

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Parts 271 and 273**

[FNS-2019-0008]

RIN 0584-AE68

**Employment and Training Opportunities in the Supplemental Nutrition Assistance Program****AGENCY:** Food and Nutrition Service (FNS), USDA.**ACTION:** Final rule.

**SUMMARY:** The final rule implements the changes made by section 4005 of the Agriculture Improvement Act of 2018 (the Act) to the Supplemental Nutrition Assistance Program (SNAP) pertaining to the Employment and Training (E&T) program and aspects of the work requirement for able-bodied adults without dependents (ABAWDs). In general, these changes are related to strengthening the SNAP E&T program, adding workforce partnerships as a way for SNAP participants to meet their work requirements, and modifying the work requirement for ABAWDs.

**DATES:** This rule is effective March 8, 2021. The provisions in 7 CFR 237.7(c)(1) pertaining to the consolidated written notice and oral explanation of work requirements, and the provisions in 7 CFR 273.7(c)(11)(iii) and (iv) and 7 CFR 273.7(c)(18) are applicable beginning October 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Moira Johnston, Food and Nutrition Service, Office of Employment and Training, 1320 Braddock Place, Alexandria, VA 22314, *ETORule@USDA.gov*.

**SUPPLEMENTARY INFORMATION:** The final rule implements the changes made by section 4005 of The Agriculture Improvement Act of 2018 (Pub. L. 115-334) (the Act) to the Supplemental Nutrition Assistance Program (SNAP). The Department published the proposed rule on March 17, 2020, and received 75 comments, 72 of which were substantive.

The final rule 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 Workforce Innovation and Opportunity Act (WIOA). The final rule also makes changes to E&T components including: Replacing job search with supervised

job search as a component; eliminating job finding clubs; replacing job skills assessments with employability assessments; adding apprenticeships and subsidized employment as allowable activities; requiring a 30-day minimum for provision of job retention services; and allowing those activities from the E&T pilots authorized under the Agricultural Act of 2014 (Pub. L. 113-79) that have had the most demonstrable impact on the ability of participants to find and retain employment that leads to increased income and reduced reliance on public assistance to become allowable E&T activities.

The final rule also 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 rule 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. It also modifies the required reporting elements in the final quarterly E&T Program Activity Report provided by State agencies to include the number of SNAP applicants and participants who are required to participate in E&T, of those, the number who begin participation in the E&T program and an E&T component, and the number of mandatory E&T participants who are determined ineligible for failure to comply. The rule adds workforce partnerships as a way for SNAP participants to meet their work requirements. It also establishes a funding formula for reallocated E&T funds and increases the minimum allocation of 100 percent funds for each State agency to \$100,000, as prescribed by the Act. The rule requires State agencies to re-direct individuals who are determined ill-suited for an E&T program component to other more suitable activities.

The final rule also codifies some changes to policy pertaining to able-bodied adults without dependents (ABAWDs). These changes include updating the regulations to reflect the reduction in the number of ABAWD work exemptions from 15 percent to 12 percent (this change was implemented at the start of Fiscal Year 2020) and referring to such exemptions as “discretionary exemptions,” as well as adding workforce partnerships and employment and training programs for veterans operated by the Department of Labor or the Department of Veteran’s Affairs to the list of work programs for ABAWDs. The rule replaces “job search” with “supervised job search” as

a type of activity that cannot count as a work program for the purposes of an ABAWD fulfilling their work requirement, unless it comprises less than half the work requirement.

The final rule adds the requirement that all State agencies advise certain zero-income households subject to the general work requirement at recertification of employment and training opportunities. The rule also requires State agencies to provide to all households subject to work requirements a consolidated written notice and comprehensive oral explanation of the work requirements for individuals within the household.

Overall, the Department believes the statutory changes made by section 4005 of the Act will strengthen E&T programs, and improve SNAP participants’ ability to gain and retain employment, thus reducing participant reliance on the social safety net. Through this legislation, Congress has tasked the Department and State agencies with reviewing and bolstering the quality and accountability of E&T programs for SNAP participants. The final rule allows for more evidence-based components and requires more accountability on the part of both State agencies and E&T participants while also retaining State flexibility. Notably, the addition of case management to the definition of an E&T program fundamentally changes SNAP E&T and the expectation for how State agencies must engage with E&T participants. As a result, the Department made several changes to the way E&T programs are described. In the final rule, an E&T program is defined as a program providing both case management and one or more E&T components. E&T components may be comprised of a number of activities which are designed to achieve the purpose of the component.

The Department discusses each of the final regulatory changes in more detail below.

**Consultation With Workforce Development Boards and Coordination With the Workforce Innovation and Opportunity Act (WIOA)**

Current regulations at 7 CFR 273.7(c)(5) require that E&T components must be delivered through the State’s statewide workforce development system, unless the component is not available locally through such a system. The Act added the requirement in section 6(d)(4)(A) of the Food and Nutrition Act (FNA) that State agencies must design their SNAP E&T programs in consultation with their State workforce development board or, if the

State agency demonstrates that consultation with private employers or employer organizations would be more effective or efficient, in consultation with private employers or employer organizations. The Act also added a new requirement that State agencies include in their E&T State plans the extent to which the State agency will coordinate with the activities carried out under title I of the Workforce Innovation and Opportunity Act (WIOA). The Department proposed to modify the regulation at 7 CFR 273.7(c)(5) to add the requirement that State agencies design their E&T programs in consultation with their State workforce development board or with employers or employer organizations, if the State agency demonstrates such consultation would be more effective or efficient. The Department also proposed to modify the regulation at 7 CFR 273.7(c)(6)(xii), as re-designated, to require State agencies to describe in their E&T State plans how they met this requirement to consult, to include a description of any outcomes from this consultation, and to document the extent to which their E&T programs are coordinated with activities carried out under title I of WIOA.

The Department received 13 comments on this provision, all of which were supportive of the proposed changes, although some commenters provided suggestions for improvement. Commenters supported the required consultation with workforce development boards to ensure SNAP E&T programs benefit from the expertise of these boards and to streamline the delivery of services. Commenters also noted that better alignment across SNAP E&T and title I of WIOA can help reduce service duplication, generate cost savings, and increase access to resources for jobseekers. One workforce training agency; however, cautioned against folding SNAP E&T into WIOA services. This agency noted that SNAP E&T funding offers certain flexibilities and support services that make it especially well-suited for working with job seekers with lower basic skills and greater barriers to employment, a group that is sometimes excluded from WIOA services. The Department agrees that SNAP E&T is well-positioned to serve individuals with greater need for support. The Department would like to clarify that this provision does not require State agencies to fold E&T into WIOA services and cautions against interpreting the provision this way. The Department encourages State agencies to be part of the conversations regarding States' workforce development strategies, to take full advantage of the

knowledge and expertise that currently exists within the statewide workforce development system, and to identify and leverage resources where appropriate and practicable. However, the SNAP E&T program remains the responsibility of the State agency and should be designed around the unique characteristics of the SNAP population. In addition, as discussed in the proposed rule, the new requirements for consultation with State workforce development boards and for documenting in E&T State plans the extent to which State agencies have coordinated with activities carried out under title I of WIOA, do not mean that State agencies need approval from their State workforce development board to implement their E&T program. The State SNAP agency will remain responsible for implementing and operating the State's E&T program.

A not-for profit agency suggested that, if a State agency chooses to consult with private employers or employer organizations instead of workforce development boards, the State agency should also demonstrate that they have consulted with labor representatives such as unions or worker centers. The Department agrees that these organizations may offer an important perspective on workforce development opportunities and would not discourage any State agency from reaching out to union or workforce centers, as applicable. However, the statutory requirement is only for States to consult with State workforce development boards, or private employers or employer organizations, if the State agency demonstrates such consultation would be more effective or efficient, and the Department believes it would impose an unnecessary additional burden on State agencies to expand the number of groups State agencies are required to consult with in the design of their E&T programs. A local government agency and three not-for-profit agencies recommended that the Department also encourage State agencies to engage with local employers or industry representatives to become SNAP E&T providers. The Department does encourage State agencies to collaborate and engage with a wide array of entities to develop training opportunities for SNAP E&T but declines to mandate such collaboration and engagement beyond the requirements of Section 4005 of the Act. State agencies can capitalize on the relationships and labor market expertise of State workforce development boards to facilitate connections to local employers and industry representatives. As a result, the

Department concludes that no addition to the proposed regulatory text is necessary.

To further collaboration with WIOA services, a State agency requested the Department commit to coordinated guidance from the United States Department of Agriculture and the Department of Labor on SNAP E&T and WIOA services. The coordinated guidance would "enhance local workforce boards' understanding of the opportunity that SNAP E&T recipients provide and help ensure their due consideration in the distribution of finite local workforce board resources." The Department regularly interacts with the Department of Labor, and will continue to explore opportunities to ensure awareness and understanding of SNAP E&T by State and local workforce development system stakeholders, including local workforce boards.

In conclusion, the Department finalizes the regulatory text as proposed without any changes.

### Supervised Job Search

Current regulations at 7 CFR 273.7(e)(1)(i) establish job search as an allowable E&T component. In addition, current regulations at 7 CFR 273.7(e)(1) specify that "job search or job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs." However, with respect to the ABAWD work requirement, the current provision goes on to state that "job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components." The Act replaced the E&T job search component with supervised job search in section 6(d)(4)(B)(i)(I) of the FNA, and defined supervised job search as an E&T component that occurs at State-approved locations at which the activities of participants shall be directly supervised, and the timing and activities of participants tracked in accordance with guidelines issued by the State agency. The Department proposed to codify the new supervised job search component at current 7 CFR 273.7(e)(1)(i), re-designated as 7 CFR 273.7(e)(2)(i). In addition, the Department proposed to make edits to current 7 CFR 273.7(e)(1), at re-designated 7 CFR 273.7(e)(2), to specify that job search, including supervised job search, when offered as components of an E&T program, are not in and of themselves "qualifying activities relating to the participation

requirements necessary to fulfill the ABAWD work requirement under § 273.24.” However, job search, including supervised job search, is an acceptable activity when offered as part of other E&T program components and it comprises less than half of the total required time spent in the components. The Department recognizes that job search, supervised or otherwise, can be an important activity for E&T participants seeking employment or looking for a new job where they can apply the skills gained through E&T. The Joint Explanatory Statement of the Committee of Conference, issued with the Act, reinforced that view by stating that “unsupervised job search” may be a “subsidiary component” for the purposes of meeting a work requirement, so long as it is less than half of the requirement.<sup>1</sup> The Department proposed to add in paragraph 7 CFR 273.7(c)(6)(i) a requirement that State agencies report in their E&T State plans a summary of the State guidelines used to implement supervised job search. The Department also proposed changes related to supervised job search in the section on ABAWD work programs at 7 CFR 273.24(a)(1)(iii), which are discussed in the section titled *Work Programs for Fulfilling the ABAWD Work Requirement* later in this preamble.

In the proposed rule, the Department proposed various factors to consider in interpreting “State-approved location,” “directly supervise participants,” and “tracking timing and activities of participants.” The Department sought comments regarding these phrases. The Department also sought comments describing current job search programs operated as part of E&T programs or other workforce development programs that are directly supervised and where the timing and activities of participants are tracked by the State agency or providers.

The Department received 49 comments on this provision. Twenty-six of the commenters supported defining supervised job search to allow maximum flexibility for State agencies to design programs that meet the needs of local participants. However, one commenter opposed the change explaining supervised job search “would place patronizing, infantilizing, and absurd restrictions on those seeking new employment.” The Department notes that the Act replaced job search with supervised job search and requires direct supervision and tracking of

timing and activities, therefore the Department must implement the regulatory change.

In responding to the Department’s request for feedback, commenters explained that the nationwide COVID-19 public health emergency demonstrated the importance of providing flexibility within supervised job search as the pandemic had limited face-to-face service options and necessitated that State agencies pivot to online or virtual platforms. A workforce training agency explained that, even before the current pandemic, searching and applying for jobs shifted greatly to online methods due to the increased use of technology. As such, the commenter believed that requiring job seekers to complete job search while being in the same physical location as SNAP E&T program staff is not necessary and should not be required. Two State agencies believed that allowing virtual locations would enable State agencies to integrate delivery of their supervised job search activities with the same online job search portals used by their WIOA and unemployment insurance systems, thus furthering the goal of greater integration with WIOA processes. Commenters also explained that geographic variation in where people live and varied access to public transportation may limit the types of physical locations available to them. For instance, in rural areas it may be prohibitive for participants to travel long-distances to attend in-person job search, so online or mobile application options may better suit these individuals. Commenters also noted it may be burdensome to State agencies and E&T providers to provide enough physical locations to accommodate all supervised job search participants, or to provide enough participant reimbursements to cover the transportation or other costs associated with travel. However, several commenters also cautioned that some participants will not have the ability or the technology to perform job search through a computer or mobile phone and, in these cases, State agencies should maintain easily-accessible locations for in-person job search in the community, or allow participants to access online or smartphone-based job search tools through community organizations like the public library. A workforce training agency and a legal services agency also commented about the importance of job seekers having personal technology now that so many job search resources and job application portals are online. The commenters urged the Department to allow E&T

supportive services funding to include technology costs as a permissible expenditure for SNAP E&T providers. A workforce training agency noted that State-administered job boards and workforce exchanges may not always contain up-to-date or relevant job postings, so State agencies should be allowed to direct participants to non-governmental social media and job posting sites. On the other hand, two State agencies lauded their workforce agency’s online tools for job search and participant activity tracking. One not-for-profit agency recommended that State agencies give participants the option to participate online or in-person based on the preferences of the participant.

The Department appreciates the number of well-thought-out comments received. The Department concludes the definition of “State approved locations” will include any location deemed suitable by the State agency where the participant has access to the tools they need to perform supervised job search. At these locations, participants may use any tools, such as virtual tools which include but are not limited to websites, portals, or applications to access supervised job search services. For instance, a State agency may choose to allow supervised job search to occur at any physical location where the participant can adequately access an internet connection with appropriate materials (e.g., a computer, tablet, smart phone) to access virtual tools. If the individual does not have access to the appropriate material to use a virtual tool, the State agency must provide the individual with the materials they need to participate in supervised job search, such as a computer, a tablet, Wi-Fi etc. Alternatively, the State may additionally decide to designate specific locations for a supervised job search. In this instance, the State agency must give the participant a list of locations where they can access the necessary tools and materials, such as a library, American Job Center, etc. In this case, the State agency would have to provide participant reimbursements in accordance with 7 CFR 273.7(d)(4) enabling the individual to access the location. To the extent practicable, the Department encourages State agencies to allow participants to choose their preferred location (e.g., at home, a library, a third party provider) to best meet the needs of the participants and better ensure a successful job search. The Department has updated the definition of supervised job search at 7 CFR 273.7(e)(2)(i) accordingly. The Department also reminds State agencies

<sup>1</sup> Conf. Rept. 115–1072, p. 617, <https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf>.

that 7 CFR 273.7(d)(4) requires State agencies to provide or reimburse the participant for expenses that are reasonably necessary and directly related to participation in the E&T program, including materials to access online programs (e.g., a laptop, tablet, or internet) or transportation assistance to physical locations. State agencies must also provide reasonable accommodations to all E&T participants with a disability in accordance with the Americans with Disabilities Act (Pub. L. 101–336).

Commenters similarly explained that supervision can be effectively delivered through a variety of means including in-person, phone, web-based and text-based methods, and the approach should align with the capabilities of the E&T provider and what will most effectively serve the client. A workforce training agency supported supervision of job search activities as it allows E&T staff to coach participants, build their labor market skills, identify potential barriers to employment, and determine plans for how to address those barriers through supportive services during the job search process. This commenter also explained that participant supervision requirements should be defined based on what supportive components exist as part of the supervision, rather than for pure oversight and compliance reasons. For instance, the commenter believed that time spent sharing and confirming job applications, logging hours committed to independent job search, and receiving assistance from a job coach should all count towards a participant's supervision requirement. Several State agencies noted that supervision of job search services can be completed remotely through web-based services that support active monitoring of participant progress with activities, as well as efficient communication with participants. The State agencies highly recommended that the Department consider technology and remote supervision when defining the supervised job search component for the purposes of E&T. For instance, one State agency explained how participants can utilize the State's workforce agency's online portal to complete career exploration assessments and skill assessments, in addition to seeking employment. The State agency partners with other community agencies offering job coaching to ensure participants have the skills necessary to become self-sufficient. Through other partnerships, the State agency also offers virtual workshops on resume development and "How-To" workshops covering a variety of topics. Another State agency

commented that State agencies could use weekly or semi-weekly case management telephonic meetings with participants to discuss digital job search logs and to direct and refine participants' job search moving forward. And a third State agency explained that their current process of developing a job search plan with the participant, combined with at least monthly check-ins to review progress, was an effective model of supervised job search. A not-for-profit agency recommended that State agencies also be allowed to conduct supervised job search programs in an asynchronous format, where program participants engage in job search activities on their own schedule. The Department agrees that both remote and in-person supervision can be effective. As a result, the Department concludes that State agencies will have flexibility to provide supervision through a number of modes (e.g., remote, in-person, or a blend), and encourages State agencies to ensure the mode of supervision aligns with the needs of the participant (e.g., if a participant performs job search online because of the inability to travel long distances, the State agency should consider conducting the supervision remotely as well). Significantly, the Department also concludes, based on language from The Joint Explanatory Statement of the Committee of Conference, issued with the Act,<sup>2</sup> that the intent of the statutory change from job search to supervised job search was to make State agencies more accountable to E&T participants by providing direct supervision and guidance to participant job search activities. The Department appreciates that some State agencies are able to provide a significant number of resources to E&T participants through online portals and websites, and believes these resources provide an effective means of providing some types of job search assistance to participants; however, online resources are not by themselves sufficient to fulfill the statutory obligation to provide direct supervision. To ensure participants engaged in supervised job search are provided the support they need to be successful, the Department concludes that supervision must be provided by skilled staff who can provide meaningful guidance and support to help participants find suitable employment through at least monthly check-ins with participants. These check-ins could cover a number of

topics, including reviews of participant job search logs, feedback on job applications, barrier reduction, progress monitoring, and job search coaching, and must be conducted with the aim of helping the participant find suitable employment. This supervision can also be provided asynchronously (i.e., the supervision need not occur at the same time a participant is searching for or applying for a job), but the Department will require at least monthly communication with the participant—either in-person or remotely—with a skilled staff person. Supervision that only occurs through automatic or autonomous computer programs, without at least monthly communication between the participant and skilled staff, would not fulfill the requirement to provide meaningful guidance and support, and would not meet the requirements for direct supervision. The Department has modified the regulation at 7 CFR 273.7(e)(2)(i), as re-designated, accordingly.

Commenters also noted that a number of methods exist to track the timing and activities of participants, including counters and timers in web-based programs to track hours logged in, sign-in sheets, job logs, and a deemed number of hours per job application. Several commenters encouraged the Department to allow State agency flexibility to use technology or other means to log and track job search efforts. The Department concludes State agencies should have discretion to devise the most appropriate means for tracking job search activities given the capabilities of the local programs and the needs of participants, and has modified the regulation accordingly at 7 CFR 277.7(e)(2)(i), as re-designated. The Department also notes that State agencies will continue to have flexibility to determine the most suitable method to track job search hours (e.g., by the number of applications submitted, or the number of hours logged onto a portal). Lastly, the Department would like to clarify that hours spent receiving job search supervision, in addition to hours spent looking for a job, count toward hours spent in the component.

Overall, commenters noted State agencies and their E&T providers should work with E&T participants to ensure participants are directed to supervised job search programs that are accessible and well-matched to the participant's needs. Commenters also believed that the introduction of the requirement for supervision would make job search programs more accountable and responsive to participants to increase

<sup>2</sup> Conf. Rept. 115–1072, p. 617, <https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf>.

their ability to gain regular employment. Several commenters also suggested additional changes or clarifications as detailed below.

Two commenters recommended allowing supervised job search to be coordinated with case management and the assessment process, as having only one entity conduct the activities would save resources and better allow case managers to coordinate services. The Department agrees and encourages State agencies, as a best practice, to coordinate the provision of supervised job search, case management, participant assessments, and any other E&T activities within the same provider. No revision to the regulatory text is necessary.

A not-for-profit agency urged the Department to require State agencies to explain in their E&T State plans how their approach to supervised job search: (1) Is based on evidence that individuals are likely to successfully comply; (2) targets individuals likely and able to find employment through job search; and (3) provides adequate information to each individual about the program design, anticipated outcomes, sanctions for noncompliance, how to obtain assistance overcoming obstacles to compliance (such as the lack of child care or transportation), reasonable accommodations for persons with disabilities, and where to obtain additional information. The Department agrees all E&T components operated by the State agency, not just supervised job search, should employ successful strategies to help participants move toward self-sufficiency, be appropriately targeted to individuals based on their training needs, and provide adequate information to the participant. For these reasons, the Department emphasized in the proposed rule the importance of State agency accountability for E&T programs and introduced new processes to ensure individuals are directed to the most appropriate component, or exempted from mandatory E&T, if appropriate. These efforts include the requirements that all E&T participants receive case management and that case managers share information about possible exemptions or good cause circumstances with the State agency, as well as the introduction of a new form of good cause if there is not an appropriate or available opening in E&T. The Department also agrees that State agencies must provide E&T participants with information about the E&T program, consequences for non-compliance, participant reimbursements, and any other information that would help mandatory E&T participants with compliance. For

this reason, the Department proposed that all households with individuals subject to the work requirements receive a consolidated written notice and oral explanation of those work requirements. In addition, several commenters recommended the Department require a direct link between job search activities and employment opportunities in order for the component to be approved. The commenters believed this language would help ensure that training be relevant and targeted to individuals who are able and likely to benefit from it. The Department agrees that the intent of replacing job search with supervised job search was to better support individuals to find suitable employment, not just fill work hours, and has added to the definition of supervised job search at 7 CFR 273.7(e)(2)(i), as redesignated, that job search activities must increase the employment opportunities of the participant.

Several State agencies and workforce training agencies requested that the Department change how State agencies must summarize the State guidance for the supervised job search component in their E&T State plans. The commenters explained that, instead of requiring specific sites for supervised job search to be documented in the plan, the State agencies should be allowed to include the specific criteria used by the State agency to approve supervised job search location. The Department agrees that, given the broad definition of supervised job search, it would likely be far too burdensome to have to identify in the E&T State plan all the approved locations. As a result, the Department has modified the regulation at 7 CFR 273.7(c)(6)(i) to require that State agencies instead provide the criteria used to approve locations and an explanation of why those criteria were chosen.

The Department received several requests to clarify how job search and job search training can be integrated as subsidiary activities of another component. As stated in the proposed rule, with the replacement of job search with supervised job search, unsupervised job search may no longer be a standalone E&T component. However, also as stated in the proposed rule, job search that does not meet the definition of supervised job search is allowed as a subsidiary activity of another E&T component, so long as the job search activity comprises less than half of the total required time spent in the component. One State agency, in particular, asked the Department to clarify whether job search may only be a subsidiary activity of another component when offered to a mandatory

E&T participant or ABAWD, or whether this construction also applies to E&T volunteers. The Department appreciates how the statement in the proposed regulatory text of “required time spent in the component” could be understood as only referring to mandatory participants. Therefore, the Department is clarifying that, in this context, allowable E&T components are the same whether offered to mandatory or voluntary E&T participants for this purpose, and has consequently modified the regulatory text at 7 CFR 273.7(e)(2)(i) to remove “required.” The State agency also questioned how to measure if job search makes up less than half the time in the component. The State agency provided the example of an E&T provider who employs a comprehensive curriculum with vocational education classes the first several months, followed by full-time job search. The State agency wondered if such a program could track all hours under the educational component, provided the hours spent in job search make up less than half of the total hours over the duration of the entire component. For purposes of fulfilling the ABAWD work requirement, the Department has always provided discretion to State agencies on how they measure the length of time participants spend in job search when job search is integrated into another component, to ensure job search makes up less than half the total required time spent in the component. The Department will allow similar discretion to State agencies when determining if time spent in unsupervised job search makes up less than half the time spent in the broader E&T component.

The Department also received a question about supervised job search and the ABAWD work requirement. This commenter asked if the Department has the flexibility to allow supervised job search activities to count for the ABAWD work requirement if the activities are offered through WIOA. The answer is, if an individual is enrolled in a program under title 1 of WIOA, supervised job search can count toward the ABAWD work requirement. However, supervised job search offered through any other WIOA program cannot count toward the ABAWD work requirement, unless it makes up less than half the requirement.

A not-for-profit agency expressed a number of concerns about the existing regulations that allow State agencies, at their option, to require SNAP applicants to participate in E&T, and expressed specific concerns related to requiring applicants to participate in job search. The commenter asked the Department to

require the following assurances in E&T State plans: That State agencies must adhere to the requirement at 7 CFR 273.7(c)(2) to screen each work registrant to determine whether it is appropriate to refer the individual to an E&T program component; that State agencies must reimburse applicants for all reasonable and necessary costs to participate in any E&T activity, including supervised job search, as required by 7 CFR 273.7(d)(4); that supervised applicant job search must not impose a new condition of eligibility in accordance with 7 CFR 273.2(a); and that applicant job search cannot delay determining SNAP eligibility. The Department agrees that all State agencies must adhere to the above policies for all E&T participants, whether they have chosen to serve applicants or not. Treating applicants differently than other E&T participants would not further the purposes of E&T and the changes required by the Act designed to enhance the effectiveness and accountability of SNAP E&T programs. Therefore, the Department has clarified the regulation at 7 CFR 273.7(e)(2), as re-designated, to indicate that, if a State agency requires an applicant to participate in E&T, the State agency must screen the applicant to determine if it is appropriate for that individual to participate in E&T in accordance with paragraph 7 CFR 273.7(c)(2) of this section, provide the applicant with participant reimbursements in accordance with 7 CFR 273.7(d)(4), and inform the applicant of E&T participation requirements, including how to access the component and consequences for failing to participate. The Department has also added a reference in the supervised job search paragraph at 7 CFR 273.7(e)(2)(i) citing the criteria necessary to serve applicants in 7 CFR 273.7(e)(2).

The Department also received several comments on the job search training component requesting the Department add the phrase “employment opportunities” to the sentence in paragraph 7 CFR 273.7(e)(2)(ii), as re-designated, thereby stating, “a direct link between the job search training activities and job-readiness and employment opportunities must be established for a component to be approved.” The commenters believed the addition of “employment opportunities” would allow providers to include activities such as job placement services, which may increase employment opportunities, but not affect their job-readiness. While the Department believes that job placement

activities can be part of a job search training, the purpose of the job search training component is to improve a participant’s skills to search for and acquire a job. These skills can be valuable in the future when the participant engages in new job searches. For this reason, the Department is not adding “employment opportunities” to the description of job search training.

The Department also received a comment requesting that job readiness training not be included as part of supervised job search, but instead be included as part of the education component. The Department received a similar comment requesting the Department to clarify that soft skills and job readiness training can be considered an education component. The Department understands that the commenters are confused about where to properly categorize job readiness training. The Department already recognizes work readiness training (*i.e.*, job readiness training) as part of the E&T education component, but notes that work readiness training is not formally listed within the education component at 7 CFR 273.7(e)(2)(iv), as re-designated. The Department has updated the regulatory text at 7 CFR 273.7(e)(2)(iv) to include work readiness training to reduce confusion and facilitate proper categorization of work readiness activities in the education component in the future.

In conclusion, the Department adopts the proposed regulatory language with the above noted changes to the definition of supervised job search, the modification of what State agencies must report on their E&T State plan, the addition of clarifying language about requiring applicants to participate in E&T, and the explicit addition of work readiness as an allowable activity to the education component.

#### **Employability Assessments**

Current regulations at 273.7(e)(1)(ii) permit the use of job skills assessments as part of a job search training component in a State’s E&T program. The Act replaced job skills assessments in section 6(d)(4)(B)(i)(II) of the FNA with “employability assessments.” The Department proposed to incorporate this change into the regulations by modifying paragraph 7 CFR 273.7(e)(1)(ii), re-designated as 7 CFR 273.7(e)(2)(ii), to remove the reference to job skills assessments and replace it with employability assessments.

The Department received six comments on this provision, with all commenters supporting the change. One commenter explained the shift to employability assessments in the Act

recognized that a more holistic focus on “employability” explicitly acknowledges the role that non-skill barriers (such as a suspended driver’s license, a criminal record, or unreliable childcare) can play in impacting how a person fares in the job market. However, one not-for-profit agency and one local government agency asked the Department to clarify that employability assessments can be part of both case management and the job search training component. The Department agrees that employability assessments can be helpful in a number of contexts and thus they are allowable under either category. However, State agencies and their providers should coordinate assessments so a participant does not undergo an employability assessment twice in a short period of time. One commenter asked for further clarification on the statement from the proposed rule that “the information collected through employability assessments should be used, together with ongoing case management, to improve and individualize services to E&T participants.” The commenter wondered if providers must continue to offer case management as a follow-up to an employability assessment. As discussed later in this preamble, State agencies and their providers are encouraged to continue to offer case management to all E&T participants so long as they are engaged with E&T and the participant shows interest in continuing case management. The Department encourages State agencies to work with their E&T providers to determine appropriate follow-up steps after an employability assessment, bearing in mind the needs of the participant, the structure of the E&T program, and provider capacity.

Additionally, a not-for-profit agency urged the Department to proceed carefully and mindfully in the design and delivery of employability assessments. In this commenter’s experience employability assessments can be used to screen out an individual from job placement, even when the individual is very motivated to work. The commenter also explained that employability assessments are subject to racial bias in that people of color—and Black people in particular—are disproportionately over-represented with regards to homelessness, involvement in the criminal legal system, and chronic unemployment. The commenter recommended the Department take a “zero exclusion” approach to employability assessments—as well as services offered—that assumes employability

and worker motivation, and makes every effort to accept and accommodate all jobseekers receiving SNAP E&T services. The commenter also recommended that State agencies collect information on the characteristics of jobseekers determined “not ready” for employment based on employability assessments. The Department appreciates the experience and perspective of the commenter and agrees that, in general, State agencies should strive to serve all individuals who are motivated to work or train for employment. State agencies are prohibited from discriminating against SNAP participants, in accordance with 7 CFR 272.6, and must have agreements in place with their providers to ensure discrimination is prohibited. The Department notes; however, that employability assessments may uncover circumstances that would make an individual exempt from a work requirement or provide good cause for non-compliance. If the E&T case manager is made aware of these circumstances, the Department requires at 7 CFR 273.7(e)(1), as re-designated, that the case manager inform the appropriate State agency staff. If the exemption or good cause is granted, the individual would no longer be required to participate in E&T. The Department also notes that State agencies are encouraged to collect information on E&T program performance, and may track the number of jobseekers determined “not ready.”

In conclusion, the Department codifies the regulatory language as proposed without any changes.

#### Removal of Job Finding Clubs

Current regulations at 7 CFR 273.7(e)(1)(ii) include job finding clubs as an allowable activity under the job search training component. The Act modified the job search training component in section 6(d)(4)(B)(i)(II) of the FNA to remove job finding clubs from the list of activities that can be included in a job search training program. As a result, the Department proposed to modify the regulation at 7 CFR 273.7(e)(1)(ii), now re-designated as 7 CFR 273.7(e)(2)(ii), to remove job finding clubs as an activity under the job search training component.

The Department received one comment on this provision from a workforce training agency, who claimed it was contradictory to remove job finding clubs and require that job search be supervised, as the commenter viewed these activities as similar. As already discussed, the Department views supervised job search as encompassing a robust set of supervisory activities and

does not believe the removal of job finding clubs from job search training activities will inhibit the implementation of supervised job search. In addition, while job finding clubs are specifically eliminated as an allowable activity, other activities that increase the employability of participants are still permitted, such as State or agency facilitated peer-to-peer learning opportunities or offering job search trainings in a group format.

