

TOP RECOMMENDATIONS

- 🍌 Recommendation #1: The USDA should adopt nutrition guidelines for its Food Distribution Programs
- 🍌 Recommendation #2: Congress should increase TEFAP funding by indexing TEFAP to a more adequate Food Plan than the Thrifty Food Plan
- 🍌 Recommendation #3: Congress should increase TEFAP Farm to Food Bank (FTFB) funding to at least \$25 million
- 🍌 Recommendation #4: USDA should add fresh produce to the Commodity Supplemental Food Program (CSFP), and Congress should provide infrastructure grants for distribution
- 🍌 Recommendation #5: Congress should expand FDPIR's Traditional, Locally- and Regionally-Sourced Food Fund
- 🍌 Recommendation #6: Congress should allow simultaneous participation in FDPIR and SNAP
- 🍌 Recommendation #7: USDA should evaluate the impact of recent changes to FDPIR and TEFAP
- 🍌 Recommendation #8: Additional states should implement direct-spending programs supporting farm-to-food bank donations
- 🍌 Recommendation #9: Additional states should implement organic waste bans that prioritize nutritious food donation
- 🍌 Recommendation #10: Congress should create a new grant program to support state organic waste ban planning and implementation
- 🍌 Recommendation #11: Researchers should study the effect of required donation under New York's organic waste ban

ADDITIONAL RECOMMENDATIONS

- 🍌 Recommendation #12: Congress should amend the Federal Food Donation Act (FFDA) to mandate donation of certain nutritious foods, and states should implement similar state-level laws
- 🍌 Recommendation #13: FDA and USDA should develop and implement federal date labeling standards
- 🍌 Recommendation #14: Congress should fund research on whether tax credits incentivize nutritious food donation
- 🍌 Recommendation #15: The FDA's Food Code should incorporate the Conference for Food Protection's forthcoming recommended language on food donation
- 🍌 Recommendation #16: More states should subsidize game donation and more funds should be appropriated for these programs
- 🍌 Recommendation #17: States with game donation programs should address game-related food safety concerns
- 🍌 Recommendation #18: Food banks should adopt HER's Nutrition Guidelines for the Charitable Food System

Top Recommendations

Section I. USDA Food Distribution Programs provide the CFS with a large volume of nutritious food, but there is room to improve both quantity and nutritional quality, especially in FDPIR

In 2020, Feeding America sourced 1.7 billion of its 5 billion total distributed meals from federal and state governments.¹ The majority of donated food came from USDA Food Distribution Programs, including The Emergency Food Assistance Program, the Commodity Supplemental Food Program, Food Distribution Program on Indian Reservations, and the now-discontinued Coronavirus Food Assistance Program. Under these programs, USDA exercises statutory authority to purchase food at scale, often commodities from agribusiness, and to distribute it to the CFS. TEFAP, CSFP, and FDPIR are vital for providing the CFS with food and offer promise for improved nutrition.

In 2019, TEFAP provided over \$1.8 billion of food.² The USDA purchases foods that it then distributes to State Agencies designated to administer the program locally. TEFAP Foods are

The three most impactful policy reforms...

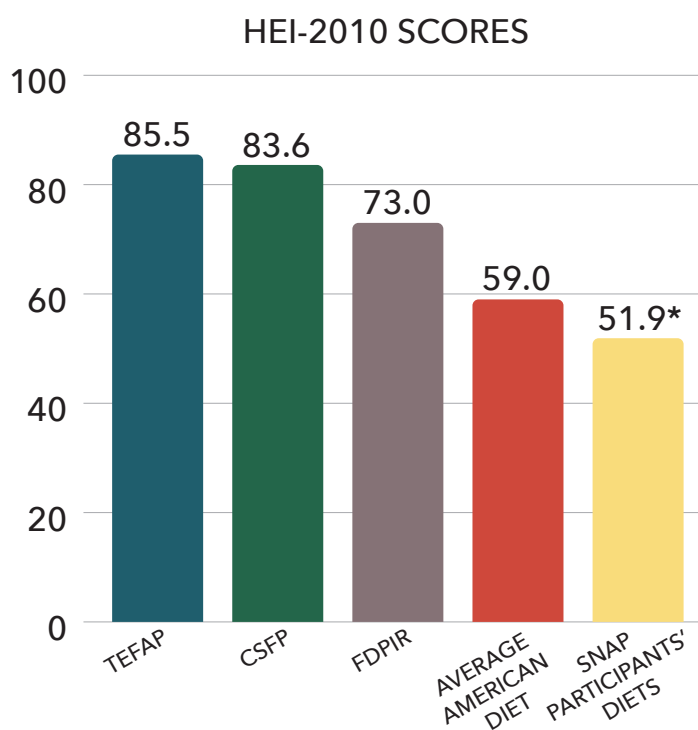
1. **Strengthen** the nutritional quality of United States Department of Agriculture (USDA) Food Distribution Programs, which include the Emergency Food Assistance Program (TEFAP), the Commodity Supplemental Food Program (CSFP), and the Food Distribution Program on Indian Reservations (FDPIR);
2. **Introduce or strengthen** government farm-to-food bank programs; and
3. **Implement** additional state-level organic waste bans.

