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Waivers Add Key State Flexibility to SNAP's Three-Month Time Limit

By Ed Bolen and Stacy Dean

One of the harshest rules in the Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program) limits unemployed individuals aged 18 to 50 not living with children to three months of SNAP benefits in any 36-month period when they aren't employed or in a work or training program for at least 20 hours a week.¹ Under the rule, implemented as part of the 1996 welfare law, states are not obligated to offer affected individuals a work or training program slot, and most do not. 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. As a result, this rule is, in reality, a time limit on benefits and *not* a work requirement, as it is sometimes described.

In addition to being harsh policy that punishes individuals who are willing to work but can't find a job, the rule is one of the most administratively complex and error-prone aspects of SNAP law. Many states also believe that the rule undermines their efforts to design meaningful work requirements, as the time limit imposes unrealistic dictates on the types of job training that can qualify. For these reasons, many states have long sought the rule's repeal.

The time limit law does provide states with the ability to seek waivers from the Agriculture Department (USDA), which administers SNAP, to temporarily suspend the three-month limit for individuals in areas with insufficient jobs. Since passage of the welfare law, many states have sought waivers for counties, cities, or reservations with relatively high and sustained unemployment. Every state except Delaware has sought a waiver at some point since the time limit's enactment.²

The waiver also helps non-profit service providers located in areas with high unemployment and with limited means to expand their services, such as food banks, homeless shelters, and health clinics, which experience greater demand without the waiver as clients lose benefits and are in

¹ For a more comprehensive discussion of the time limit rule, see: Ed Bolen *et al.*, "More Than 500,000 Adults Will Lose SNAP Benefits in 2016 as Waivers Expire," Center on Budget and Policy Priorities, updated March 18, 2016, <http://www.cbpp.org/research/food-assistance/more-than-500000-adults-will-lose-snap-benefits-in-2016-as-waivers-expire>.

² "FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents," USDA Office of Inspector General, Audit Report 27601-0002-31, September 2016, <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

greater need of services, given their deep poverty. While participating in SNAP, childless adults have average incomes of 32 percent of the poverty line — the equivalent of about \$3,900 per year for a single person in 2017.

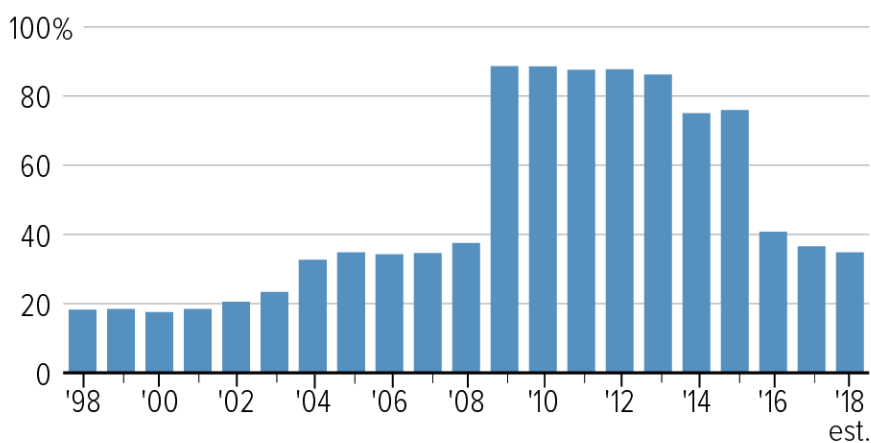
States can choose (or choose not) to request a waiver. In some cases, states with areas that have a persistently struggling labor market, such as the Central Valley in California or rural West Virginia, have sought waivers to avoid penalizing those who cannot find a 20-hour-per-week job within three months. In other cases, governors have sought waivers because extraordinary events have hurt their local labor markets, such as the 2010 Gulf of Mexico oil spill, Hurricane Katrina, or layoffs from a major local employer.

Many states also seek waivers from the time limit because they would prefer to devote the resources needed to implement the administratively complex time limit to implementing a more rational and appropriate work requirement tailored to their local economy and to available job training programs.

FIGURE 1

Share of Population Waived from SNAP's 3-Month Time Limit Peaked in Recession

Share of population living in an area, i.e., county or city, waived from time limit



Note: SNAP limits unemployed individuals aged 18 to 50 not living with children to three months of SNAP benefits in any 36-month period when they aren't employed or in a work or training program for at least 20 hours a week. The time limit law does allow states to seek waivers from the Agriculture Department, which administers SNAP, to temporarily suspend the three-month limit for individuals in areas with insufficient jobs.

