

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA, STATE
OF NEW YORK, STATE OF
CALIFORNIA, STATE OF
CONNECTICUT, STATE OF
MARYLAND, COMMONWEALTH
OF MASSACHUSETTS, STATE OF
MICHIGAN, STATE OF
MINNESOTA, STATE OF NEVADA,
STATE OF NEW JERSEY, STATE
OF OREGON, COMMONWEALTH
OF PENNSYLVANIA, STATE OF
RHODE ISLAND, STATE OF
VERMONT, COMMONWEALTH OF
VIRGINIA, and CITY OF NEW
YORK,

Plaintiffs,

v.

U.S. DEPARTMENT OF
AGRICULTURE; GEORGE ERVIN
PERDUE III, in his official capacity as
Secretary of the U.S. Department of
Agriculture, and UNITED STATES
OF AMERICA,

Defendants.

Civ. Action No.

**DECLARATION OF EDWARD BOLEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

1. I am over the age of eighteen (18) years, competent to testify to the matters contained herein, and testify based on my personal knowledge and information.

2. I am a Senior Policy Analyst with the Center on Budget and Policy Priorities (CBPP). In this position, I focus on state and federal issues in the Supplemental Nutrition Assistance Program (SNAP), including SNAP Employment & Training (E&T) and waivers for able-bodied adults without dependents (ABAWDs). I have provided trainings to multiple states regarding their loss of waivers and have worked with advocates and state officials concerning issues in implementing ABAWD time limits. CBPP is a nonpartisan research and policy institute. We work to protect and strengthen programs that reduce poverty and inequality and increase opportunity for people trying to gain a foothold on the economic ladder. Federal

nutrition programs, including SNAP, are a core component of our organization's work. We have deep expertise on SNAP time limit policy, including waivers and individual exemptions. I base the analysis and estimates in this declaration on my work and the work of my colleagues at the Center.

3. I am aware that the federal government recently issued a final rule, "Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents," 84 Fed. Reg. 66,782 ("the rule"). I have reviewed the rule and am aware of its direct implications for the administration of SNAP, formerly known as the Food Stamp Program, within the states. I understand that this lawsuit challenges the rule.

4. Unemployed childless adults aged 18-49 not living with children are generally restricted to three months of SNAP benefits when they are not employed or in a training program for at least 20 hours per week. The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) has severely restricted the ability of states to waive this rule when unemployment is high or the state can document insufficient jobs for this population. SNAP recipients' benefits are generally cut off after three months irrespective of whether they are searching diligently for a job or willing to participate in a qualifying work or job training program.

I. The Final Rule Will Result in the Loss of SNAP Benefits for an Estimated 688,000 Low-Income Americans

5. Under USDA's final rule, the number of areas eligible for waivers would be dramatically reduced. Applying the criteria in the rule to the areas waived in 2018 yields the following results:

- Of the 985 counties (or county equivalents) waived in 2018, 639 counties (65 percent) in 28 states would have lost their waivers.
- Of the 309 towns waived in 2018, 285 towns (92 percent) would have lost their waivers.
- Of the 273 reservations waived in 2018, 170 reservations (62 percent) would have lost their waivers.¹

6. Under the final rule, I estimate that the share of the U.S. population living in waived areas would have declined by over 80 percent in 2018, from 36 percent to 6.1 percent. The rule will therefore dramatically reduce states' ability to waive areas from the time limit. As a result, an estimated 688,000 low-income Americans will lose their SNAP benefits after the rule is implemented.

7. The rule cuts SNAP benefits by approximately \$1.3 billion in 2021 and \$5.5 billion over the five years 2020-2024. This is a 1.8 percent reduction in federal SNAP benefit

¹ Based on CBPP internal analysis of unemployment data from the U.S. Bureau of Labor Statistics and the U.S. Census Bureau. The list of areas is included in Appendix B as "CBPP Summary of Areas That Would Have Lost Their Waivers from the SNAP Three-Month Time Limit in 2018 if the Proposed Rule Were Implemented in 2018."

spending over those five years. The spending reduction is achieved by cutting benefits for low-income childless adults, which will significantly weaken their food purchasing power. SNAP-authorized retailers will also see lower redemptions.

