

SNAP's Time Limit:

Emerging Issues in Litigation and Implementation

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Congress established the Food Stamp Program in 1964 to “safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households.”¹ Now known as the Supplemental Nutrition Assistance Program, SNAP is a federally funded and state-administered program that “permit[s] low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.”² The U.S. Food and Nutrition Service is the federal agency in charge of SNAP.

While the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was primarily aimed at changing federal cash assistance, it put restrictions on other public benefits including SNAP.³ Among these restrictions was a little-noticed provision that barred unemployed adults aged 18–49 who are not disabled or raising minor children from receiving SNAP for more than three months in



any three-year period.⁴ These affected individuals are referred to as Able-Bodied Adults Without Dependents, or ABAWDs.

The federal government suspended the ABAWD time limit for 2009 and 2010 as part of the American Recovery and Reinvestment Act.⁵ After 2010 many states qualified for (and the U.S. Food and Nutrition Service approved) statewide waivers

in at least some areas in their states, and 22 of those states implemented the time limit for the first time since the Great Recession.⁶ One study estimated that anywhere from 500,000 to one million people would lose SNAP benefits in 2016 because of the reimposition of the time limit, and, in fact, April 2016 saw a 773,000-person drop in SNAP participation driven by the time limit.⁷ Currently 26 states have partial

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of the time limit in light of persistently high unemployment. As employment conditions improved over the last few years, states are once again required by federal law to implement the ABAWD time limit. More than 40 states implemented the time limit in

waivers from the ABAWD time limit; 17 have implemented the ABAWD time limit statewide; and 7 states and Washington, D.C., Guam, and the U.S. Virgin Islands have

1 7 U.S.C. § 2011 (2015).

2 *Id.* See 7 C.F.R. § 2711 (2017). The federal government funds all benefits under the Supplemental Nutrition Assistance Program (SNAP) and at least 50 percent of the states’ administrative costs of operating the program (7 U.S.C. §§ 2013(a), 2019, 2025(a); 7 C.F.R. §§ 2771(b), 277.4).

3 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 824, 110 Stat. 2105, 2323.

4 7 U.S.C. § 2015(o). See 7 C.F.R. § 273.24(b) (“Individuals are not eligible to participate in the Food Stamp Program ... if the individual received food stamps for more than three countable months during any three-year period”).

5 American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 101(e), 123 Stat. 115, 121 (2009).

6 See Dottie Rosenbaum & Ed Bolen, Center on Budget and Policy Priorities, SNAP Reports Present Misleading Findings on Impact of Three-Month Time Limit (Dec. 14, 2016).

7 Ed Bolen et al., Center on Budget and Policy Priorities, More Than 500,000 Adults Will Lose SNAP Benefits in 2016 as Waivers Expire (March 18, 2016); Brynne Keith-Jennings, Center on Budget and Policy Priorities, SNAP Caseloads Fall Sharply; Three-Month Time Limit a Major Driver (July 13, 2016).

statewide waivers.⁸ As a result, ensuring lawful implementation of the ABAWD time limit is a pressing issue to both state agencies and civil legal aid lawyers nationwide.

Who Is Affected

The SNAP time limit does not apply to all SNAP recipients. Six categories of recipients are exempt from the time limit: (1) those under 18 or 50 years of age or older, (2) those medically certified as physically or mentally unfit for employment, (3) parents of a household member under 18, even if the household member who is under 18 is not eligible for SNAP, (4) those who reside in a household where a household member is under 18, even if the household member who is under 18 is not eligible for SNAP, (5) those who are otherwise exempt from work requirements under section 6(d)(2) of the Food Stamp Act, and (6) those who are pregnant.⁹

Recipients who do not meet any of these criteria—generally low-income 18–49-year-olds not raising children—are subject to the SNAP time limit when they live in an un-waived area. The term for members of this group—able-bodied adults without dependents—points to the work requirement but mischaracterizes the men and women affected by it, many of whom face significant barriers to work and self-sufficiency even though they do not meet the high threshold for disability benefits.

The most in-depth study on the men and women affected by the time limit comes from the Work Experience Program in Franklin County, Ohio, a partnership between the Ohio Association of Foodbanks and the Franklin County Department of Job

8 U.S. Department of Agriculture (USDA), *Status of State Able-Bodied Adult Without Dependents (ABAWD) Time Limit Waivers: Fiscal Year 2017–2nd Quarter* (Jan. 6, 2017).

9 7 C.F.R. § 273.24(c).