In conclusion, the Department codifies the regulation as proposed without any changes.

#### Job Retention

Current regulations at 7 CFR 273.7(e)(1)(viii) allow job retention services as an allowable E&T component. These regulations explain that State agencies offering this component must provide no more than 90 days of job retention services. The Act modified the job retention E&T component in section 6(d)(4)(B)(i)(VII) of the FNA to require that State agencies choosing to provide job retention services must offer a minimum of 30 days of services, but did not modify the existing 90 day statutory maximum for the receipt of job retention services. As a result, the Department proposed to modify the current regulations at 7 CFR 273.7(e)(2)(viii), as re-designated, to add a 30-day minimum for the receipt of job retention services. Consistent with the statute, the proposed regulation stated that job retention services would need to be provided for a minimum of 30 days and no more than 90 days.

The Department received nine comments on this provision, all of which were supportive of the addition of the 30-day minimum. Commenters did, however, request clarification on some aspects of the rule as described below. A local government agency and a workforce training agency supported the minimum of 30 days, but requested that State agencies be allowed to offer up to 365 days of job retention services. The commenters explained the extended period of job retention services would better support the transition to employment and to a more independent lifestyle because, in the commenters' experience, the challenges that participants juggle as they begin to work can last throughout the first full year of employment. The Department agrees that some E&T participants may benefit from extended job retention services, but the Department does not have discretion through rulemaking to extend job retention services beyond the 90-day limit in the FNA.

A not-for-profit agency encouraged the Department to offer additional

guidance to specify that job retention services must include support for child care and transportation costs associated with retaining employment. The commenter explained many job retention participants may benefit from these services, but do not receive them, and as a result may not successfully transition to employment. The Department agrees that child care and transportation assistance may be helpful supports for the newly employed. However, as with all components, State agencies have flexibility to determine what services to offer under its job retention component. Job retention services may include providing or reimbursing participants for costs associated with transportation and childcare so that an individual can go to work. It is true that per § 273.7(d)(4), State agencies are required to provide participant reimbursements that are reasonable and necessary, and directly related to participating in an E&T component, including the job retention component. However, employment, in and of itself, is not a job retention service and, therefore, the State agency is not required to provide participant reimbursements so that an individual can go to work. Rather, if a State agency offers a service outside of work, such as a class on workplace etiquette, that requires individuals to travel to get there, a State agency is required to provide or reimburse individuals for their transportation costs in accordance with § 273.7.d(4). The Department encourages State agencies to consider offering job retention services, and work with their E&T providers to identify available and appropriate services that will support successful employment, but the Department cannot require a State agency to provide job retention services, nor require that the State agency provide child care and transportation services as part of the job retention component, outside of the required participant reimbursements that are reasonable and necessary for participating in a job retention activity outside of work.

Three commenters were concerned with preamble language that offered examples of how the State agency could demonstrate a good faith effort to provide at least 30 days of job retention services. The commenters explained that the example of creating a case management program for job retention participants that extended at least 30 days would deter some providers and participants from participating in the job retention component, because many providers of job retention do not create a case management plan for each

participant, but rather offer services based on the most salient needs of the participant at the time of contact. One commenter explained it would also be confusing to have a broader E&T case management plan and a more specific one for job retention. Instead the commenters proposed that service providers describe a general approach to job retention case management in their agreements with the State agency. A not-for-profit agency believed that a good faith effort to provide job retention services should also include a reasonable number of documented outreach attempts to the participant. The Department appreciates the comments that developing a separate case management plan for job retention may not always be feasible or helpful. The Department only intended to include a case management plan as an example of how a provider is making a good faith effort to provide at least 30 days of job retention. The Department requires that the provider must demonstrate in some way that a good faith effort has been made to provide 30 days of services. This could include, among other ideas, making a reasonable number of attempts to contact a participant, discussing the 30 day minimum requirement with the participant at the outset, or outlining specific steps the provider or the participant will take over the next 30 days to maintain a job.

In conclusion, the Department codifies the regulation as proposed without any changes.

#### **E&T Pilot Activities**

The Act provided the Secretary with discretion to allow programs and activities from the E&T pilots authorized under the Agricultural Act of 2014 (Pub. L. 113–79) (2014 Farm Bill) as regular E&T components in section 6(d)(4)(B)(i)(VIII). The Act specified that this determination must be based on the results from the independent evaluation of the 2014 Farm Bill E&T pilots, showing which programs and activities have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. As a result, the Department proposed adding similar language to the regulations in a new paragraph at 7 CFR 273.7(e)(2)(ix) to create a new E&T component category. The Department would note that the independent evaluation of the 2014 Farm Bill E&T pilots will not be completed until late 2021; as a result, the Department is not yet able to specifically identify new E&T

components from the 2014 Farm Bill E&T pilots.

The Department received 13 comments on this provision. As the evaluation is not yet complete, commenters generally expressed support in engaging with pilot activities once the Department has completed their assessment. However, one commenter recommended that States that participated in the pilots be allowed to continue those activities until the evaluation is complete and the Department has identified which activities have been found effective. The commenter explained Congressional interest in continuing these pilots is reflected in the Congressional prioritization of reallocated 100 percent E&T Federal funds. The Department appreciates the commenter's interest in the 2014 Farm Bill E&T pilots. As discussed later in this preamble, 50 percent of reallocated 100 percent funds shall be reallocated to State agencies requesting such funds to conduct employment and training programs and activities for which such State agencies had previously received pilot funding that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. However, until the final assessment, the Act allows the Department some discretion in determining activities with the most demonstrable impact, including using interim pilot reports or other information relating to performance of programs and activities.

In conclusion, the Department codifies the regulatory text as proposed without any changes.

#### **Subsidized Employment and Apprenticeships**

Current regulations at 7 CFR 273.7(e)(1)(iv) describe a work experience program as a program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. The Act added subsidized employment and apprenticeship in section 6(d)(4)(B)(i)(IV) of the FNA as examples of allowable activities under a program designed to improve the employability of individuals through actual work experience or training (*i.e.*, a work experience program). The Department proposed to modify the regulation at 7 CFR 273.7(e)(1)(iv), now re-designated as 7 CFR 273.7(e)(2)(iv), to better align the definition of a work

experience program and activities with other Federal workforce development programs, by delineating work experience programs into two sets of activities: Work activities and work-based learning. Subsidized employment and apprenticeships were added as work-based learning activities. The Department strongly encouraged State agencies interested in incorporating work-based learning activities into their E&T programs to work with their State Departments of Labor, American Job Centers, Perkins Career and Technical Education (CTE) providers, and other stakeholders, such as community colleges and community-based organizations, to capitalize on existing work-based learning infrastructure and services. The Department also proposed amending 7 CFR 273.7(d)(1)(ii)(A) to allow E&T funds to be used to subsidize the wages of E&T participants.

The Department received 41 comments on this provision. Commenters were very supportive of the changes to the definition of work experience and the alignment of the definitions of work experience, work activity, and work-based learning with definitions in other programs, as well as the inclusion of apprenticeships and subsidized employment as allowable activities. Several commenters mentioned they would like to implement subsidized employment as soon as possible, particularly in light of the spike in unemployment resulting from the COVID–19 public health emergency. However, some commenters were concerned that wages earned through subsidized employment would count as income for the SNAP eligibility determination, potentially making E&T participants ineligible for SNAP and, consequently, ineligible for E&T and the subsidized wage. FNS is not aware of any existing laws that would allow income from subsidized employment to be excluded when determining eligibility for SNAP. The Department advises, as a best practice, that the State agency advise participants of whether earnings from a work-based learning activity under an E&T program could potentially decrease the amount of SNAP benefits they receive or make their household ineligible for SNAP, and by extension, E&T, depending on their circumstances.

A not-for-profit agency explained they appreciated the Department's recognition in the proposed rule that the work experience component must be consistent with the Fair Labor Standards Act (FLSA), must not displace existing workers, and must provide participants with the same benefits and opportunities as anyone else doing a



substantially similar job. The commenter encouraged the Department to partner with Department of Labor (DOL) to issue guidance helping states avoid FLSA violations when using work-based learning models. The Department agrees that, with the introduction of subsidized employment, State agencies may be partnering with employers unfamiliar with E&T, and appreciates that guidance on avoiding FLSA violations, as well as other technical assistance on implementing a subsidized employment program, may be helpful. The Department will work with DOL to determine the most appropriate next steps to assist States agencies building their work-based learning programs in E&T.

A State agency asked for clarification on the application of the FLSA hour limitation rules to the ABAWD work requirement and the work experience component. The commenter explained that they understood the hours worked by an ABAWD in a work experience component would be countable towards the ABAWD work requirement; however, with the FLSA limitation of hours, the commenter believed an ABAWD could be in a situation where they participate in a work activity, as defined at 7 CFR 273.7(e)(2)(iv), for the number of hours equal to their benefit divided by the minimum wage, but this number of hours may not be sufficient to meet the ABAWD work requirement. The commenter explained TANF participants are “deemed up” for participation in the TANF work requirement when they complete the maximum hours allowable under FLSA rules. The State agency recommended for the work experience component that ABAWD hours be treated the same as they are in the TANF program and with SNAP workfare. The Department understands the commenters concerns; however, the FNA is specific in this area and the Department does not have discretion to allow work experience hours to be “deemed up” as they are in TANF. An ABAWD who participates in a work experience component is prohibited from being required to work more 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 balance of hours necessary to meet the ABAWD work requirement. The Department encourages State agencies to provide additional opportunities through the E&T program

that would allow the ABAWD to meet the ABAWD work requirement.

The Department would also like to make a clarification to the language in 7 CFR 273.7(e)(5)(iii) regarding voluntary E&T participants being permitted to work in an E&T program or workfare for more hours in a month than the value of their household allotment divided by the higher of the applicable Federal or State minimum wage. The Department recognized that the language at 7 CFR 273.7(e)(5)(iii), as proposed, could have been interpreted in some circumstances to allow voluntary E&T participants to choose to work additional hours for less than minimum wage in violation of Federal and State minimum wage laws. The clarified final regulation will now only permit those additional hours if the voluntary E&T participant earns a wage at least equal to minimum wage for the additional hours. For instance, if an E&T participant volunteers to participate in a subsidized employment activity, the participant may volunteer to participate for more hours in a month than their household allotment divided by the higher of the applicable Federal or State minimum wage, so long as the subsidized employment activity provides the participant with a wage at least equal to the higher of the applicable Federal or State minimum wage for those additional hours. The Department would also like to note that voluntary E&T participants in a work activity will not be allowed to volunteer for additional hours beyond the number of hours in a month that is equal to the value of their household allotment divided by the applicable Federal or State minimum wage, as allowing such excess would translate to receiving less than the minimum wage in the form of SNAP benefits. The Department has made this clarification at 7 CFR 273.7(e)(5)(iii), as re-designated.

A workforce training agency cautioned that, while subsidized wages can provide an incentive to employers to hire people with greater barriers to work, there must be oversight to ensure that employers do not just use the subsidy as a discount on labor, replacing the worker as soon as the subsidy ends with another subsidized worker. The commenter explained there needs to be systems of accountability to ensure employers retain and advance workers. The Department agrees that the objective of work-based learning, including subsidized employment, is to create a learning environment with the employer that includes specific training objectives and leads to regular employment. The objective of work-based learning, including subsidized

employment, is not to provide employers with low-cost workers until the subsidy “runs out.” Work-based learning is also part of the broader work experience component. The Department explains in the regulatory text that a work experience program is designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. The Department expects State agencies implementing subsidized employment programs to have agreements in place with employers to provide actual training to SNAP participants and a plan to move participants into unsubsidized employment as a result of the subsidized employment experience, either with the same employer or with another employer. As part of outcome reporting for E&T, as required in 7 CFR 273.7(c)(17), State agencies will be expected to report on participant outcomes for participants engaged in the work experience component.

The Department also received comments from a State agency and a workforce training agency that urged the Department to clarify whether wages or stipends provided by the employers participating in subsidized employment can be considered the non-Federal amount for which they may receive 50 percent reimbursement (e.g., the employer pays a total training wage or stipend of \$15 per hour, with \$7.50 reimbursed through E&T). The commenters recommended allowing wages or stipends provided by employers to be eligible for 50 percent reimbursement in order to increase the potential number of subsidized employment opportunities that may be offered. The Department is hereby clarifying that the Department will reimburse the State agency 50 percent of non-Federal funds expended on allowable E&T activities and services, including allowable costs associated with wages though a subsidized employment program, in accordance with applicable SNAP laws and regulations, as well as the Federal cost principles in title 2 of the CFR. The Department would also like to make a clarification to the regulatory text at 7 CFR 273.7(d)(1)(ii) to explain that while the E&T grants may be used to subsidize wages as part of the subsidized employment activity within the work experience component, that the E&T grant will not otherwise be permitted to subsidize wages for E&T participants.

These commenters also asked the Department to clarify if wages earned

for both classroom training and work are eligible for reimbursement under SNAP E&T. A State agency explained one of their E&T providers employs a model where participants earn wages for time spent in the classroom instruction phase of the curriculum, as well as the following phase, when individuals begin applying their knowledge through actual work. The Department is hereby clarifying that if an individual is in a job (e.g., subsidized employment, apprenticeship etc.), and that job requires classroom training in addition to the regular work, then State agency expenditures on wages earned for the classroom training are eligible for 50 percent reimbursement.

A local government agency agreed with the addition of apprenticeships and subsidized employment as allowable work experience activities, but suggested that pre-apprenticeship training should also be included, as pre-apprenticeship programs can function as an on-ramp to success in an actual apprenticeship program. The Department agrees and, for this reason, included pre-apprenticeships as a type of work-based learning program in the regulatory text at 7 CFR 273.7(c)(2)(iv)(A)(2).

A local government agency explained the most recent reauthorization of the Carl D. Perkins Career and Technical Education Act included simulated environments in the definition of work-based learning. The commenter recommended ensuring this option is included in allowable activities in E&T. The commenter explained instruction in a classroom setting is not always feasible for participants, particularly those with family or dependent care responsibilities, so online instruction fosters familiarity with technology, and is better aligned with the future of work. The commenter cautioned, however, that given the “digital divide” faced by many economically disadvantaged households, online learning should only be one in a range of options, with the provision of necessary supports. The Department agrees that simulated environments can be one way to deliver work-based learning, and included simulated environments in the definition of work-based learning in the proposed rule, and will keep simulated environments as part of the final rule at 7 CFR 273.7(c)(2)(iv)(A)(2).

A workforce training agency noted that in the Department’s revised definition of work experience, work activity, and work-based learning, there no longer appears to be a place for “non-workfare activities” that build a participant’s general skills, knowledge, and work habits, and provide a history

of work experience, but are not aligned with a career path in a specific field. The commenter explained the definition of work activity appears similar to workfare activities, to provide participants with the “general skills, knowledge, and work habits necessary to obtain employment,” while work-based learning is intended to build skills and experience in a given career field. The commenter believed some populations require work-based learning experiences that are more general in nature to allow them to build a work history that will lead to other employment. For example, an E&T provider may provide work experiences for E&T participants on parole or probation. These experiences are extremely important in helping the participant demonstrate the ability to obtain and retain future employment; however, they are not always connected to a specific career path. The commenter urged that the final language should allow for these types of work experiences within the definition of work-based learning or should broaden the definition of work activity. The Department recognizes that some E&T providers provide services that prepare individuals for the “first rung” of a career ladder. Mastery of soft skills and other work readiness activities—including general skills building, developing good work habits, and building a work history—are important foundational elements of any career pathway. Thus, these experiences can be included under work experience as part of a career pathway program. The Department also notes that, in some cases, basic skills training may be a better fit under another activity like work readiness in the education component.

The Department also received a comment from a not-for-profit agency opposing any work requirement in exchange for any form of basic assistance, including SNAP. As a result, the commenter rejected the premise in the proposed definition of a work activity, stating that work activities are “performed in exchange for SNAP benefits.” The commenter expressed that people experiencing hunger should not have to “perform activities” in exchange for food. The Department appreciates the commenter’s point of view, but the Department believes it is important, to the extent practicable, to align the definition of work activity in SNAP with the definition from TANF. Household members participating in a work activity or workfare are being compensated for their work through the SNAP allotment. The FNA in section

6(d)(4)(F) and regulations at 7 CFR 273.7(e)(4)(ii), as re-designated, prohibit members of a household from being required to work in an E&T program or participating in workfare for more hours than value of the household allotment for the month divided by the higher of the applicable State or Federal minimum wage. The Department stands by the proposed definition of work activity as one of several different types of work experience that can be offered by a State agency to develop the skills and experience of E&T participants, and move them toward self-sufficiency.

In conclusion, the Department codifies the regulatory language as proposed, with a modification to the language at 7 CFR 273.7(e)(5)(iii) pertaining to voluntary E&T participant work hours.

#### **WIOA Programs**

In the proposed rule, the Department proposed to modify 7 CFR 273.7(e)(2)(v), as re-designated, pertaining to allowing “WIA or State or local program” to serve as E&T components. The Department proposed to strike “or a WIA or State or local program” from the regulatory language because with the Act’s inclusion of subsidized employment and apprenticeships as allowable activities in E&T, all activities operated under WIOA (formerly referred to as the Workforce Improvement Act or WIA) are now allowable within other E&T components. Similarly, any services offered by the State agency or through State or local programs can be included in one of the other E&T components. By making this change, the Department is not intending to convey that programs operated under WIOA would be unallowable as E&T activities; in fact, all would be allowable and coordination would be encouraged. The Department received no comments on this change and hereby codifies the regulatory language as proposed.

#### **Case Management**

Current regulations at 7 CFR 273.7(c)(4) establish the requirement that each State agency must design and operate an E&T program that must consist of one or more E&T components as described in 7 CFR 273.7(e)(1). The Act modified the definition of an E&T program in section 6(d)(4)(B)(i) of the FNA to require that each State E&T program must also provide case management services, such as comprehensive intake assessments, individualized service plans, progress monitoring, or coordination with service providers, in addition to at least one E&T component. The Department

proposed to modify the regulation at 7 CFR 273.7(c)(4) to add that State agencies must offer case management services to all E&T participants. The Department also proposed to modify the regulations at 7 CFR 273.7(e) to add a new paragraph (e)(1), stating that case management services are a required part of all State E&T programs, and to provide examples from the Act of case management services. The Department proposed in new paragraph 7 CFR 273.7(c)(6)(ii), requiring that State agencies include information in their E&T State plans about case management operations, including a description of their case management services and models, the cost for providing the services, how participants will be referred to case management, how the participant's case will be managed, who will provide services, and how the service providers will coordinate with E&T providers, the State agency, and other community resources, as appropriate. In addition, the Department proposed various changes to the definitions in 7 CFR 271.2, the screening and referral process for E&T at 7 CFR 273.7(c)(2), and other E&T provisions to reflect the inclusion of case management services in the E&T program.

The Department received 35 comments on the case management provision, most of which believed case management was a beneficial addition that would help individuals successfully participate in E&T. Commenters supported the flexibility within the proposed regulation allowing case management services to be tailored to the needs of the participants and the capacity of the service provider. Many State agencies and workforce training agencies mentioned that case management is already a regular part of their E&T programs. Commenters also supported the requirement that case managers inform the appropriate State agency staff about possible participant exemptions or good cause circumstances, although some commenters were concerned that the State agency may not take the appropriate action with that information. In addition, while all commenters felt that case management would be helpful to E&T participants, some commenters were concerned that mandatory participants could be sanctioned for failing to participate in case management. Commenter concerns are discussed at greater length below.

The Department received several requests to clarify what services may constitute case management, to clearly state that State agencies have discretion to develop their own case management

programs, and to clarify if hours spent in case management count toward the ABAWD or E&T work requirements. As stated in the proposed rule, State agencies would have flexibility in the types of case management services offered, but the provision of case management services should generally be consistent with the examples provided in the Act, and driven by the needs of the participant. In the proposed rule, the Department stated that, to be allowable, the State agency would need to be able to demonstrate how a case management service is supporting an individual to successfully participate in E&T. Several not-for-profit agencies explained that E&T participants can face a number of barriers to employment, including housing instability, domestic violence, and unmet physical and behavioral health care needs. The commenters recommended that case management providers have broad flexibility in the types of services and supports they can provide participants to address these barriers. The Department understands that many different kinds of services can be offered under the umbrella of case management and that E&T participants can face a large number of barriers to successful participation in E&T. However, the Department wants to clarify that, while case managers may assist participants with barrier removal (e.g., perform an assessment of participant barriers, identify resources in the community to address those barriers, make referrals), SNAP E&T funds can only be used for allowable E&T activities and support. E&T funds must be used for the administrative costs of planning, implementing and operating SNAP E&T. This includes allowable components and activities, and supports that are reasonably necessary and directly related to participating in E&T, such as transportation, dependent care or other work, training or education related expenses. For instance, case managers might identify substance use disorder as a significant barrier to training or employment and in such a case would be allowed to make a referral to a substance use disorder treatment center. However, the State agency would not be allowed to support treatment costs at a substance use disorder treatment center with E&T funds, as this is not an allowable E&T component nor an allowable participant reimbursement. Similarly, a case manager might learn that an individual needs transportation assistance to get to the E&T site or help purchasing training supplies that are required in order to successfully participate in an E&T component. In

such instances, the case manager could provide the individual with participant reimbursements to fund those costs.

Another State agency asked for clarification that hours a participant spends reducing barriers identified in their individual employment plan and assigned through case management may count towards the work requirement. Case management is part of the E&T program. Thus, time spent participating in case management counts towards the time a participant spends in E&T. In addition, E&T is a way for ABAWDs to fulfill the ABAWD work requirement, with certain restrictions as detailed in 7 CFR 273.7(e)(2). As such, hours an E&T participant spends with a case manager must count towards the participant's mandatory E&T requirement and ABAWD work requirement. However, hours spent by the individual actually participating in the barrier removal activities do not count, unless the activity is an allowable E&T activity. For instance, hours a participant spends with a case worker identifying a temporary housing solution must count toward their work requirement, but not hours spent actually moving into temporary housing, as moving is not an E&T component or activity. On the other hand, a case manager may identify limited English proficiency as a barrier to successful participation in an E&T activity and refer the individual to an education component to build basic reading skills. Time spent in the education component would count toward work hours just as would time spent in any other E&T component. The Department has modified the regulation at 7 CFR 273.7(e)(1) to state that case management can include a number of activities and supports, but the services must directly support an individual's participation in an E&T program to count towards the individual's work requirement. Case management may include referrals to activities and supports outside of the E&T program, but State agencies can only use E&T funds for allowable components, activities, and participant reimbursements.

The Department also notes that 7 CFR 273.7(e)(1), as re-designated, requires a case manager to report to the appropriate State agency staff any likely exemptions or potential good cause circumstances applicable to an E&T participant. In some cases, an individual facing significant barriers may be better served with a referral to another program, and can return to E&T when they are able to seek work or train for a job. In these circumstances, a case manager would be allowed to assist the individual with any State agency

follow-up on the request for an exemption or good cause, and the Department would encourage case managers to make a warm hand-off to other appropriate non-E&T services, if and when the exemption or good cause is granted. More discussion of the case manager's responsibilities to inform the appropriate State agency staff about exemptions and good cause is found later in the preamble, in the section on State agency accountability for participation and good cause.

Several commenters wrote of their support for the statement at 7 CFR 273.7(e)(1) that "the provision of case management services must not be an impediment to the participant's successful participation in E&T," but urged the Department to strengthen this provision by specifying that, if a participant is otherwise participating in SNAP E&T activities, the participant may not be sanctioned for noncompliance solely because of non-compliance with case management activities. One not-for-profit agency recommended that the case management provider be required to gather input from the SNAP E&T participant about their desired level of participation. If the participant is still engaged in other SNAP E&T activities, but no longer interested in case management services, the participant would not be sanctioned for noncompliance solely for not participating in case management. Another not-for-profit agency suggested that case management should be provided to each individual at least once and be offered on an ongoing basis, but not be required beyond the initial interaction, if not desired or needed by the participant. A legal service agency recommended that the rule should explicitly state that case management activities not add additional case maintenance, paperwork burdens, or eligibility steps that could result in delays, reductions, or terminations of SNAP benefits due to non-compliance with case management activities. A workforce training agency cautioned that the Department should also not require the provision of case management services with a particular frequency (e.g., once a month). The Department acknowledges that a mandatory E&T participant can be sanctioned for failure to comply with case management, as case management is part of the E&T program, but the Department also believes that State agencies have sufficient flexibility in the design of their case management services to ensure that case management supports individuals participating in E&T and does not become a barrier for

low-income individuals who need access to E&T or food assistance. The Department also recognizes the wide variability in how E&T programs are structured across States, and that case management will be provided in a number of ways depending on the structure of the program and the needs of the participants. For instance, some participants may receive case management services embedded in a component, whereas other participants may receive stand-alone case management services separate from a component. Some participants may desire regularly occurring case management meetings, whereas other participants may only desire receiving case management when requested. The Department believes it is important to maintain this flexibility, and expects State agencies and their providers to work with participants to determine the best and most efficient delivery of case management services. The Department also reminds State agencies that the purpose of case management is to support participation in the E&T program. While all E&T participants must receive some case management, there is not an expectation that participants receive ongoing case management or multiple sessions of case management, if that is not desired by the participant, and the participant is otherwise successfully participating in an E&T component. The Department strongly urges State agencies and their providers to communicate upfront with participants about the participant's need for and interest in case management, and plan for case management services that meet those interests and needs. If the State agency or a provider finds that an individual has received some case management services, but is not currently engaged with case management, and is otherwise successfully participating in an E&T component, the Department would strongly encourage the State agency or the provider to communicate with the participant about their interest in case management, and adjust the provision of case management services accordingly.

The Department strongly believes that E&T programs should not unduly burden participants with administrative hurdles, meaningless tasks, and inefficient processes. Several commenters agreed that overly intensive or complex services, such as exhaustive skills assessments, numerous in-person meetings, or multiple hand-offs between providers can deter individuals, even in voluntary E&T programs, from completing the case management

process, especially for those that already face transportation or accessibility barriers. One not-for-profit agency urged the Department to require State agencies to include in their State E&T plans a description of how the case management services will support the goals of guiding participants to appropriate services, support individuals throughout the E&T activity, and provide additional services. The Department agrees that case management services must be tailored to the need of participants. State agencies and their providers should only provide services when there is a clear connection between those services and supporting the participant to succeed in the training or improving the employability of the participant. State agencies must also design their case management processes in a way that reduces hand-offs and unnecessary steps. The Department recognizes that State agencies will provide case management services in a number of ways—through State agency staff, E&T provider staff, or through other professionals—so it may not be possible to describe all case management services and the way they are provided in the E&T State plan. The Department notes that the regulatory text at 7 CFR 273.7(e)(1), as re-designated, states that the purpose of case management services shall be to guide the participant towards appropriate E&T components and services based on the participant's needs and interests, support the participant in the E&T program, and provide activities and resources that help the participant achieve program goals. However, the Department has modified the regulation at 7 CFR 273.7(c)(6)(ii) to require State agencies to include in their E&T State plan a general description of how the State agency will ensure E&T participants are provided with targeted case management services through an efficient administrative process. The Department will also continue to work with State agencies to develop case management processes that are efficient and adaptable to make best use of E&T resources and reduce participation barriers.

The Department also received a comment from a not-for-profit agency suggesting that the proposed rule incorrectly implemented the case management statutory provision by requiring case management be provided to all E&T participants. The commenter stated that the changes to section 6(d)(4)(B)(i) of the FNA only required case management to be a part of every State E&T program, not that every E&T

participant must receive case management. The commenter explained a State E&T program can contain case management and one component, or case management and multiple components. In the latter instance, all E&T participants are not required to participate in all components. The Department does not concur. The Department believes reading the statute in a manner that only offers case management to some E&T participants instead of all E&T participants does not make sense or further the purpose of the Act's changes. This change means all States agencies must now offer both case management and at least one component to each participant, and each individual must receive both case management and at least one component.

The Department received general support for including a description of the case management services offered by the State in the State E&T plan. However, several commenters did not support requiring cost information associated with the case management services in the E&T State plan. A not-for-profit agency that works with service providers and several workforce training agencies explained that providers integrate case management into other individually tailored services within E&T components, such as career counseling and job readiness training, and it would be burdensome and difficult for providers to account for each activity separately. They asked the Department to allow the cost of case management services to be embedded within component costs when participants receive case management services as part of that component. In addition, two workforce training agencies, who already provide case management to E&T participants, asked that the Department not impose onerous tracking, reporting, and other requirements for case management on E&T providers. The Department agrees that regulations pertaining to case management should not impose unnecessary burdens on E&T providers or participants. The flexibility provided within the regulations allows E&T providers, in conjunction with the State agency, to develop and provide case management services that are tailored to the needs of participants, the capacity of the E&T provider, and the structure of the E&T program in the State. The Department also understands that, in many circumstances, embedding case management in the E&T component will best serve the needs of the E&T participant, and that separately tracking the cost of those case management

services could indeed be onerous. As a result, the Department has modified the regulation at 7 CFR 273.7(c)(6)(ii) to remove the requirement that State agencies include the estimated cost of case management services in the E&T State plan. However, the Department notes that State agencies must still track the receipt of case management services for the E&T quarterly reports to ensure every E&T participant receives case management. The Department provides State agencies with discretion regarding how they collect data from their providers. As such, State agencies should work with their respective E&T providers to develop reporting systems that efficiently and accurately gather the appropriate information required for E&T quarterly and annual reports.

The Department also received a comment from a workforce training agency urging the Department to set aside a portion of E&T 100 percent funds to only be used for case management, and a separate comment from a not-for-profit agency to provide additional 100 percent funds for case management. Both commenters explained that the provision of high quality case management services is expensive, and may be cost prohibitive for some agencies if they do not receive dedicated or additional funds. In addition, both commenters explained that setting aside dedicated case management funds would encourage agencies to work more with individuals facing high barriers. The Department understands that the provision of high-quality case management services is resource intensive. Each State agency receives 100 percent funds that can be used to offset the costs of case management services, and State agencies have discretion in how these funds are distributed to their E&T providers. In addition, FNS reimburses State agencies 50 percent for allowable costs paid for with non-Federal funds above that amount, which would include costs associated with case management. The Department encourages State agencies to work with their E&T providers to ensure these resources are used to provide robust E&T case management services while maximizing the impact of E&T.

Lastly, the Department also received a comment regarding the frequency of case management meetings. The commenter had read in the Regulatory Impact Assessment (RIA) that the Department estimated approximately monthly case management meetings. The commenter was concerned about what they viewed as the Department's decision to regulate the number and frequency of meetings. The Department

is clarifying that the values provided in the RIA are only used to estimate the impact of the regulation on the affected public, and that the Department understands, as discussed above, that the number and frequency of case management meetings will vary by individual, depending on their circumstances, the structure of the E&T program, and the capacity of the E&T providers.

In conclusion, the Department codifies the proposed regulations with changes made to the description of case management at 7 CFR 273.7(e)(2) and the information required in the E&T State plan at 7 CFR 273.7(c)(6)(ii).

