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LEGISLATIVE AND EXECUTIVE BRANCH
DEVELOPMENTS AFFECTING THE UNITED STATES
DEPARTMENT OF AGRICULTURE SUPPLEMENTAL
NUTRITION ASSISTANCE PROGRAM
Sheila Fleischhacker, Alyssa Moran, and Sara N. Bleich

Legislative and Executive Branch Developments Affecting the United States Department of Agriculture Supplemental Nutrition Assistance Program

Sheila Fleischhacker*, Alyssa Moran**, and Sara N. Bleich***

Abstract

For more than forty years, the United States Department of Agriculture Supplemental Nutrition Assistance Program (SNAP; formerly Food Stamps) has offered nutrition assistance to nearly forty million eligible individuals and families each month. This article first provides a brief overview of the evolution of the United States' largest domestic food security and nutrition safety net program. Then, the article reviews Congressional actions taken regarding SNAP during the 2018 Farm Bill deliberations, appropriations for fiscal years 2017 through 2020, and oversight (in)activities. The article focuses on Congressional activities regarding block grants; participant eligibility; benefit adequacy, issuance, and redemption; and strengthening SNAP's nutritional impacts. Next, the article discusses a variety of executive orders, administrative actions, initiatives, nominations, budget proposals, and tweets with SNAP implications put forth thus far by President Donald Trump, the 45th President of the United States. These actions include the America's Harvest Box, natural disaster responses, the public charge rule, tariffs on Chinese imports, and various agency relocations and reorganizations. The article reflects on how each of these legislative and executive developments might impact SNAP's organization, operations at the federal, tribal, state and retailer levels, and, ultimately, eating patterns and health of participating and eligible children and families, persons with disabilities, and elders.

I. Introduction

While the United States (US) has not explicitly enshrined the right to food in our Constitution or adopted national legislation specifically recognizing the fundamental right to freedom from hunger¹, the national government has an extensive history of using

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policy and programmatic approaches to ensure individuals and families in most need have access to nutritious and safe foods and beverages.² Helping secure access to nutritious and safe foods and beverages has been associated with a variety of positive impacts including but not limited to economic growth and job creation, increased global security and stability, improved health, poverty reduction, reduced healthcare burden, and trade opportunities.³ The US Department of Agriculture (USDA) leads the national efforts to tackle hunger and promote food security through the administration of fifteen federal food and nutrition assistance programs, including the Supplemental Nutrition Assistance Program (SNAP; formerly Food Stamps).⁴ In the 2008 Farm Bill, the Food Stamps Program

and food insecurity. Sheila has more than 15 years of food, nutrition, and health law and policy experience in academic, government, and civil society organizational sectors.

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¹ *Food: A Fundamental Human Right*, FAO OF THE UN, <http://www.fao.org/FOCUS/E/rightfood/right7.htm> (last visited Aug. 20, 2018).

² *A Short History of SNAP*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/newa-short-history-snap> (last visited Aug. 20, 2018); see also *FNS Strategic Priorities*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/> (last visited Aug. 20, 2018) (laying out the following strategic priorities: Provide Americans with access to nutritious food; utilize data-driven strategies to improve program integrity; maintain a high-performing workforce by improving performance and increasing accountability; deliver FNS programs in a manner that maximizes customer service and ensures equal access and opportunity; and ensure FNS programs pave a pathway to self-sufficiency).

³ *Global Food Security*, U.S. DEP'T AGRIC. NAT'L INST. FOOD AGRIC., <https://nifa.usda.gov/topic/global-food-security> (last visited Aug. 20, 2019).

⁴ *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> (last visited Aug. 20, 2019); see also *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 13, 2018), <https://www.cbpp.org/research/policy-basics-the-supplemental-nutrition>

was renamed to SNAP to include a greater emphasis on nutrition.⁵ For more than forty years, SNAP has been the nation's largest program in the domestic food security and nutrition safety net and accounted for sixty-eight percent of all federal food and nutrition assistance in fiscal year 2018.⁶

Each month, SNAP offers nutrition assistance to nearly forty million eligible individuals and families, persons with disabilities, and elders.⁷ In fiscal year 2018, twelve percent of the population participated in SNAP; this marked the fifth consecutive year that participation decreased after increasing in twelve of the previous thirteen years.⁸ The monthly benefits are delivered to electronic benefits transfer accounts, allowing beneficiaries to purchase eligible foods and beverages from 247,861 authorized retailers.⁹ The per person SNAP benefits for fiscal year 2018 averaged \$125.25 per month.¹⁰ SNAP also lifts individuals and families out of poverty; in 2014, this included more than four million people.¹¹ And, SNAP is known as an “automatic economic stabilizer” that dampens the depths of recession and protects the larger national economy; because, as an entitlement program, SNAP automatically expands

-assistance-program-snap (explains how SNAP works, who is eligible, how do people apply for SNAP, how much do households receive in benefits, how much does SNAP cost, current trends in SNAP participation, and other special features of SNAP).

⁵ *About FNS*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/about-fns> (last updated June 1, 2019); see Dottie Rosenbaum, *Food Stamp Provisions of the Final 2008 Farm Bill*, CTR. ON BUDGET AND POL'Y PRIORITIES (July 1, 2008), <https://www.cbpp.org/research/food-stamp-provisions-of-the-final-2008-farm-bill> (provides a brief summary of each of the food stamp provisions in the 2008 Farm Bill).

⁶ VICTOR OLIVEIRA, U.S. DEPT. OF AGRIC. ECON. RES. SERV., THE FOOD ASSISTANCE LANDSCAPE: FY 2018 ANNUAL REPORT iv, (2019), <https://www.ers.usda.gov/webdocs/publications/92896/eib-207.pdf?v=8949.8>.

⁷ RANDY ALISON AUSSENBERG, CONG. RESEARCH SERV., R42505, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): A PRIMER ON ELIGIBILITY AND BENEFITS 1 (2014), <https://fas.org/sgp/crs/misc/R42505.pdf>.

⁸ OLIVEIRA, *supra* note 6, at 4–5.

⁹ *Facts About SNAP*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/facts-about-snap> (last updated Aug. 14, 2019); Dottie Rosenbaum, *USDA to Fund SNAP for February 2019, But Millions Face Cuts if Shutdown Continues*, <https://www.cbpp.org/research/food-assistance/millions-face-cut-in-snap-food-assistance-if-government-shutdown-continues> (last updated Jan. 10, 2019); U.S. DEP'T AGRIC. FOOD & NUTR. SERV., *Where Can I Use SNAP EBT?*, <https://www.fns.usda.gov/snap/retailer-locator> (last updated Oct. 22, 2013).

¹⁰ OLIVEIRA, *supra* note 6, at 4.

¹¹ Brynne Keith-Jennings, *SNAP Kept 4.7 Million Americans Out of Poverty Last Year*, CTR. ON BUDGET AND POL'Y PRIORITIES (Sept. 15, 2016), <https://www.cbpp.org/blog/snap-kept-47-million-americans-out-of-poverty-last-year>.

when individuals and families qualify for the program without direct legislative or executive actions at the federal or state levels.¹²

SNAP was initially developed to prevent hunger and enable workers to work and children to grow up and thrive, even if their families or our nation fell on tough times.¹³ *Hunger* is a potential but not necessarily physiological consequence of *food insecurity*.¹⁴ A 1990 Life Sciences Research Office of the Federation of American Societies for Experimental Biology report explained, “food insecurity exists whenever the availability of nutritionally adequate and safe foods or the ability to acquire acceptable foods in socially acceptable ways is limited or uncertain.”¹⁵ According to the World Food Summit of 1996, *food security* “exists when all people at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.”¹⁶ This definition encompasses food availability, food access (physical and financial), utilization (sufficiently nutritious and safe foods and beverages that are equitably distributed within the household), and stability of these three dimensions over time.¹⁷ Since 1995, the USDA Economic Research Service (ERS) has monitored national and state-level food insecurity through the Current Population Survey Food Security Supplement (CPS-FSS), administered monthly by the Census Bureau and Bureau of Labor Statistics.¹⁸ The CPS-FSS uses the eighteen-item US Household Food Security Survey Module, which categorizes households as having *very low food security* (reports of multiple indications of disrupted eating patterns and reduced food intake), *low food security* (reports of reduced quality, variety, or

¹² Rachel West & Rebecca Vallas, *Trump’s Effort to Cut SNAP by Fiat Would Kill 178,000 Jobs Over the Next Decade*, CTR. FOR AM. PROGRESS (Mar. 14, 2019), <https://www.americanprogress.org/issues/poverty/news/2019/03/14/466700/trumps-effort-cut-snap-fiat-kill-178000-jobs-next-decade/>.

¹³ JEFFREY M. BERRY, FEEDING HUNGRY PEOPLE: RULEMAKING IN THE FOOD STAMP PROGRAM 21 (1984).

¹⁴ NAT’L RES. COUNCIL, FOOD INSECURITY AND HUNGER IN THE UNITED STATES: AN ASSESSMENT OF THE MEASURE 44 (Gooloo S. Wunderlich & Janet L. Norwood eds. 2006).

¹⁵ FED’N OF AM. SOC’Y FOR EXPERIMENTAL BIOLOGY, CORE INDICATORS OF NUTRITIONAL STATE FOR DIFFICULT-TO-SAMPLE POPULATIONS vi (Sue Ann Anderson ed. 1990), https://www.faseb.org/Portals/2/PDFs/LSRO_Legacy_Reports/1990_Core%20Indicators%20of%20Nutritional%20State%20for%20Difficult-to-sample%20Populations.pdf.

¹⁶ *Food Security* 1, FAO (June 2006), http://www.fao.org/fileadmin/templates/faoi/taly/documents/pdf/pdf_Food_Security_Concept_Note.pdf.

¹⁷ *Id.*

¹⁸ *Current Population Survey-Food Security Supplement*, HEALTHYPEOPLE.GOV, <https://www.healthypeople.gov/2020/data-source/current-population-survey-food-security-supplement> (last visited Aug. 20, 2019).

desirability of diet; little or no indication of reduced food intake), *marginal food security* (one or two reported indications—typically of anxiety over food sufficiency or shortage of food in the house; little or no indication of changes in diets or food intake), or *high food security* (no reported indications of food-access problems or limitations).¹⁹

In 2017, “an estimated 11.8 percent of US households were food insecure, down from 2016 and continuing a decline from a high of 14.9 percent in 2011, while still above the pre-recession (2007) level of 11.1 percent.”²⁰ Among households with children, an estimated 7.7 percent were food insecure, slightly down from 8.0 percent in 2016.²¹ Evidence suggests undocumented immigrants face “unique vulnerabilities for food insecurity related to unfamiliar food environments, remittances and separation, employment, and community and government resources” that are likely not accurately captured in national estimates of household food insecurity.²² Besides households, growing concerns have emerged on college campuses.²³ A 2017 systematic review of grey and peer-reviewed literature reported average rates of food insecurity on postsecondary education campuses of 35% and 42%, respectively.²⁴ Similarly, a 2018 Government Accountability Office report noted there are no national estimates for food insecurity among college students and recommended areas for improvement for communicating to eligible students the options for federal food and nutrition assistance, such as

¹⁹ *Definitions of Food Security*, U.S. DEPT. OF AGRIC. ECON. RES. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx> (last updated Sept. 5, 2018); *Survey Tools*, U.S. DEPT. OF AGRIC. ECON. RES. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/survey-tools/> (last updated Aug. 6, 2019).

²⁰ ALISHA COLEMAN-JENSEN, ET AL., U.S. DEPT. OF AGRIC. ECON. RES. SERV., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2017 v (2018), <https://www.ers.usda.gov/webdocs/publications/90023/err-256.pdf?v=0>.

²¹ *Id.* at ii.

²² Ashley Munger et al., *More than Just Not Enough. Experiences of Food Insecurity for Latino Immigrants*, 17 J. IMMIGR. & MINORITY HEALTH, 1548, 1548 (2015).

²³ Erika Dunyak, *The End of the Ramen Diet: Higher Education Students and SNAP Benefits*, 14 J. FOOD L. & POL’Y 154, 154 (2018).

²⁴ See Meg Bruening et al., *The Struggle is Real: A Systematic Review of Food Insecurity on Postsecondary Education Campuses*, 117 J. ACAD. NUTRITION & DIETETICS 1767, 1767 (2017) (reviews the peer-reviewed and gray literature to assess the prevalence of food insecurity on postsecondary education institutions, as well as factors related to food insecurity among students and suggested/practiced solutions and included seventeen peer-reviewed studies and forty one sources of gray literature in the analysis and found food insecurity was high among students and more studies are needed to assess the long-term influence of food insecurity among this vulnerable population).

SNAP.²⁵ Food insecurity among older adults “remains a persistent problem, particularly in minority and rural populations.”²⁶

Across the life course, food insecurity—even marginal food security—has direct and indirect consequences with short and long term impacts including inadequate dietary intake, suboptimal development and function, increased hospitalizations, disrupted or under use of prescribed medications, poorer management of chronic diseases, elevated and prolonged periods of stress, reduced academic achievement, decreased interpersonal skills, and fetal epigenetic changes.²⁷ A 2014 systematic review of the associations between

²⁵ U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-95, FOOD INSECURITY: BETTER INFORMATION COULD HELP ELIGIBLE COLLEGE STUDENTS ACCESS FEDERAL FOOD ASSISTANCE BENEFITS (2018), <https://www.gao.gov/products/GAO-19-95>.

²⁶ Wilson O'Dare, *Community Food Environments and Healthy Food Access Among Older Adults: A Review of the Evidence for the Senior Farmers' Market Nutrition Program (SFMNP)*, 56 SOC. WORK HEALTH CARE 193227-243 (2017).

²⁷ See Ellen Barnidge et al., *Clinic-to-Community Models to Address Food Security*, JAMA PEDIATRICS, 507-508 (2017) (discusses how food insecurity is a social and economic condition with direct and indirect consequences, including poor dietary intake, poor physical and mental health, hospitalizations, stress, reduced academic achievement, and fetal epigenetic changes); John T. Cook et al., *Are Food Insecurity's Health Impacts Underestimated in the U.S. Population? Marginal Food Security also Predicts Adverse Health Outcomes in Young U.S. Children and Mothers*, 4 ADV. NUTRITION 51, 51-52 (2013) (reviews the literature regarding households with marginal food security and found these households should not be classified as food secure, as is current practice, and should be reported in a separate discrete category); John T. Cook & Deborah A. Frank, *Food Security, Poverty, and Human Development in the United States*, 1136 ANN. N.Y. ACAD. SCI., 196-202 (2008) (summarizes the data on household and children's food insecurity and its relationship with children's health and development and with mothers' depressive symptoms); Robert C. Whitaker et al., *Food Insecurity and the Risks of Depression and Anxiety in Mothers and Behavior Problems in their Preschool-Aged Children*, 118 PEDIATRICS e859, e866 (2006) (conducted a cross-sectional survey and found mental health problems in mothers and children are more common when mothers are food insecure); Diana F. Jyoti et al., *Food Insecurity Affects School Children's Academic Performance, Weight Gain, and Social Skills*, 135 J. NUTRITION 2831, 2835-2836 (2005) (used longitudinal data and found food insecurity was a positive predictor of poor developmental trajectories in children); Craig Gunderson & James P. Ziliak, *Food Insecurity and Health Outcomes*, 34 HEALTH AFF. 1830, 1832-1835 (2015) (reviews the literature and discusses how food insecurity is consistently associated with poor health); Seth A. Berkowitz et al., *Treat or Eat: Food Insecurity, Cost-Related Medication Underuse, and Unmet Needs*, 127 AM. J. MED. 303, 308 (2014) (conducted a cross-sectional study with chronically ill adult patients and found about 1 in 3 were unable to afford food, medications, or both); Jung Sun Lee et al., *Food Insecurity and Health Across the Lifespan*, 3 ADVANCES NUTRITION 744, 745 (2012) (summarizes a symposium that aimed to learn about the prevalence and severity of food insecurity in the US across the lifespan, understand the growing body of research that documents the impact of varying degrees of food insecurity on physical and mental health across the lifespan, examine how food insecurity is related to chronic disease, and explore research methodology to determine the

food insecurity and dietary quality reported that food insecure adults consumed fewer vegetables, fruit, and dairy products in comparison to food secure adults and had lower intakes of vitamin A and B6, calcium, magnesium, and zinc.²⁸ Food insecure children only

impact of food insecurity on healthcare costs and utilization); Hillary K. Seligman & Dean Schillinger, *Hunger and Socioeconomic Disparities in Chronic Disease*, 363 NEW ENG. J. MED. 6, 6–8 (2010) (discusses the relationship between hunger, socioeconomic disparities, and chronic disease); Seth A. Berkowitz et al., *Material Need Insecurities, Control of Diabetes Mellitus, and Use of Health Care Resources: Results of the Measuring Economic Insecurity in Diabetes Study*, 175 JAMA INTERNAL MED. 257, 258 (2015) (conducted cross-sectional analyses and reported material need insecurities were common among patients with diabetes mellitus and had varying but generally adverse associations with diabetes control and the use of health care resources); Yiyun Chen & Seth C. Kalichman, *Synergistic Effects of Food Insecurity and Drug Use on Medication Adherence Among People Living with HIV Infection*, 38 J. BEHAV. MED. 397, 403 (2015) (conducted a cross-sectional survey and found maternal needs were common among patients with diabetes mellitus and had varying but generally adverse associations with diabetes control and use of health care resources); Deidra C. Crews et al., *Effect of Food Insecurity on Chronic Kidney Disease in Lower-Income Americans*, 39 AM. J. NEPHROLOGY 27, 32 (2014) (conducted cross-sectional analyses and found food insecurity was associated with a trend towards greater odds of chronic kidney disease); Francesca Gany et al., *Do Our Patients Have Enough to Eat?: Food Insecurity Among Urban Low-Income Cancer Patients*, J. HEALTH CARE FOR POOR & UNDERSERVED 1153, 1164 (2014) (found underserved cancer patients had higher rates of food insecurity—nearly five times those of the state average); Shalon M. Irving et al., *Food Insecurity and Self-Reported Hypertension Among Hispanic, Black, and White Adults in 12 States, Behavioral Risk Factor Surveillance System, 2009*, 11 PREVENTATIVE CHRONIC DISEASE E161, E162 (2014) (conducted cross-sectional study and found a positive relationship between food insecurity and hypertension); Amanda W. Singer et al., *Does Food Insecurity Undermine Adherence to Antiretroviral Therapy? A Systematic Review*, 19 AIDS BEHAV. 1510-1526 (2015) (summarized the literature and found antiretroviral therapy adherence was negatively associated with food insecurity); Savannah Hobbs & Christian King, *The Unequal Impact of Food Insecurity on Cognitive and Behavioral Outcomes Among 5-year-old Urban Children*, 50 J. NUTRITION EDUC. & BEHAV. 687, 689, 692 (2018) (conducted cross-sectional study and found negative associations between food insecurity and child behavior problems); Sara E. Grineski et al., *Transitional Dynamics of Household Food Insecurity Impact Children's Developmental Outcomes*, 39 J. DEV. & BEHAV. PEDIATRICS 715 (2018) (found among a nationally representative sample of kindergarten and first-grade students that food insecurity was determinantal to children's self-control, math, and working memory scores); Emily A. Wang, et al., *Food Insecurity and Health: Data from the Veterans Aging Cohort Study*, 130 PUB. HEALTH REP. 261, 265 (2015) (used cross-sectional data to find food insecurity was prevalent among veterans in an aging cohort and was associated with worse control of medical conditions who accessed care in the Veterans Health Administration).

²⁸ Karla L. Hanson & Leah M. Conner, *Food Insecurity and Dietary Quality in US Adults and Children: A Systematic Review*, 100 AM J. CLINICAL NUTRITION 684, 687 (2014) (across all studies, food security or food sufficiency was generally measured for the household and indicated by one or more of the following categories: 1) food secure or food sufficient, 2) marginal food security (MFS), 3) food sufficient with

consumed less fruit than food secure children; however, research suggests parents or primary care givers protect their children from compromised dietary quality during food shortages and are also the ones (mis)reporting their children's consumption.²⁹ For almost a decade and a half, evidence continues to mount demonstrating food insecurity often co-occurs with being overweight, particularly among women.³⁰

The intersections between inadequate dietary intake, weight gain, and increased risk of non-communicable chronic diseases such as obesity, cardiovascular disease, type 2 diabetes mellitus, and certain types of cancer may be linked through a developed dependence on inexpensive, highly palatable foods and beverages that are energy dense, but nutrient poor.³¹ And, these intersections could potentially result from a cyclical pattern of having enough food at certain periods followed by food scarcity, especially if these episodic food shortages are experienced during critical periods of growth and development, particularly, pregnancy and infancy.³² Research indicates overconsumption when food is available and under-consumption when scarce may contribute to metabolic disturbances, such as cycles of hyper- and hypoglycemia.³³ Moreover, research regarding the role of body fat in fertility suggests that women tend to conserve energy even when food is limited, which may explain gender differences in associations between food

limitations (i.e., "enough but not always what we wanted to eat"), 4) low food security (LFS), 5) very low food security (VLFS), and 6) food insecure or food insufficient, which was equivalent to LFS and VLFS combined).

²⁹ *Id.* at 684 (identifying 16 articles that examined the associations between food insecurity and dietary quality in US children with 21 results (16%) suggesting an adverse association but many studies used only a few measures of dietary quality).

³⁰ See Nicole I. Larson & Mary T. Story, *Food Insecurity and Weight Status Among U.S. Children and Families: A Review of the Literature*, 40 AM. J. PREVENTATIVE MED. 166, 166 (2011); Marilyn S. Townsend et al., *Food Insecurity is Positively Related to Overweight in Women*, 131 J. NUTRITION 1738, 1742 (2001); J.C. Eisenmann et al., *Is Food Insecurity Related to Overweight and Obesity in Children and Adolescents? A Summary of Studies, 1995-2009*, 12 OBESITY REV. e73, e73 (2011); Lauren M. Dinour et al., *The Food Insecurity-Obesity Paradox: A Review of the Literature and the Role Food Stamps May Play*, 107 J. AM. DIETETICS ASS'N. 1952, 1953 (2007); LISA M. TROY, EMILY ANN MILLER & STEVE OLSON, RAPORTEURS; INST. MED. NAT'L ACAD., *Setting the State for the Coexistence of Food Insecurity and Obesity*, in HUNGER AND OBESITY: UNDERSTANDING A FOOD SECURITY PARADIGM: WORKSHOP SUMMARY 13-14 (2011).

³¹ See Barbara A. Laraia, *Food Insecurity and Chronic Disease*, 4 ADVANCES NUTRITION 203, 203-205 (2013) (summarizes the literature on the link between food insecurity and the following: 1) diet, 2) weight gain, and 3) chronic disease).

³² *Id.* at 203, 210.

³³ Lee M. Scheier, *What is the Hunger-Obesity Paradox?*, 105 J. AM. DIETETIC ASS'N 883, 884 (2005).

insecurity and weight status.³⁴ Another mechanism is competing demands; in other words, tradeoffs between medication for chronic disease management or housing/utility payments and food may exacerbate food insecurity.³⁵ Chronic stress associated with food insecurity and poverty may also increase chronic disease risk by possibly increasing allostatic load, reducing healthy behaviors (i.e., lack of energy for physical activity), increasing unhealthy coping behaviors (e.g., substance abuse), and diminishing cognitive capacity to make decisions that support long-term health.³⁶

This article starts with a brief overview of the evolution of the largest program in the nation's domestic food security and nutrition safety net. Then, this article analyzes current legislative (One Hundred Fifteenth and initial One Hundred Sixteenth US Congress) and executive (first two years of the Trump administration) branch developments impacting SNAP's organization, operations at the federal, state and retailer levels, and, ultimately, eating patterns and health outcomes of the United States' most vulnerable populations. This article focuses on the legal and policy implications and reflects on how each might affect our ability to improve nutrition among participating and eligible children and families, persons with disabilities, and elders.

II. From Breadlines to EBT: SNAP History, Participation, and Impacts

A. History

The seeds of SNAP date back to the stock market crash of October 1929 when our country began the worst economic downturn in our history at that time.³⁷ During this period known as the Great Depression, farm prices were at record lows and farmers held huge surpluses of leading agricultural products while thousands of poverty-stricken Americans stood in bread lines across the nation's cities for free food supported by private charities, individuals

³⁴ Daniel Nettle et al., *Food Insecurity as a Driver of Obesity in Humans: The Insurance Hypothesis*, 40 BEHAV. BRAIN SCI. 1, 19 (2017).

³⁵ SENDHILL MULLAINATHAN & ELДАР SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH (2013).

³⁶ Amanda C. McClain et al., *Food Insecurity and Odds of High Allostatic Load in Puerto Rican Adults: The Role of Participation in the Supplemental Nutrition Assistance Program (SNAP) During 5 Years of Follow-up*, 80 PSYCHOSOMATIC MED. 737 (2018).

³⁷ JANET POPPENDIECK, BREADLINES KNEE-DEEP IN WHEAT: FOOD ASSISTANCE IN THE GREAT DEPRESSION ix-x (U. Cal. Press 2014) (1986).

including Al Capone, or government agencies.³⁸ This contrast of overproduction and under-consumption became known as the “paradox of want amid plenty” or “the paradox of scarcity and abundance” and fueled the development of federal food and nutrition assistance programs in both the Hoover and Roosevelt administrations.³⁹ Table 1 highlights other policy and programmatic developments emerging from the legislative, executive, and judicial branches of the US Government shaping SNAP. Today, the USDA Food and Nutrition Service (FNS) works with state agencies, schools, food, nutrition, and health professionals, along with neighborhood and faith-based organizations to ensure eligible individuals and households can access federal food and nutrition assistance benefits.⁴⁰ FNS also works with state agencies and the retail food industry on program administration and integrity.⁴¹

B. Participant Characteristics

In fiscal year 2017, the majority of SNAP households (eighty percent) included a child, an elderly individual, or an individual with a disability; these households received eighty-five percent of SNAP benefits.⁴² About half of SNAP participants (forty-three percent) live in a household with earnings; some of these working individuals are known as able-bodied adults without dependents (ABAWDs) or technically: a “person between the ages of 18 and 49 who has no dependents and is not disabled.”⁴³ ABAWDs, which we will discuss further, can only receive SNAP benefits for three months in three years if they do not meet certain special work requirements.⁴⁴ The program benefits households in both urban and rural areas and across

³⁸ *Id.* at 25.

³⁹ *Id.* at xvi–xvii; see JONATHAN COPPESS, *THE FAULT LINES OF FARM POLICY I* (2018).

⁴⁰ U.S. DEP’T AGRIC. FOOD & NUTR. SERV., *supra* note 4.

⁴¹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-19-167, *SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: ACTION NEEDED TO BETTER MEASURE AND ADDRESS RETAILER TRAFFICKING* (2018), <https://www.gao.gov/products/GAO-19-167> (discusses how some authorized SNAP retailers are “selling” cash instead of food, anywhere from \$960 million to \$4.7 billion and recommends the Administrator of FNS improve the accuracy of the estimates of retailer tracking, assess the benefits and costs of reauthorizing a sample of high-risk stores more frequently than other stores, and increase penalties for retailer trafficking, among others).

⁴² Kathryn Cronquist & Sarah Lauffer, *Characteristics of Supplemental Nutrition Assistance Program Householders: Fiscal Year 2017* 14, Contract N. AG-3198-F-18-0005, U.S. DEP’T. AGRIC. FOOD & NUTR. SERV. (Feb. 2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/Characteristics2017.pdf>.

⁴³ *Able-Bodied Adults Without Dependents (ABAWDs)*, U.S. DEP’T. AGRIC. FOOD & NUTR. SERV. (July 17, 2018), <https://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds>.

⁴⁴ *Id.*

all fifty states, the District of Columbia, and, via block grants, the US territories.⁴⁵ Economic conditions and state program policies such as income eligibility criteria, application assistance, online applications, and the extent of outreach activities influence their residents' SNAP participation.⁴⁶ Moreover, the length of SNAP participation and state approaches to renewal varies; one study examining SNAP entrants (between 2008 to 2012) determined twenty-six percent of SNAP households participated for a four month period, fifty-two percent participated for a year or less, and sixty-seven percent participated for two years or less.⁴⁷ Improvement in financial circumstances is the most common "exit trigger" for ending SNAP participation.⁴⁸

C. Economic and Health Impacts

An integral component of the evolution of SNAP has been research and evaluation of demonstration projects that examine the impact of SNAP on poverty, food insecurity, dietary intake and quality, weight status, healthcare costs, and academic achievement. Evidence indicates SNAP benefits help lift individuals out of poverty.⁴⁹ That is, if SNAP benefits are included as income, 10 percent of SNAP households would move above the federal poverty

⁴⁵ *SNAP – It Ain't Just for Cities*, AM. FARM. BUREAU FED'N. (Aug. 14, 2017), <https://www.fb.org/market-intel/snap-it-aint-just-for-cities>; Tim Marema, *Keep It Rural: SNAP Enrollment as Percent of County Population*, DAILY YONDER (Dec. 31, 2018), https://www.dailyyonder.com/geographyfoodstamps/2018/05/07/25422/?utm_source=SNEB+Members&utm_campaign=de7ca8b706-EMAIL_CAMPAIGN_2017_08_25&utm_medium=email&utm_term=0_15f2e0b4a4-de7ca8b706-709861073.

⁴⁶ Brian Stacy et al., *Using a Policy Index to Capture Trends and Differences in State Administration of USDA's Supplemental Nutrition Assistance Program* 18, ERR-No.244, U.S. DEP'T AGRIC. ECON. RES. SERV. (Feb. 2018), <https://www.ers.usda.gov/webdocs/publications/87096/err-244.pdf?v=0/>; U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-670, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: IMPROVED OVERSIGHT OF STATE ELIGIBILITY EXPANSIONS NEEDED 39–40 (2012), <https://www.gao.gov/products/GAO-12-670>.

⁴⁷ *Current Perspectives on SNAP Participation: Dynamics of Supplemental Nutrition Assistance Program Participation from 2008 to 2012* 66, U.S. DEP'T. AGRIC. FOOD & NUTR. SERV (Dec. 2014), <https://fns-prod.azureedge.net/sites/default/files/ops/Dynamics2008-2012.pdf>.

⁴⁸ *Id.* at 9.

⁴⁹ Laura Tiehen et al, *The Effect of SNAP on Poverty* 20 (U. Ky. Ctr. Poverty Res. Discussion Paper Series DP2013-06, 2013), https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1014&context=ukcpr_papers; *but see*, Laura Tiehen et al., *Alleviating Poverty in the United States: The Critical Role of SNAP Benefits* 17, ERR-No.132, U.S. DEP'T AGRIC. ECON. RES. SERV. (Apr. 2012) (claiming that, "prevalence of poverty, as measured by the headcount index, was not reduced much by SNAP"), <https://www.ers.usda.gov/publications/pub-details/?pubid=44965>.

guidelines.⁵⁰ Among women, childhood participation in SNAP increases economic self-sufficiency, including educational attainment, earnings, and income.⁵¹ Emerging evidence is illustrating connections between SNAP participation and reduced health care costs and hospital utilization.⁵² In terms of academic achievements, a 2006 longitudinal study of a nationally representative sample found starting Food Stamp program participation during the four years from kindergarten to third grade was associated with about a three-point greater improvement in reading and mathematics scores compared with stopping Food Stamp program participation during that period.⁵³

⁵⁰ Cronquist & Lauffer, *supra* note 42, at xv.

⁵¹ Hilary Hoynes, Diane W. Schanzenbach, & Douglas Almond, *Long-Run Impacts of Childhood Access to the Safety Net*, 106 AM. ECON. REV. 893-934 (2016).

⁵² See Seth Berkowitz, Hilary Seligman, Joseph Rigdon, James Meigs & Sanjay Basu, *Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults*, 177 J. AM. MED. ASSOC. INTERN. MED. 1642-1649 (2017) (found SNAP participation was associated with reduced health care spending among low-income American adults); Steven Carlson & Brynne Keith-Jennings, *SNAP is Linked with Improved Nutritional Outcomes and Lower Health Care Costs* (Jan. 17, 2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care> (discusses how SNAP may promote better health and lower health care costs); Laura J. Samuel, Sarah L. Szanton, Rachel Cahill, Jennifer L. Wolff, Pinchuan Ong, Ginger Zielinskie & Charles Betley, *Does the Supplemental Nutrition Assistance Program Affect Hospital Utilization Among Older Adults? The Case of Maryland*, 21 POPUL. HEALTH MANAG. 88-95 (2018) (estimated that enrolling the forty-seven percent of the 2012 population who were eligible nonparticipants in SNAP could have been associated with nineteen million in hospital cost savings); Chinedum O. Ojinnaka & Colleen Heflin, *Supplemental Nutrition Assistance Program Size and Timing and Hypertension-Related Emergency Department Claims Among Medicaid Enrollees*, 12 J. AM. SOC. HYPERTENSION e27-e34 (2018) (found higher SNAP benefit amount was associated with a decreased probability of hypertension-related emergency department claims); Rajan A. Sonik, Susan L. Parish & Monika Mitra, *Inpatient Medicaid Usage and Expenditure Patterns After Changes in Supplemental Nutrition Assistance Program Benefit Levels*, 15 PREV. CHRONIC DIS. E120 (2018) (found changes in SNAP benefit levels were associated with changes in inpatient Medicaid usage and cost problems); Irma Arteaga & Colleen Heflin, *SNAP Benefits and Pregnancy-Related Emergency Room Visits*, 37 POP. RES. POLICY REV. 1031-1052 (2018) (found that women who received SNAP benefits in the second or third week of the calendar month were less likely to receive pregnancy-related care through the emergency room in the week following benefit receipt).

⁵³ Edward A. Frongillo, Diana F. Jyoti & Sonya J. Jones, *Food Stamp Program Participation is Associated with Better Academic Learning Among School Children*, 136 J. NUTR. 1077-1080 (2006).

SNAP also helps individuals and households “put food on the table”⁵⁴ and reduces the prevalence of very low food security.⁵⁵ For example, an analysis of nearly three thousand households with children found SNAP participation for six months was associated with improved food security.⁵⁶ But impacts on dietary intake and quality have been mixed.⁵⁷ Although many studies have linked

⁵⁴ Steven Carlson et al., *SNAP Works for America’s Children 2*, CTR. ON BUDGET & POL’Y PRIORITIES (Sept. 29, 2016), <https://www.cbpp.org/research/food-assistance/snap-works-for-americas-children>.

⁵⁵ Mark Nord & Anne Marie Golla, *Does SNAP Decrease Food Insecurity? Untangling the Self-Selection Effect* i, ERR-No. 85, U.S. DEP’T AGRIC. ECON. RES. SERV. (Oct. 2009), https://www.ers.usda.gov/webdocs/publications/46295/10977_err85_1_.pdf?v=0.

⁵⁶ James Mabl & Julie Worthington, *Supplemental Nutrition Assistance Program Participation and Child Food Security*, 133 PEDIATRICS 610, 610 (2014).