quite nutritious. A 2014 USDA analysis found that fruits and vegetables accounted for 38 percent of the entitlement and bonus TEFAP foods delivered to emergency feeding organizations,³ and that, in FY2014, TEFAP had a Healthy Eating Index-2010 (HEI-2010) score of 85.5 out of 100.⁴ This score is higher than the average American diet (59 out of 100) and the average SNAP participant's diet (51.9 out of 100).⁵

CSFP provides pre-assembled food packages for low-income seniors over 60.⁶ CSFP's HEI-2010 score was 83.6 in FY2014.⁷

FDPIR provides food to income-eligible tribal populations, typically as an alternative to SNAP in places where recipients do not have access to SNAP offices or authorized retailers.⁸ Households cannot simultaneously participate in FDPIR and SNAP.⁹ In FY2014, FDPIR's HEI-2010 score was 73.¹⁰

FDPIR allows state agencies or tribal organizations administering the program to purchase locally and regionally grown foods and traditional indigenous foods, like blue corn and bison through the Traditional, Locally- and Regionally-Sourced Food Fund. First introduced as a pilot program in the 2014 Farm Bill, the 2018 Farm Bill made it permanent.¹¹ The 2018 Farm Bill also, separately, created a demonstration project allowing Indian Tribal



*1999-2004

Organizations, rather than USDA, to purchase program food by entering into self-determination contracts.¹²

The 2018 FDPIR Farm Bill measures were partly a response to a 2016 USDA report on FDPIR that included a survey on client satisfaction with respect to program foods' nutrition and cultural appropriateness. That report found that "participant suggestions for improvements centered on building a more culturally relevant, local, and fresh food package."¹³

The statutes and regulations governing TEFAP, CSFP, and FDPIR do not contain comprehensive nutrition guidelines or stipulate that the programs follow the *Dietary Guidelines for Americans* (DGAs). The last comprehensive USDA study on the programs' nutritional quality examined data from 2014.¹⁴ Based on the HEI scores discussed above, USDA Food Distribution Program foods are relatively nutritious, but there is clear room for improvement.

However, in recent years the USDA has tried to align the programs with the DGAs and has improved the nutritional quality of its offerings.¹⁵ These changes have included decreasing the levels of fat, sodium, and sugar in all USDA Foods.¹⁶

Key informant interviewees praised USDA foods' nutritional quality but indicated that there is still room for improvement:

- 🌱 A hunger relief organization executive called them: *"high-quality, high nutritional value."*
- 🌱 A food bank executive shared that: *"for the most part, those products really are nutritious products. Every once in a while there's a beef stew high in sodium...but...there's always canned vegetables, there's always canned fruits, there's whole grain cereal, there's shelf-stable milk, there's whole grain pasta or brown rice."*
- 🌱 An anti-hunger expert felt that: *"[c]ommodities have always been an under-appreciated but overly important resource in the charitable food stream...they're of higher nutritional quality than the other streams, not a bad thing to grow."*

🌱 Suggesting that there is still room for nutritional improvement, a food bank CEO stated that a:
“significant source [of our food] is the USDA, so when you think about what could actually impact the nutritional value of our food...it would be just through the nutritional quality of food we’re able to source from the USDA.”

Recommendation #1: The USDA should adopt nutrition guidelines for its Food Distribution Programs.

Uniform nutrition standards, which are currently absent from USDA Food Distribution Programs, would correct current nutritional quality disparities among USDA programs. Setting such standards may also accelerate improvements faster than USDA’s current slower and less formal approach of trying to align its purchases with the DGAs over a period of years.

Recommendation #2: Congress should increase TEFAP funding by indexing TEFAP to a more adequate Food Plan than the Thrifty Food Plan.

The USDA calculates Food Plans to illustrate a nutritious diet at four cost levels, using the Consumer Price Index.¹⁷ Currently, TEFAP is indexed to the Thrifty Food Plan, meaning that the annual TEFAP appropriation is calculated based on changes to the Thrifty Food Plan.¹⁸

The Thrifty Food Plan is the least costly of the four food plans that USDA calculates to represent a household’s monthly food costs.¹⁹ The USDA re-evaluated the Thrifty Food Plan in August 2021, increasing its assessment of food costs under the plan.²⁰ This change will increase TEFAP funding as well as SNAP benefits. However, the Thrifty Food Plan allowance breaks down to a meager \$1.80 per meal, which still undervalues the amount of food that CFS clients require.

