

March 3, 2020

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 20-18

This letter provides County Welfare Departments (CWDs) with guidance on the use of discretionary exemptions as a result of a Final Rule issued by the United States Department of Agriculture regarding the Supplemental Nutrition Assistance Program, known as CalFresh in California, time limit for Able-Bodied Adults Without Dependents (ABAWDs). This letter details temporary changes to California's discretionary exemption policy as a result of the Final Rule and provides guidance on the use of discretionary exemptions for CWDs implementing the ABAWD time limit between April 1, 2020 and September 30, 2020. The guidance in this letter is effective April 1, 2020.



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DIRECTOR

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DEPARTMENT OF SOCIAL SERVICES
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GAVIN NEWSOM
GOVERNOR

March 3, 2020

ALL COUNTY LETTER NO. 20-18

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CALFRESH PROGRAM SPECIALISTS
ALL CONSORTIA PROGRAM REPRESENTATIVES
ALL QUALITY CONTROL COORDINATORS

SUBJECT: CALFRESH DISCRETIONARY EXEMPTION POLICY FOR
COUNTIES IMPLEMENTING THE ABLE-BODIED ADULT
WITHOUT DEPENDENTS (ABAWD) TIME LIMIT FROM APRIL 1,
2020 THROUGH SEPTEMBER 30, 2020

REFERENCE: [TITLE 7 CODE OF FEDERAL REGULATIONS \(CFR\) 273.24; ALL COUNTY LETTER \(ACL\) 19-93 AND 19-60; ALL COUNTY INFORMATION NOTICE \(ACIN\) I-72-18 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM – ABLE-BODIED ADULTS WITHOUT DEPENDENTS DISCRETIONARY EXEMPTION TOTALS FOR FISCAL YEAR 2019; MANUAL OF POLICIES AND PROCEDURES \(MPP\) SECTIONS 63-407.21, 63-407.53, 63-408.61, AND 63-410](#)

This letter provides County Welfare Departments (CWDs) with guidance on the use of discretionary exemptions as a result of a Final Rule issued by the United States Department of Agriculture (USDA) regarding the Supplemental Nutrition Assistance Program (SNAP), known as CalFresh in California, time limit for Able-Bodied Adults Without Dependents (ABAWDs). This letter details temporary changes to California's discretionary exemption policy as a result of the Final Rule and provides guidance on the use of discretionary exemptions for CWDs implementing the ABAWD time limit between April 1, 2020 and September 30, 2020. The guidance in this letter is effective April 1, 2020.

For the purposes of this letter “implementing” counties are those counties not under waiver of the ABAWD time limit rule during the given period. There are currently six counties implementing the ABAWD time limit. Beginning April 1, 2020, CDSS

anticipates 34 additional counties to begin implementing the time limit along with the six existing implementing counties.

Background

The USDA published the Final Rule, *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults without Dependents* on December 5, 2019 (Final Rule).

Under current SNAP regulations, all ABAWDs subject to the time limit are eligible to no more than three full months of CalFresh benefits in a 36-month period, unless they are exempt from the time limit or are satisfying the ABAWD work requirement.

The Final Rule limits the conditions under which the Food and Nutrition Service (FNS) will waive the time limit in areas with high unemployment when requested by states. Changes to time limit waiver criteria are effective April 1, 2020. In addition, the Final Rule limits states' ability to carry over unused discretionary exemptions, previously known as "percentage exemptions" or "15 percent exemptions". Changes to discretionary exemptions are effective October 1, 2020.

This letter focuses on temporary changes to California's discretionary exemption policy as a result of the Final Rule. The guidance provided in this letter applies between April 1, 2020 and September 30, 2020.

Because FNS has not issued complete Final Rule implementation guidance, the CDSS will provide additional details regarding the impact on California's long-term discretionary exemption policy in the coming months. Guidance regarding the new waiver criteria will be released under separate cover.

