

Waivers Gone Wild

**CONGRESS MUST CRACK
DOWN ON FOOD
STAMP LOOPHOLES**

MAY 24, 2023

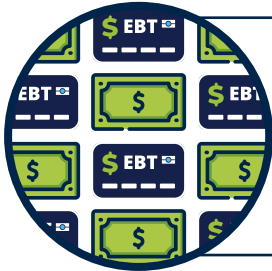
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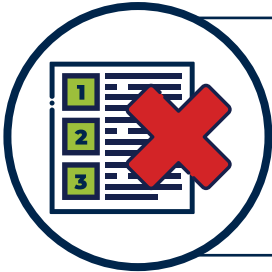
KEY FINDINGS



FOUR MILLION ABLE-BODIED ADULTS WITHOUT DEPENDENTS (ABAWDS) ARE ON FOOD STAMPS, WITH THREE-QUARTERS OF ABAWDS NOT WORKING AT ALL.



WHEN WORK REQUIREMENTS GO BACK INTO EFFECT IN JULY 2023, LESS THAN 30 PERCENT OF ABAWDS WILL BE SUBJECT TO WORK REQUIREMENTS DUE TO WAIVERS AND EXEMPTIONS.



STATES HAVE USED LOOPHOLES AND GIMMICKS TO WAIVE WORK REQUIREMENTS ENACTED BY CONGRESS, EVEN IN AREAS WITH RECORD-LOW UNEMPLOYMENT.



LESS THAN THREE PERCENT OF COUNTIES WITH WAIVERS HAVE UNEMPLOYMENT RATES AT OR ABOVE 10 PERCENT—THE STATUTORY THRESHOLD—AND 75 PERCENT ARE AT “FULL EMPLOYMENT.”



WITH NEARLY 10 MILLION OPEN JOBS—1.7 OPEN JOBS FOR EVERY JOBSEEKER—AMERICA NEEDS MORE ABLE-BODIED ADULTS TO MOVE FROM WELFARE TO WORK.

THE BOTTOM LINE:

CONGRESS SHOULD REIN IN WAIVERS GONE WILD TO HELP MOVE MILLIONS OF ABLE-BODIED ADULTS OUT OF DEPENDENCY AND OFF THE SIDELINES.

Overview

Despite nearly 10 million open jobs sitting unfilled nationwide, the number of able-bodied adults receiving food stamps remains near record-high levels.¹ Indeed, roughly four million ABAWDs are enrolled in the program—near a record high.²⁻⁴

Federal law requires ABAWDs to work, train, or volunteer at least part time to maintain program eligibility.⁵ These rules apply to non-pregnant adults, between the ages of 18 and 49, who are mentally and physically fit for employment, and have no dependent children at home.⁶

Unfortunately, the ABAWD work requirement has been suspended since the public health emergency began, causing a massive uptick in enrollment for many states.⁷ And while the public health emergency has finally ended and work requirements should return in July 2023, many states are still gaming the system to maximize enrollment.



States use loopholes and gimmicks to bypass work requirements

States have long used loopholes and gimmicks to waive commonsense work requirements in as many jurisdictions as possible. Congress intended for these waivers to be limited in nature, meant only for areas with unemployment rates above 10 percent, or that otherwise lacked suitable job opportunities for able-bodied adults.⁸

But in the final days of the Clinton administration, bureaucrats at the U.S. Department of Agriculture (USDA) issued new rules creating loopholes that allowed states to waive work requirements for millions of able-bodied adults, even during periods of economic growth.⁹⁻¹⁰ Three of the largest loopholes have allowed states to gerrymander areas in order to waive work requirements in as many jurisdictions as possible, rely on outdated data to justify waivers, and waive work requirements in areas with objectively low unemployment, as long as it is slightly above the national average.¹¹⁻¹² Making matters worse, the Obama administration actively pressured states into waiving the work requirement to keep as many able-bodied adults trapped in dependency as possible.¹³ The Biden administration is continuing that policy, with USDA “highly encourag[ing]” states to seek waivers and use exemptions to bypass the work requirement.¹⁴ **States report that they expect at least 70 percent of ABAWDs to be exempt from the work requirement even after the nationwide suspension ends.**¹⁵



