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April 6, 2018

Ms. Sasha Gersten-Paal
SNAP Program Development Division
Food and Nutrition Service
3101 Park Center Drive, Room 812
Alexandria, VA 22302

Submitted online at: <https://www.federalregister.gov/documents/2018/02/23/2018-03752/supplemental-nutrition-assistance-program-requirements-and-services-for-able-bodied-adults-without>

Re: Advanced Notice of Proposed Rulemaking: Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents RIN 0584-AE57

Dear Ms. Gersten-Paal:

The Western Center on Law and Poverty represents California's poorest residents in policy and budget discussions affecting housing, health and public benefits. We have lead California's advocacy during the last several farm bills and in the state administration of SNAP. We are writing to comment on USDA's Advanced Notice of Proposed Rulemaking on requirements and services for people deemed to be Able-Bodied Adults Without Dependents (ABAWDs) in the Supplemental Nutrition Assistance Program (SNAP).

As you are aware, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),¹ Congress created a time limit in the Food Stamp Program, now known as SNAP, for unemployed childless adults between the ages of 18 and 49 years old, who were deemed to be ABAWDs.² Unless exempt due to disability or pregnancy, an ABAWD is limited to receiving federal food benefits for just three months out of any thirty-six month period unless they satisfy the 20 hours-per-week work requirement associated with this time limit.

Under SNAP regulations, a state or an area within a state can qualify for a 12-month statewide ABAWD waiver if it demonstrates that it has a labor surplus. Using the criteria established in the Code of Federal Regulations (C.F.R.), the United States Department of Agriculture's Secretary has approved California's request for a waiver of the ABAWD time-limit until September of this year. After that, the state has requested and, according to criteria set forth in the C.F.R.,³ should receive a waiver for all areas except Santa Clara, San Mateo and San Francisco Counties, which are no longer eligible pursuant to these provisions. Area waiver approvals come up for review each year.

Our organization opposed the passage of the rule as it was included in PRORWA and, today, we join the California Secretary of Agriculture and the California Secretary of Health and Human

¹ Public Law 104-193: <http://www.gpo.gov/fdsys/pkg/PLAW-104publ193/html/PLAW-104publ193.htm>

² 7 U.S.C. § 2015 (o); 7 C.F.R. § 273.24; MPP § 63-410.

³ The ABAWD Time Limit final rules were published in 2000 by the Clinton Administration.

Services in calling for a repeal of this rule altogether.⁴ If a repeal of the rule cannot be achieved, we urge lawmakers, at a minimum, not to allow for the weakening of the protections to the rule that have been long-established in federal law and guidance and that have worked to prevent hunger for people who cannot find work and in communities impacted by periods times of high unemployment.

California's recovery from the recession was slower than in other states because, according to economists, the state's austerity measures resulted in higher than average cuts to government jobs and money circulated in the economy.⁵ While two million new jobs have been created and unemployment has dropped in half since 2011, many Californians struggle with unemployment, underemployment and low-wages and, as a result, experience hunger or are forced to rely on programs in the social public safety net. Without support to improve their skills and work opportunity, these Californians will linger in poverty regardless of how hard they work. In fact, in 2015, nearly 80% of poor Californians had earnings from work.⁶

The ABAWD time limit is one of the most hardhearted and backward thinking of the policy changes implemented during federal welfare reform. The time limit denies food aid to both individuals with undiagnosed impairments who struggle to find work. States are not obliged to help these individuals find medical providers who can diagnose or treat their impairments. The time limit denies food aid to individuals without impairments who are actively looking for work and willing to accept any appropriate job or work program slot offered if they can get to the job and if an employer will hire them. Unlike work requirements in other public assistance programs, states have absolutely no obligation under the SNAP time limit rules to offer skills training, employment services or any transportation assistance to individuals before cutting them off food assistance.⁷ As a result, most of these individuals are denied food help and go hungry, making it more difficult to find work, not less.

