

May 13, 2022

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

**EXECUTIVE SUMMARY**

**ALL COUNTY LETTER NO. 22-38**

The purpose of this All County Letter (ACL) is to summarize the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Subsidized Work-Based Learning Activities memorandum issued by the United States Department of Agriculture, Food, and Nutrition Service (FNS) on November 17, 2021, for all entities responsible for the administration of the CalFresh Employment & Training (E&T) program. This memorandum provides guidance regarding changes to the Subsidized Work-Based Learning (SWBL) activities, within the work experience component.



KIM JOHNSON  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



GAVIN NEWSOM  
GOVERNOR

May 13, 2022

ALL COUNTY LETTER NO. 22-38

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY CALFRESH SPECIALISTS  
ALL QUALITY CONTROL COORDINATORS  
ALL CALFRESH E&T REPRESENTATIVES  
ALL CONSORTIA REPRESENTATIVES

**SUBJECT: CALFRESH EMPLOYMENT AND TRAINING PROGRAM  
SUBSIDIZED WORK-BASED LEARNING ACTIVITIES**

REFERENCE: [SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM \(SNAP\) – EMPLOYMENT & TRAINING \(E&T\) SUBSIDIZED WORK BASED LEARNING \(SWBL\) ACTIVITIES; 2018 AGRICULTURE IMPROVEMENT ACT; PUBLIC LAW 115-334; FINAL RULE \(FR\), EMPLOYMENT & TRAINING OPPORTUNITIES IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM; TITLE 7 CODE OF FEDERAL REGULATION \(CFR\) 271.1; 7 CFR 273.7; 86 FR 358; ACL NO. 21-48; 7 CFR 273.7\(E\)\(2\)\(IV\); 7 CFR 273.7\(D\)\(1\)\(II\)\(A\); 7 CFR 273.7\(E\)\(2\)\(IV\)\(A\)\(2\); 7 CFR 273.7\(C\)\(2\); 7 CFR 273.7\(D\)\(4\); LABOR COMMISSIONER'S OFFICE; 20 CFR 663.710; 20 CFR 680.720; 20 CFR 680.730; 20 CFR 680.730\(B\); 7 CFR 273.9; 29 CFR 29.5\(B\)\(2\); ALL COUNTY INFORMATION NOTICE \(ACIN\) NO. 1-57-21; 7 CFR 273.7\(D\)\(1\)\(II\)\(A\); 7 CFR 273.7\(C\)\(17\)](#)

The purpose of this ACL is to summarize the [Supplemental Nutrition Assistance Program \(SNAP\) - Employment and Training Subsidized Work-Based Learning Activities](#) memorandum issued by the United States Department of Agriculture, Food, and Nutrition Service (FNS) on November 17, 2021, for all entities responsible for the administration of the CalFresh Employment & Training (E&T) program. This memorandum provides guidance regarding changes to the Subsidized Work-Based Learning (SWBL) activities, within the work experience component.

## BACKGROUND

The [Agriculture Improvement Act of 2018](#), also known as the 2018 Farm Bill, was signed into law on December 20, 2018 ([PL 115-334](#)). The [Final Rule, Employment & Training Opportunities in the Supplemental Nutrition Assistance Program](#), issued on January 4, 2021, amended [Title 7 Code of Federal Regulation \(CFR\) 271.1](#) and [7 CFR 273.7](#), pertaining to the Supplemental Nutrition Assistance Program (SNAP) ([86 FR 358](#)). The Final Rule changed the definition of the work experience component and made reimbursement for subsidized wages to E&T participants allowable when included in an approved CalFresh E&T Plan. The CDSS released guidance pertaining to the Final Rule via [ACL No. 21-48](#) issued on April 23, 2021.

The [SNAP E&T SWBL Activities](#) memorandum from FNS provides further guidance on allowable SWBL activities and costs within the work experience component issued on November 17, 2021. The changes made to SWBL activities are effective for all entities administering the CalFresh E&T program beginning Federal Fiscal Year 2023. These changes include:

- Expanded definition of SWBL activities;
- Fair Labor Standards Act (FLSA);
- Clarification of On-the-Job Training, as defined by the Workforce Innovation Opportunity Act (WIOA);
- Potential impact on CalFresh benefits;
- SWBL time limits and exceptions;
- Limitations for private for-profit employers;
- SWBL models;
- Subsidy considerations;
- Coordination with WIOA Title I programs;
- Allowable and Unallowable costs; and
- Reporting requirements.

## SUBSIDIZED WORK-BASED LEARNING

In accordance with [7 CFR 273.7\(e\)\(2\)\(iv\)](#) and [7 CFR 273.7\(d\)\(1\)\(ii\)\(A\)](#), SWBL activities are defined as employment in the private for-profit sector, the non-profit sector, or the public sector where a portion of an E&T participant's wages are subsidized by either E&T funds or non-E&T funds. SWBL activities include apprenticeships, customized training, incumbent worker training, internships, on-the-job training (OJT), as defined by the WIOA, pre-apprenticeships, and transitional jobs, per [7 CFR 273.7\(e\)\(2\)\(iv\)\(A\)\(2\)](#).

