

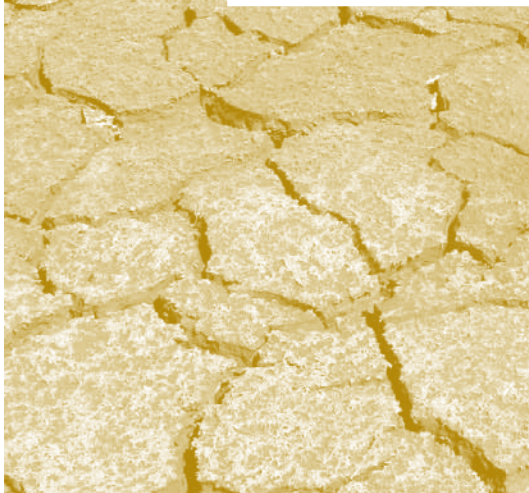
# Clearinghouse REVIEW

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IN THE LAND  
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## National Center for Law and Economic Justice's SNAP Application Delay Litigation Project

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In the wake of the deepest recession since the Great Depression, states, counties, and localities have largely failed to ensure that basic safety-net programs such as food stamps are readily available for all households in need.<sup>1</sup> The number of food stamp-eligible individuals increased by 15 percent from the 2008 fiscal year to the 2009 fiscal year.<sup>2</sup> Yet food stamp participation lagged significantly. For example, “[o]f the nearly 45 million individuals eligible for ... benefits in an average month in FY 2009, 32 million (72 percent) participated and more than 12 million did not.”<sup>3</sup> Indeed, only 66 percent of people eligible for food stamps in the 2008 fiscal year received them.<sup>4</sup>

Supplemental Nutrition Assistance Program (SNAP) participation rates vary greatly between states and demographic groups. The lowest participation rate is in the West at 58 percent.<sup>5</sup> Participation rates between cities and counties also vary considerably. The Food Research and Action Center estimates that “only 76 percent of eligible people in the 22 cities and urban counties studied participated in the program in December 2008, with rates in individual cities ranging from 40 percent to 98 percent.”<sup>6</sup>

<sup>1</sup>Effective October 1, 2008, the federal Food Stamp Program was renamed the Supplemental Nutrition Assistance Program (SNAP), and the federal Food Stamp Act was renamed the Food and Nutrition Act of 2008 (Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, §§ 4001–4002, 122 Stat. 1651, 1853–1860). In many states, SNAP benefits are commonly known as food stamps. Here we use the term “food stamps” when referring to the program, enacting federal legislation, and implementing federal regulations. For a discussion of SNAP participation rates, see JOSHUA LEFTIN ET AL., FOOD AND NUTRITION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, TRENDS IN SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM PARTICIPATION RATES: FISCAL YEAR 2002 TO FISCAL YEAR 2009, at xiii–xiv (Aug. 2011), <http://bit.ly/NryBDd>.

<sup>2</sup>LEFTIN ET AL., *supra* note 1, at xiii.

<sup>3</sup>*Id.*

<sup>4</sup>Karen Cunnyngham & Laura A. Castner, Food and Nutrition Service, U.S. Department of Agriculture, Reaching Those in Need: State Supplemental Nutrition Program Rates in 2008, at 1–2 (Dec. 2010), <http://bit.ly/MSg51R>.

<sup>5</sup>*Id.* In the West, Wyoming had the lowest participation rate, with only 46 percent of eligible households participating.

<sup>6</sup>Food Research and Action Center, SNAP Access in Urban America: A City-by-City Snapshot 2 (Jan. 2011), <http://bit.ly/P28Ck7>. The Food Research and Action Center's lowest estimates of the proportion of SNAP-eligible people who are actually enrolled in the program in the twenty-two survey areas were for San Diego, California (40 percent); Denver, Colorado (46 percent); and Los Angeles, California (56 percent). The highest were for Washington, D.C. (98 percent); Wayne County, Michigan (97 percent); and Jefferson County, Kentucky (96 percent) (*id.*).