For low-income Americans, both those who work and those who do not or cannot, SNAP offers an essential support, preventing hunger and malnutrition. For people looking for work, this access to food is essential, as hunger can easily undermine employment goals. But that's not all. For many SNAP recipients, receipt of hunger-fighting food benefits makes them eligible for the SNAP Employment and Training (E&T) program. SNAP ET can help recipients reduce barriers to work, find employment and even provides post-employment services to help workers be successful in a new job. However, the SNAP ET programs are limited, do not have slots that open up fast enough to correspond with the recipient's time clock, and do not offer up front funds for transportation costs (it operates as a reimbursement). However, for SNAP recipients who can access these programs, the services can be a lifeline. Cutting recipients off of aid, cuts them from the opportunity to work.

The time limit includes protections for people who are disabled, but the red tape in establishing that a person is disabled or unfit for work can be burdensome and those with the most significant illnesses are at risk of being unable to comply with the verification rules. This is especially true if one couples the time limit with the Administration's proposal to limit access to Medicaid. Even if

⁴ Joint letter detailing Farm Bill priorities: https://www.cdffa.ca.gov/farm_bill/pdfs/2018FarmBillPriorities.pdf

⁵ Citation about austerity in California.

⁶ According to the Public Policy Institute of California. http://www.ppic.org/main/publication_show.asp?i=261

⁷ [H.R. 1276 \(Rep. Adams, Alma S. \[D-NC-12\] + 89 Co-sponsors\)](#) would require that a job opportunity be provided before a person could have their benefits cut as a result of the time limit.

covered by Medicaid, many medical providers charge a service fee for providing proof of disability. After years of administrative advocacy, Western Center sponsored a bill that was signed in 2017 that would prevent Medi-Cal providers from charging this fee when it is needed to verify disability for the purposes of SNAP (and other public aid),⁸ though other providers may still charge fees and this provision is only available in California.

Lacking job opportunities and with multiple barriers to work, SNAP recipients deemed to be an ABAWD may be able to find a low-paying service sector work, but those jobs are increasingly part-time and lack fair scheduling practices making it difficult to guarantee 20 hours a week on a regular basis.⁹ According to one study, 43 percent of part-time workers wished they had more hours and this involuntary part-time work has only grown over the course of the economic downturn, more than doubling between 2007 and 2012 from 3.6 to 7.8 percent among women in the workforce and from 2.4 to 5.9 percent among men.¹⁰ According to federal law, if a SNAP recipient who is subject to the time limit falls short of the 80 hours of work activity, the entire month must count toward the three month in a three year period time limit, regardless of the reasons for not meeting the requirement of the household's circumstances.

According to a study of workers of all ages, about 17 percent of the workforce experiences unstable work schedules.¹¹ More than 40 percent of early career hourly workers (ages 26 to 32) receive one week or less advance notice of their job schedules. Half of these workers have no input into their schedules and three-quarters experience fluctuations in the number of hours they work, with hours varying by more than eight hours per week on average.¹² Some who work in hourly jobs receive hours that fluctuate by up to 40 percent.¹³ Most retailers and restaurants do not and have testified in the California state legislature that having unpredictable scheduling is necessary in their industry because customer traffic is also unpredictable. As a result, workers in the retail and restaurant industry who would like to work 20 hours per week or more, may not get those hours and will not know that they will miss the ABAWD Time Limit work goal with enough time to find additional employment. This not only disadvantages workers in these fields, it is also unfair to their managers who may need to cut hours of their workers to keep business costs down, but will also be burdened with the knowledge that by doing so, their employees could also go hungry.

In California, counties that wish to participate in SNAP E&T must submit an annual SNAP E&T Plan to CDSS for approval. This non-competitive proposal contains key elements of a proposed SNAP E&T program. DSS aggregates information from county SNAP E&T Plans into a California SNAP E&T Plan, which in turn is submitted to the USDA FNS for approval each year. Amendments to the plan may be submitted at the discretion of CDSS. Changes to the SNAP E&T Program made in 2013 (SB 1321, Chaptered laws of 2012), led County Human Services Agencies to

⁸ Senate Bill 575 (Leyva) signed by the Governor in October of 2017, to have free access to their medical records when applying for CalFresh.