Source: CBPP analysis of state waivers; U.S. Census Bureau population estimates

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USDA's firm guidelines regarding waiver criteria have limited the waivers' scope. A review of waivers over the last 20 years shows that just over a third of the country (as measured by the share of the total population living in waived counties) is waived in a typical year. (See Figure 1.) During the recession and its aftermath, Congress made a large portion of the country temporarily eligible for

a waiver in recognition of widespread elevated unemployment. Some have misinterpreted this temporary expansion of waivers as a permanent expansion of the policy or an Obama Administration-led effort to eliminate the time limit.

This report provides an overview of the SNAP time-limit waiver criteria and a summary of the main reasons that states seek waivers. It also highlights how the waiver criteria fall short in recognizing the difficulties that many subject to this rule face in finding consistent work for 20 hours a week.

USDA May Approve Waivers Only for High-Unemployment Areas

When the time limit was being debated in Congress as part of the 1996 welfare law, its proponents claimed that the proposed rule was not intended to take effect in areas where jobs weren't available. Then-congressman and co-author of the provision John Kasich said, "It is only if you are able-bodied, if you are childless, and if you live in an area where you are getting food stamps and there are jobs available, then it applies."³ The rule was designed to permit states to seek waivers in areas where jobs aren't available. To qualify for a waiver, states must provide detailed evidence of high unemployment in local areas, in accordance with rigorous requirements set by the U.S. Department of Agriculture (USDA). USDA has consistently used the same criteria to define high unemployment since the late 1990s.

The federal law gives states the option to request a waiver of the time limit if they can document that a given geographic area has an insufficient number of jobs (or has an unemployment rate over 10 percent). The standards that define how a state may document "insufficient jobs" were first fully codified in regulations under the Bush Administration in 2001 (and essentially reflect guidance set in the late 1990s). In setting the waiver criteria, USDA adhered to long-time Labor Department standards to identify areas with labor-market weakness. To qualify for the insufficient jobs standard, a state must demonstrate that a geographic area (as defined by the state) meets specified criteria.

Federal regulations deem waiver requests that are based on certain criteria as "readily approvable" — meaning USDA approves them once it confirms that the data are correct — because the data clearly establish high unemployment in the area. (In other words, USDA cannot arbitrarily deny a state that provides adequate documentation showing that the area's unemployment rate would qualify it for a waiver.) These criteria are:

- *Designation as a Labor Surplus Area* — a criterion several that federal agencies use to prioritize government contracts or assistance.⁴
- *An average unemployment rate at least 20 percent above the national average over a recent 24-month time period.* This standard tracks the Labor Department's definition of a Labor Surplus Area but can use more recent data.

³ Congressional Record, 104th Congress, Welfare and Medicaid Reform Act of 1996 (House of Representatives – July 18, 1996), page H7905, <https://www.congress.gov/crec/1996/07/18/CREC-1996-07-18.pdf>.

⁴ U.S. Department of Labor, "Labor Surplus Area: Frequently Asked Questions," updated August 21, 2015, https://www.doleta.gov/programs/lsa_faq.cfm.

- *An average 12-month unemployment rate over 10 percent.*

In addition, waivers based on unemployment rates that meet the criteria to qualify for additional weeks of Extended Benefits (EB) under the Unemployment Insurance (UI) system may also be approved by USDA.⁵ States may also make the case for a waiver for a given area based on certain other criteria; approval of these waivers is left to the discretion of the Secretary of Agriculture. One example is a low and declining employment-to-population ratio,⁶ a measure that labor economists use to capture weak labor markets in areas where there is a notable lack of jobs relative to the size of the working-age population. States have used this criterion sparingly, and USDA requires states to demonstrate additional evidence of weak labor markets for approval, such as a spike in unemployment or a significant company layoff that affects local labor markets.⁷ Typically, only a handful of rural counties and Indian reservations receive waivers under this criterion.

USDA has not issued major policy changes since the criteria were initially published in 2001, and state waiver requests have consistently been evaluated according to these criteria.

Congressional Action to Expand Waivers During the Great Recession

In response to the 2007 recession, Congress temporarily expanded the circumstances under which an area could qualify for a waiver. These temporary policies were the only two expansions in waiver criteria since the time limit took effect in 1996 — and both have ended.