As a reminder, federal discretionary exemptions are only available to individuals at risk of losing federal SNAP benefits due to the time limit. Individuals receiving state-funded benefits under the California Food Assistance Program (CFAP) are not eligible to receive a federal discretionary exemption. California provides a state-funded equivalent to federal discretionary exemptions for CFAP recipients who are at risk of losing CFAP benefits due to the time limit. Information about state-funded discretionary exemptions is provided later in this letter.

Note that the guidance provided in this letter differs from previous and future discretionary exemption policy in recognition of the unique conditions created by the Final Rule. The discretionary exemption policy outlined in this letter will not be used after October 1, 2020.

Discretionary Exemption Policy Overview

Federal law provides that each state be allotted a number of individual exemptions equal to a percentage of the state's annual SNAP caseload that is subject to the

ABAWD time limit. Effective FFY 2020, the Agriculture Improvement Act of 2018 reduced the number of discretionary exemptions from 15 percent of covered individuals to 12 percent of covered individuals.

Discretionary exemptions allow states to extend SNAP eligibility to ABAWDs who would otherwise be ineligible. Each exemption is equal to one month of SNAP benefits for one ABAWD subject to the time limit. Only states who do not qualify for a statewide waiver of the time limit each year accrue discretionary exemptions and the number of accrued discretionary exemptions is based only on the portion of the SNAP caseload that is subject to the time limit. Under previous rules, states could “carryover” unused discretionary exemptions from one fiscal year to the next indefinitely.

The Final Rule establishes significant changes to the carryover of discretionary exemptions. The Final Rule eliminates any remaining discretionary exemption carryover effective October 1, 2020 and limits the number of discretionary exemptions that a state can carryover in the future to 12 percent of the SNAP caseload subject to the time limit in the previous federal fiscal year (FFY). The USDA will make the first discretionary exemption adjustment as a result of the Final Rule for FFY 2021 which begins October 1, 2020. States can use currently available discretionary exemptions until September 30, 2020.

The Final Rule does not change a state’s ability to determine when to provide a discretionary exemption to an individual ABAWD. The flexibility to provide available discretionary exemptions to individual ABAWDs remains the same. Though, the limitation on carryover means that if a state does not provide an allocated discretionary exemption to an individual ABAWD within two years of accrual, the state will lose that discretionary exemption forever.

California has over 850,000 discretionary exemptions in carryover that have accrued over time. Effective October 1, 2020, the Final Rule eliminates any remaining discretionary exemption carryover. Under the Final Rule, all of California’s currently available discretionary exemptions must be used by September 30, 2020 or they will be eliminated come October 1, 2020.

The CDSS has determined that the best course of action is to use as many discretionary exemptions as needed by September 30, 2020 to mitigate the harm of the Final Rule on CalFresh recipients. Therefore, CWDs implementing the time limit between April 1, 2020 and September 30, 2020 will receive the following:

Initial Discretionary Exemption Allocation: an initial allocation of discretionary exemptions equal to two months of benefits for every CalFresh recipient who is potentially an ABAWD subject to the time limit and not satisfying the work requirement. This allocation must be used between April 1, 2020 and May 31, 2020.

Second Discretionary Exemption Allocation: a second allocation of discretionary exemptions based on the number of discretionary exemptions remaining after the initial allocation is granted. The remaining balance of any unused discretionary exemptions remaining will be divided among CWDs implementing the time limit based on each county's share of the statewide caseload of ABAWDs subject to the time limit. The second allocation must be used between June 1, 2020 and September 30, 2020.

Initial Discretionary Exemption Allocation: Individual Allocation Guidelines

Between April 1, 2020 and May 31, 2020, all CWDs implementing the time limit will apply a discretionary exemption to every CalFresh recipient who is potentially an ABAWD subject to the time limit and not satisfying the work requirement. The number of discretionary exemptions granted to each CWD will be equal to the number of potential ABAWDs subject to the time limit and not satisfying the work requirement for the months of April and May. A discretionary exemption may be provided to individuals who would otherwise be CalFresh eligible if it wasn't for the ABAWD time limit.

