



Nutrition¹

INTRODUCTION

The Agricultural Act of 2014 (“2014 Farm Bill”) is the most recent multi-year, omnibus piece of legislation governing food and agricultural programs. Title IV–Nutrition is divided into three subtitles covering the Supplemental Nutrition Assistance Program (“SNAP”), Commodity Distribution Programs, and Miscellaneous programs, including Farm-to-School, Seniors Farmers’ Market Nutrition, and amendments to dietary guidelines among others. The Nutrition Title, along with Crop Insurance, Conservation, and Farm Commodity Support, comprises 99 percent of the total budget, with SNAP representing 80% of the projected net outlays.²

This background memo discusses the history of Title IV in farm bills, the programs offered in Title IV, and the major changes made in the 2014 Farm Bill. It concludes with recommendations for potential areas of focus in the next farm bill. These areas of focus fall under two main themes. The first thematic area relates to the robust maintenance of SNAP, particularly in light of the current political climate. The second thematic area relates to identifying small, reasonable changes within the Nutrition Title that can be framed with bipartisan appeal. In that vein, we suggest that particular attention be paid to changes that can help promote small businesses and rural development. We identify two potential areas—an improved focus on public health and tracking and evaluation—and conclude by identifying a list of several other potential areas for policy reform.

I. HISTORY

Before Congress enacted the Agricultural and Consumer Protection Act of 1973, farm bills focused on farm commodity programs that provided support for staple commodities (corn, soybeans, wheat, cotton, rice, dairy, and sugar).³ But the 1973 Farm Bill included amendments to the Food Stamp Act of 1964 and the Commodity Distribution Program, expanding its coverage of food and agricultural policies and making it the first “omnibus” farm bill.⁴

SNAP grew out of the Food Stamp Program of 1939 and the pilot programs of the 1960s.⁵ The Food Stamp Program of 1939 was enacted to connect the food needs of the poor and the food surpluses of the Great Depression.⁶ Those on public assistance purchased orange stamps for one dollar up to the amount of their monthly food expenditures.⁷ For every orange stamp purchased they received a blue stamp worth fifty cents.⁸ Blue stamps could be used only on foods that were deemed surplus by the United States

¹ The following people contributed to this report: Emilie Aguirre (UCLA School of Law, Resnick Program for Food Law & Policy), Mallory Neumann (Florida State University College of Law), Emma Clippinger (Harvard Law School Food Law and Policy Clinic), Jude Lee (Harvard Law School), and Eliza Pan (Summer Intern, Harvard Law School Food Law and Policy Clinic).

² CONGRESSIONAL RESEARCH SERVICE, *The 2014 Farm Bill (Agricultural Act of 2014, P.L. 113-79) (2014)*, <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/IF00014.pdf>.

³ *Id.*

⁴ Renee Johnson and Jim Monke, *What Is the Farm Bill?*, CONGRESSIONAL RESEARCH SERVICE 2 (July 23, 2014), <https://fas.org/sgp/crs/misc/RS22131.pdf>.

⁵ Committee on Examination of the Adequacy of Food Resources and SNAP Allotments, Food and Nutrition Board, Committee on National Statistics, Institute of Medicine, National Research Council, *Supplemental Nutrition Assistance Program Examining the Evidence to Define Benefit Adequacy, 2 History, Background and Goals of the Supplemental Nutrition Assistance Program* (Caswell and Yaktine, 2013), available at <http://www.ncbi.nlm.nih.gov/books/NBK206907/>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*



Department of Agriculture (“USDA”) while orange stamps could be used on any food.⁹ In 1943, unemployment levels had declined and there was a reduction in agricultural surpluses so the Food Stamp Program of 1939 was terminated.¹⁰

The food stamp program reappeared when President John F. Kennedy announced that the USDA would conduct food stamp pilot programs in 1961.¹¹ The success of the pilot programs prompted President Lyndon Johnson to request a permanent food stamp program and he signed it into law in 1964.¹² The Food Stamp Act of 1964 allowed for the purchase of any food for home consumption except imported foods, and alcohol and tobacco products were also prohibited.¹³

The eligibility standards were amended in 1971 to create a national standard rather than a state-by-state regime and in 1974 the program expanded nationwide.¹⁴ A major change to the purchase requirement occurred in the enactment of the Food Stamp Act of 1977. Instead of participants purchasing the amount of stamps equal to their monthly food expenditures, the purchase amount would be equal to the cost of a healthy diet as determined by the USDA.¹⁵ The new purchase requirement was controversial and was eventually eliminated.¹⁶ Participants were to receive the amount in coupons of the formerly free portion of the previous purchase requirement and were supposed to supplement their coupons with cash to buy foods for a healthy diet.¹⁷ In passing the 1977 act there was an attempt to exclude the purchase of foods with low nutritional value but that policy did not make it into the final bill.¹⁸

During the 1980s, concerns about the costs of the food stamp program grew, driving the passage of legislation to change eligibility standards requiring households to meet a certain gross income.¹⁹ By the 1990s, further legislation gave more control to states, changed some eligibility requirements for legal noncitizen residents and able-bodied adults without dependents, and established the EBT system, which went nationwide in 2002.²⁰ Through the enactment of the Food, Conservation, and Energy Act of 2008 (“2008 Farm Bill”), the name of the food stamp program was changed to SNAP in order to fight the stigma of food stamps, and the Food Stamp Act of 1977 was renamed as the Food and Nutrition Act of 2008.²¹ In the wake of the economic recession of 2007-09, SNAP participation increased, and Congress enacted the American Recovery and Reinvestment Act of 2009 to increase SNAP benefits.²²

Today’s SNAP program was reauthorized in the 2014 Farm Bill, maintaining eligibility requirements but changing income deduction calculations to determine SNAP eligibility by amending the Low-Income Home Energy Assistance Program (“LIHEAP”).²³ The 2014 Farm Bill also brought about new pilot

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *A Short History of SNAP*, USDA Food and Nutrition Service, <http://www.fns.usda.gov/snap/short-history-snap>.

²¹ *Id.*

²² Committee on Examination of the Adequacy of Food Resources and SNAP Allotments, *supra* note 5.

²³ Laura Tiehen, *2014 Farm Act Maintains SNAP Eligibility Guidelines and Funds New Initiatives*, USDA ECONOMIC RESEARCH SERVICE (July 07, 2014), <http://www.ers.usda.gov/amber-waves/2014-july/2014-farm-act-maintains-snap-eligibility-guidelines-and-funds-new-initiatives.aspx#.V46sIusrLcs>.



programs for employment and training of SNAP recipients, more funding for technology to prevent SNAP trafficking, and grants for organizations that encourage the purchase of fruits and vegetables.²⁴

II. THE 2014 FARM BILL

A. Subtitle A – SNAP

Subtitle A of the 2014 Farm Bill reauthorizes SNAP by amending the Food and Nutrition Act of 2008. The Food and Nutrition Act of 2008 outlines the establishment of SNAP and all topics that relate to the implementation and administration of the program such as eligibility of participants, the value of the benefits allotted, approval of retail stores where benefits can be redeemed, authorization of appropriations, grant programs, and so on. The Act also declares the policy of Congress to protect the health of the population by improving the nutrition of low-income households.²⁵ The SNAP program is the bulk of Title IV and accounts for a large amount of spending as it serves approximately 45–47 million people each month.²⁶ SNAP regulations also afford states additional flexibility by providing individual states may apply for waivers to be approved by USDA under certain conditions, including when approval of a waiver would result in more effective and efficient administration of the SNAP program. As of May 2016, the USDA had approved almost 260 SNAP waivers from almost all 50 states, including the District of Columbia, Guam, and the Virgin Islands.²⁷ Examples of common waivers that many states utilize include allowing telephone interviews instead of face-to-face interviews and the “early denial” waiver, also known as “deny applications before the 30th day,” which allows households thirty days to provide the state verification of any missing information without the termination of their benefits.²⁸ With the transition of the presidential administration, it is important to consider the important influences the incoming Secretary of Agriculture will have on what sorts of waivers are accepted. Appendix B contains a table of all currently approved waivers, encompassing 25 different types, and their implementation and expiration dates, listed by state.

i. Reauthorization of Appropriations

Section 4024 reauthorized appropriations for the SNAP program through fiscal year 2018.²⁹ SNAP is categorized as a mandatory program.³⁰ A mandatory program is paid for through the Farm Bill by using a multi-year budget estimate to appropriate an amount of funds to carry out the program.³¹ In contrast, a discretionary program is one that is authorized by the Farm Bill but is not funded by the Farm Bill.³² In fiscal year 2015, SNAP served approximately 45.8 million people per month.³³

ii. Eligibility

²⁴ *Agricultural Act of 2014: Highlights and Implication, Nutrition: Title IV*, USDA ERS (last updated on Friday, April 11, 2014), <http://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications/nutrition.aspx>.

²⁵ H.R. 2642 § 4024

²⁶ Tiehen, *supra* note 23.

²⁷ *SNAP Certification Policy Waiver Database*, U.S. DEPT. OF AGRIC. FOOD AND NUTRITION SERVICE, <http://www.fns.usda.gov/snap/snap-certification-policy-waiver-database> (last visited Dec. 13, 2016).

²⁸ *Id.*

²⁹ 7 U.S.C. § 2011

³⁰ Randy A. Aussenberg, *SNAP and Related Nutrition Provisions of the 2014 Farm Bill (P.L. 113-79)*, Congressional Research Service 5 (April 24, 2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43332.pdf>.

³¹ Johnson, *supra* note 4 at 4.

³² *Id.*

³³ Randy A. Aussenberg, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, Congressional Research Service 5 (February 2, 2016), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42505.pdf>.



The 2014 Farm Bill retained the basic SNAP eligibility requirements³⁴ while making some changes to certain income and expense deductions.³⁵ Eligibility is generally governed by federal statute but states retain some flexibility to choose to determine eligibility through categorical eligibility.³⁶

a. Traditional Eligibility

Traditional eligibility is set by federal statute in the Food and Nutrition Act of 2008.³⁷ A set income and asset threshold is determined as a national standard for eligibility as well as income and expense deductions.³⁸ A household's gross income is the household's net monthly income less any deductions listed in Section 5 of the Food and Nutrition Act and less an additional portion in recognition of the fact that a household's income is not used solely for the purpose of purchasing food.³⁹ If a household's gross income is at or below the threshold then the household qualifies for SNAP benefits.⁴⁰ Households without elderly or disabled members receive a standard deduction, an earned income deduction, a child support deduction, and an excess shelter deduction.⁴¹ Households with elderly or disabled members receive the same deductions but have an uncapped excess shelter deduction and a deduction for any out-of-pocket medical expenses that are incurred by the elderly or disabled members if they exceed \$35 a month.⁴² Section 4005 prohibits medical marijuana from qualifying as a medical expense.⁴³

b. Categorical Eligibility

As an alternative to the traditional income and asset thresholds, states have the option to use categorical eligibility to determine if a household can receive SNAP benefits. Categorical eligibility makes certain households automatically eligible for SNAP because the household already receives benefits through other low-income assistance programs.⁴⁴ Households receiving Temporary Assistance for Needy Families ("TANF") grants, Supplemental Security Income assistance, or state General Assistance automatically qualify to receive SNAP benefits.⁴⁵ This option allows a state to bypass the income and asset thresholds of traditional eligibility but states must still impose a gross income limit of 200% of the federal poverty line in order to determine eligibility for SNAP through administration of TANF benefits.⁴⁶

c. Work-Related Requirements

In addition to income and asset requirements, non-elderly and able-bodied adult SNAP participants are also subject to work-related requirements in order to retain eligibility.⁴⁷ All states administering SNAP require most able-bodied adults to register for work with the applicable state agency, accept a suitable job

³⁴ 7 U.S.C. § 2014

³⁵ Tiehen, *supra* note 23.

³⁶ Aussenberg, *supra* note 33 at 1.