### Referral of Individuals

Section 4005 of the Act added a new requirement for State agencies regarding any E&T participant, not otherwise exempted from the general work requirement, who is determined by the operator of an E&T component to be ill-suited to participate in that E&T program component. For work registrants determined to be ill-suited, the Act required the State agency to do the following: (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. During this time, also per the Act, the State agency shall ensure that an individual undergoing and complying with the process above shall not be found to have refused without good cause to participate in an E&T program. This new requirement was added at new section 6(d)(4)(O) of the FNA. The Department proposed to codify this new requirement in a new paragraph at 7 CFR 273.7(c)(18). The Department believes this new provision was intended by Congress to increase the accountability of State agencies, particularly for mandatory E&T participants. While State agencies are already required to develop State criteria to determine who should be required to participate in E&T, State agencies often do not apply sufficient due diligence to ensure the SNAP participants who are referred to the E&T program have the capacity to benefit from the particular training or that the particular component to which they are referred matches the SNAP participant's needs and skill level. Unfortunately, in these situations, SNAP participants could fail to benefit from the program and, ultimately, could be disqualified

for failure to participate. This new provision strives to strengthen State accountability for their E&T programs by requiring State agencies take additional steps to ensure SNAP participants who are determined ill-suited for an E&T component receive the targeted help they need to move toward self-sufficiency. The Department proposed several new processes to implement the provision, including a requirement that individuals with an ill-suited determination receive a Notice of E&T Participation Change (NETPC) from the State agency soon after their ill-suited determination.

The Department received 44 comments on this provision. Commenters were generally supportive and believed the provision would ensure more participants are directed to activities most likely to help them move toward self-sufficiency. However, many commenters had questions and concerns on segments of the provision as proposed, most notably the term “ill-suited,” the applicability of the provision to self-referrals and voluntary households, the NETPC requirements, and the inability to stop the ABAWD time clock after an ill-suited determination.

Several commenters explained that the term “ill-suited” was insensitive and stigmatizing, and did not take a strengths-based approach to working with participants. A not-for-profit agency explained that people are not “ill-suited” for programs, but programs can be ill-suited for people. Another commenter explained there may be multiple reasons a referral from a State agency may not be successful, including a lack of an available slot or a lack of follow-up from the participant or provider, and believed these other reasons should also be communicated back to the State agency under a mandatory E&T program. Alternative terms like “incomplete referral,” “revised referral,” or “reassigned referral” were suggested. The Department agrees that a switch to different terminology for this situation could be less stigmatizing, but also notes “ill-suited” is the language used in the statute. For the purposes of the regulations, the Department will use the phrase “provider determination” in place of “ill-suited determination.” The Department also recognizes there are many reasons why a participant may not successfully complete a component, but for the purposes of this regulation the Department is finalizing language pertaining to individuals who are determined by the provider to not be a good fit for the component.

Commenters also asked the Department to recognize a new referral is a significant burden on the time and hopefulness of a jobseeker, and can be a demoralizing process. Commenters spoke of the need for State agencies to have as much information as possible about E&T providers so that State agencies can make the best possible referrals, thus heading off instances when an individual and an E&T program are not well-aligned. One workforce training agency explained it frequently receives referrals from the State agency for individuals who do not meet criteria for enrollment; this commenter believed a handbook for State agency staff which offered more information about available providers would be helpful. A not-for-profit agency that works with many E&T providers suggested a more upstream solution to invest additional resources into data systems, as well as the development of robust and holistic intake and referral processes. The commenter encouraged the Department to support the development of these systems. The commenter further explained these data systems could support making a better match and facilitating the back and forth with a client when a provider determination is made. The Department agrees that E&T participants must always be treated with care and respect, which is why State agencies should implement screening and referral processes that are both effective and efficient. The Department encourages State agencies to work with their providers to develop appropriate screening criteria so they only refer individuals who meet the providers’ criteria for enrollment. The Department also agrees that State agencies should consider developing data systems and other processes to improve their ability to screen and refer individuals to appropriate providers. The Department will continue to offer technical assistance to support State agencies in these efforts.

The proposed rule stated that the E&T provider has the authority to determine if an individual referred to or participating in an E&T component should receive a provider determination for that E&T component. Two commenters urged the Department to make an addition to paragraph 7 CFR 273.7(c)(18)(i) to require the State agency to ensure E&T providers are informed, not only of their authority, but also their responsibility to make a provider determination for a particular E&T component. The commenters believed this addition would place an expectation on the provider to inform

the State agency whenever an individual was not a good fit for the program component. The Department agrees that, not only do E&T providers have the authority to make a provider determination, the E&T providers must also have the responsibility to make this determination. The addition of “responsibility” more clearly lays out the Department’s expectation that E&T providers will identify individuals who are not a good fit and notify the State agency of the provider determination in accordance with 7 CFR 273.7(c)(18)(i).

Commenters also shared that E&T providers should have more guidance on what constitutes a provider determination, to ensure consistency among providers and to avoid discriminatory practices. Commenters also felt that E&T providers should be given guidance on how to approach the decision to make a provider determination with compassion and a spirit of assistance, acknowledging that some E&T participants, particularly ABAWDs, may face barriers that would make it hard for them to meet E&T program expectations. For instance, providers should consider how to enable an individual to participate rather than immediately making an E&T provider determination. Another commenter explained that, while the end goal of the provider determination may be to match a jobseeker with more appropriate programming, in practice the determination screens a jobseeker out of an available E&T component with the hope that the State agency will have another, better option available for the individual down the line. The commenter recommended that the Department take steps to make transparent the criteria that inform an E&T provider determination and to offer opportunities for feedback and revision of these criteria. In addition, the commenter was concerned that deferring sole authority to E&T providers to make these determinations could result in a patchwork of unaligned and confusing approaches that are subject to staff discretion and, therefore, also subject to staff’s implicit or explicit racial biases. The Department agrees that E&T providers should not indiscriminately refer E&T participants back to the State agency. The Department has long discouraged providers from “creaming”—serving only participants that show potential for good outcomes. The Department encourages providers to make every reasonable effort to assist individuals’ participation in the training to which they have been referred, only making a provider determination if absolutely

necessary. In accordance with 7 CFR 272.6(a), State agencies are prohibited from discriminating against any applicant or participant in any aspect of SNAP administration for reasons of age, race, color, sex, disability, religious creed, national origin, or political beliefs. Non-discrimination language must also be in all contracts or agreements between State agencies and their E&T providers, and the USDA non-discrimination statement must be on all forms. In addition, the Department at 7 CFR 272.6 has procedures in place to monitor for discrimination and manage complaints. At the same time, the Department acknowledges there is great deal of flexibility in the types of E&T programs offered among and within States, and believes it is not feasible to develop a finite list of criteria for use in making provider determinations for all E&T providers to abide by. In fact, a finite list of criteria could actually be harmful by reducing the flexibility State agencies and E&T providers have to target programs to individuals with a wide range of needs. The Department encourages State agencies to work up-front with their providers to identify the criteria for referring individuals to that provider and ensure staff are properly screening prior to referring individuals. This would go a long way in reducing the need for provider determinations. In addition, the Department agrees that State agencies have a responsibility to monitor their E&T providers to ensure provider determinations are fair and non-discriminatory. The Department will provide oversight of State agency implementation of this provision through ongoing management evaluations.

A not-for-profit agency encouraged the Department to consider allowing E&T participants to request re-assignment if the participant believes the provider is “ill-suited” to the participant’s needs and interests. As stated above, the Department will allow E&T providers the flexibility, with State agency oversight, to develop the criteria for use in making a provider determination. However, the Department encourages State agencies and providers to take into consideration participants’ needs and interests when determining whether it is appropriate to refer and enroll them in certain activities. The Department would encourage the use of provider determinations when a participant does not feel they are a good fit for the E&T component.

The Department received two comments from not-for-profit agencies recommending that anyone who has received a provider determination

should have the right to appeal that decision through the fair hearing process. The Department understands that individuals may disagree with the decision made by a provider that they are not a good fit for a particular component. However, the Department does not believe that requesting an appeal through the fair hearing process at 7 CFR 273.7(f)(6) is the appropriate approach, as a provider determination does not, in and of itself, result in a sanction or disqualification from SNAP benefits. The Department would encourage any participant who disagrees with the provider determination to discuss their concern with the State agency. The State agency may be able to help the participant resolve any issues that may have led to the provider determination and to then allow a re-referral. In addition, as discussed above, if an individual believes they have been discriminated against, the Department has procedures in place at 7 CFR 272.6 to file a complaint, and all State agencies must make these procedures available to all SNAP participants.

The Department received one comment on the timing for notifying the State agency when a provider determination has been made. One commenter recommended that the E&T provider be required to notify the State agency expediently, with a timeframe of no longer than 14 days. The Department agrees that timely notification of the provider determination is an important step and, the sooner the State agency knows of the determination, the sooner the State agency can inform the participant and begin to take one of the four actions in 7 CFR 273.7(c)(18)(i)(B). The Department notes that E&T providers are required at 7 CFR 273.7(c)(4) to notify the State agency within 10 days if a participant fails to comply with E&T requirements. The Department is choosing to adopt the same 10-day timeframe for E&T providers to notify the State agency of the provider determination and has updated the regulatory text.

Commenters had differing opinions about the types of information that should be shared between the State agency and the E&T provider regarding E&T participants. Several commenters had concerns over provider-participant confidentiality when E&T providers share data with the State agency on the ill-suited determination, actions that may result in a breach of trust with the participant. Two commenters recommended the Department define specific fields that minimize confidentiality concerns, such as “participant does not meet specific

provider eligibility criteria,” and recommended that all E&T participants sign a release of confidential information at intake with the provider. One commenter suggested that the provider include a recommended next step, such as “suggest reassessment for exemption for mental/physical fitness,” when they notify the State agency of the provider determination. However, a not-for-profit agency did not believe it was necessary for the State agency to even receive the reason for the provider determination. The commenter strongly supported the proposal to require the State agency to act on the provider determination, even if the E&T provider does not inform the State agency of the reason for the determination, as the State agency can make its own decision about the next step. On the other hand, a local government agency believed the State agency could not appropriately monitor for potential discriminatory actions if there is not a requirement that the provider share information on provider determinations with them. A not-for-profit agency urged the Department to hold State agencies accountable for collecting, analyzing, and reporting on the characteristics of jobseekers with a provider determination, focusing on the characteristics of race, ethnicity, gender, and age. To enhance State agencies’ ability to provide oversight, the commenter also recommended that the Department build out “accountability mechanisms” for situations in which the E&T provider makes a provider determination but fails to provide the reason for that determination. The Department understands that E&T providers may develop relationships with E&T participants and may learn personal or sensitive information. At the same time, the Department recognizes that the sharing of particular information could assist in State oversight, prevent discrimination, and ensure the appropriateness of subsequent referrals. Thus, the Department concludes that E&T providers should provide the reason for a provider determination to the State agency, so that the State agency can make the best possible decision about next steps; however, if the provider does not provide the reason, the State agency must continue to process the provider determination without the reason. In addition, the Department is encouraging, but not requiring, the E&T provider to share a recommended next step when they notify the State agency of the provider determination so that the State agency has as much information as possible to make their decision about

the next step. The Department encourages State agencies to include appropriate protocols for the secure handling of personal or sensitive information in their agreements with providers, including any such protocols based on Federal or State law and guidance. E&T providers should follow their internal protocols, as well as any protocols outlined in their agreements with the State agency, consistent with applicable laws regarding secure handling of such information.

Several State agencies expressed concern with the section of the proposed rule that would require the State agency to be the entity that makes the choice among the four available actions. These State agencies agreed that rescreening the individual for mandatory participation in the E&T program is the responsibility of eligibility workers, but they did not think eligibility workers would be the most appropriate group to refer the individual to another E&T component, workforce partnership, or another assistance program. One State agency suggested that case managers would be the most appropriate entity to make the re-referral and, in their State, case managers are embedded with E&T providers. As a result, requiring the individual with a provider determination to go back to the State agency, rather than to their provider case manager, would be problematic because: The participant has an established relationship with their case manager (not with an eligibility worker); individuals will lose trust they have built with their case manager; individuals will be forced to “start over” potentially causing them to disengage from the program; eligibility workers are not well-versed in the specific E&T components offered in the State; and case managers know more about the participant’s circumstances and are better able to recommend other appropriate next steps, including possible exemptions. The State agency recommended that the Department provide flexibility to allow individuals with a provider determination to go back to their case managers for next steps, while still allowing eligibility functions to remain with the eligibility workers. Several commenters stated that allowing case managers or staff associated with the E&T providers to re-refer the participant to another component would also reduce the number of times an individual bounces around to different offices, thereby reducing confusion and inconvenience. Another State agency operating both a mandatory and voluntary E&T program

explained that E&T providers are very capable of assigning the participant to a new component, referring the participant to another partner organization, reassessing the individual, and obtaining other assistance for the participant. Similarly, a second State agency operating a voluntary program explained that the proposed provision assumes that State agencies are not already implementing a “no wrong door” approach to service delivery. The State agency explained their existing process already allows for a “no wrong door” approach, which provides for re-referrals within the provider network and for participants to be screened for suitability before receiving services across multiple programs. The Department does not disagree that E&T providers may, in some cases, have the necessary skills and capacity to reassess individuals and determine a more appropriate component. However, the Department believes, particularly with regard to mandatory programs, but also with voluntary programs, that the State agency, not other entities, must determine if a participant with a provider determination should actually continue to participate in E&T. Congress included, as one of the four options after an individual receives a provider determination, that the State agency reassess the individual’s mental and physical fitness. The Department interprets this to mean that Congress intended for the State agency to only re-refer an individual to E&T or, at the participant’s discretion, refer to a workforce partnership (the two methods of meeting a mandatory E&T requirement), if the individual remained eligible for E&T. Only the State agency can determine if an individual is eligible to participate in E&T, and if it would be appropriate for the individual to do so.

A professional organization noted the proposed rule goes beyond what is specified in the Act to dictate that the decision regarding appropriate next steps after a provider determination is a function of eligibility staff. The commenter urged the Department not to assign this as a function of eligibility staff, and allow State agencies to identify which parties within the E&T program are the most appropriate to be involved in the decision-making and communication with the clients. A State agency also asked the Department to clarify the difference between an eligibility function and the functions of State staff that are more directly engaged in E&T. When the Department refers to an eligibility function or eligibility staff, the Department is referring to the

workers who make eligibility determination for SNAP benefits (including determining exemptions from the work requirements and referring individuals to E&T) as specified in section 11(e)(6) of the FNA. State E&T staff are those who evaluate participants’ suitability for certain E&T activities and otherwise coordinate activities within the E&T program. The Department believes that the decision about which of the four actions to take at 7 CFR 273.7(c)(18)(i)(B) for an individual with a provider determination must be performed by an eligibility worker because only an eligibility worker can determine if it is appropriate, as a condition of eligibility, to refer someone to E&T in accordance with State agency criteria. Similarly, only an eligibility worker can re-screen an individual for exemptions from work registration as that determination is closely related to eligibility. While other State agency staff beyond eligibility workers could refer an individual to a workforce partnership or coordinate with other Federal, State, or local workforce or assistance programs, the Department does not think it is logistically or administratively feasible to split the decision-making authority at 7 CFR 273.7(c)(18)(i)(B) between eligibility and non-eligibility staff. That being said, the Department does believe that State E&T staff, case workers, and E&T providers likely have important information to share that may inform which of the four actions would be the most appropriate for an individual with a provider determination. The Department would encourage these staff to share this information with the eligibility worker to inform the eligibility worker’s decision. In addition, the Department believes State agencies must take greater accountability for individuals they refer to E&T programs—both in voluntary and mandatory programs. If an individual has already received a provider determination after an initial referral to an E&T program, the State agency must seriously consider if E&T is the most appropriate placement for the individual, or if another program, as described in 7 CFR 273.7(c)(18)(i)(B)(4), would be a better use of a participant’s time. As described earlier, E&T provider staff are encouraged to provide the reason for the provider determination and make a recommendation regarding the best next action to the State agency, but ultimately the decision about the next action rests with eligibility staff in the State agency. In light of these explanations, no modification to the regulatory language is made.



A State agency operating a voluntary program noted that its State E&T program had contracted with several E&T providers who operate multiple components, and found that such providers are able to re-assign individuals from one component to a more appropriate component without re-involving the State agency. The commenter explained how the E&T provider enters the component change in the E&T data system and thus the State agency is informed. The State agency requested that the Department modify language to allow an E&T provider offering multiple components approved by the State agency to move participants to a more appropriate component without referring the individual back to the State agency. The commenter believed granting E&T providers this discretion would ensure an individual could move into a more suitable activity as soon as reasonably possible while maintaining continuity of case management services. The Department notes that section 6(d)(4)(O) of the FNA refers to an individual being “ill-suited” for a “component” and not for an “E&T program.” However, the Department agrees with the commenter that, if an E&T provider makes a provider determination for one component and believes an individual would be a good fit for another State-approved component offered by the same provider, a reasonable next step would be for the E&T provider to enroll the individual in the second component. The Department believes that the intent of the statutory language was to give E&T providers a tool to refer individuals back to the State agency when an E&T provider makes a determination that it is unable to serve the participant well. As a result, if an E&T provider determines an individual is ill-suited for a component and there is a more suitable component available, the State agency will have the option to either require the E&T provider to refer the individual back to the State agency with a provider determination, if the individual is ill-suited for one component, or allow the E&T provider to switch the individual to another component without referral back to the State agency. In the latter case, the E&T provider must inform the State agency of the new component. If an E&T provider does not have a more suitable component, the E&T provider must refer the individual back to the State agency with a provider determination. The Department has added this language to allow State agency discretion at 7 CFR 273.7(c)(18)(i).

Several commenters, including State agencies operating voluntary E&T programs, explained that implementing the ill-suited process, as described in the proposed rule, would be onerous and confusing for a voluntary E&T program to operate, and would likely create unnecessary burdens for both participants and State agency staff. One commenter recommended that, for voluntary programs, the State agency require E&T providers to refer participants with a provider determination to other providers, but only if appropriate and desired by the participant. Commenters explained that, since voluntary participants cannot be sanctioned for failure to comply with E&T, it is not necessary to include voluntary households in the actions described at 7 CFR 273.7(c)(18). The Department agrees that voluntary participants cannot be sanctioned for failure to comply with E&T, but also notes that the Act does not differentiate between voluntary and mandatory E&T participants with regard to the ill-suited process. In addition, the Department believes there is value in requiring voluntary participants with a provider determination to be reassessed by the State agency to determine the next most appropriate action. As stated above, the State agency must be accountable to E&T participants and the efficient use of E&T resources even in voluntary programs. The State agency has a responsibility to properly screen individuals for participation in E&T and match participants to the most appropriate E&T component. The State agency must also ensure all participants, both mandatory and voluntary, are being adequately served by the State’s E&T providers.

The Department also received comments on the interaction between reverse referrals and provider determinations. A State agency explained that voluntary E&T participants may be referred to a specific program by the State agency or they may self-refer to an E&T provider. This State agency explained their E&T program is structured so that all E&T providers provide case management and case managers work with the participant to place them into the most compatible component. Using the proposed model, the State agency believed few individuals would be placed in a component where they are “ill-suited.” However, the State agency wondered what would happen if an E&T participant self-referred to an E&T provider and the individual received a provider determination for that component. The State agency explained

they would prefer that the E&T provider, using their case management services, refer the participant to a more appropriate E&T provider, rather than back to the State agency, adding unnecessary complexity. The Department does not believe that the process described in the rule is inconsistent with self-referrals as described by this State agency, and the Department notes that self-referrals can occur in both voluntary and mandatory programs. Self-referrals (also known as reverse referrals) happen when a SNAP participant identifies an E&T provider without being directly referred to that provider and independently asks to enroll in the program. The E&T provider must determine, by contacting the State agency, that the individual is a SNAP participant and request the individual be formally referred by the State agency to the E&T component offered by the provider. If then referred by the State agency, the E&T provider may then enroll the participant in the component. The Department would expect, as a best practice that, if a potential E&T participant self-refers to an E&T provider, the E&T provider would assess the individual for compatibility with the E&T components offered prior to sending a request to the State agency for a formal referral to their E&T component. The Department reminds State agencies that E&T providers cannot enroll SNAP participants as E&T participants unless the State agency has first screened individuals to determine if it is appropriate to refer them to E&T and then refers them to the E&T program in accordance with 7 CFR 273.7(c)(2). If an E&T provider is asking the State agency to enroll walk-ins without first making sure the individual is a good fit for their program and is, in fact, a SNAP participant, and if the State agency is not scrutinizing self-referral requests from providers to ensure it is appropriate to refer individuals to the E&T program, then both the E&T provider and the State agency are failing in their responsibility to ensure participants are matched to programs where they are likely to be successful. The State agency has an accountability role to play in ensuring that self-referrals should be officially referred to E&T and, if not, to assist the individual in finding a more appropriate program.

Several commenters expressed concerns with the Notice of E&T Participation Change (NETPC). Some commenters strongly recommended the Department make the NETPC optional for voluntary E&T participants or do away with the notice requirement entirely. A not-for-profit agency

explained the State agency and local E&T providers with whom they work already have structures in place for communicating with voluntary E&T participants, and did not believe that State and Federal administrative resources should be spent on sending an unnecessary and confusing notice. The commenter urged the Department to, at a minimum, consider different parameters for the notice (*e.g.*, in a voluntary state, the NETPC language would need to inform the participant that E&T has no bearing on SNAP eligibility and not doing E&T would not harm their SNAP benefits). A State agency that runs both a voluntary and mandatory E&T program explained that the Act already requires all E&T programs to provide case management services to E&T participants, and believed it is more appropriate that the provider determination be addressed during regular on-going case management. The commenter suggested the case manager could re-assess the individual's physical and mental fitness to participate in the assigned E&T component or refer the individual to a more appropriate E&T component or workforce partnership. Another State agency, running both a voluntary and a mandatory program, explained the ill-suited notification for participants should be left to the discretion of State agencies. The commenter explained that, in their State, all E&T participants have an Employment and Career Development plan, which is updated by the participant and their case worker when circumstances change. The State agency believed this form would provide sufficient notification of the participant's changing requirements. A professional organization suggested the Department should consider providing only basic guidance that notices be given in some State-established form, acknowledging that State agencies are in the best position to identify how and when notice should be given. The commenter stated this approach would in part alleviate the burden on State agencies to establish a new written notice and procedure, but still allow State agencies to ensure that participants are communicating with their providers and case managers regarding critical decisions in the services they are receiving. This could help to reduce confusion on the part of the SNAP participant by ensuring the necessary conversations are had with staff who already have a relationship with and knowledge of the participant.

On the other hand, some commenters supported the formal noticing requirement and asked that the

Department include more information in the notice. A not-for-profit agency explained notice issues have been a core element of confusion for individuals subject to a work requirement, and noted that life circumstances can change quickly for this population, potentially changing their exemption status. This commenter noted that clear communications outlining steps that can be taken to maintain benefits, including pursuing an exemption or good cause, are important to ensuring participants have continued access to the SNAP benefits they need. This not-for-profit agency recommended: Requiring State agencies to not only mail the NETPC, but also to send it via other channels like email; requiring the State agency to mail the notice to the individual subject to the work rules to ensure the message is targeted to the individual of interest; including language about exemptions and good cause in the notice; informing the E&T participant about next steps and explaining that the E&T participant is not at risk of sanction for failure to comply with E&T during that time; explaining the State agency will follow-up (by taking one of the four steps); and informing participants they will get a follow-up notice if a negative action is being taken on their SNAP case. A different not-for-profit agency explained the NETPC should clearly articulate the reason for the "ill-suited" determination, the next steps that the State agency will take to match the jobseeker to another opportunity, the time frame in which those next steps will occur, and how the jobseeker can appeal the decision. Another not-for-profit agency recommended that the Department work with State agencies to establish automatic notification procedures to ensure that E&T providers alert State agencies of a provider determination as soon as it is made. This commenter also explained State agencies should be directed to establish procedures that then communicate this notification in multiple formats (such as mail, email, and text or phone) to participants immediately upon its receipt from the provider. In addition, another not-for-profit agency urged the Department to amend 7 CFR 273.7(18)(ii) to provide notice that an ABAWD's countable months may still accrue unless the individual meets or is otherwise not subject to the ABAWD work requirement.

The Department's intent in requiring the NETPC in the proposed rule was to ensure that the individual with a provider determination understood that they had received such a determination

and that they should no longer attend their E&T program, to provide the participant with some background about what would happen next and, in the case of an ABAWD, inform the ABAWD about the accrual of countable months if the ABAWD is subject to the time limit and not meeting the work requirement in accordance with 7 CFR 273.24. The Department agrees with commenters that there may be other ways, beyond a formal notice, to share this information with participants. Therefore, with this final rule, the Department is not requiring the State agency to send a NETPC, but is requiring that the State agency develop and implement procedures to notify individuals about the provider determination, steps the State agency will take to identify another opportunity, and necessary information to contact the State agency. The Department acknowledges that entities outside the State agency, such as E&T providers or other case management staff, may have a relationship with the E&T participant who received the provider determination, but the Department believes that it is the State agency's responsibility, not providers, to notify the individual of the provider determination. This is because, as noted previously, the State agency is responsible for taking one of the four actions in 7 CFR 273.7(c)(18)(i)(B) and, as discussed below, if the individual with the provider determination is an ABAWD, the State agency is responsible for informing the ABAWD that they will accrue countable months unless the ABAWD fulfills the work requirement in accordance with 7 CFR 273.24, has good cause, lives in a waived area, or is otherwise exempt. The Department is providing State agencies with discretion to determine how the State agency will notify the individual with the provider determination—for instance, in writing or verbally. The State agency must, at a minimum, document this notification in the case file. The Department is not requiring that the State agency notify the participant of the reason for the provider determination, although the State agency may do so. In any case, as previously stated, State agencies can move forward with processing a provider determination before obtaining the information from the provider as to the reason for the provider determination. In the case of either a mandatory or voluntary E&T participant, the State agency must also notify the participant that they are not being sanctioned as a result of the provider determination. The Department has added these

requirements to 7 CFR 273.7(c)(18)(i)(A).

With regard to an ABAWD who receives a provider determination, the State agency must notify the ABAWD, at the same time the State agency informs the ABAWD of the information above, that he or she will accrue countable months toward the three-month participation time limit the next full benefit month after the month during which the State agency notifies the ABAWD of the provider determination, unless the ABAWD fulfills the work requirements in accordance with 7 CFR 273.24, or the ABAWD has good cause, lives in a waived area, or is otherwise exempt. The Department has modified the language regarding the accrual of countable months in the final rule to state the ABAWD will accrue countable months “the next full benefit month after the month during which the State agency notifies the ABAWD of the provider determination.” The Department recognizes that ABAWDs could potentially receive a provider determination during a partial benefit month, which is not to be considered a countable month under 7 CFR 273.24(b)(1). Additionally, for ABAWDs that are notified of a provider determination during the middle of a full benefit month, this provision will not penalize ABAWDs for lost opportunities to meet the ABAWD work requirement that month. The Department does not believe it is appropriate to penalize ABAWDs for being referred to an E&T component for which an ABAWD is determined to be ill-suited, likely due to no fault of their own, nor for the time during which such an ABAWD may not have definitive communication of the provider determination. This change will mean that ABAWDs can only be assigned countable months when the ABAWD has a full month (and a full opportunity) to fulfill the work requirement after being notified of a provider determination. As a result, ABAWDs would not accrue a countable month for the month in which they receive notification of a provider determination. The ABAWD would be expected to fulfill the ABAWD work requirement by working (paid or unpaid) or participating in a work program or workfare program during the next full benefit month, unless the ABAWD has good cause, lives in a waived area, or is otherwise exempt. The regulations at 7 CFR 273.7(c)(18)(i)(A) and 7 CFR 273.7(c)(18)(ii) have been modified to reflect this change, and a corresponding change has been made to the definition of countable months at 7 CFR

273.24(b)(1). The State agency might find it appropriate on these occasions to consider whether the individual should be considered for an exemption or good cause determination and inform the ABAWD of exemption and good cause determination processes.

The Department notes that notifying individuals of the provider determination, in accordance with 7 CFR 273.7(c)(18)(i)(A), is necessary even for voluntary E&T participants, as the individual may not understand their participation in that component has ended, and wonder what their next step to receive training and assistance should be. In addition, in some cases, ABAWDs may be voluntary participants and, as discussed above, it is particularly important that ABAWDs receive information about the accrual of countable months in the next full benefit month after the month during which the State agency notifies the ABAWD of the provider determination.

The Department is also making a change to the timing of when the State agency must notify E&T participants of a provider determination. Given how crucial it is for ABAWDs to receive that notification, so that they may begin to identify other opportunities to fulfill the ABAWD work requirement, and for other E&T participants to be notified of the provider determination, so that they are not left wondering what their next step ought to be, the Department is adding a requirement to 7 CFR 273.7(c)(18)(i)(A) that the State agency must notify E&T participants with a provider determination of that determination within 10 days of receiving the notification from the E&T provider.

The Department also received comments regarding when the State agency should be required to take one of the actions in 7 CFR 273.7(c)(18)(i)(B). One not-for-profit agency recommended that the State agency be required to take one of the four actions at the next recertification because the State agency is already required to contact the participant at that time and will have the opportunity to ask questions related to the provider determination. The same commenter also suggested the participant should be given the opportunity to contact the State agency sooner for help in identifying E&T opportunities. Another commenter believed the final rule should specify steps the State agency can take to ensure that an individual with a provider determination is moved into a more suitable activity as soon as reasonably possible. Some of these steps might include having State agency staff speak with the participant about their

employment goals and interests, requiring the State agency to maintain an up-to-date database of existing workforce development programming, specifically targeted to jobseekers who face more significant barriers to employment, or having the State agency employ system navigators who can better coordinate options on behalf of a participant. Given the flexibility State agencies have to structure their E&T programs based on agency priorities and the needs of local providers, the Department is providing State agencies flexibility with regard to when they take one of the actions in 7 CFR

273.7(c)(18)(i)(B), so long as the action is taken no later than the individual's recertification. The Department also believes it is important for the State agency to be responsive to individuals with a provider determination who would like to move on to one of the next steps as soon as possible. As a result, if an individual with a provider determination tells the State agency they would like the State agency to make a decision among the four options and refer, the State agency should do so as soon as possible. The Department believes that the vast majority of E&T participants will be properly screened and initially assigned to components for which they are a good match and thus expects this provision to only apply to a small subset of the overall E&T population. The regulation at 7 CFR 273.7(c)(18)(i)(B) has been updated accordingly.

The Department received a comment from a not-for-profit agency suggesting that, rather than making a re-assessment of general work requirement exemptions, including a re-assessment of mental and physical fitness, one of the four options at 7 CFR 273.7(c)(18)(i)(B)(3), all participants should be reassessed for exemptions at the point that an E&T provider makes a provider determination. The commenter explained that, in their State, many mandatory E&T participants and ABAWDs could end up qualifying for an exemption from mandatory E&T or the ABAWD work requirement after a short period of time. The commenter believed re-assessing exemptions should be the starting point before seeking to refer participants to additional programs or identifying other work opportunities. Further, the commenter believed the regulation at 7 CFR 273.7(c)(18)(i)(B)(3) should also include an evaluation of exemptions for all the work requirements the participant is subject to, not just the general work requirement. The Department agrees that individuals who should be exempt

from any work requirement receive those exemptions, and that it is the responsibility of the State agency to screen for and provide those exemptions. The Department considered requiring the State agency to first re-assess individuals with a provider determination for an exemption from the general work requirement before taking one of the other three actions; however, the Department concluded that this requirement would be administratively burdensome for the State agency because not all individuals with a provider determination will need a re-assessment for an exemption. The Department decided that providing re-assessment as one of the four options would allow State agencies to perform the re-assessment if they had reason to believe a re-assessment was necessary (*i.e.*, received information from the provider, a case manager, or a participant suggesting an individual may be exempt). The Department would strongly encourage the State agency to re-assess the individual for an exemption if the E&T provider suggested the reason for the provider determination was related to an exemption. In addition, the Department does not believe it is necessary to require State agencies to always re-assess an ABAWD with a provider determination for exemptions from the ABAWD work requirement; however, the State agency may do so at any time.

