USDA
United States Department of Agriculture

Food and Nutrition Service

1320 Braddock Place

Alexandria VA, 22314

DATE: July 15, 2021

SUBJECT: Supplemental Nutrition Assistance Program (SNAP) - Final Rule: Employment and Training Opportunities in SNAP – Questions and Answers, PART 2

TO: All SNAP State Agencies
All Regions

On March 29, 2021, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) issued the first Question and Answer document on the Employment and Training Opportunities in the Supplemental Nutrition Assistance Program final rule (RIN 0584-AE68) published on January 5, 2021. Since that time, FNS has received additional questions from State agencies and other stakeholders, and has responded with the second enclosed Question and Answer memorandum.

State agencies with questions should contact their respective Regional Office representatives.

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Enclosure

Enclosure

Issuing Agency/Office:	FNS/SNAP
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Summary:	Question and answer document to facilitate State agency implementation of the final rule: *Employment and Training Opportunities in SNAP.*

A. Consultation and Coordination

1. What is the difference between the requirement to consult with the State workforce development board and collaboration with a workforce partnership?

Response: A workforce partnership and the State workforce development board are very different concepts. A workforce partnership is a brand new concept created by the 2018 Farm Bill and now codified at 7 CFR 273.7(n). As of the date of this memorandum, no workforce partnerships yet exist. In accordance with the final rule, States may enter into workforce partnerships with employers to provide work opportunities and trainings to SNAP participants; however, workforce partnerships are not E&T programs and must not receive E&T or any SNAP funding. These workforce partnerships are an additional way for SNAP participants to meet their work requirement(s).

State agencies are not required to establish workforce partnerships, but may do so if they identify a willing employer and the workforce partnership meets the criteria listed at 7CFR 273.7(n).

On the other hand, State workforce development boards are State Governors' policy making bodies for their workforce development strategy. The Workforce Innovation and Opportunity Act (WIOA) requires State Governors to establish a State Workforce Development Board to develop a strategy and oversee the workforce development system; thus every State has one. Professional staff, such as an Executive Director, commonly support the members of the State workforce development board.

[1] Activities associated with the Employment and Training Opportunities in the Supplemental Nutrition Assistance Program final rule are approved under Office of Management and Budget Control Number 0584-0653.

SNAP E&T is an important tool in any State's workforce development strategy, and should be aligned with the Governors' visions for workforce development. State agencies are required to consult with the State workforce development board, or employers or employer organizations if that would be more effective or efficient, on the design of their E&T programs. This consultation must be documented in the E&T State plan, along with any outcomes from the consultation.

2. **Does the requirement to collaborate with the State workforce development board mean that the State E&T plan must be "reviewed" by the State workforce development board?**

   Response: No. State agencies must consult with the State workforce development board on the design of the E&T program (or with employers or employer organizations, if that would be more effective or efficient). While the State workforce development board may review the E&T State plan, reviewing a near-complete E&T State plan does not provide much opportunity for the board to truly give input on the overall design of the E&T program. FNS encourages a State agency to regularly consult with the State workforce development board to ensure the SNAP E&T program aligns with the State's workforce development strategy, and to benefit from their expertise on workforce development strategies, make connections to potential new E&T providers, and stay-up-to-date on State workforce conditions. The State agency should then incorporate this information into the design of the State E&T program, as applicable.

B. Work Experience

3. **Can stipends be subsidized the same as wages?**

   Response: FNS is developing additional guidance to address subsidized work experience activities. FNS will provide this guidance to State agencies as soon as possible.

4. **Can subsidized wages be reimbursed from 100 percent E&T funds, 50/50 funds, or either?**

   Response: Subsidized employment is an allowable activity within an E&T component, and therefore, wages are an allowable administrative cost. States can use 100 percent E&T Federal funds or non-Federal funds, which FNS will reimburse 50 percent. Note that American Rescue Plan Act of 2021 (ARPA) funds can be used for any E&T State plan approved SNAP E&T administrative expenses allowable under 7 CFR 273.7(d)(1)(ii), including State agency and contractual costs.