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Even before the pandemic, these loopholes and gimmicks left most able-bodied adults on food stamps on the sidelines. A whopping 74 percent of ABAWDs did not work at all prior to the pandemic, while less than three percent worked full time.¹⁶

MOST ABLE-BODIED ADULTS ON FOOD STAMPS DO NOT WORK AT ALL

Work status among childless adult food stamp enrollees without disabilities between the ages of 18 and 49

NO WORK

73.8%

PART-TIME

23.3%

FULL-TIME

2.9%

Source: U.S. Department of Agriculture

Work requirements are wiped out by gerrymandering

Although federal law allows states to request waivers in specific areas with high unemployment, current rules allow states to combine counties, cities, and other jurisdictions together to form a single “area” for waiver purposes.¹⁷⁻¹⁹ This loophole has led states to abuse this flexibility by gerrymandering areas together to waive the work requirement for as many able-bodied adults as possible. Officials from multiple states have admitted that they request “waivers in as many parts of the state as possible” as a way to “minimize the areas” subject to the work requirement.²⁰ States also often rely on software or analyses prepared by left-wing advocacy groups, including the Center on Budget and Policy Priorities (CBPP), which are specifically designed to maximize the number of people states can exempt from the work requirement through waivers.²¹

In Minnesota, for example, state officials sought waivers for 35 different gerrymandered “regions” of nearly 165 ZIP Codes.²² But nearly half of those ZIP Codes did not independently qualify and could only be waived if gerrymandered with other areas.²³ State officials even reported that multiple waived jurisdictions had no unemployment.²⁴

In Oregon, state officials gerrymandered a group of 19 counties together for waiver purposes, despite the fact that just seven of those counties independently qualified due to their unemployment levels.²⁵ State officials reported unemployment rates as low as 3.2 percent—well below the national average at the time—in some waived counties during their chosen lookback period.²⁶



THIS LOOPHOLE HAS LED STATES TO ABUSE THIS FLEXIBILITY BY GERRYMANDERING AREAS TOGETHER TO WAIVE THE WORK REQUIREMENT FOR AS MANY ABLE-BODIED ADULTS AS POSSIBLE.

Similarly, Washington combined 37 of its 39 counties into a single “area” for waiver purposes.²⁷ This grouping suggests that Washington state has just two economic regions: two—but not all three—of the counties that make up the Seattle metropolitan area and the rest of the state. Nearly half of the counties in this gerrymandered area would not independently qualify for waivers.²⁸

States manipulate old data to get new waivers

Federal law limits waivers to areas that have unemployment rates above 10 percent or otherwise do not have a sufficient number of jobs.²⁹ This reflects a present-tense requirement, indicating that USDA may only waive work requirements based on current economic conditions. But Clinton-era regulations and Obama-era guidance reinstated by the Biden administration created an extended lookback period, allowing states to continue waiving work requirements long after any economic crisis has passed.³⁰⁻³¹



Federal law limits waivers to areas that have unemployment rates above 10 percent or otherwise do not have a sufficient number of jobs.



Under those rules, states can use unemployment data dating back as far as the period used to calculate labor surplus areas.³² For fiscal year 2023, the lookback period could date as far back as January 2020, allowing states to use data from three years ago—during the height of the pandemic and government-imposed lockdowns—to support waiver requests, even when that data has no connection to current economic conditions.³³

California wins the prize for using the oldest data, relying on data going as far back as August 2019—45 months ago.³⁴ But all states with active waivers relied on data from the peak of the pandemic in 2020, with many reaching as far back as the periods associated with government-imposed lockdowns in the early spring.³⁵ Some states, such as New Hampshire, even cherry-picked different lookback periods for gerrymandered groups in the same waiver request.³⁶

To put this in perspective, states are successfully using data from a time when the national unemployment rate was 14.7 percent to justify waivers when the unemployment rate sits a near-record-low 3.4 percent.³⁷