II. The Loss of Benefits Will Be Sudden for Most Affected ABAWDs

8. States that have ended waivers and reimposed the time limit have seen significant drops in SNAP participation after three months. That is because most individuals are unable to find work. Once an individual subject to the time limit receives three months of benefits and is unable to find a job, they are terminated from SNAP.

9. In 2013 Kansas and Oklahoma reimposed the time limit after several years of statewide waivers. Beginning three months after the time limit took effect, these states' caseloads dropped significantly. While caseloads had been slowly declining (as is typical when unemployment falls) even before reimposition of the time limit, the drop accelerated substantially three months after the time limit returned, when ABAWDs subject to the time limit who could not find jobs had received three months of benefits. These states did not offer workfare or job training slots to all non-disabled childless adults at risk of losing benefits.

10. I anticipate that most ABAWDs in areas that are currently waived but that fail to qualify under the new rules will lose benefits three months after the rule takes effect. For example, Kansas reimposed the time limit in October 2013, with the first childless adults losing eligibility in January 2014. The caseload decline expected due to the improving economy — about 3,000 to 4,000 participants per month — suddenly accelerated in January to about 15,000 individuals. That month was the fourth month after the waiver ended and ABAWDs who had been unable to find sufficient work would have exceeded their three-month limit. Subsequent months saw the caseload decline slow dramatically.

III. Individuals Subject to the Time Limit Are Poor and Face Higher Unemployment Than the General Unemployment Rate

11. ABAWDs that participate in SNAP tend to have very low incomes. While participating in SNAP, childless adults have average incomes of 33 percent of the poverty line — the equivalent of about \$4,000 per year for a single person in 2019. With extremely limited financial resources, these individuals rely on SNAP to purchase food.

12. Many of the ABAWDs subject to the time limit struggle to find employment even in normal economic times. They work in occupations like the service and retail sales fields, where underemployment, high job turnover, gaps in work, and higher unemployment rates are common. In addition, ABAWDs are more likely to face barriers to employment such as a physical or mental condition that affects their ability to work, housing instability, or lack of transportation.

13. States utilize waivers in part because they recognize that the general unemployment rate is a broad metric that masks differences in the labor market outcomes experienced by different groups. Some groups, such as African American workers, individuals

with no more than a high school education, and people living in rural areas, have consistently higher unemployment.

14. The Great Recession also demonstrated that less-advantaged groups fared more poorly in a downturn, losing more jobs and recovering more slowly. Employment opportunities for some groups remained scarce even after the recession. In 2017, for example, the number of jobs in rural areas was still below pre-recession levels.²

15. Many ABAWDs face barriers to employment due to lack of education. About a quarter of childless adults on SNAP have less than a high school education, and half have at most a high school diploma or GED.³ ABAWDs are more likely than other SNAP participants to lack basic job skills like reading, writing, and basic mathematics, according to the Government Accountability Office (GAO).⁴ Research shows that adults with less education have higher unemployment rates. Compared to workers with a bachelor's degree, for example, the unemployment rate in 2018 was twice as high for workers with no more than a high school education and two and a half times higher for workers with less than a high school education.⁵

16. FNS has long recognized that waivers are particularly important in some rural areas because residents are less likely to be employed, due to factors such as out-migration of younger workers, the aging of the remaining workforce, and declining infrastructure and investment. Beginning in the 1970s, the share of men with less than a high school education who are employed has declined more in rural areas than in urban areas. By 2016, only about 50 percent of these men with lower educational attainment were employed, about 15 percentage points lower than their counterparts in urban areas.⁶ While employment fell in both urban and rural areas from 2007 to 2010, urban areas recovered more quickly. Annual average job growth between 2010 and 2017 was about 1.8 percent in urban areas, compared to about 0.5 percent in rural areas. In 2017, average rural employment was 2 percent below its 2007 peak, while metro employment was over 7 percent above 2007 levels.⁷

² U.S. Department of Agriculture, "Rural America at a Glance: 2017 Edition," November 2017, <https://www.ers.usda.gov/webdocs/publications/85740/eib-182.pdf?v=43054>.