5. **How much of the wage can be subsidized?**

   Response: FNS is developing additional guidance to address subsidized work experience activities, and will include a response to this question in that guidance. FNS will provide this guidance to State agencies as soon as possible.

6. **How long can a subsidized employment program last?**

   Response: FNS is developing additional guidance to address subsidized work experience activities, and will include a response to this question in that response. FNS will provide this guidance to State agencies as soon as possible.

7. **How long can an apprenticeship program last?**

   Response: FNS is developing additional guidance to address subsidized work experience activities, and will include a response to this question in that response. FNS will provide this guidance to State agencies as soon as possible.

8. **Is there a formal notification to the E&T participant that must occur before they accept subsidized employment?**

   Response: As with participation in any E&T program, in accordance with 273.7(c)(2), States agencies must provide both mandatory and voluntary E&T participants with sufficient information about the E&T program to allow the E&T participant to successfully participate (please see responses to Questions 73-76 in the first set of Questions and Answers on the Final Rule Memorandum dated March 29, 2021 regarding notice requirements for mandatory E&T participants). This includes information about participant reimbursements, how to access the E&T program, and appointment dates and times. In the case of a subsidized work-based learning activity, FNS highly encourages the State agency to describe to the participant how income earned from participation may affect SNAP eligibility and benefit levels, and allow the participant to choose a different activity if losing eligibility or decreased benefits is concerning.

9. **Must State agencies provide participants engaged in subsidized employment with participant reimbursements?**

   Response: Yes. State agencies are required to pay E&T participants for expenses that are reasonably necessary and directly related to participating in an E&T component, including expenses related to participating in a subsidized work-based learning activity.

10. **Must State agencies provide E&T participants engaged in subsidized employment with case management?**

    Response: Yes. As an E&T participant, the State agency must provide an individual participating in a subsidized work-based learning activity with case management.

11. **What can a State agency do to ensure an individual participating in a subsidized employment activity does not go over the SNAP eligibility income limit?**

Response: For purposes of SNAP eligibility and benefit determination, income from subsidized employment is subject to the same considerations as income from other sources in accordance with 7 CFR 273.9. Countable income from subsidized employment may change household benefits levels, and potentially make a household ineligible for SNAP, and consequently SNAP E&T.

While State agencies cannot disregard income that must be counted under program rules, State agencies can determine how many hours a given participant can participate in a subsidized work-based learning activity before the household income exceeds household eligibility, and advise the participant and the employer of this threshold.

12. **Can E&T funds be used to continue to subsidize wages while a participant is in job retention? In this situation, a household's income could exceed SNAP income eligibility, but the participant could still be eligible for the subsidized wage as a participant in job retention.**

    Response: No. Job retention helps participants retain regular employment by providing services like job coaching, case management, and participant reimbursements. On the other hand, participants in a subsidized work-based learning activity are engaged in the work experience component. Activities pertaining to work-based learning must be offered under the work experience component, not the job retention component.

13. **If a State agency used general funds to pay for subsidized wages in FY21, can the State agency submit a plan for FY22 without the general fund and request funds from SNAP E&T instead (i.e. supplant the general funds)?**

    Response: As a best practice, E&T funding should be used to expand a State agency's capacity to offer employment and training opportunities to SNAP participants. Thus, FNS encourages E&T funds to be used to create additional subsidized work-based learning opportunities in the State, rather than replace funding for existing slots. Please note, however, that State agencies and their partners are prohibited from using E&T funds to supplant State and local funding for educational activities.

14. **Will FNS provide additional funding to support the costs of subsidized employment?**

    Response: The amount of funding available for FNS to allocate to State agencies is authorized and appropriated by Congress. FNS will continue to allocate E&T 100 percent funds according to the formula in 7 CFR 273.7(d)(1)(i). In addition, FNS will continue to reimburse States for allowable State E&T expenditures in accordance with their approved E&T State Plans.