Federal regulations also give states the option to rely on the state’s eligibility for “extended” unemployment benefits to qualify for a waiver.³⁸ But eligibility for those extended benefits—meant for periods of high unemployment—need not be recent. Not a single state currently qualifies for extended unemployment benefits and most states stopped qualifying for those benefits by the end of 2020.³⁹ Nevertheless, most statewide waivers in effect today are based on those expired programs.⁴⁰

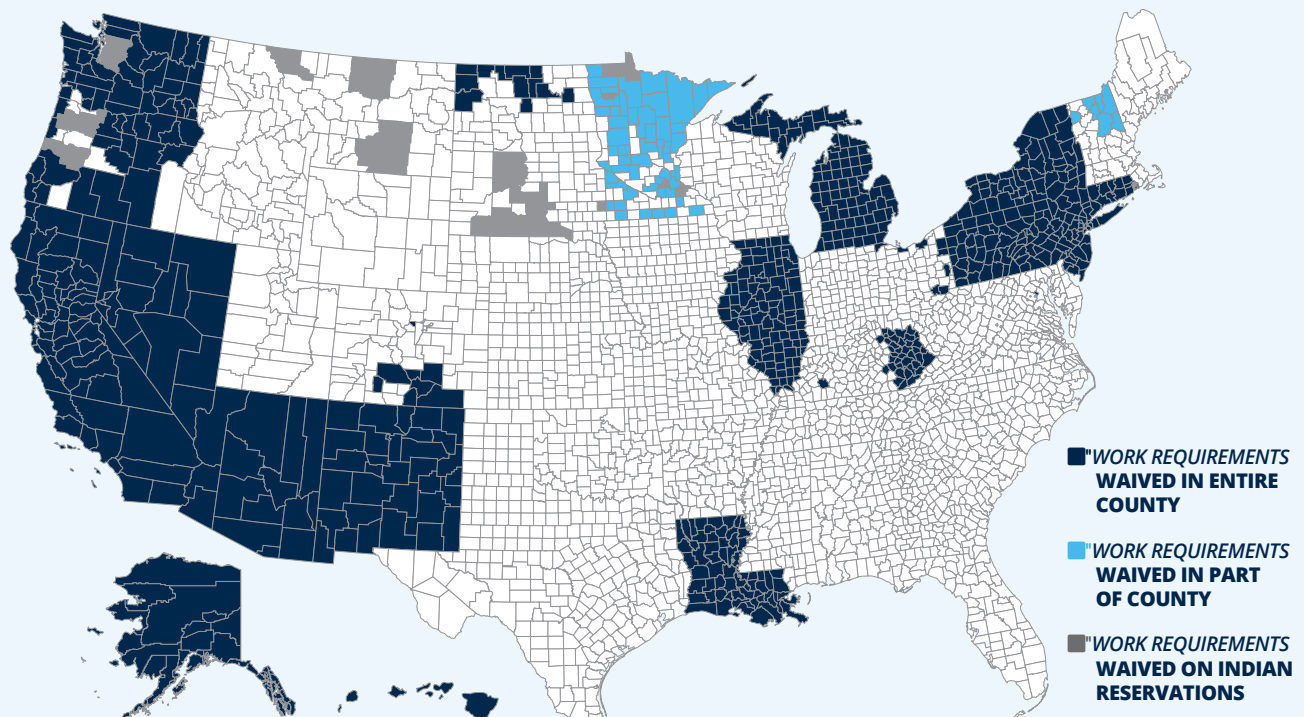
States waive work requirements in areas with low unemployment

The food stamp statute was designed to limit waivers to areas with an unemployment rate above 10 percent, or that otherwise lacked sufficient jobs.⁴¹ But during the Clinton administration, rules were adopted that created “alternative procedures,” allowing areas to qualify for a waiver if their local unemployment rate was 20 percent higher than the national average.⁴² This loophole does not rely on whether an area has sufficient jobs, and rather focuses on how an area’s unemployment rate is performing when compared to the national average.⁴³ Naturally, some areas of the country will always underperform the national unemployment rate, meaning they will always qualify for waivers, even during periods of high economic growth.⁴⁴ Consider that if today’s near-record-low unemployment rate persists, states will be eligible for waivers in any areas with unemployment rates above four percent—well below the level considered full employment.⁴⁵