The Department would also like to clarify a misunderstanding of the proposed regulatory text at 7 CFR 273.7(c)(18)(i)(B)(1). In the proposed rule, the Department explained that, if the State agency chose to re-refer an individual with a provider determination to another E&T component, the individual must also receive case management in accordance with 7 CFR 273.7(c)(2). A not-for-profit agency explained many individuals re-referred to an E&T component might not actually be placed into the component due to a lack of provider slots, the participant not meeting eligibility criteria, or the participant or provider not following through with the referral. The commenter further explained that many SNAP agencies are not configured to provide case management outside of their E&T providers, and many E&T providers would not be willing to provide case management if they did not have available component slots or the participant did not meet eligibility criteria. The commenter concluded that case management should only be required if the SNAP participant is successfully placed in a component. The Department identifies several

misunderstandings in this statement, and would like to clarify both the overall role of case management in E&T, the general purpose of the provider determination, and the application of next steps in 7 CFR 273.7(c)(18)(i)(B). First, all E&T programs must provide case management to all E&T participants. If a State agency chooses to re-refer a participant to an E&T component after the individual received a provider determination, the State agency must provide that participant with case management, whether through the E&T provider or through some other means. This case management could be a continuation of the case management the participant was receiving before the provider determination, or a new set of case management services. As discussed previously in the case management section of the preamble, the State agency should tailor case management services to the needs of the participant. Second, the Department does not understand why a State agency would refer an individual to an E&T component after the individual received a provider determination if the component does not have a place for the participant, if the participant does not meet eligibility criteria, or there is a likelihood that the provider will not follow through on the referral. State agencies should not refer individuals to E&T components that do not have available slots or are inappropriate for the individual. The State agency has a choice among the four actions in 7 CFR 273.7(c)(18)(i)(B) and can choose the most helpful path for an individual in moving toward self-sufficiency. If there is not an appropriate E&T component available, the State agency should refer the participant to a workforce partnership in accordance with 7 CFR 273.7(c)(18)(i)(B)(2), if available and of interest to the participant, or coordinate with another program in accordance with 7 CFR 273.7(c)(18)(i)(B)(4). No changes to the regulatory text are necessary with this clarification.

The Department received one comment recommending the Department require the State agency to inform individuals who are referred to an E&T component, in accordance with 7 CFR 273.7(c)(18)(i)(B)(1) that the participant may be disqualified for failure to report or begin the new E&T component. The Department believes that modifications to paragraph 7 CFR 273.7(c)(2) in this rulemaking regarding screening and referral to E&T sufficiently outline the necessary steps the State agency must take to inform E&T participants regarding compliance with E&T. The requirements in

paragraph 7 CFR 273.7(c)(2) apply to individuals who are referred to E&T as a result of actions in 7 CFR 273.7(c)(18)(i)(B)(1); therefore, no additional regulatory changes are necessary.

The Department received one comment requesting the Department clearly state in 7 CFR 273.7(c)(18)(i)(B)(4), if the State agency finds that the best option is to coordinate with Federal, State, or local workforce or assistance programs, rather than refer the individual to E&T or a workforce partnership, then that individual must be exempted from mandatory E&T. The Department discussed in the preamble to the proposed rule that if a State agency determines that other work opportunities or assistance would be most appropriate for the individual, then the State agency cannot subject the individual to mandatory E&T requirements because the other work opportunities or assistance would not fulfill a mandatory E&T requirement. In other words, it would be not be fair to subject an individual to a mandatory E&T requirement if the State agency has determined that other Federal, State, or local workforce or assistance programs would be more beneficial. The Department agrees that an individual should not be required to participate in E&T if the State chooses this option and has modified the regulation at 7 CFR 273.7(c)(18)(i)(B)(4) to more clearly state this understanding. In addition, the Department notes that if a State agency chooses the option at 7 CFR 273.7(c)(18)(i)(B)(3) to reassess the mental and physical fitness of the participant, and the State agency determines that an individual does not meet an exemption from the general work requirement, but the State agency also determines the individual should be exempted from mandatory E&T, the State agency must exempt the individual.

The Department also received comments on the requirement in 7 CFR 273.7(c)(18)(ii) that, from the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the actions in paragraph 7 CFR 273.7(c)(18)(i)(B), the individual shall not be found to have refused without good cause to participate in mandatory E&T. A not-for-profit agency explained that taking one or all of the actions in 7 CFR 273.7(c)(18)(i)(B) does not guarantee State agency follow-up on referrals or successful identification of an appropriate and available placement by the State agency. The commenter, therefore, suggested that the statement

in 7 CFR 273.7(c)(18)(ii) be revised to state, “from the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the actions in (i)(B) of this section that leads to State-confirmed enrollment in an appropriate SNAP E&T component or workforce partnership that meets mandatory E&T requirements, or else leads to an exemption, the individual shall not be found to have refused without good cause to participate in mandatory E&T.” The Department understands that, at the time a State agency takes one of the four actions in 7 CFR 273.7(c)(18)(i), there may still be actions the participant must take to follow through, for example, beginning the E&T program or workforce partnership; however, the Department believes it would be too administratively burdensome to track the end of the period when an individual cannot be found to have failed to comply with mandatory E&T to multiple disparate end points (*i.e.*, when someone starts E&T, when someone receives good cause etc.). In addition, while the language in 7 CFR 273.7(c)(18)(ii) specifies for a period after a provider determination during which an individual cannot be found to have failed to comply with E&T, at the end of this period, State agencies still have a responsibility to determine exemptions and good cause related to the mandatory E&T requirement, as appropriate, as they would in any other case. As a result, the Department does not believe the additional language proposed by the commenter is necessary, and does not modify the text at 7 CFR 273.7(c)(18)(ii).

The Department received several comments urging the Department to not allow ABAWDs to accrue countable months after they received a provider determination. A professional organization suggested ABAWDs would be unduly penalized for a decision that is ultimately outside of their control, and the work that ABAWDs did complete within those months would go unacknowledged. The commenter believed that pausing the accrual of countable months while awaiting the State agency to take action on one of the four options in 7 CFR 273.7(c)(18)(i)(B) would also allow State agencies adequate time to react, re-assess, and reassign ABAWDs. A not-for-profit agency explained that, at present in their State, when organizations attempt to refer individuals back to the State agency for reasons of suitability, administrative delays often prevent a timely response. The commenter noted this leaves the ABAWD in limbo at no

fault of their own. The commenter argued the time spent waiting for State agencies to respond should not count towards the three-month time limit. Another not-for-profit agency explained the Department is essentially saying that it is acceptable to disconnect an ABAWD from the E&T service that was allowing that individual to fulfill the ABAWD work requirement, at the same time expecting that individual to fulfill the work requirement on their own, while the State agency has unlimited time to take one of the four required action steps to match that ABAWD to an appropriate service. Moreover, the commenter explained, the ABAWD is not at fault if their E&T provider makes a provider determination for the services offered by the provider. Given the unequal expectations in this situation, the commenter strongly encouraged the Department to reconsider its requirement that ABAWDs may accrue countable months toward their three-month participation time limit after having received a provider determination, while at the same time acknowledging that doing so may be outside of the scope of this particular rulemaking. Another not-for-profit agency was concerned that E&T providers may actually be hesitant to make a provider determination for an ABAWD if they know that an ABAWD may begin to accrue countable months, resulting in an ABAWD continuing in a component where they are not able to benefit and may ultimately not complete. This not-for-profit agency also urged the Department to add regulatory language that would direct State agencies to re-assess ABAWDs for good cause if the ABAWD received a provider determination. The commenter explained that not all individuals who receive a provider determination for a particular component would have good cause, but some might, and ABAWDs should be re-assessed after a provider informs the State agency of a poor match to determine if it might suggest they should have good cause for not fulfilling the ABAWD work requirement.

The Department understands the concern that an ABAWD may accrue countable months after receiving a provider determination and, in many cases, the ABAWD may receive the determination through no fault of their own (*e.g.*, the ABAWD was mis-assigned by the State agency). However, the mandatory protection from sanction in section 6(d)(4)(O) of the FNA only applies to the requirement to participate in E&T. ABAWDs have many ways to meet the ABAWD work requirement

outside participation in E&T. The Department also notes that ABAWDs will accrue countable months even if they are participating in E&T, but not fulfilling the ABAWD work requirement in accordance with 7 CFR 273.24(a)(1). The Department does believe it is important that the ABAWD be notified of the provider determination as soon as possible, so that the ABAWD can seek out other work or training opportunities. For this reason, the Department has directed State agencies in 7 CFR 273.7(c)(18)(i)(A) to notify ABAWDs within 10 days of receiving notification of the provider determination from the E&T provider, that the ABAWD will accrue countable months toward their three month participation time limit the next full benefit month after the month during which the State agency notifies the ABAWD of the provider determination, unless the ABAWD fulfills the ABAWD work requirement in accordance with 7 CFR 273.24, or the ABAWD has good cause, resides in a waived area, or is otherwise exempt. As discussed earlier, as a best practice, providers are encouraged to provide the reason for the provider determination to the State agency and suggest a recommended next step for the individual. If the provider was providing case management, the case manager is required in accordance with 7 CFR 273.7(e)(1), as re-designated, to share information about a possible exemption or good cause with the State agency.

In conclusion, the Department is making several changes to the proposed regulatory text at 7 CFR 273.7(c)(18): Replacing the phrase “ill-suited determination” with “provider determination;” stating that the E&T provider has the authority and the responsibility to make a provider determination; requiring the E&T provider to notify the State agency of the provider determination within 10 days; replacing the requirement to send the NETPC with a requirement to notify the participant about the provider determination and the accrual of countable months for an ABAWD; stating that ABAWDs will accrue countable months toward their three month participation time limit the next full benefit month after the month during which the State agency notifies the ABAWD of the provider determination, unless the ABAWD fulfills the ABAWD work requirement in accordance with 7 CFR 273.24, or the ABAWD has good cause, resides in a waived area, or is otherwise exempt; requiring the State agency to notify the E&T participants of the provider

notification within 10 days; requiring that the State agency notify the individual that they are not being sanctioned as a result of the provider determination; allowing the State agency to take one of the four actions in 7 CFR 273.7(c)(18)(i)(B) by no later than the next recertification; allowing, at State agency option, an E&T provider to enroll a participant in another component offered by the provider if the initial component was not a good fit; and requiring that, if the State chooses option 7 CFR 273.7(c)(18)(i)(B)(4), the participant must not be required to participate in E&T.

#### **State Agency Accountability for Participation in an E&T Program and Good Cause**

The Act introduced several new provisions that emphasize State agencies' responsibilities to build E&T programs that are well-targeted to E&T participants' needs and support E&T participants as they engage with those programs. In addition to addressing these provisions in the proposed rule, the Department also proposed additional ways to enhance State agency responsibility and capacity to build E&T programs that provide robust work and training opportunities to participants. In this section, the Department will discuss three of these additional provisions: A new form of good cause provided to E&T participants when there is not an appropriate or available opening in the E&T program; clarification of the application of good cause for failure or refusal to participate in an E&T program for ABAWDs; and a clarification that State agencies must first determine if non-compliance with a work requirement was without good cause before sending a notice of adverse action. Later sections of the preamble discuss other accountability provisions, like new State agency reporting requirements regarding mandatory E&T participants on the quarterly reports, and a new requirement to provide a consolidated written notice and oral explanation of all applicable work requirements to households.

The Department believes that, if a State agency requires participation in E&T as a condition of eligibility, it has a responsibility to build an E&T program that can accommodate all mandatory E&T participants. In situations where there is not an appropriate and available opening for a mandatory E&T participant in the E&T program, the Department does not believe that the mandatory E&T participant should be disqualified for failing to comply with the E&T requirement, as the lack of an

appropriate and available opening in an E&T program is beyond the E&T participant's control. As a result, the Department proposed to add new § 273.7(i)(4) to define good cause to include circumstances where the State agency determines that there is no appropriate and available opening in the E&T program to accommodate a mandatory E&T participant. The Department proposed that the period of good cause would extend until the State agency identifies an appropriate and available opening in the E&T program, and the State agency informs the SNAP participant of such an opening. The Department proposed in 7 CFR 273.7(c)(2) that, if there is not an appropriate and available opening in an E&T program for a mandatory participant, the State agency must determine the participant has good cause for failure to comply with the mandatory E&T requirement in accordance with paragraph 7 CFR 273.7(i)(4). The Department also proposed in paragraph 7 CFR 273.7(e)(1), as re-designated, that case managers must inform the appropriate State agency staff about the lack of an appropriate and available E&T component for a mandatory E&T participant. Lastly, the Department noted in the proposed rule preamble that, ideally, if there is not an appropriate and available opening in the E&T program, the State agency should consider exempting the individual from mandatory E&T under the discretion provided to State agencies in 7 CFR 273.7(e)(2), re-designated as 7 CFR 273.7(e)(3). The Department also noted that this proposed new form of good cause would only apply to mandatory E&T participants and would not provide all ABAWDs with good cause for failure to fulfill the ABAWD work requirement in 7 CFR 273.24. In other words, an ABAWD who is also a mandatory E&T participant, but for whom there is not an appropriate and available opening in an E&T program, would receive good cause for failure to participate in E&T, but would not receive good cause for failure to comply with the ABAWD work requirement.

The Department received 28 comments on this provision, most of which were very supportive, although two commenters, while supportive, were concerned the provision would be applied too liberally and provided suggestions to mitigate this possibility. In addition, four supporters felt that the good cause for mandatory E&T should also apply to the ABAWD work requirement. The Department did not receive any comments opposing the

addition of the new form of good cause for mandatory E&T.

Commenters believed that the addition of the new form of good cause for mandatory E&T provides an important safeguard for mandatory E&T participants who are not able to participate in E&T, through no fault of their own, because the State agency has not provided an appropriate or available slot in an E&T program. However, one not-for-profit agency felt that the Department's introduction of this new form of good cause overestimated the demand for such "exemptions," while underestimating the flexibility of the work requirement, as most E&T programs struggle to recruit participants into E&T. The commenter believed that good cause for this purpose should only ever be granted when a participant attempts to access a slot and is denied entry for lack of an opening. Further, the commenter believed the Department could mitigate concerns about over-use of this good cause provision if participants, upon receiving good cause for non-compliance, were expected to find work experience and volunteer opportunities outside a State agency's formal E&T program, pushing the participant to re-engage with their community and build work experience. The Department agrees with the commenter that the focus of State agencies should be on building robust E&T programs that provide participants opportunities in training and work experience programs that lead to improved employment outcomes, and not on excusing participants from the requirement to participate because there is not an appropriate or available opening. The Department has invested considerable resources to support State agencies in growing their capacity and developing E&T programs that are responsive to the needs of individuals and the employers. However, the Department feels strongly that, if a State agency is going to require individuals to participate in E&T as a condition of eligibility, it should hold up its end of the bargain by creating enough appropriate and available E&T opportunities so the individuals may meet this requirement. The Department would like to clarify that State agencies have the flexibility to determine who they serve in E&T, and the responsibility to screen and refer individuals to E&T only if appropriate. States have the discretion to exempt an individual or categories of individuals from participating in E&T. The Department notes that well-managed programs should have very few circumstances where there is a need to

provide this new form of good cause. State agencies should be continuously monitoring the capacity of their E&T providers, properly screening individuals to determine if it is appropriate to refer them to E&T program, and only referring individuals to providers that have appropriate and available openings. If a State agency is unable to provide an appropriate slot for an individual required to participate in E&T, the State agency should use its flexibility to exempt them from participation—otherwise, the State agency must provide good cause until a slot is available.

The Department also believes it would be unnecessarily restrictive to limit this new form of good cause to circumstances where a participant attempts to access a slot and is denied entry for lack of an opening. For instance, with the introduction of the requirement that all E&T participants receive case management, the Department would expect case managers to play a role in sharing information with the appropriate staff in the State agency about client participation. If a case manager is made aware that there is not an appropriate and available opening for a particular E&T participant, the case manager, as proposed in 7 CFR 273.7(e)(1), must share this information with the appropriate State agency staff, so that the State agency can determine if it is appropriate to provide good cause. The Department believes it would be unreasonable to require a participant to attempt to access a program, when the participant, through the case manager, already knows an opening does not exist.

The Department also appreciates the comment from the same not-for-profit agency that a mandatory E&T participant who is found to have good cause for non-compliance with E&T, because of a lack of an appropriate or available opening should be expected to find other work or volunteer experience. The Department agrees that E&T is not the only avenue available to SNAP participants to advance their skills and training, and would encourage State agencies to assist SNAP participants with referrals to other agencies or organizations. However, State agencies cannot require SNAP participants to engage in other work or training opportunities in place of E&T. In accordance with section 6(d)(4)(E) of the FNA, State agencies can only require work registrants to participate in a SNAP E&T program as defined in section 6(d)(4)(B)(i) of the FNA. The Department does note; however, that the Act requires State agencies to advise all

work registrants living in households without earned income and without an elderly or disabled member about employment and training opportunities in the community, and the Department has added this requirement at 7 CFR 273.14(b)(5). Moreover, the Department encourages State agencies, as a best practice, to provide this information to additional households, including mandatory E&T participants for whom the State does not have an appropriate or available opening in E&T, to guide these participants toward other opportunities. Lastly, as already noted, ABAWDs who receive good cause for failure to participate in E&T because of a lack of an appropriate or available opening are still subject to the ABAWD work requirement, and must work or participate in a work program or workfare program to receive benefits beyond the three-month time limit. The Department encourages the State agency, as a best practice, to share the employment and training information discussed above with these ABAWDs or any SNAP participant that is likely to benefit from this information.

Four commenters expressed their concern regarding the Department's proposal that good cause for lack of appropriate or available opening in mandatory E&T would not apply to the ABAWD work requirement. A State agency stated that the Department's justification that there are many ways to fulfill the ABAWD work requirement, other than through SNAP E&T, is not consistent with the recent Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127), which temporarily suspended the time limit for those ABAWDs not offered a slot in a work program or workfare program. Given this precedent, the State agency felt USDA should stipulate at 7 CFR 273.7(i)(4) that good cause should be granted for failure to fulfill the ABAWD work requirement during periods when the Secretary determines, or Congress appoints by law, that the options available to meet the work requirement are limited. An act of Congress to suspend the ABAWD time limit, such as with FFCRA, does not need to be incorporated into the regulation because such act specifically suspended the ABAWD time limit statute and regulations. In addition, section 6(o)(4) of the FNA and 7 CFR 273.24(f) already allow the Secretary to waive the ABAWD time limit upon request from a State agency, if certain conditions are met, therefore such provision does not need to be adopted by this final rule. More broadly, the Department does not believe it is good policy, or consistent

with FFCRA, to provide good cause for the ABAWD work requirement when an appropriate E&T slot is unavailable. As noted by the commenting State agency, Congress only temporarily suspended the ABAWD time limit for those not offered slots in work program beyond SNAP E&T. As stated in the proposed rule, there are many ways to fulfill the ABAWD work requirement other than through SNAP E&T. The lack of appropriate or available opening in a SNAP E&T program would not prevent an ABAWD from fulfilling the ABAWD work requirement in another way.

Another State agency commented that this new form of good cause for a lack of appropriate or available opening, does not have any applicability in a voluntary E&T State and, in a voluntary State, ABAWDs who were unable to find an appropriate and available E&T opening would still lose eligibility if they exceeded their three-month time limit. The Department agrees that, in voluntary States, ABAWDs who exceed their three countable months because they are unable to find an opening in an E&T program, another work program or workfare, or work enough hours to meet the work requirement would lose eligibility regardless of the good cause provision. This same State agency misinterpreted the Department's explanation in the proposed rule preamble suggesting that State agencies should, as appropriate, exempt individuals from mandatory E&T if there is not an appropriate and available opening. The State agency thought the Department was saying State agencies should use ABAWD discretionary exemptions under section 6(o)(6) of the FNA and 7 CFR 273.24(g) to exempt individuals from E&T. The Department is clarifying that the reference in the proposed rule preamble to exempting individuals from mandatory E&T referred to exemptions under 7 CFR 273.7(c)(2).

An anonymous commenter explained that, if an ABAWD received good cause for non-compliance with E&T because there was not an appropriate or available opening, the Department should not assume that the ABAWD will be able to find other opportunities to meet the ABAWD work requirement. This commenter noted that ABAWDs face many barriers to employment and E&T services may be necessary to prepare the ABAWD for work. However, as the Department has previously noted, there are many ways to fulfill the ABAWD work requirement, including other work programs that can prepare ABAWDs for work. The lack of an appropriate or available opening in a SNAP E&T program would not prevent

the ABAWD from fulfilling the ABAWD work requirement in another way.

A not-for-profit agency also suggested that ABAWDs who receive good cause from participating in mandatory E&T, because there is no appropriate and available opening, will be confused when they also do not receive good cause from the ABAWD work requirement and may, as a result, lose eligibility because they do not understand they are still subject to the ABAWD time limit. The commenter suggested that the Department require State agencies to send a notice to ABAWDs in this situation explaining all relevant information about the application of good cause and what they must do to maintain eligibility. The Department agrees this application of good cause could be confusing to ABAWDs and, for this reason, is requiring State agencies to include a clear, thorough description of good cause in the consolidated written notice and oral explanation of all applicable work requirements for individuals in the household during the application process and at recertification, in accordance with 7 CFR 273.7(c)(1).

The Department also proposed two changes to good cause regulations pertaining to the ABAWD work requirement in paragraph 7 CFR 273.24(b)(2). First, 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), the Department proposed the State agency be required to provide good cause for failure to meet the ABAWD work requirement, without having to make a separate good cause determination (an exception to this proposed policy, as discussed, is that good cause for failure to comply with mandatory E&T under the proposed 7 CFR 273.7(i)(4) for lack of an appropriate or available E&T opening would not provide good cause for failure to comply with the ABAWD work requirement). The Department proposed this change to codify longstanding practice (see *Supplemental Nutrition Assistance Program—ABAWD Time Limit Policy and Program Access* published on November 19, 2015<sup>3</sup> and *Policy Clarifications for Administering the Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Programs* published on January 19, 2017)<sup>4</sup> that, good cause

under 7 CFR 273.7(i) for failure to comply with mandatory E&T (7 CFR 273.7(a)(ii)) or State-assigned workfare (7 CFR 273.7(a)(iii)) also provides good cause under 7 CFR 273.24(b)(2) for purposes of the ABAWD work requirement. However, while this longstanding policy provided good cause for ABAWDs who were referred to a mandatory E&T program or State-assigned workfare to meet their ABAWD work requirement, it did not provide good cause for ABAWDs participating in other work programs or other types of workfare programs. So, the Department proposed a second change that, if an ABAWD is participating in work, a work program, or workfare, and would have fulfilled the ABAWD work requirement in 7 CFR 273.24, but missed some hours for good cause, the individual would be considered to have fulfilled the ABAWD work requirement if the absence from work, the work program, or workfare is temporary and the individual retains his or her job, training or workfare slot. The Department proposed this change so that State agencies can apply fair and consistent treatment to ABAWDs who have good cause, regardless of how the ABAWD chooses to meet the ABAWD work requirement.

The Department received 18 comments on this provision, all of which were supportive. Two commenters did recommend the Department make an additional change to the regulatory text at 7 CFR 273.24(b)(2) to strike the language, “and the individual retains his or her job, training or workfare slot,” reasoning that some employers and trainers will not be able to retain the SNAP participant even if he or she has a good cause circumstance. The commenters proposed that good cause be allowed in cases where the absence is temporary, whether or not the individual retains his or her job, training or workfare slot. For example, a worker who has COVID-19 might lose his or her job due to an extended absence, but be available for work upon recuperation. The Department agrees that there may be conditions outside of an ABAWD’s control that cause both a temporary absence from work, a work program, or workfare, and also cause an ABAWD to lose his or her job, training, or workfare slot. The COVID-19 public health absence is an example of such situation. As a result, the Department has modified the language at 7 CFR 273.24(b)(2) to strike the language “and the individual retains his or her job, training or workfare slot.”

In the proposed rule, the Department also noted a discrepancy in the process for establishing good cause and issuing

a notice of adverse action between current paragraphs 7 CFR 273.7(c)(3) and 7 CFR 273.7(f)(1)(i). The Department proposed revising the language in 7 CFR 273.7(c)(3) to clarify that, 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. The Department received three comments on this provision, all of which were supportive. Several commenters recommended that the Department also make a change to 7 CFR 273.24(b)(2) to explicitly require the State agency establish whether good cause exists for non-compliance with the ABAWD work requirement before sending a notice of adverse action. The Department agrees that, as a best practice, the State agency should establish whether an ABAWD had good cause before issuing a notice of adverse action in accordance with section 7 CFR 273.24(b)(2). However, the Department is declining to make a regulatory change at this time, but may consider this change in future rule-making.

In the proposed rule, the Department also stated the expectation that the new authority allowing E&T providers to determine if an individual is ill-suited for their E&T component (*i.e.*, an E&T provider determination), and the new requirement that all E&T participants receive case management, do not absolve the State agency from doing a thorough initial screening to ensure it is appropriate to require an individual to participate in an E&T program. Existing statutory and regulatory language clearly indicate that the State agency has primary responsibility for the design and operation of their E&T program, which may include agreements with one or more E&T providers who may provide case management, E&T components, or other activities as outlined in the E&T State plan. While State agencies may choose the method of delivery that best meets their operational needs, the Department emphasized in the proposed rule that each State agency retains responsibility for its E&T program. This includes properly screening individuals for exemptions from the requirement to participate in E&T, and following up on information from E&T providers and case managers that may affect exemptions or good cause determinations after the State agency makes the determination to require participation. The Department proposed in paragraph 7 CFR 273.7(e)(1), as redesignated, that the E&T case manager

<sup>3</sup> <https://fns-prod.azureedge.net/sites/default/files/resource-files/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf>.

<sup>4</sup> <https://fns-prod.azureedge.net/sites/default/files/resource-files/Policy%20Clarifications%20for%20Mandatory%20E%26T-508.pdf>.



must inform appropriate State agency staff of a possible exemption and if there is not an appropriate or available E&T opening for the participant. If the State agency determines the participant does in fact meet an exemption or have good cause, the State agency must then exempt or provide good cause to the individual, if appropriate.

The Department received several comments on the requirement that case managers share possible exemption and good cause information with the State agency. The commenters were supportive and felt the requirement will better target E&T programs to those most likely to benefit; however, commenters felt the proposed requirement did not protect the participant if the State agency fails to act upon the information. Some commenters also recommended the Department clarify that the case manager should assist the participant in reporting all potential good cause for non-compliance, not just good cause when there is a lack of an appropriate or available opening in E&T. The Department agrees that case managers may assist participants in following-up with State agency staff on the status of an exemption or good cause determination, but ultimately only State agency eligibility staff, having the authority to determine an exemption or good cause, can make that determination. The Department also agrees that case managers must provide to the State agency information on all potential good cause circumstances for non-compliance with a work requirement, beyond just circumstances relating to a lack of an appropriate or available opening in E&T, and has added this to the final regulatory text.

As a result, the Department codifies the final regulation as proposed with the modification that case managers must share with the State agency all potential instances of good cause.

#### **Improving Accountability in State Agency Quarterly Reports**

Current regulations at 7 CFR 273.7(c)(9), 7 CFR 273.7(c)(10), and 7 CFR 273.7(c)(11) require State agencies to submit quarterly E&T Program Activity Reports. 7 CFR 273.7(c)(11) specifies that the fourth quarter report provide a list of all the E&T components offered during the fiscal year, as well as the number of ABAWDs and non-ABAWDs who began participation in each component. The report must also provide the number of ABAWDs and non-ABAWDs who participated in the E&T program during the fiscal year. The Department is committed to ensuring that State agencies are providing mandatory E&T participants with real

opportunities to gain skills and appropriate services that help them be successful. Therefore, the Department proposed adding additional reporting elements to this fourth quarter report focused on mandatory E&T participants: The unduplicated number of SNAP applicants and participants required to participate in an E&T program during the fiscal year and, of those, the number who actually begin to participate in an E&T program. An E&T participant begins to participate in an E&T program when the participant commences at least one part of an E&T program, including an orientation, assessment, case management, or a component. The Department proposed to codify this new requirement by inserting a new paragraph at 7 CFR 273.7(c)(11)(iii).

The Department received 21 comments on this provision. Commenters were very supportive, explaining their belief that the new data elements will generate useful information on the take-up rate of E&T and the number of individuals who actually begin participation. Commenters expressed their concern that high non-participation rates in E&T likely indicate increased hardship among those terminated from SNAP and poorly designed or implemented programs that do not engage mandatory E&T participants.

While all commenters supported including the first proposed data element, the “number of SNAP participants required to participate in E&T by the State agency,” the Department received several comments suggesting the Department replace the second proposed data element, “of those, the number who begin participation in an E&T program”, with “of those, the number who are successfully placed into a qualifying component.” These commenters stated that activities such as orientation and assessment are considered participation and may take place at the State agency prior to component placement, yet generally do not allow participants to meet the minimum hours of mandatory programs. Moreover, commenters explained the language of placement rather than participation narrowly focuses the accountability for placement into a qualifying component on the State agency, whether or not the participant actually appears at the placement site. Other commenters also provided a different variation to the modification described above, requesting to replace “and of those the number who begin participation in an E&T program” with “of those the number who were actually enrolled in an E&T component or case

management.” These commenters, like those above, felt it was important to capture if participants were engaging with the main elements of an E&T program, rather than just attending an assessment or orientation, but did not have the same concerns with the verbs participate versus placed, and considered case management and component participation equally important to capture.

Two commenters recommended State agencies report both the number of individuals who, as proposed, begin to participate in an E&T program, as well as the number who begin participating in an E&T component. These commenters believed adding the third data element specific to participation in an E&T component would capture issues related to the “hand off”—from the State agency to a specific training activity (*i.e.*, the E&T component). The commenters stated this has been a challenge for many E&T programs, and obtaining useful information about participation in a component could provide important insights for State agencies and policymakers interested in improving SNAP E&T. Further, these commenters suggested the addition of this third data element would not be a burden to E&T providers or the State agency, as current regulations at 7 CFR 273.7(c)(11) already require the reporting of participation in individual components as well as in an E&T program.

One commenter suggested a much longer list of data elements to be added to the fourth quarter report, including the number of SNAP participants who are mandated to report for an E&T assessment, the number of mandatory participants who receive an E&T assessment, the number of mandatory participants who participate in an E&T activity, the number who are sanctioned for non-compliance, and the number of those mandated to participate who are later found to be exempt. The commenter also suggested the Department require State agencies to report on the employment rates in the second quarter and the fourth quarter after SNAP recipients are required to participate in E&T. Lastly, a not-for-profit agency suggested the Department also collect both the sanction rate and the employment rate for the full universe of those assigned to mandatory E&T in order to present a complete account of the impact of mandatory programs on SNAP participants.

The Department agrees that the proposed requirement to collect data on the number of participants required to participate in E&T and the number who begin to participate in the E&T program

would not allow for analysis of how many mandatory E&T participants actually begin to participate in a component. For instance, a mandatory E&T participant may attend an orientation the same day they visit the SNAP office for their certification interview but, because of State agency mis-communication, not understand when or where to begin their E&T component, and eventually be sanctioned for failure to comply with the requirement to participate in E&T. With the proposed regulatory language, these individuals would be counted as having begun to participate in the E&T program, but would actually receive very little benefit from E&T. As a result, the Department has added a third data element at 7 CFR 273.7(c)(11)(iii) to also collect the number of individuals who begin participation in an E&T component. The Department believes it is important to gather information on the number who “participate” in a component, rather than just the number “placed” in a component, because the Department believes that the “hand-off” between the State agency and the E&T provider of the component is a challenging transition, and many E&T participants should be better supported by the State agency to cross the bridge and show up for the component. Individuals can be placed in an E&T component but, due to no fault of their own, never make it to the component to begin training. For example, a State agency may not inform an individual that they may receive transportation assistance to their appointment, and as a result, the individual does not show up to their appointment due to lack of transportation. Further, while the Department believes that case management is an important service, the Department would like to capture the number of individuals who begin participation in a component as a standalone measure. The Department believes the components are where the training and skill development occurs. The Department counts an E&T participant as beginning to participate in an E&T component when the participant commences the first activity in the E&T component. The Department also appreciates the comment that State agencies should be required to provide data on the number of mandatory E&T participants who are determined ineligible for failure to comply with the requirement to participate in E&T. The Department believes this is an important complementary piece of information to the number of individuals who begin to participate in E&T and the number who begin to participate in a component. The

Department, as stated above, believes it is important that State agencies support all mandatory E&T participants to fulfill their requirement. Data on the number of participants determined ineligible will provide both State agencies and the Department with important information to improve E&T programs. The Department believes that the addition of these new data elements adequately addresses the need to support improved oversight of State mandatory E&T programs, but will continue to monitor data received from State reports and make revisions as necessary.