⁵⁷ See Parke E. Wilde, Paul E. McNamara & Christine K. Ranney, *The Effect of Income and Food Programs on Dietary Quality: A Seemingly Unrelated Regression Analysis with Error Components*, 81 AM. J. AGRIC. ECON 959, 698 (1999) (used a maximum likelihood estimator and found Food Stamp participation was associated with higher intake of meats, added sugars, and total fats); Steven T. Yen, *The Effects of SNAP and WIC Programs on Nutrient Intakes of Children*, 35 FOOD POL’Y 576, 579 (2010) (used a system of nutrient equations to examine the effects of SNAP and WIC participation among young children and found SNAP had a small and negative effect on fiber intake); Cindy W. Leung et al., *Dietary Intake and Dietary Quality of Low-Income Adults in the Supplemental Nutrition Assistance Program*, 96 AM. J. CLINICAL NUTRITION 977, 977 (2012) (finding SNAP participants had lower dietary quality scores than did non-participants); Meenakshi M. Fernandes, *Effect of the Supplemental Nutrition Assistance Program (SNAP) on Frequency of Beverage Consumption Among Youth in the United States*, 112 J. ACAD. NUTRITION & DIETETICS 1241, 1244 (2012) (reporting SNAP participation did not have a predictive effect on soft drink, 100% fruit juice or milk consumption among youth); Rebecca L. Franckle et al., *Transactions at a Northeastern Supermarket Chain: Differences by Supplemental Nutrition Assistance Program Use*, 53 AM. J. PREV. MED. e131, e131 (2017) (found transactions with SNAP benefit use in comparison to transactions without SNAP benefit use included higher spending on less healthful food categories including sugar-sweetened beverages, red meat, and convenience foods, and lower spending on more healthful food categories such as fruit, vegetables, and poultry); Anna H. Grummon & Lindsey S. Tallie, *Nutritional Profile of Supplemental Nutrition Assistance Program Household Food and Beverage Purchases*, 105 AM. J. CLINICAL NUTRITION 1433, 1433 (2017) (determined SNAP participants purchased an additional 15 to 20 more calories per person from sugar-sweetened beverages, and an additional 174 to 195 mg more sodium per person); Cindy W. Leung et al, *Associations of Food Stamp Participation with Dietary Quality and Obesity in Children*, 131 PEDIATRICS 463, 463 (2013) (SNAP participants were below national recommendations for whole grains, fruits, vegetables, fish, and potassium while exceeding recommended limits for processed meat, sugar-sweetened beverages, saturated fat, and sodium); Cindy W. Leung et al, *Few Changes in Food Security and Dietary Intake from Short-term Participation in the Supplemental Nutrition Assistance Program Among Low-Income Massachusetts Adults*, 46 J. NUTRITION EDUC. BEHAV. 68, 70 (2014) (found SNAP participants increased refined grain intake by 1.1 serving/day from baseline to follow-up and no other associations were observed with other foods, nutrients, or dietary quality);

SNAP participation to obesity, the most rigorous assessments show no effect of SNAP on body weight.⁵⁸ Similarly, differences in

Cindy W. Leung et al, *SNAP Participation and Diet-Sensitive Cardiometabolic Risk Factors in Adolescents*, 52 (2 Suppl. 2) AM. J. PREV. MED. S127, S127 (2017) (SNAP participants had lower Healthy Eating Index scores versus income-eligible non-participants); Lindsey S. Tallie et al., *Nutritional Profile of Purchases by Store Type: Disparities by Income and Food Program Participation*, 55 AM. J. PREVENTATIVE MED. 167, 172 (2018) (reported SNAP households purchased more calories from starchy vegetables, processed meat, desserts, sweeteners and toppings, total junk food, sugar-sweetened beverages, and milk than income-eligible and higher-income SNAP non-participants and SNAP participant purchases were higher in sodium density); Hilary W. Hoynes & Diane W. Schanzenbach, *Safety Net Investments in Children*, BROOKINGS (Mar. 8, 2018), <https://www.brookings.edu/bp-ca-articles/safety-net-investments-in-children/> (examined a variety of US social safety net program investments including SNAP and found access to safety net programs during childhood improves outcomes for children in the short and long term).

⁵⁸ Joseph Rigdon, Seth A. Berkowitz, Hilary K. Seligman & Sanjay Basu, *Re-Evaluating Associations Between the Supplemental Nutrition Assistance Program Participation and Body Mass Index in the Context of Unmeasured Confounders*, 192 SOC. SCI. MED. 112-124 (2017) (determined SNAP participation was associated with increased Body Mass Index); Amy L. Webb, Andrew Schiff, Douglas Currihan & Eduardo Villamor, *Food Stamp Participation But Not Food Insecurity is Associated with Higher Adult BMI in Massachusetts Residents Living in Low-Income Neighborhoods*, 11 PUBLIC HEALTH NUTR. 1248-1255 (2008) (reported participation in the food stamp program twelve months prior to the survey was associated with higher Body Mass Index); Diane Gibson, *Food Stamp Program Participation is Positively Related to Obesity in Low Income Women*, 133 J. NUTR. 2225-2231 (2003) (determined participation in the food stamp program was associated with a 9.1% increase in the predicted probability of current obesity); Stephanie B. Jilcott, Elizabeth D. Wall-Bassett, Sloane C. Burke & Justin B. Moore, *Associations Between Food Insecurity, Supplemental Nutrition Assistance Program (SNAP) Benefits, and Body Mass Index Among Adult Females*, 111 J. AM. DIETETIC ASSOC. 1741-1745 (2011) (reported mean Body Mass Index was significantly greater among women receiving <\$150 in SNAP benefits per household member versus those receiving > \$150 in benefits per household member); Stephanie B. Jilcott, Haiyong Liu, Katrina D. Dubose, Susan Chen & Sibylle Kranz, *Food Stamp Participation is Associated with Fewer Meals Away From Home, Yet Higher Body Mass Index and Waist Circumference in a Nationally Representative Sample*, 43 J. NUTR. EDUC. BEHAV. 110-115 (2011) (reported food stamp authorization was associated with higher Body Mass Index and waist circumference among females and higher food stamp benefits received were associated with lower Body Mass Index); Binh T. Nguyen, Kerem Shuval, Farryl Bertmann & Amy L. Yaroch, *The Supplemental Nutrition Assistance Program, Food Insecurity, Dietary Quality, and Obesity Among US Adults*, 105 AM. J. PUBLIC HEALTH 1453-1459 (2015) (reported adult SNAP participants with marginal food security from the 2003 to 2010 National Health and Nutrition Examination Survey data had lower Body Mass Index and lower probability of obesity than SNAP participants with low or very low food security); Cindy W. Leung, Susan J. Blumenthal, Elena E. Hoffnalge, Helen H. Jensen, Susan B. Foerster, Marion Nestle, Lilian W.Y. Cheung, Dariush Mozaffarian & Walter C. Willett, *Associations of Food Stamp Participation and Diet Quality and Obesity in Children*, 131 PEDIATRICS 463-472 (2013) (found SNAP participation was not associated with a higher rate of childhood obesity); Cindy W.

dietary intake between SNAP participants and non-participants are small, and the most recent, well-conducted studies show virtually no direct effect of program enrollment on diet quality.⁵⁹ In short, the diet quality of most Americans is bad and this is not a poor person's problem. Moreover, inconsistent findings are due to the majority of published studies not adequately accounting for self-selection into SNAP.⁶⁰ Essentially, small differences between SNAP participants and non-participants do not reflect SNAP's causal effect on obesity or diet quality, but rather: 1) a change in circumstances that both precipitates SNAP enrollment and affects diet and obesity (for example, a pay cut or recent illness), or 2) a greater propensity for people with obesity and poorer diets to enroll in SNAP.⁶¹

In 2012, FNS published a SNAP profile capturing key accomplishments and lessons learned over the program's four decade history including strategies used to serve Americans most in need, improve diet quality, promote self-sufficiency, and increase administrative efficiencies.⁶² FNS recognized how nationwide standards for eligibility and benefits helped ensure SNAP is available to most households with gross income less than 130 percent of the

Leung, June M. Tester, Eric B. Rimm & Walter C. Willett, *SNAP Participation and Diet-Sensitive Cardiometabolic Risk Factors in Adolescents*, 52 (2 Suppl. 2) AM. J. PREV. MED. S127-S137 (2017) (reported SNAP participants had higher Body Mass Index for age Z scores, waist circumference Z scores, and waist-to-height ratios than higher income nonparticipants but SNAP participation was not associated with most cardiometabolic risk factors); Marlana J. Kohn, Janice F. Bell, H. Mollie Grow & Galant Chan, *Food Insecurity, Food Assistance and Weight Status in US Youth: New Evidence from NHANES 2007-08*, 9 PEDIATR. OBES. 155-166 (2014) (reported food assistance program participation including SNAP, WIC, and school meals was associated with increased body size in food secure youth but not food insecure youth); Mary T. Gorski Findling, Julia A. Wolfson, Eric B. Rimm, Sara N. Bleich, *Differences in the Neighborhood Retail Food Environment and Obesity Among US Children and Adolescents by SNAP Participation*, 26 OBESITY (SILVER SPRING) 1063-1071 (2018) (determined greater neighborhood access to retail food outlets is associated with higher obesity prevalence for children overall and for children who participate in SNAP).

⁵⁹ Tatiana Andreyeva, Amanda S. Tripp & Marlene B. Schwartz, *Dietary Quality of Americans by Supplemental Nutrition Assistance Program Participation Status: A Systematic Review*, 49 AM. J. PREV. MED. 594-604 (2015).

⁶⁰ *Id.*; see also Sara Bleich, et al., *Strengthening the Public Health Impacts of the Supplemental Nutrition Assistance Program through Policy*, ANN. PUB. HEALTH (forthcoming 2019); Hilary K. Seligman & Seth A. Berkowitz, *Aligning Programs and Policies to Support Food Security and Public Health Goals in the United States*, 11 ANN. REV. PUB. HEALTH 1-19 (2018).

⁶¹ *Id.*

⁶² BUILDING A HEALTHY AMERICA: A PROFILE OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, U.S. DEP'T AGRIC. FOOD & NUTR. SERV. (Apr. 2012), <https://fns-prod.azureedge.net/sites/default/files/BuildingHealthyAmerica.pdf>.

federal poverty guidelines across the country.⁶³ And then, in 2018, ERS provided historical and analytical perspective on major SNAP design issues under consideration including block grants, restricting SNAP foods and beverages, adequacy and timing of SNAP benefits, retailer eligibility standards, program access and outreach, and work requirements.⁶⁴ Rooted in SNAP policy and programmatic history, we will draw on these 2018 ERS analyses, among others, to now focus on current legislative (One Hundred Fifteenth US Congress and initial One Hundred Sixteenth US Congress) and executive (first two years of the Trump administration) branch developments impacting SNAP's organization, operations at the federal, state, and retailer levels, and, ultimately, eating patterns and health outcomes of the nation's most vulnerable populations.

III. 115th US Congress on SNAP - The Farm Bill, Appropriations and Oversight (In)Activities

The One Hundred Fifteenth US Congress met in Washington, District of Columbia (DC) from January 3, 2017 to January 3, 2019, during the final weeks of Barack Obama's presidency and the first two years of Donald Trump's presidency.⁶⁵ The House, Senate, as well as the Presidency—once Trump took office—were all under Republican Party control; nonetheless, party unity and legislative accomplishments were comparatively modest.⁶⁶ Consistent with efforts to erode the American safety net including efforts to roll back provisions of the Affordable Care Act (P.L. 111-148) that expand Medicaid, passing the Tax Cuts and Jobs Act (P.L. 115-97) that likely makes low- and middle-income households worse off, and calls for mandatory Medicaid work requirements, the One Hundred Fifteenth US Congress

⁶³ *Id.* at 2.

⁶⁴ VICTOR OLIVEIRA ET AL., DESIGN ISSUES IN THE USDA'S SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: LOOKING AHEAD BY LOOKING BACK. i, ERR-NO.243, U.S. DEP'T AGRIC. ECON. RES. SERV. (Jan. 2018), <https://www.ers.usda.gov/webdocs/publications/86924/err-243.pdf?v=43124>.

⁶⁵ See JENNIFER E. MANNING, CONG. RES. SERV., R44762, MEMBERSHIP OF THE 115TH CONGRESS: A PROFILE i (Dec. 20, 2018), <https://fas.org/sgp/crs/misc/R44762.pdf> (presents the profile of the membership of the 115th Congress including data on party affiliation, average age, occupation, education, length of congressional service, religious affiliation, gender, ethnicity, foreign births, and military service).

⁶⁶ Sarah Binder, *Dodging the Rules in Trump's Republican Congress*, 80 J. POL. 1454, 1454 (2018); Frances E. Lee, *Parties and Partisanship in the Age of Trump Symposium: The 115th Congress and Questions of Party Unity in a Polarized Era*, 80 J. POL. 1464, 1464 (2018).

explored a variety of legislative approaches to gut SNAP including, but ultimately unsuccessfully, the 2018 Farm Bill (See Table 2).⁶⁷ The Farm Bill is a recurring omnibus bill re-approved about every five years by Congress.⁶⁸ The 2018 Farm Bill includes twelve titles, ranging from rural development to nutrition.⁶⁹ The nutrition title addresses SNAP. As Table 1 illustrates, about six decades ago, a pilot Food Stamp program with less than 380,000 participants was integrated into the Farm Bill to garner urban Congressional members' support for farming issues.⁷⁰ Now, SNAP is the largest component of the Farm Bill, with about eighty percent of total spending going to fund this entitlement program.⁷¹

This review will mainly focus on the One Hundred Fifteenth and initial One Hundred Sixteenth Congressional actions taken regarding SNAP during the 2018 Farm Bill deliberations in addition to fiscal year 2017 through 2020 appropriations and oversight (in)activities. The progress made in the 2018 Farm Bill and the negative implications of the recent government shutdown on the USDA Food Distribution Program for Indian Reservations (FDPIR), which continues to lack a shutdown contingency plan, is not within the scope of this law review; nonetheless, policy developments affecting FDPIR have significant implications for SNAP given eligible individuals and families who do not participate in FDPIR

⁶⁷ William G. Gate, *Once the Tax Bill is Paid For, Low- and Middle-Income Households will be Worse Off*, BROOKINGS (Jan. 2, 2018), <https://www.brookings.edu/blog/up-front/2018/01/02/once-the-tax-bill-is-paid-for-low-and-middle-income-households-will-be-worse-off/>; Nathaniel Weixel, *GOP Senator Calls for Mandatory Medicaid Work Requirements*, THE HILL (May 10, 2018), <https://thehill.com/policy/healthcare/medicaid/387128-gop-senator-calls-for-mandatory-medicaid-work-requirements>; Dylan Matthews, *The War on the Poor: Donald Trump's Win Opens the Door to Paul Ryan's Vision for America*, VOX (Nov. 22, 2016), <https://www.vox.com/policy-and-politics/2016/11/22/13641654/paul-ryan-trump-poverty-safety-net>.

⁶⁸ *Overview and History of the Farm Bill I*, JOHNS HOPKINS UNIVERSITY, <https://www.coursera.org/lecture/food-system/overview-and-history-of-the-farm-bill-i-Hm3Xt> (last visited Aug. 21, 2019).

⁶⁹ The Agriculture Improvement Act of 2018, P.L. 115-334, <https://docs.house.gov/billsthisweek/20181210/CRPT-115hrpt1072.pdf>.

⁷⁰ COPPESS, *supra* note 39.

⁷¹ The United States Department of Agriculture Economic Research Service, *Agriculture Improvement Act of 2018: Highlights and Implications* (2019), <https://www.ers.usda.gov/agriculture-improvement-act-of-2018-highlights-and-implications/>.

tend to participate in SNAP.⁷² Moreover, this review does not address specific policy developments and needs affecting SNAP participation among active-duty service members, although more than \$21 million SNAP benefits were redeemed at commissaries from September 2014 through August 2015.⁷³ Specifically, this review focuses on actions, or the lack thereof, on the following areas: block grants; participant eligibility; benefit adequacy, issuance, and redemption; and strengthening SNAP's nutritional impacts.

A. Block Grants

A block grant is a fixed level of annual funding regardless of need.⁷⁴ A change in this direction would be significant as SNAP is currently an entitlement program that is designed to be responsive to economic fluctuations which allow enrollment to expand rapidly when the economy weakens and shrink when it improves.⁷⁵ Charged in part by a new Federalism to give states more flexibility and control costs, initial 2018 Farm Bill discussions leading up to the One Hundred Fifteenth US Congress' legislative agenda re-explored combining safety net programs including SNAP into a meta-block

⁷² *Food Distribution Program on Indian Reservations*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV. (Sept. 28, 2018), <https://www.fns.usda.gov/fdpir/food-distribution-program-indian-reservations-fdpir>; Kayla Gebeck & Philip Baker-Shenk, *2018 Farm Bill is Historic for Indian Country*, HOLLAND & KNIGHT (Dec. 20, 2018), <https://www.hklaw.com/NativeAmericanLawBlog/2018-Farm-Bill-is-Historic-for-Indian-Country-12-20-2018/>; Mark Trahan, *Congressional Hearing Looks at the Impact of Shutdown on Indian Country*, INDIAN COUNTRY TODAY (Jan. 16, 2019), <https://newsmaven.io/indiancountrytoday/news/congressional-hearing-looks-at-the-impact-of-shutdown-on-indian-country-XhiLWA1JkSfIkOdPbE89g/>; Nancy M. Pindus et al., *STUDY OF THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR): FINAL REPORT*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV. (June 2016), <https://fns-prod.azureedge.net/sites/default/files/ops/StudyofFDPIR.pdf>; Kenneth Finegold et al., *Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP)*, U. INST. (Nov. 2009), <https://www.urban.org/sites/default/files/publication/28396/412034-Tribal-Food-Assistance.PDF>.

⁷³ U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-561, *DOD NEEDS MORE COMPLETE DATA ON ACTIVE-DUTY SERVICEMEMBERS' USE OF FOOD ASSISTANCE PROGRAMS 1* (2016), <https://www.gao.gov/products/GAO-16-561>; *SNAP Benefits*, MIL. BENEFITS, <https://militarybenefits.info/snap-benefits/> (last visited Aug. 21, 2019).

⁷⁴ *What is a Block Grant?*, GRANTS.GOV (June 15, 2016), <https://blog.grants.gov/2016/06/15/what-is-a-block-grant/>; ROBERT JAY DILGER & EUGENE BOYD, *CONG. RES. SERV.*, 7-5700, *BLOCK GRANTS: PERSPECTIVES AND CONTROVERSIES 1* (July 15, 2014), <https://fas.org/sgp/crs/misc/R40486.pdf>.

⁷⁵ David Reich et al., *Block-Granting Low-income Programs Leads to Large Funding Declines Over time, History Shows*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 22, 2017), <https://www.cbpp.org/research/federal-budget/block-granting-low-income-programs-leads-to-large-funding-declines-over-time>.

grant to states.⁷⁶ That is, the “Agenda for Renewed Opportunity” proposed each state would receive a fixed, annual amount of funding for several safety net programs.⁷⁷ A pilot program was also pitched to explore different ways of distributing this federal aid in addition to establishing a commission to examine rigorous analysis of the proposed safety net programs.⁷⁸ Known as the Commission on Evidence-Based Policy Making, this multi-disciplinary group would be tasked with advising Congress on whether or how to create a Clearinghouse for Program and Survey Data that would “facilitate the merging of data on government programs with other administrative data so researchers could link anonymous participants across programs” while maintaining privacy rights of program participants, incorporate outcome measurements, and institutionalize randomized controlled trials into program design, among others charges “without adding to the federal budget deficit (such as through user fees for participating academic and other research institutions).”⁷⁹

There is precedent for block granting social safety net programs in the US.⁸⁰ In fact, permitted by the Omnibus Budget Reconciliation Act of 1981, the Nutrition Assistance Program (NAP) operates via block grants in a growing number of US territories including Puerto Rico, American Samoa, and the Commonwealth of the Northern Marian Islands, although we will discuss later how a recently introduced Senate bill aims to allow these US territories to finally participate in SNAP.⁸¹ Research indicates total funding for NAP does not substantially change over time, which results in restricting program eligibility and benefits to the most financially needy individuals and households.⁸² Experience from other safety

⁷⁶ Paul Ryan, *Expanding Opportunity in America: A Discussion Draft from the House Budget Committee* (June 24, 2014), https://www.ncsha.org/wp-content/uploads/2016/06/expanding_opportunity_in_america.pdf; Robert Greenstein, *Ryan and Block-Granting the Safety Net*, CTR. ON BUDGET & POL’Y PRIORITIES (Dec. 3, 2015), <https://www.cbpp.org/blog/ryan-and-block-granting-the-safety-net>; Lucas Berger, *Food Stamps and Federalism*, ROOSEVELT INST. (Mar. 23, 2014), <https://www.cornellrooseveltinstitute.org/dom/food-stamps-and-federalism>; Kenneth Finegold et al., *Block Grants: Details of the Bush Proposals*, THE URBAN INST. 1 (Apr. 2004), http://webarchive.urban.org/UploadedPDF/310990_A-64.pdf.

⁷⁷ See Ryan, *supra* note 76, at 14.

⁷⁸ *Id.*

⁷⁹ *Id.* at 67.

⁸⁰ Reich et al., *supra* note 75, at 1.

⁸¹ The Omnibus Budget Reconciliation Act of 1981 H.R. 3982, 97th Cong. (1981-1982), <https://www.congress.gov/bill/97th-congress/house-bill/3982/titles>.

⁸² Elizabeth Wolkomir, *How is Food Assistance Different in Puerto Rico Than in the Rest of the United States?*, CTR. ON BUDGET & POL’Y PRIORITIES (Nov. 27, 2017), <https://www.cbpp.org/research/food-assistance/how-is-food-assistance-different>

net programs similarly illustrates the generally static impact of block granting on funding levels.⁸³ For example, the cash assistance provided by Temporary Assistance for Needy Families (TANF), which replaced Aid to Families with Dependent Children, has steadily declined over time.⁸⁴ One study found the purchasing power of TANF was at least twenty percent lower now than when the program was created in 1996.⁸⁵

While innovative approaches to lifting Americans out of poverty and promoting food security are needed, the “Agenda for Renewed Opportunity” or the “Opportunity Grant” was deemed to essentially erode SNAP’s long-standing entitlement status; most likely provide weaker and less comprehensive and responsive versions of our existing federal aid programs; and result in large funding declines over time.⁸⁶ According to an ERS report, a block grant approach to SNAP could potentially result in states restricting SNAP eligibility, hinder a state’s ability to respond quickly to increased need during an economic downturn, and increase the prevalence of food insecurity.⁸⁷ Another consideration is that a fixed block grant challenges most states’ disaster SNAP approaches (e.g., hurricanes, tornadoes, or earthquakes), which is problematic given

in-puerto-rico-than-in-the-rest-of-the; ASSESSING THE FEASIBILITY OF IMPLEMENTING THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM IN THE COMMONWEALTH OF THE NORTHERN MARINA ISLANDS 21, U.S. DEP’T AGRIC. FOOD & NUTRITION SERV. (Aug. 2016), <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPCNML.pdf>.

⁸³DILGER & BOYD, *supra* note 74, at 8; Reich et al., *supra* note 75, at 2.

⁸⁴LIZ SCHOTT ET AL., HOW STATES USE FUNDS UNDER THE TANF BLOCK GRANT 3–4, CTR. ON BUDGET & POL’Y PRIORITIES (Feb. 19, 2019), <https://www.cbpp.org/research/family-income-support/how-states-use-funds-under-the-tanf-block-grant>; R. Kent Weaver, *The Structure of the TANF Block Grant*, BROOKINGS (Apr. 3, 2002), <https://www.brookings.edu/research/the-structure-of-the-tanf-block-grant/>.

⁸⁵ASHLEY BURNSIDE & IFE FLOYD, TANF CASH BENEFITS HAVE FALLEN BY MORE THAN 20 PERCENT IN MOST STATES AND CONTINUE TO ERODE 1, CTR. ON BUDGET & POL’Y PRIORITIES (Jan. 22, 2019), <http://www.cbpp.org/research/family-income-support/tanf-cash-benefits-have-fallen-by-more-than-20-percent-in-most-states>.

⁸⁶DILGER & BOYD, *supra* note 74, at 14–15; KENNETH FINEGOLD ET AL., BLOCK GRANTS: HISTORICAL OVERVIEW AND LESSONS LEARNED, No.A-63, U. INST. (Apr. 2014), http://webarchive.urban.org/UploadedPDF/310991_A-63.pdf; Greenstein, *supra* note 76; LIZ SCHOTT, LESSONS FROM TANF: BLOCK-GRANTING A SAFETY-NET PROGRAM HAS SIGNIFICANTLY REDUCED ITS EFFECTIVENESS 2, CTR. ON BUDGET & POL’Y PRIORITIES (Feb. 22, 2017), <https://www.cbpp.org/research/family-income-support/lessons-from-tanf-block-granting-a-safety-net-program-has>; Berger, *supra* note 76; Reich et al., *supra* note 75, at 3; DOTTIE ROSENBAUM, BLOCK-GRANTING SNAP WOULD ABANDON DECADES-LONG FEDERAL COMMITMENT TO REDUCE HUNGER 1, CTR. ON BUDGET & POL’Y PRIORITIES (Mar. 30, 2017), <https://www.cbpp.org/research/food-assistance/block-granting-snap-would-abandon-decades-long-federal-commitment-to>.

⁸⁷OLIVEIRA ET AL., *supra* note 64, at iv.

the increasing frequency and intensity of natural disasters.⁸⁸ Ultimately, the 2018 Farm Bill did not convert SNAP to a block grant program.⁸⁹ Notwithstanding, work remains to identify more effective ways to consistently alleviate poverty and food security in our country while providing state and local government agencies flexibility to meet their residents' needs and streamline administrative safety net program processes.⁹⁰

B. Participant Eligibility

Legislative deliberations leading up to the 2018 Farm Bill impacting SNAP participant eligibility included intense consideration but ultimately unsuccessful legislative attempts to eliminate broad-based categorical eligibility (BBCE) and establish stricter work requirements. Other eligibility related legislative actions in the 2018 Farm Bill included simplifying homeless housing cost provisions, preserving states' option to coordinate SNAP benefits with low-income energy payments assistance (LIHEAP) (i.e., helping households "afford to heat and eat"), rejecting a lifetime ban on individuals convicted of certain felonies, and eliminating state performance bonuses to recognize best or most-improved in SNAP operations that have been historically reinvested in supporting SNAP integrity and effectiveness.⁹¹ The USDA also recently issued a memo to states urging them to strengthen their policy and programmatic approaches to restrict individuals from participating who have failed to make child support payments.⁹²

⁸⁸ Tony Abernathy, *Responsibilities of the USDA-Food and Nutrition Service in Nutrition Assistance Response to Natural Disasters*, 61 J. NUTRITION SCI. VITAMINOLOGY S14, S14 (2015).

⁸⁹ Agriculture Improvement Act of 2018, H.R.2, 115th Cong. (2017-2018) (enacted), <https://www.congress.gov/bill/115th-congress/house-bill/2>.

⁹⁰ *Id.*

⁹¹ FOOD RESEARCH & ACTION CENTER'S ANALYSIS OF THE FINAL FARM BILL CONFERENCE REPORT AGRICULTURE IMPROVEMENT ACT OF 2018 TITLE IV—NUTRITION, FOOD RES. & ACTION CTR., <http://frac.org/wp-content/uploads/2018-farm-bill-conference-report-analysis.pdf>; see also U.S. DEPT. AGRIC. FOOD NUTR. SERV., *FY19 Homeless Shelter Deduction Memo* (Feb. 8, 2019), <https://www.fns.usda.gov/snap/fy19-homeless-shelter-deduction-memo> (explaining the self-executing simplified homeless housing cost provisions of the 2018 Farm Bill); Supplemental Nutrition Assistance Program: Student Eligibility, Convicted Felons, Lottery and Gambling, and State Verification Provisions of the Agricultural Act of 2014 – Final Rule, 7 C.F.R. Parts 271, 272, and 273 [FNS 2015-0038] (Apr. 15, 2019) (outlining how states can determine whether certain felons should be disqualified and clarifying restrictions regarding lottery winners).

⁹² U.S. DEP'T AGRIC. FOOD & NUTR. SERV., *State Flexibilities Related to Custodial and Noncustodial Parents' Cooperation with State Child Support Agencies* (May 1,

i. Broad-Based Categorical Eligibility

Since 2000, states have been permitted to use BBCE, which allows them to align the SNAP asset test or gross income eligibility thresholds with certain other non-cash means-tested programs.⁹³ That is, BBCE allows states to grant automatic eligibility for families that receive TANF assistance and meet State-determined income limits.⁹⁴ According to an ERS report, BBCE simplifies the application process for potential SNAP participants and reduces administrative costs, without significant increases in eligibility.⁹⁵ Recognizing program integrity concerns and escalating program costs, the US Government Accountability Office stressed improved oversight of state implementation of BBCE is needed.⁹⁶ A preliminary House version of the 2018 Farm Bill (H.R.2), which was drafted in an untraditional partisan manner and passed by two votes with no support from Democrats, eliminated BBCE and proposed changes to countable resources.⁹⁷ Countable resources include a portion of the value of a household's vehicle(s), which states have been able to exclude some or all of, consistent with TANF; however, the preliminary H.R.2 proposed to eliminate the state vehicle policy option and increase the amount of most vehicles' value that is excluded for countable resources from \$4,650 to \$12,000.⁹⁸ On the other hand, the preliminary Senate version of the Farm Bill (S.3042) did not propose significant changes to participant eligibility.⁹⁹ A 2018 analysis of these proposed participant eligibility changes estimated almost two million households would no longer be eligible

2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-child-support-policy-050119.pdf>.

⁹³ Darryl E. Ray & Harwood D. Schaffer, *Categorical Eligibility for Food Stamps: It's Origin and Adoption by States*, AGRIC. POL'Y ANALYSIS CTR., <https://www.agpolicy.org/weekpdf/641.pdf>; AUSSENBERG, *supra* note 7, at 1; GENE FALK & RANDY ALISON AUSSENBERG, CONG. RES. SERV., R42054, THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): CATEGORICAL ELIGIBILITY 2, 4 (2019), <https://fas.org/sgp/crs/misc/R42054.pdf>.

⁹⁴ AUSSENBERG, *supra* note 7, at i.

⁹⁵ OLIVEIRA ET AL., *supra* note 64, at 52–53.

⁹⁶ U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 46, at 39.

⁹⁷ *Final Vote Results for Roll Call 284*, CONGRESS.GOV (June 21, 2018), <http://clerk.house.gov/evs/2018/roll284.xml> (finding that no democrats supported this preliminary version of the bill and that the bill passed by two votes); Agriculture Improvement Act of 2018, H.R. 2, 115th Cong. § 4006, § 4013 (2018), <https://www.congress.gov/bill/115th-congress/house-bill/2>.

⁹⁸ Agriculture Improvement Act of 2018, H.R. 2, 115th Cong. § 4013 (2018).

⁹⁹ See Agriculture Improvement Act of 2018, S. 3042, 115th Cong. (2018) (lacking a section that proposes changes to SNAP participant eligibility under Title IV–Nutrition), <https://www.agriculture.senate.gov/imo/media/doc/Agriculture%20Improvement%20Act%20of%202018.pdf>.

for SNAP benefits or eight percent of those who participated in SNAP in fiscal year 2015.¹⁰⁰ Others estimate more than three million Americans would be impacted and speculate more than 500,000 children's access to free USDA school breakfast and lunch would be jeopardized since children who live in households that receive SNAP benefits would no longer be directly certified or automatically eligible to participate in the USDA school meal programs.¹⁰¹ The elimination of BBCE will also impact a school's use of the Community Eligibility Provision, which allows a school to offer free meals to all students without collecting meal applications based on the school area's SNAP eligibility numbers.¹⁰² Still, the USDA published a proposed rule on July 23, 2019 in the Federal Register that aims to end "this loophole" and "limits SNAP/TANF automatic eligibility to households that receive substantial, ongoing TANF-funded benefits aimed at helping families move towards self-sufficiency."¹⁰³ Days prior to the release of this rule, the House Agriculture Subcommittee on Nutrition, Oversight, and Department Operations held a hearing regarding the potential implications of eliminating BBCE that included discussion of "the Minnesota millionaire," Rob Undersander, who applied for and received SNAP benefits while owning one million in assets and then donated the funds to his church and other charities.¹⁰⁴ The House Committee of Education and Labor Chairman Scott also wrote a letter to Secretary Perdue raising concerns about the USDA's estimates regarding the

¹⁰⁰ Karen Cunnyngnam, *Simulating Proposed Changes to the Supplemental Nutrition Assistance Program: Countable Resources and Categorical Eligibility 2*, MATHEMATICA POL'Y RES. (2018), <https://www.mathematica-mpr.com/our-publications-and-findings/publications/simulating-proposed-changes-to-the-supplemental-nutrition-assistance-program-countable-resources>.

¹⁰¹ Crystal FitzSimons & Ellen Vollinger, *FRAC Chat: Broad-Based Categorical Eligibility and School Meals* (2019), <https://www.frac.org/blog/broad-based-categorical-eligibility-and-school-meals>.

¹⁰² Simone Del Rosario, *17,000 Washington Students Could Lose Free Meals Over Food Stamp Changes* (2019), <https://www.msn.com/en-us/news/money/17000-washington-students-could-lose-free-meals-over-food-stamp-changes/ar-AAFjAIA>.

¹⁰³ Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP), 84 Fed. Reg. 142 (July 24, 2019).

¹⁰⁴ The United States House of Representatives Committee on Agriculture Subcommittee on Nutrition, Oversight, and Department Operations, *The Potential Implications of Eliminating Broad-Based Categorical Eligibility for SNAP Households*, <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109661>; see also Julia Limitone, *How this Minnesota Millionaire Received 'Hundreds of Dollars' in Food Stamps* (2019), <https://www.foxbusiness.com/personal-finance/how-this-minnesota-millionaire-receives-hundreds-of-dollars-of-food-stamps>.

impact of this proposed rule.¹⁰⁵ The public comment period closes on September 23, 2019.¹⁰⁶ Given that BBCE was not altered in the 2018 Farm Bill, any final rule could potentially evoke a legislative response.¹⁰⁷

ii. Work Requirements

The preliminary House version of the 2018 Farm Bill (H.R. 2) also proposed significant changes to the work requirements imposed on able-bodied adults without dependents (ABAWD) unable to find work.¹⁰⁸ As explained earlier, ABAWD describes a person between the ages of 18 and 49 who has no dependents and is not disabled that is currently eligible to receive SNAP benefits for three months in three years if they do not meet certain special work requirements.¹⁰⁹ SNAP work requirements are popular with House Republicans, State Republican leadership, the Trump administration, and the public.¹¹⁰ Various Congressional hearings, reports, and mandated pilot projects preceded the proposed SNAP work requirements in the preliminary H.R.2, along with similar legislative and executive branch efforts targeting other social safety net programs, including recent changes to Medicaid.¹¹¹ However, most

¹⁰⁵ Press Release, U.S. House of Representatives Comm. on Educ. and Labor, Chairman Scott to Secretary Perdue: Release Internal Estimates Showing Impact of Proposed SNAP Changes on Free School Meals (July 29, 2019), <https://edlabor.house.gov/media/press-releases/chairman-scott-to-secretary-perdue-release-internal-estimates-showing-impact-of-proposed-snap-changes-on-free-school-meals>.

¹⁰⁶ Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program, *supra* 103.

¹⁰⁷ The Agriculture Improvement Act of 2018, P.L. 115-334, <https://docs.house.gov/billsthisweek/20181210/CRPT-115hrpt1072.pdf>.

¹⁰⁸ Agriculture Improvement Act of 2018, H.R. 2, 115th Cong. § 4015 (2018) (as introduced in the House, Apr. 12, 2018).

¹⁰⁹ U.S. DEP'T AGRIC. FOOD & NUTR. SERV., *supra* note 43.

¹¹⁰ Helena Bottemiller Evich, *Morning Agriculture: Critics Question Stricter SNAP Work Requirements*, POLITICO (Oct. 16, 2018), <https://www.politico.com/newsletters/morning-agriculture/2018/10/16/critics-question-stricter-snap-work-requirements-375598>.