⁹ Charlotte Alexander and Anna Haley-Lock, "Not Enough Hours in the Day: Work-Hour Insecurity and a New Approach to Wage and Hour Regulation," (Dec. 2013) <http://www.irp.wisc.edu/publications/dps/pdfs/dp141713.pdf>

¹⁰ Rebecca Glauber, "Wanting More Working Getting Less: Involuntary Part-Time Employment and Economic Vulnerability," (July 2013) <http://scholars.unh.edu/cgi/viewcontent.cgi?article=1198&context=carsey>

¹¹ Lonnie Golden, *Irregular Work Scheduling and Its Consequences*, Economic Policy Institute, April 9, 2015, <http://www.epi.org/publication/irregular-work-scheduling-and-its-consequences/>. The author believes this is likely a low estimate.

¹² Susan J. Lambert, Peter J. Fugiel, and Julia R. Henly, *Schedule Unpredictability among Early Career Workers in the US Labor Market: A National Snapshot*, EINet, July 17, 2014,

https://ssascholars.uchicago.edu/sites/default/files/einet/files/lambert.fugiel.henly_executive_summary.b_0.pdf.

¹³ Lambert et al., *Schedule Unpredictability*

improve their SNAP E&T Programs and, today, 33 Counties now participate in the SNAP E&T program. The United States Department of Agriculture Food and Nutrition Service has approved the DSS SNAP E&T plan for Federal Fiscal Year (FFY) 2017, pending final 2017 Federal Budget approval. This allocation includes 100 percent federal funds totaling \$10,335,573, Administrative federal “match” reimbursement funds totaling \$76,341,582 and Participant Reimbursement Transportation/Ancillary funds totaling \$17,139,956 for a grand total of \$103,817,111.¹⁴ Some of these federal “match” reimbursement funds are for third-parties (i.e. community colleges, non-profit employment and training centers, etc.).¹⁵

In 2015, the USDA FNS created a Center of Excellence for SNAP E&T, known as SNAP to Skills, at the national level. The work of SNAP to Skills has been essential in the development of California’s SNAP E&T program to help support SNAP recipients to seek employment skills, transition into work or prepare to advance in their chosen field. Buoyed by this increase in county participation and recent federal funding supporting pilot programs like that offered by the Fresno Bridge Academy in Fresno, SNAP E&T Programs are finding success in helping families secure employment that allows them to leave the safety net altogether.

Western Center supports SNAP E&T and our staff have played a significant role in expanding opportunities for counties to engage SNAP recipients with E&T Services. We were the lead advocate in establishing subsidized employment programs in our state’s Temporary Aid to Needy Families (TANF) and, just last year, sponsored successful legislation to seek a waiver from the USDA to allow a SNAP subsidized job program. But the capacity of the SNAP E&T program to serve all those who could benefit from it, including all SNAP recipients subject to the ABAWD time limit is not within the reach of our state budget, even though it is one of the strongest in the country. In 2015, Western Center sponsored legislation that would have ensured that every SNAP recipient subject to the ABAWD time limit would receive a SNAP E&T Placement before being cut off of aid, but the fiscal analysis for the bill placed a price tag of nearly \$1 Billion and the bill was held on the California Senate Appropriations Committee Suspense File.¹⁶ We continue to advocate in favor of such a policy with our endorsement of H.R. 1276 (Adams),¹⁷ which all but 10 members of the California Congressional Delegation have signed on to co-sponsor.