³⁷ *Id.* at 3.

³⁸ *Id.*

³⁹ *Id.* at 4.

⁴⁰ *Id.*

⁴¹ *Id.* at 5.

⁴² *Id.* at 5-6.

⁴³ 7 U.S.C. § 2014(e)(6); *accord Questions & Answers Concerning the Agricultural Act of 2014 Sections 4005, 4007, 4008, 4015, 4022, 4025, 4031*, USDA FOOD AND NUTRITION SERVICE 1-2 (June 10, 2014), <http://www.fns.usda.gov/sites/default/files/SNAP%20Questions%20and%20Answers%20Concerning%20the%20Agricultural%20Act%20of%202014%20Sections%204005,%204007,%204008,%204009,%204015,%204022,%204025,%204031.pdf>

⁴⁴ *Id.* at 3.

⁴⁵ *Id.* at 3-4.

⁴⁶ *Id.* at 8.

⁴⁷ *Id.* at 9.



offer, participate in any state SNAP job training requirements, provide information on the participant's job availability, not quit a job without good cause, or work less than 30 hours a week.⁴⁸ SNAP participants are subject to disqualification if they do not comply with work requirements and the time period of disqualification differs based on if it is a first, second, or third violation.⁴⁹

Federal law exempts certain categories of SNAP participants from the work requirements and in fiscal year 2014, 64% of recipients were exempted.⁵⁰ Participants who are mentally or physically unfit for work, under the age of 16 or over 59, between ages 16 and 18 if they are not head of the household or are attending school, those working 30 hours a week, those caring for dependents under the age of 6, those who are complying with other training and job search requirements, some postsecondary students, and those in substance abuse treatment programs are exempted.⁵¹

State agencies administering SNAP are required to have an Employment and Training ("E&T") program but can limit who must participate and how often.⁵² E&T program participation can even be based on voluntary attendance if the state designs it that way.⁵³ Section 4022 allows states to expand and evaluate their E&T programs and requires reporting on performance indicators and outcomes.⁵⁴ Ten pilot projects will receive grants and the projects must collectively represent geographic variety, targeted subpopulations, and mandatory and voluntary participation.⁵⁵

Additionally, there is a time limit requirement for SNAP benefits for able-bodied adults who are between the ages eighteen to forty-nine and who do not have dependents.⁵⁶ This is known as the Able-Bodied Adults without Dependents ("ABAWD") Rule, and it requires the applicable participant to work at least 20 hours per week, participate in an employment or training program for at least twenty hours per week or participates in a state's welfare program or their SNAP benefits will be reduced to three months out of the 36-month period.⁵⁷ This rule can be waived in areas that have an unemployment rate over 10% or do not have a sufficient amount of jobs to provide employment for the participants.⁵⁸

In March 2015, California, Delaware, Georgia, Illinois, Kansas, Kentucky, Mississippi, Virginia, Vermont, and Washington were chosen to receive awards from a \$200 million fund for pilot projects that would help target populations receive skills training, work-based learning, transportation and childcare, and other job strategies.⁵⁹ The target populations include able-bodied adults without dependents, individuals with low skills, and those in low-wage and part-time jobs.⁶⁰

Finally, states may also request waivers for the ABAWD time limit in areas that have an unemployment rate above 10% or a lack of sufficient jobs.⁶¹ States can demonstrate unemployment or lack of sufficient

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Aussenberg, *supra* note 33 at 13.

⁵⁵ *Id.*

⁵⁶ *Id.* at 10.

⁵⁷ *Id.*

⁵⁸ *Id.* at 11.

⁵⁹ USDA OFFICE OF COMMUNICATIONS (202) 720-4623, *USDA Awards \$200 Million for Skills Training to Help SNAP Recipients Get Good Jobs*, USDA (last date modified: 03/20/2015), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2015/03/0071.xml>.

⁶⁰ *Id.*

⁶¹ *Id.*



jobs in several ways, including among others designation as a Labor Surplus Area (LSA) by the Department of Labor, qualification for extended unemployment benefits, and recent 24-month average unemployment rate 20 percent above the national average for the same 24-month period.⁶² Most states have waived the time limit due to employment difficulties statewide following the 2008 economic crisis.⁶³ However, as the economy has recovered, many states now may allow these waivers to expire. According to the Center for Budget and Policy Priorities (“CBPP”), more than 500,000 adults could lose SNAP benefits as waivers expire.⁶⁴

iii. Ineligibility

In addition to ineligibility based on exceeding the income and asset thresholds, individuals can be denied benefits for violating work-related requirements or may fall within other categories of ineligible individuals.⁶⁵ Many non-citizens and college students are ineligible to receive SNAP benefits.⁶⁶ Section 4007 modified the eligibility of students who are participating in an E&T program with an education component.⁶⁷ Now students enrolled at least half time at a higher-education institute as part of an E&T program in career or technical education or in remedial education, basic adult education, literacy, or English as a second language courses can qualify for SNAP benefits.⁶⁸

Section 4008 added more categories of criminal convictions that could affect eligibility. The prior law only excluded drug felony offenses⁶⁹ but the 2014 Farm Bill added convictions for aggravated sexual abuse, murder, sexual exploitation and abuse of children, sexual assault, and similar state laws as disqualifying circumstances if the felon is not in compliance with the terms of their sentence.⁷⁰ The convicted individual will not be considered a member of the household except the individual’s income will be considered as part of the income and resources of the household when calculating benefits.⁷¹

Also, Section 4009 explicitly ends receipt of SNAP benefits for those participants who have substantial lottery or gambling winnings.⁷² Although the SNAP eligibility calculations would make a substantial lottery or gambling winner ineligible to receive benefits there were several instances in which SNAP participants had won large sums of money and the state agencies had learned of this information through media reports.⁷³

iv. Benefit Calculation

⁶² *Id.*

⁶³ Memorandum from U.S. Dept. of Agric. Food and Nutrition Service (Mar. 4, 2014), *available at* <https://www.fns.usda.gov/sites/default/files/snap/SNAP-Expiration-of-Statewide-ABAWD-Time-Limit-Waivers.pdf>.

⁶⁴ Ed Bolen et. al., *More Than 500,000 Adults Will Lose SNAP Benefits in 2016 as Waivers Expire*, CENTER ON BUDGET AND POLICY PRIORITIES (March 18, 2016), <http://www.cbpp.org/research/food-assistance/more-than-500000-adults-will-lose-snap-benefits-in-2016-as-waivers-expire>.

⁶⁵ Aussenberg, *supra* note 33 at 11.

⁶⁶ *Id.* at 12.

⁶⁷ *Questions & Answers Concerning the Agricultural Act of 2014 Sections 4005, 4007, 4008, 4015, 4022, 4025, 4031*, USDA FOOD AND NUTRITION SERVICE 1-2 (June 10, 2014), <http://www.fns.usda.gov/sites/default/files/SNAP%20Questions%20and%20Answers%20Concerning%20the%20Agricultural%20Act%20of%202014%20Sections%204005,%204007,%204008,%204009,%204015,%204022,%204025,%204031.pdf>.

⁶⁸ *Id.*

⁶⁹ Aussenberg, *supra* note 33 at 16.

⁷⁰ USDA FNS, *supra* note 63.

⁷¹ H.R. 2642 at 140.

⁷² *Id.* at 4.

⁷³ Aussenberg, *supra* note 33 at 15.



SNAP benefits are calculated by using household size, income, and deductible expenses as factors.⁷⁴ As discussed in the previous section, a household's net income is calculated by subtracting a standard deduction for all households, an excess shelter deduction, and an excess medical expense deduction for households with disabled or elderly participants.⁷⁵

The 2014 Farm Bill retained general federal benefit calculations but made a change to the way an excess shelter deduction is calculated.⁷⁶ Included in an excess shelter deduction is a deduction for heating and cooling expenses, so if a household incurs expenses for heating and cooling then they can receive a higher deduction from their income and therefore receive more SNAP benefits.⁷⁷ Households are able to document these heating and cooling expenses through the receipt of payments from the Low Income Home Energy Assistance Program ("LIHEAP").⁷⁸ LIHEAP is administered by the U.S. Department of Health and Human Services ("HHS") and provides grants to assist low-income households with energy costs.⁷⁹ States can use a standard utility allowance ("SUA") to calculate the excess shelter deduction pertaining to utility costs by averaging the state's utility costs instead of collecting individual household's utility bills.⁸⁰ The practice of using the SUA to calculate a household's benefits is known as "Heat and Eat".⁸¹

Previous farm bills allowed states to use the SUA for households that received any amount of LIHEAP benefits.⁸² A household receiving any amount of LIHEAP assistance would receive a larger excess shelter deduction resulting in a larger amount of SNAP benefits.⁸³ But Section 4006 now requires that LIHEAP payments be greater than \$20 in order for a state to be able to use the SUA to calculate SNAP benefits for the household.⁸⁴ The Congressional Budget Office ("CBO") estimates that this change could reduce SNAP spending by \$8.6 billion between fiscal years 2014-2023.⁸⁵

v. Benefit Issuance, Redemption, and Trafficking

SNAP benefits are issued monthly⁸⁶ through a debit-like card by the state agency administering the program.⁸⁷ Electronic benefit transfer technology ("EBT") is utilized to allow SNAP recipients to purchase eligible foods at approved stores with their benefit cards. Prior farm bills provided EBT machines to authorized retailers at no cost⁸⁸ but Section 4002 now imposes all costs of acquiring,

⁷⁴ *Id.* at 17.

⁷⁵ Aussenberg, *supra* note 33 at 17.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Gilberto Soria Mendoza, "Heat and Eat" and SNAP Changes in the 2014 Farm Bill, NATIONAL CONFERENCE OF STATE LEGISLATURES (4/16/2014), <http://www.ncsl.org/research/human-services/-heat-and-eat-and-snap-changes-in-the-2014-farm-bill.aspx>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Randy A. Aussenberg and Libby Perl, *The 2014 Farm Bill: Changing the Treatment of LIHEAP Receipt in the Calculation of SNAP Benefits*, CONGRESSIONAL RESEARCH SERVICE 3 (February 12, 2014), http://www.ncsl.org/Portals/1/Documents/cyf/2014FarmBill_LIHEAP.pdf.

⁸⁴ *Id.* at 1.

⁸⁵ *Id.*

⁸⁶ Aussenberg, *supra* note 33 at 17.

⁸⁷ *Id.* at 16.

⁸⁸ Aussenberg, *supra* note 33 at 21.



implementing, and maintaining EBT equipment on the retailer.⁸⁹ The CBO has estimated that the shift in costs will save \$77 million over ten years.⁹⁰

The 2014 Farm Bill also expanded how benefits could be redeemed. Previous farm bills only allowed for wired EBT machines⁹¹ but Section 4011 allows for mobile technologies and Internet transactions.⁹² One potential recommendation for farm bill reform concerns the opportunity for wireless mobile technology in lieu of standard EBT machines for retailers that might find EBT machines too expensive or otherwise burdensome.

In addition to expanding the way benefits can be redeemed, the bill expanded measures to prevent trafficking of SNAP benefits. Section 4002 now requires all EBT service providers to have a “unique terminal identification number” so that the USDA can track transactions to prevent fraud.⁹³ Section 4010 also prevents trafficking by allowing states to decline to issue replacement cards to participants who made excessive requests⁹⁴ and Section 4029 provides the USDA with funds to employ technology such as data mining to administer SNAP.⁹⁵ Section 4016 requires data exchange standards for information that States must report.⁹⁶ And Section 4017 requires the USDA to implement pilot projects to investigate and reduce retailer fraud.⁹⁷

vi. Authorized Retailers

SNAP benefits can only be used to purchase eligible foods at authorized retailers.⁹⁸ Section 3(k) of the Food and Nutrition Act of 2008 defines what foods are eligible for purchase with benefits and what is required of a retail food store.⁹⁹ Foods that are eligible for purchase with SNAP benefits include food products for home consumption and seeds and plants used in gardens for personal consumption by the household.¹⁰⁰ Foods that cannot be purchased using SNAP benefits are alcohol, tobacco, hot foods, and hot foods ready for immediate consumption except for those that are provided in other sections of the bill which includes meals prepared at senior citizens centers and meals provided by a private establishment that a state has contracted with to offer meals to disabled, elderly, and homeless individuals.¹⁰¹

a. Definition of Retail Food Store

Section 4002 changed the definition of a retail food store.¹⁰² In order for an establishment to qualify as a retail food store that can accept SNAP benefits, the establishment must offer at least seven foods in each of the categories of staple foods ((a) meat, poultry, or fish, (b) bread or cereals, (c) vegetables or fruits, (d)

⁸⁹ 7 U.S.C. § 2016(f)(2); H.R. 2642 § 4002(b)(1) at 135.