- In recognition of the Great Recession’s impact on job loss and increased hardship for unemployed workers, Congress enacted the federal Emergency Unemployment Benefits (EUC) program in 2008. EUC, like the federal emergency unemployment insurance programs enacted in every major recession since 1958, was a temporary program that provided additional weeks of UI to qualifying jobless workers during periods when jobs were hard to find.⁸ EUC established several “tiers,” with each tier making a specified number of additional

⁵ The EB program has criteria in law under which unemployed workers in a state are eligible to receive extended unemployment benefits, and states can opt to offer EB benefits under certain additional criteria. (For more information, see “Conformity Requirements for State UI Laws,” Department of Labor, https://workforcsecurity.doleta.gov/unemploy/pdf/uilaws_extended.pdf.) Because these unemployment criteria (known as “triggers”) establish high unemployment, a state is eligible for a waiver if it meets the criteria under the triggers, even if the state does not elect to provide EB benefits under that trigger.

⁶ The employment-to-population ratio is the share of the non-institutional, civilian adult population (over age 16) that is employed. The employment-to-population ratio provides useful information in assessing labor market conditions over the business cycle because it takes into account changes in labor market “slack” (insufficient jobs) due to changes in both unemployment and labor-force participation. For more information, see Sarah Donovan, “An Overview of the Employment-Population Ratio,” Congressional Research Service, May 27, 2015, <https://fas.org/sgp/crs/misc/R44055.pdf>.

⁷ U.S. Department of Agriculture, Food and Nutrition Service (FNS), “Supplemental Nutrition Assistance Program — Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD),” December 2, 2016, <https://www.fns.usda.gov/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf>.

⁸ Chad Stone, “Congress Should Renew Emergency Unemployment Compensation Before the End of the Year,” Center on Budget and Policy Priorities, November 21, 2013, <http://www.cbpp.org/research/congress-should-renew-emergency-unemployment-compensation-before-the-end-of-the-year>.

weeks of UI benefits available to jobless workers in the state, depending on the state's unemployment rate. Workers in states with higher unemployment rates would be in higher tiers and hence could receive more weeks of UI benefits. Because qualifying for higher tiers of benefits under EUC signified higher unemployment and a lack of jobs, the Bush Administration allowed states to qualify for a waiver based on qualifying for at least the second tier of EUC.⁹

Congress extended and modified the EUC program several times, allowing it to operate through January 1, 2014.¹⁰ Many states qualified for at least the second tier of EUC through December 2013. As a result, they qualified for waivers from the time limit into 2015 (since USDA approved waivers for up to one year from the date a state qualified for EUC).

- Meanwhile, the 2009 Recovery Act suspended the time limit nationwide for part of 2009 and all of fiscal year 2010. States had the option to retain the time limit if they offered work opportunities, such as job training and workfare, to all individuals subject to the rule. During this time, states didn't have to request a waiver (though almost every state qualified for a statewide waiver due to the exceptionally high levels of unemployment across the country). The suspension of the time limit ended in September 2010. After that, most states continued to qualify for statewide waivers for a few years under EUC-related and other, longstanding USDA waiver criteria.

The requirement that states demonstrate to USDA that an area exceeds a high threshold of persistent unemployment in order to qualify for a waiver has limited the waivers' scope. A review of waivers over the last 20 years shows that just over a third of the country (as measured by share of the total population living in waived counties) has been waived in a typical year.¹¹ Only during the recession and its aftermath was more than half the county temporarily waived from the time limit, and that was due to widespread elevated unemployment. Some have mistakenly interpreted the temporary suspension of the time limit in 2009-2010, or the temporary expansion of waivers during the aftermath of the recession when job growth remained sluggish for some time, as a permanent expansion of the policy or an Obama Administration-led effort to eliminate the time limit.

Why Do States Seek Waivers?

Individual state decisions to seek a time-limit waiver have varied over time depending on states' leadership and the economic circumstances at the time of their request. USDA's Office of Inspector General documented states' motivation in a recent audit of this policy.¹²

⁹ USDA Memo, "SNAP-ABAWD Statewide Waivers – New Criteria for Unemployment Insurance Extended Benefits Trigger," January 8, 2009, <https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD%20Statewide%20Waivers.pdf>. When all states were eligible for both the first and second tiers of EUC, USDA required states to be eligible for at least the third tier to qualify for a waiver.