The failure of state and local governments to maximize food stamp participation is contrary to their best interests. Food stamps, which are 100 percent federally funded, are not a small economic stimulus. The Center on Budget and Policy Priorities notes:

Economists consider SNAP one of the most effective forms of economic stimulus. Moody's Analytics estimates that in a weak economy, every dollar increase in SNAP benefits generates \$1.72 in economic activity. Similarly, [the Congressional Budget Office] rated an increase in SNAP benefits as one of the two most cost-effective of all spending and tax options it examined for boosting growth and jobs in a weak economy.<sup>7</sup>

A central factor in discouraging eligible families from obtaining food stamps has been profound application delays in many states. Pursuant to federal statute, except under very limited circumstances, an application for food stamps must be processed, a decision on eligibility rendered, and food stamps provided to the applicant household, if eligible, within thirty days from the date that the household applies.<sup>8</sup> Certain very low-income households are entitled to have their applications processed within seven calendar days.<sup>9</sup> Some states require applications entitled to expedited processing to be processed in fewer than seven days. For example, New York State provides that households entitled to expedited processing must receive food stamps within five calendar days.<sup>10</sup>

Indeed, in the 2009 fiscal year, according to data maintained by the Food and

Nutrition Service, U.S. Department of Agriculture (USDA), Rhode Island processed only 63.64 percent of applications timely.<sup>11</sup> In the 2010 fiscal year only twenty states and the District of Columbia were processing fewer than 10 percent of applications late.<sup>12</sup>

Households are also harmed by delays in processing food stamp recertifications. The Food Stamp Act provision concerning processing recertifications is complex, and delays in processing can result in households losing food stamps for at least a month. The recertification process at the end of a household's initial certification period is specified in 7 U.S.C. § 2020(e)(4): if the application is received fifteen days before the end of the last month for which the recipient was certified, the recertification applicant is entitled to receive benefits for the subsequent period starting no later than one month after the last benefit was received.

Of course, the true story of the failure of state and local governments to respond to the crisis is not told by data reflected in graphs and tables published by federal agencies. Rather, it is conveyed by the misery of mothers unable to feed their children, seniors running out of food before the end of the month, and soup kitchens and food pantries with shelves picked bare.<sup>13</sup>

Against this backdrop the National Center for Law and Economic Justice started partnering with advocates from around the country and using class action litigation and other advocacy tools to compel state and local governments to process food stamp applications and recertifications timely. Here we discuss the strategies adopted, the results achieved, and,

<sup>7</sup>Dottie Rosenbaum, Center on Budget and Policy Priorities, *SNAP Is Effective and Efficient* (July 9, 2012), <http://bit.ly/MjIMZ>.

<sup>8</sup>Food, Conservation, and Energy Act of 2008, 7 U.S.C. § 2020(e)(3).

<sup>9</sup>*Id.* § 2020(e)(9).

<sup>10</sup>NEW YORK COMP. CODES R. & REGS. tit. 18, § 387.8(a)(2)(i)(a) (2012).

<sup>11</sup>[U.S. Department of Agriculture, Food and Nutrition Service], *FY 2009 Application Processing Timeliness* [June 24, 2010], <http://1.usa.gov/MjIdEA>.

<sup>12</sup>[U.S. Department of Agriculture, Food and Nutrition Service], *FY 2010 Application Processing Timeliness* [June 13, 2011], <http://1.usa.gov/NrTBKa>.

<sup>13</sup>Rachel L. Swarns, *City Agrees to Drop Delay in Food Stamp Applications*, *NEW YORK TIMES*, April 30, 1999, <http://nyti.ms/Oc8DIm>.

most important, the lessons learned. We believe that every state that processes applications timely does so through the right combination of effective management, technology, and resources. Yet those states that do not process timely fail for different reasons. Understanding why a state is not processing timely can be essential to advocating policies and practices to help it achieve timely processing.

We do not take up the many complex legal issues involved in litigating a food stamp delay case. The National Center for Law and Economic Justice is available to work with advocates interested in considering the appropriateness of legal action to deal with the systemic failure to process food stamp applications and recertifications timely or accurately.

### I. Advocacy Plan

The National Center for Law and Economic Justice has a three-part plan to correct chronic and widespread failures of states and counties to process food stamp applications and recertifications timely and accurately. First, the center works with local cocounsel to file impact litigation, typically class action litigation. Impact litigation is critical because

- pending litigation tends to compel governmental actors to operate with far greater speed and creativity in handling problems and unlawful behavior;
- pending litigation can be a valuable tool to free up budgetary and other resources from state and county legislatures; and
- public interest counsel are far more likely to have a seat at the table while governmental actors seek to resolve the underlying causes of systemic delays and errors if there is litigation pending or a court order in place through settlement or following a court decision.