⁹⁰ Aussenberg, *supra* note 33 at 21.

⁹¹ *Id.* at 22.

⁹² *Id.*

⁹³ *Id.* at 21; H.R. 2642 § 4002(b)(2); 7 U.S.C. § 2016(f)(5).

⁹⁴ H.R. 2642 § 4010(3); 7 U.S.C. 2016(h)(8)(B).

⁹⁵ H.R. 2642 § 4029; 7 U.S.C. § 2011.

⁹⁶ Supplemental Nutrition Assistance Program Provisions of the Agricultural Act of 2014 – Implementing Memorandum, USDA FNS 7 (March 21, 2014),

<http://www.fns.usda.gov/sites/default/files/SNAP%20Provisions%20of%20the%20Agricultural%20Act%20of%202014%20-%20Implementing%20Memo.pdf>.

⁹⁷ *Id.* at 9.

⁹⁸ *Id.* at 20.

⁹⁹ 7 U.S.C. §§ 2012 3(k), 3(o).

¹⁰⁰ 7 U.S.C. § 2012 3(k).

¹⁰¹ *Id.*

¹⁰² H.R. 2642 § 4002(a) referring to 7 U.S.C. § 2012(o).



dairy products), and perishable foods in at least three of those categories, or has over fifty percent of its total sales in the staple foods.¹⁰³ The USDA can consider whether the location of an applicant establishment is in an area that has limited access to food as a factor when approving retail food stores.¹⁰⁴ The final rule implementing this new requirement will be effective January 17, 2017.¹⁰⁵

Retail food stores must also now pay 100 percent of the costs of implementing and maintaining electronic benefit transfer point-of-sale equipment.¹⁰⁶ The Secretary of Agriculture is authorized but not required to exempt farmers' markets, military commissionaires, nonprofit food cooperatives, and other establishments from this requirement.¹⁰⁷ This discretion indicates the significance of the new selection for Secretary of Agriculture in the new administration. Retailers are prohibited from charging any interchange fees on EBT transactions.¹⁰⁸

Sections 4003 and 4012 also expanded which establishments could apply to become authorized retail food stores.¹⁰⁹ Prior to 2014, Community-Supported Agriculture farms and governmental and private nonprofit food purchasing and delivery services were not eligible to become authorized retail food stores.¹¹⁰ The types of retailers that are authorized to receive SNAP benefits now range from convenience stores, supermarkets, nonprofit food delivery services, and farmers' markets among others.¹¹¹

b. Restaurant Meals Program

The Restaurant Meals Program ("RMP") gives states the option to allow three categories of SNAP participants to purchase hot prepared foods from approved restaurants because they are unable to prepare meals at home or do not have a kitchen.¹¹² The eligible categories are homeless, disabled, or elderly individuals over the age of 60.¹¹³ States that have exercised their option to administer this program are California, Rhode Island, and Arizona. California has left the decision up to the individual counties to administer the program and Alameda, Los Angeles, Sacramento, San Diego, San Francisco, San Luis Obispo, and Santa Clara counties have programs.¹¹⁴ Counties who wish to participate submit a proposal to the California Department of Social Services for approval and restaurants that wish to participate must be located within a participating county and must submit both state and federal paperwork for approval.¹¹⁵

¹⁰³ *Id.*

¹⁰⁴ H.R. 2642 § 4002(e) referring to 7 U.S.C. § 2018(a)(1)(C).

¹⁰⁵ *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP) - Regulatory Flexibility Analysis*, U.S. DEPT. OF AGRIC. FOOD AND NUTRITION SERVICE, available at <http://www.regulations.gov/document?D=FNS-2016-0018-1266>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Supplemental Nutrition Assistance Program – Retailer, Issuance and Electronic Benefits Transfer Provisions of the Agricultural Act of 2014 – Questions and Answers*, USDA FNS 6-7 (May 20, 2014), <http://www.fns.usda.gov/sites/default/files/snap/Retailer-Issuance-Electronic-Benefits-Transfer-Provisions-QAs.pdf>.

¹⁰⁹ Aussenberg, *supra* note 33 at 23; H.R. 2642 § 4003.

¹¹⁰ *Id.*; H.R. 2642 § 4012.

¹¹¹ Aussenberg, *supra* note 33 at 21; H.R. 2642 § 4003.

¹¹² Marion Nestle, *Using SNAP Benefits for Fast Food Restaurants Is a State Decision*, THE ATLANTIC (Sep 14, 2011), <http://www.theatlantic.com/health/archive/2011/09/using-snap-benefits-for-fast-food-restaurants-is-a-state-decision/245085/>.

¹¹³ H.R. 2642 § 4014(a)(3) referring to 7 U.S.C. § 2020(e)(25)(i).

¹¹⁴ *CalFresh Restaurant Meals Program (RMP)*, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, <http://www.cdss.ca.gov/foodstamps/PG3665.htm>.

¹¹⁵ *Restaurant Meals Program*, ELECTRONIC BENEFIT TRANSFER (EBT) PROJECT OFFICE OF SYSTEMS INTEGRATION, <http://www.ebtproject.ca.gov/CommercialInformation/restaurant.shtml>.



Restaurants are responsible for their own electronic equipment to accept EBT.¹¹⁶ The eligibility of the SNAP participant is verified at the time of the transaction on the point-of-sale equipment and an error message will appear if the participant is not eligible for the RMP.¹¹⁷ Rhode Island and Arizona have limited the program to only households that are entirely made up of qualified individuals.¹¹⁸ Los Angeles County allows purchases through the RMP by the qualified participant and his/her spouse.¹¹⁹ But a phone call with Los Angeles County's Department of Public Social Services revealed that as long as one person in the household falls within the qualified categories, anyone in the household can use the EBT card to purchase meals from a restaurant.¹²⁰

An overview of the participating restaurants in these three states seems to show that most of the food available through the RMP is fast food such as Taco Bell and KFC as well as local pizza restaurants and national pizza chains.¹²¹ Restaurants cannot charge any sales taxes, meal taxes, or gratuities on the transaction.¹²² A phone call with a representative from URI SNAP Outreach Project, which provides information on Rhode Island's SNAP and RMP, stated that only ten Subway locations were approved for the program and that the meals are not offered at a reduced price.¹²³ In a phone call with Los Angeles County Department of Public Social Services, the representative also made clear that the meals through their program are also not sold at a lower price.¹²⁴ Beverages are also eligible for purchase through this program except for alcoholic beverages.¹²⁵ Mixed transactions are allowed when a participant does not have enough funds on the EBT card to pay the full purchase price of the meal and can supplement the remainder of the bill with cash.¹²⁶

Marion Nestle in an article for *The Atlantic* has mentioned that the RMP has divided the food advocacy community.¹²⁷ Kelly Brownell was quoted speaking out against allowing companies like Yum! Brands to be considered for participation in the program while Ed Cooney from the Congressional Hunger Center

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See *SNAP Restaurant Meals Program*, RHODE ISLAND DEPARTMENT OF HUMAN SERVICES, <http://www.dhs.ri.gov/Programs/RESTAURANT%20MEALS%20PROGRAM%20FLYER%20Q&A.pdf>; see *Restaurant Meals Program*, ARIZONA DEPARTMENT OF ECONOMIC SECURITY, <https://des.az.gov/content/restaurant-meals-program>

¹¹⁹ *Restaurant Meals Program*, LOS ANGELES COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, http://dpss.lacounty.gov/wps/portal/dpss/main/programs-and-services/restaurant-meals!/ut/p/b1/04_Sj9Q1NDK3NDAzMrA00Y_Qj8pLLMtMTyzJzM9LzAHxo8zi3QwMDNz9nYKN3H2ATef_ACdvr7BAAxMzkIZZAUGvmFuBp5Bhsa-Tu7mRhZhhoT0e-IHpefkJwGtCtePQIWMxSywAgMcwNFA388jPzdVPzcxqyI7y0QRAIsFqL8!/dl4/d5/L2dJQSEvUUt3QS80SmtFL1o2X0YwMD BHT0JTMjBFNkEwQU9TSjFVOEsxMjg3/

¹²⁰ Contact LA County Department of Public Social Services through the online form found at: <http://dpss.lacounty.gov/wps/portal/dpss/contact-us/>.

¹²¹ See *Restaurant Meals Participating Restaurants August 2016*, COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC SOCIAL SERVICES, http://file.lacounty.gov/dpss/cms1_237774.pdf; see also *Arizona Restaurants/Retailers Participating in the USDA/FNS Restaurant Meals Program*, <https://extranet.azdes.gov/faapolicymanual/FAA1/baggage/MealsProgramRestaurants.pdf>.

¹²² Aussenberg, *supra* note 33 at 21.

¹²³ Contact information for the URI SNAP Outreach Project can be found at: <http://www.eatbettertoday.com/225-2/>.

¹²⁴ *Id.*

¹²⁵ *CalFresh Restaurant Meals Program Frequently Asked Questions*, ALAMEDA SOCIAL SERVICES AGENCY, http://www.alamedasocialservices.org/public/services/food_assistance/restaurant_meals.cfm.

¹²⁶ *CalFresh Restaurant Meals Program Frequently Asked Questions*, ALAMEDA SOCIAL SERVICES AGENCY, http://www.alamedasocialservices.org/public/services/food_assistance/restaurant_meals.cfm.

¹²⁷ Marion Nestle, *How to Stop Fast Food Companies from Accepting Food Stamps*, THE ATLANTIC (September 13, 2011), <http://www.theatlantic.com/health/archive/2011/09/how-to-stop-fast-food-companies-from-accepting-food-stamps/245002/>.



was quoted supporting Yum! Brands and the program with the reasoning that these options were better than going hungry.¹²⁸

vii. Programs in Lieu of SNAP

There are numerous other programs that were reauthorized under Subtitle A that also provide food assistance but are not SNAP. These related programs are the Food Distribution Program on Indian Reservations (“FDPIR”) and the programs that operate in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands.¹²⁹ While Indian reservations have a choice of receiving state SNAP benefits or FDPIR, Puerto Rico, American Samoa, and the Northern Mariana Islands receive only nutrition assistance block grants.¹³⁰

a. Food Distribution Program on Indian Reservations (FDPIR)

Instead of a SNAP EBT card, FDPIR delivers food packages to households that contain specific foods.¹³¹ The Food and Nutrition Act of 2008 also provides funds for purchasing traditional and locally grown food for use on Indian reservations.¹³² The fund stipulates that when possible, 50 percent of the food purchased shall be from Native American farmers, ranchers, and producers.¹³³ USDA commodity foods that are available for use in FDPIR include canned beans, corn, soup, apple juice, raisins, frozen ground bison, and cereal among others.¹³⁴

The Urban Institute for the USDA, Food and Nutrition Service (“FNS”) conducted a study on the FDPIR.¹³⁵ Some of the key findings included that in 2013, 34 percent of FDPIR households had low food security and 22 percent had very low food security.¹³⁶ FDPIR was found to contribute significantly to participating households because it was the primary or sole source of food for 38 percent of participating households.¹³⁷ Less than 20 percent of participants reported attending tastings, workshops, and demonstrations but almost 75 percent reported receiving nutrition education materials and approximately half reported that the nutrition education was influencing their eating habits.¹³⁸ Ninety percent reported satisfaction with the program and only five percent of households switched to SNAP.¹³⁹ ExpectMore.gov reports that the program is performing “adequately”, meaning that improvements can be made in goal setting, achievements, and accountability and management.¹⁴⁰

¹²⁸ *Id.*

¹²⁹ Aussenberg, *supra* note 33 at 26.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² 7 U.S.C. § 2013(b)(6).