To meet CFS clients’ actual food needs, Congress should amend 7 U.S.C. § 2036 to index TEFAP against a more generous Food Plan. As the Food Research & Action Center has observed: the Low-Cost Food Plan “is generally in line with what low- and moderate-

income families report that they need to spend on food...[and] allows for greater food variety and choices to support a healthful, palatable diet.”²¹

Recommendation #3: Congress should increase TEFAP Farm to Food Bank (FTFB) funding to at least \$25 million.

TEFAP FTFB funding
is only
\$4 million/year
out of the
TEFAP 2020 budget of
\$1.8 billion

The 2018 Farm Bill introduced FTFB funding to TEFAP.²² Farm-to-food bank describes the movement of food, either through donation or purchase, directly from farmers to the CFS. Donated agricultural products, which are mostly fruits and vegetables, are a highly nutritious source of food. The farm-to-food bank supply chain is

a key opportunity to fight hunger and increase nutritious donations while cutting food waste, as fourteen million tons of crops go unharvested annually.²³ This tonnage is roughly the same as the amount of waste that New York City produces each year.²⁴

Four million dollars of FTFB funding is available annually for each Fiscal Year 2019 through 2023 for harvesting, processing, packaging, and transporting donated commodities through TEFAP.²⁵

The relatively low annual appropriation, combined with the TEFAP allocation formula (FTFB funds are allocated to states based on the TEFAP funding formula laid out in 7 C.F.R. § 251.3(h)), results in little incentive for some states to participate. For example, in FY20, only \$25,644 would have been available to West Virginia.²⁶

Moreover, subsidizing purchase of these locally and regionally produced foods likely has a positive impact on local food systems and small and mid-size farmers and growers. An anti-hunger expert emphasized in our interviews that: *“We need to financially support and provide the same kinds of incentives and subsidies [that we provide to Big Agriculture producers] to the folks who are really nourishing and feeding their communities with locally-grown, nutritious food.”*

Recommendation #4: USDA should add fresh produce to the Commodity Supplemental Food Program (CSFP), and Congress should provide infrastructure grants for distribution

CSFP's food packages, which feed low-income seniors, do not constitute a complete diet,²⁷ and are not intended to cover full dietary needs.²⁸ Yet many food banks supplement the packages with fresh produce to meet seniors' nutrition needs. CSFP foods already arrive in package form, and USDA could ease this burden on food banks by adding fresh produce.

Congress should provide infrastructure grants to help distribute increased amounts of produce through food banks participating in CSFP. The American Rescue Plan provides \$100 million dollars for food bank infrastructure grants in underserved areas.²⁹ Because these funds are specifically intended for underserved areas, they will not necessarily cover distribution of additional fresh produce through CSFP, which serves food banks across the country, not just in rural, remote, and low-income communities that the existing infrastructure grants are intended to serve.

Recommendation #5: Congress should expand FDPIR's Traditional, Locally- and Regionally-Sourced Food Fund.

The fund's current appropriation—\$5 million a year—is a drop in the bucket of FDPIR's total budget, which was \$153 million in 2019.³⁰ It should be increased to allow FDPIR to provide even more healthy, local, culturally desirable foods.

Recommendation #6: Congress should allow simultaneous participation in FDPIR and SNAP.

Qualifying tribal members can switch between SNAP and FDPIR from month-to-month. However, these changes require the tribal member to give notice

FDPIR Traditional, and Locally- and Regionally-Sourced Food Fund is a
\$5 million/year
appropriation out of the
\$153 million
total FDPIR budget.

of and administrators to register the change. Eliminating the prohibition on simultaneous SNAP and FDPIR participation would simplify the benefits process for both recipients and administrators. It would also be more likely to address food insecurity needs in Tribal communities than either program alone.³¹

Recommendation #7: USDA should evaluate the impact of recent changes to FDPIR and TEFAP.

The USDA has yet to conduct a follow-up report since the 2018 Farm Bill changes to both FDPIR and TEFAP.

A new study would illuminate the current nutritional quality of USDA foods and whether TEFAP's FTFB and FDPIR's Traditional and Locally- and Regionally- Grown Food Fund have increased nutritional quality and cultural appropriateness of, and client satisfaction with, the programs, and could provide a basis for further changes and improvements.



Section II. States should play a larger role in subsidizing farm-to-food bank donations

Interest in growing the farm-to-food bank donation stream, through which farmers send crops to the charitable food system, has risen in recent years.³² These donations are largely of inherently nutritious fruits and vegetables.

