



Summary of Final Rule Employment and Training Opportunities in the Supplemental Nutrition Assistance Program

January 8, 2021

On January 4, 2021, the Food and Nutrition Services (FNS) issued a final rule, “*Employment and Training Opportunities in the Supplemental Nutrition Assistance Program*”, effective March 8, 2021, amending 7 CFR 271 and 273 to implement changes made by section 4005 of The Agriculture Improvement Act of 2018 (Pub. L. 115- 334) to the Supplemental Nutrition Assistance Program (SNAP). Below is a summary of major provisions impacting state and local SNAP Employment and Training (E&T) programs. For additional questions or clarifications, please contact APHSA Policy Associate Mary Nelson at mnelson@aphsa.org.

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Requires Coordination with Workforce Development Boards – Requires State agencies to consult with their State workforce development boards on the design of their E&T programs and to document in their E&T State plans the extent to which their E&T programs will be carried out in coordination with activities under title I of the WIOA. State Agencies may consult with private employers or employer organizations if it would be more effective or efficient.

Changes to E&T Components – Modifies allowable SNAP E&T components as follows:

- Replaces “job search” with “supervised job search” as a component;
 - Defines “State approved locations” for supervised job search as any location deemed suitable by the State agency where the participant has access to the tools they need. States may list the criteria used to approve a location within their state plan in lieu of stating actual locations.
 - Allows for supervision of job search to be asynchronistic, meaning job search and supervision/coaching need not happen at the same time—one may follow the other, and may occur remotely or in-person.
 - Clarifies that state agencies may select the most suitable method to track job-search hours.
 - Clarifies that un-supervised job search may be used as a subsidiary activity of another component, so long as it makes up less than half the time in that component;
- Eliminates job finding clubs;
- Replaces “job skills assessments” with “employability assessments,” permitting a broader, more holistic assessment of skill-based and non-skill-based barriers to employment;
- Divides work experience programs into two types of activities – “work activity” or “work-based learning”;
 - Adds pre-apprenticeships, apprenticeships and subsidized employment as allowable activities under work-based learning activities in addition to internships, customized training, transitional jobs, incumbent worker training, on-the-job training as defined under WIOA, and other opportunities that would qualify based on the provided definition of “work-based learning”;
 - FNS will reimburse State agencies 50% of non-Federal funds spent on allowable costs, including those associated with wages though a subsidized employment activity within a work experience component and wages earned for necessary classroom training in addition to work. However, wage expenses for subsidized employment activities outside of a work experience component are not reimbursable.
 - Note that, compensation earned from subsidized employment must count as income for purposes of SNAP eligibility.
 - Clarifies that an ABAWD is prohibited from participating in a work experience component for more hours than their than their benefit divided by the higher of the applicable Federal or State minimum wage, in accordance with the FLSA. However, if those hours are not sufficient to meet the ABAWD work requirement, the ABAWD would then need to participate in another activity to meet the necessary balance of hours.
 - Clarifies that voluntary participants are prohibited from participating in a work experience component for more hours than their than their household allotment divided by the higher of the applicable Federal or State minimum wage, unless the employer compensates the voluntary participant at least equal to minimum wage for the additional hours.

- Requires provision of job retention services to be for at least 30 days but no more than 90 days, and;
- Allows activities from the E&T pilots authorized under the Farm Bill that have had the most demonstrable impact to become allowable E&T activities. Note that, evaluation of pilot programs to make such a determination is not expected until 2023.

Requires Provision of Case Management Services - Requires that, in addition to providing one or more E&T components, all E&T programs provide case management services to E&T participants. The final rule provides states broad flexibility in the duration and manner by which individual recipients participate in case management, including whether to embed case management in a component or provide as a separate service. The final rule also removes the proposed requirement to estimate the cost of case management services in the E&T plan.

Establishes Procedures for Provider Determinations & Re-referral of Individuals – Requires state agencies to ensure E&T providers are informed of their authority and responsibility to determine if an individual is ill-suited for a particular E&T component, referred to as provider determination.

Specifically, the final rule:

- Replaces the proposed term “ill-suited determination” with “provider determination” when establishing a program is not appropriate for an individual;
- Requires E&T providers to make a provider determination and provides them flexibility, with State agency oversight, to develop criteria in making a provider determination. State agencies have the option to allow the E&T provider to switch the individual to another component offered by that same provider without a provider determination.
- Requires E&T providers to notify the state agency within 10 days of making a provider determination;
- Requires that the State agency develop and implement procedures to, within 10 days of receiving provider notice, notify individuals about the provider determination, next steps, and contact information for the State agency. This need not be a formal, written notice. If the individual is an ABAWD, the State agency is also responsible for informing the ABAWD that they will accrue countable months unless the ABAWD fulfills the work requirement, has good cause, lives in a waived area, or is otherwise exempt;
- Clarifies that countable months should not accrue for ABAWDs until the first full benefit month after the provider determination;
- Clarifies the provider determination process applies to all SNAP E&T participants, including voluntary participants;
- Requires the State agency to take one of four actions after a provider determination: 1) refer the individual to an appropriate E&T component; 2) refer the individual to an appropriate workforce partnership, if available; 3) re-assess the individual’s physical and mental fitness; or 4) to the maximum extent practicable, coordinate with other Federal, State, or local workforce or assistance programs to identify work opportunities or assistance for the individual.
 - The decision regarding next steps must be made by a state eligibility worker. However, the provider issuing the provider determination should communicate their reasoning for the determination to the state agency, and case managers, providers, and other staff are

encouraged to share important information which could inform appropriate next steps. Additionally, case manager are required to report to the state agency any likely exemptions or potential good cause circumstances applicable to an E&T participant, which may also assist in making a decision.