¹³³ *Id.*

¹³⁴ *USDA Foods Available for 2016 Food Distribution Program on Indian Reservations (FDPIR)*, USDA, <http://www.fns.usda.gov/sites/default/files/fdpi/FDPIR-Foods-Available.pdf>.

¹³⁵ *Study of the Food Distribution Program on Indian Reservations (FDPIR) (Summary)*, USDA FOOD AND NUTRITION SERVICE (June 2016), <http://www.fns.usda.gov/sites/default/files/ops/StudyofFDPIR-Summary.pdf>.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Food Distribution Program on Indian Reservations, Program Assessment*, EXPECTMORE.GOV, <https://www.whitehouse.gov/sites/default/files/omb/assets/omb/expectmore/summary/10003024.2006.html>.



Section 4004 required the USDA to report on the feasibility of Indian Tribal Organizations (ITOs) administering the assistance programs instead of state agencies.¹⁴¹ The feasibility study found that most tribes participating were interested in administering some federal nutrition assistance programs and that it would depend on the availability of federal funding to cover administrative expenses.¹⁴² ITOs recommended that Congress amend the Indian Self Determination and Education Act (P.L. 93-638) to allow Tribes to manage federal nutrition assistance programs in accordance with their law and policy and using federal funds.¹⁴³

b. Puerto Rico and American Samoa

Puerto Rico and American Samoa receive mandatory funds through nutrition assistance block grants for their food assistance programs.¹⁴⁴ These block grants are not like the open-ended funding SNAP receives but instead are measured by the USDA's Thrifty Food Plan, which is the national standard for a low-cost nutritious diet¹⁴⁵, and which grows at the rate of inflation.¹⁴⁶ Puerto Rico's version of SNAP also uses an EBT card but 25 percent of the monthly benefit amount can be redeemed for cash, which the 2014 Farm Bill will phase out beginning in fiscal year 2017.¹⁴⁷

Section 4025 required the USDA to conduct a review on the history and purpose of the cash portion of benefits, the barriers to redeeming non-cash benefits, the current usage of cash benefits, and the adverse effects of discontinuing the cash portion of benefits.¹⁴⁸ The findings of the review included that the participants and retailers do not face significant barriers to redeeming and accepting noncash benefits, more than half of the participants reported using the cash benefits for nonfood purchases (cleaning supplies, hygiene products, medicine, gasoline, diapers, housing cost and medical care), and that food access was not an issue for participants but discontinuing the cash portion of benefits would negatively impact families.¹⁴⁹

c. Commonwealth of the Northern Mariana Islands

Section 4031 provides funds for a feasibility study of administering SNAP in the Commonwealth of the Northern Mariana Islands.¹⁵⁰ If determined to be feasible then the USDA will conduct a pilot program that will administer SNAP as it is administered in the States.¹⁵¹ If the USDA does not find a pilot project to be

¹⁴¹ *Feasibility of Tribal Administration of Federal Nutrition Assistance Programs*, USDA Food and Nutrition Service (last published 07/11/2016), <http://www.fns.usda.gov/feasibility-tribal-administration-federal-nutrition-assistance-programs>; H.R. 2642 § 4004.

¹⁴² *Feasibility of Tribal Administration of Federal Nutrition Assistance Program (Summary)*, USDA FOOD AND NUTRITION SERVICE (July 2016), <http://www.fns.usda.gov/sites/default/files/ops/TribalAdministration-Summary.pdf>.

¹⁴³ *Id.*

¹⁴⁴ Aussenberg, *supra* note 33 at 27.

¹⁴⁵ *Appendix C. USDA's Thrifty Food Plan*, Household Food Security in the United States, USDA ECONOMIC RESEARCH SERVICE 52, http://www.ers.usda.gov/media/864198/err11appc_002.pdf.

¹⁴⁶ Aussenberg, *supra* note 33 at 27.

¹⁴⁷ *Id.*; H.R.2642 § 4025.

¹⁴⁸ *Examination of Cash Nutrition Assistance Program Benefits in Puerto Rico*, USDA FOOD AND NUTRITION SERVICES (last published 08/16/2016), <http://www.fns.usda.gov/snap/examination-cash-nutrition-assistance-program-benefits-puerto-rico>; H.R. 2642 § 4025.

¹⁴⁹ *Examination of Cash Nutrition Assistance Program Benefits in Puerto Rico (Summary)*, USDA FOOD AND NUTRITION SERVICE (August 2015), <http://www.fns.usda.gov/sites/default/files/ops/PuertoRico-Cash-Summary.pdf>.

¹⁵⁰ *Id.* at 27-28; H.R. 2642 § 4031.

¹⁵¹ *Id.*



feasible then the funds made available for the pilot will be distributed as part of the nutrition assistance block grant and will be available until expended.¹⁵²

The feasibility study assessed eligibility, implementation, EBT, program integrity, work requirements, and funding for administrative costs.¹⁵³ The study found that more than half of the population was living in poverty, that residents would benefit from SNAP or a similar alternative, and that there are several challenges to implementing the Program.¹⁵⁴ The study provided options for moving forward that recommended providing a pilot SNAP, implementing a modified SNAP that can address the challenges to implementation and adherence to all requirements, or implementing improvements using the current block grant from the Farm Bill such as upgrading the eligibility system, implementing EBT, or changing the benefit or eligibility parameters.¹⁵⁵

viii. Other Provisions

a. Performance Bonus Awards and Tolerance Level for Errors

State agencies administering SNAP are eligible for performance bonus awards for accomplishments in making accurate payments, application timeliness, having the least improper denial error rate, and for their program access index.¹⁵⁶ Section 4021 requires that these bonus payments be reinvested in the State's SNAP program.¹⁵⁷ In addition to rewarding performance, SNAP also provides for fiscal penalties for poor performance.¹⁵⁸

Section 4019 provides a tolerance level for excluding small errors.¹⁵⁹ For the fiscal year of 2014, the tolerance level was set at \$37.¹⁶⁰ For subsequent years, the tolerance level will reflect an adjusted percentage based on adjustments made to the Thrifty Food Plan.¹⁶¹

b. SNAP Participation Verification Reports (Deceased, Immigration Status, Wages)

Section 4031 requires States to report verification of SNAP participation to the USDA that demonstrates that the State did not issue benefits to a deceased individual or to someone who has been permanently disqualified from receiving benefits.¹⁶² If a State fails to report then the USDA will reduce administration funds by up to half.¹⁶³ States must now also verify immigration status by using the Systematic Alien Verification for Entitlements (“SAVE”) Program, whereas in previous bills they did not have to use the SAVE system.¹⁶⁴ States must also use the National Directory of New Hires to verify wages in order to determine eligibility and benefit calculation.¹⁶⁵

¹⁵² *Id.*

¹⁵³ *Assessing the Feasibility of Implementing the Supplemental Nutrition Assistance Program in the Commonwealth of the Northern Mariana Islands (Summary)*, USDA FOOD AND NUTRITION SERVICE (August 2016), <http://www.fns.usda.gov/sites/default/files/ops/SNAPCNMI-Summary.pdf>.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 25.

¹⁵⁷ *Id.*; H.R. 2642 § 4021 referring to 7 U.S.C. § 2025(d).

¹⁵⁸ *Id.*

¹⁵⁹ H.R. 2642 § 4019.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* See 7 U.S.C. § 2025(c)(1)(D)(i).

¹⁶² H.R. 2642 § 4032.

¹⁶³ USDA FNS, *supra* note 96 at 8.

¹⁶⁴ Aussenberg, *supra* note 33 at Table B-7.; H.R. 2642 § 4015.

¹⁶⁵ *Id.* § 4013.



c. Bottle Deposits

Section 4001 established that SNAP benefits could not be used to pay for bottle deposits.¹⁶⁶ Bottle deposits must be paid for out-of-pocket by the SNAP participant¹⁶⁷ unless a State requires customers to pay the bottle deposit in order to purchase food in a returnable container.¹⁶⁸ Only the deposits that fall within a State's laws can be purchased using SNAP benefits.¹⁶⁹ For example, if a State does not have deposit laws but a farmer imposes a \$5 deposit fee on milk containers, the \$5 deposit cannot be paid for with SNAP benefits.¹⁷⁰

If the bottle return center is able to identify the deposit as being purchased with SNAP EBT, then the center should credit the SNAP participant's EBT account.¹⁷¹ If the center does not distinguish between the original tender types, then SNAP participants can receive the deposit back in cash.¹⁷²

Related to this provision, the 2008 Farm Bill had added a provision that prohibited the intentional destruction of food in order for a participant to redeem the food container for the bottle deposit.¹⁷³ Any SNAP participant found to be in violation of the provision could be disqualified from receiving SNAP benefits by the administering State agency.¹⁷⁴

d. Nutrition Education and Obesity Prevention Grant Program

The bill reauthorized the Nutrition Education and Obesity Prevention Grant Program which provides mandatory funding to states to implement programs that promote healthy food choices for SNAP participants and amended the grant program to include state programs that promote physical activity.¹⁷⁵ The programs are meant to promote what the newest Dietary Guidelines for Americans recommends.¹⁷⁶

e. Community Food Projects

Section 4026 provides funding for community-based projects that help to promote self-sufficiency of low-income communities.¹⁷⁷ The entities that can receive grants should need only a one-time contribution of funds and operate for the purpose of improving access to food.¹⁷⁸ Eligible entities include public food program service providers, tribal organizations, and nonprofit entities that have experience in various areas that can provide assistance to the targeted communities.¹⁷⁹

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Supplemental Nutrition Assistance Program – Retailer, Issuance and Electronic Benefits Transfer Provisions of the Agricultural Act of 2014 – Questions and Answers*, USDA FNS 1 (May 20, 2014), <http://www.fns.usda.gov/sites/default/files/snap/Retailer-Issuance-Electronic-Benefits-Transfer-Provisions-QAs.pdf>.

¹⁶⁹ *Id.* at 2.

¹⁷⁰ *Id.* at 3.

¹⁷¹ *Id.* at 2.

¹⁷² *Id.*

¹⁷³ Randy A. Aussenberg, R43332, *SNAP and Related Nutrition Provisions of the 2014 Farm Bill (P.L. 113-79)*, Congressional Research Service 45 (April 24, 2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43332.pdf>.

¹⁷⁴ *Id.*

¹⁷⁵ Aussenberg, *supra* note 33 at 25-26; H.R. 2642 § 4028 referring to 7 U.S.C. 2§ 036(a).

