individuals who are ages 51 and older, consistent with the statute.

The current regulation strips the Secretary of his authority to approve or deny waivers

The food stamp statute provides that the Secretary **may** approve state waiver requests in certain circumstances.[92] Nothing in the statute **requires** the Secretary to do so. But the regulation attempts to strip the Secretary of this discretion. Under current regulations, USDA **will** automatically approve waivers that meet certain criteria.[93] This framework—which strips the Secretary of his authority to approve or deny waivers—is continued under the proposed rule.[94]

Not only does this language conflict with the plain meaning of the statute, it also conflicts with how USDA treats other types of waivers within the food stamp program. For example, current regulations provide that USDA "may authorize waivers" of other regulatory provisions, but does not require USDA to approve any such waivers automatically.[95] USDA should revise its rule to specify that the Secretary **may** grant waivers to states with unemployment rates above 10 percent and who can objectively demonstrate the area lacks sufficient jobs.

Work requirements have a proven track record of success

Work requirements have been extremely effective at moving able-bodied adults from welfare to work. USDA researchers determined that the 1996 welfare reforms moved millions of able-bodied adults from welfare to work, increasing economic growth.[96] More recent analyses of work requirements at the individual-level has illustrated the power of work to transform lives.

When Kansas restored work requirements for able-bodied adults without dependents in 2013, these adults went back to work in hundreds of diverse industries, their incomes more than doubled within a year, and higher wages more than offset lost welfare benefits.[97] Maine witnessed similar success after restoring work requirements in 2014, with able-bodied adults witnessing their incomes more than double within a year, more tan offsetting lost food stamps.[98]

More recent experiences have found similar results. When Arkansas restored the work requirement in 2016, for example, able-bodied adults who left the program saw their incomes more than triple within two years, more than offsetting lost benefits.[99]

These able-bodied adults are also not just finding work in fast food or big box retail industries. After Florida restored the work requirement in 2016, able-bodied adults found work in more than 1,000 different industries, touching virtually every corner of the state's economy.[100] Nearly 70 percent of individuals who initially found work in the fast food industry or at temp agencies left those industries within a year, as more able-bodied adults moved from lower-wage industries into higher-wage industries over time.[101]

Conclusion

The proposed rule represents a critical step forward in restoring the work requirement to its statutory purpose and helping more individuals onto the path to self-sufficiency and independence. OSP strongly supports USDA's efforts to move more able-bodied adults from welfare to work. However, the proposal leaves in place certain loopholes that states will continue to exploit. In order to end these abuses, USDA should make technical corrections to ensure states are not waiving work requirements in areas that do not lack sufficient jobs.

USDA should take three important steps to refine its geographic area restrictions to ensure waivers are targeted to areas that lack sufficient jobs. First, USDA should prohibit states from waiving the work requirement in any jurisdiction that does not independently lack sufficient jobs. Second, USDA should prohibit waivers in jurisdictions where there are sufficient jobs within a reasonable commuting distance. Third, USDA should use commuting zones—rather than labor market areas—as a basis for evaluating whether sufficient jobs are within commuting distance of a jurisdiction.

USDA should also eliminate exemption loopholes that conflict with the food stamp statute. Specifically, current regulations provide unlawful exemptions for able-bodied adult siblings and 50-year-old able-bodied adults who should otherwise be subject to the work requirement. Finally, USDA should revise the proposed regulation to restore the Secretary's statutory discretion in approving and rejecting waivers.

Making these technical corrections would ensure more able-bodied adults move from welfare to work, increase incomes, help address the nation's labor shortage, and spur greater economic growth.

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Supplement: Regulatory Impact Analysis issues

Food and Nutrition Service
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The regulatory impact analysis does not account for all waived areas

The regulatory impact analysis reports that the Department based its analysis on current waivers in 975 counties and county-equivalents.[1] However, not all waived jurisdictions are counties or county-equivalents. States in New England—including Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont—have active waivers at the city, town, and township levels, with no waivers being operated at the county-level.[2-6] New York and Pennsylvania each have waivers that include counties, cities and towns.[7-8] New York even has waivers for specific community districts within certain boroughs of New York City.[9] As of January 1, 2019, state waivers covered more than 1,100 jurisdictions—not including Indian reservations.[10]

The regulatory impact analysis does not accurately estimate the number of able-bodied adults living in waived areas

The regulatory impact analysis estimates that states have 3.4 million able-bodied adults without dependents enrolled in the program and that 44 percent of those individuals reside in waived areas.[11] This analysis assumes that distribution of able-bodied adults without dependents is the same as the overall distribution of non-public assistance food stamp enrollees.[12] However, this is not an appropriate proxy for enrollment distribution. In fiscal year 2017, able-bodied adults without dependents made up less than 10 percent of all non-public assistance food stamp enrollees.[13] This means that the vast majority of individuals USDA used to determine the distribution of able-bodied adults within waived areas would not be subject to the work requirement. In effect, it assumes that the work requirement has virtually no effect on enrollment in non-waived areas.