In accordance with [7 CFR 273.7\(c\)\(2\)](#) and [7 CFR 273.7\(d\)\(4\)](#), all entities administering the CalFresh E&T program must ensure that individuals participating in E&T, including

SWBL activities, are provided case management services and reimbursed for expenses that are reasonable, necessary, and directly related to participating in SWBL activities.

SWBL activities should:

- Be developed with consideration of program length, anticipated enrollment, and the ability of CalFresh E&T participants to move from subsidized employment to unsubsidized, regular employment;
- Include clearly defined skill elements that are evidence-based and aligned with the E&T participant's training plan;
- Be designed to meet the skilled workforce needs of employers, in addition to helping E&T participants obtain the certificates and credentials employers use to make hiring decisions; and
- Train for in-demand occupations that pay a living wage or at least be part of an articulated career pathway that leads to a living wage.

## **FAIR LABOR STANDARDS ACT**

SWBL activities must comply with the FLSA and all other applicable labor laws in accordance with [7 CFR 273.7\(e\)\(2\)\(iv\)](#). Labor standards apply in any work experience setting where an employee/employer relationship exists, as defined by the FLSA. In California, labor standards are managed by the [Labor Commissioner's Office](#).

Labor standards include but are not limited to:

- Participants must receive the same benefits and working conditions as non-E&T participants doing comparable work for comparable hours including holidays, sick pay, vacation, and medical insurance.
- The employer or E&T provider must provide worker's compensation coverage.
- Participants must be paid the same amount as other comparable workers.
- Participants must be paid a wage at least equal to the local, state or federal minimum wage, whichever is highest.
- Participants must not displace or replace existing employment of individuals not participating in E&T.
- An employer is not permitted to lay off workers or fill openings that were previously held by unsubsidized workers and replace them with SWBL participants.
- SWBL participants must not be used to cross strike lines as this would have the effect of replacing existing workers.

## **ON-THE-JOB TRAINING**

OJT, as defined by the WIOA, is a type of work-based learning in which the CalFresh E&T provider agrees to pay the employer of record for the extraordinary costs of providing the training and additional supervision related to the OJT. OJT payments to

the employer of record are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants, per [20 CFR 663.710](#). OJT activities do not subsidize the participant's wage, rather, the OJT employer receives reimbursement for allowable training costs.

CalFresh E&T funds can be used to reimburse the portion of the wage allotted as the employer's cost to train the participant, up to 50 percent of the wage rate of an OJT participant, per [20 CFR 680.720](#). In accordance to [20 CFR 680.730](#) and in limited circumstances, CalFresh E&T funds can be used to reimburse the portion of wage allotted as the employer's extraordinary costs of providing training and additional supervision, up to 75 percent of the wage rate of an OJT participant. CalFresh E&T providers must document the factors used when deciding to increase the wage reimbursement levels above 50 percent and up to 75 percent, per [20 CFR 680.730\(b\)](#).

### **IMPACT ON CALFRESH BENEFITS**

Income earned from SWBL activities is subject to the same considerations as income from other sources as described in [7 CFR 273.9](#). As a best practice, all providers of SWBL activities should advise participants of whether earnings from a SWBL activity could potentially decrease the amount of CalFresh benefits they receive or make their household ineligible for CalFresh. Additionally, the number of hours a participant engages in a SWBL activity can be customized to reduce the impact of countable income earned on their CalFresh benefit and E&T eligibility.

### **TIME LIMITS**

The CDSS will reimburse the entity issuing funds for the subsidized wages up to six months for eligible CalFresh E&T participants enrolled in a SWBL activity when included in an approved CalFresh E&T Annual Plan.

SWBL activities should also be limited to once every twelve months per CalFresh E&T participant.

### **EXCEPTIONS TO TIME LIMITS**

The CDSS will reimburse the entity issuing funds for the subsidized wages for more than six months for eligible CalFresh E&T participants enrolled in a SWBL activity when included in an approved CalFresh E&T Annual Plan and:

- The SWBL activity is part of a registered apprenticeship program as described in [29 CFR 29.5\(b\)\(2\)](#), or

- There is compelling evidence to support the SWBL activity provides training and experience that leads towards unsubsidized employment and the longer duration is necessary to achieve those outcomes.

CalFresh E&T participants may be enrolled in a SWBL activity more than once every twelve months where the participant had to drop out of the SWBL activity due to no fault of their own, for example due to an illness, provider determination, or other unavoidable circumstance. As a best practice, CalFresh E&T providers should document the reason for the exception in the participants' case file.