¹⁷⁶ *Id.*

¹⁷⁷ 7 U.S.C. 2034. See also Competitive Food Projects Competitive Grant Program (CFPCGP), USDA National Institute of Food and Agriculture, <https://nifa.usda.gov/program/community-food-projects-competitive-grant-program-cfpcgp>.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*



On February 15, 2015 the USDA’s National Institute of Food and Agriculture announced that \$9 million in funding was available for grants for nonprofits.¹⁸⁰ All grants require a dollar-for-dollar match and are funded from \$10,000 to \$400,000.¹⁸¹

f. Service of Traditional Foods in Public Facilities

Section 4033 allows the donation and serving of traditional foods at public facilities, nonprofits, and those operated by tribes that primarily serve Native Americans.¹⁸² Traditional foods include wild game meat, fish, seafood, marine mammals, plants, and berries.¹⁸³

B. Subtitle B – Commodity Distribution Program

Section 4027, which is located in Subtitle A under SNAP, reauthorized the purchase of commodities for emergency food assistance through 2018.¹⁸⁴ Sections 4101, 4102, and 4103 reauthorized the Commodity Distribution Program, Commodity Supplemental Food Program, and the Distribution of Surplus Commodities to Special Nutrition Projects, respectively, through 2018.¹⁸⁵ These programs authorize the USDA to purchase a variety of foods including dairy, livestock, fruits and vegetables, fresh, frozen, and processed foods for distribution to nutrition programs.¹⁸⁶ The nutrition programs that receive USDA commodity foods are the Commodity Supplemental Food Program, National School Lunch Program, The Emergency Food Assistance Program, Summer Food Assistance Program, and Child and Adult Care Food Program.¹⁸⁷ There are two categories of commodities that the USDA distributes: “entitlement commodities,” which receive mandatory funding, and “bonus commodities” which the USDA purchases by request from the agricultural community to respond to surpluses or when there is a need for price support.¹⁸⁸

i. The Emergency Food Assistance Program (“TEFAP”)

TEFAP was authorized in 1981 and the Hunger Prevention Act of 1988 authorized appropriated funds to purchase USDA foods, but the program was formally named The Emergency Food Assistance Program in the 1990 Farm Bill.¹⁸⁹ TEFAP provides USDA-purchased commodities to emergency feeding organizations such as food pantries and food banks.¹⁹⁰ Organizations that qualify are public or private nonprofit organizations that serve meals in a congregate setting or distribute food for home preparation to low-income households.¹⁹¹ States have the authority to set their own eligibility standards and can adjust the criteria to provide assistance to only the neediest households.¹⁹² USDA commodities are distributed to the state agency administering TEFAP and the amount of food the State receives is based on the number of

¹⁸⁰ Release No. 0039.15, USDA 1 (Feb. 19, 2015), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2015/02/0039.xml>.

¹⁸¹ *Id.*

¹⁸² SP 42-2015, CACFP 19-2015, SFSP 21-2015, USDA FNS (July 31, 2015), http://www.fns.usda.gov/sites/default/files/cn/SP42_CACFP19_SFSP21-2015os.pdf.

¹⁸³ *Id.* See also H.R. 2642 at 70.

¹⁸⁴ H.R. 2642 § 4027 referring to 7 U.S.C. § 2036(a).

¹⁸⁵ H.R. 2642 §§ 4101, 4102, 4103.

¹⁸⁶ Aussenberg *supra* note 33 at 28.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *The Emergency Food Assistance Program (TEFAP) Frequently Asked Questions*, USDA FOOD AND NUTRITION SERVICE (last published 05/12/2014), <http://www.fns.usda.gov/tefap/frequently-asked-questions>.

¹⁹⁰ Aussenberg, *supra* note 33 at 28.

¹⁹¹ USDA FNS, *supra* note 189.

¹⁹² *Id.*



unemployed persons and the number of people with incomes below the poverty line.¹⁹³ USDA commodities available to TEFAP include canned beans, corn and carrots, spaghetti, fresh apples, orange juice, and raisins, among others.¹⁹⁴

Congress has provided mandatory funding for the entitlement commodities, has provided discretionary funding to cover administrative costs, and allows bonus commodity donations.¹⁹⁵ States also receive funds for the storage and distribution of commodity foods at the local level.¹⁹⁶ The 2014 Farm Bill increased funding for TEFAP entitlement commodities and requires funding to be spent over a two-year period.¹⁹⁷ Section 4207, a related provision that appears in Subtitle C–Miscellaneous, also requires the USDA to create a plan for increasing the purchase of and changing the labeling of Kosher and Halal foods at emergency feeding organizations.¹⁹⁸

Section 4104 also authorized the USDA to contract with private companies to process commodity foods and also to enter into agreements with processors to retain title of the commodity foods while they are being processed.¹⁹⁹

ii. Commodity Supplemental Food Program (“CSFP”)

The bill reauthorized CSFP, a program that provides USDA commodities to households, through 2018.²⁰⁰ Prior farm bills made CSFP available to low-income women, children under six, elderly persons 60 or over, and infants.²⁰¹ But Section 4102 limits CSFP to only low-income seniors.²⁰² The new limitation was not considered controversial because most participants are seniors and the other groups can participate in the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”).²⁰³ CSFP is not meant to distribute a complete diet to eligible households but instead is meant to provide foods that contain nutrients that are typically lacking in the participant’s diets.²⁰⁴

State agencies administer CSFP and set an income limit for the participants that is at or below 130 percent of the federal poverty income.²⁰⁵ States have the flexibility to require that participants be at nutritional risk as well as to set a residency requirement.²⁰⁶ Thirty-nine states and Washington, D.C. participate in CSFP as well as two Indian Tribal Organizations.²⁰⁷ Foods available through this program are dry and fluid nonfat milk, ready-to-eat cereal, peanut butter, and canned fruits and vegetables, among others.²⁰⁸

iii. Commodity Foods Used in School Meals

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Aussenberg, *supra* note 33 at 28.

¹⁹⁶ USDA FNS, *supra* note 189.

¹⁹⁷ Aussenberg, *supra* note 33 at 29.

¹⁹⁸ *Id.*

¹⁹⁹ H.R. 2642 § 4104 referring to 7 U.S.C. § 612c note. *See also* Aussenberg, *supra* note 33 at 30.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*; H.R. 2642 § 4102; 7 U.S.C. § 612c note (5).

²⁰³ *Id.*

²⁰⁴ *Commodity Supplemental Food Program (CSFP) Frequently Asked Questions*, USDA FOOD AND NUTRITION SERVICE (last published: 12/30/2015), <http://www.fns.usda.gov/csfp/frequently-asked-questions>.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*



The National School Lunch Program, Summer Food Service Program, and Child and Adult Care Food Program receive USDA commodity food support through the bill.²⁰⁹ These programs provide food to child-serving institutions and in the case of the Child and Adult Care Food Program, also provide food to adult day care settings.²¹⁰ Foods available to these programs include fresh apples, canned corn, frozen broccoli, potatoes, salsa, and spaghetti, among others.²¹¹

The National School Lunch Program serves public and private non-profit schools as well as residential childcare institutions.²¹² The Program receives entitlement commodities in an amount based on the number of meals the school serves and receives bonus commodities when the USDA makes purchases.²¹³ The National School Breakfast Program is not entitled to receive USDA commodities but schools have the option to serve USDA commodity foods as part of the breakfast program.²¹⁴

The Summer Food Service Program provides meals when school is not in session to low-income children and teenagers aged eighteen and younger.²¹⁵ Participating sites include schools, parks, hospitals, and churches among others.²¹⁶ The Child and Adult Care Food Program provides aid to at-risk afterschool care centers, adult day care centers, child care centers, day care centers, and emergency shelters.²¹⁷

C. Subtitle C – Miscellaneous

i. Farm-to-School

Section 4201 reauthorized the purchase of fresh fruits and vegetables for distribution to schools.²¹⁸

Section 4202 amends the Richard B. Russell National School Lunch Act to implement pilot projects in eight states that gives participants more flexibility in procuring fresh fruits and vegetables by allowing them to have a geographic preference and the ability to use multiple suppliers.²¹⁹ A press release on December 8, 2014 named California, Connecticut, Michigan, New York, Oregon, Virginia, Washington, and Wisconsin as the eight states chosen to participate in the pilot program, which will allow them to increase use of local fruits and vegetables in school meals.²²⁰

ii. Seniors Farmers' Market Nutrition Program

²⁰⁹ Aussenberg, *supra* note 33 at 30.

²¹⁰ *Id.*

²¹¹ USDA Foods Available List for School Year 2016 for Schools and Institutions April 2015, USDA, http://www.fns.usda.gov/sites/default/files/fdd/USDA_Foods_Available_List.pdf.

²¹² *USDA Commodity Foods*, Florida Department of Agriculture and Consumer Services, <http://www.freshfromflorida.com/Divisions-Offices/Food-Nutrition-and-Wellness/Administering-Your-Nutrition-Program/National-School-Lunch-Program/USDA-Commodity-Foods>.

²¹³ Aussenberg, *supra* note 33 at 30.

²¹⁴ *Schools/Child Nutrition USDA Foods Programs*, USDA Food and Nutrition Service, http://www.fns.usda.gov/sites/default/files/schcnp_faqs.pdf.

²¹⁵ *How to Participate in Summer Meals*, USDA Food and Nutrition Service, <http://www.fns.usda.gov/sites/default/files/sfsp/SFSP-Fact-Sheet.pdf>.

²¹⁶ *Id.*

²¹⁷ *Child and Adult Care Food Program (CACFP)*, USDA Food and Nutrition Service, <http://www.fns.usda.gov/cacfp/child-and-adult-care-food-program>.

²¹⁸ Aussenberg, *supra* note 33 at Table B-9.; H.R. 2642 § 4201 referring to 7 U.S.C. § 612c-4(b).

²¹⁹ *Id.*; H.R. 2646 § 4202 referring to 42 U.S.C. § 1755(f).

²²⁰ *USDA Selects States for Participation in the Pilot Program for Procurement of Unprocessed Fruits and Vegetables*, Release No. FNS 0012.14, USDA FOOD AND NUTRITION SERVICE (December 8, 2014), <http://www.fns.usda.gov/pressrelease/2014/fns-001214>.



Section 4203 reauthorized the Seniors Farmers' Market Nutrition Program ("SFMNP") through 2018.²²¹ The SFMNP gives low-income seniors the ability to purchase foods at farmers' markets, roadside stands, and community-supported agriculture programs.²²² Foods that can be purchased through the program are fruits, vegetables, honey, and fresh-cut herbs.²²³ The targeted population is individuals over sixty years old with household incomes of less than 185% of the Federal poverty guidelines.²²⁴ State agencies administering the program can limit eligible foods to those grown locally.²²⁵

Authority to administer the SFMNP was delegated to the Food and Nutrition Service ("FNS") of the USDA.²²⁶ FNS will provide assistance to the State agencies that are approved to administer the program.²²⁷ State agencies are approved to administer the Program and receive funds by submitting a State Plan.²²⁸ The State Plan must contain many specified elements such as a description of the procedures for identifying eligible participants (age and income criteria), description of the coupon issuance system, estimated number of participants for the fiscal year, and so on.²²⁹ Participants are eligible if they meet the categorical, residency, and income requirements provided by the State.²³⁰ Categorical eligibility requires that participants be sixty years or older but a State can deem Native Americans fifty-five years and older and disabled individuals who live in facilities with primarily older individuals that have congregate nutrition services as eligible.²³¹ States can impose residency requirements that a participant live in a particular service area.²³² And States must use a simple and clear process to determine income eligibility.²³³

In August 2015, the Choctaw Nation of Oklahoma became the 52nd government entity to operate the Program.²³⁴ Agriculture Secretary Tom Vilsack stated that the Program was a way to improve the health of seniors who are a particularly vulnerable demographic for food insecurity and nutrition challenges.²³⁵ The Program is reported to serve 800,000 low-income seniors in forty-three states, the District of Columbia, Puerto Rico, and eight tribes.²³⁶

iii. Dietary Guidelines for Americans

Section 4204 amended the National Nutrition Monitoring and Related Research Act of 1990 to require the publication of specifications for pregnant women and children under the age of two by the 2020 edition.²³⁷

iv. Multiagency Task Force

²²¹ Aussenberg, *supra* note 33 at 31; H.R. 2642 § 4203 referring to 7 U.S.C. § 3007(a).

²²² *Senior Farmers' Market Nutrition Program (SFMNP)*, USDA FOOD AND NUTRITION SERVICE (last published: 04/15/2015), <http://www.fns.usda.gov/sfmnp/senior-farmers-market-nutrition-program-sfmnp>.