A quarter of the men and women affected by the time limit work while receiving SNAP, and 75 percent of this group work in the year before or after receiving SNAP.

and Family Services.¹⁰ While each person's circumstances are unique, data from the individual assessments of affected recipients in the Ohio study show a group with low levels of education and training and high incidences of health problems, which make gaining and maintaining work difficult. These men and women face a combination of barriers to work:

- Low levels of education—30 percent had no high school diploma or GED (General Educational Development) credential, and only 38.1 percent attended some college, with even fewer (10.5 percent) earning a degree;¹¹
- Mental or physical limitations—30.8 percent of clients reported that they have a physical or mental health limitation, and 17.8 percent of clients reported that they had filed for SSI (Supplemental Security Income) or SSDI (Social Security Disability Insurance);¹²
- Undiagnosed learning disorders, intellectual disabilities, and autism;¹³
- Short-term living situations or homelessness;¹⁴
- Care-giving responsibilities for a parent, relative, or friend (13 percent);¹⁵
- Children not in their custody (24.4 percent);¹⁶

10 See [Franklin County Department of Job and Family Services & Ohio Association of Foodbanks, A Comprehensive Assessment of Able-Bodied Adults Without Dependents and Their Participation in the Work Experience Program in Franklin County, Ohio: Report 2015](#) (n.d.).

11 *Id.* at 8.

12 *Id.* at 6.

13 *Id.* at 8.

14 *Id.* at 10.

15 *Id.* at 8.

16 *Id.*

- Lack of access to reliable public or private transportation (33 percent);¹⁷
- Felony convictions (35.3 percent) or gaps in employment records deterring employers and making it difficult to pass background checks.¹⁸

National data add to the picture of who is affected by the policy; these data show that childless adults participating in SNAP are a demographically diverse group who cycle in and out of low-wage work and in some cases experience long spells of deep poverty or chronic homelessness (see fig. 1).¹⁹ A quarter of the men and women affected by the time limit work while receiving SNAP, and 75 percent of this group work in the year before or after receiving SNAP.²⁰ The average amount of SNAP benefits is not enough to lead to dependency, and this is why a majority of SNAP recipients who can work already do so.²¹ Work available to men and women with low levels of education and training, however, is not only typically low-wage but also inconsistent and precarious. Workers get stuck in part-time jobs that are difficult to move up through or out of, and these positions can be lost easily, for example, if a worker needs a day to recover from an illness or if a last-minute shift conflicts with a doctor's appoint-

17 *Id.* at 11.

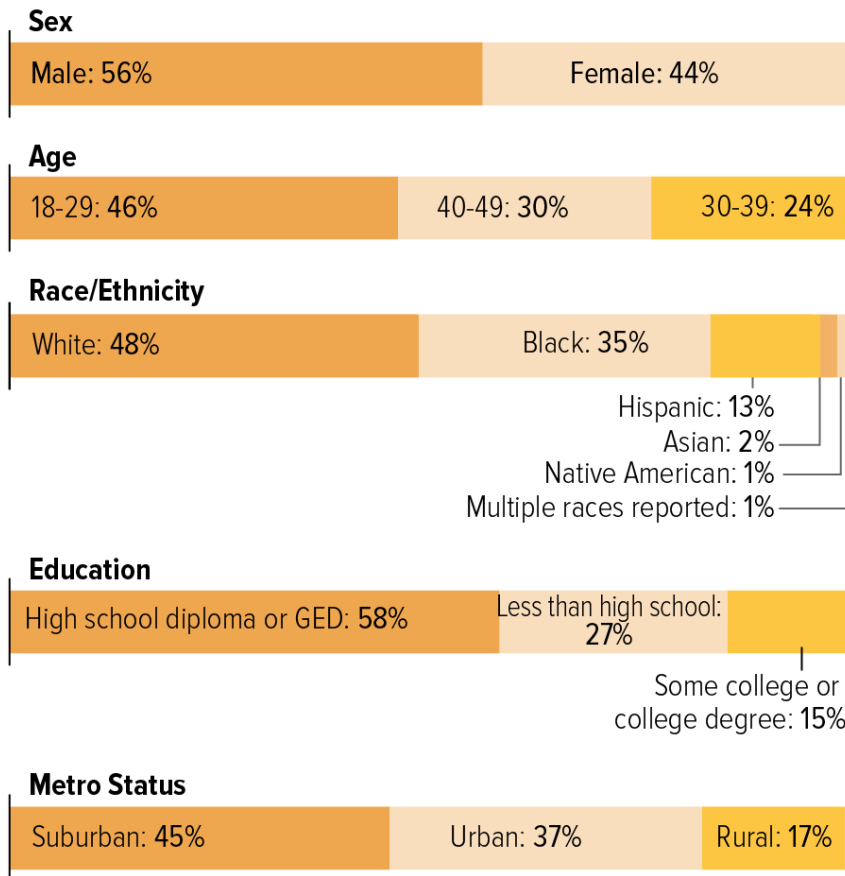
18 *Id.* at 9.