15. **Does the Fair Labor Standards Act (FLSA) apply to ALL work-based learning activities?**

Response: Work experience programs must be consistent with the Fair Labor Standards Act (FLSA). State agencies must follow all appropriate Federal and State labor laws pertaining to activities in SNAP E&T. FNS encourages State agencies to reach out to their State Labor Departments with questions regarding labor laws.

16. **Do work experience participants have to be paid a comparable wage to others employed by the employer?**

    Response: Yes. The regulations at 7 CFR 273.7(e)(2)(iv)(B)(*2*) state that all work experience programs must "provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours." FNS interprets benefits to include wages. This requirement applies to participants in a work activity, as well as participants in work-based learning.

17. **What is the difference between apprenticeship programs and subsidized employment?**

    Response: Apprenticeships are a specific type of work-based learning authorized by the National Apprenticeship Act, which is administered by the U.S. Department of Labor (DOL) Employment and Training Administration. FNS strongly encourages apprenticeship programs using SNAP E&T funds to comply with CFR Title 29, Parts 29 and 30. Additional information about apprenticeships and an apprenticeship toolkit can be found on DOL's website (https://www.dol.gov/apprenticeship/index.htm).

    Wages from apprenticeships, as a type of work-based learning, can be subsidized with E&T funds.

18. **Do the specific activities described under the work experience component (apprenticeship, on-the-job training, etc.) need to be specified in the E&T State Plan separately in order to track and report accurately?**

    Response: Yes. States agencies must specify in their E&T State plan the specific type of work experience activity they plan to provide. State agencies will also be required to track separately participation in these activities on the FNS-583. If participation in any specific work experience activity is anticipated to exceed 100 individuals, State agencies will also have to report outcomes on the annual outcome report.

19. **If a State agency requires an ABAWD to participate in a work experience activity like an apprenticeship, are the number of hours of participation limited to the value of the SNAP benefit divided by the higher of the State or Federal minimum wage? If so, what if those hours are not enough to meet the 20 hour a week ABAWD work requirement?**

Response: In accordance with 7 CFR 273.7(e)(4)(ii), for mandatory E&T participants the time spent by the members of the household collectively each month in an E&T work program (including, but not limited to, the work experience component and E&T workfare) combined with any hours worked that month in any other types of workfare program under 7 CFR 273.7(m) 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.

If the mandatory participant is also an ABAWD, the ABAWD must still meet the ABAWD work requirement in accordance with 7 CFR 273.24(a)(1). If the number of E&T hours are not sufficient to meet the ABAWD work requirement, the ABAWD must find other opportunities to fulfill the ABAWD work requirement.

However, a voluntary E&T participant is not limited in the number of hours they may volunteer to participate in E&T. If a State agency finds that a mandatory participant will reach the limit on the number of hours they can participate in E&T, and the individual would like to participate for additional hours (for any reason including to fulfill the ABAWD work requirement), the State agency may always switch the participant to a voluntary program. Please note; however, that participation in any E&T activity must comply with all applicable Federal and State labor laws, including the Fair Labor Standards Act, as applicable.

C. Education Component

20. How is work readiness training different from job readiness?

Response: FNS considers work readiness training and job readiness to be the same thing. Work readiness training can include instruction of topics like handling conflict in the workplace, proper business attire and personal care, or juggling family and work responsibilities. In the final rule, FNS formally listed work readiness training under the education component at 7 CFR 273.7(e)(vi).

D. WIOA Programs

21. FNS removed the standalone "WIOA Component" from the regulations, but said E&T participants can still participate in WIOA programs. How should E&T participants in WIOA programs be tracked and reported?

Response: In the final rule, FNS removed the standalone "WIOA Component" from the regulations because any program offered under WIOA can fit within one of the other more descriptive E&T components (e.g. education, job search training, work experience etc.). Tracking and reporting WIOA activities under the other more descriptive E&T component headings will provide more information about the types of activities provided by the State agency.