This approach is intended to maximize California's use of available discretionary exemptions statewide, mitigate client harm by postponing discontinuances due to the ABAWD time limit, and provide CWDs time to screen potential ABAWDs for an exemption from the time limit. This approach will be implemented statewide based on a batch process developed in partnership with the Statewide Automated Welfare System (SAWS) consortia.

Once the CWD has determined that an ABAWD qualifies for an exemption, no further discretionary exemptions can be applied to that ABAWD so long as they remain exempt. Similarly, if the CWD determines that the ABAWD is fulfilling the work requirement, then discretionary exemptions cannot continue to be applied to that ABAWD.

Because California has chosen to use as many discretionary exemptions as needed by September 30, 2020, ahead of that date discretionary exemptions may be provided before an individual ABAWD subject to the time limit uses their three countable months of benefits.

County by County Allocation Methodology

For FFY 2020, California had a total discretionary exemption allocation of 857,733, which includes discretionary exemptions carried over from previous fiscal years and 6,768 new discretionary exemptions accrued in FFY 19. Between October 1, 2019 and March 31, 2020 these 857,733 discretionary exemptions are available to the six counties implementing the time limit under California's current waiver (Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara.)

The number of discretionary exemptions estimated to be available as of April 1, 2020 is 848,412. This estimate is based on actual usage between October 1, 2019 and December 31, 2019 and projected usage between January 1, 2020 and March 31, 2020 by the six counties currently implementing the time limit. The number of discretionary exemptions available statewide as of April 1, 2020 is anticipated to be enough to provide all potential ABAWDs subject to the time and not satisfying the work requirement a discretionary exemption for at least two months.

Second Discretionary Exemption Allocation: Individual Allocation Guidelines

Before June 1, 2020, CWDs implementing the time limit will be provided a second allocation of discretionary exemptions. The second allocation will be based on the number of discretionary exemptions remaining after the initial allocation is granted and any unused discretionary exemptions have been recouped. The remaining balance will be divided among CWDs implementing the time limit based on each county's share of the statewide caseload of ABAWDs subject to the time limit. The second allocation of discretionary exemptions must be used by September 30, 2020. A letter will be issued before June 1, 2020 with county-by-county allocations of the remaining discretionary exemptions.

Between June 1, 2020 and September 30, 2020, CWDs will have flexibility in determining how they will provide this second allocation of discretionary exemptions to individual CalFresh recipients who are ABAWDs subject to the time limit and not satisfying the work requirement. The CWDs are encouraged to establish local policies and procedures that maximize the use of these discretionary exemptions by September 30, 2020. This letter outlines statewide allocation guidelines to support the development of local policies and procedures.

California's 1,2,3 Approach

The CDSS, in partnership with stakeholders, has developed the "1,2,3 Approach" to serving ABAWDs. This approach provides a framework for overall implementation of the time limit. It also plays a critical role in the individual allocation of discretionary exemptions as it emphasizes first effectively screening for exemptions from the time limit and second engaging ABAWDs subject to the time limit to find work or participate in qualifying work activities, before providing a discretionary exemption.

1. Assess: Effectively Screen for Exemptions

Because many individuals may face barriers to employment, a portion of the potential ABAWD population may be exempt from the time limit. Counties must properly screen all potential ABAWDs for an exemption from the ABAWD time limit at application, periodic report, and recertification. Counties should utilize information already available in the case record and conduct individualized assessments to determine if an individual meets the criteria for an exemption from the ABAWD time limit. For more information on ABAWD time limit exemptions refer to [ACL 19-93](#).