19 This is the same figure, but based on more recent data, as the figure in [Steven Carlson et al., Center on Budget and Policy Priorities, Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?](#) (Feb. 8, 2016).

20 *Id.*

21 [Center on Budget and Policy Priorities, Policy Basics: Introduction to the Supplemental Nutrition Assistance Program \(SNAP\)](#) (March 24, 2016).

Adults Subject to SNAP Time Limit Don't Fit a Single Profile



Source: CBPP analysis of 2015 SNAP household characteristics data and March 2016 Current Population Survey (CPS) (for metro status only).

Figure 1. No single profile of adults subject to SNAP time limit.

ment.²² Since SNAP is one of the only supports available to this specific group in periods of unemployment—low-wage workers rarely qualify for unemployment insurance, and childless adults are left out of many safety-net programs—the men and women who are likely to lose SNAP due to

22 See Lonnie Golden, *Economic Policy Institute, Still Falling Short on Hours and Pay* (Dec. 5, 2016); Victoria Smith & Brian Halpin, *University of California, Davis, Center for Poverty Research, Low-Wage Work Uncertainty Often Traps Low-Wage Workers* (n.d.).

a time limit are typically extremely poor, with average incomes of 17 percent of the poverty line or about \$2,000 per year.²³

For people who face significant barriers to work and who work less than part-time, a policy that time-limits their benefits without offering education, training, or work opportunities causes precipitous caseload

23 Bolen et al., *supra* note 7.

drops when it returns (see fig. 2).²⁴ When 20 states reimposed the time limit in January 2016, for example, three months later SNAP participation nationally fell by 773,000 people, the largest single-month drop since temporary disaster benefits for Hurricane Katrina ended.²⁵ While SNAP caseloads have been on the decline as the economy recovers from the Great Recession, states imposing time limits experienced greater drops (–2.8 percent) than states that did not reimpose a time limit (–0.8 percent).²⁶ When a time limit is reimposed, men and women living in deep poverty lose SNAP’s \$5 a day for food and move one step further away from work. In other words, the time limit has an impact: it leads to more hungry community members who are suddenly unable to access SNAP’s support.²⁷ Emergency food networks offer some support but cannot meet the need created by this many hungry people.²⁸

Implementing the ABAWD Time Limit

State agencies will need public benefits experts to assist them in lawfully administering the ABAWD time limit. Civil legal aid lawyers can play a crucial role in enforcing state compliance with federal law through litigation and in offering innovative policy recommendations through administrative advocacy.

Recent Litigation Efforts in Four States.

The ABAWD time limit is complex, and it places a significant administrative burden on often-overwhelmed state agencies. Unsurprisingly civil legal aid attorneys have filed legal challenges to the implementation

24 Rosenbaum & Bolen, *supra* note 6.

25 Keith-Jennings, *supra* note 7.

26 *Id.*

27 See Carlson et al., *supra* note 19.

28 See MacKenzie Speer, *SNAP: A Key Ingredient to Ending Hunger*, SHRIVER BRIEF (Sept. 22, 2016).

of the time limit in four states: Louisiana, New Mexico, New York, and Florida.²⁹

Asserting due process claims and violations of the Food Stamp Act and its implementing regulations, attorneys filed suit in Louisiana on December 18, 2015.³⁰ Following the inauguration of Gov. John Bel Edwards, Louisiana settled with the litigants and extended the ABAWD waiver statewide.³¹

Drawing on a 1998 court-approved settlement agreement with the state agency, New Mexico lawyers challenged multiple state practices in 2014 and later filed a motion for an order to show cause why the state should not be held in contempt for violating the court's orders, including on ABAWD implementation.³² Most recently the magistrate judge recommended that the U.S. district court find the state agency in contempt and appoint a special master to help the state comply with the court's orders.³³