¹⁰ U.S. Department of Labor, "Emergency Unemployment Compensation Expired on January 1, 2014," updated July 1, 2015, http://ows.doleta.gov/unemploy/supp_act.asp.

¹¹ "SNAP Time Limits: Waivers from the Time Limit Are Back to Historic Norms," Center on Budget and Policy Priorities, March 24, 2017, <http://www.cbpp.org/sites/default/files/atoms/files/3-24-17fa1.pdf>.

¹² "FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents."

- **The time limit provision is very complicated and difficult to administer.** State administrators have expressed strong concern with the complexity of the time-limit provision since its passage in 1996. The rule requires them to track individuals with a level of specificity that is inconsistent with how they otherwise operate SNAP and other low-income assistance programs. States find the rule to be error-prone and believe that it can increase their payment error rate. Some states seek waivers, in part, to ease the administrative burden associated with the rule.
- **Waiving the time limit allows states to set a genuine work requirement.** Under the time limit, states are not required to offer a job or training program to every individual (or, for that matter, to *any* affected individuals), and they do not receive sufficient funds through the SNAP Employment and Training (E&T) program to do so. In addition, the law limits the types of slots a state can provide, making them expensive and out of sync with the needs of much of this population. As a result, very few states commit to offering work opportunities to all individuals subject to the time limit.

Waivers, by contrast, can make meaningful work requirements a reality. A state requesting a waiver of the three-month time limit can still require individuals to engage in work-related activities as a condition of receiving benefits through the SNAP E&T program. Every state operates a SNAP E&T program, through which the state can provide a wide range of employment-related activities to a broad range of individuals who are able to work. While there is little evidence that SNAP E&T requirements lead to long-term sustainable jobs, they do allow a state to require a SNAP participant to engage in work activities in order to remain eligible.

Some states require SNAP participants to participate in a job search program, as a way of testing an individual's willingness to work, to remain eligible. These job search programs are relatively inexpensive to operate. But stand-alone job search is explicitly prohibited from being a qualifying E&T activity for childless adults subject to the time limit. The only activities states are allowed to offer to individuals subject to the time limit are job training, education, and workfare programs, which typically are too expensive to offer to all such individuals.¹³ Moreover, this population often isn't a state's priority for such investments.

In short, if a childless adult searches diligently for work but is unable to find a job or a slot in a work or training program, he or she loses benefits after three months, despite showing effort and willingness to work. Waivers, by contrast, allow states to ensure that they are denying benefits based only on bad conduct, not bad luck.

- **States wish to protect individuals living in relatively high unemployment areas.** Even in states with relatively low statewide unemployment rates, parts of the state may have significantly weaker labor markets, with few jobs available. The flexibility that allows states to apply for *area* waivers recognizes that parts of a state may have insufficient jobs for low-income workers. For example, some states may seek waivers for areas where a dominant industry is struggling.

¹³ Hours spent in job search can count toward an individual's required 20 hours per week, so long as they constitute less than half of the total number of hours spent in E&T activities.

States frequently use waiver authority for rural areas, where about three-quarters of adults say good jobs are hard to come by where they live.¹⁴ Urban areas as a whole have fully recovered the jobs lost in the recession, while the number of jobs in rural areas continued to remain below pre-recession levels in 2017.¹⁵

Waiver Authority Insufficient to Address Needs of Unemployed Workers

While a waiver offers a necessary, temporary reprieve from the time limit for individuals living in areas with high unemployment, both the waiver authority and the underlying time limit are not responsive to the immediate employment challenges that many people subject to the rule face, even in areas of more modest unemployment. Geographic waivers thus provide needed but inadequate protection for individuals subject to the time limit. While the underlying rule exempts some individuals from the time limit (such as people with physical or mental conditions and those caring for incapacitated individuals) and states can exempt a limited number of additional individuals in unique circumstances, this flexibility allows states the option to fully exempt all individuals who face insufficient job opportunities for reasons other than area unemployment.¹⁶

Many of the individuals subject to the time limit struggle to find employment even in normal economic times. Those subject to this rule are extremely poor, tend to have limited education, and sometimes face barriers to work such as a criminal justice history or racial discrimination. About a quarter have less than a high school education, and half have at most a high school diploma or GED.¹⁷ SNAP participants subject to the three-month cutoff are more likely than other SNAP participants to lack basic job skills like reading, writing, and basic mathematics, according to the Government Accountability Office.¹⁸

