MEMO TO FNS REGARDING EXECUTIVE ORDER REDUCING POVERTY IN AMERICA BY PROMOTING OPPORTUNITY AND ECONOMIC MOBILITY

On April 10, 2018, President Trump signed Executive Order Reducing Poverty in America by Promoting Opportunity and Economic Mobility. This order directs federal officials to update rules, regulations, and guidance to better meet core objectives in various welfare programs. The new regulations should promote economic mobility, increase employment, improve economic independence, strengthen state flexibility, reduce wasteful spending, and preserve resources for the truly needy.

Food and Nutrition Service should strengthen work requirements in food stamps, eliminate loopholes that keep individuals dependent longer than necessary, and preserve resources for the truly needy.

The Trump administration should strengthen work requirements in food stamps

Federal law requires able-bodied childless adults on food stamps to work, train, or volunteer for at least 20 hours per week. These requirements have a proven track record in moving able-bodied adults from welfare to work.

When Kansas implemented work requirements for able-bodied childless adults, it set in place a comprehensive system that would track employment and wages of able-bodied adults removed from food stamps for refusing to work, train, or volunteer. After work requirements were implemented, able-bodied adults went back to work in more than 600 different industries and their incomes more than doubled on average. Higher wages more than offset lost benefits, leading to greater economic activity and higher state and local tax collections.

Maine established a similar tracking system and found consistent results. Those leaving food stamps saw their incomes more than double on average, more than offsetting lost benefits. Higher wages led to greater economic activity and increased income tax collections.

Evidence from these states shows that the longer able-bodied adults remain on the program, the harder it is for them to re-enter the labor force. As such, Food and Nutrition Service's goal should be getting these able-bodied adults off welfare as quickly as possible and back into the workforce.

Unfortunately, federal rules have created loopholes that have allowed states weaken and eliminate these requirements for millions of adults. Food and Nutrition Service should revise its regulations on work requirements to move more able-bodied adults from welfare to work.

I. REAFFIRM SECRETARY'S AUTHORITY TO DENY WAIVERS

Federal law provides that the Secretary may waive work requirements, upon state request, in areas with unemployment rates above 10 percent or otherwise do not have a sufficient number of jobs. The statutory language provides the Secretary with clear authority to approve or deny these waivers at his or her discretion.

Federal regulations have undermined this discretion by creating a class of waivers that are deemed "readily approvable" under federal guidance, providing that Food and Nutrition Service ***will*** approve waivers automatically.

In this case, the regulation explicitly conflicts with both the intent and plain meaning of the statute by attempting to revoke the Secretary's discretion on approving or rejecting waiver requests. Given a conflict between statute and regulation, the statute controls. As such, Food and Nutrition Service should revise the regulation to reaffirm the Secretary's statutory authority and discretion.

II. LIMIT WAIVERS TO AREAS WITH OBJECTIVELY HIGH UNEMPLOYMENT OR LACK OF JOBS

Although federal law defines high unemployment for waiver purposes as above 10 percent, regulations have interpreted the vague lack of sufficient jobs standard in a manner that is overly broad, is disconnected from whether an area lacks sufficient jobs, and does not reflect Congressional intent.

Under current regulations, a state may qualify for a waiver due to a lack of sufficient jobs if it demonstrates that its unemployment rate was 20 percent higher than the national average over a 24-month period.

But this metric has nothing to do with whether an area has a lack of sufficient jobs. It does not reflect whether the area has a high unemployment rate or few job openings. It merely indicates how an area's unemployment rate is performing relative to the national average. If the national unemployment rate were 1 percent, a state could waive work requirements so long as its unemployment rate was at least 1.2 percent.

This metric also does not take into account job openings, despite the fact that many states produce job vacancy surveys. The metric also ignores job training opportunities and volunteer opportunities, despite the fact that either would satisfy the work requirement.

Food and Nutrition Service should revise the regulation to require states to demonstrate that the area has objectively high unemployment or a lack of jobs. Consistent with the statute, the revised regulations should affirm that the Secretary may approve waivers in areas with unemployment rates above 10 percent. The rules concerning unemployment rates relative to the national average should be eliminated, as it does not illustrate a lack of jobs and conflicts with the clear statutory guidance on what high unemployment should mean for waiver purposes. The regulations should also require states to objectively demonstration that there is a lack of jobs in all occupations or industries and a lack of volunteer opportunities or job training opportunities which would satisfy the work requirement.

III. LIMIT WAIVERS TO AREAS THAT INDEPENDENTLY QUALIFY

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. The statute does not define the term "area."

Current regulations have allowed states to combine counties, cities, and other areas for waiver qualification. 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. In fact, officials from multiple states told auditors from the U.S. Department of Agriculture's 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.