22. Since WIOA is no longer a standalone component, how does that align with the requirement to coordinate with the State workforce development board and to show in the E&T State plan the extent to which E&T activities are coordinated with title 1 of WIOA?

Response: Removing the standalone "WIOA Component" only means that the WIOA programs offered in the E&T program must now be categorized under one of the other more descriptive E&T component headings. This is totally unrelated to the requirement that State agencies consult with their State workforce development board or that State agencies include in their E&T State plans the extent to which they coordinate with activities under title I of WIOA.

23. Does participation in supervised job search, job search, and job search training count toward the ABAWD work requirement when the ABAWD is engaged in a title I WIOA program versus engaged in an E&T program?

Response: ABAWDs may fulfill the ABAWD work requirement in several ways including by engaging for at least 80 hours a month in a work program. The final rule aligned the regulation at 7 CFR 273.24(a)(3)(i) with the statutory language that programs under title 1 of WIOA may count as work programs for the purposes of fulfilling the ABAWD work requirement. Previous regulatory language had omitted "title 1." ABAWDs can meet the ABAWD work requirement by participating in and complying with any program under title 1 of WIOA for at least 80 hours a month, and that includes job search, supervised job search, and job search training regardless if time spent in job search, supervised job search, or job search training make up more or less than half the requirement.

In addition, in accordance with 7 CFR 273.24(a)(3)(iii), ABAWDs may participate in 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. E&T programs may incorporate WIOA programs under the appropriate E&T component, including programs from title 1 of WIOA. However, in E&T programs job search, supervised job search, and job search training must make up less than half of the E&T requirement in order for the E&T component to count towards the ABAWD work requirement.

State agencies are encouraged to develop E&T programs that coordinate, as appropriate, with programs under the titles of WIOA, and many of those programs can be E&T components. The final rule removed WIOA programs as a standalone E&T component in 7 CFR 273.7(e)(2) so as to require State agencies to track E&T participation in WIOA programs under the other more descriptive E&T components like education, work experience etc. Removal of the WIOA standalone component did not change the allowability of incorporating WIOA programs in E&T programs as E&T components, and did not change how job search, supervised job search, and job search training should be counted for the purpose of fulfilling the ABAWD work requirement.

E. Case Management

24. Can participating in case management meet the hourly work requirement for both mandatory E&T participants and ABAWDs if case management is the ONLY activity an individual does to meet the mandatory or ABAWD work requirement?

Response: No. The FNA changed the definition of an E&T program to include both case management and at least one E&T component. If State agencies only offer case management, they are not operating an allowable E&T program. It follows, therefore, that if a SNAP recipient is only participating in case management, they are not participating in E&T. This holds for both mandatory and voluntary E&T participants, including ABAWDs that are E&T participants.

25. If a service could be paid for under E&T as a participant reimbursement, but the case manager decides to refer the individual to an outside resource instead (e.g. to obtain internet access the participant is referred to a new Broadband Benefit Program), is the time spent assisting the participant apply for the outside program considered countable hours for the case management activity?

Response: There are two considerations for this response. First, State agencies have a responsibility to provide participant reimbursements to all E&T participants up to any State-imposed cap. While the State agency can refer participants to outside programs, the State agency must still ensure all necessary participant reimbursements are sufficiently provided to all E&T participants. For instance, it may take time to receive benefits from an outside program, so the State agency must make sure to provide the necessary participant reimbursements in the interim. In addition, if the participant does not choose to apply for or receive the outside program benefits, then the State agency is still responsible for providing all necessary participant reimbursements. If the State agency is unable to provide the necessary participant reimbursements to an E&T participant, then in the case of a mandatory E&T program, the State agency must exempt that individual from the requirement to participate in E&T.

Second, in general, the hours spent assisting an E&T participant with applying for an outside program that may support the individual's progress through E&T is an allowable expense under case management. This does not mean that assistance applying for any program is allowable as part of E&T case management. There must be a direct connection between the program being applied for and the E&T component in order for the application process to be supported under case management.