Unemployment rates for lower-skilled workers tend to be high even when the economy is otherwise doing well. The unemployment rate for people lacking a high school diploma or GED — who make up about a quarter of all non-disabled childless adults on SNAP — stood at 6.5 percent in 2017, while the overall unemployment rate was 4.4 percent.¹⁹ (See Figure 2.) Unemployment rates for workers in many lower-skilled occupations, such as those in the service industries, are also

¹⁴ “The State of American Jobs,” Pew Research Center, October 6, 2016, http://www.ledevoir.com/documents/pdf/etude_travail_pewresearch.pdf.

¹⁵ U.S. Department of Agriculture, “Rural America at a Glance: 2017 Edition,” November 2017, <https://www.ers.usda.gov/webdocs/publications/85740/cib-182.pdf?v=43054>.

¹⁶ Federal regulations identify certain individuals as exempt (see 7 C.F.R. §273.24(c)) and states receive a limited number of individual exemptions they can use to exempt any individual subject to the rule, though these are underutilized in most states (see 7 C.F.R. §273.24(g)).

¹⁷ 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>.

¹⁸ “Food Stamp Employment and Training Program,” United States General Accounting Office (GAO–3-388), March 2003, p. 17.

¹⁹ Bureau of Labor Statistics, <https://www.bls.gov/cps/cpsaat07.htm>.

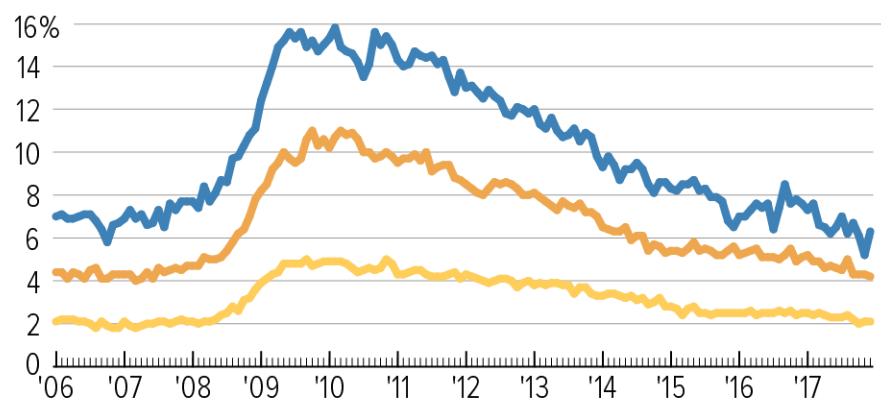
substantially higher than the overall unemployment rate. In December 2017, unemployment in the food services industry was 6.3 percent, above the national overall average of 4.1 percent.²⁰

FIGURE 2

Unemployment Higher Among Those With Less Education

Monthly unemployment rate

— Less than high school — High school — Bachelor's degree or higher



Source: U.S. Bureau of Labor Statistics, Current Population Survey

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While there have been few in-depth studies of people subject to the time limit, some evidence suggests that a sizable portion have a criminal history, which has a significant impact on job prospects. A detailed study of childless adults who were referred to community-based workfare in Franklin County (Columbus), Ohio found that about one-third had a felony conviction.²¹ People with criminal records find it harder to be hired, due to reluctance by employers to hire such individuals as well as low levels of education and poor work histories.²² In addition to the stigma of incarceration, a number of states prohibit people with criminal histories from working in certain occupations. Not surprisingly, people with criminal backgrounds work less and have reduced earnings. It is unrealistic to expect these individuals to find work quickly, especially in weaker labor markets.

²⁰ Industries at a Glance: Food Services and Drinking Places, Bureau of Labor Statistics, <https://www.bls.gov/iag/tgs/iag722.htm>.

²¹ Ohio Association of Food Banks, “Franklin County Comprehensive Report on Able-Bodies Adults Without Dependents, 2014-2015,” October 14, 2015, http://admin.ohiofoodbanks.org/uploads/news/ABAWD_Report_2014-2015-v3.pdf.

²² Maurice Emsellem and Jason Ziedenberg, “Strategies for Full Employment Through Reform of the Criminal Justice System,” Center on Budget and Policy Priorities, March 20, 2015, <http://www.cbpp.org/research/full-employment/strategies-for-full-employment-through-reform-of-the-criminal-justice>.

