



Billing Code: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

RIN 0584-AE57

Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults without Dependents; Advance Notice of Proposed Rulemaking

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Food and Nutrition Act of 2008, as amended (the Act), limits the amount of time an able-bodied adult without dependents (ABAWD) can receive Supplemental Nutrition Assistance Program (SNAP) benefits to 3 months in a 36-month period, unless the individual is working and/or participating in a work program half-time or more, or participating in workfare. The Act exempts individuals from the time limit for several reasons, including age, unfitness for work, or having a dependent child. The Act also provides State agencies with flexibility to request a waiver of this time limit if unemployment is high or the area does not have a sufficient number of jobs to provide employment. Moreover, the Act gives States discretion to exempt 15 percent of the individuals who would otherwise be subject to the time limit.

The Department of Agriculture's (Department's) policy goal is to address food insecurity by providing supplemental food assistance and helping able-bodied SNAP participants move out of poverty and into work in a manner that is consistent with the structure and the intent of the Act.

As described in Sections 2 and 6(d) of the Act, the goals of the program are to promote food

security, self-sufficiency, well-being, and economic mobility. In this Notice, the Department is seeking public input to inform potential policy, program, and regulatory changes to more consistently advance this goal.

DATES: Written comments must be received on or before [insert date 45 days after date of publication in the Federal Register] to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this advanced notice of proposed rulemaking. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Send comments to SNAP Program Development Division, Food and Nutrition, Services, USDA, 3101 Park Center Drive, Room 812, Alexandria, Virginia 22302.
- All written comments submitted in response to this advanced notice of proposed rulemaking will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Sasha Gersten-Paal, Chief, Certification Policy Branch, SNAP Program Development Division, Food and Nutrition, Services, USDA, 3101 Park Center Drive, Room 812, Alexandria, Virginia 22302 or (703) 305-2507 during regular business hours 8:30 a.m. to 5 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Need To Issue This Notice

SNAP offers nutrition assistance to millions of low-income individuals and families. SNAP is the largest federal nutrition assistance program in the United States. As a result of the Great Recession, the national unemployment rate peaked at 9.7 percent for Fiscal Year (FY) 2010. As with other recessions, there was a lag between the time that the national unemployment rate began to decrease and the time that the national poverty rate and SNAP participation began to decrease. SNAP participation peaked at an average of 47.6 million recipients per month in FY 2013. During that time period, the national average unemployment rate was 7.6 percent. In FY 2017, the program served an average of 42.1 million recipients per month, and the national average unemployment rate was 4.5 percent. As Americans get back to work, it is appropriate to review how SNAP can better promote work and self-sufficiency so that fewer Americans need assistance from the program.

The Department is soliciting public comments on potential policy, program, and regulatory changes that could advance its goal of addressing food insecurity by helping able-bodied SNAP recipients obtain and maintain employment and aligning program regulations with the President's Budget proposals related to ABAWDs. The Department will consider comments received through this Notice to help inform development of potential policy, program, or regulatory changes.

The Department seeks input on potential regulatory or other changes that might better support States in accurately identifying ABAWDs subject to the time limit and providing meaningful

opportunities for them to move towards self-sufficiency. The Department is also asking whether changes should be made to the existing process by which State agencies request to waive the ABAWD time limit, the information and data States are required to provide in supporting the waiver request, and the Department's implementation and duration of the waiver approval. If so, the Department is asking for information on changes that would better support the Department's goals. Moreover, the Department seeks input on 15 percent exemptions and how they may be better used to support State efforts to serve ABAWDs. The Department is receptive to suggested changes that could be made within the current statutory authority as well as changes that may require new or revised statutory authority. The Department believes that this public comment can inform the development of any rule that may ultimately be proposed.