Some states have established or begun to support innovative programs to facilitate farm-to-food bank donation. For example, Pennsylvania has PASS,³³ a program that provides state funds to support the harvesting, processing, packaging, and transport of donated food.³⁴ Current funding is \$1.5 million.³⁵ When funding was originally \$1 million, Philabundance, a Pennsylvania food bank and anti-hunger advocacy organization, wrote that the “appropriation only covers a portion of the nutritious bounty that could be brought into the charitable food system through PASS”³⁶ and advocated for increased state support.

In contrast, food bank, philanthropic, and ad hoc government funding supports farm-to-food bank programs in other states. For example, California food banks and philanthropic dollars have funded the California Food Bank Association’s Farm to Family program.³⁷

And while federal TEFAP FTFB funding is available, states must apply for these grants and the funding is not enough to support the full extent of farm-to-food bank opportunities in each state. For example, Maine received \$19,630 in TEFAP FTFB funding in Fiscal Year 2021 for frozen blueberry harvesting and donation.³⁸ Simultaneously, Mainers Feeding Mainers,³⁹ the farm-to-food bank program run by the state’s largest food bank received \$1 million in the Maine Fiscal Year 2020-21 budget to harvest over two million pounds of food.⁴⁰

A food bank executive in a state with state funding for such a program emphasized that robust continued funding is necessary

for farm-to-food bank programs to thrive: “[t]hat’s our evergreen state policy priority, to get state funding for [the program] included in the budget, and it’s a battle every year.”

Recommendation #8: Additional states should implement direct-spending programs supporting farm-to-food bank donations.

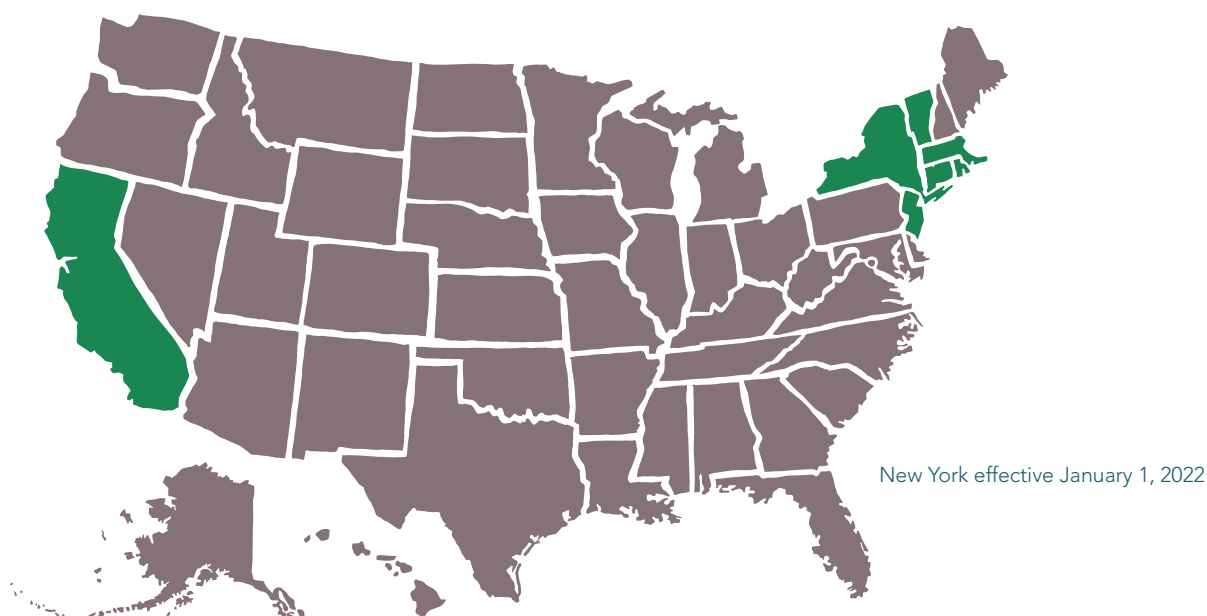
State legislatures already subsidizing farm-to-food bank programs, like Pennsylvania’s, should fund these programs more robustly. States where food banks, food bank associations, or philanthropists subsidize farm-to-food bank donations without state funds, or without such programs, should appropriate funds to grow or implement farm-to-food bank programs.



Section III. Organic waste bans benefit human and environmental health by driving nutritious food donation

Organic waste bans were only three percent of the policies in our scan. With six interviewees reporting that they encourage nutritious donation, our KIIs revealed an opportunity for more states to implement organic waste bans.

Seven states—California,⁴¹ Connecticut,⁴² Massachusetts,⁴³ New Jersey (effective October 14, 2021),⁴⁴ New York⁴⁵ (effective January 1, 2022), Rhode Island⁴⁶, and Vermont⁴⁷ have bans. The 2018 Farm Bill established a pilot program allowing Congress to appropriate \$25 million annually through 2023 in part for local governments to develop and test composting and food waste reduction plans in at least 10 states.⁴⁸ However, this grant money is unavailable for state-level programs.