In conclusion, the Department has added a third and fourth data element to 7 CFR 273.7(c)(11)(iii) to capture the number of mandatory E&T participants who begin to participate in an E&T component and the number of E&T participants who are determined ineligible for failure to participate in E&T.

#### **Workforce Partnerships**

The Act established workforce partnerships. Workforce partnerships are not an E&T component, but they are partnerships between the State agency and other entities that create a new way for SNAP participants to gain high-quality, work-related skills, training, work, or experience that will increase the ability of the participants to obtain regular employment. The Act added workforce partnerships to the list of work programs through which an ABAWD may fulfill the ABAWD work requirement, and workforce partnerships may be a way for mandatory E&T participants to meet their E&T requirement. The Act added workforce partnerships to several sections of the FNA, including sections 6(d)(4)(B)(ii), 6(d)(4)(E), 6(d)(4)(H), and new paragraph 6(d)(4)(N). The Department proposed adding the description and requirements for workforce partnerships to new paragraph 7 CFR 273.7(n). In addition, the Department proposed including two additional State agency responsibilities associated with workforce partnerships. First, the Department proposed to require State agencies to re-screen any individual for the requirement to participate in mandatory E&T when the State agency learns the individual is no longer participating in a workforce partnership. Second, the Department proposed to require State agencies to provide sufficient information to household members subject to the general work requirements of 7 CFR 273.7 and ABAWD work requirements of 7 CFR 273.24 about workforce partnerships, so that individuals could

make an informed decision about participation.

The Department received 12 comments on this provision. While no comments opposed the addition of workforce partnerships as a way for SNAP participants to meet their work requirement and gain new skills, some commenters appear to have misunderstood the general structure and purpose of workforce partnerships. Commenters also shared some concerns about the Department’s requirement to inform SNAP participants about the availability of workforce partnerships.

The Department received several questions about how workforce partnerships would be structured and the interaction between workforce partnerships and E&T programs. Each of these questions is answered in more detail below, but the Department would like to emphasize that key to understanding workforce partnerships is that they are a new concept introduced by the Act in 2018. Workforce partnerships, as described in 7 CFR 273.7(n), as amended by this final rule, are not industry or sector partnerships as defined under WIOA. Workforce partnerships are also not part of the E&T program. Workforce partnerships, as described in 7 CFR 273.7(n), are a particular opportunity available to State agencies to provide SNAP recipients one additional way to meet their work requirement (*i.e.*, mandatory E&T or the ABAWD work requirement) while gaining skills. The Act provided specific instructions regarding what may constitute a workforce partnership, and how they are to be managed by the State agency. While State agencies are encouraged to pursue workforce partnerships with interested employers or eligible WIOA training services providers, there is no requirement that they do so. In addition, if a State agency chooses not to pursue workforce partnerships, as described in 7 CFR 273.7(n), the State agency is still encouraged to partner with employers and training providers to identify and build new opportunities for skills training for SNAP participants through the E&T program.

A State agency expressed concerns that E&T funding cannot be used for workforce partnerships. The commenter suggested this may make it difficult to motivate organizations to participate in creating workforce partnerships that provide 80 hours per month of work and training. The Department understands the commenter’s concern, but the Act explicitly prohibits any FNA funding from being used for workforce partnerships. See section 6(d)(4)(B)(ii)(I)(bb)(CC) of the FNA.

Another State agency explained that many E&T providers already create internships and work experiences with private employers. The commenter asked if the requirement to provide work registrants with information about workforce partnerships also requires State agencies to furnish an exhaustive list of all possibilities, including opportunities through E&T, to the participant. The State agency was concerned that such a list could prove unwieldy and create a burden, having to constantly update the evolving available work sites and participating employers. As discussed above, the Department emphasizes that workforce partnerships described in 7 CFR 273.7(n) are completely separate concept from the E&T work experience component at 7 CFR 273.7(e)(2)(iv). In addition, if a State agency is offering an E&T work experience component, the activities provided under the component would be prohibited from inclusion in a workforce partnership, as workforce partnerships may not use funds authorized by the FNA and all E&T components are supported by FNA funding. If a State agency has certified one or more workforce partnerships, only the activities associated with those workforce partnerships must be provided to individuals targeted for participation in a workforce partnership, in accordance with 7 CFR 273.7(n)(10).

The State agency also asked if State agencies would be able to use private employers for workfare, if workforce partnerships could include work experience, and if so, if the work experience could more closely mirror TANF work experience. The State agency recommended that the relationship with workforce partners mirror the relationship with partners engaged in TANF work experience to create a more flexible system. As discussed above, workforce partnerships at 7 CFR 273.7(n) are a separate concept from E&T components at 7 CFR 273.7(e)(2), workfare at 7 CFR 273.7(m), or any other activity described in current regulations which provide work experience or training for SNAP participants. The introduction of workforce partnerships does not change how workfare or any of the E&T components are regulated or operated. As stated in 7 CFR 273.7(n)(4)(i), workforce partnerships must “assist SNAP households in gaining high-quality, work-relevant skills, training, work, or experience that will increase the ability of the participants to obtain regular employment.” Thus, within the bounds of the workforce partnership

requirements at 7 CFR 273.7(n), State agencies will have flexibility in identifying work, training, or experience that increases the employability of SNAP participants.

The same State agency asked what the requirements will be for certification of workforce partnerships, and if the requirements would be flexible and designable by the State. The Act established specific requirements for certification of a workforce partnerships and the Department included these requirements at 7 CFR 273.7(n)(4). The Department encourages any State agency interested in certifying a workforce partnership to reach out to the Department for technical assistance on specific questions regarding the certification requirements.

Two commenters asked if participation with workforce partnerships is “all or nothing” for participants looking to fulfill the ABAWD work requirement. That is, because ABAWDs can fulfill their work requirement through a combination of work, volunteer hours, and training, can workforce partnerships be offered for fewer than 20 hours per week so that ABAWDs can meet the balance of their work requirement in another way? The commenters felt the proposed requirement to certify that workforce partnerships offer at least 20 hours per week of training, work, or experience may limit the number of workforce partnerships available to participants. The Department understands that ABAWDs may look to fulfill their work requirement through several types of activities, but the Act requires that, to be certified, workforce partnerships must provide not less than 20 hours a week of training, work, or experience. See sections 6(d)(4)(N)(i)(I) and 6(d)(4)(B)(ii)(I)(bb)(BB) of the FNA. This requirement is reflected at 7 CFR 273.7(n)(4). The Department would also like to emphasize that participation in a workforce partnership must be voluntary; ABAWDs cannot be required to participate in a workforce partnership.

Another State agency explained how they interpreted the proposed workforce partnership regulation to mean State agencies would need to create “Workforce Partnerships” similar to those in WIOA. The State agency asked how the proposed workforce partnerships would be distinguished from the current WIOA partnerships. The State agency also explained their interest in examples of partnerships that operate outside of the WIOA regulations. As discussed above, workforce partnerships described at 7 CFR 273.7(n) are a new concept created

by the Act in 2018 and are separate from industry or sector partnerships defined by WIOA, from the E&T program, workfare, and other activities currently described in regulations. Workforce partnerships, as described at 7 CFR 273.7(n), must meet very specific criteria, including a set of certification requirements, and are one additional way for SNAP participants to meet their SNAP work requirements and gain skills. The Department is not aware of any existing workforce partnerships that meet the criteria in 7 CFR 273.7(n).

The Department also received two comments regarding the burden of providing a list of workforce partnerships to all SNAP work registrants at certification and recertification, as required in proposed 7 CFR 273.7(n)(10). A local government agency felt this requirement, as proposed, was onerous, unnecessary, and potentially confusing to work registrant households who may not be a good match for a slot in a workforce partnership, but who would be required to receive information about them anyway. The local government agency explained they would be in a better place to determine if a work registrant was a good match for a workforce partnership and, therefore, State agencies should be given the flexibility to target information about workforce partnerships to those most likely to benefit. A State agency and a professional association did not oppose providing the list, but felt it would take at least a year to develop and make the system changes to distribute it, particularly given the backlog of system changes resulting from the COVID-19 public health emergency. The Department’s intent in requiring the State agency to provide the list of workforce partnerships at certification and recertification was to ensure that SNAP households were made aware of their existence. Since SNAP households cannot be required to participate in a workforce partnership, but a workforce partnership can be a way for a SNAP participant to meet their work requirements, the Department wanted to make sure work registrants who could benefit from participation, received the appropriate information. In response to comments, the Department has concluded that State agencies need not provide a list of workforce partnerships at certification and recertification to all work registrants, as this would be overly burdensome and potentially confusing to some SNAP participants. However, the State agency must inform any SNAP participant determined as likely to benefit from participation in a

workforce partnership of the availability of the workforce partnership, and provide the participant with all available pertinent information regarding the workforce partnership to enable the participant to make an informed choice about participation. State agencies are also encouraged to include workforce partnerships in the list of employment and training opportunities provided to households with no reported earned income at 7 CFR 273.14(b)(5).

In conclusion, the Department codifies the regulations pertaining to workforce partnerships as proposed, with one modification at 7 CFR 273.7(n)(10) to require the State agency to target information about workforce partnerships to SNAP participants most likely to benefit from participation in workforce partnerships.

#### Minimum Allocation of 100 Percent Funds

Current regulations at 7 CFR 273.7(d)(1)(i)(C) provide that no State agency will receive less than \$50,000 in Federal E&T grant funds and set forth the methodology to ensure an equitable allocation among the State agencies. The Act increased this baseline of Federal E&T funds for each State to \$100,000 in section 16(h)(1)(D) of the FNA. The Department proposed to modify 7 CFR 273.7(d)(1)(i)(C) to reflect the change in the baseline, and received one comment on this provision, which was supportive. The Department is therefore finalizing the regulatory language as proposed.

#### Prioritized Reallocation of Employment and Training Federal Grant Funds

Current regulations at 7 CFR 273.7(d)(1)(i)(D) provide the process for the Department to reallocate unobligated or unexpended Federal E&T funds to other State agencies requesting additional E&T funds. The Act introduced priorities for the reallocation of these funds in section 16(h)(1)(C)(iv) of the FNA. Those priorities are: At least 50 percent shall be reallocated to requesting State agencies that were awarded grants to operate E&T pilots under the Agricultural Act of 2014 (Pub. L. 113–79) (also known as the 2014 Farm Bill), to conduct those E&T programs and activities from the pilots that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance; at least 30 percent must be available to State agencies requesting funds for E&T programs and activities authorized under section

6(d)(4)(B)(i) of the FNA that are targeted to individuals with high barriers to employment and that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance; and the remaining funds to other State agencies requesting additional funds for E&T programs and activities that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Department proposed to add new paragraph 7 CFR 273.7(d)(1)(iii) to specify these priorities for the reallocation of funds. Additionally, the Department proposed to add new paragraph 7 CFR 273.7(c)(6)(xix) to specify that State agencies requesting additional funds would need to submit those requests when their E&T State Plan is submitted for the upcoming Federal fiscal year. Lastly, the Department proposed to reallocate any unobligated funds remaining after the prioritized reallocation process described above at the proposed new 7 CFR 273.7(d)(1)(iii)(E) to State agencies requesting additional funds for E&T programs and activities that the Secretary determines have the most demonstrable impact.

The Department received five comments on this provision, all of which were supportive of the proposed rule; however, commenters did provide some additional suggestions as detailed below.

With regard to the 30 percent reallocation focused on individuals with substantial barriers to employment, three commenters suggested that, when the State agency requests funds, the State agency estimate the percentage of E&T participants that the State agency expects to serve for each of the listed categories of highly-barriered individuals. Another commenter suggested it may be advantageous for reallocated funds to serve a specific target population of jobseekers (*e.g.*, individuals experiencing homelessness) who are disproportionately under-represented among existing E&T participants in the State seeking additional E&T funds. The Department agrees that focusing reallocated funds on individuals with high barriers to employment is an opportunity to target E&T funds to individuals most likely to need extra support, which is the objective of the 30 percent reallocation. However, the Department does not believe additional qualifying criteria

(like the percentage of E&T participants that the State agency expects to serve falling into each of the listed categories) are necessary to achieve this objective. The Department believes creating additional criteria to determine how funds are distributed would actually hamper the Department's ability to balance all concerns and re-distribute funds in the most efficient and impactful manner.

Two commenters recommended that the Department require State agencies include in their request for reallocated funds under 7 CFR 273.7(d)(1)(iii)(F) whether the State agency plans to initiate or maintain new services, enhanced services, or new slots with the reallocated E&T funding. The Department does not believe the required inclusion of this information in the State agency's request would significantly alter how reallocated funds are distributed, as a result the Department does not believe a change is necessary.

In conclusion, the Department codifies the regulatory text as proposed without any changes.

#### Advisement of Employment and Training Opportunities

The Act added a requirement at section 11(w) of the FNA that, at the time of recertification, State agencies advise SNAP household members subject to the requirements of section 6(d) of the FNA (the general work requirements) of available employment and training opportunities, if these individuals are members of households containing at least one adult, with no elderly or disabled individuals, and with no earned income at their last certification or required report. The Department proposed to codify this requirement in proposed paragraph at 7 CFR 273.14(b)(5). As a minimum standard for meeting this requirement, the Department proposed that State agencies provide the household, in either electronic (*e.g.*, on a website or in an email) or in printed form, a list of available employment and training services for household members subject to the general work requirements. The Department clarified that employment and training services are not limited to SNAP E&T. Rather, State agencies should also provide information about the availability of opportunities through the American Job Centers or local community-based organizations. This is particularly important in areas that do not operate SNAP E&T programs. The Department encouraged State agencies to consult with their Departments of Labor when developing information about available employment and

training services. In meeting this requirement, State agencies should consider how to best target lists of employment and training opportunities to increase access of work opportunities for SNAP participants, including creating tailored lists for certain regions or municipalities, or for SNAP participants with particular career interests or barriers to employment.

The Department received five comments on this provision, all of which were generally supportive. The commenters suggested the list of employment and training opportunities be provided in paper whenever possible because some SNAP participants may not have access to reliable internet, and to make sure the list is updated at least annually. The Department agrees that some SNAP participants may not have reliable access to the internet and believes State agencies are in the best position to know how to ensure participants can access the information, either electronically or in paper form. The Department also believes that the list of training opportunities should be updated as often as is necessary to maintain a reasonable level of accuracy in the information provided, and believes State agencies are in the best position to determine this frequency. The commenters also recommended that the list of training providers be paired with labor market information to help SNAP participants identify the “fastest growing or largest sectors for entry-level jobs and living wage jobs that can be accessed with limited training, and the career pathways associated with them.” While the Department believes this information may be helpful to SNAP participants and would encourage interested State agencies to provide this additional information, the Department does not believe that requiring the inclusion of labor market information is necessary to meet the statutory obligation and would constitute an additional burden for State agencies that outweighs the benefits. Commenters also recommended that the list be made available to underemployed SNAP participants and E&T participants. The Department notes that while the list of training opportunities must be provided to the specific set of households with no earned income described in the previous paragraph, State agencies may provide the list to a broader group of SNAP households at their discretion.

In conclusion, the Department finalizes the regulatory text as proposed without any changes.

### Work Programs for Fulfilling the ABAWD Work Requirement

Current regulations at 7 CFR 273.24(a)(3) define the types of work programs in which ABAWDs may participate to meet the ABAWD work requirement and thereby remain eligible beyond the 3 months in 36-month time limit. The Act added the following types of programs to that definition in section 6(o)(1) of the FNA: An employment and training program for veterans operated by the Department of Labor or the Department of Veterans Affairs, as approved by the Secretary; and workforce partnerships. The Department proposed to add these programs to the existing paragraph at 7 CFR 273.24(a)(3). As noted earlier, the Act also changed section 6(o)(1)(C) of the FNA by replacing the term “job search program” with “supervised job search program.” For the purposes of ABAWD work requirements, the Department proposed to implement this terminology change by revising 7 CFR 273.24(a)(3)(iii).

The Department received four comments on this provision, all of which were generally supportive. Commenters supported the Department’s clarification that job search does not need to be supervised when integrated as a subsidiary activity into one or more other components, so long as it makes up less than half the time in the component, as provided in The Joint Explanatory Statement of the Committee of Conference issued with the Act (Conf. Rept. 115–1072, p. 617). Commenters also supported the Department’s reiteration of current policy that job search, whether supervised or not supervised, and job search training activities can count toward the ABAWD work requirement, so long as they are offered as part of other E&T program components and comprise less than half the total required time spent in the components. However, commenters did ask for further clarification regarding how “total required time spent in the components” should be measured for the purposes of ensuring job search, supervised job search, and job search training make up less than half the total required time spent in the component (for instance, can the fraction of time spent in job search be calculated over the average length of the component). The Department recognizes that different E&T components run for different lengths of time and comprise different activities at different points in time. For this reason, the Department has always provided flexibility to State agencies to determine the most effective and efficient way to calculate if job search,

supervised job search, or job search training make up less than half the total required time spent in the component for the purpose of compliance with the ABAWD work requirement. The Department will continue to provide this flexibility to State agencies.

In conclusion, the Department finalizes the regulatory text as proposed without any changes.

### Discretionary Exemptions for ABAWDs Subject to the Time Limit

Current regulations at 7 CFR 273.24(g) state that each State agency shall be allotted exemptions equal to an estimated 15 percent of “covered individuals,” as defined at 7 CFR 273.7(g)(ii). States can use the exemptions available to them to extend SNAP eligibility for a limited number of ABAWDs subject to the time limit. When one of these exemptions is provided to an ABAWD, that one ABAWD is able to receive one additional month of SNAP benefits. The Act changed the number of exemptions allocated by the Department to State agencies each Federal fiscal year from 15 percent to 12 percent of the “covered individuals” in the State, and this change took effect in Fiscal Year 2020. The Department proposed replacing the number “15” with the number “12” in paragraphs 7 CFR 273.24(g)(1) and 7 CFR 273.24(g)(3), and also proposed changing the name of these exemptions from “15 percent exemptions” to “discretionary exemptions” in paragraph 7 CFR 273.24(g).

The Department received six comments on this section. Two commenters supported the change, three commenters opposed the change, and one did not express a clear opinion. A not-for-profit agency who supported the change felt that these exemptions hold back able-bodied adults who could otherwise rise out of welfare, thus trapping prospective workers in dependency and taking benefits away from those more in need. The commenter explained that reducing the number of exemptions would provide more opportunity for work to more individuals. The commenter also felt the name change to “discretionary exemptions” emphasized that States should use discretion when applying the exemptions to unusual circumstances when ABAWDs face unique barriers to work or training not already covered by another exemption. The commenters who opposed the provision emphasized how important these exemptions are for low-income individuals struggling with multiple barriers to work, including domestic violence survivors. However, the

commenters also acknowledged that the Department has no discretion in implementing the statutory change from 15 to 12 percent. The Department agrees that there is no discretion in implementing this change.

In conclusion, the Department finalizes the regulatory text as proposed without any changes.

### **Informing SNAP Participants About Their Work Requirements**

In the proposed rule, the Department noted that many of the changes made by section 4005 of the Act emphasized State agency responsibility to assist SNAP participants in finding and retaining employment. The Department believes that foundational to this increased accountability for both the State agency and SNAP participants is improved communication between the State agency and SNAP participants regarding the nature of any work requirement that the SNAP household may be subject to, consequences for not complying with work requirements, and how to find more information. The Department also noted in the proposed rule that a single individual may be subject to multiple work requirements, which may be confusing for the household to decipher to ensure compliance, especially if these requirements are communicated to the individual at different times via different mediums. In order to streamline and improve communication between the State agency and the household, and to improve the household's customer service experience, the Department proposed to consolidate the State requirement to inform individuals of their applicable work requirements (*i.e.*, the general work requirements, including the mandatory E&T requirement, and the ABAWD work requirement). This consolidated work information requirement would take two forms: A single written notice and a comprehensive oral explanation of all the work requirements that would pertain to a particular household. The consolidated work information requirement would merge two existing requirements to inform the household about their work requirements (*i.e.*, the general work requirement and mandatory E&T) with a new more clearly delineated requirement to inform ABAWDs regarding their ABAWD work requirement and time limit. The consolidated work information requirement to inform households of all applicable work requirements would be added at new 7 CFR 273.7(c)(1), 7 CFR 273.7(c)(2) and 7 CFR 273.24(b)(8). The Department proposed that the new

written notice would need to include all pertinent information related to each of the applicable work requirements for individuals in the household, including: An explanation of each applicable work requirement; exemptions from each applicable work requirement; the rights and responsibilities of each applicable work requirement for individuals subject to the work requirements; what is required to maintain eligibility under each applicable work requirement; pertinent dates by which an individual must take any actions to remain in compliance with each of the applicable work requirements; the consequences for failure to comply with each applicable work requirement; and any other information the State agency believes would assist the household members with compliance. If the household were to contain an individual who is subject to mandatory E&T, the written notice would also need to explain the individual's right to receive participant reimbursements for allowable expenses related to participation in E&T, up to any applicable State cap, and the responsibility of the State agency to exempt the individual from the requirement to participate in E&T if the individual's allowable expenses exceed what the State agency would reimburse, as provided in paragraph 7 CFR 273.7(d)(4).

The Department received 28 comments on this provision. Seventeen commenters supported the provision, ten commenters provided conditional support with suggestions for improvement, and two commenters opposed the provision. Supporters generally felt that the new consolidated requirement to provide information about the work requirements to households will help individuals understand their responsibilities and expectations, allow participants to share concerns or ask questions, and increase participant awareness of what they must do to prevent unexpected termination of SNAP benefits.

Several commenters in support of providing the consolidated work information to participants proposed adding to the written notice an explanation of the process for requesting good cause consideration, examples of good cause circumstances, and contact information to initiate a good cause request. The Department agrees, and has added an explanation of good cause to the list of pertinent information in 7 CFR 273.7(c)(2)(iii).

In addition to including good cause information, a legal services agency and a not-for-profit agency also recommended that the written and oral

information include: The full scope of ways that an individual can meet the work requirement; the list of exemptions on the notice itself (so that the State agency does not direct individuals to a website they may not be able to access); how to claim exemptions; and the fact that an exemption can be claimed at any time if there is a change in circumstances. Conversely, the Department also received a comment from a State agency arguing that including the full list of exemptions for each work requirement on the written statement would be unmanageable and confusing to participants. The Department is interested in balancing the need to provide pertinent information to participants with the readability of the document. As a result, the Department has revised the final regulation at 7 CFR 273.7(c)(2)(iii) to require that the written notice include information on how to claim an exemption and claim good cause, and provide contact information to initiate a request. However, the Department notes that it is the responsibility of the State agency to screen for exemptions from the general work requirement, mandatory E&T and the ABAWD work requirement, and not the responsibility of the participant to "request" an exemption. Similarly, it is the State agency's responsibility to establish good cause for failure to meet the general work requirements and not the responsibility of the participant to "request" good cause. That being said, participant circumstances can change after certification and the Department believes it would be helpful to the participant to know how to inform the State agency of this change in circumstance, if the participant believes they may qualify for an exemption or good cause. The Department also understands that providing the entire list of exemptions, particularly from mandatory E&T, could be quite extensive and confusing to participants. Nonetheless, the State agency is required to screen for exemptions during the application process, and has an opportunity to explain the exemptions to the client at that time. Providing the full list of exemptions is also a helpful reference for participants should their circumstances change. For these reasons, the Department believes it is important to include the full list of exemptions in the written notice. Lastly, with regard to the comment to include an explanation of ways the individual can meet the work requirement, the Department believes the requirement, as proposed, to include in the written notice "what is required to maintain

eligibility under each applicable work requirement,” already calls for a description of the ways the individual may meet their work requirement and believes it unnecessary to make an addition to the regulatory text. Nevertheless, the Department encourages State agencies to include examples of how to meet the mandatory E&T and ABAWD work requirements, as applicable, in the written notice and oral explanation to aid participant comprehension.

A legal services agency commented that the proposed regulatory text at 7 CFR 273.7(c)(1) and 7 CFR 273.7(c)(2) was unclear regarding to whom the oral explanation and written notice should be directed, *i.e.*, the head of household or each individual household member with a work requirement. The commenter asked the Department to clarify that the oral explanation and written notice must be given specifically to the individual with the work requirement, not solely to the head of household, because the individual’s compliance impacts the rest of the household. The commenter explained that, because the work rules are unique and extremely complex, communicating this important information only to the head of household and not also directly to the individual subject to the work requirement, means the message could be muddled or not communicated at all. The commenter also asked that the State agency be required to include in the oral explanation that the individual should review the written notice, as well as where the individual can go to find resources and learn more information. The Department understands the interest in providing the written notice and oral explanation to each individual in a household subject to a work requirement, to ensure information is shared accurately and comprehensively with the individual who needs it. However, the Department believes that such a requirement for the oral explanation would be impractical given the challenge, in some instances, of tracking down in a short period of time several individuals per case, and could potentially slow application processing. The proposal is also out of sync with other SNAP regulations pertaining to the eligibility process, like the SNAP interview, that do not require the participation of more than one individual. The Department also notes that, for the purposes of work registration, an authorized representative has long been allowed to register others in the household because work registration must occur prior to certification (see 7 CFR 273.7(a)(1)(i)).

For similar practical reasons, the Department believes one written notice should be sent to the household, but language should be included in the written notice that clearly states which individuals in the household are subject to which work requirement. Information to this effect has been added to the final regulatory text. The Department has also modified the text in 7 CFR 273.7(c)(1)(ii) through (iii) to more clearly indicate that the household is the recipient of the oral explanation and written notice.

A workforce training agency recommended adding a requirement that the State agency must follow up by phone and mail to notify ABAWDs and mandatory E&T participants in advance of dates by which an individual must take action. The commenter explained that mandatory participants often do not understand that they must report to a location to establish a plan for E&T, and miss important information because they did not receive a piece of mail or understand the consequence of missing that date. Similarly, the commenter believed ABAWDs should have specific follow-up by case managers if they are approaching their third month of eligibility and need to prove compliance with the work requirement. The Department agrees that ABAWDs and mandatory E&T participants may often miss important information detailing the necessary steps to maintain eligibility. For this reason, with this final rule-making, the Department has added the requirement at 7 CFR 273.7(c)(1)(ii) and 273.24(b)(8) that, during the application process, at recertification, and whenever an individual loses an exemption or there is a new household member, the State agency must provide each household with a written notice and oral explanation regarding the applicable work requirement for individuals in the household. The Department also believes the new requirement that each E&T participant receive case management services will help participants better navigate their work requirements and support participants who are struggling to meet important milestones. As a result, the Department does not believe that an additional State notification requirement is necessary.

Two non-profit agencies suggested the written notice must be: Provided in a timely manner; written at a widely-accessible reading level; translated as needed; and be accessible to people with disabilities. One commenter asked the Department to consider providing participants with an explanatory video about the information contained in the statement. The commenter also stated that the oral explanation be provided in

the SNAP participant’s spoken language of choice, or via sign language, as needed. Several commenters urged the Department to develop and share with State agencies model notices that have been user-tested for both plain language and clear information about the steps that participants must take in order to retain their benefits. A professional association asked the Department to clarify that the written notice can be delivered in electronic form without a waiver, consistent with USDA memorandum issued on November 3, 2017, “Electronic Notice Waivers and Options.”<sup>5</sup> The commenter suggested the allowance of electronic notices is beneficial to clients who prefer accessing information through electronic devices and may allow for greater access to information.

The Department agrees that, to be helpful to SNAP participants, the oral explanation and written notice must be provided in a timely manner, be clearly written or spoken, and be provided in the appropriate language. Existing SNAP regulations at 7 CFR 272.4(b) lay out procedures to ensure State agencies provide program information in languages that reflect those spoken in the surrounding community. State agencies, in accordance with existing laws, must also provide reasonable accommodations to individuals with disabilities, and regulations at 7 CFR 272.6 lay out procedures for participants to file a discrimination complaint. The Department will consider how to effectively provide technical assistance to State agencies as they develop the written notice and scripts for the oral explanation to help ensure they are clear, comprehensible, and in compliance with existing regulations. The Department will also consider how to support making use of new innovative platforms, like videos, to supplement the requirements in the regulation. State agencies may choose to provide the written notice as an electronic notice if they do so in accordance with the FNS memorandum, “Electronic Notice Waivers and Options” issued on November 3, 2017, and other applicable policy guidance and regulations. In particular, the State agency must notify its Regional Office upon adopting e-notices and provide a list of the notices that will be offered electronically. The State agency must also include this information in its SNAP State Plan. As a result, no changes to the regulatory text are required.

<sup>5</sup> <https://fns-prod.azureedge.net/sites/default/files/snap/Memo-Electronic-Notice-and-Other-Options-11317.pdf>.

One State government and one local government agency opposed the requirement to provide a written notice and oral explanation of the work requirements because of the increased administrative burden. In addition, one professional organization, while supportive, also cautioned about the increased burden to State agencies. The local government agency and a professional organization noted that, particularly during the COVID-19 public health emergency, any additional administrative and fiscal requirements imposed on the State agency would be particularly burdensome since they are already experiencing increased applications and special operational demands imposed by the public health emergency. The professional organization requested that the Department consider a reasonable timeline for implementation of the new requirement. A State agency explained that adding the level of detail the Department is proposing would be more confusing to participants and most likely would result in an increased administrative burden for State agencies as they help clients understand the written statement, leading to further delays in individuals beginning to participate in E&T. The State agency further explained their existing process is less burdensome and provides targeted information to participants at different points in the process based on the needs at that time, for instance, at application and interview, and again when the participant makes contact with the E&T provider. The State agency recommended that this process continue to be allowable. The State agency also allowed that participants don't always read their notices and miss important information.

The Department agrees that information about the work requirements can be overwhelming to participants, particularly when multiple individuals in the household may be subject to different requirements. For this reason, the Department believes it is important to have a comprehensive and consolidated written notice of this information during the application process and at recertification, so that participants are clear on the expectations from the start. For instance, information on reimbursements for E&T participants should be provided during certification, and not withheld until the participant makes their first contact with an E&T provider or attends an E&T orientation. During certification, the participant should also be informed that the State

agency must exempt the individual if the costs to participate exceed the allowable amount of participant reimbursements. Otherwise, without that explanation, a participant could be inappropriately sanctioned for missing their first E&T appointment because they lacked transportation or child care, not realizing they could have received those services as participant reimbursements to support their participation in E&T. The Department also agrees that developing the new written notice and script for the oral explanation will take time and effort, but as explained by a different State agency, the additional time to develop the written notice and provide the oral explanation is time well-invested by reducing the likelihood of a participant misunderstanding or disregarding the work requirements, and reducing the possibility of participants losing benefits due to noncompliance. Additionally, the Department allowed for a longer implementation period for this provision (until October 1, 2021). As stated above, the Department is considering ways to work with State agencies to ensure the written notices and oral scripts are understandable and responsive to the information needs of participants. Information provided in a clear and comprehensible fashion may be more likely read and understood by participants. The Department would also like to point out that, while the final regulation is requiring the written notice and oral explanation be provided during the application process, recertification, and when a previously exempt individual or new household member becomes subject to a work requirement, nothing in the new regulation would prohibit State agencies or their E&T providers, as a best practice, from regularly sharing information with participants at important stages in their certification period to reinforce information previously provided. As already mentioned for E&T participants, case managers can also be an important support and information resource. The Department also notes that, as a best practice, State agencies are also encouraged to inform ABAWDs about their time limit when the area in which the ABAWD lives comes off a waiver.