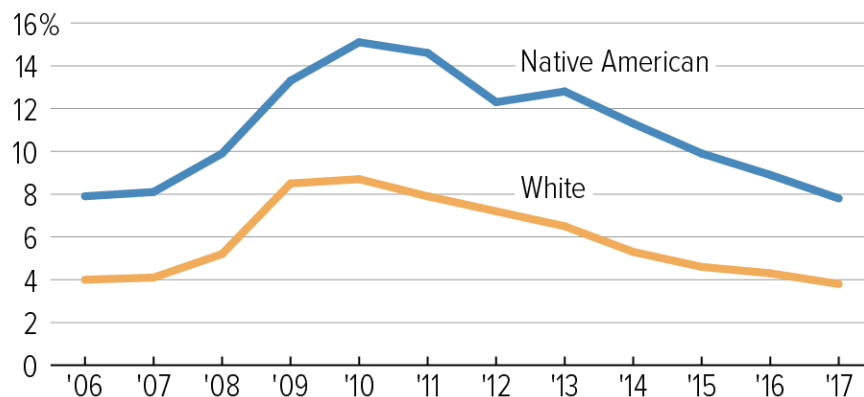
Racial and ethnic minorities facing the time limit also may face discrimination that contributes to higher-than-average unemployment, irrespective of their education level or criminal history. Unemployment rates tend to be higher for African Americans; in 2017, the rate for African American men over 16 years old was 7.5 percent, compared to an overall rate for men over 16 of 4.4 percent.²³ Racial discrimination likely plays a role: field studies have found that even holding qualifications equal, white job applicants are much more likely to receive callbacks after initial applications or interviews than African American applicants.²⁴

Native Americans also face higher-than-average unemployment, in part because some live on Indian reservations or in other remote, economically disadvantaged areas. Historically, the Native American unemployment rate has significantly exceeded the white unemployment rate; the Native American unemployment rate was roughly double the white unemployment rate in 2017.²⁵ (See Figure 3.) As a result, states have repeatedly requested waivers for reservations where jobs can be extremely difficult to find (and some states *only* request waivers for reservation areas).

FIGURE 3

Native Americans Face High Unemployment

2006 - 2017 annual averages



Note: "Native American" refers to individuals identifying as American Indian or Alaska Native alone or in combination with some other racial category. "White" refers to individuals identifying as white alone. Both Native American and white data include Hispanics.

Source: U.S. Bureau of Labor Statistics, Current Population Survey

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²³ Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics, <https://www.bls.gov/cps/cpsaat03.htm>.

²⁴ Devah Pager and Bruce Western, "Identifying Discrimination at Work: the Use of Field Experiments," *Journal of Social Issues*, Vol. 68, No. 2, 2012, pp. 221-237, http://scholar.harvard.edu/files/pager/files/identifying_discrimination_pager_western.pdf?m=1462807104.

²⁵ Algernon Austin, "High Unemployment Means Native Americans Are Still Waiting for an Economic Recovery," Economic Policy Institute, December 17, 2013, <http://www.epi.org/publication/high-unemployment-means-native-americans/>.

Implementing the Time Limit Does Not Increase Work Effort

There is no evidence that SNAP receipt discourages unemployed adults without children from seeking employment. Many are likely receiving SNAP because, although they want to work, various barriers prevent them from landing a job. Others may be getting SNAP while looking for work or because they can't find a job with sufficient work hours.

For the population of individuals who aren't working at least 20 hours a week, SNAP provides less than \$5 a day in food benefits. It is hard to imagine these individuals would forgo earnings to maintain eligibility for SNAP. (Moreover, workers securing low-wage jobs often remain eligible for SNAP due to their low earnings.)

Conclusion

When policymakers enacted SNAP's three-month time limit, they provided states with the ability to waive this harsh rule in areas with insufficient jobs or high unemployment. States have made use of this authority to protect vulnerable citizens, to ease the burden of administering this complicated rule, and to craft meaningful work requirements that are better suited for this population and their communities. Waiver criteria have been applied consistently for the past 20 years, resulting in about a third of the country being waived during non-recessionary periods. Critics of the waiver policy often do not take into account the time limit's unusual severity, the limited and temporary reach of waivers, and how they allow states to impose more meaningful and fair work requirements. Waivers from the time limit are a limited, albeit, important measure of state flexibility to ease this very harsh rule.