³ Steven Carlson, Dorothy Rosenbaum, and Brynne Keith-Jennings, "Who Are the Low-Income Childless Adults Facing the Loss of SNAP in 2016?" Center on Budget and Policy Priorities, February 8, 2016, <http://www.cbpp.org/research/food-assistance/who-are-the-low-income-childless-adults-facing-the-loss-of-snap-in-2016>.

⁴ "Food Stamp Employment and Training Program," United States General Accounting Office (GAO-3-388), March 2003, p. 17.

⁵ "Employment Status of the Civilian Population 25 Years and Over by Educational Attainment," Bureau of Labor Statistics, revised February 1, 2019, <https://www.bls.gov/news.release/empsit.t04.htm>.

⁶ James Ziliak, "Restoring Economic Opportunity for 'The People Left Behind': Employment Strategies for Rural America," Aspen Institute, revised 2019. <https://www.aspeninstitute.org/longform/expanding-economic-opportunity-for-more-americans/restoring-economic-opportunity-for-the-people-left-behind-employment-strategies-for-rural-america/>.

⁷ See U.S. Department of Agriculture, Economic Research Service, September 23, 2019, <https://www.ers.usda.gov/topics/rural-economy-population/employment-education/rural-employment-and-unemployment/>.

17. While adults may be exempt from the time limit if they are “medically certified as physically or mentally unfit for employment,”⁸ evidence suggests that many childless adult non-elderly SNAP participants have health conditions that serve as a barrier to employment but who are not determined to be exempt. These adults may not fit the state’s definition of “unfit for work,” may not be properly identified as exempt by the SNAP agency, or may struggle to understand the rules or document their condition in order to obtain an exemption.

18. Survey data indicate that among SNAP participants aged 18-49 who do not receive disability benefits, or have children in their household, about one-fifth report a health problem or disability that prevents them from working or limits the type of work they can do, report leaving their job or the labor force due to disability, or report not having worked in the last year due to disability.⁹ FNS itself reported that state caseworkers found multiple barriers to employment among individuals subject to the time limit as they worked to implement the 1996 welfare law’s time limits and work requirements. The most frequently cited barriers included medical or mental health issues or substance use disorders such as opioid addiction.¹⁰ These individuals risk losing SNAP under the rule.

19. A detailed study of ABAWDs who were subject to the time limit and were referred to a work experience program in Franklin County (Columbus), Ohio found that one-third reported that a mental or physical limitation affected their ability to work, including depression, post-traumatic stress disorder, mental or learning disabilities, or physical injuries.¹¹ A more recent study of participants in SNAP’s E&T program, which includes many childless adults aged 18-49, found that about 30 percent identified health issues as a barrier to employment.¹²

20. Research shows that adults with disabilities and other health issues tend to have higher unemployment rates and fewer employment opportunities. In 2018, the employment-population ratio (the proportion of the population that is employed) for people with a disability was just 19 percent, compared to 66 percent for people without a disability. The unemployment rate was more than twice as high for working-age adults with a disability as for working-age adults without a disability (8.7 percent versus 3.8 percent).¹³ Since 2008, the Bureau of Labor Statistics (BLS) has tracked unemployment among those who self-report as disabled, many of whom have incomes low enough to be eligible for SNAP and may not be found exempt from the time limit. In months when the unemployment rate averaged 7 percent, the disabled rate was 13 percent.¹⁴

⁸ 7 C.F.R. § 273.24(c)(2)

⁹ CBPP analysis of the March 2018 Current Population Survey.

¹⁰ John L. Czajka *et al.*, “Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation, Volume I,” U.S. Department of Agriculture, Food and Nutrition Service, September 2001, <https://fns-prod.azureedge.net/sites/default/files/abawd.pdf>.