In conclusion, the Department finalizes the requirement to provide a written notice and oral explanation of all applicable work requirements as proposed, with clarification of the information to be contained in the written notice and that the household is

the target of the oral and written explanation.

#### **Voluntary E&T Participation Time Limits**

The Department proposed a technical correction to paragraph 7 CFR 273.7(e)(5)(iii) to align the regulations with the statutory provision at section 6(d)(4)(F)(iii) of the FNA, allowing voluntary participants to participate in E&T activities for more than the maximum number of hours calculated as their benefit divided by the minimum wage and for more than 120 hours in a month. The Department received no comments directly on this provision, but did make a change to this section based on a comment received on the subsidized employment provision discussed earlier in this preamble and to clarify that the Department does not interpret section 6(d)(4)(F)(iii) to override Federal and State minimum wage laws. The Department has modified language at 7 CFR 273.7(e)(5)(iii), as re-designated, to indicate that for any additional hours a volunteer chooses to participate in an E&T work program or workfare beyond the number of hours equal to the household allotment for that month divided by the higher of the applicable Federal or State minimum wage, the participant must earn a wage at least equal to the higher of the Federal or State minimum wage. This adjustment has been added to ensure no E&T participant works for less than the minimum wage.

#### **Procedural Matters**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866. The table below presents the expected costs of the rule changes. Derivation of these costs, and the overall impact on Federal and State spending, are summarized in the discussion that follows.



TABLE 1—SUMMARY OF IMPACTS

In millions of dollars	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total
<b>Impacts on Federal Transfers (nominal dollars)</b>						
Increased 100% E&T grant funding** .....	\$13	\$13	\$13	\$13	\$13	\$65
<b>Impacts on Federal (50%) and State (50%) Administrative Costs (nominal dollars)</b>						
Administrative costs/burden—case management + .....	39.8	39.8	39.8	39.8	39.8	199.0
Administrative costs/burden—related to sending new required ABAWD notice and notifying participants of Provider Determinations + # .....	0	(*)	6.8	6.8	6.8	20.4
Administrative costs/burden—reporting of additional measures + # .....	0	0	(*)	(*)	(*)	(*)
<b>Total .....</b>	<b>39.8</b>	<b>39.8</b>	<b>46.6</b>	<b>46.6</b>	<b>46.6</b>	<b>219.4</b>
<b>Impacts on Burden of Participating Households (costs in nominal dollars)</b>						
Household Burden—case management ..	4.6	4.6	4.6	4.6	4.6	23.0
Household Burden—Notification of Provider Determination # .....	0	0	(*)	(*)	(*)	(*)
Household Burden—List of E&T Services	0.8	0.8	0.8	0.8	0.8	4.0
Household Burden—ABAWD Notification # .....	0	0	1.6	1.6	1.6	4.8
<b>Total .....</b>	<b>5.4</b>	<b>5.4</b>	<b>7.0</b>	<b>7.0</b>	<b>7.0</b>	<b>31.8</b>

\*\* The 2018 Farm Bill included an additional \$13 million per year in 100 percent grant funding for E&T.  
 + A portion of these costs are expected to be covered using existing 100 percent grant funding.  
 # These provisions are effective 10/1/21.

*Regulatory Impact Analysis:* A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any one year). The Department does not anticipate that this final rule will have economic impacts of \$100 million or more in any one year, and therefore, it does not meet the definition of “economically significant” under Executive Order 12866. An analysis assessing the costs and benefits of this rule is presented below.

As explained above, this rule codifies the 2018 Farm Bill changes related to E&T program operations, the ABAWD work requirement, and the allocation and reallocation of 100 percent grant funds. Those changes and their expected costs and benefits are summarized briefly below:

*Changes to SNAP E&T Programs, Components, and Activities*

Pursuant to the 2018 Farm Bill, the final rule makes several changes to E&T components and allowable activities, including:

- Replacing job search with supervised job search as an E&T component and clarifying that “supervision” may be provided through a variety of modes including virtual modes to ensure States can continue to deliver services during the COVID pandemic;

- eliminating job finding clubs as an allowable activity;
- replacing job skills assessments with employability assessments;
- adding apprenticeships and subsidized employment as allowable activities;
- requiring a 30-day minimum for receipt of job retention services; and
- allowing activities from the 2014 Farm Bill E&T pilots to become allowable E&T components, if those activities had a demonstrable impact on the ability of participants to find and retain employment that leads to increased income and reduced reliance on public assistance.

The rule also implements the 2018 Farm Bill provision that requires all E&T programs to provide case management services to E&T participants, in addition to one or more E&T components. We expect the cost of the case management to be approximately \$39.8 million per year. While all E&T participants must receive some case management, there is no expectation that participants receive ongoing case management if that is not desired by the participant and the participant is otherwise successfully participating in E&T. Consistent with the estimates used for the Paperwork Reduction Act section of the proposed rule, we assume approximately 460,000 annual E&T participants participate on

average for 3.27 months. We further assume the average participant receives just over 1 hour total of case management services (30 minutes for the initial case management meeting and 15 minutes for subsequent monthly meetings). In addition, we expect caseworkers to spend approximately 10 minutes per case management session preparing for the meeting and 5 minutes recording case notes and otherwise documenting the case management interactions (for a total of 1.87 hours per case). Using a fully-loaded hourly rate (including benefits and indirect costs) of approximately \$46.32<sup>6</sup> results in an annual cost of about \$39.8 million, shared equally. The Department believes that initially most States will use 100 percent grant funding, including the increased funding provided through the 2018 Farm Bill, to pay for the required case management services. In some States this may mean States reallocate funds from other activities in order to provide sufficient case management.

The case management requirement will also increase burden on individual

<sup>6</sup> Based on May 2019 BLS Occupational and Wage Statistics for “Social Workers, All Other,” available at <https://www.bls.gov/oes/tables.htm>, plus approximately 50 percent for fringe and overhead. Overhead is included because this is a new activity and will likely result in hiring of additional staff or contractors.

SNAP participants as they will be required to participate in monthly discussions with their case manager regarding their E&T participation and plans for self-sufficiency. While the Department expects most of the conversations will be held by telephone, in some instances E&T participants may need to travel to meet their case manager in person. Therefore, the average number of burden hours per

participant includes travel time. Total burden per participant is 1.4 hours, compared to an estimate of 1.32 hours for State agencies (excluding the time needed for note taking and other documentation).<sup>7</sup> The additional burden is expected to cost SNAP E&T participants approximately \$4.6 million annually. While these estimates include travel time to permit E&T participants to meet their case manager in person, the

Department notes that the rule provides States with flexibility to deliver case management services virtually. It is likely that few participants will meet face-to-face with a case manager during the current public health emergency; therefore the burden on participants could be lower for the duration of the pandemic.

TABLE 2—ANNUAL COST OF BURDEN ASSOCIATED WITH CASE MANAGEMENT SERVICES

	State agency burden	Household burden
E&T participants per year .....	460,000	460,000
Burden hours per participant .....	1.87	1.4
Hourly wage rate * .....	\$46.32	\$7.25
<b>Total Annual Cost (Federal and State shares millions) .....</b>	<b>\$39.8</b>	<b>\$4.6</b>

\* State Agency rate is a fully loaded rate. Household rate is equal to the federal minimum wage. Totals may not sum due to rounding.

*Changes to Funding Allocation/ Reallocation*

The final rule establishes a funding formula for reallocated E&T funds, in accordance with statutory changes. It also codifies the increase to \$100,000 in the minimum allocation of 100 percent funds to State agencies. While these changes may affect the amount of funds received by individual States, the Department does not expect these changes to affect overall spending on SNAP E&T. Prior to the 2018 Farm Bill, three States (Virgin Islands, Wyoming and North Dakota) received less than the \$100,000 minimum allocation and now receive a larger grant. Over the past three years, less than \$10 million per year in 100 percent grant funds have been reallocated, and the amount available for reallocation has been declining.

*Changes Affecting Work Requirements*

Pursuant to the 2018 Farm Bill, the rule makes a number of changes affecting SNAP work requirements (both the ABAWD requirement and mandatory E&T). The final rule:

- Adds workforce partnerships to the list of programs that may be used to meet SNAP work requirements;
- adds employment and training programs for veterans operated by the Department of Labor or the Department of Veterans Affairs to the list of work

programs that may be used to meet the ABAWD work requirement;

- requires State agencies to provide an oral explanation and written notice to ABAWDs of all applicable work requirements during certification, recertification, and when a previously exempt individual or new household member becomes subject to a work requirement;
- codifies the statutory change that reduces the number of ABAWD work exemptions from 15 percent to 12 percent and change their name to “discretionary exemptions;”
- requires State agencies to provide good cause for noncompliance with E&T if an appropriate or available opening in the E&T program is not available;
- requires State agencies to re-direct individuals who are determined by a provider not to be a good fit for the E&T component to other more suitable activities and notify the participant of the provider’s determination; and
- requires that, at recertification, all State agencies advise certain types of households subject to the general work requirement of employment and training opportunities.

Most of these provisions are not expected to have cost impacts. Most States have not historically and do not currently use all of their available discretionary exemptions, so the reduction in the number of available exemptions is unlikely to impact

individual ABAWDs.<sup>8</sup> While the regulatory impact analysis for the final rule *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents* assumed that some States would use their carryover exemptions and would subsequently use more (although not all) of their available discretionary exemptions to exempt individual ABAWDs in response to the rule’s changes to waiver eligibility, those regulatory changes have been set aside by a Federal court. Furthermore, the Families First Coronavirus Response Act generally suspended the ABAWD work requirement and time limit for the duration of the COVID–19 public health emergency, so individual ABAWDs are unlikely to be at risk of losing SNAP at this time. Together, these recent changes reduce the need for States to use all of their available exemptions.<sup>9</sup>

Permitting individuals to fulfill the ABAWD work requirement or mandatory E&T through workforce partnerships, which are operated by private employers or non-profit groups, may result in additional ABAWDs meeting the work requirement and retaining SNAP eligibility. However, such programs are not currently widespread. Given the lack of available data for such programs and the requirements for establishing a workforce partnership, the Department does not believe they will become

<sup>7</sup> For more information on the derivation of these estimates, please see the Paperwork Reduction Act section of this proposed rule.

<sup>8</sup> Typically States use far fewer exemptions in a fiscal year than they earn (see FY 2020 Discretionary Exemptions with Carryover). In 2019, nine States used more exemptions than they earned

for FY 2019 and thus had to use a portion of their carryover exemptions. In three of those States, most carryover exemptions were used as an adjustment to account for misreporting of exemptions used in earlier years. Of the remaining 44 States, none used more exemptions in 2019 than they earned in 2020 (the first year exemptions were reduced to 12 percent).

<sup>9</sup> A small number of States have continued to offer work program slots to ABAWDs, which results in those ABAWDs being subject to the ABAWD work requirement and time limit. However, in most cases States have not offered ABAWDs slots in work programs during the pandemic.

commonplace and has, therefore, assumed there would be only negligible impacts of this change on the SNAP ABAWD population.

The requirement that State agencies inform ABAWDs both orally and in writing of the ABAWD work requirement and time limit is expected to result in additional burden for State agencies as this is a new requirement. The Department received a comment that informing ABAWDs of their work requirement may take longer than

proposed; as a result FNS has increased the burden in the final rule. However, having this information may mean that ABAWDs better understand the work requirement and how to meet it, and thus are better able to fulfill those requirements and retain SNAP eligibility. States agencies are already required to inform work registrants and mandatory E&T participants of their respective work requirements in existing regulations at 7 CFR 273.7(c) (OMB Control Number 0584-0064;

Expiration date 12/31/2020, currently under review with OMB). This this additional burden is expected to cost approximately \$6.7 million annually when implemented on 10/1/21, with costs divided equally between State agencies and the Federal government. The table below shows how these estimates were derived. The Department notes that the actual burden associated with this provision may be lower if the COVID-19 public health emergency is still in place at implementation.

TABLE 3—STATE AGENCY COST OF BURDEN RELATED TO SENDING NEW REQUIRED ABAWD NOTICE

	ABAWD written notice
Occurrences per year <sup>10</sup> .....	2,700,000
Burden hours per occurrence .....	0.083
Hourly wage rate <sup>11</sup> .....	\$30.12
<b>Total Annual Cost (Federal and State shares, millions) .....</b>	<b>\$6.7</b>

States will also face burden related to the requirement that they notify participants when a provider determination has been made that the individual is not a good fit for the E&T component and re-direct individuals to

other more suitable activities. The Department estimates that the burden associated with this activity will be about \$0.11 million annually when implemented on 10/1/21. To the extent that fewer individuals participate in

E&T due to COVID-19, actual burden associated with notifying individuals of the provider determination may be lower for the duration of the pandemic.

TABLE 4—STATE AGENCY COST OF BURDEN RELATED TO NOTIFYING PARTICIPANTS OF PROVIDER DETERMINATION

	Notify participant of provider determination
Occurrences per year <sup>6</sup> .....	46,000
Burden hours per occurrence <sup>12</sup> .....	0.083
Hourly wage rate <sup>13</sup> .....	\$30.12
<b>Total Annual Cost (Federal and State shares, millions) .....</b>	<b>\$0.11</b>

The Department also anticipates a small (\$0.06 million) one-time burden for State Agencies to develop the new ABAWD written notice and the list of employment and training services that will be provided to work registrant households at recertification This assumes States spend on average 24

hours developing the list of E&T services and 40 hours developing the ABAWD notice, and an average wage of \$18.41 per hour (64\*18.41\*53 State Agencies = \$62,447).

ABAWDs will also face new burden associated with reviewing the ABAWD written notice when received.

Households with work registrants, who will receive a list of E&T services at recertification, will face additional burden associated with reading that list. Each activity is expected to result in a minimal amount of administrative burden, about \$2.4 million total over the two activities.

TABLE 5—HOUSEHOLD COST OF BURDEN RELATED TO NEW INFORMATIONAL ACTIVITIES

	ABAWD written notice	List of employment and training services
Occurrences per year <sup>4</sup> .....	2,700,000	5,496,000

<sup>10</sup> Estimates of occurrences of ABAWD notifications are based on the expected number of SNAP ABAWD participants in FY 2021. For more information on these estimates, please see the Paperwork Reduction Act section of this rule.

<sup>11</sup> Based on the Bureau of Labor Statistics May 2019 Occupational and Wage Statistics for

“eligibility interviewers, government programs,” available at <https://www.bls.gov/oes/tables.htm>.

<sup>12</sup> Estimates of occurrences of notifying individuals of a provider determination assume 10 percent of E&T participants are found to be ill-suited for their assigned activity. For more

information on these estimates, please see the Paperwork Reduction Act section of this rule.

<sup>13</sup> Based on the Bureau of Labor Statistics May 2019 Occupational and Wage Statistics for “eligibility interviewers, government programs,” available at <https://www.bls.gov/oes/tables.htm>.

TABLE 5—HOUSEHOLD COST OF BURDEN RELATED TO NEW INFORMATIONAL ACTIVITIES—Continued

	ABAWD written notice	List of employment and training services
Burden hours per occurrence <sup>14</sup> .....	.08	0.2
Hourly wage rate <sup>15</sup> .....	\$7.25	\$7.25
Total Annual Cost (Federal and State shares, millions) .....	\$1.6	\$0.8

While these changes are estimated to increase burden for State agencies and individuals, these changes are expected to provide important protections to individuals subject to the ABAWD time limit. The notice requirement will help ensure that these individuals are adequately informed of their responsibilities with respect to work requirements and of what steps they should take in order to comply with those requirements or if they believe they should be exempt from those requirements. The Department also notes that, in response to the COVID-19 pandemic, States currently have flexibilities regarding certification periods that may reduce the frequency

of certification actions. In addition, as noted previously, the ABAWD time limit is temporarily and partially suspended. Therefore, actual burden on households may be lower than these estimates for the duration of the public health emergency.

*Changes to Reporting Requirements*

The final rule modifies the required reporting elements in the quarterly E&T Program Activity Report provided by State agencies to add four additional reporting elements to form FNS-583, which State agencies must submit annually with the further quarter report. These new reporting elements include (1) the number of SNAP participants

who are required to participate in E&T (mandatory participants); (2) of those in (1), the number who begin participation in an E&T program; (3) of those in (1), the number who begin participation in an E&T component; and (4) the number of participants who are determined ineligible for non-compliance. Reporting on these additional elements is expected to increase reporting burden on 17 State agencies that currently operate mandatory E&T programs. The Department will add four reporting elements to form FNS-583, which State agencies must submit annually with the fourth quarter report. This additional burden is expected to be of minimal cost to State agencies.

TABLE 6—COST OF STATE AGENCY BURDEN, NEW REPORTING REQUIREMENTS

	State Agency burden
State agencies .....	17
Reports per year (4 additional elements) .....	1
Hours per response .....	51
Hourly wage rate <sup>16</sup> .....	\$18.41
Total Annual Cost (Federal and State shares) .....	(*)

\* Minimal—less than \$1 million.

**Overall Impact on E&T Spending**

In addition to the 100 percent grant funding provided by the Federal government, most States spend their own funds on SNAP E&T services. This additional State E&T spending is matched by the Federal government and referred to as 50-50 spending. While the rule provisions are expected to result in some additional cost to State agencies (primarily related to case management and administrative burden), it is the Department's belief that States will use the following strategies as they modify their E&T programs in accordance with the statutory and regulatory changes:

- In the first five years after implementation, the Department expects that most States will use 100

percent grant funding, including the increased funding provided through the 2018 Farm Bill, to pay for the required case management services.

- The Department anticipates that changes to allowable components and activities, which may result in a higher cost per E&T participant, will initially be managed by adjusting the number of participants served through various components/activities rather than through investment of additional 50-50 matching funds by State Agencies. State Agencies' budgets are often less flexible (for example, prohibitions on running a deficit or budgets that cover multiple years) and may not permit immediate increases in State E&T spending. This is especially true currently due to the

COVID-19 pandemic and the resulting need for States to redirect resources to public health activities.

- Over the five year period covered by these estimates, the Department expects that some but not all States will increase their investment in 50-50 matching funds to cover both the costs of case management services and to permit greater participation in new allowable activities and components that may show more success in moving individuals toward greater self-sufficiency.

In total, we estimate that these provisions of the rule will increase spending on E&T by \$0 million in Fiscal Year (FY) 2020, and by \$21 million over the five FYs 2020-2024. Costs would be

<sup>14</sup> Estimates of occurrences per year are based on the expected number of SNAP ABAWD participants and work registrants in FY 2021. For more information on these estimates, please see the Paperwork Reduction Act section of this rule.

<sup>15</sup> Based on the Bureau of Labor Statistics May 2019 Occupational and Wage Statistics for "eligibility interviewers, government programs," available at <https://www.bls.gov/oes/tables.htm>.

<sup>16</sup> Based on the Bureau of Labor Statistics May 2019 Occupational and Wage Statistics for "Office and Administrative Support Workers, All other," available at <https://www.bls.gov/oes/tables.htm>.

shared equally between the Federal government and State agencies.

The estimates were derived as follows:

- Between FY 2016 and FY 2018, the Federal share of 50–50 spending increased by about \$17 million, from \$171 million to \$188 million. Therefore, we assume that the Federal share of State 50–50 spending would have increased by about \$8 million per year.
- In response to the changes in allowable components and activities as

well as the case management requirement, we assume that each year beginning in FY 2022 a small number of States increase their 50–50 spending beyond current projected spending. In FY 2020 and FY 2021, we assume no States increase their 50–50 spending due to the ongoing pandemic. In FY 2022, 4 States spend about 10 percent more, and by FY 2024 8 States have increased their spending by about 10 percent overall.

- The per-State increase in 50–50 spending is approximately \$0.5 million per State. The per-State increase is estimated as follows: A 10 percent increase in 50–50 spending equals \$20.5 million in FY 2020. There are 53 State agencies (including the District of Columbia, Guam, and the U.S. Virgin Islands), 43 of which currently spend 50–50 funding on E&T services, therefore \$20.5 million is divided by 43 to calculate the average (\$20.5 million / 43 = \$0.49 million).

TABLE 7—EXPECTED INCREASE IN STATE 50-50 SPENDING OVER TIME

(Dollars in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total
Pre-Farm Bill projected 50-50 spending ..	205	213	221	229	237	.....
10% increase (amount per State) .....	.49	.49	.49	.49	.49	.....
Number of States increasing spending ...	0	0	4	6	8	.....
State agency Cost .....	0	0	2	2	5	10
<b>Total, Federal + State .....</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>7</b>	<b>10</b>	<b>21</b>

\* Totals may not sum due to rounding.

**Benefits of Final Rule**

The Department believes the statutory changes made by Section 4005 of the 2018 Farm Bill are intended to strengthen E&T programs and improve SNAP participants’ ability to gain and retain employment, thus reducing participant reliance on the social safety net. The changes contained in the final rule allow for more evidence-based activities, requiring more accountability on the part of both State agencies and E&T participants, while also retaining State flexibility. The requirement to inform ABAWDs of their work requirement will help ensure that these individuals are adequately informed of their responsibilities with respect to work requirements and of what steps they should take in order to comply with those requirements, or if they believe they should be exempt from those requirements.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule would not have a significant impact on a substantial number of small entities. This final rule would not have a measurable impact on small entities because the changes required by the regulations are primarily directed toward State agencies operating SNAP programs and SNAP E&T programs. Some E&T providers may be considered

small entities. This rule requires that E&T providers inform the State agency within 10 days when they have made a determination that an individual who was referred for E&T services is not a good fit for the component.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**Executive Order 13771**

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This final rule is considered an E.O. 13771 regulatory action. We estimate that it will impose \$20.30 million in annualized costs at a 7% discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.”

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$100 million or

more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 12372**

This Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under Number 10.551 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) FNS Regional offices are in contact with State agencies, who provide feedback on policies and procedures for the E&T program and overall SNAP policy.

**Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency’s considerations in terms of the three categories called for under Section

(6)(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

#### **Executive Order 12988, Civil Justice Reform**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

#### **Civil Rights Impact Analysis**

FNS has reviewed the final rule, in accordance with Departmental Regulation 4300-004, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on participants on the basis of race, color, national origin, sex, age, or disability. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the final rule, including an analysis of participant data and provisions contained in the final rule. While the CRIA did not find any major civil rights implications, the CRIA outlines outreach and mitigation strategies that would lessen any possible civil rights impacts. This final rule will impact all State agencies in their administration of the E&T programs. Additionally, the final rule will impact applicants and recipients of SNAP who are E&T participants. However, the Department finds that the CRIA and the mitigation and outreach strategies outlined within the CRIA provide ample consideration to applicants' and participants' ability to participate in SNAP. For instance, FNS will provide implementation guidance and technical assistance to support State agencies implementation of the new regulations consistent with the final rule. FNS, through review and approval of E&T State plans, performance of management evaluations, and collection and analysis of required data elements, will monitor the implementation of the new rule to mitigate potential civil rights violations. Among the outreach strategies included in the CRIA, FNS National Office will

communicate regulatory changes to Regional Offices who directly interact and provide technical assistance to State agencies. Regional Offices will also communicate with the National Office regarding implementation challenges so that FNS can take appropriate action.

#### **Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that this rule has tribal implications that require consultation under E.O. 13175. FNS discussed the proposed rule in Washington, DC on May 1, 2019, at the United States Department of Agriculture Farm Bill Tribal Consultation. FNS also discussed the final rule in a virtual Tribal SNAP Learning Session on October 30, 2020. FNS received no comments.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule. Once the information collection request is approved by OMB, the agency will publish a separate notice in the **Federal Register** announcing OMB approval.

*Title:* Employment and Training Opportunities in the Supplemental Nutrition Assistance Program.

*OMB Number:* 0584-NEW.

*Form Number:* FNS 583.

*Expiration Date:* N/A.

*Type of Request:* New request.

*Abstract:* This final rule would implement changes made by section 4005 of the Act to the E&T program to strengthen State and Federal accountability to move SNAP participants toward self-sufficiency. FNS is requesting a new OMB Control Number for the requirements in this final rule. Some of the final changes will modify current regulations resulting in an increase in the reporting burden for State agencies. Other requirements are new and will result in new mandatory reporting burden requirements for State agencies, as well as individuals participating in E&T. First, the Act requires that State agencies provide individuals participating in E&T with case management services. Many State agencies already provide case management activities to SNAP E&T participants; however, State agencies are not currently reporting this activity to the Department and the Department is not currently collecting case management activities from these State agencies. This regulatory change to require that State agencies provide these services as part of their E&T programs and include them in their E&T State plans will help ensure that E&T participants receive the guidance and support needed to move toward self-sufficiency. Second, the Act establishes that individuals participating in an E&T component who receive a provider determination (*i.e.*, are determined ill-suited) by the E&T provider for that component, must be engaged by the State agency to assess their mental or physical fitness or to identify another type of training or assistance. The Department requires at 7 CFR 273.7(c)(18)(i) that individuals who have received a provider determination be notified of this determination, and if the individual is an ABAWD, be notified that they will begin to accrue countable months. This process to notify individuals with a provider determination will constitute a new burden for State agencies and for SNAP participants who must exchange the information. Third, to increase State accountability for moving SNAP participants toward self-sufficiency, the Department has added at 7 CFR 273.7(c)(11) four additional data elements to the final quarterly E&T Program Activity Report (FNS 583 reports) (SNAP Employment and Training Program activity Report; OMB Control Number: 0584-0594; Expiration Date: 7/31/2023 currently under renewal) to collect information on the

number of SNAP applicants and participants who are required by the State agency to participate in an E&T program, of those the number who begin to participate in an E&T program and an E&T component, and the number of mandatory participants who are determined ineligible for failure to comply. Fourth, the Department requires in new paragraph 7 CFR 273.24(a)(5) to add a State agency requirement to inform every ABAWD in writing about the ABAWD work requirement and time limit, thus creating a new burden to develop and provide this written notice, and to participants to read this notice. This requirement to inform ABAWDs of their work requirement is added to a consolidated written notice that consolidates the requirements to inform ABAWDs, work registrants, and mandatory E&T participants of their work requirements, as applicable. The requirements to inform work registrants and mandatory E&T participants of their work requirements are already covered by an existing burden (OMB Control number: 0584–0064; Expiration Date 12/31/2020, currently under review with OMB). And fifth, the Department requires in new paragraph 7 CFR 273.14(b)(5) that, at a minimum, the State agency provide households with no earned income and with no elderly or disabled members a list of available employment and training services for household members subject to the general work requirements either electronically (*e.g.*, on a website or in an email) or in printed form. This requirement creates a new burden on State agencies to develop the list of opportunities and for participants to read the list. The Department notes that the final rule create a new requirement for State agencies to consult with their workforce development boards, and to explain in their E&T State plans the extent to which they coordinate with title 1 of WIOA. Based on the existing regulatory requirement to work with their State workforce development systems, this information is already collected by the Department through the E&T State plans and is included in an existing burden (OMB Control Number: 0584–0083; Expiration Date: 8/31/2023 currently under OMB review), as a result the new requirement in the Act is not expected to increase the existing burden.

The existing burden for the FNS–583 is currently covered under the information collection for the Food Programs Reporting System, OMB Control Number 0584–0594, expiration

date 7/31/2023. The recordkeeping burden for the FNS 583 is already sufficient as documented in OMB Control Number: 0584–0339; Expiration Date: 1/31/2021. The basic recordkeeping requirement for household case file documentation is part of OMB Control Number: 0584–0064; Expiration Date 10/31/2020. FNS will add additional burden to this collection to accommodate the increased burden resulting from providing case management to E&T participants. FNS intends to merge the new reporting burden 0584–0594 and 0584–0064, once the final rulemaking information collection request is approved. At that time, FNS will publish a separate notice in the **Federal Register** announcing OMB's approval.

The Department received some comments directly on the cost and hour burden, as well as comments related to the underlying policy. As a result, the Department has made changes to the rule's burden. Regarding the requirement that all E&T participants receive case management, the Department received a comment from a State agency agreeing that the State agency will experience increased costs as a result of the requirement, but the State agency did not dispute the values provided in the burden. The Department did receive one comment that State agency staff will need time to prepare for the case management sessions, thus the Department added 10 minutes per case management meeting to account for this preparation time. Regarding the requirement in the proposed rule to send a Notice of E&T Participation Change (NETPC) when an individual receives an ill-suited determination, the Department received a comment from a State agency that the notice was unnecessary and more costly to implement than provided for in the burden. The Department, as described in the final rule preamble, has decided not to require the NETPC, and instead will only require that State agencies notify the participant with State discretion regarding the mode for providing the information. The burden has also been updated to account for the act of notifying the individual, rather than sending a formal notice. Regarding the new data elements for the FNS–583, the Department received several comments requesting the Department add a third and fourth data element capturing the number of individuals who begin an E&T component and the number of mandatory E&T participants who are sanctioned for failure to comply. The Department agreed with

these commenters and has added a third and fourth data element to the FNS–583 fourth quarter report. The burden for the FNS–583 new data elements has been updated to include this third and fourth element and to correct errors in estimation during the proposed rule, resulting in a decrease in burden hours for this element. Regarding the requirement to inform ABAWDs of the ABAWD work requirement, the Department received one comment from a State agency that the impact of the proposal would add burden to the State agency, but on balance, the State agency believed that it may be time well spent if ABAWDs better understand the work requirement, thus reducing churn. The Department has modified the burden for informing ABAWDs of the work requirement by increasing the time to orally inform the ABAWD from two minutes to five minutes to account for the additional information commenters believed should be communicated during the interaction (*e.g.*, good cause and exemption). The Department also increased the amount of time it will take State agencies to develop the written notice from 24 to 40 hours to account for the greater amount of information required to be in the notice in the final rule. Regarding the requirement that State agencies advise certain households with zero earned income, the Department received no comments regarding the burden and has made no changes to the burden from what was proposed.

*Respondents:* State Agencies.

*Estimated Number of Respondents:* 53 State Agencies.

*Estimated Number of Responses per Respondent:* 108,575.64.

*Estimated Total Annual Responses:* 5,754,509.

*Estimated Time per Response:* 0.1899868.

*Estimated Total Annual Burden on Respondents:* 1,093,281.

*Respondents:* (Individuals) SNAP E&T participants.

*Estimated Number of Respondents:* 8,702,000.

*Estimated Number of Responses per Respondent:* 1.1199954034.

*Estimated Total Annual Responses:* 9,746,200.

*Estimated Time per Response:* 0.100411135.

*Estimated Total Annual Burden on Respondents:* 978,627.

The total burden for this rulemaking is 2,069,983 burden hours and 15,500,709 total annual responses.