In some states cocounsel may be the local legal services or legal aid office or another public interest law office. In other states the National Center for Law and Economic Justice cocounsels with local American Civil Liberties Union affiliates, Appleseed offices, or private attorneys.

Second, the National Center for Law and Economic Justice works with cocounsel to identify why state or county agencies or both are failing to provide food stamps to eligible households or process recertifications timely. As discussed more fully in III. Lessons Learned, below, the reasons for the failure of state or local governments to meet their statutory duty include, but are not limited to, staffing shortages, outdated policies, inefficient practices, and troublesome technology.

Third, the National Center for Law and Economic Justice seeks to work with cocounsel to require the state or county or both to provide reliable and detailed monitoring. Our experience is that many state and local governments do not adequately monitor the processing of food stamp applications and recertifications. Reliable and detailed monitoring serves several purposes. Detailed reporting can measure state or local performance or both in clear, consistent, and understandable metrics. Advocates and state legislatures are both likely to want to know the percentage of applications processed timely each month as well as the number of overdue pending applications.

Monitoring can serve as a valuable management tool. For example, if a state agency maintains data on each local office's performance, the state agency can target resources to assist the low-performing offices. Similarly data that reflect problems in scheduling initial interviews can inform the vigilant manager and lead to systemic reforms.

Effective monitoring assists smart agency directors in identifying future staffing and other needed resources. For example, an increase in delays that correlates to increased application volume can directly influence the number of additional workers and supervisors or overtime hours needed. Similarly data showing the percentage of applications that are processed according to expedited processing standards can be compared to previous periods and to other states so that a curious administrator can assess whether expedited processing requirements are being applied appropriately.

The National Center for Law and Economic Justice has brought successful lawsuits reflecting these priorities against states and counties around the country. In Hawaii we joined with Hawaii Appleseed Center for Law and Economic Justice and Alston, Hunt, Floyd, and Ing to challenge the state's persistent delays in processing food stamp applications: 139,816 households—an 18 percent increase over the previous year—received food stamps in Hawaii in May 2011.<sup>14</sup> Yet only 79.8 percent of food stamp applications were processed timely, down from 87 percent in July 2009.<sup>15</sup>

On November 16, 2011, the court heard plaintiffs' motion for a classwide preliminary injunction and ruled for plaintiffs.<sup>16</sup> The court ordered the parties to meet with the magistrate judge and submit a proposed injunction within thirty days.<sup>17</sup> On January 23, 2012, the court entered a preliminary injunction requiring the defendant to (1) comply fully with timely processing requirements within twelve months; (2) achieve interim performance benchmarks, (3) give detailed monthly monitoring data to plaintiffs' counsel; and (4) devise a mechanism by which plaintiffs' counsel can bring individual delay cases to defendant's attention and get a response within three business days.<sup>18</sup>

In the fall of 2005 the National Center for Law and Economic Justice and the William E. Morris Institute for Justice reached a very favorable settlement agreement in a federal class action challenging the Arizona welfare agency's

failure to process food stamp applications, including recertifications, timely. Arizona agreed to certify the class and to process applications in compliance with federal law for at least 95 percent of the applications; maintain an 800 number for individuals to call if their application is delayed; inform applicants about the timely processing requirements; and supply plaintiffs with extensive monitoring data.

In 2004, with our Colorado colleagues, including the Colorado Center for Law and Policy and Sherman and Howard, we filed an action following Colorado's premature launch of a flawed computer system to manage applications and ongoing eligibility for all of its public benefits programs.<sup>19</sup> The new system, the Colorado Benefits Management System, led to massive delays in processing applications and the loss of benefits.<sup>20</sup> In late 2004 we secured a preliminary injunction requiring timely benefits processing, elimination of the backlog of overdue cases, an emergency processing mechanism for those who lost benefits as a result of the system, extensive reporting, improved notices to program beneficiaries, and a stay on collection of overpayments caused by the system.<sup>21</sup>

In late 2007 Colorado agreed to comply with federal and state timely processing requirements of applications for the Food Stamp Program, Medicaid, and Temporary Assistance for Needy Families and engage in extensive reporting.<sup>22</sup> Colorado must also maintain a toll-free line for applicants and recipients to report Colorado

<sup>14</sup>Complaint, *Booth v. McManaman*, No. CV 10-00680 DAE-RLP (D. Haw. Nov. 17, 2011) (on file with National Center for Law and Economic Justice).