¹¹ “A Comprehensive Assessment of Able-Bodied Adults Without Dependents and Their Participation in the Work Experience Program in Franklin County, Ohio,” Ohio Association of Foodbanks, revised 2015, <http://ohiofoodbanks.org/wep/WEP-2013-2015-report.pdf>.

¹² Gretchen Rowe, Elizabeth Brown, and Brian Estes, “SNAP Employment and Training (E&T) Characteristics Study: Final Report,” United States Department of Agriculture, Food and Nutrition Service, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPEandTCharacteristics.pdf>.

¹³ See <https://www.bls.gov/news.release/disabl.nr0.htm>.

¹⁴ CBPP analysis of BLS data, 2008-2018.

21. Several studies have documented that many childless adult SNAP participants lack access to stable housing and some experience homelessness. A USDA research report looking at individuals first subject to the time limit found that homelessness was among the barriers that case managers reported.¹⁵ A GAO study of E&T programs for childless adults also found that case managers reported housing difficulties as a barrier to work; for example, Colorado officials estimated that about 40 percent of their E&T participants experienced homelessness.¹⁶ Similarly, a more recent USDA study of E&T providers found that over two-fifths identified lack of stable housing as a barrier for at least a quarter of program participants, which include many adults targeted by the time limit.¹⁷

22. Many ABAWDs face difficulty in maintaining employment due to lack of transportation. The number of jobs within a typical commuting distance in major metro areas fell by 7 percent between 2000 and 2012. The losses were steeper for Latino and African American residents, for whom the number of jobs within a typical commuting distance fell by 17 and 14 percent respectively, and for residents with incomes below the poverty line, for whom the decline was 17 percent (compared to 6 percent for non-poor residents). The majority of Census tracts with high poverty rates or a majority of residents of color experienced losses in accessible jobs.¹⁸

IV. Over Two-Fifths of Childless Adult SNAP Participants Aged 18-49 Are African American or Latino — Groups Facing Higher Unemployment and More Employment Discrimination

23. Over 25 percent of childless adult SNAP participants targeted by the time limit are African American and approximately 20 percent are Latino.¹⁹ These groups, particularly African Americans, also have higher unemployment rates than white Americans and are more affected by recessions.

24. Black and Latino workers generally have higher unemployment rates than white Americans. According to BLS data, for example, the unemployment rate in the fourth quarter of 2018 was 3.2 percent for white workers but 4.3 percent for Latino workers and 6.1 percent for African American workers.²⁰ In fact, for about the past four decades, unemployment rates among

¹⁵ John L. Czajka *et al.*, "Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation, Volume I," U.S. Department of Agriculture, Food and Nutrition Service, September 2001. <https://fns-prod.azureedge.net/sites/default/files/abawd.pdf>.

¹⁶ "Food Stamp Employment and Training Program," United States General Accounting Office, revised March 2003, <https://www.gao.gov/assets/240/237571.pdf>.

¹⁷ Gretchen Rowe, Elizabeth Brown, and Brian Estes, "SNAP Employment and Training (E&T) Characteristics Study: Final Report," United States Department of Agriculture, Food and Nutrition Service, revised October 2017, <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPEandTCharacteristics.pdf>.

¹⁸ Elizabeth Kneebone and Natalie Holmes, "The Growing Distance Between People and Jobs in Metropolitan America," Metropolitan Policy Program at Brookings, March 2015, pp. 1-24, <https://www.brookings.edu/research/the-growing-distance-between-people-and-jobs-in-metropolitan-america/>.

¹⁹ CBPP analysis of FY 2017 USDA Household Characteristics data, the March 2018 Current Population Survey, and 2017 American Community Survey (ACS) one-year estimates.