In this case, if internet access is crucial to participation in the program, then the case manager may assist the participant with applying for the Broadband Benefit program; however, this assistance is not a substitute for providing participant reimbursements and the E&T participant cannot be required to apply. That is, the State agency is still responsible for providing internet access to the participant, and if desired by the participant, may assist the participant in applying for the Broadband Benefit Program.

If the participant is found eligible and receives internet through the Broadband Benefit Program, the State agency may offset the program benefit from the participant reimbursement.

F. Workforce partnerships

26. Must a State agency operate a workforce partnership?

Response: No. State agencies may operate a workforce partnership, but they are not required to do so. As discussed in question 1, a workforce partnership is different from the State workforce development board.

27. If a State agency operates activities that fall under existing E&T components and those activities are part of broader partnerships with entities in the workforce development system, can those be counted as workforce partnerships?

Response: Workforce partnerships as defined in 7 CFR 273.7(n) are not the same as sector partnerships, relationships with the State workforce development boards, or partnerships with E&T providers. Workforce partnerships as defined in 7 CFR 273.7(n) are a new concept created by the 2018 Farm Bill whereby State agencies may partner with employers to offer SNAP participants a new way to gain skills and meet SNAP work requirements. It is possible that existing State E&T partnerships with entities in the workforce development system (e.g. employers, sector partners, or other organizations) may lend themselves to be re-characterized as a workforce partnership as defined in 7 CFR 273.7(n), but State agencies need not make that transition. Workforce partnerships are not part of SNAP E&T, and no SNAP funds may be used to support them. When considering if a workforce partnership will be a good fit for a State's SNAP population, State agencies are encouraged to reach out to their FNS Regional Office.

28. What type of data sharing is required as part of a workforce partnership?

Response: One of the certification criteria for a workforce partnership is that the employer agrees to provide sufficient information upon request by the State agency to determine whether an individual participating in a workforce partnership is fulfilling any applicable SNAP work requirements. In accordance with 7 CFR 273.7(n)(13), workforce partnerships must also report to the State agency: when the employer learns a SNAP participant is participating in a workforce partnership; when a SNAP participant has completed or is no longer participating in the workforce partnership; changes to the workforce partnership that result in the workforce partnership no longer meeting the certification requirements; and providing sufficient information, on request by the State agency, to verify that a participant is fulfilling the applicable work requirements.

29. Can SNAP E&T funds be used to refer a participant to a workforce partnership?

Response: It depends on the circumstances. State agencies must provide targeted information to SNAP participants whom the State agency believes may benefit from participation in a workforce partnership (if the State agency operates a workforce partnership). If informing and making a referral, among those who volunteer for a workforce partnership, is part of a SNAP certification function (e.g. during the screening for work registration or during the SNAP certification interview), SNAP E&T funds cannot be used to inform or make the referral.

However, since workforce partnerships are one way for a mandatory E&T participant to fulfill the mandatory E&T requirement, after the State agency screens and refers the individual to E&T, E&T funds may be used to inform the mandatory E&T participant about workforce partnerships (if the State agency operates a workforce partnership). If the mandatory E&T participant then chooses to participate in the workforce partnership, the State agency may make that referral using E&T funds.

Regardless if the participant in a workforce partnership is a voluntary E&T participant, mandatory E&T participant, or neither, E&T funds cannot be used to support the administrative costs of the workforce partnership, provide participant reimbursements, provide case management, or track participation.

30. Is an employer engaged in a workforce partnership required to work with all SNAP participants who volunteer to participate?

Response: No. An employer engaged in a workforce partnership is not required to work with every SNAP participant interested in participating in a workforce partnership. Please note that the regulations at 7 CFR 273.7(n)(10) require State agencies to provide a significant amount of information about the workforce partnership to potential SNAP participants, including any screening criteria the workforce partnership may use to select candidates. This will allow the SNAP participant to make an informed choice about participation. FNS also encourages State agencies to work with the employer to understand the types of candidates that are likely to be successful and to target workforce partnerships to those individuals.