However, USDA has access to a more reliable source on the number of able-bodied adults without dependents living in waived areas. Each state is required to file an updated state plan for its employment and training program each year. In these state plans, each state estimates the total unduplicated number of able-bodied adults without dependents on the program, the number residing in waived areas, the number receiving an exemption under the state's 15 percent exemption policy, and the number subject to the work requirement. In these filings, states estimated that they would have 4.1 million able-bodied adults without dependents enrolled in the program in fiscal year 2019 and that nearly 65 percent of them would be in waived areas.[14]

Altogether, USDA estimates more than one million fewer able-bodied adults without dependents living in waived areas than reported by states.

The regulatory impact analysis does not accurately reflect state choices in the lookback period

In evaluating potentially waived areas, the regulatory impact analysis sets a uniform lookback period of January 2016 through December 2017.[15] This is one acceptable waiver lookback period for fiscal year 2019, but it is not the only acceptable lookback period. In fact, of the waivers in effect on January 1, 2019, just seven states selected that period for waiver purposes.[16]

States will continue to choose lookback periods to maximize the size and scope of waivers. In fact, several states already use multiple different lookback periods even within the same waivers.

The regulatory impact analysis incorrectly assumes states cannot combine areas for waiver purposes

In evaluating potentially waived areas, the regulatory impact analysis assumes that any county that does not independently meet waiver thresholds are ineligible for a waiver, claiming that the proposed rule "eliminates the ability to combine data."[17] However, the proposed rule does not eliminate the ability to combine data. Instead, it allows states to continue to combine data for any areas that collectively form a labor market area, as defined by the Bureau of Labor Statistics.[18] This will allow states to continue waiving work requirements in some jurisdictions that do not independently qualify, because it will allow them to combine data for areas that form labor market areas.[19] Worse yet, the proposed rule will encourage states to expand waivers in some instances in order to use the labor market area designation, which is not adjusted for in the regulatory impact analysis.[20]

Allowing states to combine data in jurisdictions that collectively form labor market areas would increase the number of waived jurisdictions by more than five percent when compared to a prohibition on combining data at all.[21]

The regulatory impact analysis does not reflect the actual county-level distribution of able-bodied adults without dependents

The regulatory impact analysis assumes a 76 percent decline in waived areas is the equivalent to a 76 percent decline in the number of able-bodied adults living in waived areas.[22] However, not all counties are equal in terms of enrollment.

Eliminating a waiver in Cook County, Illinois would have an impact nearly 250,000 percent larger than the impact of eliminating a waiver in Brown County, Illinois.[23] But the regulatory impact analysis assumes an equal impact for each of these counties. In reality, eliminating a waiver in a single urban county could have a substantial effect on the number of waived able-bodied adults without dependents, while eliminating waivers in several rural counties could have a minimal impact on the number of waived able-bodied adults.

The regulatory impact analysis assumes disenrollment levels substantially below state experiences

The regulatory impact analysis assumes that enrollment will decline by just two-thirds among able-bodied adults who become subject to the work requirement.[24] This assumes that the only impact on enrollment is the direct impact of removing individuals who refuse to comply with the work requirement. However, individuals will also leave the program as their earnings increase.

In states that have eliminated these waivers, enrollment declines have been significantly higher than projected in the regulatory impact analysis. The number of able-bodied adults without dependents on the program declined by 85 percent in Alabama, 70 percent in Arkansas, 94 percent in Florida, 75 percent in Kansas, and 90 percent in Maine following work requirement implementation.[25]

The regulatory impact analysis miscalculates average benefit spending of able-bodied adults

The regulatory impact analysis calculates savings using the average benefit spending of all able-bodied adults without dependents, including those USDA assumes will not leave the program.[26] Although the analysis assumes only those individuals not currently working will be removed from the program, it bases the average monthly benefit on both individuals who were working and individuals who were not.

However, these two groups had significantly different benefit levels. The average pro-rated benefit amount for non-working able-bodied adults without dependents is more than 64 percent higher than the average benefit amount those working at least 20 hours per week.[27]

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