²⁰ "Table E-16. Unemployment Rates by age, sex, race, and Hispanic or Latino ethnicity," Bureau of Labor Statistics, revised January 4, 2019, https://www.bls.gov/web/empsit/cpsee_e16.htm.

black workers have been about double those of white workers.²¹ This relationship is true even when comparing unemployment rates for those with similar education levels. Among workers with less than a high school education in 2018, the unemployment rate for African Americans was 10.4 percent, more than double the 5.1 percent rate for whites. Similarly, among high school graduates in 2018, African Americans' unemployment rate of 6.7 percent was nearly double whites' 3.5 percent rate.²²

25. Using national BLS data, there were 106 months since 1972 when the overall unemployment rate was between 6.5 percent and 7.5 percent. The average rate was 7.1 percent, about the threshold for a waiver under the new rule. But unemployment for African American and Latino workers was a much higher: 13.9 percent and 10.2 percent, respectively. White unemployment was 6.2 percent.

V. USDA Research Shows That the Loss of SNAP Due to the Time Limit Fails to Raise Income and Increases Hardship

26. USDA research has found that childless adults struggle after losing SNAP benefits. After the three-month time limit was enacted in 1996, USDA's Economic Research Service (ERS) joined with the U.S. Department of Health and Human Services to fund studies in four states (Arizona, Illinois, Iowa, and South Carolina) that examined the well-being of people who exited SNAP in the late 1990s after the time limit went into effect.²³ The studies included people who had left SNAP because of the three-month limit or for other reasons, for example, because they found a job or mistakenly believed they were no longer eligible. Even though the studies were not able to isolate the individuals who left SNAP *because of* the time limit, their findings regarding the hardship such individuals face suggest that the time limit has not spurred many to self-sufficiency, contrary to the stated rationale behind the rule.

- **Many were employed but had very low earnings.** Employment rates among SNAP “leavers” who were unemployed childless adults and thus potentially subject to the time limit ranged from 41 percent in Illinois to 76 percent in Iowa, “but earnings and incomes are low and their poverty rates are high.”²⁴
- **Most remain poor.** Regardless of work effort, between one-third and two-thirds of SNAP leavers had household incomes below the poverty line — well above the

²¹ Valerie Wilson, “Before the State of the Union, a fact check on black unemployment,” Economic Policy Institute, February 2019, pp. 1-4. <https://www.epi.org/blog/before-the-state-of-the-union-a-fact-check-on-black-unemployment/>.

²² “Labor Force Statistics from the Current Population Survey, Table 7. Employment status of the civilian noninstitutional population 25 years and over by educational attainment, sex, race, and Hispanic or Latino ethnicity,” Bureau of Labor Statistics, revised January 18, 2019, <https://www.bls.gov/cps/cpsaat07.htm>.

²³ Elizabeth Dagata, “Assessing the Self-Sufficiency of Food Stamp Leavers,” Economic Research Service, USDA, September 2002, <https://www.ers.usda.gov/publications/pub-details/?pubid=46645>, a summary of in-depth studies in Arizona, Illinois, Iowa, and South Carolina. See also individual reports for Iowa (https://lib.dr.iastate.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1013&context=card_staffreports), Illinois (<https://www.mathematica-mpr.com/our-publications-and-findings/publications/food-stamp-leavers-in-illinois-how-are-they-doing-two-years-later>), and South Carolina (<https://naldc.nal.usda.gov/download/45220/PDF>).

²⁴ Dagata, p. 2.

overall poverty rate of 13 percent at the time. Many of these households experienced severe poverty after leaving SNAP; about 40 percent of the Illinois and Iowa SNAP leavers had incomes below *half* of the poverty line.

- **Many had housing problems or had trouble paying their utility bills.** About 20 to 40 percent of SNAP leavers faced housing issues, including falling behind on the rent, moving in with relatives, or becoming homeless. Between 20 and 65 percent reported problems paying for utilities. These are all characteristics associated with much higher rates of unemployment.
- **Many struggled to afford adequate food.** Between 17 and 34 percent of the SNAP leavers reported very low food security — meaning they had to skip or reduce the size of their meals or otherwise disrupt their eating patterns at times during the year because they couldn't afford enough food — compared with 3 percent of all households without children.²⁵ The Arizona study found that the incidence of moderate or severe hunger was greatest among the ABAWD subgroup, at 34 percent, compared to 3.5 percent of all Arizona households. The Arizona study concluded by pointing out that individuals who might appear to be self-sufficient or better off after leaving SNAP, because they receive fewer public benefits and report less private support, might still be facing significant hardship:

“The high rate of food insecurity with hunger found among ABAWD exiters — 34 percent — is noteworthy. This incidence is more than twice the 1999 national rate of 14 percent estimated by USDA for households at or below 50 percent of the poverty level. The ABAWD finding highlights the importance of considering whether exiters who appear self-sufficient, in terms of their reduced reliance on public and private support, are able to avoid hardship and deprivation.”²⁶

This cautionary note is not acknowledged in the rule.

27. The studies also raise an important question about whether individuals with physical or mental health conditions were properly exempted from the time limit. “In two of the studies, the majority of nonworking [SNAP leavers] cited health problems as the reason they were not working. . . . [I]t is important to know whether the standards for being categorized as ‘able bodied’ are set appropriately.”²⁷

28. Research on work requirements in Medicaid shows that they do not help people find jobs. Arkansas imposed a 80 hour per month work reporting requirement that is similar to the SNAP rule. Only a small minority of those who lost coverage due to this requirement found jobs, state data show, many of whom would likely have found jobs anyway.²⁸ A study by Harvard researchers found no significant rise in employment, hours worked, or overall rates of community engagement activities among those subject to the work requirement — but it did find

²⁵ Dagata, p. 4. Food insecurity “with hunger” was how USDA then referred to the most severe form of food insecurity, where households had to skip or reduce the size of their meals or otherwise disrupt their eating patterns at times during the year because they couldn't afford sufficient food.

²⁶ Gregory Mills and Robert Kornfeld, “Study of Arizona Adults Leaving the Food Stamp Program, Final Report,” Dec. 2000, p. 94, <https://naldc.nal.usda.gov/download/45673/PDF>.

²⁷ Dagata, p. 5.

²⁸ See <https://www.cbpp.org/blog/new-arkansas-data-contradict-claims-that-most-who-lost-medicaid-found-jobs>.

sharp increases in uninsured rates.²⁹ Because the requirement and the population to which it applies are similar to the SNAP time limit, similar results can be expected in areas no longer eligible for a waiver of the SNAP time limit.

VI. The Final Rule Includes Restrictions Not Part of the Proposed Rule That Result in Some Areas Losing Eligibility for Waivers

29. Under the final rule, states can only request waivers for areas that BLS defines as Labor Market Areas (LMAs). Limiting waivers to LMAs, which are just one way to identify economically integrated areas, fails to reflect the actual employment opportunities available to SNAP participants. Also, because this part of the final rule was not in the proposed rule, some communities severely affected by this change did not have an opportunity to comment on it. For example, numerous areas that were waived in 2019 and would have been eligible in 2019 under the final rule based on their unemployment rates would *not* have been eligible under the final rule because the LMA in which they are located was not eligible. For example:

- The District of Columbia was eligible in 2019, but its LMA, the “Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area,” is not eligible under the final rule. In addition to DC, this LMA contains five counties in Maryland, 17 counties in Virginia, and one county in West Virginia.
- Caddo Parish, Louisiana was eligible in 2019 and has 5 percent of the state’s population, but its LMA, “Shreveport-Bossier City, LA Metropolitan Statistical Area,” is not eligible. This LMA contains four parishes.
- Baltimore, Maryland was eligible in 2019 (it has 10 percent of the state’s population), but its LMA, the “Baltimore-Columbia-Towson, MD Metropolitan Statistical Area,” is not eligible. This LMA contains seven counties.
- Sandoval and Valencia Counties, New Mexico, were eligible in 2019 and have nearly 7 percent and 4 percent of the state’s population, respectively, but their LMA, the “Albuquerque, NM Metropolitan Statistical Area,” is not eligible. This LMA contains four counties.
- Bronx County, New York was eligible in 2019, with 7 percent of the state’s population, but its LMA, the “New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area,” is not eligible. This LMA contains 12 counties in New York, 12 in New Jersey, and one in Pennsylvania.
- Philadelphia, Pennsylvania was eligible in 2019, with 12 percent of the state’s population, but its LMA, the “Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area,” is not eligible. This LMA contains one county in Delaware, one in Maryland, four in New Jersey, and five in Pennsylvania.