- State agencies must make a decision before an individual's next recertification, except if an individual with a provider determination asks the state to take action the state must do so as soon as possible.
- Clarifies, that, with regards to 7 CFR 273.7(c)(3) and 7 CFR 273.7(f)(1)(i), before a State agency issues a notice of adverse action to an individual or a household, as appropriate, for non-compliance with SNAP work requirements, the State agency must determine that the non-compliance was without good cause.

Establishes Good Cause for Failure to Participants When There is No Appropriate/Available Opening in E&T – Revises the definition of good cause for failure to comply with the requirement to participate in E&T to include instances in which an appropriate component or opening in an E&T program is not available. Note, this form of good cause does not extend to ABAWD work requirements.

Establishes New Components of the Quarterly E&T Program & Activity Report – Modifies the required reporting elements in the final quarterly E&T Program Activity Report provided by State agencies to include the number of: (1) mandatory E&T participants; (2) mandatory E&T participants who begin participation in an E&T program; (3) mandatory participants who begin participation in an E&T component; and (4) participants who are determined ineligible for non-compliance.

- Note that, the distinction between (2) and (3) was added in the final rule to acknowledge where participants may be enrolled in an E&T program, but in the process of beginning a component. For example, a participant may be enrolled in E&T but there are additional steps before they have actually begun participating in a component, such as attending an orientation.

Establishes Workforce Partnerships as an Eligible Work Activity – Adds workforce partnerships as a way for SNAP participants to meet their mandatory SNAP E&T and ABAWD work requirements.

- Establishes a certification process for workforce partnerships by the State agency. Clarifies that workforce partnerships are not an E&T component but are partnerships that allow E&T participants to gain high-quality, work-related skills, training, work, or experience;
- Clarifies that workforce partnerships must offer at least 20 hours/week for SNAP E&T, meaning that ABAWDs cannot “mix and match” workforce partnerships with other components to make up the mandatory hours/month;
- Requires state agencies to inform any SNAP participant likely to benefit from participation in a workforce partnership of the availability of workforce partnerships and provide all available pertinent information. However, State agencies need not provide a list to all work registrants.

Changes the Minimum Allocation and Reallocations of 100 Percent Funds – Establishes a funding formula for reallocated E&T funds and increases the minimum allocation of 100% funds for each State agency to \$100,000.

Requires Advisement of Employment and Training Opportunities – Requires that all State agencies advise certain zero-income households subject to the general work requirement at recertification of employment and training opportunities.

- Allows state agencies to determine how participants can best access the information, either electronically or in paper form.

Requires Consolidated Notice of Work Requirements – Requires State agencies to provide to all households subject to work requirements a consolidated written notice and comprehensive oral explanation of all applicable work requirements for individuals within the household.

- Clarifies notice may be delivered consistent with the [*Electronic Notice Waivers and Options*](#) policy;
- Establishes a deadline for implementation for this provision of October 1, 2021.

Establishes Changes Specific to Able-bodied Adults Without Dependents (ABAWDs) –

- Updates the regulations to reflect the reduction in the number of ABAWD work exemptions from 15 percent to 12 percent and referring to such exemptions as “discretionary exemptions”;
- Adds workforce partnerships and employment and training programs for veterans operated by the Department of Labor or the Department of Veteran’s Affairs as work programs for ABAWDs;
- Clarifies that either supervised or unsupervised job search are activities that cannot count for the purposes of an ABAWD fulfilling their work requirements unless it is a subsidiary activity and comprises less than half the work requirement;
 - Clarifies for individuals enrolled in a program under Title 1 of WIOA, supervised job search can count toward the ABAWD work requirement. However, for any other WIOA program, supervised job search cannot count toward the ABAWD work requirement, unless it makes up less than half the requirement.
- Requires the State Agency to provide good cause for failure to meet the ABAWD work requirement, without having to make a separate determination if an individual is determined to have good cause for failure or refusal to comply with mandatory E&T under 7 CFR 273.7(i), except for CFR 273.7(i)(4) (lack of an appropriate or available E&T opening);
- Requires the State Agency to find an ABAWD has fulfilled the work requirements if an ABAWD is participating in work, a work program, or workfare and would have fulfilled the work requirements, but missed some hours for good cause, so long as the absence is temporary.