<sup>15</sup>*Id.*

<sup>16</sup>*Booth v. McManaman*, 830 F. Supp. 1037 (D. Haw. 2011).

<sup>17</sup>*Id.*

<sup>18</sup>Preliminary Injunction, *Booth v. McManaman*, No. CV 10-00680 DAE-RLP (D. Haw. Jan. 23, 2012) (on file with National Center for Law and Economic Justice).

<sup>19</sup>Complaint, *Hawthorne-Bey v. Reinartson*, No. 04-CV-7059 (D. Colo. Aug. 30, 2004) (on file with National Center for Law and Economic Justice).

<sup>20</sup>*Id.*

<sup>21</sup>Order, *Hawthorne-Bey v. Reinartson*, No. 04-CV-7059 (D. Colo. Dec. 21, 2004) (on file with National Center for Law and Economic Justice).

<sup>22</sup>Settlement Agreement, *Davis v. Henneberry* (formerly *Hawthorne-Bey v. Reinartson*), No. 04-CV-7059 (D. Colo. Dec. 19, 2007) (on file with National Center for Law and Economic Justice).

Benefits Management System problems, instruct counties to refund collections of overpayments caused by improper operation of the system, require counties that are not providing telephonic access to applicants and recipients to do so, and take steps to investigate and resolve system computer problems identified by plaintiffs. A late 2010 settlement amendment requires the Department of Human Services to achieve performance targets by certain dates for timely processing of cash assistance and food stamp applications.<sup>23</sup> There is a comparable settlement for the health programs.

The National Center for Law and Economic Justice's federal class action challenging Indiana's failure to process food stamp applications timely led to a preliminary injunction on consent, approved by the judge on October 19, 2009.<sup>24</sup> Indiana's timely processing plummeted following its flawed efforts at modernizing its benefits delivery system. Under the injunction, Indiana is required to improve its compliance with federal time frames, submit monitoring data to demonstrate the extent of its compliance, and create a mechanism for applicants to have individual problems resolved. Cocounsel are Bryan Cave and Shaw Friedman.

On December 10, 2009, after a four-day trial, the National Center for Law and Economic Justice and local counsel secured a permanent injunction requir-

ing Maryland to comply absolutely with timely processing requirements in the food stamp, Medicaid, and cash public assistance programs in one year.<sup>25</sup> Maryland was ordered to submit a corrective action plan within forty-five days, and plaintiffs had fifteen days to respond.<sup>26</sup> Maryland was required to supply plaintiffs with monthly processing data.<sup>27</sup>

When the suit was filed, plaintiffs claimed that each month thousands of Maryland residents had to wait for their food stamps, Medicaid, and cash assistance well beyond the federal and state-mandated time limits.<sup>28</sup> At the December 2009 trial the National Center for Law and Economic Justice submitted data that showed that almost one-out-of-five applications were delayed, with some applications backlogged from before April 2009.<sup>29</sup> For many needy families, delays in receiving assistance meant going hungry, forgoing medical care, or being rendered homeless.<sup>30</sup>

The National Center for Law and Economic Justice, together with the Rhode Island affiliate of the American Civil Liberties Union, filed in 2009 a federal class action lawsuit challenging Rhode Island for failure to process food stamp applications timely.<sup>31</sup> On October 19, 2009, the district court approved a settlement in which Rhode Island agreed to meet federal deadlines for processing food stamp applications.<sup>32</sup> The settlement required the state to meet timely

<sup>23</sup>Amended Stipulation and Order of Settlement Concerning the Department of Human Services, *Davis v. Henneberry*, No. 04-CV-7059 (D. Colo. Dec. 15, 2010) (on file with National Center for Law and Economic Justice).

<sup>24</sup>Complaint, *Bell v. Murphy*, No. 3:09-CV-148 (N.D. Ind. April 7, 2009) (on file with National Center for Law and Economic Justice).