Food loss and waste are immense problems: the U.S. wastes up to 40 percent of edible food,⁴⁹ which generates climate-damaging methane emissions when food sits in landfills.⁵⁰ During the first 20 years following its release into the atmosphere, methane is 84

times more potent as a global warming accelerant than carbon.⁵¹ Donating food, rather than landfilling it, is an opportunity to fight food and nutrition insecurity and cut methane emissions, and our recommendations below take into consideration such positive climate impacts.

Existing organic waste bans are positive steps but could better prioritize donation.

Bans generally apply to organic waste generators, most notably food retailers, above a certain tonnage within a specified timeframe, for example one ton per week. The bans are often structured so that the tonnage threshold progressively lowers in a ban's first few years.⁵²

Most existing bans do not prioritize donation. For example, the Frequently Asked Questions section of the Connecticut ban states that donation counts as compliance with the law, but this option is not explicit in the statutory text.⁵³ Vermont's ban has a food waste priority use hierarchy that includes "diversion for food consumption by humans" as the second option after reducing the amount of food waste generated at the source.⁵⁴ However, New York's law will be the first to require donation of edible food before recycling.⁵⁵

Organic waste bans benefit human and environmental health by driving nutritious food donation.

There is strong evidence that nutritious, fresh food donation increases when states implement organic waste bans. For example, the second phase of Vermont's Universal Recycling Law took effect in 2015, prohibiting food waste generators of over one ton per week from landfilling that waste.⁵⁶ Subsequently, the Vermont Foodbank saw a 30 percent increase in food rescue from donors, including a 200 percent rise in retail donation pickups.⁵⁷ This donation increase included an uptick in fruits and vegetables.⁵⁸

Several KII participants emphasized this effect:

- 🌱 An environmental agency employee in a state with an organic waste ban reported that: *"there were several large food retailers that weren't donating at the level they could have been, and when the law*

was going to come into play, they started donating more.”

- 🌱 An environmental policy expert who has provided technical support to states implementing bans shared that a particular state saw a: *“20-25 percent increase in donation post-ban. Shelf-stable foods stayed relatively consistent, and really the delta came in these highly nutritious foods: produce, meat, prepared foods that are a little more challenging to donate.”*
- 🌱 Regarding concerns about organic waste bans resulting in food banks shouldering more unwanted waste, the same KII interviewee noted that: *“[w]e’ve done some digging into this and, sure, there are anecdotal occasions where this is happening, but we’ve asked multiple times if food banks locally feel like they are the dumping ground, and they are saying that they’re not. This may also get back to best management practices, having a good relationship and feedback loop between donor and recipient.”*

One interviewee also emphasized organic waste bans’ positive climate effects: *“if you are going to focus on diverting waste and improving recycling goals, you really can’t get there without focusing on food. It’s not a question of if, it’s when your state is going to talk about food.”*

Recommendation #9: Additional states should implement organic waste bans that prioritize nutritious food donation.

New bans should explicitly include edible food donation as an option under the law. The statutory language should also specifically encourage nutritious food donation and recycling of unhealthy foods.

Bans should include funding and implementation plans for perishable food rescue to ensure that necessary infrastructure exists. Implementation efforts must include donor education around not overburdening food banks with inedible waste. Food banks can also invest in de-canning machines and anaerobic digesters to avoid shouldering the landfilling costs associated with inedible food disposal.

Recommendation #10: Congress should create a new grant program to support state organic waste ban

planning and implementation.

Federal funding could enable more states to plan and implement organic waste bans. Congress should create a new grant program for this purpose.

Recommendation #11: Researchers should study the effect of required donation under New York’s organic waste ban.

New York’s ban, effective January 1, 2022, is the first organic waste ban to require donation of edible food. The law’s construction provides an opportunity to study whether such a requirement improves the proportion of nutritious food donated to food banks.

ADDITIONAL RECOMMENDATIONS

These recommendations are not likely to impact nutritious donations as robustly as our top recommendations, because the policies involved do not result in as high volumes of donations to the CFS, but would nevertheless be meaningful changes.

Recommendation #12: Congress should amend the Federal Food Donation Act (FFDA) to mandate donation of certain nutritious foods, and states should implement similar state-level laws.

The FFDA requires inclusion of a clause encouraging the donation of excess, “apparently wholesome food”⁵⁹ in each federal agency or subcontractor food service contract above \$25,000.⁶⁰ It requires inclusion of the same clause in contracts above \$25,000 for federal property lease or rental for events at which food is served.⁶¹

Most laws involving food donation are optional—they generally encourage donation rather than require it and therefore are less likely to result in donation. Congress should amend the FFDA to require rather than encourage donation, but limit the requirement to fruits, vegetables, dairy, protein, and healthy beverages, and bar donation of sugar-sweetened beverages, unhealthy snacks, and desserts.