On August 19, 2016, the Empire Justice Center and the National Center for Law and Economic Justice filed a class action challenging New York's termination of SNAP benefits for ABAWDs following the state's implementation of the ABAWD time limit earlier in the year.³⁴ On December 20, 2016, the National Center for Law and Economic Justice, along with Florida colleagues, filed in the Northern District of Florida a similar class action

29 The states are listed in order of filings.

30 See [Class Action Complaint, Romain v. Sonnier](#), No. 15-cv-06942 (E.D. La. Dec. 18, 2015).

31 See [Louisiana Budget Project, January 14, 2016](#) (Jan. 14, 2016) ("Food assistance to continue").

32 See [Proposed Findings and Recommended Disposition, Hatten-Gonzales v. Earnest](#), No. 88-0385 (D.N.M. July 15, 2016) (relating case history).

33 *Id.*

34 See [Brooks v. Roberts](#), No. 16-cv-1025 (N.D.N.Y. Aug. 19, 2016). The lawsuit identifies three claims: (1) failure to provide adequate initial notice, (2) failure to provide adequate and timely termination notice, and (3) failure to follow a fair process by which states assess recipients individually and allow recipients to claim exemption from the time limit.

States Implementing SNAP Time Limit Experienced Sudden Drops in SNAP Participation

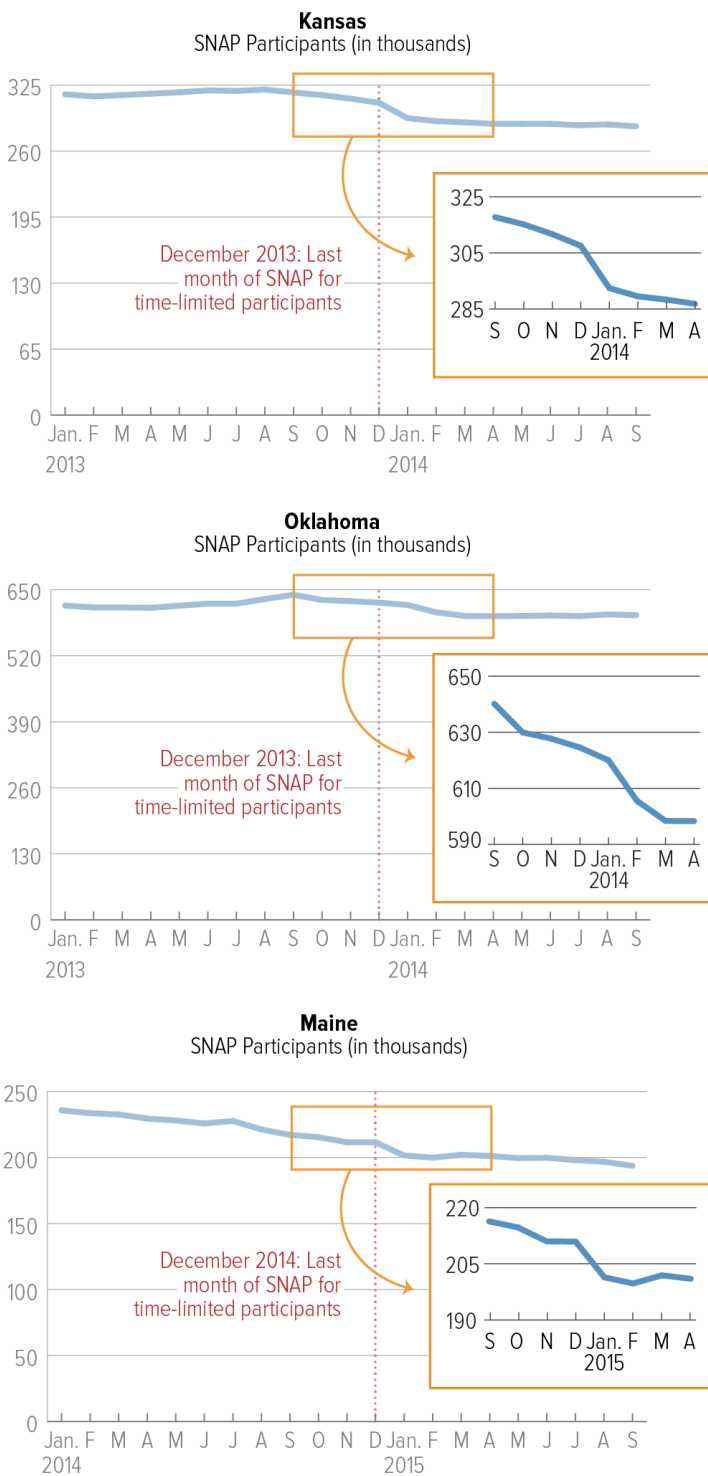


Figure 2. States' drop in SNAP participation due to time limit.