¹¹¹ The Agricultural Act of 2014 Pub. L. No. 113-79, sec. 4022, 128 Stat. 649, 799 (2014); PAUL RYAN, EXPANDING OPPORTUNITY IN AMERICA: A DISCUSSION DRAFT FROM THE HOUSE BUDGET COMMITTEE 310 (2014), http://budget.house.gov/uploadedfiles/expanding_opportunity_in_america.pdf; *Public Hearing: To Review the Implementation of Section 4022 of the Agricultural Act of 2014: Pilot Projects to Reduce Dependency and Increase Work Requirements and Work Effort Under the Supplemental Nutrition Assistance Program Before the H. Comm. on Agric.*, 113th Cong. (2014), <https://archives-agriculture.house.gov/hearing/review-implementation-section-4022-agricultural-act-2014-pilot-projects-reduce-dependency>; *How Our Welfare System Can Discourage Work: Joint Hearing Before the Subcomm. on Human Res. of the H. Comm. on Agric.*, 114th Cong. (2015), <https://www.govinfo>.

working-age adults in SNAP who can work do, while often for low pay, without benefits, and unstable schedules.¹¹² The current ABAWD requirements, as set forth in the Food and Nutrition Act of 2008, include registering for work, accepting suitable employment, not voluntarily quitting a job or reducing hours, and participating in workfare (unpaid work through a special state-approved program), or employment and training programs.¹¹³ While several exemptions exist, including permitting states to provide waivers to ABAWD during periods of high unemployment, if work requirements are not met, inability to participate in SNAP may exaggerate an ABAWD's food insecurity.¹¹⁴ The preliminary H.R.2 proposed stricter work

gov/content/pkg/CHRG-114hhrg97912/html/CHRG-114hhrg97912.htm; *How Our Welfare System Can Discourage Work: Joint Hearing Before the Subcomm. on Human Res. of the H. Comm. on Ways and Means & the Subcomm. on Oversight of the H. Comm. on Agric.*, 114th Cong. (2015) (discussing the work requirement and efforts to coordinate programs in regards to this aspect); *Hearing: Past, Present, and Future of SNAP: The Means to Climbing the Economic Ladder*, U.S. House of Representatives Committee Repository (June 10, 2015, 10:00 AM), <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=103569>; *How Our Welfare System Can Discourage Work* (2016), *Subcommittee on Nutrition – Public Hearing RE: Past, Present, and Future of SNAP: Improving Innovation and Success in Employment and Training Programs*, House Committee on Agriculture Republicans (Sept. 13, 2016, 10:00 AM), <https://republicans-agriculture.house.gov/calendar/eventsingle.aspx?EventID=3511>; Letter From Department of Health and Human Services to State Medicaid Director (Jan. 11, 2018), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18002.pdf> (discussing, amongst other issues, the Center for Medicare and Medicaid Services' policy to incentivize work engagement).

¹¹² Brynne Keith-Jennings & Raheem Chaudhy, *Most Working-Age SNAP Participants Work, But Often in Unstable Jobs*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 15, 2018), <https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs>; Brynne Keith-Jennings & Vincent Palacios, *SNAP Helps Millions of Low-Wage Workers: Crucial Financial Support Assists Workers in Jobs with Low Wages, Volatile Income, and Few Benefits*, CTR. ON BUDGET & POL'Y PRIORITIES (May 10, 2017), <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-low-wage-workers>; LAUREN BAUER ET AL., *WORK REQUIREMENTS AND SAFETY NET PROGRAMS 2*, HAMILTON PROJECT (2018), http://www.hamiltonproject.org/assets/files/WorkRequirements_EA_web_1010_2.pdf.

¹¹³ The Food and Nutrition Act of 2008, 7 U.S.C. § 2015(d)(1); U.S. DEP'T AGRIC. FOOD & NUTR. SERV., *supra* note 43.

¹¹⁴ OLIVERIRA ET AL., *supra* note 64; Kristin F. Butcher et al., *Most Workers in Low-Wage Labor Market Work Substantial Hours, in Volatile Jobs*, CTR. ON BUDGET & POL'Y PRIORITIES (July 24, 2018), <https://www.cbpp.org/research/poverty-and-inequality/most-workers-in-low-wage-labor-market-work-substantial-hours-in> (stating that proposals for work requirements in SNAP . . . vary in terms of . . . the economic conditions under which the requirements may be temporarily waived"); Ed Bolen et al., *More than 500,000 Adults Will Lose SNAP Benefits in 2016 as Waivers Expire*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar 18, 2016), <https://www.cbpp.org/research/food-assistance/more-than-500000-adults-will-lose-snap-benefits-in-2016-as-waivers-expire>.

requirements called for almost all adult SNAP participants under the age of sixty to work or participate in employment and job training for at least twenty hours per week and permitted states to target limited resources to those who they deem may benefit most from employment and training programs.¹¹⁵

The Congressional Budget Office estimated more than one million adults would lose SNAP benefits as a result of the preliminary H.R.2's proposed stricter mandatory work requirements.¹¹⁶ In addition, the Congressional Budget Office determined other impacts on states including: the likely need for more than the proposed two years to establish new employment and training opportunities that will likely serve relatively few eligible SNAP participants in each state; possible increased costs for tracking SNAP work status or exemptions from work requirements; and potential financial hardships contending with at least seven provisions deemed unfunded mandates (i.e., a regulation(s) that requires a state to perform certain actions with no funding allocated to support its fulfillment).¹¹⁷ Notably, states have had the option to implement work requirements in SNAP, but many have stopped or opted not to start as the requirements are burdensome on participants and state agencies.¹¹⁸ The Heritage Foundation reported, "as of late 2017, six states and the District of Columbia have statewide ABAWD work waivers, 27 states have partial waivers, and roughly 1,300 counties are 'labor surplus areas' as designated by the Department of Labor."¹¹⁹ Recent reports indicate that Illinois' request for a waiver to reinstate a number of cases was denied and resulted in what federal investigators determined as an over-issuance of SNAP benefits during a four-month period.¹²⁰ In a similar situation but for a longer period of time, the State of New Mexico

¹¹⁵ Ed Bolen et al., *House Farm Bill Would Increase Food Insecurity and Hardship*, CTR. ON BUDGET & POL'Y PRIORITIES (2018), <https://www.cbpp.org/research/food-assistance/house-farm-bill-would-increase-food-insecurity-and-hardship>.

¹¹⁶ CONG. BUDGET OFF., COST ESTIMATE: H.R. 2 AGRICULTURE AND NUTRITION ACT OF 2018 12 (2018), https://www.cbo.gov/system/files?file=2018-07/hr2_1.pdf.

¹¹⁷ *Id.* at 13, 22.

¹¹⁸ FNS CONTROLS OVER SNAP BENEFITS FOR ABLE-BODIED ADULTS WITHOUT DEPENDENTS 4 U.S. DEP'T OF AGRIC. OFF. OF THE INSPECTOR GEN. (2016), <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

¹¹⁹ ROBERT RECTOR & VIJAY MENON, ISSUE BRIEF: SNAP REFORM ACT OFFERS SOUND BASIS FOR WELFARE POLICY 3, HERITAGE F. (2018), <https://www.usda.gov/oig/webdocs/27601-0002-31.pdf>.

¹²⁰ Cole Lauterbach, *USDA Says Illinois Over-Issued Food Stamps, May Face Significant Fines*, ILL. NEWS NETWORK. (Sept. 30, 2018), https://www.ilnews.org/news/state_politics/usda-says-illinois-over-issued-food-stamps-may-face-significant/article_02f08c50-c422-11e8-a5f3-4b474cacffd6.html.

was fined more than \$163 million.¹²¹ On the other hand, Maine announced in 2014 it would no longer grant waivers from the work requirements for ABAWDs, resulting in eighty percent ABAWD caseload drop in only a few months.¹²² Likewise, in 2014, Indiana reinstated work requirements.¹²³ Between October 2017 and March 2018, Georgia ended SNAP benefits for an average of 356 participants for failing to meet work requirements.¹²⁴ Recently, in April 2018, Wisconsin increased work requirements for SNAP recipients, among other provisions to limit the state's welfare programs.¹²⁵

Employment and training programs (SNAP E&T) are administered by the USDA, using a formula-based grant program that provides about \$300 million annually to support states (or state partners) offering a package of services including, but not limited to, participant assessment, employment and training activities, and supportive services.¹²⁶ SNAP to Skills (S2S) is a USDA project that is designed to provide direct and intensive technical assistance, tools and resources to ten states to help each of them build more effective and job-driven SNAP E&T programs.¹²⁷ While Congressional appropriations to SNAP E&T have grown and USDA has learned a lot about how to provide states technical assistance in developing and operating these programs, preliminary evaluations generally found states only offered basic job search services and have not had significant impacts on helping ABAWD transition into the workforce.¹²⁸ A recent Government Accountability Office report

¹²¹ *Id.*

¹²² ROBERT RECTOR ET AL., MAINE FOOD STAMP WORK REQUIREMENT CUTS NON-PARENT CASELOAD BY 80 PERCENT 1, HERITAGE F. (2016), <https://www.heritage.org/welfare/report/maine-food-stamp-work-requirement-cuts-non-parent-caseload-80-percent>.

¹²³ *Reinstatement of Work Requirements for Able-Bodied SNAP Recipients Without Dependents*, IND. FAM. & SOC. SERV. ADMIN., <https://www.in.gov/fssa/dfr/4929.htm>.

¹²⁴ Chris Joyner, *Ga. Cuts Food Stamps for Thousands with New System Tracking Recipients*, ATL. J. CONSTITUTION (Dec. 24, 2018), <https://www.ajc.com/news/state-regional-govt--politics/cuts-food-stamps-for-thousands-with-new-system-tracking-recipients/GUlvSd5v5CFosItLktYIK/>.

¹²⁵ Scott Bauer, *Walker Signs 9 Bills Limiting Wisconsin Welfare Into Law*, U.S. NEWS (Apr. 10, 2018), <https://www.usnews.com/news/best-states/wisconsin/article/s/2018-04-10/walker-to-sign-9-welfare-overhaul-bills-into-law>.

¹²⁶ U.S. DEP'T AGRIC. FOOD & NUTR. SERV., *What is SNAP E&T?*, <https://snaptoskills.fns.usda.gov/about-snap-skills/what-is-snap-et> (last visited Aug. 21, 2019).

¹²⁷ U.S. DEP'T AGRIC. FOOD & NUTR. SERV., *About SNAP to Skills*, <https://snaptoskills.fns.usda.gov/about-snap-skills> (last visited Aug. 21, 2019).

¹²⁸ DEBORAH KOGAN ET AL., SNAP EMPLOYMENT AND TRAINING (E&T) BEST PRACTICES STUDY: FINAL REPORT III-23, U.S. DEP'T AGRIC. FOOD & NUTR. SERV.

determined SNAP E&T programs have served a small percentage of SNAP recipients—less than 1% per month on average in 2016; the data regarding these programs and their impacts were limited and of poor quality, and several states have not leveraged work force development system resources.¹²⁹ A 2017 report by the American Enterprise Institute (AEI)—a conservative think tank—discussed how SNAP work requirements might hinder a state’s ability to respond to local economic conditions and the availability or lack of education and training programs.¹³⁰ The AEI report also found this punitive approach fails to provide robust investment in more effective pathways to transition ABAWDs into the workforce.¹³¹ The local labor market conditions are an important consideration; to illustrate, an ERS report found “a 10 percent increase in local employment raises the average [SNAP] recipient’s probability of program exit by nearly seven percent.”¹³² A recent report from the White House Council of Economic Advisors found the proposed work requirements in the preliminary H.R.2 may facilitate the placement of certain ABAWD into the workforce.¹³³ However, evidence from TANF, which has work requirements, suggests that employment gains were inconsistent and participation in the program dropped sharply.¹³⁴ Ultimately, the 2018 Farm Bill did not include stricter work requirements and included provisions aiming to strengthen employment and training operations such as increasing

<https://www.fns.usda.gov/snap/snap-employment-and-training-et-best-practices-study-final-report>.

¹²⁹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-19-56, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: MORE COMPLETE AND ACCURATE INFORMATION NEEDED ON EMPLOYMENT AND TRAINING PROGRAMS (2018), <https://www.gao.gov/products/GAO-19-56>.

¹³⁰ See DIANE WHITMORE SCHANZENBACH, THE FUTURE OF SNAP: CONTINUING TO BALANCE PROTECTION AND INCENTIVES 17, AM. ENTER. ISNT. (2017), <http://www.aei.org/publication/the-future-of-snap-continuing-to-balance-protection-and-incentive-s/> (discussed how SNAP responds quickly to increased need during times of economic downturns and strengthens the macroeconomy but could do more to assist participants with finding employment).

¹³¹ *Id.*

¹³² ERIK SCHERPF ET AL., PARTICIPATION IN USDA’S SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): EFFECT OF LOCAL LABOR MARKET CONDITIONS IN OREGON. i, ERR-257, U.S. DEP’T AGRIC. ECON. RES. SERV. (2018), <https://www.ers.usda.gov/webdocs/publications/90038/err-257.pdf?v=5890.6>.

¹³³ EXPANDING WORK REQUIREMENTS IN NON-CASH WELFARE PROGRAMS 5, EXEC. OFF. PRESIDENT COUNS. ECON. ADVISORS (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/07/Expanding-Work-Requirements-in-Non-Cash-Welfare-Programs.pdf>.

¹³⁴ Marian Jarlenski & Sara N. Bleich, *The New Push for Work Requirements in Medicaid and SNAP: Implications for Children and Families*, MED. CARE BLOG (May 24, 2018), <https://www.themedicalcareblog.com/the-new-push-for-work-requirements-in-medicaid-and-snap-implications-for-children-and-families/>.

funding, expanding the definition of SNAP E&T programs, and requiring state agencies to reach out to private employers in developing their SNAP E&T plans.¹³⁵ The 2019 Agricultural Appropriations allocated \$487,707 to employment and training programs.¹³⁶ On March 6, 2019, as part of its Farm Bill Implementation, the USDA issued an information memorandum on the self-executing Employment and Training provisions.¹³⁷

Altogether, the proposed stricter work requirements in the preliminary H.R.2 were one of the most contentious differences between the preliminary House and Senate versions and ultimately was not a part of 2018 Farm Bill approved by both the House (390-47) and Senate (87-13) and signed by President Trump on December 20, 2018. Shortly after the President signed the 2018 Farm Bill, the USDA Food and Nutrition Service (FNS), issued a new proposed rule aiming to strengthen the criteria for mandatory SNAP work requirements and significantly restrict state waiver allowance.¹³⁸ The USDA proposed rule indicated the widespread use of ABAWD waivers during periods when unemployment rates were low necessitated strengthening the criteria for granting waivers.¹³⁹ The proposed rule also aims to end the unlimited carryover of ABAWD exemptions, which states have used to extend SNAP eligibility for

¹³⁵ See Agriculture Improvement Act of 2018, Pub. L. No. 115-334 § 4005 (discussing employment and training programs for SNAP recipients).

¹³⁶ DIVISION A – AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2019 30, CONGRESSIONAL DIRECTIVES, [https://www.appropriations.senate.gov/imo/media/doc/FY%202019%20Explanatory%20Statement%20for%20Division%20A%20\(Ag\)%20\(1.21.19\).pdf](https://www.appropriations.senate.gov/imo/media/doc/FY%202019%20Explanatory%20Statement%20for%20Division%20A%20(Ag)%20(1.21.19).pdf).

¹³⁷ Memorandum from the U.S. Dep't Agric., Food & Nutr. Serv. to the Regional Directors of Food & Nutr. Serv. 1 (Mar. 6, 2019), <https://fns-prod.azureedge.net/sites/default/files/Section-4005-Agriculture-Act-2018.pdf>.

¹³⁸ Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, 84 Fed. Reg. 980 (proposed Feb. 1, 2019) (to be codified at 7 C.F.R. pt. 273); Olivia Paschal, *The Farm Bill and the Assault on Poor Families: Stringer New Work Requirements for Food-Stamp Recipients Could Doom Passage of a New Farm Bill*, ATLANTIC (Aug. 24, 2018), <https://www.theatlantic.com/politics/archive/2018/08/the-farm-bill-and-the-assault-on-poor-families/568441/>.

¹³⁹ Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, *supra* note 138, at 981; see also U.S. DEP'T OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): STATUS OF STATE ABLE-BODIED ADULT WITHOUT DEPENDENTS (ABAWD) TIME LIMIT WAIVERS – FISCAL YEAR 2019–2ND QUARTER (Mar. 13, 2019), <https://fns-prod.azureedge.net/sites/default/files/snap/FY19-Quarter2-ABAWD-Waiver-Status.pdf> (listing the current ABAWD time limit waivers approved for State agencies, which is updated each fiscal quarter).

ABAWDs.¹⁴⁰ The USDA indicated the proposed rule would not apply to the disabled, elderly, or women who are pregnant. Over ten years, the proposed rule is projecting an estimated one billion and half dollar reduction. Close to eight thousand public comments were submitted during a sixty-day period that was only briefly extended for three days due to technical issues with the website;¹⁴¹ even though, on February 1, 2019 during the historic shutdown, Representative Marcia Fudge requested an extension for the public comment period.¹⁴²

Legislation was introduced during the 115th Congress to prevent the USDA from implementing the proposed rule.¹⁴³ In addition, Title 1 of a Rules Committee package (H.Res. 6) directs the House of Representatives' Office of General Counsel to explore legal options for responding to the proposed SNAP rule, recognizing, in part, Congress had the opportunity to address work requirements in the 2018 Farm Bill and did not.¹⁴⁴ During a Senate hearing on February 28, 2019, Secretary Perdue was asked several contentious questions about the proposed rule and then fired back with a press release reiterating "the need to restore the original intent of SNAP: A second chance, not a way of life."¹⁴⁵ On April 3, 2019, the House Agriculture Subcommittee on Nutrition, Oversight and Department Operations held a hearing regarding the proposed rule and most members expressed strong opposition, emphasizing Congressional intent was expressed during the 2018 Farm Bill to not impose stricter work requirements and the USDA should await the results of the 2018 Farm Bill provisions aiming to strengthen SNAP E&T programs.¹⁴⁶ The day before the hearing, more than 100 House

¹⁴⁰ Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, *supra* note 138, at 980.

¹⁴¹ *Id.* at Enhanced Content – Public Comments.

¹⁴² Press Release, Rep. Marcia L. Fudge (D-OH-11), Congresswoman Marcia L. Fudge Requests Immediate Extension of USDA's Comment Period on SNAP Rule (Feb. 1, 2019), <https://fudge.house.gov/press-statements/congresswoman-marcia-l-fudge-requests-immediate-extension-of-usdas-comment-period-on-snap-rule/>.

¹⁴³ Protect SNAP Act, H.R. 7372, 115th Cong. § 2 (2018), https://delauro.house.gov/sites/delauro.house.gov/files/Protect_SNAP_Act.pdf?eType=EmailBlastContent&eId=9ecb2bc8-24c4-45f2-974b-a80c3bbce3ad.

¹⁴⁴ Adopting the Rules of the House of Representatives for the One Hundred Sixteenth Congress, and for other purposes, H.R. Res. 6, 116th Cong. § 103(o) (2019).

¹⁴⁵ Press Release, U.S. Dep't Agric., Perdue Reiterates Need to Restore Original Intent of SNAP: A Second Chance, Not A Way of Life (Feb. 28, 2019), <https://www.usda.gov/media/press-releases/2019/02/28/perdue-reiterates-need-restore-original-intent-snap-second-chance>.

¹⁴⁶ *Hearing: Subcommittee on Nutrition, Oversight and Department Operations – RE: "Examining the Proposed ABAWD Rule and its Impact on Hunger and Hardship"*, REPUBLICAN HOUSE COMM. ON AGRIC. (Apr. 3, 2019), <https://republica>

Democrats sent a letter to Secretary Perdue urging him to withdraw the proposed rule and demanding detailed demographic data on ABAWDs.¹⁴⁷ The USDA only provided a publicly available report at this time, which lacked the requested detailed assessment.¹⁴⁸ In addition, Secretary Perdue acknowledged the definition of ABAWDs might need further refining.¹⁴⁹ Similarly, close to half of the members of the Senate in a bipartisan effort sent a letter to Secretary Perdue explaining how the proposed rule is “...contrary to Congressional intent, evidenced by the passage of the Agriculture Improvement Act of 2018 (P.L. 115-334), which rejected similar harmful changes to SNAP and passed Congress by a historic vote of 87-13 in the Senate and by 369-47 in the House of Representatives.”¹⁵⁰

The proposed rule will likely affect participation rates and participant churn in SNAP, which occurs when a SNAP participant exits and then reenters within four months or less.¹⁵¹ Evidence suggests the stronger enforcement of mandatory work requirements and stricter standards for waivers put forth in this proposed rule could potentially affect the food security status of more than one million individuals.¹⁵² Retail food outlets could also lose millions of

ns-agriculture.house.gov/calendar/eventsingle.aspx?EventID=4523&utm_source=SNEB+Members&utm_campaign=cb428b769a-EMAIL_CAMPAIGN_2017_08_25_COPY_01&utm_medium=email&utm_term=0_5640af03cf-cb428b769a-709895345.

¹⁴⁷ Press Release, Rep. Rosa DeLauro (D-CT-3rd), DeLauro, House Dems Urge Secretary Perdue to Withdraw Harmful Changes to SNAP Work Requirements (Apr. 2, 2019), <https://delaurow.house.gov/media-center/press-releases/delauro-house-dem-s-urge-secretary-perdue-withdraw-harmful-changes-snap>.

¹⁴⁸ Ryan McCrimmon, *Dems Turn Up Heat on SNAP data*, POLITICO (Apr. 4, 2019), <https://www.politico.com/newsletters/morning-agriculture/2019/04/04/dems-turn-up-heat-on-snap-data-570428>.

¹⁴⁹ Ryan McCrimmon, *Disaster Aid Talks Break Down as New Storm Nears*, POLITICO (Apr. 10, 2019), <https://www.politico.com/newsletters/morning-agriculture/2019/04/10/disaster-aid-talks-break-down-as-new-storm-nears-577842>.

¹⁵⁰ Press Release, Sen. Mark R. Warner (D-VA), Warner, Kaine Urge Trump Admin. to Withdraw Rule that Would Take Away Nutrition Benefits, Eliminate Jobs (Mar. 29, 2019), <https://www.warner.senate.gov/public/index.cfm/2019/3/warner-kaine-urge-trump-admin-to-withdraw-rule-that-would-take-away-nutrition-benefits-eliminate-jobs>.

¹⁵¹ GREGORY MILLS ET AL., UNDERSTANDING THE RATES, CAUSES, AND COSTS OF CHURNING IN THE SUPPLEMENTAL NUTRITIONAL ASSISTANCE PROGRAM (SNAP): Final Report 14, U.S. DEP’T. AGRIC. FOOD & NUTR. SERV. (2014), <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf>.

¹⁵² Karen Cunyngnam, *Proposed Changes to the Supplemental Nutrition Assistance Program: Waivers to Work-Related Time Limits* 1, MATHEMATICA POL’Y RES. (Mar. 14, 2019), <https://www.mathematica-mpr.com/our-publications-and-findings/publications/proposed-changes-to-the-supplemental-nutrition-assistance-program-waivers-to-work-related-time>.

dollars.¹⁵³ According to a recent Hamilton Project analysis, the proposed rule would likely weaken states' ability to respond to deteriorating economic conditions and negatively affect the important automatic stabilizer SNAP provides in our fiscal policy toolkit.¹⁵⁴ Likewise, a recent Urban Institute case study of ABAWD in Kentucky found at least 13,122 SNAP participants lost benefits because they reached the three-month time limit after work requirements were reinstated.¹⁵⁵ The study authors expressed concern about this "rapid loss of SNAP benefits associated with a policy change without clear evidence."¹⁵⁶ In Wisconsin, a New Food Economy analysis found the state's expanded work requirements fell short of expectations and was expensive (more than one billion annually was paid to the one company awarded the employment training program contract).¹⁵⁷ On the other hand, The Foundation for Government Accountability contends states have used "loopholes and gimmicks" to waive work requirements, which were "only intended for areas with unemployment rates above ten percent or that otherwise lacked job opportunities for able-bodied adults."¹⁵⁸

Future research can further examine how best to utilize a program aimed at preventing food insecurity as a means of transitioning participants with a range of marketable skills and life circumstances into more stable and stronger workforce situations.¹⁵⁹

¹⁵³ Leslie Gersing, *City Grocers Could Lose Millions Monthly in Federal Food-Stamp Proposal*, CRAINS N.Y. BUS. (Mar. 14, 2019), <https://www.craainsnewyork.com/politics/city-grocers-could-lose-millions-monthly-federal-food-stamp-proposal>.

¹⁵⁴ LAUREN BAUER ET AL., HOW DO WORK REQUIREMENTS WAIVERS HELP SNAP RESPOND TO A RECESSION 7, HAMILTON PROJECT (2019), <https://www.brookings.edu/research/how-do-work-requirement-waivers-help-snap-respond-to-a-recession/>.

¹⁵⁵ ELAINE WAXMAN & NATHAN JOO, URBAN INST., REINSTATING SNAP WORK-RELATED TIME LIMITS: A CASE STUDY OF ABLE-BODIED ADULTS WITHOUT DEPENDENTS IN KENTUCKY 12, (Mar. 2019), https://www.urban.org/sites/default/files/publication/100027/reinstating_snap_time_limits_1.pdf.

¹⁵⁶ *Id.* at 2.

¹⁵⁷ H. Claire Brown, *When the Government Mandates Work Requirements for Food Stamps, Who Actually Profits?*, THE NEW FOOD ECONOMY (Apr. 10, 2019), <https://newfoodeconomy.org/work-requirements-snap-mandatory-employment-training-program-profits/>.

¹⁵⁸ Sam Adolphsen, et al., *Waivers Gone Wild: How States are Still Fostering Dependency*, FGA (Apr. 16, 2019), <https://thefga.org/research/work-requirement-waivers-gone-wild/>.

¹⁵⁹ See JULIE STRAWN, POLICY BRIEF 6: INTEGRATING SNAP E&T INTO CAREER PATHWAY SYSTEMS TO BOOST OUTCOMES 5, U.S. DEP'T AGRIC. FOOD & NUTR. SERV. (2017), https://snaptoskills.fns.usda.gov/sites/default/files/2017-05/S2SBrief6_IntegratingSNAPandPathways.pdf (discusses how States may find an added benefit to integrating SNAP E&T services into existing career pathway systems); Brianna Provenzano, *The Implementation of SNAP Work Requirements Could Be Hugely Harmful to the LGBT Community*, PAC. STANDARD (Jan. 9, 2019), <https://psmag.c>

Evidence suggests that food and nutrition assistance is often still needed even when an individual is employed full time.¹⁶⁰ In addition, more state demonstrations might provide better insights on how to provide states flexibility and other administrative supports necessary to meet their constituents' food security *and* employment needs through administering SNAP, among other safety net programs. Future research could also focus on how to develop, implement, and scale up more effective and efficient employment and training activities aiming to provide more than basic job searching tips and target developing marketable skills.¹⁶¹

C. *Benefit Adequacy, Issuance & Redemption*

i. Benefit Adequacy

The 2018 Farm Bill did not significantly alter benefit adequacy or issuance, with the exception of establishing an interstate data system to prevent the simultaneous issuance of SNAP benefits to an individual by more than one state.¹⁶² Fortunately, the 2018 Farm Bill did not eliminate the minimum SNAP benefit proposed in President Trump's 2018 budget.¹⁶³ But bipartisan support was not secured for the Closing the Meal Gap Act that aimed to revise the requirements for calculating SNAP benefits using the Low-Cost Food Plan instead of the Thrifty Food Plan.¹⁶⁴ A SNAP benefit allotment is calculated by multiplying an individual's or household's net monthly income by 0.3 and then subtracting the result from the

om/economics/the-implementation-of-snap-work-requirements-could-be-hugely-harmful-to-the-lgbt-community (discusses how there is limited data available to understand potentially harmful impacts of stricter work requirements to the LGBT community).

¹⁶⁰ Sarah Bowen, et al., *How Real Families Use Food Stamps: Our Research Shows Why It's Counterproductive to Increase Work Rules*, POLITICO, (Apr. 25, 2019), <https://www.politico.com/agenda/story/2019/04/25/food-assistance-programs-snap-funding-000894> (finding among 100 families studied in North Carolina that even when participants worked full time for usually low wages, food stamps often helped ensure all household members remained food secure).

¹⁶¹ *USDA FNS SNAP E and T Pilots*, DEP'T AGRIC. FOOD & NUTR. SERV. (Aug. 24, 2019), <https://www.fns.usda.gov/snap/usda-fns-snap-e-and-t-pilots>.

¹⁶² Agriculture Improvement Act of 2018, H.R. 2, 115th Cong § 4011 (2017-2018); Agriculture Improvement Act of 2018, S. 3042, 115th Cong. § 4019 (2018).

¹⁶³ OFF. MGMT. & BUDGET, EXEC. OFF. PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT: A NEW FOUNDATION FOR AMERICAN GREATNESS. FISCAL YEAR 2018 10, <https://www.govinfo.gov/content/pkg/BUDGET-2018-BUD/pdf/BUDGET-2018-BUD.pdf>.

¹⁶⁴ Closing the Meal Gap Act of 2017, H.R. 1276, 115th Cong. (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/1276>.

maximum monthly allotment for an individual or household size.¹⁶⁵ Allotments are different in Alaska, Hawaii, Guam, and the US Virgin Islands.¹⁶⁶ According to a 2006 USDA report, the Thrifty Food Plan is the basis for SNAP benefit allotments and aims to provide a “representative healthful and minimal cost meal plan that shows how a nutritious diet may be achieved with limited resources.”¹⁶⁷ This 2006 report updated the 1999 version of the Thrifty Food Plan.¹⁶⁸ The USDA also puts forth three other plans at different costs known as: Low-Cost, Moderate-Cost, and Liberal Food.¹⁶⁹ On a monthly basis, the USDA provides weekly and monthly costs for each of the four food plans.¹⁷⁰ While Closing the Meal Gap was not supported, the 2018 Farm Bill requires the USDA Secretary to re-evaluate and publish the Thrifty Food Plan every five years based on dietary guidance, food prices, food composition data, and consumption patterns.¹⁷¹ Recently, the Closing the Meal Gap Act was reintroduced in the House (H.R. 1368) to amend the Food and Nutrition Act of 2008 to require SNAP benefits be based on the Low Cost Food Plan.¹⁷² In the Senate, a bill (S.677) proposes to amend the Food and Nutrition Act of 2008 to provide for participation of Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands in SNAP (instead of NAP, a block grant program explained earlier), which will enable equitable nutrition

¹⁶⁵ *Am I Eligible for SNAP?*, U.S. DEP’T AGRIC. FOOD & NUTR. SERV. (Nov. 16, 2018), <https://www.fns.usda.gov/snap/eligibility#How%20much%20could%20I%20receive%20in%20SNAP%20benefits?>.

¹⁶⁶ *Id.*

¹⁶⁷ See ANDREA CARLSON ET AL., THRIFTY FOOD PLAN, 2996, CNPP-19, CTR. ON BUDGET AND POL’Y PRIORITIES i (2007), https://www.cnpp.usda.gov/sites/default/files/usda_food_plans_cost_of_food/TFP2006Report.pdf (explains how the 2006 Thrifty Food Plan is based on the 2005 *Dietary Guidelines for Americans* as well as the 2005 MyPyramid Food Guidance System, uses the prices low-income people paid for many foods, uses the latest data on food consumption, nutrient content, and food prices, the 2001-2002 National Health and Nutrition Examination Survey and the 2001-2002 Food Price Database, and offers a more realistic reflection of the time available for food preparation).

¹⁶⁸ *Id.* at ES-1; THE THRIFTY FOOD PLAN, 1999: ADMINISTRATIVE REPORT, CNPP-7, U.S. DEP’T AGRIC. CTR. FOR NUTRITION POL’Y & PROMOTION (1999), https://www.cnpp.usda.gov/sites/default/files/usda_food_plans_cost_of_food/FoodPlans1999ThriftyFoodPlanAdminReport.pdf.

¹⁶⁹ THE LOW-COST, MODERATE COST, AND LIBERAL FOOD PLANS: 2003 ADMINISTRATIVE REPORT, CNPP-13, U.S. DEP’T AGRIC. CTR. FOR NUTRITION POL’Y & PROMOTION (2003), https://www.cnpp.usda.gov/sites/default/files/usda_food_plans_cost_of_food/FoodPlans2003AdminReport.pdf.

¹⁷⁰ *USDA Food Plans: Cost of Food*, U.S. DEP’T AGRIC. CTR. FOR NUTRITION POL’Y & PROMOTION <https://www.cnpp.usda.gov/USDAFoodPlansCostofFood/reports> (last visited Aug. 27, 2019).

¹⁷¹ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, § 4002, 132 Stat. 4490, 4624 (2018).

¹⁷² Closing the Meal Gap Act of 2019, H.R. 1368, 116th Cong. (2019-2020).

assistance for SNAP eligible individuals and households living in US territories.¹⁷³ A legal battle is underway against the USDA, among other federal agencies, regarding “policies awarding lower federal benefits to US citizens who reside in Puerto Rico than to similarly situated and equally needy US citizens residing in any of the 50 states of the US.”¹⁷⁴ The plaintiffs seek an injunction and declaration that these federal laws violate their right to equal protection guaranteed by the Fifth Amendment.¹⁷⁵ At the state level, starting March 1, 2019, Maine enacted a working families supplement benefit that was authorized by the Maine State Legislature in 2011 and is funded through TANF that will more than triple benefits from \$15 to \$50 per month for approximately 13,000 working families receiving SNAP benefits.¹⁷⁶

A 2013 Institute of Medicine (IOM) examination of the evidence to define SNAP benefit adequacy concluded it is possible to develop a definition of allotment adequacy that factors in cost-time trade-offs involved in procuring and preparing a safe and nutritious diet, geographic price variations, and access to retail food outlets.¹⁷⁷ The IOM report also found the assumptions regarding a SNAP participant’s time built into the Thrifty Food Plan are “inconsistent with the time available for most households at all income levels, particularly those with a single working head.”¹⁷⁸ Similarly, the ERS determined more attention is needed on how best to balance program costs with benefit adequacy and to make appropriate adjustments for geographic variations in food and beverage prices; cost variations associated with nutrient requirements of household members of varying life stages; and the costs of time spent in food preparation built into the dated Thrifty Food Plan.¹⁷⁹ A 2018 analysis found the SNAP benefit does not cover the cost of a low-income meal in ninety-nine percent of US continental counties and the District of Columbia and suggested Congress consider strategies to better align

¹⁷³ Equitable Nutrition Assistance for the Territories Act of 2019, S. 677, 116th Cong. (2019-2020).

¹⁷⁴ *Martinez v. Azar*, No. 3:18-cv-01206, 2018 WL 1795786, at *2 (D. P.R. Apr. 13, 2018); *see also* *Martinez v. Azar*, 376 F. Supp. 3d 191 (D. P.R. Apr. 15, 2019) (explaining how the complaint barely survived a motion to dismiss).

¹⁷⁵ *Martinez*, 2018 WL 1795786, at *6.

¹⁷⁶ News Release, Me. Dep’t Health & Hum. Serv., Maine DHHS Takes Steps to Support Working Families, (Feb. 20, 2019), <https://www.maine.gov/dhhs/press-release.shtml?id=1100668>.

¹⁷⁷ COMM. ON EXAMINATION ADEQUACY FOOD RES. & SNAP ALLOTMENTS, ET AL., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: EXAMINING THE EVIDENCE TO DEFINE BENEFIT ADEQUACY 4 (Julie A. Caswell & Ann L. Yaktine, eds. 2013).

¹⁷⁸ *Id.*

¹⁷⁹ OLIVEIRA ET AL., *supra* note 64, at iv.

the maximum SNAP benefit with county-level meal costs.¹⁸⁰ Another recent study determined that SNAP benefits may be insufficient to support eating patterns recommended by the *Dietary Guidelines for Americans*.¹⁸¹ Increasing SNAP benefits resulted in increased food expenditures, decreased levels of food insecurity, and modest improvements in dietary quality among school-aged children participating in a Summer Electronic Benefit Transfer for Children demonstration.¹⁸² Similarly, increases in SNAP benefits following The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) were associated with increased food expenditures and decreased levels of food insecurity.¹⁸³ Recently, the Center on Budget and Policy Priorities conducted a review of the literature on SNAP benefit adequacy and found families in high-cost areas find it especially difficult to afford a healthy diet.¹⁸⁴ Thus, more timely and sufficient legislative attention is needed towards defining, calculating, and providing adequate SNAP benefits. This work includes improving the evidence base for how minimum wage laws, among other improvements in the social safety net, supports impact SNAP benefit adequacy.

ii. Benefit Issuance

Aside from benefit adequacy, further work is needed to explore how state authority to make decisions about the timing and frequency of benefit issuance impact SNAP participants. Currently, households participating in SNAP receive benefits once monthly,¹⁸⁵

¹⁸⁰ ELAINE WAXMAN ET AL., HOW FAR DO SNAP BENEFITS FALL SHORT OF COVERING THE COST OF A MEAL? 6, URB. INST. (2018), <https://www.urban.org/research/publication/how-far-do-snap-benefits-fall-short-covering-cost-meal>.