Illinois is the only state with a comparable state-level law. Illinois' law (30 Ill. Comp. Stat. § 500/55-20) forbids public entities from contracting to purchase food if the terms prohibit donation of the food, and requires state agencies with contracts for food purchase to adopt policies permitting leftover food donation.⁶² Yet the Illinois law is even less likely than the FFDA to spur donation. It does not encourage or recommend donation; it merely requires agencies to adopt policies permitting it.

Other states should enact laws that require public entity contracts for food purchase to mandate donation of fruits, vegetables, dairy, protein, and healthy beverages, and bar donation of sugar-sweetened beverages, unhealthy snacks, and desserts. These laws should include a dollar threshold—such as the \$25,000 threshold in the FFDA—to avoid overburdening state agencies that procure small amounts of food.

Illinois should amend 30 Ill. Comp. Stat. § 500/55-20 to conform with the above recommendations.

Recommendation #13: FDA and USDA should develop and implement federal date labeling standards.

The lack of federal date labeling standards, especially a uniform discard date label, has long been a source of confusion for food retailers and creates unnecessary food waste where there are opportunities for donation.

Date labeling on food either estimates the window in which a product is at its best quality, or when it was produced.⁶³ Date labels are commonly misunderstood to reflect food safety, but actually indicate the time period in which food will be freshest; depending on the food, it will still likely be safe to consume for days, weeks, months, or even years after the label date.⁶⁴ The federal government regulates date labeling only minimally: the FDA requires a “use by” date for infant formula and the USDA mandates a “pack date” for poultry and eggs.⁶⁵

In the absence of further federal regulation, states have a confusing array of date labeling laws: our policy scan found that at least 28 states and Washington, DC have laws regarding date labeling of

dairy products, eggs, meat, or packaged perishable foods,⁶⁶ and many of these laws conflict with one another.⁶⁷ Fully 20 percent of the policies in our scan—the second highest of any federal or state policy category—are state date labeling laws, showing how the dearth of federal regulation has created a vacuum into which state laws have stepped.

Required date labels such as these do not necessarily reflect safety. For example, Montana does not allow the sale of milk more than twelve days after pasteurization, even though milk can be fresh for 2-3 weeks after pasteurization.⁶⁸ Retailers pay close attention to date labels, particularly on perishable foods, which are often nutritious. While food safety grounded in science is vital, strict adherence to labels that do not necessarily convey safety information and vary widely across the food industry is overkill and can result in wasted healthy food that could otherwise be donated to food banks.

The lack of federal date labeling standards, especially a uniform discard date label, has long been a source of confusion for food retailers and creates unnecessary food waste where there are donation opportunities.

The federal government's failure to comprehensively regulate date labeling has led to industry initiatives promoting use of voluntary, standardized labeling language. In 2017, the Food Marketing Institute and the Grocery Manufacturers Association, two of the largest food industry trade groups, launched the FMI-GMA Product Code Dating Initiative, which urges grocery manufacturers and retailers to use two labeling phrases: "BEST if Used By" to indicate freshness, and "USE By" safety phrasing for perishable products where there are safety concerns.⁶⁹

The FDA does not currently specifically regulate date labeling but issued a letter in May 2019 indicating that the agency "strongly supports" the industry's voluntary efforts to use the "BEST if Used by" language.⁷⁰ The letter stated, however, that the agency had not taken a position on the "USE By" language to convey safety risks.

The Product Code Dating Initiative anticipated 98 percent compliance by January 2020. However, a Harvard FLPC study

found that the voluntary language conflicts with required date labeling language in at least 27 states.⁷¹ For this reason, manufacturers and retailers in those states cannot use the FMI-GMA language *and* comply with state laws.⁷² This conflict allows a confusing array of labeling practices to persist.

A comprehensive federal date labeling framework would include language clarifying the difference between quality concerns and safety risks. The more clarity food retailers and distributors have around date labels, the more likely they are to feel confident in donating food, particularly perishable food, which is often nutritious. Because FDA already supports the “BEST if Used by” language for quality dating, FDA and USDA should implement this standard through rulemaking.

Safety labeling is more complex, and Congress should fund the FDA and/or USDA to develop a uniform discard date standard. Before issuing regulations or guidance on safety labeling, FDA must develop a science-based framework for determining safety dates and properly communicating that information to consumers.

As with organic waste bans, awareness about treating the CFS as a waste repository is important with donation of past-dated food. Education can alleviate some of this concern, as can retailers pulling and donating close-coded items where food safety is a concern in time for the food to reach CFS clients while it is still edible.