²⁹ Benjamin Sommers *et al.*, “Medicaid Work Requirements – Results from the First Year in Arkansas,” *New England Journal of Medicine*, September 12, 2019, <https://www.nejm.org/doi/full/10.1056/NEJMSr1901772>.

30. In addition, the final rule drastically limits SNAP's ability to respond quickly to worsening economic conditions. SNAP historically follows unemployment insurance as the most responsive federal program helping families and communities during economic downturns. The current rule is a key part of that responsiveness because states can qualify for waivers when they qualify for Extended Benefits to Unemployment Insurance (EB). While the proposed rule maintained that criterion, the final rule eliminates it. As a result, the final rule is far worse than the proposed rule and interested parties have had no opportunity to comment on the dramatic impact of this change. As a recession emerges, unemployment rates rise nearly everywhere, but under the final rule, many areas with high unemployment will not have been high enough for long enough to qualify for a waiver based on a 12- or 24-month average. Further, during a recession, areas with high unemployment may not qualify if the unemployment rate is not 20 percent above the national average. Applying the final rule during the Great Recession would have severely limited waivers. Between 2009 and 2013 over 90 percent of areas would have qualified under the proposed rule, while only about 40 percent would have qualified under the final rule. Worse, only 25 percent of counties would have been eligible throughout the recession.³⁰ The elimination of EB as a waiver criterion severely limits the ability of SNAP to mitigate hardship during tough economic times.

VII. States Face an Increased Administrative Burden Stemming from Implementation of the Rule

31. For the past 22 years, states have used the flexibility in grouping substate areas for waiver applications in part to improve efficiency in administering SNAP. States have used their discretion to define areas to help align the geographic scope of waivers with areas where they are unable to provide sufficient work or training opportunities to work registrants, including those subject to the time limit. A state that can only provide SNAP E&T slots in certain counties may request waivers for eligible counties where SNAP E&T slots are not available or guaranteed.

32. States sometimes adjust the regional alignment of programs to reflect changes to the labor force, resources, service delivery, and administrative capacity. Federal agencies may not be aware of these changing circumstances or able to make adjustments in a timely manner.

33. From two decades of experience reviewing state waiver requests, the Department is aware of how states use their existing flexibility to balance multiple priorities, resources, and policies, such as SNAP E&T policies and services, housing and transportation planning, and workforce and economic development strategies. The Department did not provide reasons for ignoring these considerations, making it difficult for the public to comment on the proposed changes.

34. States now face a tight timeframe in which to implement the rule's changes. The rule is scheduled to take effect April 1, 2020, which gives states an inadequate lead time to prepare for such a significant change.

³⁰ Lauren Bauer, Jana Parsons and Jay Shambaugh, "New SNAP Rule Change Just Made It Harder to Combat Future Recessions," The Hamilton Project, Dec. 4, 2019, https://www.hamiltonproject.org/blog/new_snap_rule_just_made_it_harder_to_combat_recession.

35. The USDA Inspector General found that the three-month time limit is complex and error-prone, states have difficulty implementing it, and improper implementation results in eligible ABAWDs losing benefits.³¹ States need to identify individuals newly subject to the time limit, provide adequate notice of the changing rules, screen for exemptions, and coordinate with counties and local agencies. This requires staff training, the reprogramming of computer eligibility and tracking systems, and the distribution of information notices. Indeed, a USDA research report noted that, when the ABAWD time limit went into effect, state officials informed USDA that “the ABAWD provisions were among the most difficult policy changes they ever had to administer,” partly due to the “tracking of the receipt of time-limited benefits.”³²

36. As observed by the Inspector General, states have found the implementation of the time limit to increase errors and require additional resources and additional attention by eligibility workers. More troubling, failing to screen each individual to ensure the time limit is imposed only upon those subject to it will result in individuals losing SNAP benefits despite being eligible.