<sup>25</sup>Amended Complaint, *Thompson v. Donald*, No. 24-C-09-002775 (Baltimore, Md., City Cir. Ct. Aug. 14, 2009) (on file with National Center for Law and Economic Justice).

<sup>26</sup>Order, *Thompson v. Donald*, No. 24-C-09-002775 (Baltimore, Md., City Cir. Ct. Dec. 10, 2009) (copy of court order on file with National Center for Law and Economic Justice; plaintiffs represented by National Center for Law and Economic Justice, Public Justice Center and Homeless Persons Representation Project, both of Baltimore, and Kirkland & Ellis).

<sup>27</sup>*Id.*

<sup>28</sup>Amended Complaint, *supra* note 25.

<sup>29</sup>Trial Exhibits, *Thompson v. Donald*, No. 24-C-09-002775 (Baltimore, Md., City Cir. Ct. Aug. 14, 2009) (copy of trial exhibits on file with National Center for Law and Economic Justice).

<sup>30</sup>*Id.*

<sup>31</sup>Complaint, *Spruill v. Alexander*, No. 09-CV-292 (D.R.I. July 6, 2009) (on file with National Center for Law and Economic Justice).

<sup>32</sup>*Id.*

processing rates in excess of 95 percent and to improve monitoring so as not only to measure timely processing but also to identify whether any delay was the fault of the applicant or the agency.<sup>33</sup> Rhode Island had blamed its failure to process timely on decreased staff and rapidly rising caseloads, but, within months of the action being filed, it was processing applications timely in excess of 95 percent of the time.

The National Center for Law and Economic Justice has also worked with local counsel in New York State to sue Erie, Columbia, Nassau, Steuben, and Suffolk Counties as well as New York City.<sup>34</sup> We sued the counties because the state had delegated to them day-to-day administration of SNAP.<sup>35</sup> California, North Carolina, Ohio, and Wisconsin also delegate operation of their food stamp programs to county governments.<sup>36</sup>

In each of the New York cases, the National Center for Law and Economic Justice and its colleagues secured a consent decree requiring, inter alia, that the county comply with the Food Stamp Act; monitor so as to demonstrate the extent to which food stamps are provided within statutory time frames to eligible households; and establish an individual relief system for households whose delayed applications are brought to the attention of the county by local advocates. Each of these consent decrees limits the court's oversight jurisdiction to a set number of months. However, if plaintiffs demonstrate that the county has not cured its untimely food stamp processing, plaintiffs may seek additional relief, including the extension of the court's jurisdiction.

The results in our cases can be remarkable. For example, in New York City, timely processing increased from 80 percent to 94 percent in less than one year.<sup>37</sup> As a consequence, thousands of households received food stamps timely when they otherwise would not have.

## II. Lessons Learned

Advocates need to understand why their state or county is performing poorly. We have identified a wide range of reasons why states and counties do not timely and accurately process applications and recertifications. We roughly divide them into technology, staffing, management, and failure to exploit policy options. All of these frequently overlap.

Notice that most poorly performing states have more than one barrier to timely and accurate processing. For example, a state's food stamp agency may be understaffed and poorly managed and have antiquated technology. Unfortunately for attorneys hoping to fight SNAP application delay, the same root causes—a failure to plan for periods of increased demand and inept oversight by the agency—manifest in different ways from state to state.

Even states that have had a history of being well run can be overwhelmed by a rapid increase in applications, and they cannot increase worker capacity to respond to such a challenge. During this recession, some agencies have not been able to turn to their governors or legislators for the necessary overtime or for increased hiring authority to keep pace with the increase in applications. In

<sup>33</sup>*Id.*

<sup>34</sup>Complaint, *Martin v. Weiner*, No. 06 CV 0094(E) (W.D.N.Y. Feb. 10, 2006); Complaint, *Travis v. Mossman*, No. 11-CV-0374 (N.D.N.Y. April 5, 2011); Complaint, *Dowdell v. Imhof*, No. 2:10-CV-01332 (E.D.N.Y. March 24, 2010); Complaint, *Kari C. v. Muller*, No. 09-CV-6367 (W.D.N.Y. July 15, 2009); Complaint, *Maryann C. v. Demarzo*, No. 2:08-CV-346 (E.D.N.Y. Aug. 22, 2008); Complaint, *Williston v. Eggleston*, No. 04-CV-4454 (S.D.N.Y. June 15, 2004) (on file with National Center for Law and Economic Justice). Cocounsel in *Williston* are the New York Legal Assistance Group and the Urban Justice Center. Cocounsel in *Martin* is the Western New York Law Center. Cocounsel in *Kari C.* are the Western New York Law Center and the Empire Justice Center. Cocounsel in *Travis*, *Maryann C.*, and *Dowdell* is the Empire Justice Center.