¹⁸¹ Kranti Mulik & Lindsey Haynes-Maslow, *The Affordability of MyPlate: An Analysis of SNAP Benefits and the Actual Cost of Eating According to the Dietary Guidelines*, 49 J. NUTRITION EDUC. & BEHAV. 623, 623 (2017).

¹⁸² Ann M. Collins & Jacob A. Klerman, *Improving Nutrition by Increasing Supplemental Nutrition Assistance Program Benefits*, 52 AM. J. PREV. MED. S179, S181 (2017).

¹⁸³ MARK NORD & MARK PRELL, FOOD SECURITY IMPROVED FOLLOWING THE 2009 ARRA INCREASE IN SNAP BENEFITS iii, ERR-116, U.S. DEP'T AGRIC. ECON. RES. SERV. (2011), <https://www.ers.usda.gov/publications/pub-details/?pubid=44839>.

¹⁸⁴ Steven Carlson, *More Adequate SNAP Benefits Would Help Millions of Participants Better Afford Food* (July, 30 2019), <https://www.cbpp.org/research/food-assistance/more-adequate-snap-benefits-would-help-millions-of-participants-better>.

¹⁸⁵ *Supplemental Nutrition Assistance Program (SNAP) When Are Benefits Available?*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV., <https://www.fns.usda.gov/snap/snap-monthly-benefit-issuance-schedule>.

and most benefits are spent within two weeks of receipt.¹⁸⁶ Research consistently shows that early exhaustion of benefits leads to food insecurity at the end of the SNAP benefit month.¹⁸⁷ This monthly cycle of food insecurity has been called the “SNAP nutrition cycle,” and is linked to a host of negative health and societal outcomes, including reduced caloric intake and diet quality, increased hospital admissions for hypoglycemia, lower standardized test scores, and increased crime.¹⁸⁸ More frequent issuance (e.g., distributing benefits every two weeks) could potentially help SNAP participants smooth consumption and reduce the severity of food insecurity experienced at the end of the month.¹⁸⁹ In 2006, a proposal in Michigan aimed to do just this,¹⁹⁰ but was halted by language in the 2008 Farm Bill, which makes it infeasible for states to issue benefits more frequently than once per month absent an act of Congress.¹⁹¹ By contrast, states have authority to decide when, during the course of the month, individual households receive their benefits.¹⁹² Currently, there is substantial variation across states regarding benefit issuance.¹⁹³ In seven states, all SNAP participants receive their benefits on a single day of the month (single-day issuance); in another seven states, SNAP participants receive their monthly benefits spread over three to seven different days; and in the

¹⁸⁶ *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*, CTR. ON BUDGET AND POLICY PRIORITIES, <https://www.cbpp.org/research/policy-basics-the-supplemental-nutrition-assistance-program-snap> (last updated June 25, 2019).

¹⁸⁷ K.S. Hamrick & M. Andrews, *SNAP Participants' Eating Patterns Over the Benefit Month: A Time Use Perspective*, 11 *PLOS One* e0158422 (2016).

¹⁸⁸ C. Cotti, J. Gordanier, & O. Ozturk, *When Does It Count? The Timing of Food Stamp Receipt and Educational Performance*, 66 *ECONOMICS EDUC. REV.* 40-50 (2018).

¹⁸⁹ A. Ammerman, T. Hartman, & M.M. DeMarco, *Behavioral Economics and the Supplemental Nutrition Assistance Program: Making the Healthy Choice the Easy Choice*, 52 *AM J. PREV. MED.* S145-S150 (2017); Tommy Tobin, *Semi-Monthly Benefit Transfers Are A Simple Way to Improve Food Stamps*, *FORBES* (Apr. 23, 2018) <https://www.forbes.com/sites/tommytobin/2018/04/23/fixing-food-stamps-for-families/#6ad45bc638d7>.

¹⁹⁰ *Id.*; *Changing the Monthly Food Stamp Cycle*, U.S. FOOD POLICY (May 13, 2006), <http://usfoodpolicy.blogspot.com/2006/05/changing-monthly-food-stamp-cycle.html>.

¹⁹¹ Sec. 7. Issuance and Use of Program Benefits, (g) Alternative Benefit Delivery, The Food, Conservation, and Energy Act of 2008 (P.L. 110-234), <https://www.agriculture.senate.gov/imo/media/doc/110-246%20-%20Food,%20Conservation,%20And%20Energy%20Act%20Of%202008.pdf>.

¹⁹² *Supplemental Nutrition Assistance Program (SNAP) When Are Benefits Available?*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV., <https://www.fns.usda.gov/snap/snap-monthly-benefit-issuance-schedule> (last updated Apr. 23, 2014).

¹⁹³ *Supplemental Nutrition Assistance Program (SNAP): Monthly Issuance Schedule for All States and Territories*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV., <https://fns-prod.azureedge.net/sites/default/files/snap/Monthly-Issuance-Schedule-All-States.pdf> (last visited Aug. 27, 2019).

remaining thirty-six states, benefits are received on eight to twenty-eight different days each month (each beneficiary is assigned a day usually by case number or last name).¹⁹⁴ But these state issuance schedules continue to evolve.¹⁹⁵ Some research suggests that issuance schedules affect retailer behaviors, with retailers operating in states with single-day or short issuance schedules increasing prices or targeting advertisements during the first week of the benefit month.¹⁹⁶ For example, one study found in-store sugar-sweetened beverage marketing was 4.35 times higher during SNAP issuance compared with non-issuance days in census tracts with high SNAP enrollment.¹⁹⁷ Shutdown implications on issuance are discussed in

¹⁹⁴ *Id.*

¹⁹⁵ Kel Dansby, *Expect Changes in SNAP Issue Dates Beginning July* (May 31, 2019), <https://www.8newsnow.com/news/local-news/expect-changes-in-snap-issue-dates-beginning-july/> (explaining how in the beginning of July 2019, the State of Nevada Division of Welfare and Supportive Services will spread out the issue date to the first 10 days of the month determined by the last digit of the recipient's birth year); see also Jessica E. Todd & Christian A. Gregory, *ERS's SNAP Distribution Schedule Database Allows for New Research on Program Impacts*, USDA ERS AMBER WAVES (Aug. 12, 2019), <https://www.ers.usda.gov/amber-waves/2019/august/ers-s-snap-distribution-schedule-database-allows-for-new-research-on-program-impacts/>.

¹⁹⁶ E. Castellari, C. Cotti, J. Gordanier, & O. Ozturk, *Does the Timing of Food Stamp Distribution Matter? A Panel-Data Analysis of Monthly Purchasing Patterns of US Households*, 26 HEALTH ECON. 1380-1393 (2017); Justine S. Hasting & Ebonya L. Washington, *The First of the Month Effect: Consumer Behavior and Store Responses* (2008), NBER Working Paper No. 14578, <https://www.nber.org/papers/w14578>; L.A. Gennetian, R. Seshardi, N.D. Hess, A.N. Winn, & R.M. George, *Supplemental Nutrition Assistance Program (SNAP) Benefit Cycles and Student Disciplinary Infractions*, 90 SOC. SER. REV. 403-433 (2016); P.E. Wilde & C.K. Ranney, *The Monthly Food Stamp Cycle: Shopping Frequency and Food Intake Decisions in an Endogenous Switching Regression Framework*, 82 AM. J. AG. ECON. 200-213 (2000); J.M. Shapiro, *Is There a Daily Discount Rate? Evidence from the Food Stamp Nutrition Cycle*, 89 J. PUB. ECON. 303-325 (2005); J.E. Todd, *Revisiting the Supplementation Nutrition Assistance Program Cycle of Food Intake: Investigating Heterogeneity, Diet Quality, and a Large Boost in Benefit Amounts*, 37 APPLIED ECON. PERSPECTIVES & POL'Y 437-458 (2015); E.D. Whiteman, B.W. Chrisinger, & A. Hillier, *Diet Quality Over the Monthly Supplemental Nutrition Assistance Program Cycle*, 55 AM J. PREV. MED. 205-212 (2018); K.S. Hamrick & M. Andrews, *SNAP Participants' Eating Patterns Over the Benefit Month: A Time Use Perspective*, 11 PLOS ONE e0158422 (2016); M.A. Kuhn, *Who Feels the Calorie Crunch and When? The Impact of School Meals on Cyclical Food Insecurity*, 166 J. PUB. ECON. 27-38 (2018); N. Sanjeevi & J. Freeland-Graves, *Monthly Variations in Dietary Intake of Women Participating in the Supplemental Nutrition Assistance Program*, 119 J. ACAD. NUTR. DIET. 261-271 (2019); H.K. Seligman, A.F. Bolger, D. Guzman, A. Lopez, & K. Bibbins-Domingo, *Exhaustion of Food Budgets at Month's End and Hospital Admissions for Hypoglycemia*, 33 HEALTH AFF. (Milwood) 116-123 (2014).

¹⁹⁷ A.J. Moran, A. Musicus, M.T. Gorski Findling, I.F. Brissette, A.A. Lowenfels, S.V. Subramanian, & C.A. Roberto, *Increases in Sugary Drink Marketing During*

the appropriations section. More research is needed to better inform federal and state policy and programmatic decisions regarding benefit issuance, along with how best to work with retailers and participants to maximize benefit utilization that preserves SNAP's mission to promote food security and improve nutrition.

iii. Benefit Redemption

Unlike benefit adequacy and issuance, recent legislative actions have explored approaches to modernizing the redemption of SNAP benefits, particularly at farmers' markets, restaurants, and through online delivery¹⁹⁸ and during the summer months when child(ren) are not participating in school-based child nutrition assistance programs. Indeed, more than seven thousand farmers' markets and direct-marketing farmers are now SNAP authorized and \$22.4 million (less than 0.1%) of SNAP benefits were redeemed at direct-marketing farmers or farmers' markets in fiscal year 2017.¹⁹⁹ USDA reported SNAP redemptions at farmers' markets increased from \$2.7 million in fiscal year 2008 to more than \$19 million in fiscal year 2015, which is an increase of about 620 percent and, since fiscal year 2008, the number of farmers' markets authorized to accept SNAP increased by 587 percent.²⁰⁰ Community Supported Agriculture (CSAs) is another possible innovative mode now eligible to help connect local farmers with SNAP participants.²⁰¹ This is tremendous given SNAP participants could potentially improve access to and consumption of fresh fruits and vegetables and these purchases help farmers.²⁰²

Supplemental Nutrition Assistance Program Benefit Issuance in New York, 55 AM J. PREV. MED. 55-62 (2018).

¹⁹⁸ Parke Wilde & Mehreen Ismail, *Beyond the Farm in the Farm Bill: What Nutrition Professionals Need to Know about the Nutrition Title*, 52 NUTR. TODAY 273, 277 (2017).

¹⁹⁹ UNITED STATES DEP'T AGRIC., COMPARISON OF SNAP AUTHORIZED FARMERS AND MARKETS FY2012 AND FY2017, <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Farmers-Markets-Redemptions.pdf>.

²⁰⁰ Dennis Pillion, *Increased Food Stamp Use at Alabama Farmers Markets Puts Healthy Food On Tables, Officials Say*, ALABAMA (Jul. 21, 2015), https://www.al.com/news/index.ssf/2015/07/food_stamps_at_farmers_markets.html.

²⁰¹ UNITED STATES DEP'T. AGRIC., OPERATING A CSA AND SNAP PARTICIPATION, <https://fns-prod.azureedge.net/sites/default/files/snap/CSA.pdf>.

²⁰² D.A. Freedman et al., *Systematic Review of Factors Influencing Farmers' Market Use Overall and Among Low-Income Populations*, 116 J. ACAD. NUTR. DIET. NUTR. 1136, 1151 (2016); H.M. Black et al., *Improving Fruit and Vegetable Consumption: Use of Farm-to-Consumer Venues Among US Adults*, 8 PREV. CHRONIC DIS. 1, 2 (2011); R.C. Woodruff et al., *Urban Farmers Markets as a Strategy to Increase Access to and Consumption of Fresh Vegetables Among SNAP and Non-SNAP Participants: Results from an Evaluation*, 8 J. AGRIC. FOOD SYSTEMS & COMM. DEV.

The Agricultural Act of 2014 (P.L. 113-79) requires authorized SNAP retailers to pay for their own electronic benefit transfer (EBT) equipment but provided an exception for eligible farmers' markets and direct-marketing farmers, among others.²⁰³ In addition, appropriations were authorized to allow the USDA to provide EBT equipment to eligible markets and farmers.²⁰⁴ Unfortunately, on July 14, 2018, the FNS Administrator responded to news that a major provider of mobile EBT technology for farmers' markets would be discontinuing this service and outlined a variety of strategies available to ensure markets and farmers have the equipment needed to continue to process SNAP transactions.²⁰⁵ FNS recently increased the cost for markets to accept EBT and now requires each farmers' market location to obtain its own EBT authorization number and machine, even if multiple locations are operated by a single organization.²⁰⁶ The 2018 Farm Bill only made modest adjustments to EBT system rules including temporarily banning the switching and routing of fees and easing of EBT authorization processes for farmers' markets serving multiple locations.²⁰⁷ In other words, the 2018 Farm Bill allows farmers' market vendors to use a single device to accept SNAP EBT at multiple farmers' market locations. The current regulations require one device per location. Fortunately, a financial tech company provided a two million dollar lifeline to ensure continuance of EBT cards at farmers' markets and the company is exploring how to ensure the appropriate technology is in place to enable vendors to use one device at multiple locations, which should lower costs and reduce administrative burdens.²⁰⁸ Farmers' market vendors are also

93, 101 (2018); A.M. Buttenheim et al., *Increasing Supplemental Nutrition Assistance Program/Electronic Benefit Transfer Sales at Farmers' Markets with Vendor-Operated Wireless Point-of-Sale Terminals*, 112 J. ACAD. NUTR. DIET. 636, 641 (2012); Brenda Robles et al., *Dietary Behaviors Among Public Health Center Clients with Electronic Benefit Transfer Access at Farmers' Markets*, 117 J. ACAD. NUTR. DIET. 58, 65 (2017).

²⁰³ H.R. 2642, 113th Cong (2014) (enacted).

²⁰⁴ *Id.*

²⁰⁵ *USDA Statement on SNAP Access at Farmers Markets*, Release No. FNS 0005-18, UNITED STATES DEP'T AGRIC. FOOD & NUTR. SERV. (July 14, 2018), <https://www.fns.usda.gov/pressrelease/2018/fns-0005-18>.

²⁰⁶ UNITED STATES DEP'T. AGRIC., INFORMATION ABOUT FARMERS MARKETS AND DIRECT MARKETING FARMERS PARTICIPATION IN SNAP, <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Farmers-Market-FAQs.pdf>; *Policy Priorities Request that FNS Revise its "One Site, One Permit, One Machine" Policy*, FARMERS MARKET COALITION, <https://farmersmarketcoalition.org/advocacy/snap/> (last visited Aug. 27, 2019).

²⁰⁷ H.R. 2, 115th Cong. § 4006 (2018) (enacted).

²⁰⁸ Jane Block, *Tech Company Comes to the Rescue of Food Stamp Benefits at Farmers Markets*, WA. POST (Jan. 31, 2019), <https://www.washingtonpost.com/lifes>

expecting additional support through the Local Agriculture Market Program (LAMP), which was created in the 2018 Farm Bill and provides \$50 million annually in permanent, mandatory funding.²⁰⁹ LAMP aims to improve coordination for local and regional food systems funding across agencies and streamlines certain existing programs by putting them under one umbrella such as the Farmers Market and Local Food Promotion Program (FMLFPP) and Value-Added Producer Grants (VAPG).²¹⁰

Restaurants' redemption is evolving. Back in 1971, in *Kentucky Fried Chicken of Cleveland v. United States*, the US Supreme Court determined the Secretary of Agriculture acted within his scope of authority granted under the Food Stamp Act of 1964 in denying the applicant fast food restaurant request to participate as a "retail food store" in the Food Stamp Program and only approved grocery establishments which stock a large number of low-cost staples.²¹¹ In the Food Stamp Act of 1977, states were granted flexibility to authorize certain restaurants as SNAP retailers to enable SNAP redemption for homeless, elderly, and/or disabled.²¹² If states elected to operate a Restaurant Meals Program for certain eligible SNAP participants, the Agricultural Act of 2014 (P.L. 113-79) established requirements for plans and reports to help monitor the program's effectiveness and integrity.²¹³ California, Arizona, and Rhode Island, among others, have well developed Restaurant Meal Programs.²¹⁴ Yet, determining if a state participates in the Restaurant

tyle/food/tech-company-comes-to-the-rescue-of-food-stamp-benefits-at-farmers-markets/2019/01/30/ba22def2-24e7-11e9-90cd-dedb0c92dc17_story.html?eId=110589c8-7f5b-45ec-9adb-37d5af509426&eType=EmailBlastContent&utm_term=.250f86780028.

²⁰⁹ *A Closer Look at the 2018 Farm Bill: Local Agriculture Market Program*, NAT'L SUSTAINABLE AGRIC. COAL. (Jan. 22, 2019), <http://sustainableagriculture.net/blog/2018-farm-bill-local-agriculture-market-program/>.

²¹⁰ *Id.*

²¹¹ *Kentucky Fried Chicken of Cleveland v. United States*, 449 F.2d 255, 256 (5th Cir. 1971).

²¹² The Food Stamp Act of 1977 (P.L. 88-525); Marion Nestle, *Using SNAP Benefits for Fast Food Restaurants is a State Decision*, ATLANTIC (Sept. 14, 2011), <https://www.theatlantic.com/health/archive/2011/09/using-snap-benefits-for-fast-food-restaurants-is-a-state-decision/245085/>; Nicole, *Low Income Relief: These Fast Food Restaurants Accept EBT*, LOW INCOME RELIEF (Feb. 18, 2017), <https://lowincomerelief.com/fast-food-restaurants-ebt/>; William Lipovsky, *First Quarter Finance: What Fast-Food Places Take EBT/Food Stamps/SNAP? Here's the List*, FIRST QUARTER FINANCE (Mar. 21, 2019), <https://firstquarterfinance.com/what-fast-food-places-take-ebt-food-stamps-snap/>.

²¹³ H.R. 2642, *supra* note 203.

²¹⁴ Cynthia Hsu, *Food Stamps Accepted in Restaurants in AZ, CA, FL, MI*, FINDLAW (Sept. 8, 2011), https://blogs.findlaw.com/law_and_life/2011/09/food-stamps-for-restaurants-accepted-in-az-ca-fl-mi.html; *Restaurant Meals Program*, CAL. DEP'T

Meal Program using a state SNAP website is not always straightforward and even if a state does participate in the program, identifying which restaurants are authorized could be difficult.²¹⁵ Similarly, using the USDA retailer website to determine if a restaurant participates can be challenging.²¹⁶ Little is known about the health impacts of this SNAP redemption option.

An emerging redemption innovation being explored is the Summer Electronic Benefits Transfer for Children (SEBTC) demonstration to study the use of SNAP and the USDA Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC) electronic benefits transfer to provide assistance to low-income children during the summer.²¹⁷ In a recent demonstration project, SEBTC provided certain households with additional resources during the summer months when they were not participating in school meal programs such as the USDA National School Lunch Program and School Breakfast Program.²¹⁸ The 2010 Agriculture Appropriations Act (P.L.111-80) authorized and provided funding for the USDA to implement and rigorously evaluate demonstrations to reduce summer food insecurity for children.²¹⁹ The SEBTC demonstration project findings indicate the benefit of \$60 per month per child reduced the most severe category of food insecurity among children during the summer by one-third and receiving either a \$30 or \$60 monthly were both associated with higher fruit and vegetable consumption.²²⁰ The 2018 Farm Bill did not address the use of SNAP to provide additional benefits during the summer but future legislative action might occur as the Child Nutrition Reauthorization processes get underway.

SOC. SERV., <https://www.cdss.ca.gov/inforesources/CalFresh/Restaurant-Meals-Program> (last visited Aug. 27, 2019); *Restaurant Meals Program*, ARIZ. DEP'T ECON. SEC., <https://des.az.gov/content/restaurant-meals-program> (last visited Aug. 27, 2019); *SNAP Restaurant Meals Program*, R.I. DEP'T HUMAN SERV., <http://www.dhs.ri.gov/Programs/RESTAURANT%20MEALS%20PROGRAM%20FLYER%20Q&A.pdf> (last visited Aug. 27, 2019).

²¹⁵ *Where Can I Use SNAP EBT?*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/retailerlocator> (last visited Aug. 27, 2019); *Retailer Eligibility – Restaurants*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/retailer-eligibility-restaurants> (last visited Aug. 27, 2019).

²¹⁶ *Id.*

²¹⁷ *Summer Electronic Benefit Transfer for Children (SEBTC)*, U.S. DEP'T. AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/ops/summer-electronic-benefit-transfer-children-sebtc> (last updated Nov. 8, 2013).

²¹⁸ *Id.*

²¹⁹ H.R. 2997, 111th Cong. (2009) (enacted).

²²⁰ *Summer Electronic Benefit Transfer for Children (SEBTC) Demonstration: Summary Report 2011-2014 (Summary)*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV. (May 2016) <https://fns-prod.azureedge.net/sites/default/files/ops/sebtcfinalreport-summary.pdf>.

Congress has taken steady legislative actions to explore the use of online delivery among SNAP participants, given one-third of SNAP participants use someone else's car, walk, bike or use public transit to grocery shop.²²¹ The Agricultural Act of 2014 (P.L. 113-79) mandated Online Purchasing Pilots to test the feasibility of online transactions using SNAP benefits.²²² FNS recently requested public comments about the evaluation planned for the two-year online transaction pilots taking place with the following retail food outlets (in the following states): Amazon (Maryland, New Jersey, New York), FreshDirect (New York), Safeway (Maryland, Oregon, Washington), ShopRite (Maryland, New Jersey, Pennsylvania), Hy-Vee, Inc. (Iowa), Hart's Local Grocers (New York), and Dash's Market (New York).²²³ These pilots, among other studies, can help better understand the challenges and motivators to successfully implementing an online delivery option for SNAP eligible individuals and families.²²⁴ The 2018 Farm Bill directs the USDA Secretary to authorize the use of mobile technologies for the purpose of accessing SNAP benefits, after conducting no more than five demonstration projects to pilot such technologies.²²⁵ Put another way, the 2018 Farm Bill requires nationwide implementation of

²²¹ Michele Ver Ploeg et al., *Where Do Americans Usually Shop for Food and How Do They Travel To Get There? Initial Findings from the National Household Food Acquisition and Purchase Survey*, U.S. DEP'T AGRIC. ERS, (Mar. 2015) <https://www.ers.usda.gov/publications/pub-details/?pubid=79791>.

²²² H.R. 2642, *supra* note 203.

²²³ Agency Information Collection Activities: Evaluation of Technology Modernization for SNAP Benefit Redemption Through Online Transactions for the USDA Food and Nutrition Service, 83 Fed. Reg. 36515, 36515 (July 30, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-07-30/pdf/2018-16220.pdf> (request for comments); *USDA Announces Retailer Volunteers for SNAP Online Purchasing Pilot*, U.S. DEP'T. AGRIC. (Jan. 5, 2017), <https://www.usda.gov/media/press-releases/2017/01/05/usda-announces-retailer-volunteers-snap-online-purchasing-pilot> (indicating the pilot retailers and the locations of each retailer); *Supplemental Nutrition Assistance Program (SNAP) Online Purchasing Pilot*, U.S. DEP'T. AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/online-purchasing-pilot> (last updated June 27, 2019) (indicating the pilot retailers and their locations).

²²⁴ *See e.g.* Olivia Martinez, Barbara Tagliaferro, Noemi Rodriguez, Jessica Athens, Courtney Abrams, & Brian Elbel, *EBT Payment for Online Grocery Orders: A Mixed-Methods Study to Understand Its Uptake among SNAP Recipients and the Barriers to and Motivators for Its Use*, 50 J. NUTR. EDUC. BEHAV. 396, 396 (2018) (examining "uptake of the pilot program and its impact on SNAP recipients' food purchases" and concluding that "[e]lectronic Benefit Transfer for online grocery purchases has the potential to increase food access among SNAP beneficiaries," but "[u]nderstanding online food shopping barriers and motivators is critical to the success of policies targeting the online expansion of SNAP benefits").

²²⁵ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, § 4006(e), 132 Stat. 4490, 4635-4636 (2018).

online acceptance for SNAP benefits after the pilots required in the 2014 Farm Bill are implemented.²²⁶ On April 18, 2019, participants in the two-year test (pilot) in New York State were the first ever to select and pay for their groceries online; eventually, the other pilots will get underway.²²⁷ Recent analyses have raised concern about the data privacy requirements set out in the pilot's Request for Volunteers might not sufficiently safeguard against predatory marketing practices tailored at an already disadvantaged population.²²⁸ Therefore, permitting online transactions might help ensure home bound SNAP participants or those with limited transportation options have modernized redemption alternatives; however, much remains before nationwide implementation.

Another redemption development is the recent legal battle over whether SNAP redemption data at the retailer level (online or brick or mortar) is confidential business information,²²⁹ recently Supreme Court Justice Neil Gorsuch stayed a lower court's order requiring the disclosure of how much money retail food outlets earn from SNAP transactions²³⁰ until the plaintiff, Argus Leader, responds to the Food Marketing Institute's request to appeal to the US Supreme Court.²³¹ On April 22, 2019, the Supreme Court heard oral arguments and, based on the Justices questions, most Justices appear to be leaning towards maintaining the existing standard, centering on the competitive harm that could result from expanding the types of traditional confidential business information that could

²²⁶ FOOD RES. & ACTION CTR., FOOD RESEARCH & ACTION CENTER'S ANALYSIS OF THE FINAL FARM BILL CONFERENCE REPORT AGRICULTURE IMPROVEMENT ACT OF 2018: TITLE IV— NUTRITION 3, <http://frac.org/wp-content/uploads/2018-farm-bill-conference-report-analysis.pdf>; see also Agricultural Improvement Act of 2018, Pub. L. No. 115-334, § 4001(a), 132 Stat. 4490, 4624 (2018) ("Section 3(o)(1) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(o)(1)) is amended by striking 'or house-to-house trade route' and inserting ', house-to-house trade route, or online entity.'").

²²⁷ Press Release, U.S. Dep't Agric., USDA Launches SNAP Online Purchasing Pilot (Apr. 18, 2019), <https://www.usda.gov/media/press-releases/2019/04/18/usda-launches-snap-online-purchasing-pilot>.

²²⁸ 2017 Annual Report, CTR. DIGITAL DEMOCRACY, https://www.democraticmedia.org/annual_reports.

²²⁹ See *SNAP Retailer Data*, U.S. DEP'T. AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap-retailer-data> (detailing the timeline of this legal battle); see also *Texas Retailers Ass'n v. USDA*, No. 01:18-CV-659-DAE, 2018 WL 6427347 (W.D. Tex. Aug. 27, 2018) (detailing how the Texas Retailers Association asked a Federal judge in Texas for an injunction to block the USDA from releasing the SNAP redemption data of its members).

²³⁰ *Argus Leader Media v. USDA*, 889 F.3d 914, 916 (8th Cir. 2018).

²³¹ Arthur Delaney, *Big Retailers Don't Want You to Know How Much Their Stores Earn from Food Stamps*, HUFFPOST (Aug. 13, 2018), https://www.huffingtonpost.com/entry/food-stamps-supreme-court_us_5b71d6dfe4b0bdd0620bcda0/.

be accessed through potential Freedom of Information Act (FOIA) (P.L. 89-487) requests.²³² On June 24, 2019, the Supreme Court held that commercial information submitted to the federal government qualifies as “confidential” under FOIA’s Exemption 4 when, at a minimum, it is “actually” and “customarily” “kept private” and the federal government provides assurances that the information will be maintained in confidence.²³³ Thus, more attention is needed to explore innovative administrative data linkages and public-private partnerships around retail transactional data that protect SNAP participants’ privacy and SNAP authorized retailers’ proprietary information while enabling a better understanding of SNAP participants’ purchasing patterns.

D. Appropriations

i. Fiscal Years 2017 and 2018

Agriculture and related agencies’ appropriations for fiscal years 2017 and 2018 provided about \$74 billion to SNAP in required mandatory spending plus a reserve fund for any unexpected participation increases.²³⁴ These appropriations are about four billion dollars below the fiscal year 2016 level and more than two million dollars below the President’s budget request.²³⁵ These budget cuts reflect declining enrollment, decreasing food costs, eliminating connections between the Low Income Home Energy Assistance Program and SNAP, and budget cuts laid out in the 2012 Farm Bill that put additional cost burdens on SNAP authorized retailers and state governments.²³⁶

²³² *SCOTUS Hears Oral Arguments in FMI SNAP Data Case*, PROGRESSIVE GROCER (Apr. 23, 2019), <https://progressivegrocer.com/scotus-hears-oral-arguments-fmi-snap-data-case>; Ryan McCrimmon, *SCOTUS Leans Towards Allowing USDA to Keep SNAP Data Secret*, POLITICO (Apr. 23, 2019), <https://www.politico.com/news/letters/morning-agriculture/2019/04/23/scotus-leans-toward-allowing-usda-to-keep-snap-data-secret-594316>.

²³³ *Food Mktg. Inst. v. Argus Leader Media*, No. 18–481, slip op. (June 24, 2019), https://www.supremecourt.gov/opinions/18pdf/18-481_5426.pdf.

²³⁴ JIM MONKE, CONG. RESEARCH SERV., R45128, *AGRICULTURE AND RELATED AGENCIES: FY2018 APPROPRIATIONS* 13 (2018), <https://fas.org/sgp/crs/misc/R45128.pdf> (\$78,480.7 millions in 2017 and \$73,610.0 millions in 2018).

²³⁵ *See id.* (demonstrating that Congress appropriated \$80,849.4 millions in 2016 and \$73,610.0 millions in 2018 but that the Administration requested \$73,612.5 millions).

²³⁶ Dottie Rosenbaum, Ed Bolen, Elizabeth Wolkomir, Brynne Keith-Jennings, Lexin Cai, & Catlin Nchako, *Administration’s 2018 Budget Would Severely Weaken and Cut the Supplemental Nutrition Assistance Program*, CTR. BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/food-assistance/administrations-2018-budget-would-severely-weaken-and-cut-the-supplemental>.

ii. Fiscal Year 2019 Including the Historic Government Shutdown

For fiscal year 2019, the House and Senate provided appropriation bills in May 2018 and the House passed the four-bill minibus spending package, H.R. 6147(115) on September 26, 2018 that needed and did not secure President Trump's signature.²³⁷ For SNAP, H.R. 6147 provided \$73.2 billion in required mandatory spending plus a reserve fund, which is \$794 million below last year's level and similar to the President's budget request.²³⁸ Continuing resolutions kept USDA, among other government agencies, operating until December 20, 2018.²³⁹ Starting December 21, 2018, the government was partially closed for a record-long thirty-five days due to a conflict with Congress regarding the lack of funding of the US-Mexico border wall.²⁴⁰ In the first days of the 116th Congress, House Democrats passed legislation to reopen the government that put forth six of the seven remaining appropriations bills.²⁴¹ To separate the border dispute from the shutdown, the House Democrats proposed funding the Department of Homeland Security through February 8, 2019 without funding allocated to the border wall.²⁴² But Senator Majority Leader Mitch McConnell indicated the Republican-controlled Senate will only vote on a bill the President

²³⁷ AGRICULTURE AND RELATED AGENCIES: FY2019 APPROPRIATIONS (2018), https://www.everycrsreport.com/files/20180803_R45230_6b5c7527c99479ec92fe6d651f1f7af970e6e00fb.pdf.

²³⁸ See *id.* at 13 (showing that the Administration requested \$73,218.3 million and that the House and Senate approved \$73, 219.3 million for SNAP in FY2019).

²³⁹ See Resolution Making Further Continuing Appropriations, Pub. L. No. 115-298, 132 Stat. 4382 (2018) (amending Pub. L. 115-245 to extend such appropriations until December 21, 2018); Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245, 132 Stat. 2981 (2018) (making such appropriations until December 6, 2018).

²⁴⁰ See *Appropriations Watch: FY 2019*, COMMITTEE RESP. FED. BUDGET, <http://www.crfb.org/blogs/appropriations-watch-fy-2019> ("On January 25, a three-week continuing resolution was enacted to reopen the government after a 35-day partial government shutdown, the longest in American history.").

²⁴¹ See Julie Grace Brufke, *House Votes on 10th Bill to Reopen Government*, THE HILL (Jan. 23, 2019), <https://thehill.com/homenews/house/426666-house-passes-eighth-bill-to-reopen-government> ("The House passed a Democratic-backed package of six appropriations bills Wednesday that would fund the government through the end of the fiscal year.").

²⁴² See *id.* ("[T]he chamber would then vote on a three-week continuing resolution (CR) to fund the rest of the government through Feb. 8 . . . The president has asserted he won't sign legislation that doesn't provide border wall funding while Democratic leaders have called on Trump to reopen the government before they negotiate on how to address securing the border.").

will support.²⁴³ The President showed no sign of supporting any legislation that did not allocate funding for a border wall.²⁴⁴ Ultimately, a three week short-term continuing resolution was passed to end the longest government shutdown.²⁴⁵

The inability to timely finalize fiscal year 2019 Agricultural Appropriations resulted in unprecedented logistical challenges for SNAP benefit issuance.²⁴⁶ During the historic thirty-five day partial government shutdown, February SNAP benefits were issued by most states at the end of January; specifically January 20th.²⁴⁷ That is,

²⁴³ Jordain Carney, *McConnell Blocks House Bills to Reopen Government*, THE HILL (Jan. 15, 2019), <https://thehill.com/homenews/senate/425414-mcconnell-blocks-house-bill-to-reopen-government-for-second-time>.

²⁴⁴ See *id.* (“Roughly a quarter of the government has been shut down since Dec. 22 over an entrenched fight on funding for Trump’s proposed wall on the U.S.-Mexico border wall . . . [T]he president walked out of a White House meeting last week when Pelosi told him that Democrats would not consider border wall funding even if he fully reopened the government.”).

²⁴⁵ See Resolution Making Further Continuing Appropriations, Pub. L. No. 116-5, 133 Stat. 10 (2018) (amending Pub. L. 115-245 to extend appropriations until February 15, 2019); Grace Segers, *Trump Signs Bill to Reopen Government for 3 Weeks, Ending Longest-Ever Shutdown*, CBS NEWS (Jan. 25, 2019), <https://www.cbsnews.com/news/government-shutdown-deal-reached-trump-speech-announcement-opens-government-shutdown-over-today-live-updates-2019-01-25/>.

²⁴⁶ Peter Wade, *The Shutdown’s Next Victims Are America’s Poorest Families: Food Stamps, Housing Assistance, and Tax Refunds Are All at Risk* (Jan. 6 2019), <https://www.rollingstone.com/politics/politics-news/shutdown-affects-poor-families-775446/>; *Government Shutdown Puts the Public’s Health at Risk: Potential for Harm Increases as Impasse Continues*, AMERICAN PUB. HEALTH ASS’N (Jan. 10, 2019), <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2019/government-shutdown-statements>; Bryce Gray, *Grocers Eye Government Shutdown’s Impact on SNAP Disbursements with Caution*, ST. LOUIS POST-DISPATCH (Jan. 24, 2019), https://www.stltoday.com/business/local/grocers-eye-government-shutdown-s-impact-on-snap-disbursements-with/article_e7d7e900-1975-5f2c-a9b2-ac7d8c6ff8d1.html; Helena Bottemiller Evich, *Food Stamps for Millions of Americans Become Pawn in Shutdown Fight*, POLITICO (Jan. 7, 2019), <https://www.politico.com/story/2019/01/07/food-stamps-government-shutdown-1062090>; Tal Axelrod, *Shutdown May Jeopardize Tax Refunds, Food Stamps: Report*, THE HILL (Jan. 4, 2019), <https://thehill.com/homenews/administration/423988-shutdown-may-jeopardize-tax-refunds-food-stamps-report>.