lawsuit challenging Florida's termination of SNAP benefits for ABAWDs after the state made its employment and training program mandatory for ABAWDs.³⁵

Legal Authority on the ABAWD Time

Limit. Considering that other state agencies will implement the time limit and that civil legal aid attorneys will be tasked with ensuring that implementation is lawful, here we analyze the major legal issues with state implementation of the ABAWD time limit.

Due Process Challenges to Pretermination Notice. In light of the administrative burden of implementing the time limit, state agencies may be tempted to issue a blanket notice to all or part of their SNAP caseload. However, the U.S. Food and Nutrition Service has instructed state agencies to make an initial screening for which SNAP recipients are exempt from the ABAWD time limit.³⁶ Attorneys in the aforementioned lawsuits have repeatedly challenged these notices on due process grounds.

Federal due process requires that when terminating SNAP benefits for ABAWDs, a state agency must (a) provide initial notices of the new ABAWD work requirements, (b) do so in a timely manner, (c) include in those notices information that identifies the exceptions to those work requirements and how recipients might be able to meet those exceptions, (d) include possible good-cause grounds for failing to meet those exceptions, and (e) put into place a fair process to determine whether an individual would have qualified for an exception for those work rules. Failure to meet these requirements would rise to five independent violations of due process under the Four-

teenth Amendment as well as the federal law and implementing regulations that govern state administration of SNAP.³⁷ Given the complexity of the time limit, equipping recipients with adequate and accurate

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information on how the time limit affects their eligibility is both critical to implementing the rule and difficult to do successfully.

Ensuring Lawful Implementation of the Exceptions to the Work Requirement.

Even if the pretermination notice meets the five requirements identified above, attorneys may still have legal avenues to challenge the implementation of the ABAWD time limit. One potentially problematic area to scrutinize is a state's screening process for the exceptions to the work requirement. As the U.S. Food and Nutrition Service has stated, "[a]ccurate screening is fundamental to the State's implementation of the time limit consistent with Federal law."³⁸ The exceptions from the ABAWD time limit vary in their complexity; some exceptions are relatively easy to screen for and administer, while others are more complicated.³⁹

The exception that is perhaps most vulnerable to unlawful implementation is the one involving physical and mental impairments; that exception states that the time limit does not apply to an individual "medically certified as physically or mentally unfit for employment."⁴⁰ Federal regulations and

guidance give detailed, specific direction on determining the medically-unfit-for-employment exception.⁴¹ The federal regulation identifies three ways in which "[a]n individual is medically certified as physically or

mentally unfit for employment."⁴² The SNAP recipient is considered unfit if that recipient

(i) [i]s receiving temporary or permanent disability benefits issued by governmental or private sources;

(ii) [i]s obviously mentally or physically unfit for employment as determined by the State agency; or

(iii) [i]f the unfitness is not obvious, provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel the State agency determines appropriate, that he or she is physically or mentally unfit for employment.⁴³

In light of the federal regulations, states must grant exceptions for individuals who receive any short-term or long-term disability benefit.⁴⁴ Total disability is not required, and the impairment may be partial or complete.⁴⁵ The second category, referring to those recipients who are

41 See *id.* (confirming that SNAP recipient must be "[d]etermined by the State agency to be medically certified as physically or mentally unfit for employment").

42 *Id.*

43 *Id.*

44 See *id.* § 273.24(c)(2)(i).

45 See, e.g., [Memorandum from USDA to SNAP Regional Directors](#) (May 20, 2016) ("ABAWD Time Limit Exemption for Veterans Disability Benefit Recipients").

35 See *Mo v. Carroll*, No. 16-cv-00780 (N.D. Fla. 2016).

36 [Memorandum from USDA to SNAP Regional Directors](#) 1 (Nov. 19, 2015) ("Supplemental Nutrition Assistance Program—ABAWD Time Limit Policy and Program Access," concluding that "[s]tates must screen for exemptions as part of their process to identify ABAWDs").