A sustainability executive from a major retailer modeled this sensitivity: *“Our organization is very focused on not using the donation program as a waste diversion program by any stretch, but the foods that we do donate that are good, consumable foods, we want to get out into our communities.”*

Recommendation #14: Congress should fund research on whether tax credits incentivize nutritious food donation.

Advocates frequently cite tax credits and deductions as incentivizing food donation, but there is insufficient evidence of this effect. Further research is important as several states, including New York and Maryland, have recently introduced farm-to-food

bank credits, and statutes and regulations related to state tax incentives were nine percent of the policies in our scan.

Overview of tax credits and deductions

Under the Federal Enhanced Tax Deduction for Food Donation, businesses can claim an itemized deduction for the value of donated food. Entities donating food to nonprofit organizations can deduct the lesser of (i) their tax basis for the food, plus one-half of the profit margin (fair market value less the tax basis), or (ii) twice the tax basis, up to 15 percent of net income.⁷³ The CARES Act temporarily increased the limitation to 25 percent of net income for Fiscal Year 2020.⁷⁴ The federal deduction applies to all donated food, regardless of nutritional quality.

Our policy scan found that at least fifteen states provide state-level tax deductions or credits for food donations.⁷⁵ So-called farm-to-food bank credits in at least seven of these states—California,⁷⁶ Iowa,⁷⁷ Maryland,⁷⁸ New York,⁷⁹ Oregon,⁸⁰ Virginia,⁸¹ and West



Virginia⁸²—apply to farmer and grower crop donations, which are inherently nutritious. Unique among these credits, California’s applies more broadly to certain processed, mostly healthy foods, like 100 percent fruit juice.⁸³

Credits differ from deductions in that they directly reduce a filer’s tax liability, as opposed to taxable income.⁸⁴ Credits are more beneficial than deductions for low-profit margin businesses, farms, and small businesses because they do not depend on the amount of taxable income.⁸⁵

Existing policy recommendations often point to tax incentives as tools for encouraging donation.⁸⁶ The main evidence that tax incentives motivate donation is that that food donations in the United States rose by 137 percent in the year after Congress expanded the Federal Enhanced Deduction to cover more businesses in 2005.⁸⁷ However, Congress acted in response to post-Hurricane Katrina hunger and there was heightened attention to and interest in food donation at that time.

Several of our KII interviewees, especially executives at food retailers, reported that existing tax incentives do not motivate donation. For example, an executive at a major food retailer shared that *“sometime in January we exceed the [percentage of net income] threshold, so it’s really not driving the behavior in any real, meaningful way.”* An executive at another major retailer said that tax incentives are not a primary motivator in large retailers’ donation programs but may benefit small businesses and encourage them to participate in food donation.

It is also unclear if tax credits motivate farms and small businesses to donate food. A Canadian study examining Ontario’s 2013 farm-to-food bank tax credit found that it did not motivate farmers and growers to donate because they were already doing so.⁸⁸ In fact, the farmers and growers were offended by the credit’s value—25 percent of the fair market value of donated agricultural products—because they perceived the value of their donations to be higher.⁸⁹

Further research can determine if additional federal or state tax credits would motivate further nutritious food donation by both large and small businesses, including food retailers and farmers.

These tax breaks could take the form of farm-to-food bank credits or broader nutritious food credits like California's. Congress should appropriate funds for studies on this issue, and NGOs should conduct similar research, which could include more extensive interviews with donors, particularly in states with farm-to-food bank credits. And future recommendations for state-level tax credits should balance their potential utility against further erosion of state income tax revenue in the face of budgetary problems.

Recommendation #15: The FDA's Food Code should incorporate the Conference for Food Protection's forthcoming recommended language on food donation.

Amending the Food Code could increase donation, particularly of often-nutritious perishable food, by providing clear guidance for new donors. KII interviewees cited food safety concerns as a barrier to donation, especially of perishable, nutritious foods.

Overview of federal and state food donation regulatory guidance

The FDA Food Code (Food Code) is the federal model code outlining food safety regulations for restaurants and food retailers. State and local governments use the FDA Food Code as the basis for their own food codes.⁹⁰ The FDA updates the Food Code every four years based on contributions by regulatory officials, industry representatives, academics, and consumers participating in the Conference for Food Protection (the Conference).⁹¹ Although it covers a wide range of food safety issues occurring in restaurant and retail settings, the Food Code does not address food donation.

The FDA and USDA maintain the Comprehensive Resource for Food Recovery Programs (Comprehensive Resource). This resource, last updated in 2016, does provide food safety guidance for retailers interested in establishing food recovery programs.⁹² However, the Comprehensive Resource is a standalone document, separate from the Food Code, and does not offer model text for adoption into state and local food codes.⁹³ As a result, few states provide donation guidance in their food codes.⁹⁴ Amending the Food Code could increase the number of states that provide this guidance.