Reg. section	Affected public	Respondent type	Description of activity	Estimated number of respondents	Estimated frequency of response	Total annual responses	Number of burden hours per response	Estimated total burden hours	Previous burden hours used	Differences due to program changes	Difference due to adjustment	Hourly wage rate	Fully loaded hourly wage rate (a)(3)	Estimated cost to respondents
7 CFR 273.7(c)(1)	State Agencies	State Agency E&T Case Manager*	Provide Case Management Services.	53	28,381	1,504,193	0.493	741,567.15	0	0	0	\$29.69	\$39,487.7	\$29,282,781
7 CFR 273.7(c)(1)	.....	State Agency E&T Case Manager*	Document Case Management Services.	53	28,381	1,504,193	0.08	120,335.44	0	0	0	29.69	39,487.7	4,751,770
7 CFR 273.7(c)(18)(i)	.....	State Eligibility worker*	Notify E&T Participants of Provider Determination.	53	868	46,000	0.083	3,818.00	0	0	0	22.65	30,124.5	115,015
7 CFR 273.7(c)(11)	.....	State Agency Administrative Staff*	Reporting FNS 583 data elements** (OMB Control Number 0584-0594).	53	4	212	98	20,776.00	21,889	0	1,113	18.41	24,485.3	508,707
7 CFR 273.7(c)(11)	.....	State Agency Administrative Staff*	Reporting additional FNS 583 data elements.	17	1	17	4	68.00	0	51	0	18.41	24,485.3	1,665
7 CFR 273.7(a)(5)	.....	State Agency Administrative Staff*	Develop ABAWD written statement of work requirements.	53	1	53	40	2,120.00	0	0	0	18.41	24,485.3	51,909
7 CFR 273.7(a)(5)	.....	State Eligibility worker*	Inform ABAWDs of the ABAWD work requirements.	53	50,943	2,700,000	0.083	224,100.00	0	0	0	22.65	30,124.5	6,750,900
7 CFR 273.14(b)(5)	.....	State Agency Administrative Staff*	Develop list of Employment and Training Services.	53	1	53	24	1,272.00	0	0	0	18.41	24,485.3	31,145
Sub-Total State Agencies	.....	.....	.....	53	108,575,642	5,754,509	0.1899868	1,093,281	.....	.....	.....	.....	.....	40,985,186
7 CFR 273.7(c)(1)	Individual & Household.	E&T Participants.	Participate in Case Management.	460,000	3.27	1,504,200	0.426	640,789.00	0	0	0	7.25	n/a	4,645,720
7 CFR 273.7(c)(18)(i)	.....	E&T Participants.	Review Information on Provider Determination.	46,000	1	46,000	0.083	3,818.00	0	0	0	7.25	n/a	27,681
7 CFR 273.7(a)(5)	.....	E&T Participants.	Read ABAWD written statement of work requirements.	2,700,000	1	2,700,000	0.083	224,100.00	0	0	0	7.25	n/a	1,624,725
7 CFR 273.14(b)(5)	.....	E&T Participants.	Read list of Employment and Training Services.	5,496,000	1	5,496,000	0.02	109,920.00	0	0	0	7.25	n/a	796,920
Sub-Total Individual/ Households.	.....	.....	.....	8,702,000	1,119,995,403	9,746,200	0.1004111	978,627	.....	.....	.....	.....	.....	7,095,046
Grand Total Reporting Burden with both affected public and States.	.....	.....	.....	8,702,053	108,576,76	15,500,709	0.1336653	2,071,908	21,889	8,788	1,113	.....	.....	48,080,231

\*Note: Each State Eligibility worker is counted once as all State Agency employees.  
 \*\*OMB Control Number 0584-0594.  
 \*\*\*Numbers may not add due to rounding.

This current FNS 583 reporting elements with OMB control number 0584-0594. Expiration Date: 7/31/2023. FNS is not seeking approval for these burden estimates in the request. All burden hours associated with the FNS 583 will be merged into 0584-0594 when OMB approves the information collection request (ICR) associated with the Final Rule.



**E-Government Act Compliance**

The Department is committed to complying with the E-Government Act, 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects**

*7 CFR Part 271*

Administrative practice and procedures, Food stamps, Grant programs-social programs.

*7 CFR Part 273*

Administrative practice and procedures, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping.

Accordingly, 7 CFR parts 271 and 273 are amended to read as follows:

- 1. The authority citation for parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

**PART 271—GENERAL INFORMATION AND DEFINITIONS**

- 2. In § 271.2:
  - a. Revise the definitions of “Employment and training (E&T) component” and “Employment and training (E&T) mandatory participant”;
  - b. Add in alphabetical order a definition for “Employment and Training (E&T) participant”;
  - c. Revise the definition of “Employment and training (E&T) program”;
  - d. Add in alphabetical order a definition for “Employment and Training (E&T) voluntary participant”;
  - and
  - e. Remove the definition of “Placed in an employment and training (E&T) program”.

The revisions and additions read as follows:

**§ 271.2 Definitions.**

\* \* \* \* \*

*Employment and Training (E&T) component* a work experience, work training, supervised job search or other program described in section 6(d)(4)(B)(i) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4)(B)(i)) designed to help SNAP participants move promptly into unsubsidized employment.

*Employment and Training (E&T) mandatory participant* a supplemental nutrition assistance program applicant or participant who is required to work register under 7 U.S.C. 2015(d)(1) or (2) and who the State determines should

not be exempted from participation in an employment and training program and is required to participate in E&T.

*Employment and Training (E&T) participant* means an individual who meets the definition of a mandatory or voluntary E&T participant.

*Employment and Training (E&T) program* means a program operated by each State agency consisting of case management and one or more E&T components.

*Employment and Training (E&T) voluntary participant* means a supplemental nutrition assistance program applicant or participant who volunteers to participate in an employment and training (E&T) program.

\* \* \* \* \*

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

- 3. In § 273.7, revise paragraphs (c) through (f) and (i) and add paragraph (n) to read as follows:

**§ 273.7 Work provisions.**

\* \* \* \* \*

(c) *State agency responsibilities.* (1)(i) The State agency must register for work each household member not exempted by the provisions of paragraph (b)(1) of this section. The State agency must permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a)(1)(i) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(ii) During the certification process, the State agency must provide a written notice and oral explanation to the household of all applicable work requirements for all members of the household, and identify which household member is subject to which work requirement. These work requirements include the general work requirement in paragraph (a) of this section, mandatory E&T in paragraph (a)(1)(ii) of this section, and the ABAWD work requirement at § 273.24. The written notice and oral explanation must be provided in accordance with (c)(1)(iii) of this section. This written notice and oral explanation must also be provided to the household when a previously exempt household member or new household member becomes subject to these work requirements, and at recertification.

(iii) The consolidated written notice must include all pertinent information related to each of the applicable work requirements, including: An explanation of each applicable work requirement; which individuals are subject to which work requirement; exemptions from each applicable work requirement; an explanation of the process to request an exemption (including contact information to request an exemption); the rights and responsibilities of each applicable work requirement; what is required to maintain eligibility under each applicable work requirement; pertinent dates by which an individual must take any actions to remain in compliance with each applicable work requirement; the consequences for failure to comply with each applicable work requirement; an explanation of the process for requesting good cause (including examples of good cause circumstances and contact information to initiate a good cause request); and any other information the State agency believes would assist the household members with compliance. If an individual is subject to mandatory E&T, the written notice must also explain the individual’s right to receive participant reimbursements for allowable expenses related to participation in E&T, up to any applicable State cap, and the responsibility of the State agency to exempt the individual from the requirement to participate in E&T if the individual’s allowable expenses exceed what the State agency will reimburse, as provided in paragraph (d)(4) of this section. In addition, as stated in paragraph (c)(2) of this section and § 273.24(b)(8), the State agency must provide a comprehensive oral explanation to the household of each applicable work requirement pertaining to individuals in the household.

(2) The State agency is responsible for screening each work registrant to determine whether or not it is appropriate, based on the State agency’s criteria, to refer the individual to an E&T program. If the State agency determines the individual is required to participate in an E&T program, as defined in paragraph (e) of this section and § 271.2, the State agency must provide the participant with the written notice and the comprehensive oral explanation described in paragraph (c)(1)(iii) of this section. The State agency must refer participants to E&T, this referral may vary from participant to participant, but in all cases E&T participants must receive both case management services and at least one E&T component while participating in

E&T. The State agency must determine the order in which the participant will receive the elements of an E&T program (e.g., case management followed by a component, case management embedded within a component, etc.). The State agency must explain to the participant next steps for accessing the E&T program. If there is not an appropriate and available opening in an E&T program, the State agency must determine the participant has good cause for failure to comply with the mandatory E&T requirement in accordance with paragraph (i)(4) of this section. The State agency may, with FNS approval, use intake and sanction systems that are compatible with its title IV–A work program. Such systems must be proposed and explained in the State agency’s E&T State Plan.

(3) After learning of an individual’s non-compliance with SNAP work requirements, the State agency must issue a notice of adverse action to the individual, or to the household if appropriate, within 10 days of establishing that the noncompliance was without good cause. The notice of adverse action must meet the timeliness and adequacy requirements of § 273.13. If the individual complies before the end of the advance notice period, the State agency will cancel the adverse action. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period. Mandatory E&T participants who have received a provider determination in accordance with paragraph (c)(18)(i) of this section shall not be subject to disqualification for refusal without good cause to participate in a mandatory E&T program until after the State has taken one of the four actions in paragraph (c)(18)(i)(B) of this section, and the individual subsequently refuses to participate without good cause.

(4) The State agency must design and operate an E&T program that consists of case management services in accordance with paragraph (e)(1) of this section and at least one or more, or a combination of, employment and/or training components as described in paragraph (e)(2) of this section. The State agency must ensure that it is notified by the agency or agencies operating its E&T components within 10 days if an E&T mandatory participant fails to comply with E&T requirements.

(5) The State agency must design its E&T program in consultation with the State workforce development board, or with private employers or employer organizations if the State agency determines the latter approach is more

effective and efficient. Each component of the State agency’s E&T program must be delivered through its statewide workforce development system, unless the component is not available locally through such a system.

(6) In accordance with § 272.2(d) and (e) of this chapter, the State agency must prepare and submit an E&T Plan to its appropriate FNS Regional Office. The E&T Plan must be available for public inspection at the State agency headquarters. In its E&T Plan, the State agency will detail the following:

(i) The nature of the E&T components the State agency plans to offer and the reasons for such components, including cost information. The methodology for State agency reimbursement for education components must be specifically addressed. If a State agency plans to offer supervised job search in accordance with paragraph (e)(2)(i) of this section, the State agency must also include in the E&T plan a summary of the State guidelines implementing supervised job search. This summary of the State guidelines, at a minimum, must describe: The criteria used by the State agency to approve locations for supervised job search, an explanation of why those criteria were chosen, and how the supervised job search component meets the requirements to directly supervise the activities of participants and track the timing and activities of participants;

(ii) A description of the case management services and models, how participants will be referred to case management, how the participant’s case will be managed, who will provide case management services, and how the service providers will coordinate with E&T providers, the State agency, and other community resources, as appropriate. The State plan should also discuss how the State agency will ensure E&T participants are provided with targeted case management services through an efficient administrative process;

(iii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State agency that requests 50 percent Federal reimbursement for State agency E&T administrative costs, other than for participant reimbursements, must include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed, including the costs for case management and casework to facilitate the transition from economic dependency to self-sufficiency through work. Costs in excess of the Federal grant will be allowed only with the prior approval of

FNS and must be adequately documented to assure that they are necessary, reasonable and properly allocated;

(iv) The categories and types of individuals the State agency intends to exempt from E&T participation, the estimated percentage of work registrants the State agency plans to exempt, and the frequency with which the State agency plans to reevaluate the validity of its exemptions;

(v) The characteristics of the population the State agency intends to place in E&T;

(vi) The estimated number of volunteers the State agency expects to place in E&T;

(vii) The geographic areas covered and not covered by the E&T Plan and why, and the type and location of services to be offered;

(viii) The method the State agency uses to count all work registrants as of the first day of the new fiscal year;

(ix) The method the State agency uses to report work registrant information on the quarterly Form FNS–583;

(x) The method the State agency uses to prevent work registrants from being counted twice within a Federal fiscal year. If the State agency universally work registers all SNAP applicants, this method must specify how the State agency excludes those exempt from work registration under paragraph (b)(1) of this section. If the State agency work registers nonexempt participants whenever a new application is submitted, this method must also specify how the State agency excludes those participants who may have already been registered within the past 12 months as specified under paragraph (a)(1)(i) of this section;

(xi) The organizational relationship between the units responsible for certification and the units operating the E&T program, including units of the statewide workforce development system, if available. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within 10 working days after the noncompliance occurs;

(xii) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services, including organizations in the statewide workforce development system, if available. Copies of contracts must be available for inspection. The State agency must document how it consulted with the State workforce development board. If the State agency consulted with private employers or employer organizations in lieu of the State workforce development

board, it must document this consultation and explain the determination that doing so was more effective or efficient. The State agency must include in its E&T State plan a description of any outcomes from the consultation with the State workforce development board or private employers or employer organizations. The State agency must also address in the E&T State plan the extent to which E&T activities will be carried out in coordination with the activities under title I of WIOA;

(xiii) The availability, if appropriate, of E&T programs for Indians living on reservations;

(xiv) If a conciliation process is planned, the procedures that will be used when an individual fails to comply with an E&T program requirement. Include the length of the conciliation period;

(xv) The payment rates for child care established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, and based on local market rate surveys;

(xvi) The combined (Federal/State) State agency reimbursement rate for transportation costs and other expenses reasonably necessary and directly related to participation incurred by E&T participants. If the State agency proposes to provide different reimbursement amounts to account for varying levels of expenses, for instance for greater or lesser costs of transportation in different areas of the State, it must include them here;

(xvii) Information about expenses the State agency proposes to reimburse. FNS must be afforded the opportunity to review and comment on the proposed reimbursements before they are implemented;

(xviii) For each component that is expected to include 100 or more participants, reporting measures that the State will collect and include in the annual report in paragraph (c)(17) of this section. Such measures may include:

(A) The percentage and number of program participants who received E&T services and are in unsubsidized employment subsequent to the receipt of those services;

(B) The percentage and number of participants who obtain a recognized credential, a registered apprenticeship, or a regular secondary school diploma (or its recognized equivalent), while participating in, or within 1 year after receiving E&T services;

(C) The percentage and number of participants who are in an education or training program that is intended to lead to a recognized credential, a registered

apprenticeship an on-the-job training program, a regular secondary school diploma (or its recognized equivalent), or unsubsidized employment;

(D) Measures developed to assess the skills acquisition of E&T program participants that reflect the goals of the specific components including the percentage and number of participants who are meeting program requirements or are gaining skills likely to lead to employment; and

(E) Other indicators approved by FNS in the E&T State plan; and

(xix) Any State agency that will be requesting Federal funds that may become available for reallocation in accordance with paragraph (d)(1)(iii)(A), (B), or (D) of this section should include this request in the E&T State plan for the year the State agency would plan to use the reallocated funds. The request must include a separate budget and narrative explaining how the State agency intends to use the reallocated funds. FNS will review all State agency requests for reallocated funds and notify State agencies of the approval of any reallocated funds in accordance with regulations at (d)(1)(iii)(E) of this section. FNS' approval or denial of requests for reallocated funds will occur separately from the approval or denial of the rest of the E&T State plan.

(7) A State agency interested in receiving additional funding for serving able-bodied adults without dependents (ABAWDs) subject to the 3-month time limit, in accordance with paragraph (d)(3) of this section, must include in its annual E&T plan:

(i) Its pledge to offer a qualifying activity to all at-risk ABAWD applicants and recipients;

(ii) Estimated costs of fulfilling its pledge;

(iii) A description of management controls in place to meet pledge requirements;

(iv) A discussion of its capacity and ability to serve at-risk ABAWDs;

(v) Information about the size and special needs of its ABAWD population; and

(vi) Information about the education, training, and workfare components it will offer to meet the ABAWD work requirement.

(8) The State agency will submit its E&T Plan annually, at least 45 days before the start of the Federal fiscal year. The State agency must submit plan revisions to the appropriate FNS regional office for approval if it plans to alter the nature or location of its components or the number or characteristics of persons served. The proposed changes must be submitted for

approval at least 30 days prior to planned implementation.

(9) The State agency will submit an E&T Program Activity Report to FNS no later than 45 days after the end of each Federal fiscal quarter. The report will contain monthly figures for:

(i) Participants newly work registered;

(ii) Number of ABAWD applicants and recipients participating in qualifying components;

(iii) Number of all other applicants and recipients (including ABAWDs involved in non-qualifying activities) participating in components; and

(iv) ABAWDs subject to the 3-month time limit imposed in accordance with § 273.24(b) who are exempt under the State agency's discretionary exemptions under § 273.24(g).

(10) The State agency will submit annually, on its first quarterly report, the number of work registrants in the State on October 1 of the new fiscal year.

(11) The State agency will submit annually, on its final quarterly report:

(i) A list of E&T components it offered during the fiscal year and the number of ABAWDs and non-ABAWDs who participated in each;

(ii) The number of ABAWDs and non-ABAWDs who participated in the E&T Program during the fiscal year. Each individual must be counted only once;

(iii) Number of SNAP applicants and participants required to participate in E&T by the State agency and of those the number who begin participation in an E&T program and the number who begin participation in an E&T component. An E&T participant begins to participate in an E&T program when the participant commences at least one part of an E&T program including an orientation, assessment, case management, or a component. An E&T participant begins to participate in an E&T component when the participant commences the first activity in the E&T component; and

(iv) Number of mandatory E&T participants who were determined ineligible for failure to comply with E&T requirements.

(12) Additional information may be required of the State agency, on an as needed basis, regarding the type of components offered and the characteristics of persons served, depending on the contents of its E&T Plan.

(13) The State agency must ensure, to the maximum extent practicable, that E&T programs are provided for Indians living on reservations.

(14) If a benefit overissuance is discovered for a month or months in which a mandatory E&T participant has already fulfilled a work component

requirement, the State agency must follow the procedure specified in paragraph (m)(6)(v) of this section for a workfare overissuance.

(15) If a State agency fails to efficiently and effectively administer its E&T program, the provisions of § 276.1(a)(4) of this chapter will apply.

(16) FNS may require a State agency to make modifications to its SNAP E&T plan to improve outcomes if FNS determines that the E&T outcomes are inadequate.

(17) The State agency shall submit an annual E&T report by January 1 each year that contains the following information for the Federal fiscal year ending the preceding September 30.

(i) The number and percentage of E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T.

(ii) The number and percentage of E&T participants and former participants who are in unsubsidized employment during the fourth quarter after completion of participation in E&T.

(iii) Median average quarterly earnings of the E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T.

(iv) The total number and percentage of participants that completed an educational, training work experience or an on-the-job training component.

(v) The number and percentage of E&T participants who:

(A) Are voluntary vs. mandatory participants;

(B) Have received a high school degree (or GED) prior to being provided with E&T services;

(C) Are ABAWDs;

(D) Speak English as a second language;

(E) Are male vs. female; and

(F) Are within each of the following age ranges: 16–17, 18–35, 36–49, 50–59, 60 or older.

(vi) Of the number and percentage of E&T participants reported in paragraphs (c)(17)(i) through (iv) of this section, a disaggregation of the number and percentage of those participants and former participants by the characteristics listed in paragraphs (c)(17)(v)(A), (B), and (C) of this section.

(vii) Reports for the measures identified in a State's E&T plan related to components that are designed to serve at least 100 participants a year; and

(viii) States that have committed to offering all at-risk ABAWDs participation in a qualifying activity and have received an additional allocation

of funds as specified in paragraph (d)(3) of this section shall include:

(A) The monthly average number of individuals in the State who meet the conditions in paragraph (d)(3)(i) of this section;

(B) The monthly average number of individuals to whom the State offers a position in a program described in § 273.24(a)(3) and (4);

(C) The monthly average number of individuals who participate in such programs; and

(D) A description of the types of employment and training programs the State agency offered to at risk ABAWDs and the availability of those programs throughout the State.

(ix) States may be required to submit the annual report in a standardized format based upon guidance issued by FNS.

(x) State agencies certifying workforce partnerships for operation in their State in accordance with paragraph (n) of this section may report relevant data to demonstrate the number of program participants served by the workforce partnership, and of those how many were mandatory E&T participants.

(18)(i) The State agency must 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. Such determinations shall be referred to as provider determinations. For purposes of this paragraph, an E&T provider is the provider of an E&T component. The E&T provider must notify the State agency of a provider determination within 10 days of the date the determination is made and inform the State agency of the reason for the provider determination. The E&T provider may also provide input on the most appropriate next step, as outlined in paragraph (c)(18)(i)(B) of this section, for the individual with a provider determination. If the State agency is unable to obtain the reason for the provider determination from the E&T provider, the State agency must continue to act on the provider determination in accordance with this section. If an E&T provider finds an individual is ill-suited for one component, but the E&T provider determines the individual may be suitable for another component offered by the E&T provider, at State agency option, the E&T provider may switch the individual to the other component and inform the State agency of the new component without the need for the State agency to act further on the provider determination. The E&T provider has the authority to determine if an individual is ill-suited for the E&T

component from the time an individual is referred to an E&T component until completion of the component. When a State agency receives notification that an individual has received a provider determination, and the individual is not exempt from the work requirement as specified in paragraph (b) of this section, the State agency must:

(A) Notify the mandatory or voluntary E&T participant, within 10 days of receiving notification from the E&T provider, of the provider determination including the following information, as applicable. The State agency must explain what a provider determination is, the next steps the State agency will take as a result of the provider determination, and contact information for the State agency. In the case of either a mandatory or voluntary E&T participant with a provider determination, the State agency must also notify the individual that they are not being sanctioned as a result of the provider determination. In the case of an ABAWD who has received a provider determination, the State agency must also notify the ABAWD that the ABAWD will accrue countable months toward their three-month participation time limit the next full benefit month after the month during which the State agency notifies the ABAWD of the provider determination, unless the ABAWD fulfills the work requirements in accordance with § 273.24, or the ABAWD has good cause, lives in a waived area, or is otherwise exempt. The State agency may make such notification either verbally or in writing, but must, at a minimum, document when the notification occurs in the participant's case file; and

(B) Take the most suitable action from among the following options no later than the date of the individual's recertification. If an individual with a provider determination requests that the State agency take one of the following actions sooner than the next recertification, the State agency must take the most suitable action as soon as possible:

(1) Refer the individual to an appropriate E&T program component in accordance with paragraph (e)(2) of this section. Before making this referral, the State agency must screen the individual for participation in the E&T program in accordance with paragraph (c)(2) of this section, and determine that it is appropriate to refer the individual to an E&T component, considering the suitability of the individual for any available E&T components. In accordance with paragraph (e)(1) of this section, all E&T participants must

receive case management services along with at least one E&T component;

(2) Refer the individual to an appropriate workforce partnership as defined in paragraph (n) of this section, if available. Before making this referral, the State agency must provide information about workforce partnerships to assist the individual in making an informed decision about whether to voluntarily participate in the workforce partnership, in accordance with paragraph (n)(10) of this section;

(3) Reassess the physical and mental fitness of the individual. If the individual is not found to be physically or mentally fit, the individual is exempt from the work requirement in accordance with paragraph (b)(1)(ii) of this section. If the individual is found to be physically or mentally fit, and the State agency determines the individual is not otherwise exempt from the general work requirements the State agency must consider if one of the other available actions in paragraph (c)(18)(i)(B) of this section would be appropriate for the individual. If the State agency determines the individual should not be required to participate in E&T, the State agency must exempt the individual from mandatory E&T; or

(4) Coordinate, to the maximum extent practicable, with other Federal, State, or local workforce or assistance programs to identify work opportunities or assistance for the individual. If the State agency chooses this option, the State agency must not require the individual to participate in E&T.

(ii) From the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the actions in paragraph (c)(18)(i)(B) of this section, the individual shall not be found to have refused without good cause to participate in mandatory E&T. In the case of an ABAWD who has received a provider determination, the ABAWD will accrue countable months toward their three-month participation time limit the next full benefit month after the month during which the State agency notifies the ABAWD of the provider determination, unless the ABAWD fulfills the work requirements in accordance with § 273.24, or the ABAWD has good cause, lives in a waived area, or is otherwise exempt.

(d) *Federal financial participation—*  
(1) *Employment and training grants—*(i) *Allocation of grants.* Each State agency will receive a 100 percent Federal grant each fiscal year to operate an E&T program in accordance with paragraph (e) of this section. The grant requires no State matching.

(A) In determining each State agency's 100 percent Federal E&T grant, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(B) of this section to the total amount of 100 percent Federal funds authorized under section 16(h)(1)(A) of the Act for each fiscal year.

(B) FNS will allocate the funding available each fiscal year for E&T grants using a formula designed to ensure that each State agency receives its appropriate share.

(1) Ninety percent of the annual 100 percent Federal E&T grant will be allocated based on the number of work registrants in each State as a percentage of work registrants nationwide. FNS will use work registrant data reported by each State agency on the FNS-583, Employment and Training Program Activity Report, from the most recent Federal fiscal year.

(2) Ten percent of the annual 100 percent Federal E&T grant will be allocated based on the number of ABAWDs in each State, as determined by SNAP QC data for the most recently available completed fiscal year, which provide a breakdown of each State's population of adults age 18 through 49 who are not disabled and who do not live with children.

(C) No State agency will receive less than \$100,000 in Federal E&T funds. To ensure this, FNS will, if necessary, reduce the grant of each State agency allocated more than \$100,000. In order to guarantee an equitable reduction, FNS will calculate grants as follows. First, disregarding those State agencies scheduled to receive less than \$100,000, FNS will calculate each remaining State agency's percentage share of the fiscal year's E&T grant. Next, FNS will multiply the grant—less \$100,000 for every State agency under the minimum—by each remaining State agency's same percentage share to arrive at the revised amount. The difference between the original and the revised amounts will represent each State agency's contribution. FNS will distribute the funds from the reduction to State agencies initially allocated less than \$100,000.

(ii) *Use of funds.* (A) A State agency must use E&T program grants to fund the administrative costs of planning, implementing and operating its SNAP E&T program in accordance with its approved State E&T plan. E&T grants must not be used for the process of determining whether an individual must be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity that takes place after the

operator of an E&T program reports noncompliance without good cause. For purposes of this paragraph (d), the certification process is considered ended when an individual is referred to an E&T program for assessment or participation. E&T grants may be used to subsidize wages in accordance with paragraph (e)(2)(iv)(2) of this section, and may not be used to reimburse participants under paragraph (d)(4) of this section.

(B) A State agency's receipt of its 100 percent Federal E&T grant is contingent on FNS's approval of the State agency's E&T plan. If an adequate plan is not submitted, FNS may reallocate a State agency's grant among other State agencies with approved plans. Non-receipt of an E&T grant does not release a State agency from its responsibility under paragraph (c)(4) of this section to operate an E&T program.

(C) Federal funds made available to a State agency to operate an educational component under paragraph (e)(2)(vi) of this section must not be used to supplant nonfederal funds for existing educational services and activities that promote the purposes of this component. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an E&T program.

(D) In accordance with section 6(d)(4)(K) of the Food and Nutrition Act of 2008, and notwithstanding any other provision of this paragraph (d), the amount of Federal E&T funds, including participant and dependent care reimbursements, a State agency uses to serve participants who are receiving cash assistance under a State program funded under title IV-A of the Social Security Act must not exceed the amount of Federal E&T funds the State agency used in FY 1995 to serve participants who were receiving cash assistance under a State program funded under title IV-A of the Social Security Act.

(1) Based on information provided by each State agency, FNS established claimed Federal E&T expenditures on this category of recipients in fiscal year 1995 for the State agencies of Colorado (\$318,613), Utah (\$10,200), Vermont (\$1,484,913), and Wisconsin (\$10,999,773). These State agencies may spend up to a like amount each fiscal year to serve SNAP recipients who also receive title IV assistance.

(2) All other State agencies are prohibited from expending any Federal E&T funds on title IV cash assistance recipients.

(iii) If a State agency will not obligate or expend all of the funds allocated to

it for a fiscal year under paragraph (d)(1)(i) of this section, FNS will reallocate the unobligated, unexpended funds to other State agencies during the fiscal year or subsequent fiscal year. FNS will allocate carryover funding to meet some or all of the State agencies' requests, as it considers appropriate and equitable in accordance with the following process:

(A) Not less than 50 percent shall be reallocated to State agencies requesting funding to conduct employment and training programs and activities for which the State agency had previously received funding under the pilots authorized by the Agricultural Act of 2014 (Pub. L. 113–79) that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.

(B) Not less than 30 percent shall be reallocated to State agencies requesting funding for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance, including activities targeted to:

- (1) Individuals 50 years of age or older;
- (2) Formerly incarcerated individuals;
- (3) Individuals participating in a substance abuse treatment program;
- (4) Homeless individuals;
- (5) People with disabilities seeking to enter the workforce;
- (6) Other individuals with substantial barriers to employment, including disabled veterans; or
- (7) Households facing multi-generational poverty, to support employment and workforce participation through an integrated and family-focused approach in providing supportive services.

(C) State agencies who receive reallocated funds under paragraph (d)(1)(iii)(A) of this section may also be considered to receive reallocated funds under paragraph (d)(1)(iii)(B) of this section.

(D) Any remaining funds not accounted for with the reallocations specified in paragraphs (d)(1)(iii)(A) or (B) of this section shall be reallocated to State agencies requesting such funds for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased

household income and reduced reliance on public assistance.

(E) State agencies requesting the reallocated funds specified in paragraph (d)(1)(iii)(A), (B), or (D) of this section, shall make their request for those funds in their E&T State plans submitted for the upcoming fiscal year. FNS will determine the amount of reallocated funds each requesting State agency shall receive and provide the reallocated funds to those State agencies within a timeframe that allows each State agency to which funds are reallocated at least 270 days to expend the reallocated funds. When making the reallocations, FNS will also consider the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program.

(F) Unobligated, unexpended funds not reallocated in the process specified in paragraph (E) of this section, shall be reallocated to State agencies upon request for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. In making these reallocations FNS will also consider the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program.

(2) *Additional administrative costs.* Fifty percent of all other administrative costs incurred by State agencies in operating E&T programs, above the costs referenced in paragraph (d)(1) of this section, will be funded by the Federal Government.

(3) *Additional allocations.* In addition to the E&T program grants discussed in paragraph (d)(1) of this section, FNS will allocate \$20 million in Federal funds each fiscal year to State agencies that ensure availability of education, training, or workfare opportunities that permit ABAWDs to remain eligible beyond the 3-month time limit.

(i) To be eligible, a State agency must make and comply with a commitment, or "pledge," to use these additional funds to defray the cost of offering a position in an education, training, or workfare component that fulfills the ABAWD work requirement, as defined in § 273.24(a), to each applicant and recipient who is:

(A) In the last month of the 3-month time limit described in § 273.24(b);

(B) Not eligible for an exception to the 3-month time limit under § 273.24(c);

(C) Not a resident of an area of the State granted a waiver of the 3-month time limit under § 273.24(f); and

(D) Not included in each State agency's 15 percent ABAWD exemption allotment under § 273.24(g).

(ii) While a participating pledge State may use a portion of the additional funding to provide E&T services to ABAWDs who do not meet the criteria discussed in paragraph (d)(3)(i) of this section, it must guarantee that the ABAWDs who do meet the criteria are provided the opportunity to remain eligible.

(iii) State agencies will have one opportunity each fiscal year to take the pledge described in paragraph (d)(3)(i) of this section. An interested State agency, in its E&T Plan for the upcoming fiscal year, must include the following:

(A) A request to be considered as a pledge State, along with its commitment to comply with the requirements of paragraph (d)(3)(i) of this section;

(B) The estimated costs of complying with its pledge;

(C) A description of management controls it has established to meet the requirements of the pledge;

(D) A discussion of its capacity and ability to serve vulnerable ABAWDs;

(E) Information about the size and special needs of the State's ABAWD population; and

(F) Information about the education, training, and workfare components that it will offer to allow ABAWDs to remain eligible.

(iv) If the information provided in accordance with paragraph (d)(3)(iii) of this section clearly indicates that the State agency will be unable to fulfill its commitment, FNS may require the State agency to address its deficiencies before it is allowed to participate as a pledge State.