References – the following references may be useful to help inform those wishing to provide comments:

- (1) Section 6(d) and section 6(o) of the Food and Nutrition Act of 2008, as amended
- (2) Code of Federal Regulations Title 7, Parts 273.7 and 273.24
- (3) Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Proposed Rule, 64 Fed. Reg. 70920 (December 17, 1999). Available at:
<https://www.federalregister.gov/documents/1999/12/17/99-32527/food-stamp-program-personal-responsibility-provisions-of-the-personal-responsibility-and-work>
- (4) Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Final Rule, 66 Fed. Reg. 4437 (January 17, 2001). Available at:

<https://www.federalregister.gov/documents/2001/01/17/01-1025/food-stamp-program-personal-responsibility-provisions-of-the-personal-responsibility-and-work>

- (5) Guide to Serving ABAWDs Subject to Time-limited Participation, 2015. Available at: https://fns-prod.azureedge.net/sites/default/files/Guide_to_Serving_ABAWDs_Subject_to_Time_Limit.pdf
- (6) Guide to Supporting Requests to Waiver the Time Limit for Able-Bodied Adults without Dependents, 2016. Available at: <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>
- (7) Expiration of Statewide ABAWD Time Limit Waivers, 2015. Available at: <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Expiration-of-Statewide-ABAWD-Time-Limit-Waivers.pdf>
- (8) ABAWD Time Limit Policy and Program Access, 2015. Available at: <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf>
- (9) ABAWD Questions and Answers, 2015. Available at: <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-June%202015.pdf>
- (10) ABAWD Questions and Answers, 2013. Available at Internet site: <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-December-2013.pdf>

Overview of Current SNAP Work Policies

SNAP work-related policies are best understood as three distinct, but interrelated and mutually supportive areas: the general work requirements, SNAP Employment and Training (SNAP E&T) programs, and the ABAWD time limit and work requirement. These work-related policies, the people they affect, and the ways in which they interact are summarized below.

The General Work Requirements: *section 6(d) of the Act and 7 CFR 273.7*

The general work requirements apply to people ages 16 through 59, except for those who are physically or mentally unfit for employment, care for a child under age 6 or an incapacitated person, are already employed 30 hours or more per week, are already participating in a work program, or are in school half-time or more. In order to be eligible for SNAP benefits, people who are subject to the general work requirements must register for work, report to an employer if referred by the State agency, accept a bona fide offer of a suitable job, not voluntarily quit a job or reduce their work hours below 30 hours a week, and participate in a SNAP E&T program or a workfare program if assigned by the State agency.

People subject to the general work requirements are commonly called “work registrants.” People that do not comply with the general work requirements without good cause are disqualified from receiving SNAP for a period of time. These disqualification periods can vary by State and circumstances. When a person subject to the general work requirements does not comply, the State must determine whether the person has good cause before imposing any disqualification. Examples of good cause include illness, household emergency, lack of transportation, or other

circumstances beyond the person's control. In accordance with current law, if the State finds that a person has good cause, it must not disqualify them.

The ABAWD Time Limit and Work Requirement: *section 6(o) of the Act and 7 CFR 273.24*

The ABAWD time limit and work requirement apply to people ages 18 through 49, unless they are already exempt from the general work requirements, medically certified as physically or mentally unfit for employment, responsible for a child under 18, or pregnant. ABAWDs are also work registrants and must meet the general work requirements. In addition, ABAWDs subject to the time limit must work and/or participate in a work program 80 hours per month or more, or participate in and comply with workfare in order to receive SNAP for more than 3 months in a 36-month period. Participation in SNAP E&T, which is a type of work program, is one way a person can meet the 80 hour per month ABAWD work requirement, but other work programs are acceptable as well.

State agencies can request to waive the ABAWD time limit if an area has an unemployment rate of over 10 percent or the State can meet one of the regulatory options to show it does not have a sufficient number of jobs to provide employment. If the time limit is waived, individuals are not required to meet the ABAWD work requirement in order to receive SNAP for more than 3 months in a 36-month period. However, even if the time limit is waived, ABAWDs remain subject to the general work requirements, as ABAWDs are work registrants, and the general work requirements cannot be waived. State agencies also have discretion to exempt, on a month-to-month basis, 15 percent of the individuals who would otherwise be subject to the time limit as estimated by the Department each year. Each 15 percent exemption extends eligibility to one ABAWD for one month.

SNAP Employment and Training Programs: *section 6(d) of the Act and 7 CFR 273.7*

The Department strongly supports the goal that individuals obtain gainful employment as a means to move to self-sufficiency. SNAP E&T programs are intended to help SNAP recipients gain skills, training, work, or experience that will increase their ability to obtain regular employment and become self-sufficient. The State agency must operate E&T programs, though it has significant flexibility in program design. The State determines who to serve through its E&T programs, what kind of activities to provide, and where to provide them. The State may provide other wrap-around services such as on-going case management, job coaching, or job retention services. The State is required to provide participant reimbursements for things that are necessary for participation in SNAP E&T such as transportation, books, safety equipment, or other items or services.