2. Engage: Engage ABAWDs to Find Work or Participate in Qualifying Work Activities

If it is determined that an individual does not meet the criteria for an exemption from the ABAWD time limit and is not currently satisfying the ABAWD work requirement, the CWD should engage the individual to support them in finding work and/or participating in qualifying work activities. Engagement may include a referral to local workforce partners, such as America's Job Centers of California (AJCC), CalFresh E&T, volunteer opportunities, or other training and education programs. Counties may send the client additional information by mail or contact the client via phone or electronic means to encourage them to contact the county for assistance in satisfying the ABAWD work requirement. For more information on ways to satisfy the ABAWD work requirement and ABAWD engagement activities refer to [ACL 19-93](#).

3. Support: Support ABAWDs in Maintaining CalFresh Food Assistance

Prior to discontinuance, when an individual does not qualify for an exemption from the ABAWD time limit, is not satisfying the ABAWD work requirement, and has used their three countable months of benefits, the CWD may provide a discretionary exemption to maintain food assistance, if the individual meets criteria as determined by each county. Use of a discretionary exemption may allow clients and counties additional time to engage in work or participate in qualifying work activities.

While California's 1,2,3 approach was established before the Final Rule was issued, the driving principles continue to apply and CWDs are highly encouraged to assess and engage individuals before providing a discretionary exemption. Contrary to step 3, solely for the period of April 1, 2020 to May 31, 2020, CWDs should not wait until the ABAWD has used their three countable months of benefits before applying a discretionary exemption.

Tracking Discretionary Exemptions: STAT 47 Reminders

All CWDs implementing the time limit are required to track the number of discretionary exemptions that have been provided to individual ABAWDs. Discretionary exemption tracking is always required and is not unique to implementation of the Final Rule. All counties implementing the time limit must track the number of discretionary exemptions provided to individual ABAWDs.

County-by-county utilization of discretionary exemptions are tracked via the SAWS and reported to CDSS on the quarterly STAT 47 Report - Part I, Entry 3.

Please note that the number of "ABAWDs exempt under the discretionary criteria during the quarter" reported by each CWD implementing the time limit is a duplicate count. Each CWD must count each discretionary exemption granted per month in a given

quarter. An individual ABAWD subject to the time limit may receive a discretionary exemption for multiple months in a quarter.

Example: If 300 ABAWDs subject to the time limit each receive a discretionary exemption in each month of a given quarter, the county would enter 300 per month and 900 for the quarter.

ABAWDs subject to the time limit who are granted a discretionary exemption are temporarily excused from satisfying the work requirement (i.e. for one month). ABAWDs excused from satisfying the work requirement when provided a discretionary exemption remain subject to ABAWD time limit and must satisfy the work requirement, qualify for an exemption, or reside in a waiver area to maintain CalFresh eligibility beginning the month following the last month in which the discretionary exemption was provided.

Because individuals that are provided a discretionary exemption are still considered ABAWDs subject to the time limit, they must be included when entering ABAWD data in “Part A – Work Registrant and ABAWD Information” and “Part F - Point in Time Work Registrant and ABAWD Counts” of the STAT 47 report. Data must be entered for all months that an individual ABAWD subject to the time limit is provided a discretionary exemption.

State Funded Discretionary Exemptions

Generally, CalFresh eligibility rules must be applied to recipients of state-funded CFAP benefits. Per [Manual of Policies and Procedures \(MPP\) 63-411.2](#), CFAP recipients are subject to the ABAWD time limit rules, including rules pertaining to the provision of discretionary exemptions. However, individuals receiving state funded CFAP benefits cannot be provided a federal discretionary exemption. Individuals at risk of losing state-funded CFAP benefits due to the ABAWD time limit may be provided a state-funded discretionary exemption.

Between April 1, 2020 and May 31, 2020 all CWDs implementing the time limit will provide a state-funded discretionary exemption to every CFAP recipient who is potentially an ABAWD subject to the time limit and not satisfying the work requirement. The number of state-funded discretionary exemptions granted to each county will be equal to the number of CFAP recipients that are potential ABAWDs subject to the time limit and not satisfying the work requirement for the months of April and May 2020. As with federal discretionary exemptions, this approach will be implemented statewide based on a batch process developed in partnership with the SAWS consortia.