(v) If the State agency does not address its deficiencies by the beginning of the new fiscal year on October 1, it will not be allowed to participate as a pledge State.

(vi) No pledges will be accepted after the beginning of the fiscal year.

(vii)(A) Once FNS determines how many State agencies will participate as pledge States in the upcoming fiscal year, it will, as early in the fiscal year as possible, allocate among them the \$20 million based on the number of ABAWDs in each participating State, as a percentage of ABAWDs in all the participating States. FNS will determine the number of ABAWDs in each

participating State using SNAP QC data for the most recently available completed fiscal year, which provide a breakdown of each State's population of adults age 18 through 49 who are not disabled and who do not live with children.

(B) Each participating State agency's share of the \$20 million will be disbursed in accordance with paragraph (d)(6) of this section.

(C) Each participating State agency must meet the fiscal recordkeeping and reporting requirements of paragraph (d)(7) of this section.

(viii) If a participating State agency notifies FNS that it will not obligate or expend its entire share of the additional funding allocated to it for a fiscal year, FNS will reallocate the unobligated, unexpended funds to other participating State agencies during the fiscal year, as it considers appropriate and equitable, on a first come-first served basis. FNS will notify other pledge States of the availability of additional funding. To qualify, a pledge State must have already obligated its entire annual 100 percent Federal E&T grant, excluding an amount that is proportionate to the number of months remaining in the fiscal year, and it must guarantee in writing that it intends to obligate its entire grant by the end of the fiscal year. A State's annual 100 percent Federal E&T grant is its share of the regular 100 percent Federal E&T allocation plus its share of the additional \$20 million (if applicable). Interested pledge States must submit their requests for additional funding to FNS. FNS will review the requests and, if they are determined reasonable and necessary, will reallocate some or all of the unobligated, unspent ABAWD funds.

(ix) Unlike the funds allocated in accordance with paragraph (d)(1) of this section, the additional pledge funding will not remain available until obligated or expended. Unobligated funds from this grant must be returned to the U.S. Treasury at the end of each fiscal year.

(x) The cost of serving at-risk ABAWDs is not an acceptable reason to fail to live up to the pledge. A slot must be made available and the ABAWD must be served even if the State agency exhausts all of its 100 percent Federal E&T funds and must use State funds to guarantee an opportunity for all at-risk ABAWDs to remain eligible beyond the 3-month time limit. State funds expended in accordance with the approved State E&T Plan are eligible for 50 percent Federal match. If a participating State agency fails, without good cause, to meet its commitment, it may be disqualified from participating in the subsequent fiscal year or years.

(4) *Participant reimbursements.* The State agency must provide payments to participants in its E&T program, including applicants and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T program. The Federal Government will fund 50 percent of State agency payments for allowable expenses, except that Federal matching for dependent care expenses is limited to the maximum amount specified in paragraph (d)(4)(i) of this section. These payments may be provided as a reimbursement for expenses incurred or in advance as payment for anticipated expenses in the coming month. The State agency must inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(4)(i) and (ii) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs must not include the cost of meals away from home. If applicable, any allowable costs incurred by a noncompliant E&T participant after the expiration of the noncompliant participant's minimum mandatory disqualification period, as established by the State agency, that are reasonably necessary and directly related to reestablishing eligibility, as defined by the State agency, are reimbursable under paragraphs (d)(4)(i) and (ii) of this section. The State agency may reimburse participants for expenses beyond the amounts specified in paragraph (d)(4)(i) of this section; however, only costs that are up to but not in excess of those amounts are subject to Federal cost sharing. Reimbursement must not be provided from E&T grants allocated under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section is not deductible under § 273.10(d)(1)(i).

(i) The State agency will reimburse the cost of dependent care it determines to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, or the applicable payment rate for child care, whichever is lowest. The payment rates for child care are established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, and are based on local market rate surveys. The State agency will provide a

dependent care reimbursement to an E&T participant for all dependents requiring care unless otherwise prohibited by this section. The State agency will not provide a reimbursement for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or is under court supervision. The State agency must provide a reimbursement for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of a household member in the E&T program. The State agency will obtain verification of the physical and/or mental incapacity for dependents age 13 or older if the physical and/or mental incapacity is questionable. Also, the State agency will verify a court-imposed requirement for the supervision of a dependent age 13 or older if the need for dependent care is questionable. If more than one household member is required to participate in an E&T program, the State agency will reimburse the actual cost of dependent care or the applicable payment rate for child care, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. An individual who is the caretaker relative of a dependent in a family receiving cash assistance under title IV-A of the Social Security Act in a local area where an employment, training, or education program under title IV-A is in operation is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's SNAP household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service (*e.g.*, five hours per day, five days per week for two weeks). A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may require that dependent care provided or arranged by the State agency meet all applicable standards of State and local

law, including requirements designed to ensure basic health and safety protections (e.g., fire safety). An E&T participant may refuse available appropriate dependent care as provided or arranged by the State agency, if the participant can arrange other dependent care or can show that such refusal will not prevent or interfere with participation in the E&T program as required by the State agency.

(ii) The State agency will reimburse the actual costs of transportation and other costs (excluding dependent care costs) it determines to be necessary and directly related to participation in the E&T program up to the maximum level of reimbursement established by the State agency. Such costs are the actual costs of participation unless the State agency has a method approved in its E&T Plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses up to the maximum level of reimbursements established by the State agency.

(iii) No participant cost that has been reimbursed under a workfare program under paragraph (m)(7)(i) of this section, title IV of the Social Security Act or other work program will be reimbursed under this section.

(iv) Any portion of dependent care costs that are reimbursed under this section may not be claimed as an expense and used in calculating the dependent care deduction under § 273.9(d)(4) for determining benefits.

(v) The State agency must inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program, including participation in case management services and E&T components, exceed the allowable reimbursement amount. Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(4)(i) and (ii) of this section are not required to participate in that component. These individuals will be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals will be exempt from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid

by the State agency. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(4)(i) of this section will be considered in determining a dependent care deduction under § 273.9(d)(4).

(5) *Workfare cost sharing.* Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under paragraph (m)(7)(iv) of this section at the 50 percent reimbursement level and reported as such.

(6) *Funding mechanism.* E&T program funding will be disbursed through States' Letters of Credit in accordance with § 277.5 of this chapter. The State agency must ensure that records are maintained that support the financial claims being made to FNS.

(7) *Fiscal recordkeeping and reporting requirements.* Total E&T expenditures are reported on the Financial Status Report (SF-425 using FNS-778/FNS-778A worksheet) in the column containing "other" expenses. E&T expenditures are also separately identified in an attachment to the SF-425 using FNS-778/FNS-778A worksheet to show, as provided in instructions, total State and Federal E&T expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant reimbursements; State and Federal expenditures for E&T costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food and Nutrition Act of 2008 and paragraph (m)(7) of this section. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program will be submitted in accordance with paragraph (m)(7)(iv) of this section.

(e) *Employment and training programs.* Work registrants not otherwise exempted by the State agency are subject to the E&T program participation requirements imposed by the State agency. Such individuals are referred to in this section as E&T mandatory participants or mandatory E&T participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency will result in disqualification as specified in paragraph (f)(2) of this section. Mandatory E&T participants who receive an E&T provider determination in accordance with paragraph (c)(18)(i) of this section shall

not be subject to disqualification for refusal without good cause to participate in mandatory E&T during the time specified in (c)(18)(ii) of this section.

(1) *Case management.* The State E&T program must provide case management services such as comprehensive intake assessments, individualized service plans, progress monitoring, or coordination with service providers which are provided to all E&T participants. The purpose of case management services shall be to guide the participant towards appropriate E&T components and activities based on the participant's needs and interests, support the participant in the E&T program, and to provide activities and resources that help the participant achieve program goals. Case management services and activities must directly support an individual's participation in the E&T program. Case management may include referrals to activities and supports outside of the E&T program, but State agencies can only use E&T funds for allowable components, activities, and participant reimbursements. The provision of case management services must not be an impediment to the participant's successful participation in E&T. In addition, if the case manager determines a mandatory E&T participant may meet an exemption from the requirement to participate in an E&T program, may have good cause for non-compliance with a work requirement, or both, the case manager must inform the appropriate State agency staff. Also, if the case manager is unable to identify an appropriate and available opening in an E&T component for a mandatory E&T participant, the case manager must inform the appropriate State agency staff.

(2) *Components.* To be considered acceptable by FNS, any component offered by a State agency must entail a certain level of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months making job contacts (less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount). However, FNS may approve components that do not meet this guideline if it determines that such components will advance program goals. An initial screening by an eligibility worker to determine whom to place in an E&T program does not constitute a component. The State agency may require SNAP applicants to participate in any component it offers in its E&T program at the time of



application. The State agency must screen applicants to determine if it is appropriate to participate in E&T in accordance with paragraph (c)(2) of this section, provide the applicant with participant reimbursements in accordance with (d)(4) of this section, and inform the applicant of E&T participation requirements including how to access the component and consequences for failing to participate. The State agency must not impose requirements that would delay the determination of an individual's eligibility for benefits or in issuing benefits to any household that is otherwise eligible. In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, supervised job search and job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to fulfill the ABAWD work requirement under § 273.24. However, job search, including supervised job search, or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components. An E&T program offered by a State agency must include one or more of the following components:

(i) A supervised job search program. Supervised job search programs are those that occur at State-approved locations at which the activities of participants shall be directly supervised and the timing and activities of participants tracked in accordance with guidelines issued by the State agency and summarized in their E&T State plan in accordance with paragraph (c)(6)(i) of this section. State-approved locations include any location deemed suitable by the State agency where the participant has access to the tools and materials they need to perform supervised job search. Tools used in the supervised job search program may include virtual tools, including, but not limited to, websites, portals, or web applications to access supervised job search services. State agencies are encouraged to offer a variety of locations and formats to best meet participant needs, and to the extent practicable, allow participants to choose their preferred location. Supervision can occur asynchronously with respect to the participant's job search activities, but must be provided by skilled staff, either remotely or in-person, who provide meaningful guidance and support with at least monthly check-ins, and must be provided in such a way so as to best

support the participant. State agencies have discretion to develop tracking methods that best meet the needs of the participant. Supervised job search activities must have a direct link to increasing the employment opportunities of individuals engaged in the activity. Job search that does not meet the definition of supervised job search is allowed as a subsidiary activity of another E&T component, so long as the job search activity comprises less than half of the total time spent in the component. The State agency may require an individual to participate in supervised job search from the time an application is filed for an initial period established by the State agency, so long as the criteria for serving applicants in this paragraph (e)(2) are satisfied. Following this initial period (which may extend beyond the date when eligibility is determined) the State agency may require an additional supervised job search period in any period of 12 consecutive months. The first such period of 12 consecutive months will begin at any time following the close of the initial period. The State agency may establish a supervised job search period that, in its estimation, will provide participants a reasonable opportunity to find suitable employment. The State agency should not, however, establish a continuous, year-round supervised job search requirement. If a reasonable period of supervised job search does not result in employment, placing the individual in a training or education component to improve job skills will likely be more productive. In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, a supervised job search program is not a qualifying E&T activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs. However, a job search program, supervised or otherwise, when operated under title I of the Workforce Innovation and Opportunity Act (WIOA), under section 236 of the Trade Act, or a program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs, is considered a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of employability assessments, training in techniques to increase employability, job placement services, or other direct training or support activities, including educational

programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved. In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, a job search training program is not a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs. However, such a program, when operated under title I of WIOA, under section 236 of the Trade Act, or a program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs, is considered a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs.

(iii) A workfare program as described in paragraph (m) of this section.

(A) The participation requirements of section 20(b) of the Food and Nutrition Act of 2008 and paragraphs (m)(5)(i)(A) and (B) of this section for individuals exempt from SNAP work requirements under paragraphs (b)(1)(iii) and (v) of this section, are not applicable to E&T workfare components.

(B) In accordance with section 20(e) of the Food and Nutrition Act of 2008 and paragraph (m)(6)(ii) of this section, the State agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment. This job search activity is part of the workfare assignment, and not a job search "program." Participants are considered to be participating in and complying with the requirements of workfare, thereby meeting the participation requirement for ABAWDs.

(C) The sharing of workfare savings authorized under section 20(g) of the Food and Nutrition Act of 2008 and paragraph (m)(7)(iv) of this section are not available for E&T workfare components.

(iv) A work experience program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate, and consistent with other laws such as the Fair Labor Standards Act. Work experience may be arranged within the

private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists.

(A) A work experience program may include:

(1) A work activity performed in exchange for SNAP benefits that provides an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. The purpose of work activity is to improve the employability of those who cannot find unsubsidized full-time employment.

(2) A work-based learning program, which, for the purposes of SNAP E&T, are sustained interactions with industry or community professionals in real world settings to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction. Work-based learning emphasizes employer engagement, includes specific training objectives, and leads to regular employment. Work-based learning can include internships, pre-apprenticeships, apprenticeships, customized training, transitional jobs, incumbent worker training, and on-the-job training as defined under WIOA. Work-based learning can include both subsidized and unsubsidized employment models.

(B) A work experience program must:

(1) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(2) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program aimed at accomplishing the purpose of the E&T program.

(vi) Educational programs or activities to improve basic skills, build work readiness, or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program.

(A) Allowable educational programs or activities may include, but are not limited to, courses or programs of study that are part of a program of career and technical education (as defined in section 3 of the Carl D. Perkins Act of 2006), high school or equivalent educational programs, remedial

education programs to achieve a basic literacy level, and instructional programs in English as a second language.

(B) Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

(vii) A program designed to improve the self-sufficiency of recipients through self-employment. Included are programs that provide instruction for self-employment ventures.

(viii) Job retention services that are designed to help achieve satisfactory performance, retain employment and to increase earnings over time. The State agency may offer job retention services, such as case management, job coaching, dependent care assistance and transportation assistance, for up to 90 days to an individual who has secured employment. State agencies must make a good faith effort to provide job retention services for at least 30 days. The State agency may determine the start date for job retention services provided that the individual is participating in SNAP in the month of or the month prior to beginning job retention services. The State agency may provide job retention services to households leaving SNAP up to the 90-day limit unless the individual is leaving SNAP due to a disqualification in accordance with § 273.7(f) or § 273.16. The participant must have secured employment after or while receiving other employment/training services under the E&T program offered by the State agency. There is no limit to the number of times an individual may receive job retention services as long as the individual has re-engaged with E&T prior to obtaining new employment. An otherwise eligible individual who refuses or fails to accept or comply with job retention services offered by the State agency may not be disqualified as specified in paragraph (f)(2) of this section.

(ix) Programs and activities conducted under the pilots authorized by the Agricultural Act of 2014 (Pub. L. 113–79) that the Secretary determines, based on the results from the independent evaluations conducted for those pilots, have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.

(3) *Exemptions.* Each State agency may, at its discretion, exempt individual work registrants and categories of work registrants from E&T participation. Each State agency must periodically

reevaluate its individual and categorical exemptions to determine whether they remain valid. Each State agency will establish the frequency of its periodic evaluation.

(4) *Time spent in an employment and training program.* (i) Each State agency will determine the length of time a participant spends in case management or any E&T component it offers. The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an E&T work program (including, but not limited to, those carried out under paragraphs (e)(2)(iii) and (iv) of this section) combined with any hours worked that month in a workfare program under paragraph (m) of this section must not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable Federal or State minimum wage. The total hours of participation in an E&T program for any household member individually in any month, together with any hours worked in a workfare program under paragraph (m) of this section and any hours worked for compensation (in cash or in kind), must not exceed 120.

(5) *Voluntary participation.* (i) A State agency may operate an E&T program in which individuals elect to participate.

(ii) A State agency must not disqualify voluntary participants in an E&T program for failure to comply with E&T requirements.

(iii) Voluntary participants are not subject to the restrictions in paragraph (e)(4)(ii) of this section, as long as the voluntary participants are paid a wage at least equal to the higher of the applicable Federal or State minimum wage for all hours spent in an E&T work program or workfare.

(f) *Failure to comply*—(1) *Ineligibility for failure to comply.* A nonexempt individual who refuses or fails without good cause, as defined in paragraphs (i)(2), (3), and (4) of this section, to comply with SNAP work requirements listed under paragraph (a)(1) of this section is ineligible to participate in SNAP, and will be considered an ineligible household member, pursuant to § 273.1(b)(7).

(i) As soon as the State agency learns of the individual's noncompliance it must determine whether good cause for the noncompliance exists, as discussed in paragraph (i) of this section. Within 10 days of establishing that the noncompliance was without good cause, the State agency must provide the individual with a notice of adverse action, as specified in § 273.13. If the

State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(ii) The notice of adverse action must contain the particular act of noncompliance committed and the proposed period of disqualification. The notice must also specify that the individual may, if appropriate, reapply at the end of the disqualification period. Information must be included on or with the notice describing the action that can be taken to avoid the disqualification before the disqualification period begins. The disqualification period must begin with the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

(iii) An E&T disqualification may be imposed after the end of a certification period. Thus, a notice of adverse action must be sent whenever the State agency becomes aware of an individual's noncompliance with SNAP work requirements, even if the disqualification begins after the certification period expires and the household has not been recertified.

(2) *Disqualification periods.* The following disqualification periods will be imposed:

(i) For the first occurrence of noncompliance, the individual will be disqualified until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) One month; or

(C) Up to three months, at State agency option.

(ii) For the second occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Three months; or

(C) Up to six months, at State agency option.

(iii) For the third or subsequent occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Six months;

(C) A date determined by the State agency; or

(D) At the option of the State agency, permanently.

(3) *Record retention.* In accordance with § 272.1(f) of this chapter, State agencies are required to retain records concerning the frequency of noncompliance with FSP work requirements and the resulting disqualification actions imposed. These records must be available for inspection and audit at any reasonable time to ensure conformance with the minimum mandatory disqualification periods instituted.

(4) *Disqualification plan.* In accordance with § 272.2(d)(1)(xiii) of this chapter, each State agency must prepare and submit a plan detailing its disqualification policies. The plan must include the length of disqualification to be enforced for each occurrence of noncompliance, how compliance is determined by the State agency, and the State agency's household disqualification policy.

(5) *Household ineligibility.* (i) If the individual who becomes ineligible to participate under paragraph (f)(1) of this section is the head of a household, the State agency, at its option, may disqualify the entire household from SNAP participation.

(ii) The State agency may disqualify the household for a period that does not exceed the lesser of:

(A) The duration of the ineligibility of the noncompliant individual under paragraph (f)(2) of this section; or

(B) 180 days.

(iii) A household disqualified under this provision may reestablish eligibility if:

(A) The head of the household leaves the household;

(B) A new and eligible person joins the household as the head of the household, as defined in § 273.1(d)(2); or

(C) The head of the household becomes exempt from work requirements during the disqualification period.

(iv) If the head of the household joins another household as its head, that household will be disqualified from participating in SNAP for the remaining period of ineligibility.

(6) *Fair hearings.* Each individual or household has the right to request a fair hearing, in accordance with § 273.15, to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with SNAP work requirements. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component or service of the E&T program must receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency must be available

through one of these means. A household must be allowed to examine its E&T program casefile at a reasonable time before the date of the fair hearing, except for confidential information (that may include test results) that the agency determines should be protected from release. Confidential information not released to a household may not be used by either party at the hearing. The results of the fair hearing are binding on the State agency.

(7) *Failure to comply with a work requirement under title IV of the Social Security Act, or an unemployment compensation work requirement.* An individual exempt from SNAP work requirements by paragraph (b)(1)(iii) or (v) of this section because he or she is subject to work requirements under title IV-A or unemployment compensation who fails to comply with a title IV-A or unemployment compensation work requirement will be treated as though he or she failed to comply with SNAP work requirement.

(i) When a SNAP household reports the loss or denial of title IV-A or unemployment compensation benefits, or if the State agency otherwise learns of a loss or denial, the State agency must determine whether the loss or denial resulted when a household member refused or failed without good cause to comply with a title IV-A or unemployment compensation work requirement.

(ii) If the State agency determines that the loss or denial of benefits resulted from an individual's refusal or failure without good cause to comply with a title IV or unemployment compensation requirement, the individual (or household if applicable under paragraph (f)(5) of this section) must be disqualified in accordance with the applicable provisions of this paragraph (f). However, if the noncomplying individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section (other than the exemptions provided in paragraph (b)(1)(iii) or (v) of this section) the individual (or household if applicable under paragraph (f)(5) of this section) will not be disqualified.

(iii) If the State agency determination of noncompliance with a title IV-A or unemployment compensation work requirement leads to a denial or termination of the individual's or household's SNAP benefits, the individual or household has a right to appeal the decision in accordance with the provisions of paragraph (f)(6) of this section.

(iv) In cases where the individual is disqualified from the title IV-A program for refusal or failure to comply with a

title IV–A work requirement, but the individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section, other than the exemption in paragraphs (b)(1)(iii) of this section, the State agency may, at its option, apply the identical title IV–A disqualification on the individual under SNAP. The State agency must impose such optional disqualifications in accordance with section 6(i) of the Food and Nutrition Act of 2008 and with the provisions of § 273.11(1).

\* \* \* \* \*

(i) *Good cause.* (1) The State agency is responsible for determining good cause when a SNAP recipient fails or refuses to comply with SNAP work requirements. Since it is not possible for the Department to enumerate each individual situation that should or should not be considered good cause, the State agency must take into account the facts and circumstances, including information submitted by the employer and by the household member involved, in determining whether or not good cause exists.

(2) Good cause includes circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

(3) Good cause for leaving employment includes the good cause provisions found in paragraph (i)(2) of this section, and resigning from a job that is unsuitable, as specified in paragraphs (h)(1) and (2) of this section. Good cause for leaving employment also includes:

(i) Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance of employment by the individual, or enrollment by the individual in any recognized school, training program or institution of higher education on at least a half time basis, that requires the individual to leave employment;

(iv) Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political

subdivision that requires the household to move and thereby requires the individual to leave employment;

(v) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

(vi) Employment that becomes unsuitable, as specified in paragraphs (h)(1) and (2) of this section, after the acceptance of such employment;

(vii) Acceptance of a bona fide offer of employment of more than 30 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 30 hours that, because of circumstances beyond the individual's control, subsequently either does not materialize or results in employment of less than 30 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 30 hours; and

(viii) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for SNAP benefits between jobs particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment must be considered as with good cause if it is part of the pattern of that type of employment.

(4) Good cause includes circumstances where the State agency determines that there is not an appropriate and available opening within the E&T program to accommodate the mandatory participant. Good cause for circumstances where there is not an appropriate or available opening within the E&T program shall extend until the State agency identifies an appropriate and available E&T opening, and the State agency informs the SNAP participant. In addition, good cause for circumstances where there is not an appropriate and available opening within the E&T program shall only apply to the requirement to participate in E&T and shall not provide good cause to ABAWDs who fail to fulfill the ABAWD work requirement in accordance with § 273.24.

(5) *Verification.* To the extent that the information given by the household is questionable, as defined in § 273.2(f)(2), State agencies must request verification of the household's statements. The primary responsibility for providing verification, as provided in § 273.2(f)(5), rests with the household.

(n) *Workforce partnerships.* Workforce partnerships must meet the following requirements.

(1) Workforce partnerships are programs operated by:

(i) A private employer, an organization representing private employers, or a nonprofit organization providing services relating to workforce development; or

(ii) An entity identified as an eligible provider of training services under section 122(d) of WIOA (29 U.S.C. 3152(d)).

(2) Workforce partnerships may include multi-State programs.

(3) Workforce partnerships must be in compliance with the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq), as applicable.

(4) *Certification of workforce partnerships.* All workforce partnerships must be certified by the Secretary or by the State agency to the Secretary to indicate all of the following. The workforce partnership must:

(i) Assist SNAP households in gaining high-quality, work-relevant skills, training, work, or experience that will increase the ability of the participants to obtain regular employment;

(ii) Provide participants with not less than 20 hours per week, averaged monthly of training, work, or experience; for the purposes of this provision, 20 hours a week averaged monthly means 80 hours a month;

(iii) Not use any funds authorized to be appropriated under the Food and Nutrition Act of 2008;

(iv) Provide sufficient information to the State agency, on request, to determine whether members of SNAP households who are subject to the work requirement in 7 CFR 273.7(a), the ABAWD work requirements in 7 CFR 273.24, or both are fulfilling the work requirement through the workforce partnership;

(v) Be willing to serve as a reference for participants who are members of SNAP households for future employment or work-related programs.

(5) In certifying that a workforce partnership meets the criteria in paragraphs (n)(4)(i) and (ii) of this section to be certified as a workforce partnership, the Secretary or the State agency shall require that the program submit to the Secretary or the State agency sufficient information that describes both:

(i) The services and activities of the program that would provide participants with not less than 20 hours per week of training, work, or experience; and

(ii) How the workforce partnership would provide services and activities described in paragraph (n)(5)(i) of this section that would directly enhance the employability or job readiness of the participant.

(6) *Application to employment and training.* (i) Workforce partnerships may not use any funds authorized to be appropriated by the Food and Nutrition Act of 2008.

(ii) If a member of a SNAP household is required to participate in an employment and training program in accordance with paragraph (a)(1)(ii) of this section, the State shall consider an individual participating in a workforce partnership certified in accordance with paragraph (n)(4) of this section to be in compliance with the employment and training requirements. The State agency cannot disqualify an individual for no longer participating in a workforce partnership. When a State agency learns that an individual is no longer participating in a workforce partnership, and the individual had been subject to mandatory E&T in accordance with paragraph (a)(1)(ii) of this section, the State agency must re-screen the individual to determine if the individual qualifies for an exemption from the work requirements in accordance with paragraph (b) of this section, and re-screen the individual to determine if the individual meets State criteria for referral to an E&T program or component in accordance with paragraph (c)(2) of this section. After this re-screening, if it is appropriate to require the individual to participate in an E&T program, the State agency may refer the individual to an E&T program or workforce partnership, as applicable.

(7) *Supplement, Not Supplant.* A state agency may use a workforce partnership to supplement, not to supplant, the employment and training program of the State agency.

(8) *Application to work programs.* Workforce partnerships certified in accordance with paragraph (n)(4) of this section are included in the definition of a work program under 7 CFR 273.24(a)(3) for the purposes of fulfilling the ABAWD work requirement.

(9) The State agency shall not require any member of a household participating in SNAP to participate in a workforce partnership.

(10) *List of workforce partnerships.* A State agency shall maintain a list of workforce partnerships certified in accordance with paragraph (n)(4) of this section. A State agency must also inform any SNAP participant whom the State agency has determined is likely to benefit from participation in a workforce partnership of the availability

of the workforce partnership, and provide the participant with all available pertinent information regarding the workforce partnership to enable the participant to make an informed choice about participation.

The information must include, if available: contact information for the workforce partnership; the types of activities the participant would be engaged in through the workforce partnership, screening criteria used by the workforce partnership to select individuals, the location of the workforce partnership, the work schedule or schedules, any special skills required to participate, and wage and benefit information, if applicable.

(11) Participation in a workforce partnership shall not replace the employment or training of an individual not participating in a workforce partnership.

(12) A workforce partnership may select individuals for participation in the workforce partnership who may or may not meet the criteria for the general work requirement at 7 CFR 273.7(a), including participation in E&T, or the ABAWD work requirement at 7 CFR 273.24(a)(1).

(13) *Reporting.* Workforce partnership reporting requirements to the State agency are limited to the following:

(i) On notification that an individual participating in the workforce partnership is receiving SNAP benefits, notifying the State agency that the individual is participating in a workforce partnership;

(ii) Identifying participants who have completed or are no longer participating in the workforce partnership;

(iii) Identifying changes to the workforce partnership that result in the workforce partnership no longer meeting the certification requirements in accordance with paragraph (n)(4) of this section; and

(iv) Providing sufficient information, on request by the State agency, for the State agency to verify that a participant is fulfilling the applicable work requirements in paragraph (a) of this section or 7 CFR 273.24.

■ 4. In § 273.14, add paragraph (b)(5) to read as follows:

**§ 273.14 Recertification.**

\* \* \* \* \*

(b) \* \* \*

(5) *Advise of available employment and training services.* (i) At the time of recertification, the State agency shall advise household members subject to the work requirements of § 273.7(a) who reside in households meeting the criteria in paragraph (b)(5)(ii) of this section of available employment and

training services. This shall include, at a minimum, providing a list of available employment and training services electronically or in printed form to the household.

(ii) The State agency requirement in paragraph (b)(5)(i) of this section only applies to households that meet all of the following criteria, as most recently reported by the household:

(A) Contain a household member subject to the work requirements of § 273.7(a);

(B) Contain at least one adult;

(C) Contain no elderly or disabled individuals; and

(D) Have no earned income.

\* \* \* \* \*

- 5. In section § 273.24:
- a. Revise paragraph (a)(3);
- b. Amend paragraph (b)(1)(iii) by removing the word “or” at the end of the paragraph;
- c. Revise paragraph (b)(1)(iv);
- d. Add paragraph (b)(1)(v);
- e. Revise paragraph (b)(2);
- f. Add paragraph (b)(8);
- g. Amend the paragraph (g) subject heading by removing the words “15 percent” and adding in its place the word “Discretionary”;
- h. Amend paragraph (g)(1) introductory text by removing the words “15 percent exemption” and adding in their place the words “discretionary exemptions”; and
- i. Amend paragraph (g)(3) introductory text by removing the number “15” and adding in its place the number “12”.

The revisions and additions read as follows:

**§ 273.24 Time limit for able-bodied adults.**

\* \* \* \* \*

(a) \* \* \*

(3) *Work Program* means:

(i) A program under title 1 of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L.113–128);

(ii) A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(iii) An employment and training program operated or supervised by a State or political subdivision of a State agency that meets standards approved by the Chief Executive Office, including a SNAP E&T program under § 273.7(e) excluding any job search, supervised job search, or job search training program. However, a program under this clause may contain job search, supervised job search, or job search training as subsidiary activities as long as such activity is less than half the requirement. Participation in job search, supervised job search, or job search training as subsidiary activities that

make up less than half the requirement counts for purposes of fulfilling the work requirement under paragraph (a)(1)(ii) of this section.

(iv) A program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs. For the purpose of this paragraph, any employment and training program of the Department of Labor or Veterans Affairs that serves veterans shall be an approved work program; or

(v) A workforce partnership under § 273.7(n)

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) Receiving benefits that are prorated in accordance with § 273.10; or

(v) In the month of notification from the State agency of a provider determination in accordance with § 273.7(c)(18)(i).

(2) *Good cause.* As determined by the State agency, if an individual would

have fulfilled the work requirement as defined in paragraph (a)(1) of this section, but missed some hours for good cause, the individual shall be considered to have fulfilled the work requirement if the absence from work, the work program, or the workfare program is temporary. Good cause shall include circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation. In addition, if the State agency grants an individual good cause under § 273.7(i) for failure or refusal to meet the mandatory E&T requirement, that good cause determination confers good cause under this paragraph, except in the case of § 273.7(i)(4), without the need for a separate good cause determination under this paragraph. Good cause granted under § 273.7(i)(4) only provides good cause to ABAWDs for failure or refusal to participate in a

mandatory SNAP E&T program, and does not confer good cause for failure to fulfill the work requirement in paragraph (a)(1) of this section.

\* \* \* \* \*

(8) The State agency shall inform all ABAWDs of the ABAWD work requirement and time limit both in writing and orally in accordance with § 273.7(c)(1)(ii) and (iii).

\* \* \* \* \*

Dated: December 21, 2020.

**Sonny Perdue,**

*Secretary, United States Department of Agriculture.*

**Appendix**

**Note:** This appendix will not be published in the Code of Regulations.

**Regulatory Impact Analysis**

7 *CFR* part 271 and 273: Employment and Training Opportunities in the Supplemental Nutrition Assistance Program.

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