The State has the option to offer E&T on a voluntary basis to certain or all SNAP participants; or, the State can require all or certain work registrants to participate in E&T as a condition of eligibility, often referred to as “mandatory E&T”. If a work registrant is required to participate in E&T and does not comply without good cause, they are disqualified from receiving SNAP as explained above under *The General Work Requirements*. In deciding whether to require E&T participation the State must carefully consider its capacity to serve E&T participants and provide reimbursements for participants with access barriers such as lack of transportation or child care.

Currently, States have several options to provide ABAWDs nutrition assistance while getting experience or training that will help them get jobs and become self-sufficient. States may refer ABAWDs to other work programs such as State or local programs or programs operated through

the Workforce Innovation Opportunity Act (WIOA) American Job Centers (AJCs). States may provide ABAWDs a slot in a workfare program or a SNAP E&T Program. However, all of these options may have their own limitations such as funding, capacity, or competing State priorities.

There is no current requirement that States serve any or all ABAWDs through their SNAP E&T programs. However, if the State does require ABAWDs who are subject to the time limit to participate in E&T, it must apply the time limit and disqualify ABAWDs who fail to comply with the mandatory E&T requirements through the sanction process. In addition, States are eligible for a portion of a pool of \$20 million in additional E&T funds if they pledge to offer all ABAWDs who are in the last month of their 3-month time limit a slot in an E&T component that fulfills the work requirement. These 100 percent federal funds are allocated across all pledge States based on the number of ABAWDs in each participating State, as a percentage of ABAWDs in all of the participating States.

Discussion

The Department is concerned that, in some cases, the State flexibilities provided under 7 CFR 273.7 and 7 CFR 273.24 have been used in ways that do not strengthen the goal of helping SNAP recipients find and keep work when jobs are sufficiently available. In particular, the ABAWD time limit waivers represent an area of concern for the Department.

The decision to request and implement an ABAWD time limit waiver rests with the States. States can request to waive some areas in the State but not others, and not all States that are eligible for ABAWD time limit waivers request one. Economic conditions in the wake of the

Great Recession resulted in an increase in the use of ABAWD time limit waivers. The American Recovery and Reinvestment Act suspended the time limit across the country from April 1, 2009, through September 30, 2010, effectively waiving the time limit in all 50 States, the District of Columbia, Guam, and the Virgin Islands for the second half of FY 2009 and all of FY 2010. From October 2010 through December 2013, the vast majority of States qualified for and continued to implement statewide ABAWD time limit waivers, meaning the waivers covered the entire State or jurisdiction.

Since that time, as economic conditions improved, there has been a decline in the use of these waivers. In the fourth quarter of FY 2013, 45 states, the District of Columbia, Guam, and the Virgin Islands had waivers of the ABAWD time limit. Of those, 42 covered the entire state or jurisdiction and 6 covered only certain areas in the state or jurisdiction. In the fourth quarter of FY 2017, 33 states, the District of Columbia, Guam, and the Virgin Islands had waivers of the ABAWD time limit. Of those, 9 covered the entire state or jurisdiction, and 27 covered only certain areas in the state or jurisdiction. However, the Department is concerned that the number of areas waived has not decreased as much as would be expected during the continued decline in unemployment rates over this time period. For these reasons, the Department is seeking comments on how to ensure the waiver criteria best reflects economic conditions.

ABAWD Policy Review Issues

The following questions represent particular areas in which the Department is interested in receiving comments. The questions are focused on ideas for regulatory or policy changes and seek information on better ways to meet the needs of SNAP participants and State agencies.

However, the Department also invites commenters to address additional issues that are not described below but are within the scope of this review, particularly as it relates to opportunities to help participants move to self-sufficiency. Other comments that are not within the scope of this Notice will not be considered; therefore please refrain from including any comments that are not responsive to this particular request.

The Department believes that this review will benefit from a broad scope of public input.

However, in addressing the questions that follow, commenters are encouraged to be as specific as possible. Please be sure to include the rationale underlying any suggested changes.