Of the nearly 800 counties nationwide where work requirements are waived in whole or in part, just 20—less than three percent—have unemployment rates at or above the 10 percent statutory threshold.⁴⁶ A whopping 75 percent of those counties have unemployment rates below what the U.S. Department of Labor defines as “full employment.”⁴⁷⁻⁴⁸

Among the states waiving the work requirement entirely—those areas deemed so economically devastated not a single able-bodied adult on food stamps could be expected to find work—have near-record amounts of open jobs—nearly 1.3 open jobs for every jobseeker in their states.⁴⁹ Some waived states, such as Louisiana, have more than two open jobs for every jobseeker.⁵⁰

LESS THAN 30 PERCENT OF ABAWDs ON FOOD STAMPS WILL BE SUBJECT TO WORK REQUIREMENTS





WAIVER STATUS: **STATEWIDE**

3.4%

UNEMPLOYMENT
NEAR A RECORD LOW

2.1%

UNEMPLOYMENT
IN SOME WAIVED COUNTIES

197,000

OPEN JOBS
*1.5 JOBS FOR
EVERY JOBSEEKER*

**NO COUNTIES HAVE
UNEMPLOYMENT
RATES ABOVE
10 PERCENT—
THE STATUTORY
THRESHOLD TO
QUALIFY FOR
WAIVERS.**

80%

**OF WAIVED
COUNTIES ARE
AT FULL
EMPLOYMENT**

**BASED CURRENT
WAIVER ON THE
FACT THAT ARIZONA
PREVIOUSLY QUALIFIED
FOR “EXTENDED”
UNEMPLOYMENT
BENEFITS. THOSE
BENEFITS EXPIRED IN
DECEMBER 2020.**

CALIFORNIA — STATE SNAPSHOT



WAIVER STATUS: **STATEWIDE**

4.5%

UNEMPLOYMENT
NEAR A RECORD LOW

2.8%

UNEMPLOYMENT
IN SOME WAIVED COUNTIES

860,000

OPEN JOBS
1.1 JOBS FOR
EVERY JOBSEEKER

JUST FIVE COUNTIES
HAVE UNEMPLOYMENT
RATES ABOVE
10 PERCENT—
THE STATUTORY
THRESHOLD TO
QUALIFY FOR
WAIVERS.

**NEARLY
HALF**
OF WAIVED
COUNTIES ARE
AT FULL
EMPLOYMENT

BASED CURRENT
WAIVER ON DATA
AS OLD AS
AUGUST 2019.



WAIVER STATUS: **STATEWIDE**

4.2%

UNEMPLOYMENT
NEAR A RECORD LOW

2.1%

UNEMPLOYMENT
IN SOME WAIVED COUNTIES

464,000

OPEN JOBS
*1.6 JOBS FOR
EVERY JOBSEEKER*

**NO COUNTIES HAVE
UNEMPLOYMENT
RATES ABOVE
10 PERCENT—
THE STATUTORY
THRESHOLD TO
QUALIFY FOR
WAIVERS.**

**MORE THAN
85%
OF WAIVED
COUNTIES ARE
AT FULL
EMPLOYMENT**

**BASED CURRENT
WAIVER ON THE
FACT THAT ILLINOIS
PREVIOUSLY QUALIFIED
FOR “EXTENDED”
UNEMPLOYMENT
BENEFITS. THOSE
BENEFITS EXPIRED IN
SEPTEMBER 2021.**