37 See [7 U.S.C. §§ 2014\(a\), 2015\(o\), 2020\(e\)\(10\); 7 C.F.R. §§ 273.13\(a\)\(2\), 273.24.](#)

38 Memorandum from USDA to SNAP Regional Directors, *supra* note 36, at 1.

39 See [7 C.F.R. § 273.24\(c\)](#) (listing six exceptions to time limit).

40 *Id.* § 273.24(c)(2).

“obviously unfit,” lessens the administrative burdens for the state agency and the recipients where the recipient’s being disabled is evident to a caseworker. As for the third category, the federal regulations allow for documentation by a long list of medical personnel and social workers. Many, if not all, of these professionals have experience filling out documentation for other public benefits programs.

Moreover, the regulatory history of the “medically certified as physically or mentally unfit for employment” rule shows that the U.S. Food and Nutrition Service, out of concern that proving disability raised a host of implementation issues, would (1) require medical certification only for those SNAP recipients whose disability was not obvious to the caseworker, and (2) permit a statement from a medical or social work professional as sufficient for exemption from the ABAWD time limit.⁴⁶ Recently the agency issued to SNAP directors a series of memoranda that confirm this interpretation.⁴⁷ The agency also cautioned state agencies to be sure to train eligibility workers on this issue.⁴⁸ Just last year the U.S. Food and Nutrition Service admonished state agencies for “not accepting receipt of VA disability compensation as verification of an individual’s exemption from the ABAWD time limit.”⁴⁹ The federal agency reiterated that states “do not have the discretion” to “impos[e]

an additional requirement that the veteran be rated 100 percent disabled by the VA to be exempt from the ABAWD time limit” but rather “must accept receipt of VA disability compensation regardless of the individual’s disability percentage rating for the purpose of exemption from the ABAWD time limit.”⁵⁰ This example confirms that documentation of a disability benefit is sufficient to exempt an ABAWD from the work requirement.

Efforts to screen households and assess individual recipients are complicated and time-consuming and partially rely on existing redetermination schedules for current recipients.⁵¹ As the U.S. Food and Nutrition Service laid out in a November 2015 program access memo, state agencies must establish policies and procedures allowing a state to make these more detailed determinations that affect client eligibility and access and have consequences for state administrative measures.⁵² In general, states with clearly defined policy and verification standards have more closely met this obligation than states with a published policy simply listing the relevant federal regulations.

States that have implemented medical-exemption forms tracking federal law have found these forms to set clear expectations for caseworkers, customers, and advocates in effectuating the rule.⁵³ When state agencies have not supplied such forms, advocacy groups and coalitions have created

templates to guide clients in identifying any exceptions they meet and the documents that can verify the status of being medically exempt from the SNAP time limit.⁵⁴ Guided by recent publications from the U.S. Food and Nutrition Service, states have added details to the unfit-to-work policy language, specifically including homelessness (Arizona, Connecticut, Massachusetts, New Jersey, North Carolina, Oregon, Pennsylvania, and Washington) and status as a survivor of domestic violence (Arizona, Michigan, New York, Ohio, Pennsylvania) as indicators of being unfit to work under this exception.

Other than the medically-certified-as-unfit exception, federal law identifies five exceptions to the work requirement. First, those who are under 18 or over 50 are exempt from the work requirement.⁵⁵ SNAP recipients reaching their 18th birthday in the middle of a certification period should not be subject to the time limit until they are notified of the time limit and their potential eligibility under the other exceptions is explored at the next recertification.

Starting to count months at the time of recertification is consistent with the Food and Nutrition Service’s long-standing policy on SNAP work registration requirements.⁵⁶ While the agency on June 26, 2015, did issue guidance suggesting otherwise, other experts have suggested that that guidance is invalid.⁵⁷ The federal statute governing SNAP requires that SNAP operate under uniform national rules and that those rules

46 See [Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act](#), 66 Fed. Reg. 4438, 4460 (Jan. 17, 2001) (codified at 7 C.F.R. § 273.24).

47 See, e.g., Memorandum from USDA to SNAP Regional Directors, *supra* note 36, at 2 (“Federal rules at 273.24(c)(ii) allow States [] flexibility to prevent placing unnecessary burden on individuals who are clearly unfit for employment.”); [Memorandum from USDA to SNAP Regional Directors](#) (June 26, 2015) (“Supplemental Nutrition Assistance Program—Able-Bodied Adults Without Dependents (ABAWD) Questions and Answers—June 2015”).