1. The Department is reviewing how it could take action on limiting ABAWD waivers as proposed in the President’s budget proposals. In light of the Department’s interest in helping SNAP participants find and maintain meaningful employment, how could the process for requesting to waive the time limit, the information needed to support waiver approval, and the waiver eligibility parameters be changed in order to provide appropriate relief for areas of high unemployment and a clearly demonstrated lack of jobs?

- a) How could the definition of “lack of sufficient jobs” be revised to better support these goals?
- b) States currently have discretion to define the area they are requesting to waive. Should States maintain this flexibility? Should an “economic area” be limited in geographic scope, such as to a single county, metropolitan area, or labor market area?

- c) Should FNS accept data from additional sources of information that are currently not considered? If so:
 - 1. What data sources would that be?
 - 2. What review process should FNS use to verify the validity of the data?
- d) How recent should the data and information used in support of a waiver be in relation to the waiver implementation date?
- e) Waivers are typically approved for 1 year, although under certain criteria 2 year waivers are available. Should FNS consider waivers of different time periods? If so, what time period and under what conditions?

2. How can existing authority and resources be best used to support ABAWDs as they transition to meaningful work and self-sufficiency? How could the Department better support State efforts to assess individuals' work readiness and identify appropriate services to help participants obtain and retain employment?

- a) What challenges and barriers do States face in helping ABAWDs find and maintain employment? What do States need to build or strengthen their capacity, investment, and expertise in working with this population?
- b) What is the appropriate role of States in assessing ABAWDs for barriers to employment, job skills, and career interests in order identify appropriate opportunities for fulfilling the work requirements? At what point in the process is this most useful? During the interview? After certification?

- c) How can existing resources be leveraged by States to help ABAWDs find and maintain employment? Are there State/local/Federal or other stakeholders that can be leveraged to provide holistic services to ABAWDs?
- d) Are there evidence-based activities that States could offer through their SNAP E&T programs that would help reduce barriers to employment among ABAWDs? What kinds of support services, job-retention services and other activities would increase success of ABAWDs moving into gainful employment?
- e) Are there additional ways that States could incentivize employers to provide jobs to ABAWDs?
- f) Should ABAWDs be subject to additional reporting requirements or be limited to a specific type of reporting system (e.g., change reporting, monthly reporting, quarterly reporting, or simplified reporting)? Have States that have assigned ABAWDs to a reporting system other than simplified reporting found this to be beneficial?
- g) What approaches have States found effective in communicating with ABAWDs to educate them on the program's work requirements, tools and resources that can help them find or keep employment, and crucial administrative actions or deadlines they must adhere to?

3. The accurate determination of whether an individual is physically or mentally unfit for employment is fundamental to applying the time limit to the proper individuals, and exempting others, consistent with the Act. In addition, it allows States to focus work strategies on those individuals who are truly capable of benefiting from them.

- a) What is the appropriate scope of conditions and indicators of physical or mental unfitness for employment under current statutory authority, particularly in State determinations of whether an individual is obviously physically or mentally unfit for employment? What level of State flexibility is appropriate in this area? Why?
- b) How do current certification processes (use of technology, lack of face-to-face interaction) affect the ability to determine exceptions or exemptions to the ABAWD time limit? How can these processes be modified or enhanced to best support these determinations, while providing any needed reasonable accommodations for individuals?
- c) Who should determine whether a participant is fit to work? What technical and information resources, or other resources, would best support States to better screen for unfitness for employment and other exceptions to the ABAWD time limit? What performance and/or accountability measures would support this process?
- d) How can the Department/States better engage and serve individuals determined to be unfit for employment? How can State agencies provide these individuals with services or opportunities that may increase their fitness for work?
- e) What are best practices for the use of 15 percent exemptions in supporting the appropriate application of ABAWD requirements?

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This action has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 13771

This Advanced Notice of Proposed Rulemaking is not a regulatory action under Executive Order 13771.

Executive Order 13175

This Advance Notice of Proposed Rulemaking (ANPRM) has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Food and Nutrition Service (FNS) has assessed the impact of this ANPRM on Indian tribes and determined that this ANPRM does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Dated: February 20, 2018

Brandon Lipps
Acting Deputy Under Secretary
Food, Nutrition, and Consumer Services
[FR Doc. 2018-03752 Filed: 2/22/2018 8:45 am; Publication Date: 2/23/2018]