Illinois, for example, received a waiver by combining all counties except one into a single "area," despite the fact that many counties did not independently qualify. Waived counties have unemployment rates as low as 2.6 percent,

with many counties at or near record lows. Some waived counties even have unemployment rates that are lower than the unemployment rate in the single non-waived county.

In New Hampshire, some townships were granted waivers despite the fact that the unemployment rate was literally 0 percent. Several other states got larger waivers in 2018 than in 2017, despite an improving economy and lower unemployment rates. Worse yet, states often rely on software prepared by left-wing advocacy groups that are specifically designed to maximize the number of people states can exempt from the work requirement through these waivers.

Food and Nutrition Service should revise the regulation to ensure that counties that do not independently qualify for a waiver do not receive them through gerrymandering.

IV. REDUCE WAIVER LOOKBACK PERIODS

Federal law permits the Secretary to approve waivers when an area has an unemployment rate above 10 percent or does not have a sufficient number of jobs. Both of these standards reflect a present-tense requirement. In other words, the Secretary may approve waivers based on current economic conditions. Current regulations, however, have created an extended lookback period that allows states to continue waiving work requirements even during times of significant and sustained economic growth.

The current regulations and guidance allow states to use a "recent" 12-month or 3-month average unemployment rate above 10 percent to qualify for a waiver. But a "recent" unemployment rate does not mean a current unemployment rate. A state requesting a waiver based on a 12-month average unemployment rate above 10 percent that went into effect January 2018, for example, could rely on data from as far back as February 2016. If a state had requested the waiver based on a 3-month average, it could have relied on data from as far back as November 2016. The unemployment rate in February 2016, or even November 2016, tells us little about the economic conditions in January 2018.

The lookback period is even more disconnected from current conditions when waivers are submitted based on unemployment rates relative to the national average. Under that standard, states submit average unemployment rates over a 24-month period, but not the most recent 24-months. Instead, the lookback period can begin as far back as the period the Department of Labor uses to calculate labor surplus areas for the federal fiscal year in which the waiver is implemented. For fiscal year 2018, the 24-month period for labor surplus areas was from January 2015 through December 2016.

The extended lookback period allows states to use data from three or more years ago to justify a waiver, even when that data does not reflect current economic conditions. States are also gaming this process. California's most recent waiver, for example, began in September 2017, the last month of fiscal year 2017. By having the waiver begin in the last month of fiscal year 2017, the state was able to use an entire year's worth of older data, going as far back as January 2014 to support its request. Had the waiver begun one month later, California would have had to rely on data that began in 2015. To put this in context, California's unemployment rate in January 2014, which it was allowed to use in its waiver application, was 8.4 percent. In September 2017, the month in which the waiver became effective, the state's unemployment rate was 4.3 percent.

Food and Nutrition Service should revise the regulation to eliminate the extended lookback period and instead require recent evidence, based on the most recently available data, of sustained unemployment rates above 10 percent.

V. SHORTEN WAIVER PERIODS

Federal law permits the Secretary to approve waivers when an area has an unemployment rate above 10 percent or does not have a sufficient number of jobs. Both of these standards reflect a present-tense requirement, based on current economic conditions. But current Food and Nutrition Service practice is to approve waivers for a one-year or two-year period.

This practice allows waivers to continue for extended periods where they may be unnecessary and do not reflect current economic conditions. Between December 2016 and December 2017, the economy added 2.2 million new jobs. The number of people unemployed dropped by nearly 1 million and the unemployment rate dropped by nearly 13 percent. The number of unfilled job openings increased by 272,000 to a near-record 5.8 million open jobs.

One-year waivers assume a static economy and when combined with the current lookback period, allows states with booming economies to pretend that the economic situation three or more years ago is the same as the economic situation expected a year from now.

Food and Nutrition Service should revise the regulation to significantly reduce the waiver length, which would ensure that waivers reflect current economic conditions and account for an improving job market.

VI. REPORT WAIVERS TO CONGRESS

Federal law requires that when the Secretary approves waivers of the work requirement, he or she "report the basis" of those approvals to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. Food and Nutrition Service is not complying with this ongoing reporting requirement. Instead, the agency has interpreted the ongoing reporting requirement to require only a general report of how the regulations were initially written and adopted.

Food and Nutrition Service should report the basis of individual waiver approvals to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry, consistent with its statutory requirements.

VII. ELIMINATE CARRYOVER EXEMPTIONS

Federal law provides states with discretionary individual-level exemptions for able-bodied adults who would otherwise be subject to work requirements. The statute provides that the exemptions "in effect during the fiscal year" cannot "exceed 15 percent" of the able-bodied adults who are ineligible for food stamps due to not meeting the work requirement.

