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How the Trump Administration Can Roll Back Obama's Food Stamp Agenda

AUTHORED BY:

Sam Adolphsen
Senior Fellow



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There are more people on food stamps in the U.S. than the total population of Canada.

Over the last eight years, the Obama administration implemented policies that grew the food stamp rolls, discouraged work in welfare programs, and held states back from freeing people from government dependency.

To restore work and bring integrity back to this taxpayer-funded program, the Trump administration can start rolling back the Obama food stamp agenda by making 10 simple changes to regulations and policies.

Restore Work

1. Empower states to expand work requirements

The current work registration requirements for non-disabled parents on food stamps is insufficient to move adults from dependence to self-sufficiency, as evidenced by the fact that half of all able-bodied parents on food stamps have no earned income. Non-disabled, workingage adults over the age of 50 are also exempt from mandatory work requirements. These two populations – non-disabled parents and non-disabled adults between 50 and 64 years old – should be required to work to receive food stamps.

ACTION STEPS

- Allow requesting states to expand the existing work rules for childless adults to non-disabled parents on food stamps and expand the age range beyond its current cap of 50 years old. This can be done by granting state waiver request for a demonstration project that is aimed at increasing the self-sufficiency of SNAP recipients.¹
- These demonstrations should also include tracking and evaluation components to test whether these policies improved work levels and earned incomes for the individuals covered under the demonstration.

2. Deny state work requirement waivers

Food stamp law is clear that any waiver to the able-bodied adults without dependents (ABAWD) work requirement must include one of two criteria: an "area" must have 1. A 10 percent or higher unemployment rate or 2. A demonstrated lack of job opportunities.² But over time, regulators have expanded this law dramatically in several ways:

- Allowing partial waivers for any "area" the state defines (typically county based)
- Granting waivers based on unemployment measures Congress did not set (20 percent higher than national average)
- Granting waivers because there is a "lack of job opportunities" according to a description "in an academic study or other publication" ³

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This application of the law is far too broad. For example, California, which has been granted a statewide waiver for work requirements as of the third quarter of Fiscal Year 2017⁴, has a five percent statewide unemployment rate, nearing its all-time low.⁵ Rhode Island also has a statewide waiver from work requirements, despite its 4.5% unemployment rate. Based on the plain reading of federal law, California and Rhode Island should not be eligible for a statewide waiver of work requirements.

Further, allowing states to have partial waivers by county ignores the reality that neighboring counties may be economically vibrant. For example, California's Sutter County, which has an unemployment rate of 11.1 percent, is bordered by five counties that have lower than 10 percent unemployment.

Partial waivers also make state administration more difficult.

FNS should not grant waivers based on a state having "a 24-month average unemployment rate 20 percent above the national average for the same 24-month period." This basically guarantees that some states will always be eligible to waive the requirement for work, even if their unemployment is low but relatively higher than other states. For example, if California's unemployment rate drops all the way to two percent but the national average is 1.6 percent, California could still qualify for a work requirement waiver under the current policy.

These examples are all clearly outside the bounds of the narrow exceptions Congress outlined.

ACTION STEPS

- FNS should not grant further ABAWD work requirement waivers, including partial waivers. No state currently has an unemployment rate above seven percent and there are currently 5.7 million job openings across the country.6
- Change regulations in 273.24(f)(2)(ii) to eliminate the "20 percent above the national average" and the vague "not enough jobs" criteria.

3. Enforce all existing work requirements in SNAP

In addition to the work requirements for ABAWDs, there are requirements for other able-bodied adults in SNAP. These requirements, outlined in 7 U.S. Code § 2015 (d)(1), include all "physically and mentally fit" or able-bodied adults between the ages of 16 and 60 including parents.⁷ This requirement is less stringent than ABAWD requirements, but requires that these individuals "register" for employment, not turn down a job, not quit a job, participate in programs as required, and generally cooperate. Unfortunately, there are states that are not enforcing this important provision.