FNS also notes that SNAP participants may identify a workforce partnership on their own. For instance, a SNAP participant may approach an employer in a workforce partnership where the employer identifies the individual as a SNAP participant and allows the individual to join the workforce partnership. In this case, in accordance with 7 CFR 273.7(n)(13)(i) the employer in the workforce partnership must inform the State agency of the SNAP participant's participation.

G. Good Cause

31. If a State agency identifies 175 individuals who meet the criteria for mandatory E&T, but only has 100 slots available, can the State agency require 100 people to participate in the component, and provide good cause to the remaining 75 (if no other appropriate E&T component opening is available)?

Response: Yes. The final rule requires State agencies to provide good cause to mandatory E&T participants when there is not an appropriate and available opening in an E&T program. Therefore, if a State agency requires 175 participants to participate in E&T, but the State agency has only provided 100 slots with appropriate services for those individuals, then the State agency must provide good cause to the 75 individuals who do not have access to a slot with appropriate services. Alternatively, as discussed in the final rule preamble, the State agency could exempt the 75 participants who do not have access to an appropriate slot from mandatory E&T.

As a best practice, State agencies should consider the capacity of their E&T programs (e.g. the number of slots available, the mix of services, resources available for participant reimbursements) when determining how many individuals can be served, and adjust their State criteria for exemptions from E&T (i.e. who is referred to E&T) to ensure the number of individuals referred aligns with the State agency's capacity to support them.

H. Provider Determination

32. If an E&T participant receives a provider determination, and the participant disagrees with that determination can the participant appeal or request a fair hearing? What if State regulations or protocols require that an individual be allowed to appeal or request a fair hearing for the "denial of any service"?

Response: State agencies have discretion in interpreting State laws and protocols, as long as the interpretations do not conflict with SNAP statutes and regulations. If State laws or protocols require appeals or fair hearings for the "denial of service" then the State agency should comply with those protocols. That being said, since a provider determination is not a sanction or a determination of ineligibility, an appeal or request of a fair hearing in accordance with 7 CFR 273.7(f)(6), may not be the appropriate way to address a participant's disagreement with a provider determination. State agencies are encouraged to be responsive to a participant's concern by working with the participant and provider, as needed, to identify a successful approach for the E&T program and participant.

33. Do provider determinations apply to all E&T providers (i.e. those that receive 50/50 funds, those that receive 100 percent funds, WIOA partners etc.)?

Response: Yes. All providers who receive E&T funds and are under an agreement with the State agency to provide E&T services may make provider determinations.

34. When must a State agency document that a provider determination happened?

Response: The State agency should record in the case file when the State agency has informed the participant of the provider determination and provided the participant with the required information listed at 7 CFR 273.7(c)(18)(i)(A). As a reminder, the E&T provider has 10 days to inform the State agency that they have made a provider

determination, and the State agency then has 10 days to inform the participant of the provider determination

35. The final rule indicates that an eligibility worker must make the decision among the four options after an individual receives a provider determination. Is there any flexibility to allow this decision to be made by E&T staff?

Response: No. Eligibility workers are required to make the decision among the four options after an individual receives a provider determination. However, as a best practice, eligibility workers are encouraged to work with E&T staff including E&T case managers, E&T navigators and others to gather additional information to help in making the decision.

36. How must the provider send and document the provider determination to the State agency? For example, is there a standard form that must be used?

Response: There is not a standard form for the E&T provider to use to send information about the provider determination to the State agency. State agencies should work with their E&T provider to determine the best mode to communicate this information.

37. Can the re-assessment of exemptions from the general work requirement after an individual has received a provider determination be paid for with E&T funds?

Response. No. The re-assessment for exemptions from the general work requirement after an individual receives a provider determination is a certification function, so E&T funds cannot be used.

I. Consolidated Work Notice and Oral Explanation

38. Will the consolidated work notice replace the notices explaining the ABAWD work requirement and the general work requirement sent at certification?