## **PRIVATE FOR-PROFIT EMPLOYERS**

Employers in the private for-profit sector may employ up to 3% of their workforce as SWBL participants, however all private for-profit employers may employ at least one SWBL participant. Subsidized positions from programs outside of CalFresh E&T are not counted towards the total number of SWBL participants.

The CDSS will consider proposals included in a CalFresh E&T Annual Plan submission to allow private for-profit employers to have a larger portion of SWBL participants, if **all** conditions below are met:

- The employer provides high-quality services to all E&T participants;
- The SWBL positions do not displace or replace existing employees; and
- Outcome data provides evidence that participation moves most participants toward unsubsidized employment.

## **SWBL MODELS**

SWBL activities can be administered through a variety and combination of models. SWBL models include but are not limited to:

- E&T program provider contracts as the employer of record and receives reimbursement for funding the wage subsidy.
- E&T program provider contracts directly with employers and passes the reimbursement for funding the wage subsidy to the employer of record.
- E&T program provider contracts with an intermediary who contracts with one or more employers and passes the reimbursement for funding the wage subsidy to the employer of record.

## **SUBSIDY CONSIDERATIONS**

SNAP regulations do not specify what portion of the wage earned by the participant may be subsidized with E&T funds or non-E&T funds. Entities administering the CalFresh E&T program must provide adequate justification in their CalFresh E&T Annual Plan regarding how much of the participants' wages will be subsidized and the amount to be

requested for reimbursement with E&T funds. CalFresh E&T providers should take into consideration:

- Effects of the level of subsidization on the willingness of employers to participate in a SWBL activity, as well as on the quality of the training and later employability of participants.
- Higher subsidies for small and medium-sized employers, and smaller subsidies for larger employers.
- Whether the employer is paying minimum wage or a higher wage, provides health insurance, and/or paid leave.
- Varying the subsidy by the type of job, i.e., whether the job is tied to a high-demand industry position or has a clear wage progression.

## COORDINATION WITH TITLE I PROGRAMS

SWBL activities can be combined or performed sequentially with WIOA Title I Programs. The following are examples of how the two programs can coordinate:

- CalFresh E&T SWBL activities can transition to a WIOA Title I subsidized wage program after the CalFresh case closes.
- WIOA Title I can provide funding for the subsidized wages, while the E&T provider administers other components and participant reimbursements.

As a reminder, WIOA Title I funds are federal, therefore E&T providers cannot request reimbursement for WIOA funded activities. Additional information on CalFresh E&T co-enrollment strategies as part of an integrated service delivery model with WIOA Title I programs is in [ACIN No. 1-57-21](#), issued on June 16, 2021.

## ALLOWABLE COSTS

CDSS will reimburse the entity issuing funds for the subsidized wages in the same manner that the CDSS reimburses other allowable E&T expenses. Allocated E&T 100 percent administrative funds or 50 percent administrative reimbursement funds may be used for wage subsidies.

The costs listed below are eligible for reimbursement to the entity issuing funds for the subsidized wages **only** when paid to eligible CalFresh E&T participants enrolled in SWBL activities that are included in an approved CalFresh E&T Annual Plan.

Allowable Administrative Costs
<ul style="list-style-type: none"><li>• Workers' compensation costs</li><li>• Payroll taxes paid by the employer</li><li>• Direct and indirect costs associated with administering the SWBL activity</li></ul>

Allowable Administrative Costs
<ul style="list-style-type: none"><li>• Stipends paid as a form of wage when equal to the number of hours worked multiplied by the federal, state, or local minimum wage, whichever is highest</li></ul>



**UNALLOWABLE COSTS**

The costs listed below are ineligible for reimbursement with CalFresh E&T funds in accordance with [7 CFR 273.7\(d\)\(1\)\(ii\)\(A\)](#).

Unallowable Administrative Costs
<ul style="list-style-type: none"><li>• Benefits (including health and dental insurance)</li><li>• Disability insurance</li><li>• Life insurance</li><li>• Bonuses and incentive payments (including recruitment and retention bonuses and performance-based bonuses)</li><li>• Indirect costs charged for participant wages</li><li>• Wages and benefits earned in the job retention component</li><li>• Wages earned as an independent contractor or self-employment situation</li></ul>



**Reporting**

Entities that are responsible for the administration of the CalFresh E&T program must report participant outcomes for individuals engaged in SWBL activities in the same manner they report participant outcomes for all CalFresh E&T activities in accordance with [7 CFR 273.7\(c\)\(17\)](#). The CDSS will be releasing guidance aligning our state reporting requirements to the federal reporting requirements as a result of changes made to the CalFresh E&T program due to implementation of the Final Rule.

If you have any questions or need additional guidance regarding the information in this letter, contact the CalFresh E&T Section at [CalFreshEandT@dss.ca.gov](mailto:CalFreshEandT@dss.ca.gov).

Sincerely,

***Original Document Signed By***

JENNIFER HERNANDEZ  
Deputy Director  
Family Engagement and Empowerment Division