²⁴⁷ *FNS Contingency Plan For Shutdown Due to a Lapse in Appropriations*, U.S. DEP’T AGRIC. FOOD AND NUTRITION SERV. (Jan. 2018), <https://www.usda.gov/sites/default/files/documents/usda-fns-shutdown-plan.pdf>; Press Release, U.S. Dep’t of Agric., *USDA Announces Plan to Protect SNAP Participants’ Access to SNAP in February* (Jan. 8, 2019), <https://www.usda.gov/media/press-releases/2019/01/08/usda-announces-plan-protect-snap-participants-access-snap-february>; Helena Bottemiller Evich, *White House Reverses Course on Food Stamp Funding*, POLITICO (Jan. 8, 2019), <https://www.politico.com/story/2019/01/08/usda-funds-february-snap-benefits-1069641>; Jory Heckman, *USDA Buys Time for SNAP Under Shutdown – But for How Long?*, FED. NEWS NETWORK (Jan. 19, 2019),

some SNAP participants received February benefits more than a month early.²⁴⁸ As a result, SNAP-authorized retailers scrambled to meet increased demand, and about one percent of retailers who were not able to renew their SNAP authorization prior to the shutdown were not able to accept SNAP benefits until reauthorized.²⁴⁹ This

<https://federalnewsnetwork.com/government-shutdown/2019/01/usda-buys-time-for-snap-under-shutdown-but-for-how-long/>; Jeff Stein, *Trump Team Promises Shutdown Won't Stop Food Stamp Payments in February, Says Program Lacks Funds for March*, WA. POST (Jan. 8, 2019), https://www.washingtonpost.com/business/economy/trump-administration-promises-food-stamp-benefits-will-continue-through-february-despite-shutdown-says-program-lacks-funds-for-march/2019/01/08/b4b0b30c-139b-11e9-803c-4ef28312c8b9_story.html?utm_term=.e2a6db41b2a5; Beth McEnoy, *NBS News Center Maine, Gov. Mills Calls for End to Shutdown, Issues SNAP Benefits a Month Early*, NEWS CTR. ME. (Jan. 14, 2019), <https://www.newscentermaine.com/article/news/gov-mills-calls-for-end-to-shutdown-issues-snap-benefits-a-month-early/97-ce148830-6b4d-4550-aa69-5de38fc02c21>; *Impact of the Federal Government Shutdown on SNAP: What You Need to Know!*, N.M. CTR. ON LAW AND POVERTY, <http://nmpovertylaw.org/wp-content/uploads/2019/01/shutdown-and-snap-2019-01-14.pdf> (last visited Aug. 30, 2019); *Government Shutdown Threatens the National Emergency for Millions of Hungry Households*, FOOD RESEARCH AND ACTION CTR., <http://frac.org/news/government-shutdown-threatens-national-emergency-for-millions-of-hungry-households-2> (last visited Aug. 30, 2019); S.E. Smith, *Government Shutdown Threatens Section 8 and Food Stamps*, TRUTHOUT.ORG (Jan. 11, 2019), <https://truthout.org/articles/government-shutdown-threatens-section-8-and-food-stamps/>; Roberto Ferdman, *How the Government Shutdown Hurt Millions of People on Food Stamps*, VICE (Jan. 25, 2019), https://news.vice.com/en_us/article/mbzady/how-the-government-shutdown-hurt-millions-of-people-on-food-stamps; Ellyn Ferguson, *States Scramble to Get February Food Stamps Out Amid Shutdown*, ROLL CALL (Jan. 14, 2019), <https://www.rollcall.com/news/congress/states-scramble-to-get-february-food-stamps-out>; Helena Bottemiller Evich, *States Warn Food Stamp Recipients to Budget Early Benefit Payments Due to Shutdown*, POLITICO (Jan. 15, 2019), <https://www.politico.com/story/2019/01/15/state-food-stamp-benefits-shutdown-2491182>; Helena Bottemiller Evich, *Billions in Food Stamp Payments to Come Early Because of Shutdown*, POLITICO (Jan. 11, 2019), <https://www.politico.com/story/2019/01/11/shutdown-food-stamp-scramble-benefits-1081210>.

²⁴⁸ Joe Davidson, *USDA's SNAP Decision Means There Will Be a Gap in Food Assistance Program*, WA. POST (Feb. 1, 2019), <https://www.washingtonpost.com/politics/2019/02/01/oh-snap-shutdown-leads-gap-food-assistance-program/>; Jeanne Kuang, *February Food Stamps to Come Early Amid Government Shutdown, March Funding Uncertain*, DEL. ONLINE (Jan. 15, 2019), <https://www.delawareonline.com/story/news/2019/01/15/february-food-stamps-come-early-amid-government-shutdown/2580389002/>; Joy Burton, *Food Security Still An Issue Despite Government Reopening*, IND. DAILY STUDENT (Jan. 27, 2019), <https://www.idsnews.com/article/2019/01/food-insecurity-still-an-issue-despite-government-reopening?eType=EmaIlBlastContent&eId=ac87bad2-4755-4f85-9bda-378ca5937cf3>; Bobby Allyn, *Food Stamp Crisis Looming in Pa. Because of Government Shutdown*, WHYY.ORG (Jan. 24, 2019), <https://whyy.org/articles/food-stamp-crisis-looming-in-pa-because-of-government-shutdown-says-state-data/>; Lisa L. Colangelo, *Advocates Warn of 'SNAP Gap' Following Government Shutdown*, AMNEWYORK (Feb. 5, 2019), <https://www.amny.com/news/snap-government-shutdown-1.26947428>.

²⁴⁹ Jossie Carbonare, *York County Grocery Store Unable to Process Food Stamps Due to Government Shutdown*, FOX 43 (Jan. 16, 2019), <https://fox43.com/2019/01/>

change in distribution or the “SNAP Gap” may provide some insight into the role of issuance in early exhaustion of benefits and related health outcomes.²⁵⁰ For example, in Vermont, which normally issues benefits to all households on the first of the month, February benefits came nearly two weeks early.²⁵¹ On January 3rd, the average SNAP household in Vermont had a balance of \$145; on February 3rd, it was only \$88.²⁵² Although it is too soon to evaluate the effects of this shift on participant outcomes, there are anecdotal reports of households running out of money weeks before receiving March benefits and reports of spikes in food pantry utilization.²⁵³

The continuing resolution enabled the USDA to issue March benefits, which in most states occurred earlier than usual.²⁵⁴ While

16/york-county-grocery-store-unable-to-process-food-stamps-due-to-government-shutdown/; Laura Santhanam, *Many Families and Stores Rely on SNAP Benefits. The Shutdown May Pinch Them Both*, PBS (Jan. 18, 2019), <https://www.pbs.org/newshour/health/many-families-and-stores-rely-on-snap-benefits-the-shutdown-may-pinch-them-both>; Michael Chen, *More Shutdown Fallout: Some Retailers Now Unable to Accept Food Stamps*, 10 NEWS (Jan. 22, 2019), <https://www.10news.com/news/local-news/more-shutdown-fallout-some-retailers-now-unable-to-accept-food-stamps?eType=EmailBlastContent&eId=ac87bad2-4755-4f85-9bda-378ca5937cf3>.

²⁵⁰ Savannah Eadens, *Government Shutdown Over, But Food-Stamp Recipients Will Feel Effects for Awhile*, CHICAGO SUN TIMES (Feb. 20, 2019), <https://chicago.suntimes.com/working/government-shutdown-over-but-food-stamp-recipients-will-feel-effect-for-awhile/>; Jennifer Mobilia, *Advocates Distribute Food to Help Food Stamp Recipients Bridge ‘SNAP gap’*, WHEC (Feb. 18, 2019), <https://www.whec.com/news/advocates-distribute-food-to-help-food-stamp-recipients-bridge-snap-gap/5250637/>.

²⁵¹ Tiffany Tan & Bennington Banner, *Vermont to Issue February Food Benefits Early Due to Shutdown*, BENNINGTON BANNER (Jan. 14, 2019), <https://www.benningtonbanner.com/stories/vermont-to-issue-february-food-benefits-early-due-to-shutdown,561583>.

²⁵² Tina Rosenberg, *When It’s Hard to Make Ends Meet, Can Smart Apps Help?*, N.Y. TIMES, (Feb. 4, 2019), <https://www.nytimes.com/2019/02/04/opinion/navigating-bureaucracy-try-technology.html>.

²⁵³ *Id.*; Mackenzie Huck, *Some People Will Receive March SNAP Benefits Early*, 1011 NOW (Feb. 12, 2019), <https://www.1011now.com/content/news/Some-people-will-receive-March-SNAP-benefits-early-505754131.html>.

²⁵⁴ Dottie Rosenbaum, *SNAP Can Cover Full Benefits Through March, But Participants Face Big Gaps Between February and March Benefits*, CTR. ON BUDGET AND POL’Y PRIORITIES (Jan. 30, 2019), <https://www.cbpp.org/blog/snap-can-cover-full-benefits-through-march-but-participants-face-big-gaps-between-february-and>; Eric Russell, *Mills Administration Will Increase Supplemental Food Stamp Benefit For Working Mainers*, PRESS HERALD (Feb. 20, 2019), <https://www.pressherald.com/2019/02/20/mills-administration-will-increase-supplemental-food-stamp-benefit-for-working-mainers/>; Alexia Elejalde-Ruiz, *Illinois Food Stamp Recipients Will Get March Benefits Early to Ease Gaps Caused by Government Shutdown*, CHICAGO TRIBUNE (Feb. 13, 2019), <https://www.chicagotribune.com/business/ct-biz-food-stamps-march-benefits-illinois-20190213-story.htm>

the status of April benefits and beyond was unclear until the agricultural appropriations were finally finalized, it was speculated that the USDA could use a similar approach as used in February, or some states could use their own budget to issue SNAP benefits, among other approaches.²⁵⁵ To ensure a reasonable continuation of benefits during a government shutdown, there are possible grounds for legal action by participants and state agencies, given the unique funding provisions of this entitlement program.²⁵⁶ Namely, Section 5(a) of the Food and Nutrition Act of 2008 gives eligible individuals and households a legal right to continued SNAP benefits and the only exception is that Section 18 allows Congress to pass an appropriation that is insufficient to fund full benefits, which does not apply when Congress has passed no appropriation for SNAP.²⁵⁷ States could potentially sue the USDA “for reimbursement of the administrative costs necessary to continue issuing SNAP benefits.”²⁵⁸ Thus, additional work is needed to understand the legal and policy implications of a government shutdown, as well as the USDA contingency plans for an entitlement program—but not an “essential

l; Helena Bottemiller Evich, *Most States Plan to Move Up Food Stamp Payments Due to Lingering Shutdown Pain*, POLITICO (Feb. 15, 2019), <https://www.politico.com/story/2019/02/15/states-move-up-snap-payments-shutdown-1180074>; *SNAP March Issuance*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV. (Feb. 14, 2019), <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-March-Issuance.pdf>.

²⁵⁵ Dottie Rosenbaum, *USDA to Fund SNAP for February 2019, But Millions Face Cuts if Shutdown Continues*, CTR. ON BUDGET AND POL'Y PRIORITIES (Jan. 10, 2019), <https://www.cbpp.org/research/food-assistance/millions-face-cut-in-snap-food-assistance-if-government-shutdown-continues>; Travis Anderson, *Anti-hunger Groups Tell Governor Baker to Craft “Disaster Plan” for Emergency Food Requests Amid Shutdown*, BOSTON GLOBE (Jan. 16, 2019), <https://www.bostonglobe.com/metro/2019/01/16/anti-hunger-groups-gov-baker-craft-disaster-plan-for-emergency-food-requests-amid-shutdown/PfP0IBW72fsGcScQuA4b4M/story.html>; Jillian Jorgensen & Marco Poggio, *De Blasio Warns of ‘Full-Blown Crisis’ for New Yorkers on Food Stamps If Shutdown Continues*, NY DAILY NEWS (Jan. 17, 2019), <https://www.nydailynews.com/news/politics/ny-pol-deblasio-food-stamps-crisis-shutdown-20190117-story.html>; EOA Staff, *Maryland Ensures Residents to Receive SNAP Benefits Despite Federal Shutdown*, EYE ON ANNAPOLIS (Jan. 15, 2019), <https://www.eyeonannapolis.net/2019/01/maryland-ensures-residents-to-receive-snap-benefits-despite-federal-shutdown/>.

²⁵⁶ David A. Super, *Continuing SNAP in a Government Shutdown*, GEORGETOWN LAW (Jan. 9, 2019) <https://www.law.georgetown.edu/wp-content/uploads/2019/01/SNAP-Govt-Shutdown-Memo-Jan-2019.pdf>; Tom Temin, *USDA Says SNAP Can Last Until February, Law Professor Says Longer*, FEDERAL NEWS NETWORK (Jan. 24, 2019), <https://federalnewsnetwork.com/federal-drive/2019/01/usda-says-snap-can-last-til-february-law-professor-says-longer/>.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

service”—affecting food security and financial stability of more than forty million individuals and families each month.²⁵⁹

Aside from SNAP benefits, USDA supported SNAP activities, such as SNAP-Ed or SNAP relevant research, were halted during the historically long shutdown.²⁶⁰ The shutdown also resulted in unpaid federal workers and contractors, among others, who had not been paid for almost two bimonthly pay dates that could potentially have been eligible for SNAP, among other federal food and nutrition assistance programs.²⁶¹ This strain was particularly pronounced among Native American tribes, where federal employment is high and the Food Distribution Program on Indian Reservations (FDPIR), an alternative federal food and nutrition assistance program to SNAP, was disrupted.²⁶² Moreover, these furloughed workers were tapping into the charitable food system that many SNAP participants or SNAP-eligible families depend on

²⁵⁹ Emily Victor, *Local Leaders Want Congress to Consider Food Stamps ‘Essential’ During Shutdowns*, WRAL.COM, <https://www.wral.com/local-leaders-want-congress-to-consider-food-stamps-essential-during-shutdowns/18184352/> (last visited Aug. 30, 2019).

²⁶⁰ Jeffrey Mervis, *End of U.S. Shutdown Won’t Mean Return to Business As Usual For Research Agencies*, SCIENCEMAG.ORG (Jan. 25, 2019), <https://www.sciencemag.org/news/2019/01/end-us-shutdown-won-t-mean-return-business-usual-research-agencies>.

²⁶¹ Stephanie Ebbs & Anne Flaherty, *During Shutdown, Janitors, Security Guards, and Other Federal Contractors Receive No Back Pay*, ABC NEWS (Jan. 2, 2019), <https://abcnews.go.com/beta-story-container/US/shutdown-janitors-security-guards-federal-contractors-receive-back/story?id=60116026>; Lisa Lerer, *For Some, the Shutdown Isn’t About Politics. It’s About Bills and Groceries*, N.Y. TIMES (Jan. 7, 2019), <https://www.nytimes.com/2019/01/07/us/politics/on-politics-government-shutdown-contractors.html>; Lauren Egan, *After Criticism He’s ‘Totally Tone Deaf’, Wilbur Ross Walks Back Furloughed Worker Comments*, NBC NEWS (Jan. 24, 2019), <https://www.nbcnews.com/politics/white-house/trump-commerce-secretary-i-don-t-understand-why-furloughed-workers-n962246>; Jackie Prager, *Children Impacted by Government Shutdown Qualify for New York Free School Meals Program*, WBNG.COM (Jan. 24, 2019), <https://wbng.com/news/local-news/2019/01/24/children-impacted-by-government-shutdown-qualify-for-new-york-free-school-meals-program/>; Dillon Mullan, *Lee County Schools Offer Help to Families Affected by Government Shutdown*, DAILY JOURNAL (Jan. 24, 2019), https://www.djournal.com/news/lee-county-wants-furloughed-gov-workers-to-apply-for-free/article_8f5b128d-069c-53f6-9458-da4a24771d3e.html?eType=EmailBlastContent&eId=ac87bad2-4755-4f85-9bda-378ca5937cf3; Jacqueline Howard, *What an Ongoing Government Shutdown Could Mean for School Lunches*, CNN (Jan. 24, 2019), <https://www.cnn.com/2019/01/24/health/government-shutdown-school-lunch-bn/index.html>.

²⁶² Mitch Smith & Julie Turkewitz, *Shutdown Leaves Food, Medicine, and Pay in Doubt in Indian Country*, N.Y. TIMES (Jan. 1, 2019), <https://www.nytimes.com/2019/01/01/us/native-american-government-shutdown.html>.

regularly.²⁶³ Several unique charitable offers emerged during the shutdown to help provide food assistance to those affected by the shutdown.²⁶⁴ These ramifications to SNAP and the charitable food network are important considerations in understanding the short and long term implications of a government shutdown. There are also intriguing short- and long-term knowledge gaps about the food security, health, and financial impacts this thirty-five-day shutdown had on furloughed workers, among others whose salary and business stability are closely tied to affected governmental entities.²⁶⁵

Ultimately, four months into the fiscal year and after the historic shutdown, 2019 Agricultural Appropriations bill (H.J.Res.31 (116)) was passed and appropriated about \$73.5 billion dollars in mandatory funding to SNAP.²⁶⁶ As we'll discuss in various sections

²⁶³ Ian Stewart, *As Shutdown Continues, Thousands of Federal Workers Visit D.C.-Area Pop-Up Food Banks*, NPR (Jan. 13, 2019), <https://www.npr.org/2019/01/13/684824384/as-shutdown-continues-thousands-of-federal-workers-visit-d-c-area-pop-up-food-ba>; Michael Burke, *Coast Guard Chief: 'Unacceptable' that Service Members Must Rely on Food Pantries, Donations Amid Shutdown*, THE HILL (Jan. 22, 2019), https://thehill.com/policy/defense/426539-coast-guard-chief-unacceptable-that-service-members-must-rely-on-food-pantries?fbclid=IwAR0IK0XdZAIJ77z65mQwh3qPdJ8MD25xNAbhZKRMoUKii_aktUmklmlCHEY; Patrick Madden, *D.C.'s Biggest Food Pantry Is 'Definitely Busier' As Unpaid Workers Struggle to Make Ends Meet*, DCIST (Jan. 16, 2019), <https://dcist.com/story/19/01/16/its-definitely-busier-d-c-food-pantry-opens-doors-to-furloughed-federal-workers/>; Claudia Boyd-Barrett, *Food Banks Brace Themselves for Influx of Hungry People Amid Shutdown*, CAL. HEALTH REPORT (Jan. 14, 2019), <https://www.calhealthreport.org/2019/01/14/food-banks-brace-influx-hungry-people-amid-shutdown/>; *2019 Government Shutdown Operations FAQ*, FEEDING AMERICA (Jan. 29, 2019), <https://www.feedingamerica.org/take-action/advocate/2019-Government-Shutdown>.

²⁶⁴ Rachel Kurzius, *20,000 Free Pies Later, One of the Highest Profile Shutdown Deals Ends Before the Shutdown Does*, DCIST (Jan. 23, 2019), <https://dcist.com/story/19/01/23/20000-free-pies-later-one-of-the-highest-profile-shutdown-deals-ends-before-the-shutdown-does/>; Tim Carman, *Americans Across the Country are Helping Feed Federal Workers as the Shutdown Enters its Second Month*, WA. POST (Jan. 23, 2019), https://www.washingtonpost.com/news/food/wp/2019/01/23/americans-across-the-country-are-helping-feed-federal-workers-as-the-shutdown-enters-its-second-month/?utm_term=.184d6fbf2aaa; Andrea Diaz, *Chef Jose Andres will Serve Free Meals Daily to Furloughed Federal Workers in Washington*, CNN (Jan. 23, 2019), <https://www.cnn.com/2019/01/15/us/chef-jose-andres-feeding-federal-workers-shutdown-trnd/index.html>; Lori McCue, *Kraft – Yes, That Kraft – Is Opening A Pop-Up Grocery Store in D.C. for Furloughed Feds this Week*, DCIST (Jan. 15, 2019), <https://dcist.com/story/19/01/15/kraft-yes-that-kraft-is-opening-a-pop-up-grocery-store-in-d-c-for-furloughed-feds-this-week/>.

²⁶⁵ Bruce Japsen, *Health Risks Rise As Shutdown Hits Second Month*, FORBES (Jan. 21, 2019), <https://www.forbes.com/sites/brucejapsen/2019/01/21/as-shutdown-enters-second-month-public-health-risks-rise/#351094c4652a>.

²⁶⁶ Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2019, *Congressional Directives: Supplemental Nutrition Assistance Program*, *supra* note 136, at 29.

of this review, this appropriations bill, along with accompanying Congressional Directives, included a number of SNAP relevant mandates and funding priorities.

iii. Fiscal Year 2020

The shutdown delayed the fiscal year 2020 appropriations process but it is moving forward in the House and the Senate.²⁶⁷ As explained further under Disaster Assistance, Congress first focused on finalizing a contentious disaster aid package. Then, attention turned to lifting caps on the fiscal year 2020 budget set out in the 2011 Budget Control Act (P.L. 112-25) since there was no bicameral approved budget for fiscal year 2020 to guide the appropriations process.²⁶⁸ This two-year budget deal to increase budget caps (P.L. 116-37) was critical since without one sequestration would have occurred in fiscal year 2020 for both defense and non-defense programs to meet the caps set out in the 2011 Budget Control Act.²⁶⁹ The House Appropriations Committee has put forth target funding levels for each of the twelve fiscal year 2020 funding bills, including a proposed \$71.1 billion in required mandatory spending for SNAP.²⁷⁰ The Senate Appropriations Committee has been conducting a series of hearings regarding fiscal year 2020 appropriations.²⁷¹ Another partial government shutdown is possible

²⁶⁷ *Overview of the Federal Budget Process*, PRESERVATION ACTION, <https://preservationaction.org/this-is-a-general-overview-of-the-federal-budget-process-for-a-single-fiscal-year-october-1-through-september-30-fall-federal-agencies-develop-and-submit-draft-budgets-to-the-office-of-management-an/> (last visited Aug. 30, 2019).

²⁶⁸ The United States House Committee on the Budget, *Issue Brief: The Devastating Consequences of the 2020 and 2021 Budget Caps* (Apr. 2, 2019), <https://budget.house.gov/publications/report/devastating-consequences-2020-and-2021-budget-caps>; see also Bipartisan Budget Act of 2019, P.L. 116-37, 116th Congress (2019-2020).

²⁶⁹ The United States House Committee on the Budget, *Issue Brief: The Devastating Consequences of the 2020 and 2021 Budget Caps* (Apr. 2, 2019), <https://budget.house.gov/publications/report/devastating-consequences-2020-and-2021-budget-caps>.

²⁷⁰ The United States House Committee on Appropriations, *Chairwoman Lowey Statement at Full Committee Markup of FY 2020 302 (b) Subcommittee Allocations* (May 8, 2019), <https://appropriations.house.gov/news/statements/chairwoman-lowey-statement-at-full-committee-markup-of-fy-2020-302b-subcommittee>; see also Press Release, U.S. House of Representatives Comm. on Appropriations, Appropriations Committee Releases Fiscal Year 2020 Agricultural-Rural Development-FDA Funding Bill (May 22, 2019), https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2020-agriculture-rural-development?fbclid=IwAR1BupazcPfxMWOzvn0_6rkEu5r-34IHwoh5HVDVIYjzzL3AMenaoJyYDM.

²⁷¹ The United States Senate Committee on Appropriations, *Hearings*, <https://www.appropriations.senate.gov/hearings> (lists a variety of hearings to review the fiscal year 2020 budget requests of various federal departments and agencies);

as Congress works to finalize spending bills for fifteen agencies after its August recess.

iv. Congressional Agricultural Appropriation Summary

Therefore, the agricultural appropriations and appropriation processes, particularly the historic fiscal year 2019 and the now delayed fiscal year 2020 appropriations process, have significant impacts on SNAP at the federal, tribal, state, and local administrative levels, on retailers, the charitable food network, and on those actively participating, eligible to participate, or who may become eligible as a result of not getting paid during a government shutdown.

E. Oversight

Congressional oversight is derived from the implied powers of the US Constitution and, when conducted in a bipartisan manner, can be an effective strategy for maintaining the separation of powers.²⁷² There is not much to report regarding the 115th Congress' SNAP oversight responsibilities. A record number of hearings reviewing SNAP were held over the course of the 114th Congress, totaling 60 witnesses in 16 hearings and a report was published synthesizing the findings.²⁷³ Congressional letters of inquiry have also been submitted to the USDA regarding the proposed agency moves discussed in the Trump administration section of this article. The 116th Congress has started to hold hearings relevant to SNAP, such as the House Agriculture hearing noted earlier focused on the implications of eliminating broad-based categorical eligibility and a few others which we will discuss in the Trump administration section.

see also Appropriations for Fiscal Year 2020, CONGRESS.GOV, <https://www.congress.gov/resources/display/content/Appropriations+for+Fiscal+Year+2020> (last visited Aug. 30, 2019).

²⁷² See U.S. CONST. art. I, § 8, cl. 18 (“The Congress shall have Power . . . [t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”); ALISSA M. DOLAN ET AL., CRS., RL30240, CONGRESSIONAL RESEARCH SERVICE: CONGRESSIONAL OVERSIGHT MANUAL 24 (2014), <https://fas.org/sgp/crs/misc/RL30240.pdf> (“Oversight and investigative authority is implied from Article I of the Constitution and rests with the House of Representatives and Senate.”).

²⁷³ *Past, Present, and Future of SNAP*, AGNET WEST (Dec. 7, 2016), <http://agnetwest.com/past-present-future-snap/>.

F. *Strengthening SNAP's Nutrition Impacts*

While not extensively during the 115th session, Congress has been exploring additional, more direct ways to strengthen SNAP's impact on dietary quality and health; specifically, through restricting product eligibility, incentivizing fruit and vegetable purchases, enhancing minimum stocking requirements for authorized SNAP retailers, and supporting nutrition education and promotion through SNAP-Ed.

i. Restricting Product Eligibility

Although the 115th Congress held a hearing focused on the pros and cons of restricting SNAP purchases in the initial weeks of their session, the 2018 Farm Bill did not put forth any provisions to restrict SNAP purchases.²⁷⁴ Historically, foods and beverages are eligible for purchase with SNAP benefits except alcoholic beverages and tobacco and hot foods or foods intended to be eaten in the store, except by individuals who cannot cook for themselves.²⁷⁵ States, most notably New York and Maine, have submitted unsuccessful waiver requests to the USDA to examine the feasibility of restricting the use of SNAP benefits,²⁷⁶ particularly sugar-sweetened beverages which research suggests about “20 cents out of every dollar are spent

²⁷⁴ Diane Whitmore Schanzenbach, *Pros and Cons of Restricting SNAP Purchases*, BROOKINGS (Feb. 16, 2017), <https://www.brookings.edu/testimonies/pros-and-cons-of-restricting-snap-purchases/>.

²⁷⁵ *Determining Product Eligibility for Purchase with SNAP Benefits*, U.S. DEP'T. AGRIC. FOOD & NUTR. SERV. (Jan. 26, 2010), <https://fns-prod.azureedge.net/sites/default/files/eligibility.pdf>.

²⁷⁶ *A Proposal to Create a Demonstration Project in New York City to Modify Allowable Purchases Under the Federal Supplemental Nutrition Assistance Program*, FOOD POLITICS, https://foodpolitics.com/wp-content/uploads/Healthy-NY-Allowable-SNAP-Purchase-Detailed-Proposal-2010-SNAPfinal-2_.doc (last visited Aug. 30, 2019); Patrick McGeehan, *Ban on Using Food Stamps to Buy Soda Rejected by USDA*, N.Y. TIMES (Aug. 19, 2011), <https://www.nytimes.com/2011/08/20/nyregion/ban-on-using-food-stamps-to-buy-soda-rejected-by-usda.html>; M.C. Mayhew, *Letter to Bonnie Brathwaite Regarding a New Approach for the SNAP-Ed Program and Renewal of Soda and Candy Restriction Waiver*, MAINE.GOV (Feb. 17, 2017), <https://www.maine.gov/dhhs/documents/FNS-Waiver-Request-2-17.pdf>; Mike Berger, *USDA Rejects Maine's SNAP Petition to Restrict Sugar Drinks, Candy*, SHELBY REPORT (Jan. 22, 2018), <http://www.theshelbyreport.com/2018/01/22/usda-rejects-maine-snap-request/>; N.E. Negowetti, *The SNAP Sugar-Sweetened Beverage Debate: Restricting Purchases to Improve Health Outcomes of Low-Income Americans*, 14 J. FOOD L. & POL'Y. 83 (2018).

on sweetened beverages, desserts, salty snacks, candy, and sugar.”²⁷⁷ Arkansas, California, Delaware, Florida, Illinois, Missouri, South Carolina, Texas, and Wisconsin, among others, have also explored legislative options at the state level to restrict SNAP purchases.²⁷⁸ Under the Obama and Trump administrations, the USDA has consistently responded to state SNAP waiver requests, generally noting concerns regarding the waivers’ rationale, feasibility, and potential effectiveness.²⁷⁹ The USDA published a summary of these concerns, which include: no standards exist for defining healthy foods and beverages; implementing restrictions would increase program complexity and costs; no guarantee restricting the use of SNAP would affect food and beverage purchases; and other ways exist to encourage healthier purchases without limiting participant choice.²⁸⁰

SNAP is the only federal food and nutrition assistance program that subsidizes sugar-sweetened beverages, which are estimated to account for between \$1.7 to \$4.2 billion dollars in SNAP spending annually.²⁸¹ A randomized trial of adults who were income-eligible but not participating in SNAP found that restricting sugar-sweetened beverages, candy, and sweets from purchase in a

²⁷⁷ S. GARASKY ET AL., U.S. DEP’T AGRIC. FOOD & NUTRITION SERV., FOODS TYPICALLY PURCHASED BY SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) HOUSEHOLDS 4 (2016), <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPFoodsTypicallyPurchased.pdf>.

²⁷⁸ John Moritz, *Arkansas Panel Backs Junk-Food Cutoff for Food-Stamp Recipients*, ARKANSAS DEMOCRAT GAZETTE (Jan. 18, 2017), <https://www.arkansasonline.com/news/2017/jan/18/panel-backs-junk-food-cutoff-20170118/?f=news-politics>; John Lyon, *Arkansas Panel Rejects Bill to Restrict Food-Stamp Purchases*, ARK. DEMOCRAT GAZETTE (Feb. 8, 2017), <http://www.arkansasnews.com/news/20170208/arkansas-panel-rejects-bill-to-restrict-food-stamp-purchases>; Sam Bloch, *Maine’s Governor Can’t Stop Trying to Limit SNAP Purchases*, NEW FOOD ECONOMY (Jan. 23, 2018) <https://newfoodeconomy.org/maine-governor-paul-lepage-snap-purchases-limit/>; *Florida House Rejects Food Stamp Junk Food Ban*, FOOD NAVIGATOR USA (Feb. 24, 2012), <https://www.foodnavigator-usa.com/Article/2012/02/24/Florida-House-rejects-food-stamps-junk-food-ban>; Patrick McGeehan, *U.S. Rejects Mayor’s Plan to Ban Use of Food Stamps to Buy Soda*, N.Y. TIMES (Aug. 19, 2011), <https://www.nytimes.com/2011/08/20/nyregion/ban-on-using-food-stamps-to-buy-soda-rejected-by-usda.html>.

²⁷⁹ U.S. DEP’T AGRIC. FOOD & NUTRITION SERV., IMPLICATIONS OF RESTRICTING THE USE OF FOOD STAMP BENEFITS – SUMMARY (Mar. 1, 2007), <https://fns-prod.azureedge.net/sites/default/files/FSPFoodRestrictions.pdf>.

²⁸⁰ *Id.*

²⁸¹ R.L. Franckle, A. Moran, T. Hou, D. Blue, J. Greene, A.N. Thorndike, M. Polacsek, & E.B. Rimm, *Transactions at a Northeastern Supermarket Chain: Differences by Supplemental Nutrition Assistance Program Use*, 53 AM. J. PREV. MED. e131-e138 (2017); T. Andreyeva, J. Luedicke, K.E. Henderson, & A.S. Tripp, *Grocery Store Beverage Choices By Participants in Federal Food Assistance and Nutrition Programs*, 43 AM. J. PREV. MED.. 411-418 (2012).

SNAP-like food benefit program led to a reduction in total energy intake, but no differences in consumption of added sugars or sugar-sweetened beverages.²⁸² One simulation study suggested restricting SNAP purchases could improve participant diet quality and reduce obesity and type 2 diabetes.²⁸³ Further, retailers have successfully implemented restrictions required of other federal food and nutrition assistance programs and for state or local tax requirements.²⁸⁴ But these possible nutrition improvements are currently deemed to be at the expense of limiting consumer choice and decreasing SNAP participation.²⁸⁵ Yet, a qualitative study found SNAP participants were supportive of prohibiting the use of SNAP benefits for purchasing foods and beverages high in added sugars.²⁸⁶ Another consideration is if and how SNAP participants might use their own money to purchase the restricted items, especially if they are generally inexpensive items.²⁸⁷ However, research has found people are less likely to use cash than SNAP to purchase foods and beverages.²⁸⁸ Therefore, more work remains to explore the role of restrictions and likely the combination of restrictions and incentives in SNAP to improve participant diet quality and health.

²⁸² L. Harnack, J.M. Oakes, B. Elbel, T. Beatty, S. Rydell, & S. French, *Effects of Subsidies and Prohibitions on Nutrition in a Food Benefit Program: A Randomized Clinical Trial*, 176 J.A.M.A. INTERN. MED. 1610-1618 (2016).

²⁸³ S. Basu et al., *Ending SNAP Subsidies for Sugar-Sweetened Beverages Could Reduce Obesity and Type 2 Diabetes*, 33 HEALTH AFFAIRS 1032-1039 (2014).

²⁸⁴ J.L. Pomeranz & J.F. Chriqui, *The Supplemental Nutrition Assistance Program: Analysis of Program Administration and Food Law Definitions*, 49 AM. J. PREV. MED. 428-436 (2015); but see J.E. Todd & M. Ver Ploeg, *Restricting Sugar-Sweetened Beverages from SNAP Purchases Not Likely to Lower Consumption*, U.S. DEP'T OF AGRIC. ECON.RESEARCH SERV., (Mar. 1, 2015), <https://www.ers.usda.gov/amber-waves/2015/march/restricting-sugar-sweetened-beverages-from-snap-purchases-not-likely-to-lower-consumption/>.

²⁸⁵ M.B. Schwartz MB, *Moving Beyond the debate Over Restricting Sugary Drinks in the Supplemental Nutrition Assistance Program*, 52 AM. J. PREV. MED. S199-S205 (2017).

²⁸⁶ S.A. Rydell, R.M. Turner, T.A. Lasswell, S.A. French, J.M. Oakes, B. Elbel, & L.J. Harnack, *Participant Satisfaction with a Food Benefit Program with Restrictions and Incentives*, 118 J. ACAD. NUTR. DIET. 294-300 (2018).

²⁸⁷ OLIVEIRA ET AL., *supra* note 64.