48 See Memorandum from USDA to SNAP Regional Directors (June 26, 2015), *supra* note 47 (Question 11).

49 Memorandum from USDA to SNAP Regional Directors, *supra* note 45, at 1.

50 *Id.*

51 See Memorandum from USDA to SNAP Regional Directors, *supra* note 36.

52 See *id.*

53 See, e.g., [Connecticut Department of Social Services, SNAP ABAWD Work Requirement Medical Report](#) (July 2016); [Hunger Solutions New York, Sample Medical Statement Form to Document “Unfit for Work” Under SNAP Time Limit Rules](#) (n.d.); [Massachusetts Department of Transitional Assistance, Request for ABAWD Work Program Exemption](#) (Nov. 2015); [Pennsylvania Department of Human Services, ABAWD Time Limit Medical Exemption Form](#) (Dec. 2015); [Washington State Department of Social and Health Services, ABAWD Requirement: Medical Report](#) (Jan. 2016).

54 These forms should be accepted as statements from recognized professionals under 7 C.F.R. § 273.24(c)(2).

55 See 7 C.F.R. § 273.24(c)(1).

56 See 7 C.F.R. § 273.7(b)(1)(i) (requiring that “[i]f the person turns 16 (or 18 under the preceding sentence) during a certification period, the State agency must register the person as part of the next scheduled recertification process, unless the person qualifies for another exemption”).

57 See Memorandum from USDA to SNAP Regional Directors (June 26, 2015), *supra* note 47 (Question 1). But see [David A. Super, Center for Civil Justice, Implementing the Three-Month Time Limit on SNAP for Unemployed 18- to 49-Year-Olds](#) (July 27, 2015).

be promulgated in a manner consistent with the Administrative Procedure Act's notice-and-comment rulemaking.⁵⁸ Therefore, the agency's guidance cannot override a federal regulation prohibiting state agencies from redetermining eligibility in the middle of a certification period. State agencies should not rely on the agency's guidance for this particular exception.

The second and third additional exceptions—those who are parents of a household member under 18 or who reside in a household with a household member under 18, even if the household member who is under 18 is not eligible for SNAP—are relatively straightforward.⁵⁹ Note that federal regulations exempt from the ABAWD time limit not only parents but also all adults who reside in a household with a minor. Moreover, the adult's eligibility does not turn on the child's own eligibility for SNAP. For instance, a child could be ineligible for SNAP because of the child's immigration status, but that child's presence in the household would exempt all adults in that household from the ABAWD time limit.⁶⁰

The fourth additional exception incorporates exemptions from the SNAP employment and training program.⁶¹ The fifth additional exception for the work requirement is for those SNAP recipients who are pregnant. The law does not require medical verification of a SNAP recipient's pregnancy, and any pregnant woman is exempt regardless of her expected date of delivery.⁶²

58 See 5 U.S.C. § 553 (2015) (rulemaking); 7 U.S.C. §§ 2013(c), 2014(b) (SNAP).

59 See 7 C.F.R. § 273.24(c)(3), (4).

60 See Memorandum from USDA to SNAP Regional Directors (June 26, 2015), *supra* note 47 (Question 8).

61 See 7 C.F.R. § 273.24(c)(5); Super, *supra* note 57, at 20–22 (discussing how ABAWD work requirement interacts with SNAP employment and training programs).

62 See 7 U.S.C. § 2015(o)(3)(E); 7 C.F.R. § 273.24(c)(6).

Lawyers can play a crucial role in both enforcing state compliance with federal law through litigation and offering innovative policy recommendations through administrative advocacy.

Implementing the ABAWD Work Requirement. For all ABAWDs who do not fit into one of the six exceptions discussed above, federal law requires that those ABAWDs receiving SNAP must (a) “work 20 hours or more per week, averaged monthly,” (b) “participate in and comply with the requirements of a work program for 20 hours or more per week, as determined by the State agency,” or (c) “participate in and comply with the requirements of a [state workfare] program.”⁶³ The U.S. Food and Nutrition Service promulgated regulations that clarify this requirement and make SNAP easier for state agencies to administer by allowing them to determine whether the recipient worked at least 80 hours in a 30-day period.⁶⁴ Moreover, SNAP recipients who have jobs that pay average weekly wages equal to 30 times the federal minimum wage are exempt from work registration even if their jobs do not entail 30 hours per week.⁶⁵

Federal regulations allow states to determine good cause for failure to fulfill the ABAWD work requirement and exclude that month from counting toward the recipient's time limit.⁶⁶ Federal law states that “[g]ood cause shall include circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence

of the member, a household emergency, or the unavailability of transportation.”⁶⁷