But the real policy options available to connect out-of-work American’s with jobs require laws to strengthen workplace rights and appropriate investments and these have been difficult to secure. Instead, the political dialogue on the topic has been flooded with rhetoric, much of it without merit and un-substantiated and based on stereotypes about who is working, who is not working and who needs help in order to find work. These stereotypes couldn’t be farther from the truth. While people often participate in SNAP when they are between jobs, SNAP recipients have high work rates, with more than 80 percent of SNAP households work in the year before or the year after receiving SNAP. Work rates are even higher for families with children: more than 60 percent work while receiving SNAP, and almost 90 percent work in the prior or subsequent year.¹⁸ Regardless of opinions of people who are not working, cannot work, or are underemployed, punishing people

¹⁴ Source: http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/cfl/2016-17/16-17_48.pdf

¹⁵ Effective with the December 2016 quarter, PC 364 SNAP E&T Third Party Match is available for claiming third party reimbursements to the SNAP E&T 50 percent allocation. Counties may utilize this code separately and/or concurrently with the PC 464 (SNAP E&T Administrative Activities). Please see CFL NO. 16/17-44 for additional information.

¹⁶ Senate Bill 306 (Hertzberg): http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB306

¹⁷ [H.R. 1276 \(Rep. Adams, Alma S. \[D-NC-12\] + 89 Co-sponsors\)](#) would require that a job opportunity be provided before a person could have their benefits cut as a result of the time limit.

¹⁸ Source: <https://www.cbpp.org/research/food-assistance/chart-book-snap-helps-struggling-families-put-food-on-the-table>

with hunger because they are in an unpopular minority is cruel and defeats its stated purpose of connecting people to work.

We are concerned that the Administration's rulemaking on the topic of the ABAWD time limit will feed off of these harmful stereotypes of out-of-work Americans and make the rule more draconian: to expand the scope of the cutoff and to eliminate the little flexibility states have to limit the damage of the rule. In fact, the Secretary of Agriculture's own statements underscore this concern when he said that the administration needed to "remove those waivers for able-bodied adults without dependents," because "it's become a lifestyle for some people." This is why we believe that the request for comment is part of an administrative effort to make the time limit even harsher, not to, as the invitation for comment suggests, to help SNAP recipients find and keep work.

We believe that the question of how to ensure that people who can work and are looking for work, are able to secure a job and keep a job is one that deserves genuine attention. Because wages the best defense against poverty, developing a policy agenda to promote work as a means toward achieving self-sufficiency should be a top priority. We recommend, however, rather than focusing on SNAP to achieve this goal, the Administration should improve the likelihood that out-of-work Americans secure and retain employment with the immediate request that Congress send the President legislation that would achieve this goal by:

Making employment a real option for every low-income American and protect families who can't work. Though unemployment has been steadily declining for the past several years, too many Americans still cannot find work. The request for comment asks, "Are there additional ways that States could incentivize employers to provide jobs to ABAWDs?" We recommend the administration support [a national guaranteed jobs initiative](#) or [Humphrey-Hawkins 21st Century Full Employment and Training Act](#) will put Americans back to work rebuilding our Nation's crumbling infrastructure and support worker retraining for a 21st Century economy. Passage of this legislation, coupled with a doubled-down investment in work opportunity through subsidized jobs for low-income families through [Temporary Assistance for Needy Families \(TANF\) Program](#) and childless adults through SNAP, will make self-reliant employment an option most working-aged Americans, including, but not limited to people deemed as an ABAWD in SNAP. Finally, families who cannot work [need to be protected from deep poverty](#) so as to ensure that future opportunities for parents and children to be meaningfully engaged in education, training and employment are not undermined by [the long-term detriments of deep poverty](#) to child development and adult health and mental health.

Increasing and index the minimum wage so that an honest day's work can bring an honest day's pay. With a [proliferation of low-wage work](#), over 25 percent of jobs in the nation pay less than the [federal poverty line](#) for a family of four, and 50 percent pay less than \$34,000 a year. Increasing the minimum wage achieves the twin goals of maintaining a wage floor to keep workers out of poverty, and stimulating the consumer spending necessary for economic recovery and future growth. In a 2011 [study](#) conducted by the Chicago Federal Reserve Bank, a one dollar increase in the minimum wage for a worker resulted in \$2,800 in new consumer spending by his or her household over the following year. America should seek to restore the full purchasing power of the minimum wage, [which would be over \\$20.00 an hour if it had kept pace with worker productivity](#), to guarantee each worker a decent standard of living, reduce the reliance of government safety-net programs and infuse our economy with more confident consumers. It should also end discrimination of workers who are disabled or under 20 and end

the distinction in wages for tipped-workers, allowing all of these groups to earn the same minimum wage as other workers.