Although the language of the statute is clear that the exemptions cannot exceed this threshold, current regulations have inappropriately interpreted this language to mean that states earn new exemptions worth 15 percent of those able-bodied adults each year, with the ability to carryover unused exemptions year after year.

This carryover policy goes beyond the scope of the statute. In fact, an audit by the Office of Inspector General at the U.S. Department of Agriculture raised concerns about the carryover policy going beyond the scope of the law, noting that the auditors disagree with Food and Nutrition Service's "process of carrying over unused 15 percent exemptions indefinitely."

By fiscal year 2017, states had accumulated 6.4 million exemptions, which were worth nearly $1.1 billion in taxpayer-funded benefits. Under the statute, Food and Nutrition Service should have capped these exemptions at approximately 1.3 million, worth roughly $220 million.

Permitting states to carryover these exemptions from year to year has allowed them to bank the exemptions over time and then use far more exemptions in a given year than authorized by the statute. Ohio, for example, earned only 75,000 exemptions in 2016. Because it had accumulated a stockpile of exemptions, however, it was able to use 391,152 exemptions in 2016 – far more than authorized by the statute.

Food and Nutrition Service should revise the regulation to eliminate the policy of carrying over exemptions from year to year, consistent with the statute and Congressional intent.

VIII. EXPAND WORK REQUIREMENTS TO 50-YEAR-OLD ABLE-BODIED ADULTS

Federal law automatically exempts able-bodied adults from the work requirement if they are "over 50 years of age." Separate requirements for work registration apply to able-bodied adults who are "over the age of 15." But Food and Nutrition Service has interpreted the word "over" in these two provisions in different and conflicting ways. In the regulations concerning work registration, the agency interpreted "over the age of 15" to mean 16 years old or older, consistent with the plain meaning and common understanding of the term. But the agency interpreted "over" in a completely different way when it comes to the exemption for adults "over 50 years of age," which it interprets to mean 50 years old or older. Auditors from the Office of Inspector General at the U.S. Department of Agriculture have warned that these conflicting interpretations of the same word "do not seem reasonable." Indeed, Food and Nutrition Service officials admitted to auditors that they "made a conscious decision to interpret the statute in this manner" to reduce the number of able-bodied adults subject to the requirements "for the benefit of the SNAP recipients."

According to federal data, few of these able-bodied adults are currently working, despite having no disabilities keeping them from meaningful employment and no dependent children in the home. More than 69 percent of able-bodied 50-year-old childless adults do not work at all, while just 5 percent work full-time. Based on state experiences with work requirements for other able-bodied adults, expanding the work requirement to 50-year-old childless adults, consistent with the statute, would move tens of thousands of able-bodied adults from welfare to work and save taxpayers up to $350 million per year.

Food and Nutrition Service should revise the regulation to remove the exemption for 50-year-old able-bodied adults, which would bring the rule in line with statutory language, Congressional intent, and the agency's interpretation of the same terms in other contexts within the food stamp program.

The Trump administration should eliminate food stamp loopholes, increase program integrity, and protect resources for the truly needy

Although food stamps were designed to provide temporary help to those in need, loopholes and gimmicks in current regulations—along with lax program integrity enforcement—have undermined those goals. Every dollar spent on an individual who is not eligible, who is trafficking benefits, or who has significant financial resources of their own is a dollar that cannot fund nutrition assistance for the most vulnerable. The Trump administration to protect resources for the truly needy by ending these loopholes and strengthening program integrity.

I. ELIMINATE BROAD-BASED CATEGORICAL ELIGIBILITY

Federal law limits assets of food stamp recipients to preserve limited resources for the truly needy. The law also exempts an individual from these requirements if he or she receives benefits through the Temporary Assistance for Needy Families program by making them "categorically eligible" for the program.

As Food and Nutrition Service noted in its 1999 guidance on the issue, this provision intended to "deem eligibility for food stamp families already subject to an income and resource test" under cash welfare programs. The idea was that it was duplicative to check income and assets of families on food stamps who were already subject to stricter income and asset limits in cash welfare programs.

But current regulations create a loophole that has allowed states to expand categorical eligibility to virtually everyone. For example, states can print informational pamphlets or operate toll-free numbers that provide information about reducing out-of-wedlock pregnancies or encouraging the formation of two-parent families. By using TANF dollars to print these informational pamphlets or manage the toll-free numbers, states can claim that individuals receiving such information are receiving benefits through the TANF program. Worse yet, the regulations allowed states to grant categorical eligibility not just to those who *receive* benefits, but to anyone *authorized to receive* such benefits. As a result, individuals can become categorically eligible for food stamps without even receiving informational pamphlets or calling toll-free numbers, so long as states deem them authorized to receive such information.