Response: Yes. Given the requirement to send the consolidated work notice, State agencies are no longer required to send separate notices regarding the general work requirement and the ABAWD work requirement. However, State agencies are encouraged to send follow-up notice, as necessary, to remind participants of important information regarding their SNAP case (for example, when an ABAWD is at risk of losing eligibility, appointment reminders for E&T etc.)

39. Can the consolidated work notice be structured so that each individual in a household who is subject to a work requirement receives a separate notice?

Response: The State agency may send targeted notices to each individual in a household who is subject to a work requirement, or it may send one notice for all individuals in a household who are subject to a work requirement, so long as the notice indicates who in the household has which work requirement.

40. If the State agency has a waiver of the recertification interview, must the State agency still provide the oral explanation of work requirements?

Response: Yes, as required at 7 CFR 273.7(c)(1)(ii), the State agency must attempt to contact the household to provide the oral explanation of the consolidated work requirement at recertification, regardless of whether a household member has a change in work requirement status. Existing recertification waivers or simplified reporting do not affect this requirement and are not affected by this requirement. Although the oral explanation can occur during the interview, it is not required to occur as part of the interview. As a reminder, the State agency must also contact the household to provide the oral explanation whenever a previously exempt household member or new household member becomes subject to a work requirements.

41. What happens if the State agency is unable to reach the household to provide the oral explanation?

Response: The State agency should make a good faith effort to reach the individual, and document these efforts in the case file. If the State agency is ultimately not able to reach the household, they need to be able to demonstrate to FNS that they made a good faith effort. The State agency must still send the written notice.

42. Does the State agency need to include in the written notice and oral explanation aspects of the general work requirement that do not apply to the household (e.g. aspects of the general work requirements described at 7 CFR 273.7(a)(ii), (iii), and (v))?

Response: No, the State agency does not need to include in the written notice of the consolidated work requirements and oral explanation aspects of the general work requirement that do not apply to the participant – like participating in mandatory E&T, participating in workfare, or reporting to an employer referred by the State agency. However, if there are aspects of the general work requirement that may not apply initially to a participant, but may apply later in the certification period, that information should be included. For instance, a work registrant may not be employed at the time they receive the written notice and oral explanation, but they may become employed later in their certification period, thus the work registrant needs to be informed of the voluntary quit provision at 7 CFR 273.7(a)(vii).

43. Must the consolidated work notice contain appointment dates for orientations or other activities related to the work requirement?

Response: Yes. Participants must know appointment dates to comply with the work requirements, which is why the regulation requires that pertinent dates be included in the consolidated work notice. If work registrants, mandatory E&T participants, and ABAWDs are given appointment dates during certification, recertification, or when there is a new household member or someone becomes subject to a work requirement, then State agencies must include those dates in the consolidated notice. State agencies may also send follow-up notices or other communications with reminders about appointment dates.

J. Eligibility functions Versus E&T functions

44. With the requirement that eligibility staff must make the referral to E&T, does this mean that reverse referrals are not allowed? If reverse referrals are allowed, what does the State agency need to do?

Response: SNAP regulations have long required that eligibility workers screen and refer individuals to E&T. This includes "reverse referral" situations. The term "eligibility worker" refers to eligibility staff who make eligibility determinations 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 Food and Nutrition Act of 2008. The final E&T rule did not change or modify this requirement, rather it underscored its importance when discussing several new provisions in the final rule, particularly the new processes associated with provider determinations and reverse referral situations.

SNAP regulations at 7 CFR 273.7(c) set forth State agency responsibilities pertaining to work requirements. Per 7 CFR 273.7(c)(2), State agencies are required to screen individuals to determine if it is appropriate, based on the State agency's criteria, to refer individuals to E&T, and, if so, to refer them to the E&T program. The regulations at 7 CFR 271.2 clarify that screening and referral to E&T is part of the certification process, and define "screening" as "an evaluation by the eligibility worker used to determine whether a person should or should not be referred for participation in an E&T program. This activity would not be considered an approvable E&T component". The regulations at 7 CFR 273.7(d)(1)(ii)(A) clarify that the certification process ends when an individual is referred to E&T, and that SNAP E&T funds cannot be used for certification process.