²⁸⁸ P.E. Wilde, L.M. Troy, & B.L. Rogers, *Food Stamps and Food Spending: An Engel Function Approach*, 91 AM. J. AGRIC. ECON. 416-430 (2009); T.A. Smith, J.P. Berning, X. Yang, G. Colson, and J.H. Dorfman, *The Effects of Benefit Timing and Income Fungibility on Food Purchasing Decisions Among Supplemental Nutrition Assistance Program Households*, 98 AM. J. AGRIC. ECON. 564-580 (2016); J.L. Hastings & J.M. Shapiro, *How Are SNAP Benefits Spent? Evidence From a Retail Panel*, 108 AM. ECON. REV. 3493-3540 (2018).

ii. Incentivizing Fruit and Vegetable Purchases

Even though Congress has not garnered significant support for restrictions on SNAP purchases, there has been growing bipartisan support for incentivizing fruit and vegetable purchases among SNAP participants, which evidence suggests helps increase SNAP participants' fruit and vegetable purchases.²⁸⁹ An initial milestone was in the 2008 Farm Bill, which provided mandatory funding for the Healthy Incentives Pilot to test point-of-purchase incentives for fruits, vegetables, and other healthful foods.²⁹⁰ The final evaluation indicated Healthy Incentives Pilot participants consumed almost a quarter of a cup more targeted fruits and vegetables per day than did nonparticipants.²⁹¹ Based on these findings, among others, the 2014 Farm Bill provided \$100 million in mandatory funding over 2014 to 2018 to establish the Food Insecurity Nutrition Incentive (FINI) grant program.²⁹² FINI is

²⁸⁹ U.S. GAO, REPORT TO THE CHAIRMAN, COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY, U.S. SENATE FOOD STAMP PROGRAM: OPTIONS FOR DELIVERING FINANCIAL INCENTIVES TO PARTICIPANTS FOR PURCHASING TARGETED FOODS, GAO-08-415 1 (2008), <https://www.gao.gov/new.items/d08415.pdf>; M. PRELL & D. SMALLWOOD, U.S. DEP'T AGRIC. COMPARING ALTERNATIVE ECONOMIC MECHANISMS TO INCREASE FRUIT AND VEGETABLE PURCHASES i (2017), <https://www.ers.usda.gov/webdocs/publications/83052/eib-170.pdf?v=0>; A.J. Cohen et al., *Increasing Use of a Healthy Food Incentive: A Waiting Room Intervention among Low-Income Patients*, 52 AM J. PREVENTATIVE. MED. FRUITS AND VEGETABLES: ENHANCED FEDERAL EFFORTS TO INCREASE CONSUMPTION COULD YIELD HEALTH BENEFITS FOR AMERICANS, 154, 154 (2017); U.S. GAO, GAO-02-657 (2002), <https://www.gao.gov/assets/240/235241.pdf>; C.R. Young et al., *Improving Fruit and Vegetable Consumption among Low-Income Customers at Farmers Markets: Philly Food Bucks, Philadelphia, Pennsylvania, 2011*, 10 PREV. CHRONIC DIS. E166, E166 (2013); L.E. Olsho et al., *Impacts of a Farmers' Market Incentive Programme on Fruit and Vegetable Access, Purchase and Consumption*, 18 PUB. HEALTH NUTR. 2712, 2712 (2015); An R, *Effectiveness of Subsidies in Promoting Healthy Food Purchases and Consumption: A Review of Field Experiments*, 16 PUB. HEALTH NUTR. 1215, 1215 (2013).

²⁹⁰ Food Conservation, and Energy Act of 2008, H.R. 2419, 110th Cong. § 4141 (2008).

²⁹¹ H.R. 2642, *supra* note 203; U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., OFFICE OF POLICY SUPPORT, EVALUATION OF THE HEALTHY INCENTIVES PILOT (HIP) FINAL REPORT – SUMMARY (2014), <https://fns-prod.azureedge.net/sites/default/files/ops/HIP-Final-Summary.pdf>; L.E. Olsho et al., *Financial Incentives Increase Fruit and Vegetable Intake among Supplemental Nutrition Assistance Program Participants: A Randomized Controlled Trial of the USDA Healthy Incentives Plot*, 104 AM. J. CLIN. NUTR. 423, 423, 430 (2016).

²⁹² *FINI Grant Program*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/FINI-Grant-Program> (last visited Aug. 30, 2019); *Food Insecurity Nutrition Incentive (FINI) Grant Program*, U.S. DEP'T AGRIC. NAT. INST. FOOD & AGRIC. <https://nifa.usda.gov/program/food-insecurity-nutrition-incentive-fini-grant-program> (last visited Aug. 30, 2019); *see also* KATE

administered by the USDA National Institute of Food and Agriculture (NIFA) in cooperation with FNS and aims to improve dietary quality and health by incentivizing the purchase of fruits and vegetables by SNAP participants.²⁹³

FINI findings are still emerging but a 2015 report noted FINI-funded SNAP produce incentive programs operated in twenty-seven states in rural and urban communities and at more than nine hundred farmers' markets, more than fifty grocery stores, and more than seventy farmer-to-consumer retailers.²⁹⁴ A 2018 qualitative evaluation with FINI grantees and key stakeholders found many believed FINI was an opportunity for consumers to try new fruits and vegetables and "cited that for every \$1 spent with SNAP, \$1.80 was generated in economic growth."²⁹⁵ Moreover, a randomized controlled study of a same-day supermarket double-dollar fruit and vegetable incentive program in rural Maine determined that over four months coupons were redeemed among fifty-three percent of eligible baskets and there was greater increases in fruit and vegetable spending among SNAP-eligible participants who redeemed coupons than among non-SNAP eligible participants who redeemed coupons.²⁹⁶ Granted, another study recommended stand-alone coupon incentive programs might need complementary strategies to build in vegetable preparation skills.²⁹⁷ The 2018 Farm Bill increased mandatory commitments to the program up to \$250 million over five years, made the program permanent, and renamed the program to Gus Schumacher Food Insecurity Nutrition Incentive

FITZGERALD, VOICES FOR HEALTHY KIDS, SNAP INCENTIVES: SUPPORT LOCAL ECONOMICS AND LOCAL HEALTH EFFORTS 2-3, (2017), <https://snapincentives.voicesforhealthykids.org/wp-content/uploads/sites/16/2018/07/Decision-Maker-Fact-Sheet.pdf> (discusses how a SNAP incentive program can increase economic growth and help individuals and families reduce food insecurity).

²⁹³ *Id.*

²⁹⁴ K. FITZGERALD, FOOD INSECURITY NUTRITION INCENTIVE GRANT PROGRAM (FINI): 2015 PROGRAM RESULTS, https://fairfoodnetwork.org/wp-content/uploads/2017/03/Consolidated-2015-Report_finaldigital-.pdf.

²⁹⁵ C.A. PARKS ET AL., GRETCHEN SWANSON CTR. FOR NUTRITION, A QUALITATIVE EVALUATION OF THE UNITED STATES DEPARTMENT OF AGRICULTURE'S FOOD INSECURITY NUTRITION INCENTIVE GRANT PROGRAM 8 (2018), <https://static1.squarespace.com/static/58a4dda16a49633eac5e02a1/t/5baaa931e5e5f0b78f5d3ae6/153711107757/HER+FINI-updated.pdf>.

²⁹⁶ M. Polacsek et al., *A Supermarket Double-Dollar Incentive Program Increases Purchases of Fresh Fruits and Vegetables among Low-Income Families with Children: The Healthy Double Study*, 50 J. NUTR. EDUC. BEHAV. 217, 224–25 (2018).

²⁹⁷ M.S. Wetherill et al., *SNAP-Based Incentive Programs at Farmers' Markets: Adaptions Considerations for Temporary Assistance for Needy Families (TANF) Recipients*, 49 J. NUTR. EDUC. BEHAV. 743, 743 (2017).

Program (GusNIP) in honor of an integral champion of this program who recently passed away.²⁹⁸ In addition, Congress granted the Secretary of Agriculture the authority to establish the Produce Prescription Program and authorized \$4,000,000.00 for each of fiscal years 2019 through 2023 (Sec. 4304). These programs have been shown to improve patient-clinician communication around diet and contribute to patient consumption of fruits and vegetables.²⁹⁹ The GusNIP request for applications was recently announced and applications were due in June 2019 for the availability of \$ 41 million in funding for fiscal year 2019 projects for three subprograms:

1) SNAP incentives (competitive grants that use point-of-sale fruit and vegetable incentives); 2) Produce Prescription Program (competitive grants for projects that provide “prescriptions” for fruits and vegetables); and 3) Training, Technical Assistance, Evaluation, and Information Center (cooperative agreements to establish a center to help develop and disseminate best practices).³⁰⁰

For retailer funded incentive programs, the 2018 Farm Bill requires the USDA Secretary to issue guidance clarifying the process for retailers to seek waivers to offer SNAP consumers incentives for purchasing healthy SNAP-eligible staple foods.³⁰¹ Recently, Giant Food’s Pharmacy added fruits and vegetables to its prescription options at a store in Washington, DC, which is available to Medicaid

²⁹⁸ The Agricultural Improvement Act of 2018, H.R. 2, 115th Cong. § 4205 (2018).

²⁹⁹ See Ridberg, et al., *A Pediatric Fruit and Vegetable Prescription Program Increases Food Security in Low-Income Households*, 51 J. NUTR. EDUC. BEHAV. 227 (2019) (finding 72% of the 578 low-income families participating in a pediatric, clinic-based, fruit/vegetable prescription program increased their food security summative score over the course of the program); see also Trapl, et al., *Dietary Impact of Produce Prescriptions for Patients with Hypertension*, 15 PREV. CHRONIC DISEASE 138, 138 (2018) (concluding produce prescription program lead to significant changes in dietary behavior); see also Joshi, et al., *Implementing a Produce Prescription Program for Hypertensive Patients in Safety Net Clinics*, 20 HEALTH PROMOTION PRACT. 94, 94 (2018) (concluding that program allows for adaptive treatment); see generally H. Swartz, *Produce Rx Programs for Diet-Based Chronic Disease Prevention*, 20 AMA J. ETHICS 960 (2018) (exploring the ethical and policy implications of produce prescription programs).

³⁰⁰ *A Closer Look At The 2018 Farm Bill: Gus Schumacher Nutrition Incentive Program*, NAT’L SUSTAINABLE AGRIC. COAL., (Jan. 24, 2019), <http://sustainableagriculture.net/blog/closer-look-2018-farm-bill-fini/>; *The Gus Schumacher Nutrition Incentive Program: 2019 Request for Applications (RFA)*, U.S. DEP’T OF AGRIC. NAT’L INST. OF FOOD AND AGRIC. (2019), <https://nifa.usda.gov/sites/default/files/rfa/20190423-fy-2019-gus-schumacher-incentive-program-rfa.pdf>.

³⁰¹ *Id.* at § 4008; see also *Supplemental Nutrition Assistance Program Provisions of the Agriculture Improvement Act of 2018 – Informational Memorandum*, U.S. DEP’T AGRIC. (Mar. 7, 2019), <https://fns-prod.azureedge.net/sites/default/files/Farm-Bill-Information-Memo.pdf> (noting contact for discussing challenges faced by States implementing Section 4008 – Retail Incentives).

recipients and provides a weekly twenty-dollar coupon for buying fruits and vegetables.³⁰² More work is needed to understand the short- and long-term, multi-sector benefits of these innovative efforts to improve the consumption of healthier foods and beverages through incentives and prescription programs.

iii. Combining Restricting Product Eligibility and Incentivizing Healthier Purchases

Altogether, a combination of restrictions and incentives might be most effective and supported by SNAP participants, among other stakeholders.³⁰³ That is, a randomized clinical trial reported favorable dietary quality changes in the incentives for purchasing more fruits and vegetables plus restriction on less nutritious foods and beverages condition that were significantly different from changes in the control condition.³⁰⁴ Likewise, a recent microsimulation study found a combined incentive and disincentive program through SNAP resulted in the largest modeled gains in health and healthcare savings and was cost-effective, with a lifetime incremental cost-effectiveness ratio of approximately \$5,200 per quality-adjusted life year.³⁰⁵ Future research and demonstration projects could further explore the feasibility and effectiveness of using restrictions and incentives to improve the dietary quality and health of SNAP participants. More work is needed to determine how best to target incentives to individuals and households that would most benefit them.³⁰⁶ Additional work could help determine the

³⁰² *Giant Food Announces Produce Rx Program Coming to Washington D.C. Store Location* (Apr. 18, 2019), CISION PR NEWSWIRE, <https://www.prnewswire.com/news-releases/giant-food-announces-produce-rx-program-coming-to-washington-dc-store-location-300834433.html>.

³⁰³ C.W. Leung et al., *Support for Policies to Improve the Nutritional Impact of the Supplemental Nutrition Assistance Program in California*, 104 AM. J. PUB. HEALTH 1576, 1579 (2015); Cindy W. Leung, Aviva Musicus, Walter C. Willett, & Eric B. Rimm, *Improving the Nutritional Impact of the Supplemental Nutrition Assistance Program: Perspectives from the Participants*, 52 AM. J. PREV. MED. S193, S193, S196–97 (2017).

³⁰⁴ Lisa Harnack et al., *Effects of Subsidies and Prohibitions on Nutrition in a Food Benefit Program: A Randomized Clinical Trial*, 176 J. AM. INTERN. MED. 1610, 1610 (2016); S.A. Rydell et al., *Participant Satisfaction with a Food Benefit Program with Restrictions and Incentives*, 118 J. ACAD. NUTR. DIET. 294, 294 (2018).

³⁰⁵ D. Mozaffarian et al., *Cost-Effectiveness of Financial Incentives and Disincentives for Improving Food Purchases and Health through the US Supplemental Nutrition Assistance Program (SNAP): A Microsimulation Study*, 15 PLOS MED. E1002661 (2018).

³⁰⁶ James R. Farmer, Angela Babb, Sara Minard, & Marcia Veldman, *Assessing Local Foods: Households Using SNAP Double Bucks and Financial Incentives at a Midwestern Farmers Market*, 8 J. AGRIC. FOOD SYS. & COMM. DEV. 1-13 (2019).

optimal incentive amount and mix of eligible foods (e.g., fruits, vegetables, whole grains, healthy oils, etc.) that optimize diet quality while containing costs.

iv. Enhancing Minimum Stocking Standards

Congress granted the USDA the authority to authorize SNAP retailers and establish eligibility criteria.³⁰⁷ Over the last decade, the number of SNAP authorized retailers grew by fifty percent to 250,000, while the demand for food assistance grew during the Great Recession of 2007 to 2009 and because an increase in convenience stores receiving authorization.³⁰⁸ Having SNAP authorized stores near communities with eligible SNAP participants is essential for promoting food security and nutrition; however, research indicates retailers in SNAP eligible communities tend to sell less fresh fruits and vegetables, whole grain-rich foods, and low-fat dairy products.³⁰⁹ As one example, a study conducted store audits in 2014 in ninety-one randomly selected, licensed food stores in Minneapolis and St. Paul, Minnesota and found only one-third stocked one or more varieties of fresh vegetables and only one-quarter stocked whole-grain-rich products.³¹⁰ Another study assessed a sample of ninety SNAP authorized dollar stores in sixteen

³⁰⁷ *Kentucky Fried Chicken of Cleveland v. United States*, 449 F.2d 255, 256–57 (5th Cir. 1971); The Food Stamp Act of 1977, H.R. 2649, 95th Cong. § 9 (1977); *Supplemental Nutrition Assistance Program (SNAP) Is My Store Eligible?*, U.S. DEP'T OF AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/my-store-eligible>.

³⁰⁸ Victor Oliveira, Mark Prell, & Laura Tiehen, *Eligibility Requirements for SNAP Retailers: Balancing Access, Nutrition, and Integrity*, U.S. DEP'T AGRIC. ERS (Jan. 25, 2018), <https://www.ers.usda.gov/amber-waves/2018/januaryfebruary/eligibility-requirements-for-snap-retailers-balancing-access-nutrition-and-integrity/>.

³⁰⁹ HEALTHY EATING RESEARCH, ROBERT WOOD JOHNSON FOUNDATION, *MINIMUM STOCKING LEVELS AND MARKETING STRATEGIES OF HEALTHFUL FOODS FOR SMALL RETAIL FOOD STORES 1–2* (2016), http://healthyeatingresearch.org/wp-content/uploads/2016/02/her_minimum_stocking_final.pdf; C.E. Caspi et al., *Differences in Healthy Food Supply and Stocking Practices Between Small Grocery Stores, Gas-Marts, Pharmacies and Dollar Stores*, 19 PUB. HEALTH & NUTR. 540, 540 (2016); E.F. Racine et al., *Accessibility Landscapes of Supplemental Nutrition Assistance Program-Authorized Stores*, 118 J. ACAD. NUTR. DIET. 836, 836 (2018).; C. Lorts, *Participation in the Supplemental Nutrition Assistance Program and Dietary Behaviors: Role of Community Food Environment*, 119 J. ACAD. NUTR. DIET. 938-940 (2019).

³¹⁰ M.N. Laska et al., *Lack of Healthy Food in Small-Size to Mid-Size Retailers Participating in the Supplemental Nutrition Assistance Program, Minneapolis-St. Paul, Minnesota, 2014*, 12 PREV. CHRONIC DIS. 15071, 15071 (2015) (stores selected did not include retailers participating in WIC that are expected to stock prescribed food and beverage items).

counties in southern and western sections of North Carolina in 2014 and found none of these stores sold fresh fruits and vegetables.³¹¹

Requiring SNAP authorized retailers to stock certain types of foods and beverages might affect a retailer's interest or ability to be authorized and, thereby, limit a participant's ability to redeem SNAP benefits or participate at all.³¹² Even so, the USDA requires WIC authorized retailers stock certain food and beverage items and these changes have been successfully implemented in retailers across the nation without much disruption to retailer or participant participation in the program and has had significant impacts on dietary quality of mothers and infants participating in WIC.³¹³ Informed by these findings, the Agricultural Act of 2014 required the USDA to update the stocking standards for authorized SNAP retailers, which only required a store to "sell food for home preparation and consumption and offer for sale at least three different varieties of food in each of the following four staple food groups, with perishable foods in at least two categories, on a daily basis: breads and grains; dairy; fruits and vegetables; and meat, poultry, and fish or at least fifty percent of the total sales (e.g., food, non-food, services, etc.) . . . must be from the sale of eligible staple food."³¹⁴

The USDA rule making process involved hosting listening sessions, calls for public comments, and conducting regulatory impact analyses, as well as extensions, delays, and technical assistance.³¹⁵ Ultimately, the staple food requirements put forth in

³¹¹ E.R. Racine et al., *Availability of Foods and Beverages in Supplemental Nutrition Assistance Program-Authorized Dollar Stores in a Region of North Carolina*, 116 J. ACAD. NUTR. DIET. 1613, 1613, 1616 (2016).

³¹² See OLIVEIRA ET AL., *supra* note 64, at 49–50 (summarizing the legislative debate on stocking requirements for SNAP authorized retailers).

³¹³ 7 C.F.R. § 246.1 (2019); see also ANDREYEVA ET AL., RUDD CTR. FOOD POL'Y & OBESITY, CHANGES IN ACCESS TO HEALTHY FOODS AFTER IMPLEMENTATION OF THE WIC FOOD PACKAGE REVISIONS 3, <https://naldc.nal.usda.gov/download/48404/PDF> (describing significantly increased availability and variety of health foods in subject stores).

³¹⁴ Agricultural Act of 2014, Pub. L. No. 113-79, § 4002, 128 Stat 649, 782 (2014) (codified as amended at 7 U.S.C.A. § 2012(o)(1) (2019)).

³¹⁵ Enhancing Retail Food Store Eligibility—Listening Sessions, 78 Fed. Reg. 52,899 (Aug. 27, 2013); Request for Information: Supplemental Nutrition Assistance Program (SNAP) Enhancing Retail Food Store Eligibility, 78 Fed. Reg. 64468 (Oct. 29, 2013); Submission for OMB Review: Comment Request, 79 Fed. Reg. 43706 (July 28, 2014); Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP) Clarification of Proposed Rule and Extension of Comment Period, 81 Fed. Reg. 65 (Apr. 5, 2016); U.S. DEP'T OF AGRIC., REGULATORY IMPACT ANALYSIS 7 CFR PARTS 271 AND 278: ENHANCING RETAILER

the 2016 final rule required authorized stores to meet one of two staple food requirements: Criterion A (staple food inventory) or Criterion B (staple food sales).³¹⁶ According to the USDA, “staple foods are the basic foods that make up a significant portion of a person’s diet and are usually prepared at home and eaten as a meal . . . and do not include prepared foods, heated foods, or accessory foods.”³¹⁷ Criterion A “requires a store to stock, on a continuous basis, a certain variety and quantity of staple foods in each of the four staple food categories, including some perishable staple foods.”³¹⁸ The majority of stores are authorized under Criterion A.³¹⁹ Criterion B “requires a store to have more than 50 percent of its total gross retail sales from the sale of staple foods.”³²⁰ These new, enhanced stocking standards emerged despite efforts to weaken them during the 2017 and 2018 Agriculture Appropriations Acts and President Trump’s calls for regulatory rollbacks and delays, including the rollback of the stronger nutrition standards for the USDA National School Lunch Program.³²¹

Research indicates these new stocking standards are feasible; as one example, a recent study of 57 small stores in four states that are SNAP authorized determined these stores are capable of stocking healthy products but recommended technical and infrastructure support and incentives be offered to retailers.³²² Nevertheless, the fiscal year 2019 Agricultural Appropriations prohibited funds be used to “implement, administer, or enforce the

STANDARDS IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) (2016), <https://fns-prod.azureedge.net/sites/default/files/snap/RIA-Enhancing-Retailer-Standards.pdf>; STAFF OF H. RULES COMM., 115TH CONG., RULES COMMITTEE PRINT 115-TEXT OF THE HOUSE AMENDMENT TO SENATE AMENDMENT NUMBERED 1 TO H.R. 244, THE HONORING INVESTMENTS IN RECRUITING AND EMPLOYING AMERICAN VETERANS ACT OF 2017, § 765, at 110. (Comm. Print 2017) (requiring an expansion to the definitions of “staple food” and “variety” as applied to “staple food” before the funds made available by the act could be implemented); Final Rule: Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP), 81 Fed. Reg. 90,675 (Dec. 15, 2016) (to be codified at 7 C.F.R §§ 271, 278).

³¹⁶ 7 C.F.R. § 271.2 (defining “Retail food store”); *see also* 7 C.F.R. § 278.1 (providing Criteria A and Criteria B).

³¹⁷ *What are Staple Foods*, U.S. DEP’T OF AGRIC. (2018), <https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Staple-Foods.pdf>.

³¹⁸ *Is My Store Eligible?*, U.S. DEP’T OF AGRIC. FOOD & NUTR. SERV. (May 9, 2018), <https://www.fns.usda.gov/snap/my-store-eligible>.

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ Sara N. Bleich, *Food Policy in the Era of Trump – Limits to Deregulation*, 113 AM. J. PREV. MED. 13, 13 (2018).

³²² A. Karpyn et al., *Examining the Feasibility of Healthy Minimum Stocking Standards for Small Food Stores*, 118 ACAD. NUTR. DIET. 1655, 1655 (2018).

‘variety’ requirements of the final rule . . . until the Secretary of Agriculture amends the definition to increase the number of items that qualify as acceptable varieties in each staple food category. . . .”³²³ On April 5, 2019, the USDA published a proposed rule that would provide regulatory flexibility for retailers in SNAP in meeting the 2016 final rule, by only modifying the definition of the term “variety” and thereby permitting “canned spray cheese, beef jerky, and pimiento-stuffed olives [to] count as staple foods.”³²⁴ More research is needed on how the SNAP authorization process and the new, enhanced stocking requirements affect SNAP participants’ access to SNAP authorized stores, stocked with affordable, healthful options and their dietary quality and health, taking into consideration the cost-benefit analysis for retailers to participate in the program.

v. Expanding Access to Foods through a National Healthy Food Financing Initiative

Expanding on the success of local and state initiatives, the Healthy Food Financing Initiative (HFFI) is an innovative national program that works to increase access to retail food outlets in communities predominantly characterized as low-income, high racial/ethnic minority status, and/or rural which tend to have less access to grocery stores and supermarkets in comparison to higher-income, white, and urban communities.³²⁵ During fiscal year 2010 through fiscal year 2016, the Departments of Agriculture, Health and Human Services, and Treasury each administered HFFI projects independently and met periodically to share implementation strategies and issues.³²⁶ In the Agricultural Act of 2014 (P.L. 113-79, Sec. 4206), the Secretary of Agriculture was given enhanced

³²³ Sec. 727 of H.J.Res.31 – Consolidated Appropriations Act, 2019, <https://www.congress.gov/116/bills/hjres31/BILLS-116hjres31enr.pdf>.

³²⁴ Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program SNAP, 7 CFR Parts 271 and 278 [FNS-2019-0003] (Apr. 5, 2019), <https://www.fns.usda.gov/snap/fr-040519>; see also Mike Dorning, *Spray Cheese Would Count as Staple Under Trump Food Stamp Rule*, BLOOMBERG (May 30, 2019), <https://www.bloomberg.com/news/articles/2019-05-30/spray-cheese-would-count-as-staple-under-trump-food-stamp-rule>.

³²⁵ Sheila E. Fleischhacker, Rebecca Flournoy, & Latetia V. Moore, *Meaningful, Measurable, and Manageable Approaches to Evaluating Healthy Food Financing Initiatives: An Overview of Resources and Approaches*, 19 J. PUB. HEALTH MGMT. PRAC. 541, 541–42 (2013); see also *USDA Announces New Partnership to Increase Rural Residents’ Access to Healthy Foods*, U.S. DEP’T OF AGRIC., RURAL DEV., <https://www.rd.usda.gov/newsroom/news-release/usda-announces-new-partnership-increase-rural-residents%E2%80%99-access-healthy-food> (last updated Jan. 13, 2017) [hereinafter U.S. Dep’t of Agric., New Partnership].

³²⁶ U.S. DEP’T OF AGRIC., NEW PARTNERSHIP, *supra* note 325.

authority and appropriated \$125,000,000 to establish HFFI.³²⁷ Currently, HFFI is administered by the Reinvestment Fund on behalf of USDA Rural Development.³²⁸ In fiscal years 2017 and 2018, Congress appropriated one million to launch HFFI at USDA.³²⁹ In the 2018 Farm Bill (Sec. 12408), slight amendments were made to the HFFI established in the 2014 Farm Bill including expanding eligible projects beyond retail to include food hubs, mobile markets, direct to consumer markets, and food business incubators.³³⁰ In total, over the last eight years, HFFI has leveraged more than \$220 million in grants plus more than one billion in additional financing and supported nearly one thousand retail food projects in more than thirty-five states.³³¹ In Agricultural Appropriations 2019, not less than \$22,000,000 is available until September 30, 2020 to provide financial assistance, technical assistance, training, and outreach to community development financial institutions for the purpose of offering affordable financing and technical assistance to expand the availability of healthy food options in distressed communities.³³² In both the House (H.R. 1717) and Senate (S.786), bills have been reintroduced to amend the Internal Revenue Code of 1986 to establish a new tax credit and grant program to stimulate investment and healthy retail options in food deserts.³³³ More multi-sectoral, multi-level research is needed to understand the impacts of federal investments aiming to improve access to retail food outlets.³³⁴

³²⁷ Agricultural Act of 2014, Pub. L. No. 113-79, § 4206. 128 Stat. 649, 824 (2014) (codified at 7 U.S.C. § 6953(d) (2019)).

³²⁸ *Healthy Food Financing Initiative*, REINVESTMENT FUND, <https://www.reinvestment.com/initiatives/hffi> (last visited Aug. 30, 2019).

³²⁹ Consolidated Appropriations Act of 2017, Pub. L. No. 115-31, § 767, 131 Stat. 135, 180 (2017); CONG. RESEARCH SERV., R44588, AGRICULTURE AND RELATED AGENCIES: FY2017 APPROPRIATIONS 45 (2017); Agriculture, Rural Development Food and Drug Administration, and Related Agencies Appropriations Act of 2018, H.R. 3268, 115th Cong. § 759 (2017).

³³⁰ Agricultural Improvement Act of 2018, H.R. 2, 115th Cong. §§ 4204; *see id.* at § 12614 (establishing Food Access Liaison).

³³¹ *Healthy Food Financing Initiative*, *supra* note 328.

³³² Community Development Financial Institutions Fund Program Account (4) of H.J.Res.31 – Consolidated Appropriations Act, 2019, <https://www.congress.gov/116/bills/hjres31/BILLS-116hjres31enr.pdf>.

³³³ H.R.1717 – Healthy Food Access for All Americans Act, 116th Congress (2019-2020); S.786 – Healthy Food Access for All Americans Act, 116th Congress (2019-2020).

³³⁴ Nicole Larson, Mary Story, & Melissa Nelson, *Neighborhood Environments: Disparities in Access to Healthy Foods in the US*, 36 AM. J. PREV. MED. 74, 74 (2009).

vi. Supporting Nutrition Education and Promotion

One final way that Congress could strengthen the nutrition impacts of SNAP is to require nutrition education be a mandatory part of the program, with adequate appropriations dedicated to evaluating the program's impact on dietary quality and health.³³⁵ Currently, states can participate in SNAP - Education (SNAP-Ed), a federally funded grant program, to develop, implement, and evaluate nutrition education and promotion, social marketing campaigns, and policies, systems, and environmental approaches to improve access to healthy eating (e.g., helping develop a new community garden or implement the federal local school wellness policy at a school or state level).³³⁶ However, these efforts only reach roughly about five percent of the SNAP population.³³⁷ SNAP-Ed has evolved since it began in 1988 in Wisconsin and now is being conducted in all fifty states with success.³³⁸ The estimated SNAP-Ed allocations for fiscal year 2019 illustrate the range of support states and US territories receive; for example, California is estimated to receive \$99,284,451 and the Virgin Islands is estimated to receive \$182,243.³³⁹ SNAP-Ed was significantly transformed during the last Child Nutrition Reauthorization process into a formula funded nutrition education and obesity prevention grants program that has increasingly permitted the integration of efforts to promote active living as well.³⁴⁰

³³⁵ M. Mueller & E. Kennedy, *The US Farm Bill: Opportunities and Challenges*, 51 NUTR. TODAY 82, 85 (2016).

³³⁶ *Supplemental Nutrition Assistance Program (SNAP-Ed)*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-education-snap-ed> (last updated June 27, 2019); *see also Supplemental Nutrition Education Program – Education (SNAP-Ed)*, U.S. DEP'T AGRIC., NAT'L INST. FOOD & AGRIC., <https://nifa.usda.gov/program/supplemental-nutrition-education-program-education-snap-ed> (last visited Aug. 30, 2019) (providing general overview of the scope of SNAP-ed) [hereinafter *USDA, SNAP-Ed*].

³³⁷ S.N. Bleich et al., *U.S. Nutrition Assistance, 2018 – Modifying SNAP to Promote Population Health*, 376 NEW ENG. J. MED. 1205, 1207 (2017).

³³⁸ *USDA, SNAP-Ed*, *supra* note 336.

³³⁹ *SNAP-Ed Estimated Allocations for FY 2019*, U.S. DEP'T AGRIC., NAT'L INST. FOOD & AGRIC., <https://snaped.fns.usda.gov/sites/default/files/documents/FY2019EstimatedAllocations.pdf> (last visited Aug. 30, 2019).

³⁴⁰ The Healthy, Hunger-Free Kids Act of 2010, Pub. Law No. 111-296, 124 Stat. 3183, 3227–3234 (2010); *see also* Nutrition Education and Obesity Prevention Grant Program, 81 Fed Reg. 18447, 18447–18448 (Mar. 31, 2016) (codified at 7 C.F.R. § 271) (describing goals and funding apparatus); *see also* U.S. DEP'T AGRIC. FOOD & NUTR. SERV., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, EDUCATION PLAN GUIDANCE FY 2018 NUTRITION EDUCATION AND OBESITY PREVENTION GRANT PROGRAM, <https://snaped.fns.usda.gov/snap/Guidance/FY2018SNAP-EdPlanGuidance.pdf>.

Over the years, various efforts have examined—with mixed success—the impacts of USDA investments in nutrition education and promotion.³⁴¹ As one example, a conference that took place in 1995 convened a broad range of stakeholders to help chart a course for nutrition education and promotion evaluation in USDA food assistance programs.³⁴² Another milestone was the development and evaluation of Statewide Nutrition Education Networks (1995-1999) that found sixty percent of the participating networks achieved their stated objectives and were able to leverage more than \$20 million in non-federal funding and identified additional in-kind contributions from non-governmental organizations.³⁴³ A 1999 Congressionally requested report identified opportunities and barriers to enhance USDA's investment in nutrition education and promotion, including: authority and funding levels vary widely by program; state and local infrastructures are necessary to deliver integrated, comprehensive programs; and the evaluation system for USDA's nutrition education is fragmented and lacks outcome measures.³⁴⁴ A 2000 Food Stamp Nutrition Education Report further illustrated the diversity of state administrative approaches to the program and in the delivery of nutrition education and promotion in addition to the need for stronger coordination and systematic reporting systems.³⁴⁵ Another report released in 2000 provided “circumstantial evidence” for the importance of nutrition education and promotion among Food Stamp participants but emphasized the need for additional research.³⁴⁶ Furthermore, a 2002 Congressionally requested report reiterated the

³⁴¹ U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., CHARTING THE COURSE FOR EVALUATION: HOW DO WE MEASURE THE SUCCESS OF NUTRITION EDUCATION AND PROMOTION IN FOOD ASSISTANCE PROGRAMS? (1997), <https://fns-prod.azureedge.net/sites/default/files/ChartingSummary.pdf>.

³⁴² *Id.*

³⁴³ RES. TRIANGLE INST. & HEALTH SYS. RES., INC., EVALUATION OF STATEWIDE NUTRITION EDUCATION NETWORKS. REPORT PREPARED FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION OFFICE OF ANALYSIS, NUTRITION AND EVALUATION 69 (1999), <https://fns-prod.azureedge.net/sites/default/files/NetReport2.pdf>.

³⁴⁴ U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., OFF. RES. & ANALYSIS, DIETARY INTAKE AND DIETARY ATTITUDES AMONG FOOD STAMP PARTICIPANTS AND OTHER LOW-INCOME INDIVIDUALS (2000), https://fns-prod.azureedge.net/sites/default/files/FSPDiet_Summary.pdf.

³⁴⁵ U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., NUTRITION EDUCATION IN FNS: A COORDINATED APPROACH FOR PROMOTING HEALTHY BEHAVIORS: A REPORT TO CONGRESS, <https://fns-prod.azureedge.net/sites/default/files/CongressNutEd%282-2002%29.pdf>.

³⁴⁶ U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., NUTRITION EDUCATION AND PROMOTION: THE ROLE OF FNS IN HELPING LOW-INCOME FAMILIES MAKE HEALTHIER EATING AND LIFESTYLE CHOICES: A REPORT TO CONGRESS (2010), <https://fns-prod.azureedge.net/sites/default/files/NutritionEdRTC.pdf>.

needs put forth in the 1999 report regarding policy changes and funding disparities.³⁴⁷ Then, in 2010, USDA committed to Congress to better coordinate nutrition education efforts across its food assistance programs.³⁴⁸ A recent 2018 analysis of SNAP-Ed

³⁴⁷ U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., ANALYSIS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EDUCATION (SNAP-ED) DATA FOR ALL STATES STUDY (SUMMARY) (2018), <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPED-Data-AllStates-Summary.pdf>.