WAIVER STATUS: **STATEWIDE**

3.6%

UNEMPLOYMENT
NEAR A RECORD LOW

2.3%

UNEMPLOYMENT
IN SOME WAIVED COUNTIES

153,000

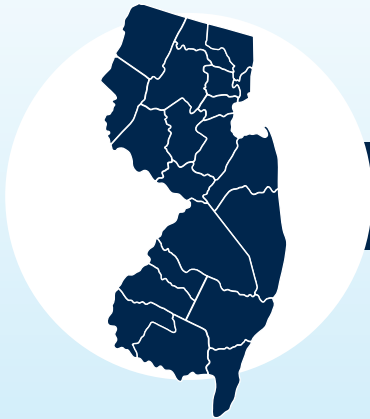
OPEN JOBS
*TWO JOBS FOR
EVERY JOBSEEKER*

**NO PARISHES HAVE
UNEMPLOYMENT
RATES ABOVE
10 PERCENT—
THE STATUTORY
THRESHOLD TO
QUALIFY FOR
WAIVERS.**

**MORE THAN
95%
OF WAIVED
PARISHES ARE
AT FULL
EMPLOYMENT**

**BASED CURRENT
WAIVER ON THE FACT
THAT LOUISIANA
PREVIOUSLY QUALIFIED
FOR “EXTENDED”
UNEMPLOYMENT
BENEFITS. THOSE
BENEFITS EXPIRED IN
JANUARY 2021.**

NEW JERSEY — STATE SNAPSHOT



WAIVER STATUS: **STATEWIDE**

3.5%

UNEMPLOYMENT
NEAR A RECORD LOW

3.1%

UNEMPLOYMENT
IN SOME WAIVED COUNTIES

246,000

OPEN JOBS
*1.4 JOBS FOR
EVERY JOBSEEKER*

**NO COUNTIES HAVE
UNEMPLOYMENT
RATES ABOVE
10 PERCENT—
THE STATUTORY
THRESHOLD TO
QUALIFY FOR
WAIVERS.**

**MORE THAN
90%
OF WAIVED
COUNTIES ARE
AT FULL
EMPLOYMENT**

**BASED CURRENT
WAIVER ON THE FACT
THAT NEW JERSEY
PREVIOUSLY QUALIFIED
FOR “EXTENDED”
UNEMPLOYMENT
BENEFITS. THOSE
BENEFITS EXPIRED
IN APRIL 2022.**



WAIVER STATUS: **STATEWIDE**

4.0%

UNEMPLOYMENT
NEAR A RECORD LOW

2.4%

UNEMPLOYMENT
IN SOME WAIVED COUNTIES

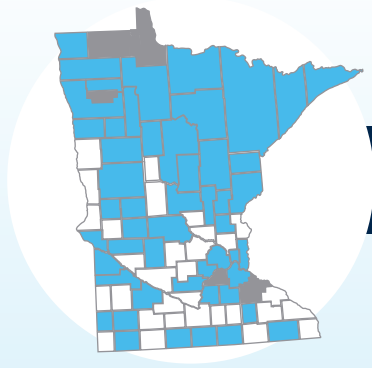
430,000

OPEN JOBS
*1.1 JOBS FOR
EVERY JOBSEEKER*

**NO COUNTIES HAVE
UNEMPLOYMENT
RATES ABOVE
10 PERCENT—
THE STATUTORY
THRESHOLD TO
QUALIFY FOR
WAIVERS.**

**NEARLY
97%
OF WAIVED
COUNTIES ARE
AT FULL
EMPLOYMENT**

**BASED CURRENT
WAIVER ON THE FACT
THAT NEW YORK
PREVIOUSLY QUALIFIED
FOR “EXTENDED”
UNEMPLOYMENT
BENEFITS. THOSE
BENEFITS EXPIRED IN
SEPTEMBER 2021.**



WAIVER STATUS: **PARTIAL**

partially waived in 56 of Minnesota's 86 counties

2.8%

UNEMPLOYMENT
NEAR A RECORD LOW

2.5%

UNEMPLOYMENT
IN SOME WAIVED COUNTIES

179,000

OPEN JOBS
TWO JOBS FOR
EVERY JOBSEEKER

NO COUNTIES HAVE
UNEMPLOYMENT
RATES ABOVE
10 PERCENT—
THE STATUTORY
THRESHOLD TO
QUALIFY FOR
WAIVERS.