37. The implementation date does not give E&T providers and community organizations time to prepare for the consequences of terminating benefits for so many destitute individuals.

38. Loss of SNAP benefits can also affect states’ administration of other benefits programs, including Medicaid. The Centers for Medicare and Medicaid Services of the Department of Health and Human Services, the agency that administers Medicaid, requires some alignment between SNAP and Medicaid work requirements. Specifically, states must count enrollment in SNAP as an automatic exemption from Medicaid work requirements since individuals enrolled in SNAP are either exempt from or complying with SNAP work requirements.³³ As a result, the rule’s changes to SNAP waiver and exemption policy would have a ripple effect on some individuals’ Medicaid eligibility and coverage. More people in states with Medicaid work requirements would be subject to those work requirements, and a large number would very likely lose Medicaid coverage. The per-person cost of health coverage often is higher than the monthly SNAP benefit.

39. SNAP helps reduce food insecurity and, in turn, is linked with reduced health care costs. The loss of SNAP under this rule therefore could contribute to increased health care costs for those losing benefits. Studies have found an association between SNAP participation and lower health care expenditures: on average, after controlling for factors expected to affect spending on medical care, low-income adults participating in SNAP incur about \$1,400 (nearly 25 percent) less in medical care costs in a year, including those paid by private or public

³¹ U.S.D.A. Office of Inspector General, “FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents,” Audit Report 27601-0002-31, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

³² Czajka, *supra*, at 141.

³³ CMS, Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries, Jan. 11, 2018, p. 5 (“Individuals enrolled in and compliant with a TANF or SNAP work requirement, as well as individuals exempt from a TANF or SNAP work requirement, must automatically be considered to be complying with the Medicaid work requirements.”), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf>.

insurance, than non-participants, one study found.³⁴ Studies also show that health care costs respond to changes in SNAP benefits. The number and cost of hospital admissions covered by Medicaid, for example, grew more slowly after the 2009 Recovery Act's SNAP benefit increase took effect and then accelerated when those benefits were cut.³⁵

VIII. USDA Did Not Adequately Address Issues Raised by Commenters

40. CBPP submitted a 237-page comment opposing the Proposed Rule on April 1, 2019. The comment extensively discussed the deficiencies of the proposed changes and provided the USDA with many pieces of evidence that undercut the Department's rationale for the proposed changes. The comment letter is attached as Exhibit A.

41. Following the announcement of the pre-publication version of the final rule, CBPP conducted an analysis of the information presented in our comment compared to the response provided by the USDA in the preamble and final rule. We found that the Department failed to address many of our comments, primarily:

- The rule's departure from waiver standards that have remained consistent for 22 years;
- Specific barriers to employment that ABAWDs face that are not captured in the unemployment rate; and
- Studies showing that work requirements in SNAP and other benefits programs do not increase employment.


A chart providing an overview of the comparison of the CBPP comments and the USDA's response is attached as Exhibit B.

³⁴ See, for example, Seth Berkowitz *et al.*, "Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults," *Jama Internal Medicine*, November 2017, <https://europepmc.org/article/MED/28973507>.

³⁵ Rajan A. Sonik, Susan L. Parish SL, Monica Mitra, "Inpatient Medicaid Usage and Expenditure Patterns After Changes in Supplemental Nutrition Assistance Program Benefit Levels," *Preventing Chronic Disease*, October 3, 2018, <https://europepmc.org/article/PMC/6178899>. These results, based on national data on hospital admissions, are consistent with earlier research based on admissions in Massachusetts following the Recovery Act increases. See Rajan A. Sonik, "Massachusetts Inpatient Medicaid Cost Response to Increased Supplemental Nutrition Assistance Program Benefits," *American Journal of Public Health Policy*, March 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4880217/pdf/AJPH.2015.302990.pdf>.

I declare under penalty of perjury that the forgoing is true and correct and of my own personal knowledge.

Executed on January 15, 2020 in Washington, DC.



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