²²³ *Id.*

²²⁴ *Senior Farmers' Market Nutrition Program*, USDA 1 (July 2016), <http://www.fns.usda.gov/sites/default/files/sfmnp/SFMNPFactSheet.pdf>.

²²⁵ *Id.* at 2.

²²⁶ 7 CFR 249 §249.4 at 509, <http://www.fns.usda.gov/sites/default/files/wic/SFMNPRegulations-7CFR249.pdf>.

²²⁷ *Id.* at 510.

²²⁸ *Id.* at 510-13.

²²⁹ *Id.*

²³⁰ *Id.* at 513-14.

²³¹ *Id.*

²³² *Id.* at 514.

²³³ *Id.*

²³⁴ USDA OFFICE OF COMMUNICATIONS (202) 720-4623, *Choctaw Nation of Oklahoma Joins USDA Senior Farmers Market Nutrition Program*, USDA (last date modified 08/25/2015), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2015/08/0227.xml>.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.* See also H.R. 2642 § 4204 referring to 7 U.S.C. § 5341(a).



Section 4205 amends the Department of Agriculture Reorganization Act of 1994 to create a multiagency taskforce to coordinate commodity programs.²³⁸ The taskforce will be composed of at least four members, including a representative from the Food Distribution Division of the Food and Nutrition Service, and at least one representative from the Agricultural Marketing Service, the Farm Services Agency, and the Food Safety and Inspection Service.²³⁹

The *Report on Multiagency Task Force to Provide Coordination and Direction for USDA Foods Administered by the Food and Nutrition Service* lists Laura Castro (Director of the Food Distribution Division, FNS) as the chair of the taskforce with Rex Barnes (Associate Administrator, AMS), David Tuckwiller (Director, Commodity Procurement Staff, AMS), Sandra Wood (Assistant Deputy Administrator for Commodity Operations, FSA), Mark Overbo (Assistant to the Deputy Administrator for Commodity Operations, FSA), Dr. Doumaya Tohamy (Deputy Assistant Administrator for the Office of Data Integration and Food Protection, FSIS), and Mary Frances Lowe (U.S. Codex Manager, FSIS) as members.²⁴⁰ The Task Force identified action items to address in its first meeting in May 2014. These included producing a white paper defining FSIS enforcement actions, reviewing the amount of purchases of individual USDA Foods, and developing a labeling requirement for product specifications for household foods, among others.²⁴¹

v. Healthy Food Financing Initiative

Section 4206 authorized \$125 million to be appropriated for grants to improve access to healthy food, create jobs, revive communities, and help food retailers overcome barriers to entry in underserved areas.²⁴²

vi. Food Insecurity Nutrition Incentive

Section 4208 amended the hunger-free community grants to be “incentive grants” that are used to incentivize SNAP participants to purchase fruits and vegetables.²⁴³ Previous bonus programs were funded by non-federal funds.²⁴⁴

In April 2015, Tom Vilsack announced that the Food Insecurity Nutrition Incentive (“FINI”) received \$31.5 million to fund strategies to assist SNAP participants in purchasing fruits and vegetables.²⁴⁵ Twenty-six states are receiving funding for pilot projects, multi-year community-based projects, and multi-year large-scale projects.²⁴⁶

vii. Food and Agriculture Service Learning Program

Section 4209 creates a grant program for the purpose of improving nutrition and increasing knowledge of agriculture for children such as gardens and nutrition education.²⁴⁷

²³⁸ Aussenberg, *supra* note 33 at Table B-10.; H.R. 2642 § 4205 referring to 7 U.S.C. § 6951.

²³⁹ H.R. 2642 § 4205 referring to 7 U.S.C. § 6951.

²⁴⁰ *Report on Multiagency Task Force to Provide Coordination and Direction for USDA Foods Administered by the Food and Nutrition Service*, USDA FOOD AND NUTRITION SERVICE 2 (February 2015), http://www.fns.usda.gov/sites/default/files/fdd/Multiagency_Taskforce_Report_to_Congress.pdf.

²⁴¹ *Id.*

²⁴² H.R. 2642 § 4206 referring to 7 U.S.C. § 6951 et seq; Aussenberg, *supra* note 33 at Table B-7.

²⁴³ *Id.*; H.R. 2642 § 4208 referring to 7 U.S.C. § 7517.

²⁴⁴ Aussenberg, *supra* note 33 at 32.

²⁴⁵ USDA OFFICE OF COMMUNICATIONS (202)720-4623, *USDA Awards \$31 Million in Grants to Help SNAP Participants Afford Healthy Foods*, USDA (last date modified 04/01/2015), <http://www.fns.usda.gov/pressrelease/2015/008415>.

²⁴⁶ *Id.*

²⁴⁷ *Id.*; H.R. 2642 § 4209 referring to 7 U.S.C. § 7630 et seq.



viii. Termination of Existing Agreement with the Republic of Mexico

Section 4211 terminates the “Partnership for Nutrition Assistance Initiative” agreement between the U.S. Secretary of Agriculture and Republic of Mexico’s Secretary of Foreign Affairs entered into in 2004.²⁴⁸

ix. Review of Sole-Source Contracts in Federal Nutrition Programs

Section 4212 requires the USDA to evaluate the effect of sole-source contracts in nutrition programs on participation, goals, retailers, free market dynamics, and non-program consumers.²⁴⁹

x. Pulse Crop Products

Section 4213 authorizes discretionary funding for the use and evaluation of pulse crops in school breakfast and school lunch programs.²⁵⁰ The pilot was established to encourage interest in pulse crops among schoolchildren as recommended in the most recent Dietary Guidelines for Americans.²⁵¹

xi. Pilot Project for Canned, Frozen, or Dried Fruits and Vegetables

Section 4214 established a pilot project for at least five states during the 2014-2015 school year that evaluated the impact of allowing schools to provide canned, frozen, or dried fruits and vegetables as part of their Fresh Fruit and Vegetable Program under the Richard B. Russell National School Lunch Act.²⁵²

III. KEY ISSUES

A. *Do Nutrition Title programs adequately promote public health?*

As outlined above, RMP gives states the option to allow three categories of SNAP participants (homeless, disabled, or elderly individuals) to purchase hot prepared foods from approved restaurants.²⁵³ California, Rhode Island, and Arizona are currently the only states administering this program. In California and Arizona, for example, because almost all of the approved restaurants in RMP are national and local fast food and pizza chains, there is an opportunity to shift the scope of eligible restaurants to promote small and rural businesses as well as healthier businesses. The category of participants eligible for RMP often encompasses especially vulnerable populations for which healthier prepared food options is particularly important. In Rhode Island only ten Subway locations are approved for RMP, reflecting the state’s desire, in part, to attempt to promote healthy food options. Because Subway restaurants are franchised, this choice likely also supports small local businesses. Similarly, discussions with local anti-hunger advocates in Los Angeles revealed that the county had attempted to take small business promotion into account when approving restaurants, which is reflected in the participation of many local pizza and fast food chains in LA. This preliminary research reflects that there is thus support for implementing this recommendation—for both small business promotion and health promotion via RMP. We recommend advocating for these changes in a more systematic way, particularly given the vulnerable populations RMP serves. In addition, the fact that this recommendation is along the same lines as the increased stocking requirements mandated by the 2014 Farm Bill suggests that it may be politically feasible as well.

²⁴⁸ Section 4211.

²⁴⁹ *Id.*; H.R. 2642 § 4212.

²⁵⁰ Aussenberg, *supra* note 33 at 31; H.R. 2642 § 4213.

²⁵¹ H.R. 2642 § 4213.

²⁵² H.R. 2642 § 4214.; Aussenberg, *supra* note 33 at 31; *see also* SP 33-2014, USDA FNS (April 07, 2014), <http://www.fns.usda.gov/sites/default/files/SP33-2014os.pdf>.

²⁵³ Marion Nestle, *Using SNAP Benefits for Fast Food Restaurants Is a State Decision*, THE ATLANTIC (Sep 14, 2011), <http://www.theatlantic.com/health/archive/2011/09/using-snap-benefits-for-fast-food-restaurants-is-a-state-decision/245085/>. H.R. 2642 § 4014(a)(3) referring to 7 U.S.C. § 2020(e)(25)(i).



Even if not possible at the federal level, this recommendation has greater appeal because it can also be advocated at the state or local level.

Because the Healthy Food Financing Initiative is intended, at least in part, to revive communities and help food retailers overcome barriers to entry in underserved areas, it is a ripe provision for promoting both small businesses and rural development. We recommend identifying ways in which this measure can be expanded to promote these interests as a means of fulfilling this mandate.

Moreover, the Nutrition Title does not currently maximize opportunities to foster healthy outcomes for SNAP recipients. Sugar-sweetened beverages are a major source of nutritionally-empty calories for Americans, comprising 9% of total calories consumed by the average American.²⁵⁴ In 2010, researchers found that soft drinks make up 6.9% of the grocery bill of SNAP recipients, more than the national average of 4.38%.²⁵⁵ As of the publication of this background memo, no state or locality has received USDA funds in order to implement a pilot program to restrict the purchase of sweetened beverages by SNAP recipients. However, several states (including Maine, Minnesota, Arkansas, and Tennessee) have proposed legislation to ban SNAP recipients from using benefits to purchase sweetened beverages and sweetened foods.²⁵⁶ New York City petitioned the USDA to conduct a pilot project to exclude sweetened beverages from SNAP, but was denied.²⁵⁷ We recommend creating a pilot program to restrict the purchase of sugar-sweetened beverages using SNAP benefits, and assessing the effects of this program to determine if a nation-wide exclusion of sugar-sweetened beverages from SNAP would be appropriate.

B. Are Nutrition Title programs subject to sufficient tracking and evaluation?

A significant number of the programs in the Nutrition Title are not systematically tracked or evaluated. This frequently remains the case even when the Nutrition Title explicitly mandates the tracking and evaluation of certain programs. As a result, the impacts of these programs often go largely unknown.

For example, there are pilot programs that provide summer food service to low-income children in the absence of the National School Lunch Program during the summer months. These pilot programs are in Connecticut, Missouri, Oregon, Delaware, and Washington. Evaluations of these programs have simply determined how many towns participate and the percentage of eligible children who participate. They do not evaluate, for example, the impact of the program on childhood hunger during the summer or on barriers to participation in different areas. Similarly, the Pilot Project for Canned, Frozen, or Dried Fruits and Vegetables provides fruit and vegetables to children in schools for at least five states. Section 4214 of the Nutrition Title required evaluating the impact of these programs,²⁵⁸ and the first report was released in January 2017.²⁵⁹

²⁵⁴ Anne Barnhill, *Impact and Ethics of Excluding Sweetened Beverages From the SNAP Program*, 101(11) *Am. J. Pub. Health* 2037 (2011).

²⁵⁵ J.D. Shenkin & M.F. Jacobson, *Using the Food Stamp Program and other methods to promote healthy diets for low-income consumers*, 100(9) *Am. J. Pub. Health* 1562 (2010).

²⁵⁶ Thomas Phippen, *Another State Is Trying To Ban Junk Food From Stamp Users*, *Daily Caller*, Jan. 14, 2017, <http://dailycaller.com/2017/01/14/another-state-is-trying-to-ban-junk-food-from-food-stamps-users>.

²⁵⁷ Patrick McGeehan, *U.S. Rejects Mayor's Plan to Ban Use of Food Stamps to Buy Soda*, *N.Y. Times*, Aug. 19, 2011, <http://www.nytimes.com/2011/08/20/nyregion/ban-on-using-food-stamps-to-buy-soda-rejected-by-usda.html>.

²⁵⁸ H.R. 2642 § 4214.; Aussenberg, *supra* note 33 at 31; *see also* SP 33-2014, USDA FNS (April 07, 2014), <http://www.fns.usda.gov/sites/default/files/SP33-2014os.pdf>.