³⁴⁸ See U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., OFF. RES. & ANALYSIS, NUTRITION AND EVALUATION, NUTRITION EDUCATION: PRINCIPLES OF SOUND IMPACT EVALUATION (2005), <https://fns-prod.azureedge.net/sites/default/files/EvaluationPrinciples.pdf> (puts forth the following principles of impact evaluation: 1) make certain that the nutrition education intervention can be evaluated; 2) build on available research; 3) hold out for research designs with random assignment but use them selectively; 4) choose impact measures that fit the intervention and approach existing standards for credible assessment; 5) observe standards for the fair treatment of study participants; 6) collect impact data after start-up problems get resolved but before implementation rolls out; 7) report both positive and negative results—but do so accurately; and 8) share results to maximize their value); U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., NUTRITION EDUCATION RESEARCH REVIEW (2007), <https://www.fns.usda.gov/nutrition-education-research-review-0> (generated three different reviews on message framing, use of interactive technology to tailor messages, and intervention intensity); U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., OFF. RES. & ANALYSIS, SNAP EDUCATION AND EVALUATION STUDY (WAVE I): FINAL REPORT (2012), <https://fns-prod.azureedge.net/sites/default/files/SNAPEdWaveI.pdf> (evaluated four SNAP-Ed demonstration projects and put forth recommendations for SNAP-Ed program implementation and evaluation); U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., OFF. RES. & ANALYSIS, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EDUCATION AND EVALUATION STUDY (WAVE II) (2013), <https://fns-prod.azureedge.net/sites/default/files/SNAPEdWaveII.pdf> (evaluated three SNAP-Ed demonstration projects and put forth recommendations for SNAP-Ed program implementation and evaluation); U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., OFF. POL'Y SUPPORT, APPROACHES FOR PROMOTING HEALTHY FOOD PURCHASES BY SNAP PARTICIPANTS (2014), <https://fns-prod.azureedge.net/sites/default/files/ICF-IHC-Final-Report-0714.pdf> (evaluated possible pilot design approaches for promoting healthier purchases); U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., SNAP-ED CONNECTION: SUCCESS STORIES, <https://snaped.fns.usda.gov/success-stories> (provides a searchable database of SNAP-Ed success stories); U.S. DEP'T AGRIC. FOOD & NUTR. SERV., SNAP-ED CONNECTION: EDUCATION AND ADMINISTRATIVE REPORTING SYSTEM (EARS), <https://snaped.fns.usda.gov/program-administration/ears-form-training> (last visited Aug. 30, 2019) (illustrates the form designed to provide uniform data and information about the activities of all States participating in SNAP-Ed); U.S. DEP'T AGRIC. FOOD & NUTR. SERV., SNAP-ED CONNECTION: SNAP-ED PLAN GUIDANCE AND TEMPLATES, <https://snaped.fns.usda.gov/program-administration/guidance-and-templates> (last visited Aug. 30, 2019) (provides guidance on how to develop your SNAP-Ed plan); U. N.C. CHAPEL HILL CTR. HEALTH PROMOTION & DISEASE PREVENTION SUPPORTED BY U.S. DEP'T AGRIC., SNAP-ED TOOLKIT, <https://snapedtoolkit.org/> (last visited Aug. 30, 2019) (provides resources to help States develop their SNAP-Ed plan and evaluation approaches); U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., HHFKA IMPLEMENTATION RESEARCH BRIEF SERIES HHFKA (2016), <https://www.fns.usda.gov>

similarly reported a variety of implementing agencies delivering a variety of nutrition education and promotion approaches, across a variety of settings, and using various reporting metrics.³⁴⁹ Other efforts have explored how best to deliver nutrition education and promotion through USDA food and nutrition assistance programs and how best to evaluate SNAP-Ed at the local, state, tribal, regional, and national levels.³⁵⁰ Moreover, the Bipartisan Policy Center worked with a SNAP Task Force to develop recommendations to leverage federal programs for better health and recommended “enhancing technical assistance from the USDA regional offices, reducing planning and reporting burdens, restructuring state reports to focus on program impact, developing new tools and components, and sharing best practices.”³⁵¹ The Bipartisan Policy Center SNAP Task Force also suggested realigning the Expanded Food and Nutrition Education Program (EFNEP) to better enable this program and SNAP-Ed to “work synergistically while avoiding duplication.”³⁵² An estimated \$100 million over five years was suggested to support “pilot comprehensive, multipronged interventions that address the core objectives of diet quality, food security, and fiscal responsibility.”³⁵³ A recent GAO study found the USDA lacks information on whether SNAP-Ed is meeting its goals and recommended: 1) the Administrator of FNS improve how the agency gathers information on the effectiveness of SNAP-Ed interventions; 2) the Secretary of Agriculture should direct the Under Secretaries for Food, Nutrition and Consumer Services and for Research, Education, and Economics to develop a formal mechanism, such as a designated individual or group of individuals, for providing cross-departmental leadership for USDA’s nutrition education efforts and facilitating cross-program information sharing; and 3) the Secretary of Agriculture should direct the Under Secretaries for Food, Nutrition, and Consumer Services and for Research, Education, and Economics to identify and implement

ov/hhfka-implementation-research-brief-series (shares a series of research briefs examining best practices in School Food Authorities’ implementation of key provisions and their impacts in the Healthy, Hunger-Free Kids Act of 2010, including fruits and vegetables, plate waste, sodium, participation, revenue, whole grains, smart snacks, and a special view of obesity).

³⁴⁹ *Leading with Nutrition: Leveraging Federal Programs for Better Health: Recommendations from the BPC SNAP Task Force*, BIPARTISAN POL’Y. CTR. (Mar. 12, 2018), <https://bipartisanpolicy.org/library/leading-with-nutrition-leveraging-federal-programs-for-better-health/>.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² Agricultural Improvement Act of 2018, H.R. 2, 115th Cong. §§ 4019.

³⁵³ *Id.*

mechanisms to fully leverage the department's nutrition expertise for its nutrition education efforts.³⁵⁴

Ultimately, the 2018 Farm Bill only made modest modifications to SNAP-Ed. The House proposal to merge SNAP-Ed and EFNEP was rejected and instead the 2018 Farm Bill encourages better coordination across the two programs, including requiring an annual report to Congress detailing the evaluation of the level of coordination between SNAP-Ed, EFNEP, and other USDA nutrition education programs.³⁵⁵ The 2018 Farm Bill now requires SNAP-Ed programs to use an electronic reporting system to measure and evaluate projects and account for state administrative costs.³⁵⁶ In addition, the 2018 Farm Bill establishes an online information clearinghouse to share best practices in planning, implementing, and evaluating SNAP-Ed programs.³⁵⁷ The USDA Secretary is required to provide technical assistance to state agencies in developing and implementing SNAP-Ed plans and state agencies are required to submit an annual SNAP-Ed report to the USDA Secretary.³⁵⁸ In the 2019 Agricultural Appropriations, \$433,000,000 was allocated to SNAP-Ed.³⁵⁹ The SNAP-Ed Plan Guidance for fiscal year 2020 has been posted, which provides policy guidance for states regarding the SNAP-Ed operations and estimates funding allocations.³⁶⁰

Taken together, based on USDA's analyses over the last three decades and the recent GAO report, adequately supported research and evaluation is needed to better understand the role of SNAP-Ed, particularly how the recent transformation of the program impacts SNAP participants' dietary quality and health. The 2018 Farm Bill lacked strong Congressional investments into research and evaluation that could potentially maximize and better harmonize

³⁵⁴ U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-572, NUTRITION EDUCATION: USDA ACTIONS NEEDED TO ASSESS EFFECTIVENESS, COORDINATE PROGRAMS, AND LEVERAGE EXPERTISE (2019), <https://www.gao.gov/products/GAO-19-572>.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ OFF. MGMT. & BUDGET, FISCAL YEAR 2019: EFFICIENT, EFFECTIVE, ACCOUNTABLE: AN AMERICAN BUDGET, <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.

³⁵⁸ *Id.*

³⁵⁹ U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV. SNAP-ED, FY2019 FINAL STATE SNAP-ED ALLOCATIONS, https://snaped.fns.usda.gov/sites/default/files/documents/FY2019SNAP-EdFinalAllocation_3.pdf (last visited Aug. 30, 2019).

³⁶⁰ *SNAP-Ed Plan Guidance and Templates*, U.S. DEP'T AGRIC. SNAP-ED CONNECTION, https://snaped.fns.usda.gov/program-administration/guidance-and-templates?utm_source=SNEB+Members&utm_campaign=cb428b769a-EMAIL_CAMPAIGN_2017_08_25_COPY_01&utm_medium=email&utm_term=0_5640af03cf-cb428b769a-709895345 (last visited May 14, 2019).

existing benefits in SNAP and SNAP-Ed across all fifty States and US territories. But, the annual reporting on coordination between SNAP-Ed and EFNEP could possibly be a foundation for future considerations to make nutrition education across the USDA and across the federal government more effective and efficient.

IV. America's Harvest Box and Other Outside of the Box Trump Administration Approaches with SNAP Implications

On January 20, 2017, President Donald Trump became the 45th President of the United States and since that date has put forth a variety of executive orders, initiatives, nominations, budget proposals, and tweets with SNAP implications (*See* Table 3). On May 7, 2019, the Executive Office of the President, Office of Management and Budget requested public comment on the consumer inflation measures produced by federal statistical agencies, which are used to calculate the official definition of poverty used by the Census Bureau to estimate the size of our nation's poor population and used to determine eligibility for government benefits including SNAP.³⁶¹

A. America's Harvest Box

The first and most direct proposal from the Trump administration to change the nature of SNAP is known as the America's Harvest Box and was put forth in the President's fiscal year 2019 budget.³⁶² Under this proposed approach to support the President's leadership on Buy American, all SNAP participating households receiving \$90 per month or more in SNAP benefits would receive a package of nutritious, one hundred percent US grown and produced food and the remainder of the benefits would be provided via EBT cards.³⁶³ States would be given flexibility in distributing these boxes to participants, through "existing infrastructure, partnerships, and/or directly to residences through

³⁶¹ Executive Office of the President, Office of Management and Budget, *Request for Comment on the Consumer Inflation Measures Produced by Federal Statistical Agencies* (84 FR 19961) (May 7, 2019), <https://www.federalregister.gov/document/s/2019/05/07/2019-09106/request-for-comment-on-the-consumer-inflation-measures-produced-by-federal-statistical-agencies>; A. Karni, *Trump Administration Seeks to Redefine Formula for Calculating Poverty*, N.Y. TIMES (May 7, 2019), <https://www.nytimes.com/2019/05/07/us/politics/trump-poverty-level-proposal.html>.

³⁶² *Id.*

³⁶³ *USDA America's Harvest Box*, U.S. DEPT' AGRIC., <https://www.agripulse.com/ext/resources/pdfs/Americas-Harvest-Box.pdf> (last visited Aug. 30, 2019).

commercial and/or retail delivery services.”³⁶⁴ Secretary of Agriculture Sonny Perdue believed America’s Harvest Box was “a bold, innovative approach to providing nutritious food to people who need assistance feeding themselves and their families—and all of it is home grown by American farmers and producers.”³⁶⁵ A variety of stakeholders criticized the idea, including negative perspectives on feasibility and public health impacts based on past and present efforts of the USDA with distributing federal commodities.³⁶⁶ Put simply, why take fresh produce, meat, and dairy options out of SNAP for a much higher logistical cost?³⁶⁷ A recent study found sixty percent of the SNAP participants and food-insufficient non-participants surveyed opposed the America’s Harvest Box proposal.³⁶⁸ This proposal was tabled but effectively stirred up attention to the President’s severe budget cuts proposed for SNAP during Farm Bill deliberations.³⁶⁹ Then, the concept reappeared in the Trump administration’s fiscal year 2020 budget.³⁷⁰ Recent stories discuss

³⁶⁴ E. Goldberg, *The US Already Tested Trump’s Canned Goods Idea on Native Americans. It was Bad*, HUFFINGTON POST (Feb. 22, 2018), https://www.huffingtonpost.com/entry/trump-snap-canned-goods-native-americans_us_5a8c403de4b0e1acb11d833a; E. Hunzinger et al., *Trump Administration Wants to Decide What Food SNAP Recipients Will Get*, NPR (Feb. 12, 2018), <https://www.npr.org/sections/these-it/2018/02/12/585130274/trump-administration-wants-to-decide-what-food-snap-recipients-will-get>; M. Hiltzik, *Economists Overwhelmingly Agree: Trump’s Food-Box Idea is Absurd*, L.A. TIMES (Mar. 5, 2018), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-economists-foodstamps-20180305-story.htm>; J. Poppendieck, *The Trump Budget: Ignoring 75 years of Food Assistance Experience*, CUNY URBAN FOOD POL’Y INST. (Feb. 19, 2018), <http://www.cunyurbanfoodpolicy.org/news/2018/2/18/ignoring-75-years-of-food-assistance-experience>.

³⁶⁵ M. Nestle, *Trump’s “Blue Apron” Plan for SNAP: Real or Smokescreen?*, FOOD POLITICS (Feb. 20, 2018), <https://www.foodpolitics.com/2018/02/trumps-blue-apron-plan-for-snap-real-or-a-smokescreen/>.

³⁶⁶ Catherine Boudreau, *Farm Bill on the Campaign Trail*, POLITICO (Dec. 19, 2018), <https://www.politico.com/newsletters/morning-agriculture/2018/10/19/farm-bill-on-the-campaign-trail-380089>.

³⁶⁷ *Id.*

³⁶⁸ Cindy W. Leung & Julia A. Wolfson, *Perspectives from Supplemental Nutrition Assistance Program Participants on Improving SNAP Policy*, 3.1 HEALTH EQUITY 81, 82 (2019).

³⁶⁹ OFF. MGMT. & BUDGET, *American First: A Budget Blueprint to Make America Great Again*, https://www.whitehouse.gov/wp-content/uploads/2017/11/2018_blueprint.pdf; OFF. MGMT. & BUDGET, *Fiscal Year 2019: Efficient, Effective, Accountable: An American Budget*, <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.

³⁷⁰ Catherine Boudreau, *Farm Bill on the Campaign Trail*, POLITICO (Dec. 19, 2018), <https://www.politico.com/newsletters/morning-agriculture/2018/10/19/farm-bill-on-the-campaign-trail-380089>; Arthur Delaney, *The Trump Administration Still Wants to Put Food Benefits in a Box*, HUFFPOST (Mar. 11, 2019), https://www.huffpost.com/entry/trump-harvest-box-food-assistance_n_5c8691d9e4b0d936162a8825; Stephanie Ebbs, *Trump’s New Budget Resurrects Controversial ‘Harvest Box’ Proposal for Food Stamps as Part of Broader Welfare Reform: The*

the new “Meals to You” program offered through funding by the USDA FNS, which offers a box including the equivalent of five breakfasts, lunches, and snacks per student delivered to each participating student’s door via UPS during the summer months.³⁷¹

B. SNAP Budget Cuts

So, what were the proposed SNAP cuts? Citing projected budget deficits, President Trump’s fiscal years 2018, 2019, and now 2020 budgets consistently proposed massive cuts to SNAP and included provisions to reconfigure the program by establishing a state match, limit categorical eligibility and the use of waivers that exempt able-bodied adults without dependents from work, and establish application fees for retailers seeking to participate in SNAP.³⁷² The President also ordered all federal agencies to cut spending by five percent for fiscal year 2019 and again for fiscal year 2020. These proposals are consistent with Trump’s Executive Order to reform the welfare system, Medicaid work requirements, and the Republican-led 115th House efforts discussed earlier that would significantly alter the nation’s safety net, decrease SNAP participation, and increase food insecurity among vulnerable individuals and households.³⁷³ Fortunately, the President proposes and Congress disposes and so far the severity of Trump’s proposed

Change to Food Stamps is Part of Several Proposals to Reform Welfare, ABC NEWS (Mar. 12, 2019), <https://abcnews.go.com/Politics/trumps-budget-resurrects-harvest-box-proposal-food-stamps/story?id=61627707>.

³⁷¹ Shelli Parker, ‘A Hungry Child Can’t Learn’ – Round Table Discussions Examines Meal Program, ATHENS DAILY REVIEW (Aug. 14, 2019), https://www.athensreview.com/news/a-hungry-child-can-t-learn---round-table/article_07610d6c-bela-11e9-8a70-a3c4155d3ffc.html.

³⁷² OFF. MGMT. & BUDGET, *American First: A Budget Blueprint to Make America Great Again*, https://www.whitehouse.gov/wp-content/uploads/2017/11/2018_blueprint.pdf; OFF. MGMT. & BUDGET, *Fiscal Year 2019: Efficient, Effective, Accountable: An American Budget*, <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>; OFF. MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, *A BUDGET FOR A BETTER AMERICA: PROMISES KEPT. TAXPAYERS FIRST., FISCAL YEAR 2020* (2019), <https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf>.

³⁷³ *Executive Order Reducing Poverty in America by Promoting Opportunity and Economic Mobility*, OFF. WHITE HOUSE (Apr. 10, 2018), <https://www.whitehouse.gov/presidential-actions/executive-order-reducing-poverty-america-promoting-opportunity-economic-mobility/>; U.S. DEP’T HEALTH & HUM. SERVS., CTRS. MEDICARE & MEDICAID SERVS., SMD: 18-002 RE: OPPORTUNITIES TO PROMOTE WORK AND COMMUNITY ENGAGEMENT AMONG MEDICAID BENEFICIARIES (Jan. 11, 2018), <https://www.medicare.gov/federal-policy-guidance/downloads/smd18002.pdf>; DISASTER ASSISTANCE EXEC. OFF. PRES. U.S., COUNCIL ECON. ADVISORS, *EXPANDING WORK REQUIREMENTS IN NON-CASH WELFARE PROGRAMS* (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/07/Expanding-Work-Requirements-in-Non-Cash-Welfare-Programs.pdf>.

SNAP cuts have not been implemented for fiscal years 2018 and 2019.³⁷⁴ Notwithstanding, as explained previously, the fiscal year 2019 Agricultural Appropriations were part of the longest government shutdown in our nation's history. The 116th Congress is not giving the President's fiscal year 2020 budget proposal much attention, but it does provide signals for where this administration stands, including consistent efforts at USDA's sister agency, the US Department of Health and Human Services, to redesign assistance programs that focus more on promoting personal responsibility and self-sufficiency.³⁷⁵

C. Disaster Assistance through SNAP

The Trump administration has responded to a variety of hurricanes, wild fires, floods, and other natural disasters thus far using the USDA's Disaster Supplemental Nutrition Assistance Program (D-SNAP).³⁷⁶ This program, which has different income eligibility requirements than SNAP, provides supplemental nutrition assistance similar to SNAP to Americans struggling with the aftermaths of a natural disaster.³⁷⁷ Hurricanes Irma and Maria ravaged the island of Puerto Rico in the summer of 2017 and presented unique challenges for Puerto Rico's Nutrition Assistance Program (NAP). The unprecedented length and scale of power outages and internet connectivity issues hindered the operation of EBT, participants' ability to prepare meals, and safe storage of foods and beverages.³⁷⁸ On a positive note, innovative approaches

³⁷⁴ Ebbs, *supra* note 370.

³⁷⁵ *Id.*

³⁷⁶ *Disaster Supplemental Nutrition Assistance Program (D-SNAP)*, DISASTERASSISTANCE.GOV, <https://www.disasterassistance.gov/get-assistance/form-s-of-assistance/5769> (last updated May 3, 2019); Steve Benen, *Trump: Puerto Rico Disaster Response was 'An Incredible Unsung Success'*, MSNBC (Sept. 11, 2018), <http://www.msnbc.com/rachel-maddow-show/trump-puerto-rico-disaster-response-was-incredible-unsung-success>; Avery Anapol, *Houston Chronicle: Trump Ridiculed Hurricane Victims Instead of Helping*, HILL (June 11, 2018), <https://thehill.com/homenews/media/391708-houston-chronicle-trump-ridiculed-hurricane-victims-instead-of-helping>; Kendra Pierre-Louis, *Trump's Misleading Claims About California's Fire 'Mismanagement'*, N.Y. TIMES (Nov. 12, 2018), <https://www.nytimes.com/2018/11/12/us/politics/fact-check-trump-california-fire-tweet.html>.

³⁷⁷ *D-SNAP Resources for State Agencies and Partners*, U.S. DEP'T AGRIC. FOOD & NUTR. SERV., <https://www.fns.usda.gov/snap/d-snap-resources-state-agencies-and-partners> (last updated Aug. 22, 2013).

³⁷⁸ N. Kishore et al., *Mortality in Puerto Rico after Hurricane Maria*, 379 N. ENGL. J. MED. 162-170 (2018); N. Weixel, *Trump Officials Allow Puerto Ricans to Use Food Stamps for Hot Food*, THE HILL (Oct. 3, 2017), <https://thehill.com/blogs/blog->

emerged to “Feed an Island”; specifically, Chef Jose Andres, in collaboration with thousands of volunteers who made up Chefs for Puerto Rico, prepared and delivered more than three million meals to every part of the island for months.³⁷⁹ News stories reported the national response was often slow, uncoordinated and inadequate.³⁸⁰ As noted earlier, S.677 has been introduced to enable Puerto Rico and other US territories to participate in SNAP and a legal battle is underway against the USDA regarding “policies awarding lower federal benefits to US citizens who reside in Puerto Rico than to similarly situated and equally needy US citizens residing in any of the 50 states of the US.”³⁸¹ The Government of Puerto Rico reached out via a video message to President Trump pleading for support of the country’s NAP, which has experienced drastic increases in applications since Hurricane Maria.³⁸² An estimated 670,000 Puerto Rico residents received a twenty-five percent decrease in their SNAP benefits for March 2019.³⁸³ Supplemental Congressional appropriations have helped provide some relief but a recent political stalemate over additional aid had put all US disaster funding in

briefing-room/353685-trump-admin-denied-puerto-rico-request-to-let-hurricane-victims-use?amp.

³⁷⁹ T. Carman, *Jose Andres’s Riveting ‘We Fed an Island’ Calls for a Revolution in Disaster Relief*, WA. POST (Sept. 6, 2018), https://www.washingtonpost.com/lifestyle/food/jose-andress-riveting-we-fed-an-island-calls-for-a-revolution-in-disaster-relief/2018/09/05/b126d766-ad70-11e8-b1da-ff7faa680710_story.html?utm_term=.f13d45a26f1a.

³⁸⁰ B. Weir, *20,000 Pallets of Bottled Water Left Untouched in Storm-Ravaged Puerto Rico*, CNN (Sept. 20, 2018), <https://www.cnn.com/2018/09/12/us/puerto-rico-bottled-water-dump-weir/index.html>; J. Wise, *Donations for Puerto Rico Hurricane Victims Found Rotting in Parking Lot*, THE HILL (Aug. 10, 2018), <https://thehill.com/blogs/blog-briefing-room/news/401360-donations-for-puerto-rico-hurricane-victims-found-rotting-in>; A.D. Fragose, *‘People are Getting Desperate’ in Puerto Rico as Federal Response Not Equal to the Crisis*, EARTH JUSTICE (Oct. 2, 2017), <https://earthjustice.org/blog/2017-september/people-are-getting-desperate-in-puerto-rico-as-federal-response-not-equal-to-the-crisis>; Snopes, *Did Trump Administration Refuse Puerto Rico’s Request to Allow Food Stamps to be Used for Hot Meals?*, SNOPE (Oct. 5, 2017), <https://www.snopes.com/fact-check/puerto-rico-food-stamps/>.

³⁸¹ *Martinez*, 2018 WL 1795786, at *2; *see also Martinez*, 376 F. Supp. 3d 191 (explaining how the complaint barely survived a motion to dismiss).

³⁸² Camilo Montoya-Galvez, *Puerto Rico’s Leaders Slam Trump Administration for Opposing Food Assistance Funding*, CBS NEWS (Jan. 17, 2019), <https://www.cbsnews.com/news/puerto-rican-officials-blast-trump-administration-for-opposing-bill-to-fund-the-islands-nutritional-program/>.

³⁸³ Jeff Stein, *More than 670,000 Puerto Rico Residents Have Received Cuts to Food Stamp Benefits Amid Congressional Impasse*, WA. POST (Mar. 12, 2019), https://www.washingtonpost.com/us-policy/2019/03/08/puerto-rico-starts-cutting-food-stamp-benefits-used-by-more-than-million-people-amid-congressional-impasse/?noredirect=on&utm_term=.0292a7fb37a1.

jeopardy.³⁸⁴ Ultimately, on June 6, 2019, a \$19.1 billion standalone disaster supplemental bill was enacted, which included \$643 million for food and nutrition assistance in Puerto Rico and Pacific territories.³⁸⁵

Altogether, SNAP can play an integral role in working with intra- and inter-departmental agencies, multi-jurisdictional agencies, and non-governmental organizations such as Red Cross, Feeding America, and the Salvation Army to develop standards and strategies for ensuring safe and nutritious foods and beverages reach vulnerable Americans in an efficient, effective, and consistent manner.³⁸⁶ These strategies need to tackle logistical barriers for preparing, storing, cooking, and cleaning meals and snacks utilizing traditional best practices and emerging technologies, as well as sensitively managing the strong emotional ramifications of enduring a natural disaster.

D. Immigration

President Trump has taken a variety of actions ranging from executive orders, budget cuts, and administrative agency initiatives that raise concern over immigrant participation in federal food and nutrition assistance programs including SNAP.³⁸⁷ The most recent explicit action that involved SNAP was a proposed rulemaking notice by the Department of Homeland Security that indicates immigrants could potentially be denied “lawful permanent residency” if they have received certain government benefits

³⁸⁴ Lowey, *House Democrats Release Emergency Disaster Appropriations Bill* (Jan. 4, 2019), COMM. ON APPROPRIATIONS, <https://appropriations.house.gov/news/press-releases/lowey-house-democrats-introduce-emergency-disaster-appropriations-bill>; Lauren Lluveras, *A Political Stalemate Over Puerto Rican Aid is Leaving All US Disaster Funding in Limbo*, CONVERSATION (Apr. 17, 2019), <http://theconversation.com/a-political-stalemate-over-puerto-rican-aid-is-leaving-all-us-disaster-funding-in-limbo-114498>.

³⁸⁵ Additional Supplemental Appropriations for Disaster Relief Act of 2019, H.R. 2157, 116th Congress (2019-2020).

³⁸⁶ T. Abernathy, *Responsibilities of the USDA-Food and Nutrition Service in Nutrition Assistance Response to Natural Disasters*, 61 J. NUTR. SCI. VITAMIOLOG. S14 (2015).

³⁸⁷ *President Trump's Executive Orders on Immigration and Refugees*, CTR. MIGRATION STUD., http://cmsny.org/trumps-executive-orders-immigration-refugees/?gclid=CjwKCAjworfdBRA7EiwAKX9HeDr7Dk2m06VsUjcnRpmAV1v0X24Zy4Q_AS3hao6m-NJalBZdKwqZaxoCK90QAvD_BwE (last visited Aug. 30, 2019); G. Kaufmann, *Why Immigrants in California are Canceling their Food Stamps: Confusion and Fear about an Immigration Crackdown are Causing Some Families to Avoid Food Banks and Public Assistance Programs*, NATION (Mar. 17, 2017), <https://www.thenation.com/article/why-immigrants-in-california-are-canceling-their-food-stamps/>.

including SNAP or if the government anticipates they may seek government benefits in the future.³⁸⁸ Known as the “public charge rule,” the Trump administration would significantly expand the 1999 Interim Field Guidance that defined dependence on government assistance as participation in cash assistance or long-term institutionalized care.³⁸⁹ An estimated 382,000 people seeking to adjust their immigration status could be subjected to the proposed rule.³⁹⁰ The sixty-day public comment period closed on December 10, 2018 and more than 216,000 comments have been submitted.³⁹¹ Several anti-hunger organizations, along with local and state social service agencies submitted comments expressing concern regarding the short- and long-term implications of expanding the definition of dependence.³⁹² A final rule was put forth on August 12, 2019 detailing the factors the Department “will consider in the totality of the circumstances when making a public charge inadmissibility determination” beginning October 15, 2019.³⁹³ The rule indicates the Department will not consider public benefits received on behalf of another, such as a citizen child in the household.³⁹⁴ The National Immigration Law Center, among others, indicated it will file suit and others re-expressed concerns this rule will have on food insecurity and a range of health outcomes.³⁹⁵

³⁸⁸ *DHS Announces New Proposed Immigration Rule to Enforce Long-Standing Law that Promotes Self-Sufficiency and Protects American Taxpayers*, U.S. DEP’T HOMELAND SEC. (Sept. 22, 2018), <https://www.dhs.gov/news/2018/09/22/dhs-announces-new-proposed-immigration-rule-enforce-long-standing-law-promotes-self>; *Inadmissibility on Public Charge Grounds*, 8 CFR Parts 103, 212, 213, 214, 245, and 248, U.S. DEP’T HOMELAND SEC. (2018), <https://www.dhs.gov/publication/proposed-rule-inadmissibility-public-charge-grounds>.

³⁸⁹ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (proposed Mar. 26, 1999).

³⁹⁰ T. Hesson, et al., *Immigrants May be Denied Green Cards if They’ve Received Benefits*, POLITICO (Sept. 22, 2018) <https://www.politico.com/story/2018/09/22/poor-immigrants-green-cards-trump-836456>; M.D. Shear & E. Baumgaertner, *Trump Administration Aims to Sharply Restrict New Green Cards for Those on Public Aid*, N.Y. TIMES (Sept. 22, 2018), <https://www.nytimes.com/2018/09/22/us/politics/immigrants-green-card-public-aid.html>.

³⁹¹ *Inadmissibility on Public Charge Grounds*, REGULATIONS.GOV, <https://www.regulations.gov/docket?D=USCIS-2010-0012> (last visited Aug. 30, 2019).

³⁹² Sara N. Bleich & Sheila Fleischhacker, *Hunger or Deportation: Implications of the Trump Administration’s Proposed Public Charge Rule*, 51 J. NUTR. EDUC. BEHAV. 501, 501 (2019).

³⁹³ *Inadmissibility on Public Charge Grounds*, 8 CFR Parts 103, 212, 213, 214, 245 and 248 (Aug. 12, 2019).

³⁹⁴ *Id.*

³⁹⁵ *The Latest on President Donald Trump’s New Rules for Immigrants Receiving Public Assistance*, U.S. NEWS (Aug. 13, 2019), <https://www.usnews.com/news/world/articles/2019-08-12/the-latest-trump-administration-defends-green-card-rules>.

The Trump administration indicates it is concerned about declining enrollments in federal food and nutrition assistance programs, particularly for WIC eligible mothers and infants.³⁹⁶ But the Acting Deputy Under Secretary for Food, Nutrition, and Consumer Services and FNS administrator Brandon Lipps noted the Department is mainly aware of only anecdotal evidence of decreased participation relating to immigration concerns.³⁹⁷ On March 25, 2019, Mr. Lipps blogged about a series of roundtable meetings he is participating in with WIC directors, participants, retailers, and other partners from across the US to address the obstacles WIC participants and potential participants and how to better support state and local agency staff.³⁹⁸ Evidence suggests the risk of deportation is negatively associated with participating in WIC and that Mexican-origin families are the most sensitive when it comes to deportations and program use.³⁹⁹ A recent news report explained how an unprecedented number of women and children are withdrawing from WIC since the proposed public charge rule last fall.⁴⁰⁰

Without question, there is limited nationally representative monitoring and surveillance of immigrant and refugee populations and, particularly, scarce time-sensitive evaluation methodologies and funding support structures in place to objectively track food security or other health related outcomes among these populations as a series of policy actions transpire.⁴⁰¹ More research is needed to understand the breadth and depth of these impacts on immigrants' short- and

³⁹⁶ E. Baumgaertner, *Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services*, N.Y. TIMES (Mar. 6, 2018), <https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html>.

³⁹⁷ *Id.*

³⁹⁸ B. Lipps, *WIC: A Pathway to Long-Term Success*, U.S. DEP'T AGRIC. (Mar. 25, 2019), <https://www.usda.gov/media/blog/2019/03/25/wic-pathway-long-term-success>.

³⁹⁹ E.D. Vargas ED & M.A. Pirog, *Mixed-Status Families and WIC Uptake: The Effects of Risk of Deportation on Program Use*, 97 SOC. SCI. 555, 568 (2016).

⁴⁰⁰ Alfred Lubrano, *More Moms and Kids Withdrawing from Nutrition Program Because of Deportation Fears, Administrators Say*, INQUIRER (Mar. 20, 2019), <https://www.philly.com/news/wic-trump-immigration-deportation-pregnant-women-infants-20190320.html>.

⁴⁰¹ *Food Insecurity Among Immigrants, Refugees, and Asylees*, FOOD RES. & ACTION CTR. (Feb. 2016), http://org2.salsalabs.com/o/5118/p/salsa/web/common/public/content?content_item_KEY=13089; A.S. Venkataramani, S.J. Shah, R. O'Brien, I. Kawachi & A.C. Tsai, *Health Consequences of the U.S. Deferred Action for Childhood Arrivals (DACA) Immigration Programme: A Quasi-Experimental Study*, 2 LANCET PUB. HEALTH e175, e176 (2017); M. Venkataramani, C.E. Pollack, L.R. DeCamp, K.M. Leifheit, Z.D. Berger & A.S. Venkataramani, *Association of Maternal Eligibility for the Deferred Action for Childhood Arrivals Program With Citizen Children's Participation in the Women, Infants, and Children Program*, 172 J. AM. PEDIAT. 699 (2018).

long-term health, as well as financial stability.⁴⁰² Attention should also be directed towards evaluating the likely increased burden placed on the charitable food sector (e.g. food banks and soup kitchens) and healthcare system.⁴⁰³ More work is needed to understand if the likely deterrent effect of this rule is associated with increases in per capita resources available to reduce food security and promote public health.

E. Trade

In an effort to bail out farmers affected by the President's recent tariffs on Chinese imports and resulting Chinese tariffs on US goods, the Trump administration purchased \$1.2 billion commodities from farmers and distributed them through the child nutrition and emergency food assistance programs.⁴⁰⁴ This doubles the amount the USDA usually distributes through its food bank network.⁴⁰⁵ The plan for trade aid 2.0 includes additional direct payments and commodity purchases.⁴⁰⁶ Time-sensitive research is needed to see how these unusually high contributions affect food security among SNAP participants in addition to SNAP eligible non-participating individuals and households. Little is known at this time about the dietary quality of these contributions either or the logistical capacity of food banks to effectively and efficiently manage the influx during non-disaster related periods. A recent story explained how trade mitigation is already shaping the menus of school lunches and food pantry offerings.⁴⁰⁷

⁴⁰² S. Calvert, *Food Banks Reap Unexpected Bounty from Trade Disputes: Government Set to Deliver \$1.2 Billion in Products Bought from Farmers as Tariff Relief*, WALL ST. J. (Oct. 5, 2018), <https://www.wsj.com/articles/food-banks-reap-unexpected-bounty-from-trade-disputes-1538731801>; V. Pelham, *Generation of Sicker Kids Feared Under Immigrant Proposal*, BLOOMBERG (Aug. 30, 2018), <https://www.bna.com/generation-sicker-kids-n73014482133/>.

⁴⁰³ R. Nixon, *Food Banks Anticipate Impact of Cuts to Food Stamps*, N.Y. TIMES (Jan. 21, 2014), <https://www.nytimes.com/2014/01/22/us/politics/food-banks-anticipate-impact-of-cuts-to-food-stamps.html>.

⁴⁰⁴ Calvert, *supra* note 402.

⁴⁰⁵ Jeff Stein, *Food Banks Scramble to Make Trump's Farm Bailout Work*, MSN NEWS (Oct. 5, 2018), <https://www.msn.com/en-us/news/world/food-banks-scramble-to-make-trumps-farm-bailout-work/ar-BBNX9IW?ocid=spartanntp>.

⁴⁰⁶ Ryan McCrimmon, *Next Steps for Trade Aid 2.0 Rollout*, POLITICO (June 12, 2019), <https://www.politico.com/newsletters/morning-agriculture/2019/06/12/next-steps-for-trade-aid-20-rollout-651844>; see also Laura Reiley, *Trump Administration Reveals Details of \$16 Billion Farm Bailout in U.S. Trade War*, WA. POST (July 25, 2019), <https://www.washingtonpost.com/business/2019/07/25/trump-administration-reveals-details-billion-farm-bailout-us-trade-war/?noredirect=on>.

⁴⁰⁷ Candice Choi, *What's On School Menus this Fall? Trade Mitigation*, ASSOC. PRESS (Aug. 11, 2019), <https://news.yahoo.com/whats-school-menus-fall-trade->

F. Administrative

The Trump administration has moved forward a variety of administrative actions affecting the capacity and skill of federal employees most relevant to developing the science that informs SNAP policy or critical to carrying out vital SNAP operations and evaluation. This includes a memo ordering USDA scientists to add a disclaimer to peer-reviewed publications that “the findings and conclusions in this preliminary publication have not been formally disseminated by the U.S. Department of Agriculture and should not be construed to represent any agency determination or policy.”⁴⁰⁸ This requirement was later revised to include the more traditional federal agency disclaimer: “The findings and conclusions in this [publications/presentation/blog/report] are those of the author(s) and should not be construed to represent any official USDA or U.S. Government determination of policy.”⁴⁰⁹ Congress directed the Office of Budget and Program Analysis of the USDA to provide an organizational charge for each agency funded in the 2019 Agricultural Appropriations.⁴¹⁰

i. Hiring Freeze

On January 23, 2017, President Trump signed a Presidential Memorandum instituting a ninety-day hiring freeze for United States federal employees.⁴¹¹ There is not much data to objectively understand the impacts of this hiring freeze or how severe budget

124106650.html;_ylt=AwrEZ7Bx11Jd6x8AtiUPxQt.;_ylu=X3oDMTByOHZyb21tBGNvbG8DYmYxBHBvcwMxBHZAaWQDBHNlYwNzcg--.