Establishing the right of all workers to have paid sick days. Most workers will need to take time away from work now and then to attend to a personal or family illness. Though paid sick leave is considered by most Americans to be “[a basic worker’s right](#),” more than [40 percent](#) of people in the private sector workforce, including [81 percent](#) of low-wage workers, don’t receive a single [paid sick day](#). For low-income, working families this is especially critical, since a [few days’ lost pay](#) makes the struggle to secure basic needs that much harder. Even worse, nearly [25 percent of workers polled](#) said that they’ve lost a job or were told they’d lose a job for taking time off to due to illness. The [Healthy Families Act](#) would help to do this by allowing most workers to earn up to seven paid sick days annually.

Supporting Paid Family Leave so that workers can care for or an ill family member without losing their job. Only 11 percent of workers in the U.S. have access to paid family leave through their employers. [A recent study](#) found that women who take paid leave are 39 percent less likely to receive public assistance and 40 percent less likely to receive food stamps in the year following a child’s birth. According to a study by [Legal Momentum](#), the United States is [virtually alone](#) among other high-income countries in not setting a minimal standard for paid sick days, and is in the minority in not providing paid family leave. [The Family Act](#) would secure up to 12 weeks of paid leave each year to qualifying workers for the birth or adoption of a new child, the serious illness of an immediate family member, or a worker’s own medical condition.

Ending Worker Discrimination and Workplace Harassment. The Office of Civil Rights of the U.S. Department of Labor (DOL) has been closed under this Administration and efforts lead by the prior administration to increase equity among American workers has been defunded. This despite that worker discrimination and harassment is still experienced by America’s workforce, undermining their ability of find and keep a job. Evidence of substantial workplace discrimination and harassment has been documented to exist for:

- ***Black Workers:*** Recently published research demonstrates that discrimination in hiring remains a persistent challenge for Black workers. 17% of Black workers are unemployed as compared to 9% of white workers in California. While Black Americans are more educated than previous generations, they still earn only three quarters of what white workers earn. Relative to their share of the overall labor force, Black workers are underrepresented in professional, construction, manufacturing, and food service jobs.
- ***Women Workers:*** More than 40 percent of lesbian, gay, and bisexual workers report experiencing employment discrimination at some point in their lives, while approximately 90 percent of transgender workers report experiencing harassment, mistreatment, or discrimination at work or have tried to hide who they are to avoid these experiences. Women are almost half of the workforce. They are the sole or co-breadwinner in half of American families with children. They receive more college and graduate degrees than men. Yet, on average, women continue to earn considerably less than men. In 2015, female full-time, year-round workers made only 80 cents for every dollar earned by men, a gender wage gap of 20 percent. What’s more, research completed by the Institute for Women's Policy Research shows that outright discrimination in pay, hiring, or promotions continues to be a significant feature of working life of women.

- **Veterans:** While joblessness among veterans has declined over the years, it remains well above a labor force rates for all workers. Researchers from the Center for New American Security interviewed executives of 69 leading corporations and all said hiring veterans can be good for business, but more than half acknowledged harboring a negative image of veterans because of stereotypes about veterans.
- **Immigrant Workers:** Despite America's origins as a nation of immigrants, newcomers may still face a number of challenges when integrating in a variety of areas of everyday American life, including discrimination in the workplace. New waves of immigrants sometimes face opposition from established employers or co-workers who may be averse to, or simply fear, change. According to a Pew research poll, Latino people are the 2nd most discriminated against ethnic group after African-Americans. This is largely due to discrimination against immigrants. 27 percent of Black Immigrants age 25 and above have a bachelor's degree are higher yet over 7 percent of the Black Immigrant population is unemployed, the highest among all immigrant groups.
- **Asian American Workers:** One survey found that 62 percent of Asian and Asian Pacific Islander workers felt that their race has impacted their ability to advance at work.
- **Muslim American Workers:** Since 1997, the number of religious discrimination charges filed has increased nearly 50%. They are the third-fastest growing discrimination claims behind disability-based (Americans with Disability Act) claims and sexual harassment claims. Most of this increase is the persistent religion-based discrimination against Muslims that increased over 250% after September 11th. Muslims continue to make up a disproportionate amount of religion-based discrimination charges, hovering over 20%.