<sup>35</sup>N.Y. COMP. CODES R. & REGS. tit. 18, § 387.2 (2012).

<sup>36</sup>CAL. WELF. & INST. CODE § 15511 (Deering 2012); N.C. GEN. STAT. ANN. § 108A-51 (West 2011); OHIO REV. CODE ANN. § 5101.54(A)(8)(e) (West 2011); WIS. STAT. ANN. § 49.79 (West 2011).

<sup>37</sup>Monthly monitoring data from *Williston*, No. 04-CV-4454, are in our files.

these situations litigation may be a catalyst to increased staffing.

The Food and Nutrition Service had exercised ongoing oversight responsibility in a number of the states, including Colorado, Indiana, Maryland, and Rhode Island, where we have litigated. Many of those states have developed multiple corrective action plans. However, due to the limited enforcement tools available to the Food and Nutrition Service, litigation has been necessary for quick and significant improvement.

Below we discuss some of the reasons why states find processing applications difficult. Our observations are drawn from our litigation and are not meant as an in-depth analysis. Instead our observations are intended as a primer for the advocate who is seeking to identify the root causes of delays and errors in food stamp processing.

#### **A. Outdated Technology or Poorly Implemented New Technology**

Some state and local agencies have failed to upgrade their dated technology systems or have deployed new technology systems that have not functioned properly. These failures have contributed to application processing delays and other problems. Technology systems include computers, telephones, call centers, document imaging, and websites that allow individuals to apply for benefits, check case status, and report changes. Some states still use outdated legacy computer systems for processing benefits; these systems are increasingly difficult to maintain and have limited functionality. Some states have phone systems that simply cannot handle the volume of beneficiary calls; beneficiaries

cannot get through to workers. Advocates are well acquainted with these problems.

In recent years, however, many states have moved to modernize their public benefits administration by upgrading technology or introducing new technology systems.<sup>38</sup> Such modernization, if done well, can improve access to benefits and enhance administration; however, poor planning and implementation can result in wrongful denial, delay, and termination of benefits. Modernization raises many challenges and presents advocacy opportunities that we do not go into here.<sup>39</sup>

Technology problems contribute to application-processing delays in various ways. For example, in some of our cases, we find that agencies have not upgraded technology in basic ways. These agencies may accept only paper applications and require workers to do the benefits calculation rather than use computer systems for eligibility determinations. Paper application and manual processing are time-consuming and inefficient. Likewise, limited telephone systems mean that applicants and recipients, who may need to get through for telephone interviews or to deal with verification problems, get repeated busy signals or cannot leave messages. When application volume is rapidly increasing, such inadequate systems can lead to applications getting lost or left piled up on desks, lost or misplaced mailed-in verification documents, workers incorrectly concluding that applicants failed to take a required step, errors in eligibility determinations or calculations, failure to issue timely notice, and unreliable monitoring of the process and the agency's performance.

<sup>38</sup>For a survey of state online capacity for public benefits programs, see Center on Budget and Policy Priorities, *Online Services for Key Low-Income Benefit Programs: What States Provide Online with Respect to SNAP, TANF, Child Care Assistance, Medicaid, CHIP, and General Assistance* (May 31, 2012), [http://bit.ly/cbpp\\_states\\_online](http://bit.ly/cbpp_states_online). In recent years the Food and Nutrition Service has issued reports and technical assistance guides for states on modernization issues (see, e.g., Food and Nutrition Service, U.S. Department of Agriculture, *Supplemental Nutrition Assistance Program Workload Management Matrix* (July 2010/1), <http://1.usa.gov/MEoQ5s>; *id.*, *Process and Functionality of States' Call Centers (CC's)-3/10* [March 30, 2011], <http://1.usa.gov/OU512l>; Letter from Lizbeth Silbermann, Director, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, to Regional Directors, *Supplemental Nutrition Assistance Program, Online Application Review Results and Action Items* (Dec. 17, 2010), <http://1.usa.gov/OXijmF>; Food and Nutrition Service, U.S. Department of Agriculture, *Call Center/Contact Center Support for States: A Framework and Reference Guide* (Aug. 2011), <http://1.usa.gov/MFPydw>.