In its 1999 guidance, Food and Nutrition Service explained that such programs "do not appear to meet the intent of categorical eligibility." It nevertheless allowed and even encouraged states to exploit this loophole, which has added millions of individuals to food stamps who would not otherwise qualify.

As a result, individuals with significant financial resources are eligible for and enrolled in food stamps. A recent report prepared for the U.S. Department of Agriculture found that most income-eligible households with financial resources that exceed the federal limit have more than $20,000 in countable assets. One in five had more than $100,000 in assets, including tens of thousands with more than $1 million in assets. Under states' broad-based categorical eligibility policies, these individuals can continue to qualify for food stamps.

Food and Nutrition Service should revise the regulation to limit categorical eligibility to families who receive actual payments or services from the Temporary Assistance for Needy Families program. Changing the regulation in this way would realign the categorical eligibility standards with Congressional intent and help move more families to self-sufficiency.

II. IMPLEMENT LOTTERY PROVISIONS

When Congress passed the 2014 Farm Bill, it aimed to crack down on food stamp abuse and preserve resources for the truly needy by removing individuals from the program when they had significant lottery or gambling winnings. Federal regulations had allowed individuals with large lottery jackpots to continue to qualify for food stamps, despite the fact that they had substantial resources. Leroy Fick, for example, won $2 million in Michigan's lottery, yet remained eligible for food stamps under federal regulations. He used his winnings to buy a new home and an Audi convertible, yet continued to rely on taxpayer-funded food stamps. Amanda Clayton won $1 million in the state lottery and continued to collect $200 per month in food stamp benefits. These abuses divert limited resources away from the truly needy, which is precisely what Congress was attempting to solve in the 2014 Farm Bill.

Although the Farm Bill was enacted in February 2014, Food and Nutrition Service delayed defining what constitutes "substantial" winnings and instructed states to not enforce the provision in the meantime. When it finally proposed

rules in December 2016, it set the threshold ten times higher than the federal asset limit. Under the proposed regulations, millionaire lottery winners could also come back into the program one month after being removed in most states. The proposed rules did not reflect Congressional intent and would have done little to reign in abuse.

In 2017, Food and Nutrition Service halted the proposed rules before implementation. The agency should revise the proposed regulation to realign the substantial winnings threshold with the program's resource limit and implement the reform as soon as possible.

III. RESTRICT THE NUMBER OF AUTHORIZED EBT USERS

Food stamp funds are loaded onto Electronic Benefit Transfer (EBT) cards, which operate largely like debit cards, with a declining balance as funds are used. This card—and its accompanying four-digit PIN—is all that is needed to utilize food stamp funds. Unfortunately, this process also allows for easy transfer of these funds in prohibited ways, such as trafficking the funds for drugs or cash.

Law enforcement officers frequently find EBT cards in the possession of questionable parties who do not match the name on the EBT card. Under current rules, those questionable parties can often say they are authorized users because they are "shopping" for the enrollee and there is little law enforcement can do about it.

To combat this fraud, Food and Nutrition Service should revise its regulations to restrict EBT use to only those who have been formally authorized to use the card. This list of authorized users should be limited in number and reported to the state agency administering the program. If cards are later found on or used by someone other than an authorized user, law enforcement or the agency will have grounds to pursue criminal or administrative misuse charges. This change will bring the food stamp program in line with other nutrition programs, including WIC.

IV. SHORTEN CERTIFICATION PERIODS

Although life circumstances change frequently and assistance was meant to be only temporary, current rules require states to create certification periods that are the longest period possible. The current regulations provide that households with no income—which make up roughly 37 percent of all households on the program—should have certification periods consistent with their circumstances and generally no shorter than three months. But states are putting most households into year-long certification. According to the most recent data, 98 percent of all households have a certification period of at least six months, while 73 percent have a period 12-months or longer.

Households with no income, particularly those with able-bodied adults, have frequent income fluctuations. But the current certification periods do not reflect those frequent changes. Food and Nutrition Service should revise its rules and administrative guidance to shorten the certification periods for these households. This would provide for more frequent checks on income and household composition, which would reduce overpayments and fraud.

V. REQUIRE COOPERATION WITH FRAUD INVESTIGATORS

Thousands of welfare fraud cases are opened each year, including food stamp fraud. Anti-fraud specialists are investigating issues ranging from vendor compliance, benefits trafficking, overpayments, and recovery of misspent funds. But these investigators are severely hampered in their work because current rules do not require individuals under investigation to cooperate with the investigation.

Because this basic cooperation is not a condition of participation in the program, many possible fraudsters simply ignore the investigators from the welfare office, which effectively denies the agency the opportunity to assess all the facts of the case to determine if there was wrongdoing. Food and Nutrition Service should issue new regulations and guidance requiring those under investigation for fraud to cooperate with investigators as a condition of continuing to receive taxpayer-funded benefits.