Before June 1, 2020, CWDs implementing the time limit will be provided an allocation of state-funded discretionary exemptions. This allocation will be based on each county's share of the statewide caseload of ABAWDs subject to the time limit that are also CFAP recipients. As with the federal discretionary exemptions, CWDs will have flexibility in determining how they will provide this second allocation of state-funded discretionary

exemptions to individual CFAP recipients and are encouraged to maximize their use by September 30, 2020. This second allocation of state-funded discretionary exemptions must be used by September 30, 2020.

A letter will be issued before June 1, 2020 with county-by-county allocations of state-funded discretionary exemptions.

Like federal discretionary exemptions, CDSS will track monthly utilization of state-funded discretionary exemptions. To enable monthly tracking, the CDSS is requesting that CWDs provide a monthly report of their utilization of state-funded discretionary exemptions. Before April 1, 2020 a template report will be sent to all CWDs implementing the time limit. This report must be sent to CalFreshPolicy@dss.ca.gov no later than the 10th day of the month following the month represented in the report.

Note, state-funded discretionary exemptions provided to CFAP recipients must not be included in the STAT 47 report.

Federal and State Funded Discretionary Exemption Noticing

When an ABAWD subject to the time limit is provided a discretionary exemption, the individual must be provided a notice informing them that a discretionary exemption has been provided, that the discretionary exemption is temporary, and the end date of the discretionary exemption. The *CalFresh Discretionary Exemption for ABAWDs* (CF 377.11D) must be used for this purpose. The CF 377.11D informs the CalFresh recipient of the temporary nature of the discretionary exemption and clearly indicates the end date of the discretionary exemption so that the individual ABAWD is aware of the requirements for maintaining benefits after the end date of the discretionary exemption.

The CF 377.11D must be used anytime a discretionary exemption is provided to an individual ABAWD. This noticing requirement is not unique to implementation of the Final Rule.

Discretionary Exemptions & CalFresh Sanctions

A federal or state funded discretionary exemption cannot be granted during a CalFresh sanction. As a reminder, [MPP 63-407.53](#) and [MPP 63-408.61](#) specify that when an individual receives a CalFresh disqualification for failing to comply with a CalFresh Employment and Training (E&T) assignment (only in a county operating a mandatory E&T program), voluntarily quitting a job, or reducing hours worked to less than 30 per week without good cause, that individual may not re-establish eligibility until the disqualification ends or the individual qualifies for one of the CalFresh work registration exemptions listed at [MPP Section 63-407.21](#).

Discretionary Exemption Use If an Injunction Is Granted

A lawsuit has been filed against USDA regarding the Final Rule. While the outcome of that lawsuit is unknown at this time, if an injunction is granted, implementation of the Final Rule may be temporarily or indefinitely postponed. If an injunction is granted, the CDSS will issue additional guidance and will revert to time limit and discretionary exemption policy issued before publication of the Final Rule.

That said, if an injunction is granted for the months of April and May, a discretionary exemption will be applied to all ABAWDs subject to the time limit and not satisfying the work requirement residing in the six counties currently implementing the time limit (Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara.) This is because these six counties will need to continue implementing the time limit under California's current time limit waiver (before publication of the Final Rule this waiver was approved for the time period of September 1, 2019 to August 31, 2020.) The six counties will utilize the batch process developed in partnership with the SAWS consortia and described in this letter. If an injunction is still in place beginning June 1, 2020, the six counties will provide discretionary exemptions manually as they had been before publication of the Final Rule.

Quality Control

Discretionary exemptions, applied on an individual basis, must be properly documented in the case file prior to Quality Control sample selections.

If you have any questions regarding this letter, please contact the CalFresh Policy Bureau at (916) 651-8047.

Sincerely,

Original Document Signed By:

JENNIFER HERNANDEZ
Deputy Director
Family Engagement and Empowerment Division