Furthermore, federal law allows ABAWDs who have used their three countable months to regain their SNAP eligibility “at any time.”⁶⁸ A time-limited ABAWD can receive SNAP once again if in a consecutive 30-day period, the former SNAP recipient “(i) [w]orked 80 or more hours; (ii) [p]articipated in and complied with the requirements of a work program for 80 or more hours; [or] (iii) [participated in any] combination of work and participation in a work program for a total of 80 hours; or participated in and complied with a workfare program.”⁶⁹ ABAWDs who regain eligibility by working are “entitled to an additional set of three consecutive countable months.”⁷⁰ A state agency may approve an application if the agency believes the recipient will perform 80 hours of work or employment or training activity in the next 30 days or become exempt for other reasons.⁷¹

Recommendations and Conclusions

As we have outlined, lawyers have ample legal authority—from constitutional due process claims to claims grounded in the federal statutes, regulations, and guidance that govern SNAP—to enforce lawful implementation of the ABAWD time limit.

67 *Id.*

68 Memorandum from USDA to SNAP Regional Directors, *supra* note 36, at 3.

69 7 C.F.R. § 273.24(d)(1)(i)-(iii).

70 Memorandum from USDA to SNAP Regional Directors, *supra* note 36, at 4.

71 7 C.F.R. § 273.24(d)(1)(iv).

63 7 U.S.C. § 2015(o)(2).

64 See 7 C.F.R. § 273.24(a)(1)(i).

65 7 U.S.C. § 2015(d)(2)(E).

66 7 C.F.R. § 273.24(b)(2).

The ABAWD time limit is a powerful example of what not to do with SNAP: burden state agencies with complicated work requirements and a crude sanction regime.

Regardless of litigation, state agencies and advocates can minimize the risk of denying assistance to people experiencing homelessness; survivors of domestic violence; people, including veterans, living with serious and persistent mental illnesses; and others who cannot reasonably be expected to maintain their eligibility for assistance by working an average of 20 hours per week. To reduce the impact of the time limit, state agencies and advocates should (1) identify all SNAP recipients who meet exception criteria and (2) support SNAP recipients who must comply with the work requirement or lose benefits after three months. Failure to do so can have a dramatic impact on a state's caseload, lead to legal challenges, and, most important, leave people in our communities hungry and without support.

In addition to taking the usual steps to update notices, policy manuals, websites, and training materials, states can lessen misapplications of the time limit by

- establishing and publishing clear, detailed policy on the time limit;
- designing household screening procedures and expanded individual assessments that rely on less-burdensome tiers of verification and can be integrated into existing processes;
- developing time-limit-specific notices and resources and working with community-based organizations on outreach;

- assigning 15 percent exemption use to the most vulnerable group(s) not protected by federal law;⁷² and
- connecting work-ready recipients at risk of losing benefits to services and supports.

The difficulty of implementing the ABAWD time limit yields at least two broader lessons about SNAP. First, lawyers can play a crucial role in both enforcing state compliance with federal law through litigation and offering innovative policy recommendations through administrative advocacy. Because SNAP benefits are an entitlement, civil legal aid attorneys are well positioned to enforce state compliance of federal law. Absent litigation, state agencies will need SNAP experts to assist the states in lawfully administering the program.

Second, the ABAWD time limit is a powerful example of what not to do with SNAP: burden state agencies with complicated work requirements and a crude sanction regime. Requirements like the ABAWD time limit cause massive confusion and “churn,” and states will pass on that administrative burden to recipients and applicants—individuals and families who have multiple barriers to employment and

72 See [USDA, Supplemental Nutrition Assistance Program \(SNAP\): Able-Bodied Adults Without Dependents \(ABAWDs\)](#) (Jan. 30, 2017) (“Federal law provides that each State agency be allotted exemptions equal to 15 percent of the State’s caseload that is ineligible for program benefits because of the ABAWD time limit. These exemptions allow the State agency to extend SNAP eligibility for ABAWDs subject to the time limit. Each 15 percent exemption extends eligibility to one ABAWD for one month.”).

who are struggling to make ends meet.⁷³ One of the reasons SNAP is so effective is that it is relatively simple for states to administer. If the federal government creates additional conditions for eligibility and constructs more hoops for individuals to jump through, states will lose one of their most effective tools to fight poverty.

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73 “Churn” describes the policy practice where eligible households temporarily lose eligibility for benefits, go without benefits, and then reapply to begin receiving assistance again.