Our policy scan found that at least 18 states have a combined

21 laws and guidance addressing donation, either stipulating time and temperature requirements for donated foods, or establishing food safety measures for game donation.⁹⁵ The state laws and guidance that do address donation often include time and temperature requirements for highly perishable foods. For example, a Texas food safety law addressing donated food includes time, temperature, and transportation requirements for “time/temperature controlled for safety foods.”⁹⁶ Donors may shy away from donating highly perishable and perishable nutritious foods without such food safety guidance.

In 2017, the Harvard FLPC surveyed state and local regulators responsible for food safety in all 50 states and found that 78 percent of survey participants thought that model language would be or would have been helpful to those regulators in creating food safety guidance for donation.⁹⁷

Several interviewees familiar with federal and state food safety regulations emphasized that the FDA Food Code’s silence on donation also has an impact. A food policy expert emphasized that the Food Code’s lack of donation information *“has led to no regulatory language around food donations in states, or conflicting information city to city around donation.”*

An executive at a hunger relief organization stated that: *“[w]e recommend putting some language in the FDA Food Code. There are some smaller health departments throughout the country who don’t understand food banks or food donation. It’s not uncommon for us when talking even to large [regulatory] agencies, who don’t know who we are or what we do or what a food bank is...if we can get language into the Food Code, that’ll be a huge step.”*

Recommendation #16: More states should subsidize game donation and more funds should be appropriated for these programs.

Food bank clients want protein.⁹⁸ Game meat is a lean and nutritious protein source,⁹⁹ and hunters often have more meat than they can use. For this reason, states with existing game donation programs should fund them more robustly. States without them, or where they are not state-funded, should establish or fund these

programs.

At least 13 states subsidize hunter donation of wild game such as venison to food banks, representing 10 percent of the policies in our scan.¹⁰⁰ These programs, often called some variation of “Hunters for the Hungry,” differ in their structure but generally entail states appropriating funds to cover the cost of processing game meat that hunters donate to the CFS. In states without these programs, food banks may spend considerable funds to process donated game meat.

A food policy expert shared that food banks *“are always grateful to have [game], it’s considered high-quality, fresh protein, and there are ways to preserve it.”*

Although game meat is a desirable protein source for food banks, most food bank KII interviewees reported receiving little of it. For example, a food bank executive reported that: *“We have a venison donation program. I believe it is exclusively venison...and fiscal year 2019, we distributed 4,700 pounds of the venison that was donated...I think that we don’t feel like it’s a terribly, you know, robust program.”*

Recommendation #17: States with game donation programs should address game-related food safety concerns.

Despite its nutritional quality, game meat can pose unique food safety risks.¹⁰¹ For example, lead contamination from ammunition presents health risks, including damage to the nervous, renal, cardiovascular, reproductive, immune and hematologic systems.¹⁰² It also poses environmental risks, including lead build-up in areas with concentrated hunting activity.¹⁰³ CDC tests have shown that donated game is frequently lead-contaminated.¹⁰⁴

States with game donation programs should provide lead-free bullets to participating hunters. The deer cull in Washington, DC’s Rock Creek Park models this concept by using only lead-free ammunition and donating the venison to DC Central Kitchen, a hunger relief organization.¹⁰⁵ Food banks can also set lead-free parameters, for example, specifying that they prefer or only accept game hunted with lead-free ammunition.

Chronic wasting disease (CWD) is another game-related food safety

concern. Certain species in the deer family (cervids)—deer, elk, reindeer, sika deer, and moose—are prone to CWD, a prion disease that causes weight loss and neurological symptoms in infected animals.¹⁰⁶

There has not been a documented case of CWD in humans; however, there is potential risk for animal-to-human transmission and the World Health Organization recommends keeping prion disease agents out of the human food chain.¹⁰⁷ Concerns over CWD have led some states to offer free CWD testing for certain priority areas.¹⁰⁸

States that subsidize game donation programs and where CWD is present should require that cervids harvested from areas with CWD in the wild population be tested to better ensure that donated game is disease-free. The Centers for Disease Control and Prevention recommend this precautionary measure.¹⁰⁹ Other game-related disease risks should be identified and addressed, either by screening donations or ensuring that donation recipients know to mitigate these risks through proper handling and cooking.

Recommendation #18: Food banks should adopt HER's Nutrition Guidelines for the Charitable Food System.

HER developed its guidelines through an expert panel of food bank directors and people with deep expertise in nutrition, food policy, and the CFS. The guidelines are clear and specific nutrition standards that will serve as a consistent definition of “healthy” for the CFS.

Food bank nutrition policies can influence donor decisions. Nutrition policies or bans excluding high calorie, low nutrient foods and beverages help food banks communicate to donors the kind of items that they will and will not accept. Such organizational policies are an important tool for improving the nutrition of CFS foods, and food banks should adopt them.

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