²⁵⁹ Ronette Briefel et al., *Evaluation of the Pilot Project for Canned, Frozen, or Dried Fruits and Vegetables in the Fresh Fruit and Vegetable Program (FFVPCFD)*, *Mathematica Policy Research* (Jan 2017), <https://fns-prod.azureedge.net/sites/default/files/ops/FFVP-CFD.pdf>.



A third, prospective example relates to the new stocking requirements in the 2014 Farm Bill. Effective January 17, 2017, a new final rule will increase stocking requirements for authorized retailers of SNAP.²⁶⁰ As discussed above, in order for an establishment to qualify, they must offer at least seven foods in each of the categories of staple foods (meat, poultry or fish; bread or cereals; vegetables or fruits; dairy) and perishable foods in at least three of those categories, or have over 50 percent of their total sales in the staple foods.²⁶¹ It will be important to evaluate the new retailer stocking requirements systematically to determine their effects on the retailers and on the diets and health outcomes of SNAP participants.

These are only three examples of many of the need for evaluation of programs within the Nutrition Title. Other programs in need of evaluation include Farm-to-School, Seniors Farmers' Market Nutrition Program, Healthy Food Financing Initiative, Food Insecurity Nutrition Incentive, SNAP Employment and Training (E&T) program, Sole-Source Contracts, Pulse Crop Products, and Food and Agriculture Service Learning Program. We recommend advocating for increased tracking and of Nutrition Title programs of all sizes, whether by the federal government, state governments, or perhaps best of all, by academic institutions acting (and funded) independently. Only with improved tracking and evaluation will it be possible to know which programs are successful and should be scaled-up, and conversely which are ineffective and should be modified or eliminated.

C. Additional Potential Areas of Focus

There are several additional potential areas we have identified that may also be of interest to reform-minded policymakers, particularly from the perspective of expanding access for small (and rural, and healthy) businesses and producers. These include:

1. The Emergency Food Assistance Program (TEFAP); Fresh fruit and vegetable program in schools; School food procurement policies; Commodity Supplemental Food Program: Which commodity producers and suppliers have access to these programs? Can the programs be modified to benefit smaller (and/or rural, and/or healthier) producers?
2. Food Distribution Program on Indian Reservations (FDPIR): Has the goal of 50 percent of food being purchased from Native American farmers and producers been reached? What are barriers to reaching this goal? Per the ITOs recommendation, should Congress amend the Indian Self Determination and Education Act (P.L. 93-638) to allow Tribes to manage federal nutrition assistance programs in accordance with their law and policy and using federal funds?
3. Retailer cost burden of EBT machines and expanding wireless mobile technology in lieu of EBT machines: States currently can exempt retailers that “provide valuable access but may not have the resources to purchase point-of-sale equipment, such as farmers' markets, shelters and group homes.” Should support of eligible retailers instead be mandatory in all states? If wireless mobile technology reduces burdens on retailers, should it be expanded in future farm bills?

²⁶⁰ *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP) - Regulatory Flexibility Analysis*, U.S. DEPT. OF AGRIC. FOOD AND NUTRITION SERVICE, available at <http://www.regulations.gov/document?D=FNS-2016-0018-1266>.

²⁶¹ *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP) - Regulatory Flexibility Analysis*, U.S. DEPT. OF AGRIC. FOOD AND NUTRITION SERVICE, available at <http://www.regulations.gov/document?D=FNS-2016-0018-1266>.



4. Community food project grants: Healthy Incentives Pilot Program: Can programs be modified to benefit small businesses or rural development? Are there cost effective ways to expand these programs (particularly the Healthy Incentives Pilot Program, which has been shown to be very effective) and is it worth advocating for their expansion?
5. Retailer use of price incentives: Would allow retailers to reduce the cost of healthy foods, for example through price promotions, for SNAP recipients, who would pay a discounted price on items compared to non-recipients (idea from Center for the Study of the Presidency and Congress report).

CONCLUSION

Protecting SNAP and other Nutrition Title programs in the current political climate remains a top priority. Our recommendations primarily outline small, reasonable changes within the Nutrition Title that can be framed with bipartisan appeal and that pertain especially to small businesses and rural development. These suggested areas include expanding opportunities for small and rural businesses through, for example, the Restaurant Meals Program and Healthy Food Finance Initiative; improving tracking and evaluation of the plethora of current Nutrition Title programs, including especially pilot programs; and increasing SNAP disbursement schedules from once monthly to semi-monthly. Moreover, we explore more radical, far-reaching changes, such as a pilot program to test restricting SNAP purchases of sugar-sweetened beverages. Our objective is to build on the 2014 Farm Bill's Nutrition Title provisions to improve their accessibility and impact and, in turn, address critical public health issues.



Appendix A: List of Farm Bills 1933-2014²⁶²

Agricultural Adjustment Act of 1933
Agricultural Adjustment Act of 1938
Agricultural Act of 1948
Agricultural Act of 1949
Agricultural Act of 1954
Agriculture Act of 1956
Food and Agricultural Act (1965)
Agricultural Act of 1970
Agricultural and Consumer Protection Act (1973)
Food and Agriculture Act (1977)
Agriculture and Food Act (1981)
Food Security Act (1985)
Food, Agriculture, Conservation, and Trade Act (1990)
Federal Agriculture Improvement and Reform Act (1996)
Farm Security and Rural Investment Act (2002)
Food, Conservation, and Energy Act (2008)
Agricultural Act of 2014

²⁶² All of the bills can be found on The National Agricultural Law Center's website at <http://nationalaglawcenter.org/farmbills/#1990FB>.



Appendix B: Current SNAP Waivers by State

Legend:

* Request Received and Under Review by FNS

Waiver Title	State	Implementation Date	Expiration Date
Deny Applications Before the 30th Day	AK	5/1/2015	4/30/2016
Postpone Expedited Service Interview	AK	6/1/2015	5/31/2016
Reinstatement	AK	5/1/2015	10/31/2016
Telephone Interviews In Lieu Of Face-to-Face	AK	6/1/2013	5/31/2017
Use of Fee Agents to Assist HH	AK	10/1/2014	9/30/2018
Reinstatement	AL	12/1/2014	11/30/2016
Average Student Work Hours	AL	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	AL	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	AR	6/1/2015	5/31/2016
Telephone Interviews In Lieu Of Face-to-Face	AR	3/1/2015	2/28/2019
Average Student Work Hours	AR	1/1/2015	12/31/2019
Conduct Unscheduled Interviews	AZ	9/1/2014	8/31/2016
Reinstatement	AZ	7/1/2015	9/1/2016
Interest Income Verification	AZ	5/1/2015	4/30/2017
Change Reporting HH to Report by 10th Day of Month	AZ	12/1/2015	11/30/2017
Telephone Interviews In Lieu Of Face-to-Face	AZ	1/1/2015	12/31/2019
Average Student Work Hours	AZ	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	CA	5/1/2015	4/30/2016



Reinstatement	CA	2/1/2015	7/31/2016
Average Student Work Hours	CA	10/1/2014	9/30/2016
Telephone Interviews In Lieu Of Face-to-Face	CA	6/1/2013	5/31/2017
Supply Paper Copy of Online Applications	CA	7/1/2016	6/30/2020
Deny Applications Before the 30th Day	CO	5/1/2016	4/30/2017
Change Reporting HH to Report by 10th Day of Month	CO	5/1/2015	4/30/2017
Send Electronic Notices	CO	1/1/2016	12/31/2017
Telephone Interviews In Lieu Of Face-to-Face	CO	1/1/2015	12/31/2019
Average Student Work Hours	CO	1/1/2015	12/31/2019
Interest Income Verification	CT	7/1/2013	6/30/2015
Postpone Expedited Service Interview	CT	1/1/2015	6/30/2016
Reinstatement	CT	8/1/2015	1/31/2017
Conduct Unscheduled Interviews	CT	10/1/2015	9/30/2017
Send Electronic Notices	CT	3/1/2016	2/28/2018
Average Student Work Hours	CT	10/1/2015	4/30/2019
Reinstatement	DC	10/1/2014	9/30/2016
Telephone Interviews In Lieu Of Face-to-Face	DC	10/1/2014	9/30/2018
Deny Applications Before the 30th Day	DE	5/1/2015	4/30/2016
Reinstatement	DE	5/1/2015	10/31/2016
Interest Income Verification	DE	5/1/2015	4/30/2017
Postpone Expedited Service Interview	DE	4/1/2016	9/30/2017
Telephone Interviews In Lieu Of Face-to-Face	DE	3/1/2014	2/28/2018
Send Electronic Notices	FL	7/1/2014	6/30/2016



Postpone Expedited Service Interview	FL	12/1/2015	11/30/2016
Deny Applications Before the 30th Day	FL	5/1/2016	4/30/2017
Conduct Unscheduled Interviews	FL	12/1/2015	11/30/2017
Telephone Interviews In Lieu Of Face-to-Face	FL	1/1/2015	12/31/2019
Average Student Work Hours	FL	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	FL	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	GA	5/1/2015	4/30/2016
Send Electronic Notices	GA	12/1/2014	11/30/2016
Telephone Interviews In Lieu Of Face-to-Face	GA	7/1/2013	6/30/2017
Supply Paper Copy of Online Applications	GA	11/1/2015	10/31/2019
Average Student Work Hours	GU	11/1/2014	10/31/2016
Deny Applications Before the 30th Day	GU	1/1/2016	12/31/2016
Telephone Interviews In Lieu Of Face-to-Face	GU	7/1/2015	6/30/2017
Reinstatement	GU	4/1/2016	9/30/2017
Telephone Interviews In Lieu Of Face-to-Face	HI	8/1/2013	7/31/2017
Deny Applications Before the 30th Day	IA	5/1/2016	4/30/2017
Reinstatement	IA	2/1/2016	1/31/2018
Average Student Work Hours	IA	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	IA	1/1/2015	12/31/2019
Conduct Unscheduled Interviews	ID	5/1/2014	4/30/2016
Deny Applications Before the 30th Day	ID	7/1/2015	6/30/2016
Telephone Interviews In Lieu Of Face-to-Face	ID	5/1/2013	4/30/2017
Average Student Work Hours	ID	1/1/2016	12/31/2019



Deny Applications Before the 30th Day	IL	5/1/2015	4/30/2016
Reinstatement	IL	3/1/2015	8/31/2016
Interactive Voice Responsive Interviews	IL	12/1/2013	12/1/2016
Postpone Expedited Service Interview	IL	4/1/2016	3/31/2017
Send Electronic Notices	IL	9/1/2015	8/31/2017
Average Student Work Hours	IL	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	IL	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	IN	11/1/2015	10/31/2016
Issue joint notice for SNAP and TANF	IN	1/1/2015	12/31/2016
Not Pay for Postage on Change Report Forms	IN	5/1/2016	4/30/2018
Telephone Interviews In Lieu Of Face-to-Face	IN	1/1/2015	12/31/2019
Average Student Work Hours	IN	1/1/2015	12/31/2019
Supply Paper Copy of Online Applications	IN	1/1/2016	12/31/2019
Determine Resources at Point of Application	KS	6/1/2014	5/31/2016
Recertification Interview for Elderly and Disabled Households with No Earned Income	KS	1/1/2015	6/30/2016
Deny Applications Before the 30th Day	KS	5/1/2016	4/30/2017
Telephone Interviews In Lieu Of Face-to-Face	KS	1/1/2015	12/31/2019
Average Student Work Hours	KS	1/1/2015	12/31/2019
Send Electronic Notices	KY	3/1/2015	2/28/2017
Conduct Unscheduled Interviews	KY	7/1/2015	6/30/2017
Reinstatement	KY	5/1/2016	10/31/2017
Average Student Work Hours	KY	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	KY	1/1/2015	12/31/2019