<sup>39</sup>See, e.g., Mary R. Mannix et al., *Public Benefits Privatization and Modernization: Recent Developments and Advocacy*, 42 CLEARINGHOUSE REVIEW 4 (May–June 2008).



In other states premature and flawed technology upgrade rollouts have wrought havoc for applicants and recipients. For example, Colorado's rollout of its new computer system was a well-publicized disaster, leading to disruptions of benefits to low-income families, court intervention, and ongoing audits by the federal government.<sup>40</sup> Indiana's 2007 launch of its modernization initiative, which relied on closing offices and increasing reliance on online applications, centralized call centers, document imaging, and a revised work process staffed by private vendors, likewise resulted in increased application delays and lost benefits—and ultimately litigation by beneficiaries and between the state and the contractor.<sup>41</sup>

Technology enhancements can make a profound difference if carefully planned and well executed, and states are planning long-range to improve administration.<sup>42</sup> Updated monitoring software can allow social service officials to time each phase of the application, to identify which worker or office is functioning efficiently, and to track volume changes and backlogs in real time. Better software can remove a lot of worker discretion, determine eligibility speedily, increase consistent findings of eligibility, and allot food stamps correctly.

Improved technology enables applicants to interact with the social services agency over the telephone or Internet. Indeed, at its most sophisticated, technology enhancements enable applicants to complete most, if not all, of the application over the Internet and telephone. However, agencies have to take care to strike the appropriate balance between automation and face-to-face interaction

with a caseworker for those who need it. Indiana learned this lesson the hard way with its flawed modernization. It modified its processes to restore more opportunities for beneficiaries to deal directly with caseworkers.<sup>43</sup>

## B. Staffing

Many states and counties reduced staffing as tax revenues declined. Social service agencies were asked to do more with (often considerably) less. Agencies need to determine how many more staff members are needed to keep pace with increased applications and recertifications. Competent managers ought to calculate a staff-to-client ratio and seek the appropriate number of workers from the governor and the legislature.

Litigation can assist social service agencies in negotiating for more staff members. In an almost Darwinian competition for scarce state and local dollars, filing an application-processing lawsuit, resulting in an adverse press and public scrutiny, may free up funds to hire additional workers.

However, simply hiring more eligibility workers is not the panacea it may seem for these reasons: (1) Hiring is often lengthy. Civil service rules or union contracts may necessitate hiring that can take many months. (2) Increased staffing begets the need for more staffing. For example, the new application workers will need supervisors and clerical support staff. (3) The new workers need work space, computers, and phones. Many social service agencies downsized their physical plants when they downsized their staffs. (4) The new staff needs to be trained.

<sup>40</sup>Michael Booth, *Federal Audit Targets Delays, Errors in Colorado's Benefits Computer System*, DENVERPOST.COM, Feb. 13, 2011, <http://bit.ly/Ml4zga>.

<sup>41</sup>Associated Press, *Indiana: IBM Welfare Intake Work Flawed from Start*, INDIANAPOLIS BUSINESS JOURNAL, July 21, 2010, <http://bit.ly/NtB3cA>. For an overview of the project, see U.S. Department of Agriculture, Update on USDA Oversight of Indiana's Eligibility Modernization Project, 13th Quarterly Report to Congress (May 2011) (on file with National Center for Law and Economic Justice).

<sup>42</sup>State Corrective Action Plans are submitted to the Food and Nutrition Service to remedy deficiencies in SNAP administration and frequently describe state modernization plans (see, e.g., Connecticut SNAP Corrective Action Plan (May 7, 2012) and Department of Human Services Hawaii Supplemental Nutrition Assistance Program Corrective Action Plan (March 2011) (both on file with National Center for Law and Economic Justice)). The Affordable Care Act offers opportunities for states to integrate and streamline the administration of public benefits programs (see, e.g., January Angeles et al., Center on Budget and Policy Priorities, Coordinating Human Services Programs with Health Reform Implementation: A Toolkit for State Agencies (June 6, 2012), <http://bit.ly/N0dimp>).