The main reason for this requirement is because participation in SNAP E&T is an eligibility requirement - a work requirement – and, as such, only eligibility workers can determine if an individual is exempt from SNAP E&T and if it is appropriate to refer an individual to E&T. Eligibility staff (who are not funded through E&T) should screen and refer participants to E&T for both "regular" referrals and "reverse referrals." The eligibility worker may view information in an MIS system or review paperwork submitted by an E&T provider to inform their decision. It is also important to note that in reverse referrals, eligibility workers must do more than just verify SNAP eligibility.

Among other things, eligibility workers must only refer SNAP recipients if they meet the State agency's criteria, if there are appropriate and available slots, and they must inform the participant how to access E&T, of their responsibilities to meet work requirements, and of their right to receive participant reimbursements or be exempt if their expenses exceed the cap.

45. Can E&T funds be used for staff time to conduct E&T case management functions (e.g. employability assessments, development of individualized service plans) before a participant is referred to E&T?

Response: E&T funds can only be used after a SNAP applicant or participant has been referred to E&T. Eligibility workers must screen applicants and participants using State-specific criteria to determine if is appropriate to refer those individuals to E&T. If it is appropriate, eligibility workers then make a referral to E&T. State agencies have discretion to determine the State-specific screening criteria that would make an individual eligible to be referred to E&T.

K. Voluntary Work Hours

46. Can a voluntary E&T participant volunteer for more hours in a work-based learning activity than the value of the household SNAP benefit divided by the higher of the State or local minimum wage?

Response: Voluntary E&T participants can volunteer for additional hours in work-based learning beyond the hours equal to the household benefit divided by the applicable minimum wage, so long as the voluntary E&T participant receives the same compensation for comparable work for comparable hours earned by non-SNAP E&T participants, and no minimum wage laws are violated.

The work experience component at 7 CFR 273.7(d)(iv) as modified by the final rule can include both paid and unpaid work experience activities for both voluntary and mandatory participants.

The final rule also modified language regarding the maximum number of hours voluntary E&T participants can participate. This new language at 7 CFR 273.7(e)(5)(iii) states that the hour restrictions on mandatory participants to do not apply to voluntary participants "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." FNS' motivation for making this change was to prevent situations in which voluntary participants were permitted to work for less than minimum wage, as stated in the preamble for the final rule, "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."

In addition, the regulation at 7 CFR 273.7(d)(iv)(B)(2) has long stated that individuals engaged in the work experience component should receive the same benefits as individuals doing comparable work for comparable hours.

Taken together, FNS understands these regulations to mean that voluntary participants may be permitted to volunteer in work-based learning activities for more hours than their benefit divided by the minimum wage, and need not be paid for those additional hours (i.e. hours before hitting the "benefit threshold" or hours after hitting "the benefit threshold"), so long as others participating in the work-based learning activity are also not paid while performing comparable work for comparable hours, and the work in the activity does not fall under State or Federal law minimum wage requirements. The regulation prevents circumstances where voluntary participation in a work-based learning activity would be permitted to violate minimum wage laws.

47. Can a zero-benefit household volunteer to participate in a work-based learning activity?

Response: If a State agency has chosen to serve zero-benefit households in E&T, and a zero-benefit household volunteers and is referred to E&T, the voluntary E&T participant may participate a work-based learning activity, so long as all applicable minimum wage laws are followed.

48. If a State agency serves zero benefit households in E&T, can those households participate in workfare or in a work activity?

Response: Workfare and the work activity sub-component of the work experience component present unique circumstances for a zero-benefit household. Both of these activities by their definition involve "working off" the SNAP benefit (i.e. working the number of hours equal to the benefit divided by the higher of the applicable State or local minimum wage). A zero-benefit household has no benefit to "work off," so the household cannot participate in these activities as a voluntary or mandatory participant.