NEARLY
80%
OF WAIVED
COUNTIES ARE
AT FULL
EMPLOYMENT

RELIED ON DATA AS
OLD AS SEPTEMBER
2020 TO SUPPORT
THE REQUEST.

BECAUSE MANY OF
THE COUNTIES
WOULDN'T QUALIFY,
MN SOUGHT
WAIVERS BY
ZIP CODE.

GERRYMANDERED
AREAS TO MAXIMIZE
WAIVER—NEARLY
HALF OF THE WAIVED
ZIP CODES DON'T
QUALIFY WITHOUT
GERRYMANDERING.

INCLUDES
MULTIPLE
ZIP CODES
THAT THE
STATE REPORTS
HAVE ZERO
UNEMPLOYMENT.

The next horizon in waiver abuse

Faced with near-record-low unemployment levels, states have begun working with liberal advocacy groups like CBPP to prepare new ways to abuse the waiver process. This should come as no surprise, as Deputy Undersecretary Stacy Dean—who oversees the food stamp program and unilaterally and unlawfully implemented the most expensive food stamp expansion in program history—spent most of her career at CBPP urging states to use loopholes and gimmicks to bypass the work requirement and lobbying Congress to repeal the 1996 welfare reform law.⁵¹⁻⁵²

In Minnesota, for example, state officials report that they work with CBPP on their waiver requests.⁵³ In 2023, recognizing that many counties could not qualify for waivers even with numerous loopholes and gimmicks still in place, the Minnesota Department of Human Services requested waivers for specific gerrymandered groupings of ZIP Codes.⁵⁴ However, the U.S. Department of Labor does not produce ZIP Code-level unemployment data.

Faced with no data to support their request, Minnesota officials simply created their own data out of thin air.⁵⁵ Those bureaucrats used Census survey responses from 2016-2020 to manipulate the U.S. Department of Labor’s county-level data to justify their waiver.⁵⁶



FACED WITH NO DATA TO SUPPORT THEIR REQUEST, MINNESOTA OFFICIALS SIMPLY CREATED THEIR OWN DATA OUT OF THIN AIR.

Work requirements work

When work requirements were implemented in the 1990s, millions of able-bodied adults moved from welfare to work, rapidly growing the economy.⁵⁷ Analyses of state-level implementation of work requirements in food stamps have reached similar conclusions.⁵⁸⁻⁶³

When food stamp work requirements were implemented at the state level, able-bodied adults left welfare in record numbers.⁶⁴⁻⁶⁹ Those able-bodied adults returned to work in more than 1,000 diverse industries, touching virtually every corner of the economy.⁷⁰⁻⁷¹ Their incomes more than doubled within a year and tripled within two years.⁷²⁻⁷⁶ Better still, those higher incomes more than offset lost welfare benefits, leaving them much better off financially.⁷⁷⁻⁸¹



WHEN FOOD STAMP WORK REQUIREMENTS WERE IMPLEMENTED AT THE STATE LEVEL, ABLE-BODIED ADULTS LEFT WELFARE IN RECORD NUMBERS.

THE BOTTOM LINE: Congress should rein in waivers gone wild to help move millions of able-bodied adults out of dependency and off the sidelines.

Commonsense work requirements can help move millions of able-bodied adults out of dependency and off the sidelines, bolstering the economy and helping fill millions of open jobs nationwide. But those work requirements are only successful when actually implemented and enforced.

States—with assistance from rogue federal bureaucrats—have used loopholes and gimmicks to bypass work requirements for more than 20 years. It is beyond time for Congress to step in and close these regulatory loopholes that violate both the letter and the spirit of the 1996 welfare reform law. Congress should simply eliminate these waivers entirely.



Commonsense work requirements can help move millions of able-bodied adults out of dependency and off the sidelines, bolstering the economy and helping fill millions of open jobs nationwide.



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