ACTION STEPS

- Review state compliance with the work requirement for this population as outlined in federal law, examining reports from each state detailing for the full prior calendar year:
 - How many households and individuals are enrolled in this category
 - · How many exemptions have been granted
 - · How many individuals have registered for work
 - How many individuals have voluntarily quit a job
 - · How many individuals have refused employment training
 - How many individuals have elected not to take an offered job
 - How many individuals have been sanctioned for a failure to comply in the previous year
- States that are not properly removing enrollees for failure to work should be required to submit corrective actions to explain how they will comply with this provision.

4. Require 50-year-old able-bodied adults without dependents to work

Federal rules currently exempt 50-year-old able-bodied adults without dependents on food stamps from work requirements, despite statutory language indicating that they should be subject to those requirements. The Office of the Inspector General notes that the current rules use two different, contradictory interpretations of the statutory language to limit the number of individuals impacted by the work requirement.⁸

The OIG stated in their September 2016 report that FNS's conflicting interpretations "do not seem reasonable to us."

ACTION STEP

■ The administration should take the recommendation of the OIG and expand the work requirement to 50-year-old able-bodied adults, compliant with federal law.

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5. Eliminate carry-over exemptions from work requirements

Federal rules allow states to carry over unused exemptions from the work requirement for ablebodied adults without dependents on food stamps. These exemptions can be used broadly to exempt any ABAWD from work, up to 15 percent of the total ABAWD population. FNS has been using this exemption in a way that goes beyond the scope of federal law and fosters dependency.

The OIG has raised concerns about this practice, noting in their September 2016 report that they "do not agree with FNS' process of carrying over unused 15 percent exemptions indefinitely." To date, states have carried over approximately \$1 billion worth of work requirement exemptions.

ACTION STEP

■ The administration should follow the advice of the OIG and eliminate carry-over exemptions. As the OIG outlines and FNS acknowledges, this is simply a "long-standing interpretation." This should be interpreted correctly immediately by eliminating the carry over.

Rein in Insider Expansions

6. End gimmicks that give food stamps to people with higher incomes

Recent federal regulations and policies have dramatically widened the front door to food stamps. One of the most contrived expansion methods is through "broad-based categorical eligibility" (BBCE). This addition to traditional eligibility standards allows millions of individuals to receive food stamps when they would otherwise be ineligible based on their income and assets.

BBCE qualifies an individual for food stamps if they receive a non-cash service from the Temporary Assistance for Needy Families (TANF) program. But in reality, what individuals receive is often not a service at all and may not even be physically provided to them. For example, in some states, "being referred to a TANF service" by receiving a brochure qualifies someone for SNAP.

The application of BBCE exceeds authority in the law and in the overly broad rule. For example, what confers eligibility is supposed to be a "service," as outlined in regulation. But all states are offering is simply a phone number, or a brochure, that was created with TANF funds, to make the person eligible. These items should not qualify as "services" since they do nothing on their own to assist the person. Further, some states say they produce a brochure, but are not actually providing them to the individual physically, but simply stating that the person is eligible to receive it.

FNS pushed states to utilize BBCE in a 2009 memo. Specifically, they cited BBCE as a means to increase food stamp enrollment. "We encourage you to continue promoting expanded categorical eligibility as a way to increase SNAP participation," the memo pleaded.¹⁰

ACTION STEPS

- The Trump administration should not allow states to make individuals broadly categorically eligible for food stamps when they are not receiving an actual service of some kind funded by TANF, compliant with current law and rule.
- The Trump administration should repeal broad-based categorical eligibility.

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7. Eliminate bonus money for increased food stamp enrollment

Federal law authorizes the distribution of \$48 million in "bonus" funds annually to states that have "high and most improved performance" in administering the food stamp program. The law outlines that the performance criteria for selecting recipients of the funds will be:

- (I) actions taken to correct errors, reduce rates of error, and improve eligibility determinations; and
- (II) other indicators of effective administration determined by the Secretary;¹¹

The regulations and practices of FNS have expanded these criteria to include a bonus payment given for improving or having a high "program access index," a measure created by FNS to determine how many people are on food stamps compared to how many they believe are eligible in each state. The total bonus given out for this measure is \$12 million annually, the second highest total award category.