<sup>43</sup>See U.S. Department of Agriculture, *supra* note 41.

All in all, while advocates ought to assess the need for more staffing as a component of a set of solutions, they must understand that the actual payoff could be six to eighteen months from the agreement to add staff.

### C. Poor Management

Improvements in management may yield the fastest improvement in performance. Issues of poor management can manifest in lax supervision of frontline workers, the agency head not stressing the importance of timeliness and accuracy, or vacancies in critical positions. Litigation can focus an agency's attention and can lead to a shake-up of key management. Hiring a new commissioner or assistant commissioner galvanizes an agency operating at less than peak efficiency. The social services agency may create a team to visit local offices and identify workflow and other impediments to timely and accurate application processing. The National Center for Law and Economic Justice has seen that successful strategy in Colorado, Maryland, and New York.

The agency may turn to outside experts and consultants for evaluation and management assistance to improve application processing. For example, the Southern Institute on Children and Families offers a twelve-month program to work with state and county agencies seeking process improvement in the Children's Health Insurance Program and Medicaid.<sup>44</sup> Increasingly states are moving from an individual caseworker model to a task-based model as part of modernization.

However, what management and business improvements are necessary and how to quantify the likely impact can be difficult to understand. The message to caseworkers that timeliness and accuracy matter can be as important as the actual improvements in business processes. In many respects, the changes can lead to accountability, but agencies can also achieve results in large measure

by hiring and nurturing caseworkers who believe that they are fulfilling a critical mission.

### D. Failure to Utilize Policy Options

Policy changes that states may adopt can streamline the application process. States may choose to simplify the reporting of income and other information or to change the schedule for recertifying food-stamp households. States can simplify the definitions of income or resources or both. For example, they may treat vehicle ownership in different ways to determine eligibility. A comprehensive discussion of policy options can be found at the Food and Nutrition Service's State Options Report.<sup>45</sup> This report gives advocates a good sense of what options a state is not using to simplify eligibility for food stamps.

## III. A Remedy in Litigation

Understanding why the state or local agency is performing poorly, the advocate can determine whether the corrective action proposed in litigation will lead to improved timeliness and accuracy. However, the National Center for Law and Economic Justice does not favor incorporating the proposed corrective action into the court order or negotiated consent decree. First, we do not know which fix or fixes are likely to work and how to quantify the improvements in accuracy or timeliness they will yield, if any. Tying improvement benchmarks and timetables to specific undertakings is very speculative.

Second, we do not want to endorse one change over another. For example, while we may believe that application simplification ought to yield increased timeliness, we do not want to be limited in complaining about the state's failure to be timely.

And, third, we believe that the law requires certain outcomes and not uncertain input. The National Center for Law

<sup>44</sup>Southern Institute on Children and Families, Eligibility Process Improvement Center, The Center's Process Improvement Collaborative (2005), <http://bit.ly/NUMf98>.

<sup>45</sup>Food and Nutrition Service, U.S. Department of Agriculture, Supplemental Nutrition Assistance Program State Options Report (Nov. 2010), <http://1.usa.gov/Owoo30>.

and Economic Justice does not seek to micromanage the social service agency and insists instead that the agency meet its legal obligations by whatever means necessary. Moreover, courts prefer to order improved performance and leave the states to decide how to achieve timeliness.

Notwithstanding the focus on outcomes, iteration typically results in understanding why the state or county is not meeting its legal obligations. Iterating, the agency is more likely to process applications more timely and accurately. Moreover, understanding why the agency fails to comply with legal mandates, advocates can involve other stakeholders such as technology experts, the governor's office, the legislature, or the Food and Nutrition Service.

Identifying systemic problems in applying for benefits ought to begin before litigation is filed and can inform how the

pleadings and supporting motions are drafted. But any engagement with the social services agency over the causes of benefit-processing deficiencies and the remedies is not a substitute for impact litigation. Only coercive litigation, in the National Center for Law and Economic Justice's experience, can both pressure the state or county agency to undertake improvements and impose harsh results if the agency fails to achieve intended goals in the mandated timelines.

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