Deny Applications Before the 30th Day	LA	5/1/2015	4/30/2016
Supply Paper Copy of Online Applications	LA	11/1/2014	10/31/2016
Reinstatement	LA	2/1/2015	1/31/2017
Recertification Interview for Elderly and Disabled Households with No Earned Income	LA	9/1/2015	2/28/2017
Average Student Work Hours	LA	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	LA	1/1/2015	12/31/2019
Send Electronic Notices	MA	6/1/2013	5/31/2016
Not Pay for Postage on Change Report Forms	MA	7/1/2015	6/30/2016
Recertification Interview for Elderly and Disabled Households with No Earned Income	MA	12/1/2015	5/31/2017
Reinstatement	MA	12/1/2015	11/30/2017
Signature Block	MA	5/1/2015	4/30/2019
Telephone Interviews In Lieu Of Face-to-Face	MA	1/1/2015	12/31/2019
Average Student Work Hours	MA	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	MD	5/1/2015	4/30/2016
Postpone Expedited Service Interview	MD	9/1/2015	8/31/2016
Shorten Certification Period for Certain Households	MD	5/1/2015	4/30/2017
Telephone Interviews In Lieu Of Face-to-Face	MD	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	ME	5/1/2015	4/30/2016
Reinstatement	ME	7/1/2015	12/31/2016
Conduct Unscheduled Interviews	ME	9/1/2015	8/30/2017
Telephone Interviews In Lieu Of Face-to-Face	ME	10/1/2014	9/30/2018
Deny Applications Before the 30th Day	MI	5/1/2015	4/30/2016



Supply Paper Copy of Online Applications	MI	7/1/2015	6/30/2016
Telephone Interviews In Lieu Of Face-to-Face	MI	8/1/2013	7/31/2017
Send Electronic Notices	MI	9/1/2015	8/31/2017
Non-SR HHs Report Change in Rate of Pay or Hours Worked	MI	5/1/2015	4/30/2019
Not Pay for Postage on Change Report Forms	MN	5/1/2015	4/30/2016
Reinstatement	MN	5/1/2015	10/31/2016
Change Reporting HH to Report by 10th Day of Month	MN	5/1/2015	4/30/2017
Telephone Interviews In Lieu Of Face-to-Face	MN	10/1/2013	12/31/2019
Not Pay for Postage on Change Report Forms	MO	5/1/2015	4/30/2016
Postpone Expedited Service Interview	MO	10/1/2015	9/30/2016
Conduct Unscheduled Interviews	MO	2/1/2016	1/31/2017
Recertification Interview for Elderly and Disabled Households with No Earned Income	MO	10/1/2015	3/31/2017
Conduct Unscheduled Interviews	MO	1/1/2016	12/31/2017
Average Student Work Hours	MO	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	MO	9/1/2015	12/31/2019
Supply Paper Copy of Online Applications	MO	1/15/2016	1/14/2020
Reinstatement	MS	1/1/2015	6/30/2016
Send Electronic Notices	MS	8/1/2014	7/31/2016
Average Student Work Hours	MS	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	MS	1/1/2015	12/31/2019
Send Electronic Notices	MT	11/1/2014	10/31/2016
Deny Applications Before the 30th Day	MT	2/1/2016	1/31/2017
Interest Income Verification	MT	5/1/2015	4/30/2017



Conduct Unscheduled Interviews	MT	9/1/2015	8/31/2017
Prisoner Pre-Release Application Filing	MT	11/1/2015	10/31/2017
Average Student Work Hours	MT	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	MT	1/1/2015	12/31/2019
Supply Paper Copy of Online Applications	NC	11/1/2015	10/31/2016
Interest Income Verification	NC	5/1/2015	4/30/2017
Average Student Work Hours	NC	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	NC	1/1/2015	12/31/2019
Supply Paper Copy of Online Applications	ND	9/1/2015	8/31/2016
Deny Applications Before the 30th Day	ND	12/1/2015	11/30/2016
Average Student Work Hours	ND	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	NE	6/1/2015	5/31/2016
Reinstatement	NE	5/1/2015	10/31/2016
Recertification Interview for Elderly and Disabled Households with No Earned Income	NE	7/1/2015	12/31/2016
\$100 Reporting Threshold for Changes in Gross Monthly Income	NE	5/1/2015	4/30/2017
Interest Income Verification	NE	5/1/2015	4/30/2017
Send Electronic Notices	NE	3/1/2016	2/28/2018
Not Pay for Postage on Change Report Forms	NE	5/1/2016	4/30/2018
Average Student Work Hours	NE	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	NE	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	NH	5/1/2015	4/30/2016
Signature Block	NH	3/1/2015	2/28/2017
Send Electronic Notices	NH	5/1/2015	4/30/2017



Telephone Interviews In Lieu Of Face-to-Face	NH	1/1/2015	12/31/2019
Average Student Work Hours	NH	1/1/2015	12/31/2019
Reinstatement	NJ	8/1/2014	7/31/2016
Telephone Interviews In Lieu Of Face-to-Face	NJ	5/1/2013	4/30/2017
Recertification Interview for Elderly and Disabled Households with No Earned Income	NM	3/1/2015	8/31/2016
Postpone Expedited Service Interview	NM	12/1/2015	11/30/2016
Average Student Work Hours	NM	3/1/2015	2/28/2019
Supply Paper Copy of Online Applications	NM	12/1/2015	11/30/2019
Telephone Interviews In Lieu Of Face-to-Face	NM	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	NV	4/1/2013	3/31/2017
Reinstatement	NY	4/1/2014	3/31/2016
Deny Applications Before the 30th Day	NY	5/1/2015	4/30/2016
Interest Income Verification	NY	7/1/2014	6/30/2016
\$100 Reporting Threshold for Changes in Gross Monthly Income	NY	7/1/2015	6/30/2017
Send Electronic Notices	NY	7/1/2016	6/30/2018
Average Student Work Hours	NY		12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	NY	1/1/2015	12/31/2019
Pend SNAP Applications for up to 90 days for Mentally Ill Individuals Scheduled to For Release from NYC Detention Facilities	NY		
Prisoner Pre-Release Application Filing	NY		
Deny Applications Before the 30th Day	OH	11/1/2015	10/31/2016
Reinstatement	OH	12/1/2015	5/31/2017
Shorten Certification Period for Certain Households	OH	4/1/2016	3/31/2018



Telephone Interviews In Lieu Of Face-to-Face	OH	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	OH	1/1/2015	12/31/2019
Postpone Expedited Service Interview	OK	7/1/2015	6/30/2016
Recertification Interview for Elderly and Disabled Households with No Earned Income	OK	8/1/2015	7/31/2016
Supply Paper Copy of Online Applications	OK	8/1/2015	7/31/2016
Reinstatement	OK	3/1/2015	8/31/2016
Change Reporting HH to Report by 10th Day of Month	OK	5/1/2016	4/30/2018
Average Student Work Hours	OK	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	OK	1/1/2015	12/31/2019
Simplified Reporting RFC and Returned Mail	OR	6/1/2013	5/31/2015
Telephone Interviews In Lieu Of Face-to-Face	OR	1/1/2014	12/31/2017
Postpone Expedited Service Interview	PA	5/1/2015	10/31/2016
Shorten Certification Period for Certain Households	PA	5/1/2015	4/30/2017
Telephone Interviews In Lieu Of Face-to-Face	PA	5/31/2013	4/30/2017
Send Electronic Notices	PA	5/1/2015	4/30/2017
Reinstatement	PA	1/1/2015	12/31/2017
Deny Applications Before the 30th Day	RI	5/1/2016	4/30/2017
Telephone Interviews In Lieu Of Face-to-Face	RI	1/1/2015	12/31/2019
Average Student Work Hours	RI	1/1/2015	12/31/2019
Conduct Unscheduled Interviews	SC	7/1/2014	6/30/2016
Interest Income Verification	SC	5/1/2015	4/30/2017
Telephone Interviews In Lieu Of Face-to-Face	SC	12/1/2014	11/30/2018
Prisoner Pre-Release Application Filing	SD	5/1/2015	4/30/2017



Telephone Interviews In Lieu Of Face-to-Face	SD	1/1/2015	12/31/2019
Average Student Work Hours	SD	1/1/2015	12/31/2019
Supply Paper Copy of Online Applications	SD	1/1/2016	12/31/2019
Deny Applications Before the 30th Day	TN	5/1/2015	4/30/2016
Telephone Interviews In Lieu Of Face-to-Face	TN	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	TN	1/1/2015	12/31/2019
Average Student Work Hours	TN	1/1/2015	12/31/2019
Supply Paper Copy of Online Applications	TX	7/1/2015	6/30/2016
Conduct Unscheduled Interviews	TX	8/1/2015	7/31/2017
Send Electronic Notices	TX	9/1/2015	8/31/2017
Telephone Interviews In Lieu Of Face-to-Face	TX	1/1/2015	12/31/2019
Average Student Work Hours	TX		
Not Pay for Postage on Change Report Forms	UT	8/1/2015	7/31/2016
Reinstatement	UT	5/1/2015	10/31/2016
Send Electronic Notices	UT	1/1/2015	12/31/2016
Conduct Unscheduled Interviews	UT	2/1/2015	1/31/2017
Allow HH 30 Days from Date of New HH Member to Provide Verification	UT	5/1/2015	4/30/2017
Shorten Certification Period for Certain Households	UT	7/1/2015	6/30/2017
Telephone Interviews In Lieu Of Face-to-Face	UT	1/1/2015	12/31/2019
Average Student Work Hours	UT	1/1/2015	12/31/2019
Supply Paper Copy of Online Applications	UT	5/1/2016	4/30/2020
Reinstatement	VA	11/1/2014	10/31/2016
Telephone Interviews In Lieu Of Face-to-Face	VA	3/1/2013	2/28/2017



Reinstatement	VI	12/1/2014	11/30/2016
Conduct Unscheduled Interviews	VT	1/1/2015	12/31/2015
Deny Applications Before the 30th Day	VT	5/1/2015	4/30/2016
Average Student Work Hours	VT	3/1/2015	2/28/2019
Telephone Interviews In Lieu Of Face-to-Face	VT	1/1/2015	12/31/2019
HHs Receiving SSI or OASDI Do Not Have to Report Changes	WA	5/16/2007	4/30/2015
Deny Applications Before the 30th Day	WA	5/1/2016	4/30/2017
Conduct Unscheduled Interviews	WA	7/1/2015	6/30/2017
Telephone Interviews In Lieu Of Face-to-Face	WA	1/1/2015	12/31/2019
Average Student Work Hours	WA	1/1/2015	12/31/2019
Postpone Expedited Service Interview	WI	7/1/2015	6/30/2016
Reinstatement	WI	5/1/2015	10/31/2016
Send Electronic Notices	WI	12/1/2014	11/30/2016
Shorten Certification Period for Certain Households	WI	2/1/2015	1/31/2017
Telephone Interviews In Lieu Of Face-to-Face	WI	1/1/2014	12/31/2017
Conduct Unscheduled Interviews	WI	1/1/2016	12/31/2017
Not Pay for Postage on Change Report Forms	WI	5/1/2016	4/30/2018
Average Student Work Hours	WI	4/1/2015	3/31/2019
\$100 Reporting Threshold for Changes in Gross Monthly Income	WI	5/1/2015	4/30/2019
Supply Paper Copy of Online Applications	WI	5/1/2016	4/30/2020
Deny Applications Before the 30th Day	WV	5/1/2015	4/30/2016
Reinstatement	WV	10/1/2015	3/31/2017
Send Electronic Notices	WV	1/1/2016	12/31/2017



Average Student Work Hours	WV	1/1/2015	12/31/2019
Telephone Interviews In Lieu Of Face-to-Face	WV	1/1/2015	12/31/2019
Deny Applications Before the 30th Day	WY	5/1/2016	4/30/2017
Not Pay for Postage on Change Report Forms	WY	5/1/2016	4/30/2018
Telephone Interviews In Lieu Of Face-to-Face	WY	1/1/2015	12/31/2019
Average Student Work Hours	WY	1/1/2015	12/31/2019