The Administration should restore and strengthen workplace civil rights investigation and enforcement to address these and other civil rights discrimination that undermine the ability of Americans to secure and maintain unemployment.

Establishing the right of all workers to have dependable schedules. Most workers will need to take time away from work now and then to attend to a personal or family illness. Though paid sick leave is considered by most Americans to be “[a basic worker’s right](#),” more than [40 percent](#) of people in the private sector workforce, including [81 percent](#) of low-wage workers, don’t receive a single [paid sick day](#). For low-income, working families this is especially critical, since a [few days’ lost pay](#) makes the struggle to secure basic needs that much harder. Even worse, nearly [25 percent of workers polled](#) said that they’ve lost a job or were told they’d lose a job for taking time off to due to illness. [The Schedules that Work Act](#) would establish fair scheduling and would support the Administration’s goal of helping people who have secured a job, keep their job, and to be fully employed.

Ensuring Health Care Coverage for all Americans. The request for comment asks, “How can the Department/States better engage and serve individuals determined to be unfit for employment? How can State agencies provide these individuals with services or opportunities that may increase their fitness for work?” It is our experience that many of the SNAP recipients who are believed to be unfit for work have undiagnosed and untreated mental or physical health disabilities. In California, low-income childless adults only recently secured health care coverage and, especially in rural communities, even when health care coverage is not a barrier

to diagnoses, lack of health care providers can be. If the administration would like to provide individuals deemed unfit for work with services and opportunities to increase their fitness for work, supporting health care for all Americans is essential. [Passing the Senate Medicaid for All Act would achieve this goal.](#)

Absent support for these proposals which would serve as the building blocks for economic security and a path to prosperity for all Americans, including those who are currently unemployed or underemployed, the administration's statements that they are seeking to help people become less dependent upon government safety-net fall flat. This is especially true if the resulting rulemaking increases hunger, thus undermining employability. As such, we would strongly oppose any administrative action by USDA that would weaken the protections to the SNAP ABAWD time limit available under existing law and regulation through the area waivers available to states that have experienced elevated unemployment. The rules governing area waivers have been in place for nearly 20 years and every state except Delaware has availed themselves of waivers at some point since the time limit became law. Until 2018, it was at the option of the County to participate in the ABAWD area waiver and even the most conservative county Boards of Supervisors chose not to exempt their counties from the waiver. The waiver rules are reasonable, transparent and manageable for states to operationalize. Any change that would restrict, impede or add uncertainty to our state's current ability to waive areas with elevated unemployment would not connect people to jobs and must not be pursued.

The request for comment also seems to suggest that potential improvements to other aspects of the time limit policy, such as individual exemption policy, would justify weakening states' flexibility to waive the time limit in areas with elevated unemployment. This logic is unfounded. Our state's current ability to exempt certain individuals from the rule is important, but is wholly insufficient and could never make up for having to apply the time limit in areas with elevated employment. And, the underfunded workforce system and SNAP E&T programs, even if funded to capacity, are not designed or well suited to meet the job training requirements under this rule. Put simply, there is no justification for weakening current waiver rules and exposing more people to this SNAP time limit.

The Administration should not weaken protections from the ABAWD time limit, for which there is no evidence that doing so would result in people working more hours...only that they would go hungry more often. The only action we encourage USDA to take with respect to the ABAWD three month time limit rule is its elimination. This policy change, combined with the proposals outlined above will ensure that every American who wants to work can work and that no one will go hungry due to lack of a job, whereby undermining their future opportunities for securing and maintaining a job with a living wage. Western Center on Law and Poverty stands prepared to help the Administration achieve this vision.

Sincerely,


Jessica Bartholow
Policy Advocate