In the 2014 farm bill, Congress barred FNS and states from using funds to advertise and promote the SNAP program to recruit more recipients. Awarding increased enrollment through bonuses in "program access" seems to approach (if not cross) this line because it rewards states who increase enrollment.

ACTION STEPS

- The Trump administration should provide bonus money to states only for actual program efficiency as the law intended, not for increased level of enrollment. The current rule should be changed to distribute the \$12 million to states that are returning SNAP recipients to employment.
- FNS should remove "outreach" materials from their website and stop asking states to develop "outreach" plans to recruit more people to the program.

8. Release SNAP retailer data on food stamp purchases

Under Obama FNS was not transparent with data about how food stamp dollars are being spent. In 2011, FNS rejected a request for all retailer level food stamp spending. The requestor sued the Obama administration and, after years of litigation, won their case in late 2016. The win was definitive – the data is not protected under Freedom of Information Act exemptions as the Administration's lawyers argued. However, an outside group filed a motion to stay the decision in early 2017 and FNS has stated they will not release SNAP retailer data until the pending court case is resolved.

The requested data is not private. It did not include any personal information. And this data is important because it will help the public understand how billions of taxpayer dollars are being spent.

Releasing the data will also allow for better scrutiny of potential retail fraud. In Maine, this type of information helped the state and FBI uncover a multi-million dollar SNAP and tax fraud scheme. ¹⁵

ACTION STEPS

- Immediately release (in Excel or .csv format) the last 8 years of retailer data that, at a minimum, includes:
 - Retailer name
 - · Retailer address, city and state
 - FNS ID number
 - Total EBT/SNAP transactions for each month
- Release regular updates of the data, no less than monthly.
- Make transaction-level data available (without unique, personally-identifying information) for at least the previous year.

Roll Back Lame Duck Rules

9. Ban significant lottery and gambling winners from food stamps

The 2014 farm bill banned lottery and gambling winners from continuing to receive food stamps. This was a prudent and critical step. Reports around the country have found individuals scoring huge amounts of cash – even more than a million dollars – in lottery and gambling winnings yet remained on food stamps.

Congress left it up to the Secretary of USDA to define the "substantial" level of lottery or gambling winnings at which food stamp recipients would be removed from the program. There are several problems with the way in which the Secretary of USDA decided to implement this provision. From the Foundation for Government Accountability's comment on the rule:

"FNS delayed defining "substantial" for nearly three years. They also explicitly told states not to enforce this law until "substantial" was defined. Now, FNS is attempting to define "substantial" at a threshold that is unreasonably high, does not comport with the monthly nature of the benefit, and is out of scale with other financial laws. This proposed rule would keep people on the SNAP program after winning huge amounts in the lottery, in direct conflict with the intent of Congress as delineated in the 2014 Farm Bill, Section 4009."16

ACTION STEP

■ The Secretary should change the rule to define "substantial" winnings in lottery or gambling as winnings of \$2,250 or more to align with the federal asset test in SNAP.

10. Eliminate Obama's last-minute photos-on-EBT-cards obstruction

Federal law is explicitly clear that states can place photos of food stamp enrollees on their electronic benefits transfer (EBT) cards. In the waning days of the lame duck Obama administration, a rule was passed that adds significant and problematic regulatory burdens on states who choose to exercise this option.

Below is the entirety of what federal law says on the topic:

- (9) Optional photographic identification.—
 - (A) In general.— A State agency may require that an electronic benefit card contain a photograph of 1 or more members of a household.
 - (B) Other authorized users.— If a State agency requires a photograph on an electronic benefit card under subparagraph (A), the State agency shall establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may utilize the card.

The rule section on "minimum requirements" goes far beyond the federal law. As the state of Maine laid out in their comments on the rule, "federal law grants states the option to implement photo EBT, without tying that option to performance standards and without delegating authority to the Secretary of the Department of Agriculture to impose that limitation or any other." ¹⁷

ACTION STEP

■ The Trump administration should immediately repeal the EBT-photo regulation. The rule goes beyond the scope of the narrow federal law which allows states to place photos on EBT cards with none of the additional restrictions added by the rule.

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15275 Collier Boulevard | Suite 201-279 Naples, Florida 34119 (239) 244-8808