⁴⁰⁸ Ben Guarino, *USDA Orders Scientists to Say Published Research is ‘Preliminary’*, WA. POST (Apr. 19, 2019), https://www.washingtonpost.com/science/2019/04/19/usda-orders-scientists-say-published-research-is-preliminary/?noredirect=on&utm_term=.53f27d1640b2 (noting this disclaimer was on Colleen Helfin, et al.’s article analyzing SNAP benefits and childhood asthma published in January 2019 in *Social Science & Medicine*).

⁴⁰⁹ *Informational Memorandum: Final Policy Guidance on Disclaimers, Disclosures and Acknowledgements in Outside Scientific Publications and Presentations*, U.S. DEP’T OF AGRIC. RESEARCH, EDUC. AND ECON. (May 8, 2019), <https://www.ree.usda.gov/sites/www.ree.usda.gov/files/2019-05/Final%20Guidance%20-%20Scientific%20Publications%20and%20Presentations.pdf>.

⁴¹⁰ Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2019, *Congressional Directives: Supplemental Nutrition Assistance Program*, *supra* note 136, at 2.

⁴¹¹ Presidential Memorandum Regarding the Hiring Freeze, 82 Fed. Reg. 8493 (Jan. 25, 2017).

cuts in fiscal years 2018 and 2019 impacted agencies' ability to appropriately staff SNAP operations.⁴¹²

ii. Nominations

Repeated concerns have been raised about the administrative inexperience, lack of scientific expertise, and industry ties Trump nominations and (relatively few) confirmed appointees have brought to the USDA to date.⁴¹³ Recently, the 115th Congressional Senate failed to vote on the USDA nominees that had been approved by the Senate Agriculture Committee; therefore, the process had to start over with re-nomination by the 116th Congressional Senate. On January 16, 2019, President Trump re-nominated his selections for the USDA Undersecretary for Food Safety; Undersecretary for Research, Education, and Economics; and Assistant Secretary for Civil Rights.⁴¹⁴ In the interim, Secretary Perdue appointed each of them to deputy positions that does not hold the same authority but does not require Senate approval.⁴¹⁵ The Senate Agriculture Committee advanced these three nominations but a date for a full chamber vote has not been set at this time.⁴¹⁶ No one has been nominated at this point to be the Undersecretary of Food, Nutrition, and Consumer Services, which is the mission area for all the federal food and nutrition assistance programs including SNAP.⁴¹⁷ This

⁴¹² E. Wagner, *Trump's Hiring Freeze Slowed Federal Retirement Processing*, Gov. EXEC. (Aug. 8, 2017), <https://www.govexec.com/management/2017/08/trumps-hiring-freeze-slowed-federal-retirement-processing/140099/>.

⁴¹³ M. Lewis, *Inside Trump's Cruel Campaign Against the U.S.D.A.'s Scientists*, VANITY FAIR (Nov. 2, 2017), <https://www.vanityfair.com/news/2017/11/usda-food-stamps-school-lunch-trump-administration>; J. Eilperin, *Trump Agriculture Nominee Sam Clovis Confirms He Has No Hard-Science Credentials, Withdraws Over Ties to Russia Probe*, WA. POST (Nov. 2, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/11/02/sam-clovis-trumps-nominee-for-usdas-top-scientist-confirms-he-has-no-hard-science-credentials/?utm_term=.5bf8b633f8d1; UNION OF CONCERNED SCIENTISTS, *SCIENCE UNDER TRUMP: VOICES OF SCIENTISTS ACROSS 16 FEDERAL AGENCIES 1* (2018), <https://www.ucsusa.org/center-science-and-democracy/promoting-scientific-integrity/scientist-survey-2018#.W70Qk2hKg dU>.

⁴¹⁴ Dan Flynn, *Brashears, Earp, Hutchins Start Work Today at USDA*, FOOD SAFETY NEWS (Jan. 29, 2019), <https://www.foodsafetynews.com/2019/01/brashears-earp-hutchins-start-work-today-at-usda/>.

⁴¹⁵ Press Release, U.S. Dep't of Agric., Secretary Perdue Selects Three Senior Leaders at USDA (Jan. 28, 2019), <https://content.govdelivery.com/accounts/USDA OC/bulletins/22b518d>.

⁴¹⁶ United States Senate Committee on Agriculture, Nutrition and Forestry, *Roberts, Stabenow Announce Committee to Vote on Three USDA Nominees* (May 10, 2019), <https://www.agriculture.senate.gov/newsroom/rep/press/release/roberts-stabenow-announce-committee-to-vote-on-three-usda-nominees>.

⁴¹⁷ Lewis, *supra* note 413.

means the mission area accounting for seventy percent of the USDA's budget is not being overseen by a Senate-confirmed appointee.⁴¹⁸ Notwithstanding, as described throughout this review, Secretary Perdue and other political appointed USDA staff have lead a range of significant policy and programmatic changes at the Department; many of which have been well-received by various agricultural stakeholders and Congressional Republications.⁴¹⁹

iii. Relocation to New Department of Health and Public Welfare

The most significant administrative proposal regarding SNAP President Trump has put forth thus far is relocation. In *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*, put forth by the Executive Office of President Trump, one of the thirty-two organizational realignments to enhance mission and service delivery was to move the non-commodity nutrition assistance programs (i.e., the “near-cash” benefit programs such as electronic benefit transfers or vouchers) from the USDA to a newly named Department of Health and Public Welfare, which is currently known as the Department of Health and Human Services.⁴²⁰ These non-commodity nutrition assistance programs include: SNAP, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program (CACFP), the WIC Farmers’ Market Nutrition Program (FMNP), and the Senior Farmers’ Market Nutrition Program (SFMNP). The USDA would continue to administer the commodity-based programs (i.e., deliver actual foods and beverages), including the National School Lunch Program (NSLP) and the School Breakfast Programs (SBP), the Emergency Food Assistance Program (TEFAP), and the Commodity Supplemental Food Program (CSFP), among others.⁴²¹ Within the new Department of Health and Public Welfare, SNAP would be moved into an expanded Administration for Children and Families

⁴¹⁸ *Id.*

⁴¹⁹ *Farmers Thank Secretary Perdue for Biofuels Support; Ask for Continued Advocacy*, NAT’L. CORN GROWERS ASS’N (Aug. 29, 2018), <http://www.ncga.com/news-and-resources/news-stories/article/2018/08/farmers-thank-secretary-perdue-for-biofuels-support-ask-for-continued-advocacy>.

⁴²⁰ EXEC. OFF. PRES. U.S., *DELIVERING GOVERNMENT SOLUTIONS IN THE 21ST CENTURY: REFORM PLAN AND REORGANIZATION RECOMMENDATIONS*, 15 (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf> [hereinafter *DELIVERING GOVERNMENT SOLUTIONS*].

⁴²¹ *Id.* at 28.

(ACF).⁴²² The United States Department of Health and Human Services currently administers Temporary Assistance for Needy Families (TANF) and houses the Center for Medicare and Medicaid Services (CMS), among other social services.⁴²³

This Reform Plan was informed by the Trump administration's analysis and comments garnered as a result of the Executive Order 13781, entitled "*Comprehensive Plan for Reorganizing the Executive Branch*."⁴²⁴ This Executive Order was issued on March 13, 2017 and directed the United States Office of Management and Budget (OMB) to propose a comprehensive plan to reform and reorganize the Executive Branch and for the OMB to seek input from Executive Branch agencies, as well as public comments on organizational alignment that can help reduce "duplication and redundancy" and improve "efficiency, effectiveness, and accountability of the executive branch."⁴²⁵ Reorganization, as discussed in the Reform Plan, is not a new Executive Branch undertaking and one recent effort highlighted was the creation of the Department of Homeland Security and the Office of the Director of National Intelligence after 9/11. Some of the suggestions put forth in response to the Executive Order 13781 and public comment period were included in the fiscal year 2019 budget or were adopted by agencies under existing authorities. The Executive Order 13781 and the Reform Plan, among other inputs, informed the *President's Management Agenda: Modernizing Government for the 21st Century*, which identified the following key drivers of transformation: IT modernization; Data, Accountability, and Transparency; and People—Workforce for the 21st Century.⁴²⁶

The Trump administration's rationale for moving SNAP to this new Department of Health and Public Welfare was to better align assistance programs with how they are often managed at the state and local levels. Currently, some states and local governments administer the Federal Government's major public assistance programs such as TANF and SNAP at a single state agency; however, this single agency has to contend with two sets of

⁴²² *Id.* at 27.

⁴²³ *Id.*

⁴²⁴ Donald J. Trump, *Executive Order 13781—Comprehensive Plan for Reorganizing the Executive Branch*, 82 Fed. Reg. 13959 (Mar. 16, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-03-16/pdf/2017-05399.pdf>.

⁴²⁵ *Id.*

⁴²⁶ President's Mgmt. Council & Executive Office of the President, *The President's Management Agenda: Modernizing Government for the 21st Century*, <https://www.whitehouse.gov/wp-content/uploads/2018/03/Presidents-Management-Agenda.pdf>.

“reporting, regulatory, and other administrative requirements—one set imposed by HHS for TANF, and another by USDA for SNAP.” Therefore, the Reform Plan discussed how consolidating public assistance programs could potentially help reduce administrative burden and possible duplication; streamline processes for issuing guidance, putting forth new or modified regulations, and approving waivers; improve coordination among public assistance programs; and increase the likelihood that policies are applied consistently across public assistance programs. In addition, the Trump administration’s Reform Plan proposes the establishment of a permanent Council on Public Assistance, housed in the new Department of Health and Public Welfare that would be composed of all intra- and inter-departmental agencies that administer public benefit programs, including within the new Department (e.g., TANF, CMS, and now SNAP and WIC), the USDA (e.g., remaining commodity-based programs), the Department of Housing and Urban Development, among others. The Council would have “statutory authority to establish certain cross-program policies, including on uniform work requirements.”⁴²⁷

While a part of the nation’s safety net, SNAP and the other non-commodity nutrition assistance programs are only one component and attention to each individual program’s interface with other safety net components is essential to overall evaluation and planning for improvement.⁴²⁸ Indeed, improved coordination and streamlining of eligibility requirements and certification periods across the existing social safety net would likely improve efficiencies and encourage participation. But moving the non-commodity nutrition assistance programs oddly separates the long-standing food assistance approach that now includes a suite of fifteen programs.⁴²⁹ Opportunity exists to explore how best to streamline these programs but separating them across two Departments is likely not the most efficient and effective way. These non-commodity nutrition assistance programs work with the USDA Center for Nutrition Policy and Promotion to put forth policies and programmatic approaches

⁴²⁷ *Id.*

⁴²⁸ MICHAEL WISEMAN, INST. RES. ON POVERTY, THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: CHAPTER 3 OF THE MIDDLE-CLASS SAFETY NET IN THE GREAT RECESSION: UNEMPLOYMENT INSURANCE AND SUPPLEMENTAL NUTRITION ASSISTANCE WORKING TOGETHER 1 (Oct. 26, 2017), <https://www.irp.wisc.edu/publications/dps/pdfs/dp143517.pdf>.

⁴²⁹ *Programs and Services*, U.S. DEP’T AGRIC. FOOD & NUTRITION SERV. (Mar. 26, 2018), <https://www.fns.usda.gov/programs-and-services>.

that aim to align with the latest *Dietary Guidelines for Americans*.⁴³⁰ Granted, the USDA works in partnership with HHS to develop and integrate the *Dietary Guidelines for Americans* into all relevant federal nutrition policies and programs.⁴³¹ Moreover, these non-commodity nutrition assistance programs have a long-standing history of working with SNAP-Ed, operated from FNS and NIFA, along with other USDA research agencies including ERS and the Agricultural Research Service (ARS), which supports national food consumption surveys, along with eight research centers often concentrating on the implications of federal food and nutrition assistance programs.⁴³² A Departmental divide might hinder access to program data, data sharing, analysts with the appropriate program knowledge and analytical skills, and/or introduce other administrative hurdles that might not justify such a significant reorganization. Furthermore, an important but overlooked part of re-envisioning our social assistance approach is how best to provide disaster relief.

Notwithstanding, the Reform Plan acknowledges a proposed reorganization of this nature requires Congressional approvals and the 115th and initial signs from the 116th Congress have given these public assistance reform plans little attention.⁴³³ Therefore, innovative policy and programmatic approaches to strengthen and streamline our social assistance at the national levels to best serve and support tribal, state, and local efforts, as well as the role of charitable organizations is needed. However, these approaches deserve objective, multidisciplinary analyses and rigorously evaluated demonstration projects to justify dismantling our domestic food and nutrition assistance programs.

⁴³⁰ *Supplemental Nutrition Assistance Program Education (SNAP-Ed)*, U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., <https://wicworks.fns.usda.gov/resources/wic-nutrition-education-guidance> (last visited Aug. 30, 2019); *WIC Works Resource System*, U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., <https://wicworks.fns.usda.gov/resources/wic-nutrition-education-guidance> (last visited Aug. 30, 2019).

⁴³¹ *Dietary Guidelines: Purpose*, U.S. DEP'T HEALTH & HUM. SERVS., OFF. DISEASE PREVENTION & HEALTH PROMOTION, <https://health.gov/dietaryguidelines/purpose.asp> (last visited Aug. 30, 2019).

⁴³² *Supplemental Nutrition Education Program – Education (SNAP-Ed)*, U.S. DEP'T AGRIC., NAT'L INST. FOOD & AGRIC., <https://nifa.usda.gov/program/supplemental-nutrition-education-program-education-snap-ed> (last visited Aug. 30, 2019).

⁴³³ DELIVERING GOVERNMENT SOLUTIONS, *supra* note 420, at 27–28.

iv. Reorganization of ERS and Proposed Relocations of ERS and NIFA

Secretary of Agriculture Sonny Perdue has proposed significant reorganizations of ERS and relocations of ERS and NIFA.⁴³⁴ Specifically, Secretary Perdue proposed ERS move out of the USDA's Research, Education, and Economics Mission Area and back into the Office of the Secretary, Office of the Chief Economist to enhance the effectiveness of economic analysis at USDA.⁴³⁵ In addition, the Secretary proposed to relocate ERS and NIFA out of the Washington, DC area to possibly the Midwest.⁴³⁶ The leases for the current headquarter facilities for both agencies are expiring and the Secretary indicated the rationale for these relocations were to improve USDA's ability to attract and retain highly qualified staff with training and interests in agriculture, place these important USDA resources closer stakeholders, and save on employment costs and rent.⁴³⁷ On the day of the announcement the ERS Administrator—a civil servant—was reassigned to another USDA agency and the position was posted for hire a few weeks later listing a Washington, DC location and this position has not yet been filled with a permanent hire.⁴³⁸

Before the shutdown, USDA indicated the exact location would be announced in early 2019, after an external review of the 136 possible options, and both agencies would be relocated by the end of fiscal year 2019.⁴³⁹ Key Congressional Committees have written to Secretary Perdue expressing concerns about these

⁴³⁴ Notice of Request for Expression of Interest for Potential Sites for Headquarters Office Locations, 83 Fed. Reg. 40499 (Aug. 15, 2018), <https://www.federalregister.gov/documents/2018/08/15/2018-17555/notice-of-request-for-expression-of-interest-for-potential-sites-for-headquarters-office-locations>; *USDA Extends Deadline for Expressions of Interest for New ERS and NIFA Headquarters*, U.S. DEP'T AGRIC. (Sept. 7, 2018), <https://www.usda.gov/media/press-releases/2018/09/07/usda-extends-deadline-expressions-interest-new-ers-nifa>.

⁴³⁵ Press Release, U.S. Dep't of Agric., USDA to Realign ERS with Chief Economist, Relocate ERS & NIFA Outside DC (Aug. 9, 2018) <https://www.usda.gov/media/press-releases/2018/08/09/usda-realign-ers-chief-economist-relocate-ers-nifa-outside-dc>.

⁴³⁶ *Id.*

⁴³⁷ *Id.*

⁴³⁸ *Administrator, United States Department of Agriculture, Economic Research Service*, AG-18-2019-0018, USAJOBS, <https://www.usajobs.gov/GetJob/ViewDetails/517636900> (last visited Aug. 30, 2019).

⁴³⁹ Hagstrom Report, *Perdue Responds on ERS, NIFA Moves as Opposition Continues*, FENCE POST (Sept. 25, 2018), <https://www.thefencepost.com/news/perdue-responds-on-ers-nifa-moves-as-opposition-continues/>.

proposals.⁴⁴⁰ Although Secretary Perdue has responded to Congressional members emphasizing these reorganization and relocation plans are sound, several former departmental and agency senior staff have criticized these proposals and numerous scientific and statistical societies, advocacy groups, among other stakeholders have as well.⁴⁴¹ During a webinar held on September 20, 2018, former departmental and agency staff called for Congress to delay or stop these proposed administrative changes through the pending agriculture appropriations or Farm Bill.⁴⁴² Additional calls were made for Congress to consider holding oversight hearings or request an independent study to evaluate the proposed changes including a cost-benefit analysis that examines, among other aspects of the move, employee hiring, recruiting, and retention data justifying the need for the move and the possible success of the proposed new location.⁴⁴³ On December 19, 2018, nine House Democrats introduced a bill aiming to prevent the USDA from reorganizing ERS

⁴⁴⁰ P. Roberts, Chairman & D. Stabenow, Ranking Member, *Letter to Secretary Sonny Perdue*, HAGSTROM REPORT (Sept. 7, 2018), http://www.hagstromreport.com/assets/2018/2018_0910_SenateAgLtr-ERS-NIFA.pdf?utm_source=MadMimi&utm_medium=email&utm_content=The+Hagstrom+Report+%7C+Monday+09_10_2018&utm_campaign=20180910_m147086427_The+Hagstrom+Report+%7C+Monday+09_10_2018&utm_term=Roberts_2Fstabenow+letter+to+Perdue.

⁴⁴¹ Jerry Hagstrom, *Perdue Responds on ERS, NIFA Moves as Opposition Continues*, AG POLICY BLOG (Sept. 25, 2018), <https://www.dtnpf.com/agriculture/web/ag/perspectives/blogs/ag-policy-blog/blog-post/2018/09/25/perdue-responds-ers-nifa-moves>; Am. Statistical Assoc. et al., *USDA Research Relocation and Reorganization: Perspectives from Former USDA Chief Scientists and Administrators*, ASSN. PUB. DATA USERS (Sept. 20, 2018), <http://apdu.org/2018/09/21/usda-research-relocation-and-reorganization-perspectives-from-former-usda-chief-scientists-and-administrators/>; M. Weaver, *Former NIFA Chief Questions USDA Decision to Relocate Institute*, CAPITAL PRESS (Aug. 15, 2018), http://www.capitalpress.com/Nation_World/20180815/former-nifa-chief-questions-usda-decision-to-relocate-institute; Mary Russell, *Academy of Nutrition and Dietetics Letter to USDA on Proposed Changes to NIFA and ERS*, EAT RIGHT PRO (Sept. 6, 2018), <https://www.eatrightpro.org/news-center/member-updates/from-our-leaders/academy-letter-to-usda-on-proposed-changes-to-nifa-and-ers>; Roger Johnson, *Letter to Secretary Sonny Perdue Regarding the Proposed ERS and NIFA Moves* (Sept. 18, 2018), <https://1yd7z7koz052nb8r33cfxyw5-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/09-18-18-Letter-to-Perdue-re-NIFA-and-ERS-.pdf>; Agric. & Applied Econ. Ass'n, *Letter to Chairmen, Roberts and Conaway and Ranking Member Stabenow and Peterson Regarding the Proposed ERS and NIFA Moves* (Aug. 28, 2018), <https://www.aaea.org/UserFiles/file/AAEA-USDAERSLetter-Final-AgCommittee.pdf>; Christine Aschwenden, *Is Trump Trying to Politicize Agricultural Data? Some Former USDA Officials Suspect Yes*, FIVETHIRTYEIGHT (Jan. 17, 2019), <https://fivethirtyeight.com/features/is-trump-trying-to-politicize-agricultural-data-some-former-usda-officials-suspect-yes/>.

⁴⁴² Am. Statistical Ass'n et al., *supra* note 444.

⁴⁴³ *Id.*

and NIFA and relocating these two agencies outside of the Washington, DC area.⁴⁴⁴

On December 21, 2018, right before the record-setting government shutdown started, Secretary Perdue announced the criteria the Department developed to evaluate the 136 Expressions of Interest received from parties in thirty-five states in request to the Department's public solicitation to become the new home to ERS and NIFA.⁴⁴⁵ With the assistance of Ernst & Young, the Department aims to apply a "set of guiding principles, including locations meeting USDA travel requirements, locations with specific labor force statistics, and locations with work hours most compatible with all USDA office schedules." In addition, the Department has further defined the following criteria to apply to the Expressions of Interests: quality of life (includes Diversity Index, Residential Housing, Access to Healthcare, and Home and Community Safety Rankings); Costs (Capital and Operating includes Cost of Living Adjustment, Commercial Real Estate Costs, Land Costs, and Wage Growth Rate); Workforce (includes Labor Force Growth Rate, Unemployment Rate, and the Labor Force Population); and Logistics/IT Infrastructure (includes Lodging Availability, Proximity to Stakeholders, and Travel Time to/from DC).

The Explanatory Statement of the budget agreement that finalized fiscal year 2019 Agricultural Appropriations called for "an indefinite delay" in reorganizing ERS and required the USDA to include cost estimates and research benefits related to the proposed relocation of ERS and NIFA in the upcoming fiscal year 2020 budget justification.⁴⁴⁶ Subsequently, more than a dozen House Democrats reintroduced standalone legislation to block the proposed reorganization and relocations, which stipulates the authority to administer ERS and NIFA is with the USDA Under Secretary for Research, Education, and Economics mission area and cannot be given over to another mission area or office within the

⁴⁴⁴ H.R. 7330, 115th Cong. (2d Sess. 2018), <https://pingree.house.gov/sites/pingree.house.gov/files/NIFAERS%20Bill%20.pdf>.

⁴⁴⁵ *Perdue Announces ERS, NIFA Site Selection Criteria* [Release No. 0282.18], U.S. DEP'T AGRIC. (Dec. 21, 2018), <https://www.usda.gov/media/press-releases/2018/12/21/perdue-announces-ers-nifa-site-selection-criteria>.

⁴⁴⁶ DIVISION A – AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2019, *supra* note 136, at 4.

Department.⁴⁴⁷ Secretary Perdue testified before the House Agriculture Committee on the state of the rural economy on February 27, 2019, during which time Representative Mike Conaway (R-Texas) recognized the Secretary's efforts to take on reorganizing the Department "head on."⁴⁴⁸ Secretary Perdue responded to questions from the Committee's new member, Representative Jahana Hayes (D-Connecticut) regarding the proposed reorganization and relocations by emphasizing parts of ERS and NIFA will remain in the Washington, DC area.⁴⁴⁹ Secretary Perdue also explained during his response to Representative Hayes how he believes aligning ERS with the Office of the Chief Economist will likely lessen any potential political interference since the head of both ERS and the Office of the Chief Economist are civil employees in contrast to ERS reporting to a politically appointed Under Secretary of Research, Education, and Economics.⁴⁵⁰ A few days later *Politico* scooped an internal list of seventy-six staffers from ERS that would remain in Washington, DC while the rest of the agency staff would be relocated.⁴⁵¹

While the President's budget proposals have not reflected Congressional appropriations, the fiscal year 2020 budget released on March 11, 2019 asked for relocation funds, significantly reduced ERS' budget, and cut staff at ERS by more than fifty percent, noting research that duplicates land-grant universities will be eliminated.⁴⁵² On March 27, 2019, the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Subcommittee held a hearing regarding the ERS and NIFA proposal.⁴⁵³ During this hearing, the Subcommittee Chairman

⁴⁴⁷ Press Release, Congresswoman Chellie Pingree, House Democrats Introduce Bill to Stop Research Agency Reorganization and Relocation (Dec. 20, 2018), <https://pingree.house.gov/news/documentsingle.aspx?DocumentID=239>.

⁴⁴⁸ *State of the Rural Economy*, C-SPAN (Feb. 27, 2019), <https://www.c-span.org/video/?458286-1/state-rural-economy>.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ Ryan McCrimmon, *Morning Agriculture: ERS Staff Tapped for Potential Relocations*, POLITICO, (Apr. 30, 2019), <https://www.politico.com/morningagriculture/re/>; see also Charles S. Clark, *GovExec: Agriculture Department Staff Given Marching Orders for Controversial Move*, G2XCHANGE.ETC (Mar. 7, 2019), <https://etc.g2xchange.com/statics/govexec-agriculture-department-staff-given-marching-orders-for-controversial-move/>.

⁴⁵² *President's FY 2020 Budget: Sustainable Agricultural Perspective*, NAT'L SUSTAINABLE AGRIC. COAL. (Mar. 19, 2019), <http://sustainableagriculture.net/blog/fy2020-presidents-budget-proposal/>.

⁴⁵³ *USDA's Proposed Relocation of the Economic Research Service and the National Institute of Food and Agriculture*, HOUSE COMM. ON APPROPRIATIONS (Mar. 27, 2019), <https://appropriations.house.gov/legislation/hearings/usda-s-proposed-relocation-of-the-economic-research-service-and-the-national>.

Representative Sanford Bishop (D-Ga) acknowledged thirty-two House Republicans wrote him and the Ranking Member a letter indicating their support of the Secretary's proposed relocations while several House Democrats expressed opposition to appropriating funds to support these relocations.⁴⁵⁴ Days later during an appropriations hearing, Secretary Perdue contended with Chairman Bishop (who is from the state Perdue was once Governor) that the proposed reorganization and relocations "maybe one of those areas where you and I are friends but will have to disagree over the issue going forward."⁴⁵⁵

On April 25, 2019, the Washington Post reported the Trump administration plans to move forward with the reorganization and relocations despite opposition.⁴⁵⁶ Secretary Perdue recently announced a "OneNeighborhood" initiative underway to consolidate Departmental offices into nearby workspaces.⁴⁵⁷ On May 3, 2019, Secretary Perdue announced a short list of three top locations with sufficient space to meet ERS and NIFA requirements: Indiana, Greater Kansas City Region, and North Carolina Research Triangle Region.⁴⁵⁸ During May and June 2019, ERS and NIFA voted to unionize and is represented by the American Federation of Government Employees (AFGE).⁴⁵⁹ *Politico* reported on how ERS employees feel the Trump administration is retaliating against the agency for publishing reports that did not support the

⁴⁵⁴ *USDA's Proposed Relocation of the Economic Research Service and the National Institute of Food and Agriculture*, HOUSE COMM. ON APPROPRIATIONS (Mar. 27, 2019), <https://appropriations.house.gov/legislation/hearings/usda-s-proposed-relocation-of-the-economic-research-service-and-the-national>.

⁴⁵⁵ Nicole Ogrysko, *Lawmakers, Perdue 'Agree to Disagree' Over Proposed USDA Relocation*, FED. NEWS NETWORK (Apr. 9, 2019), <https://federalnewsnetwork.com/agency-oversight/2019/04/lawmakers-perdue-agree-to-disagree-over-proposed-usda-relocation/>.

⁴⁵⁶ Ben Guarino, *Trump Administration Plans to Move USDA Research Divisions Despite Concerns*, WA. POST (Apr. 25, 2019), https://www.washingtonpost.com/science/2019/04/25/trump-administration-plans-move-usda-research-divisions-despite-concerns/?noredirect=on&utm_term=.dbd4b74de5e0.

⁴⁵⁷ Nicole Ogrysko, *On Heels of Proposed USDA Relocation, Perdue Announces Plans to Realign Employee Workspaces*, FED. NEWS NETWORK (Apr. 25, 2019), <https://federalnewsnetwork.com/workforce/2019/04/on-heels-of-proposed-usda-relocation-perdue-announces-plans-to-realign-employee-workspaces/>.

⁴⁵⁸ *Perdue Announces Top Sites for ERS and NIFA Relocations*, U.S. DEP'T OF AGRIC. (May 3, 2019), <https://www.usda.gov/media/press-releases/2019/05/03/perdue-announces-top-sites-ers-and-nifa-relocations>.

⁴⁵⁹ *Id.*

administration's agenda such as trade, farm subsidies, SNAP, and the environment.⁴⁶⁰

On June 13, 2019, Secretary Perdue announced the Kansas City region as the location for ERS and NIFA and ERS would remain in the USDA's Research, Education, and Economics Mission Area.⁴⁶¹ ERS and NIFA employees who do not move to Kansas City will be terminated effective September 30, 2019.⁴⁶² There continue to be various legislative actions expressing support for or alternatively exploring ways to prevent or, at least at this stage, monitor the relocations.⁴⁶³ In early August, the White House Chief of Staff Mick Mulvaney commented at a Republican party gala:

Now, it's nearly impossible to fire a federal worker
 . . . But simply saying to the people, you know what,
 we're going to take you outside the bubble, outside
 the Beltway, outside this liberal haven and move you
 out into the real part of the country, and they quit.
 What a wonderful way to streamline government

⁴⁶⁰ Ryan McCrimmon, *Economists Flee Agriculture Dept. After Feeling Punished Under Trump*, POLITICO (May 7, 2019), <https://www.politico.com/story/2019/05/07/agriculture-economists-leave-trump-1307146>; Jacqui Fatka, *ERS Employees Overwhelming Vote to Join Union*, FEEDSTUFFS (May 9, 2019), <https://www.feedstuffs.com/news/ers-employees-overwhelming-vote-join-union>.

⁴⁶¹ Press Release, U.S. Dep't Agric., Secretary Perdue Announces Kansas City Region as Location for ERS and NIFA (June 13, 2019), <https://www.usda.gov/media/press-releases/2019/06/13/secretary-perdue-announces-kansas-city-region-location-ers-and-nifa>.

⁴⁶² Ben Guarino, *Hundreds of USDA Employees to be Removed from their Jobs in September*, WA. POST (Aug. 7, 2019), <https://www.washingtonpost.com/science/2019/08/07/hundreds-usda-employees-be-removed-their-jobs-september/?noredirect=on>.

⁴⁶³ The House Committee on Agriculture Subcommittee on Biotechnology, Horticulture, and Research, Hearing: Examining the Impacts of Relocating USDA Research Agencies on Agriculture Research (June 5, 2019), <https://www.congress.gov/event/116th-congress/house-event/109580>; Press Release, U.S. House Comm. on Agric. Republicans, Dunn, Conaway: Relocation Discussion is a Distraction from Important Ag Issues (June 5, 2019), <https://republicans-agriculture.house.gov/news/documentsingle.aspx?DocumentID=6565>; Daniel J. Sernovitz, *Norton Throws Up Potential Roadblock to USDA Relocations*, WA. BUS. J. (June 26, 2019), <https://www.bizjournals.com/washington/news/2019/06/26/norton-throws-up-potential-roadblock-to-usda-moves.html>; Press Release, Chris Van Hollen, Van Hollen, Senators Introduce Bill to Bar USDA Research Agencies From Leaving National Capital Region (May 23, 2019), <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-senators-introduce-bill-to-bar-usda-research-agencies-from-leaving-national-capital-region>.

and do what we haven't been able to do for a long time.⁴⁶⁴

But, the USDA Office of Inspector General, among other federal watchdogs, indicate the relocations may have violated the 2018 appropriations act.⁴⁶⁵ Most recently, and after about two-thirds of affected employees declined relocation, the USDA agreed to key union demands and will allow employees who agree to relocate to telework through the end of the year, with an option to extend and these employees will also be given a bonus equal to one month's pay to help compensate for the loss of income incurred by the employees moving from the higher wage Washington, DC area to Kansas City region.⁴⁶⁶

Thus, it's unknown at this time how these relocations will impact the quality and quantity of research used to inform SNAP policy and programmatic decisions or set precedent for similar federal agency relocations.

v. Reorganization of the USDA Center for Nutrition Policy and Promotion

Using the authority of Executive Order 13781, Secretary Perdue already reorganized the USDA Center for Nutrition Policy and Promotion (CNPP) by eliminating the former politically-appointed Executive Director of CNPP position and merging the

⁴⁶⁴ *White House Chief of Staff Offers New Reasoning for Relocations*, FED. MANAGER (Aug. 6, 2019), <https://www.fedmanager.com/featured/3405-white-house-chief-of-staff-offers-new-reasoning-for-relocations>; Editorial Board, *The Administration Said It Was Moving These Agencies For Efficiency. Now the Truth Comes Out*, WA. POST (Aug. 10, 2019), https://www.washingtonpost.com/opinions/the-administration-said-it-was-moving-these-agencies-for-efficiency-now-the-truth-comes-out/2019/08/10/854ccd10-b91a-11e9-b3b4-2bb69e8c4e39_story.html?no-redirect=on.

⁴⁶⁵ The United States Department of Agriculture Office of Inspector General, *USDA's Proposal to Reorganize and Relocate the Economic Research Service and National Institute of Food and Agriculture*, Inspection Report 918991-0001-223 (Aug. 2019), <https://www.usda.gov/oig/webdocs/91801-0001-23.pdf>; see also Ben Guarino, *USDA Science Agencies' Relocation May Have Violated Law, Inspector General Report Says*, WA. POST (Aug. 6, 2019), <https://www.washingtonpost.com/science/2019/08/05/usda-science-agencies-relocation-may-have-violated-law-inspector-general-report-says/?no-redirect=on>; Eric Katz, *USDA Office Relocations Are Illegal, IG Says*, GOV'T EXEC. (Aug. 6, 2019), <https://www.govexec.com/oversight/2019/08/usda-relocations-are-illegal-ig-says/158955/>.

⁴⁶⁶ Rebecca Beitsch, *USDA Eases Relocation Timeline as Researchers Flee Agency*, THE HILL (Aug. 13, 2019), <https://www.msn.com/en-us/news/politics/usda-eases-relocation-timeline-as-researchers-flee-agency/ar-AAFAzHp>.

Center into the Food and Nutrition Service (FNS).⁴⁶⁷ The Bipartisan Policy Center SNAP Task Force urged that this CNPP reorganization be better leveraged to “consolidate responsibility for overseeing the Food and Nutrition Service’s nutrition and public health missions through a new Food and Nutrition Service deputy administrator/CNPP director position.”⁴⁶⁸ Only recently was this new Deputy Administrator, CNPP position announced for hire; there is no requirement for an advanced nutrition or public health degree in the position description.⁴⁶⁹ CNPP works with the Department of Health and Human Services Office of Health Promotion and Disease Prevention to develop the *Dietary Guidelines for Americans* that underlay SNAP nutrition policy.⁴⁷⁰ This work includes housing the USDA’s Nutrition Evidence Library (NEL), which “has dedicated staff that collaborates with leading scientists to objectively review, evaluate, and synthesize research using state-of-the-art methodology to answer important food- and nutrition-related public health questions.”⁴⁷¹ NEL was recently renamed to the Nutrition Evidence Systematic Review (NESR).⁴⁷²

In the Agricultural Act of 2014, Congress mandated the *Dietary Guidelines for Americans* expand to infants and toddlers from birth to age two and provide additional guidance for pregnant and lactating women.⁴⁷³ In addition, as part of fiscal year 2016 appropriations, Congress mandated the review of the guidelines’ developmental process, which resulted in two study reports from the National Academies of Science recommending significant

⁴⁶⁷ Press Release, U.S. Dep’t Agric., Secretary Perdue Announces USDA Improvements for Consumer Service & Efficiency (Sept. 7, 2017), <https://www.usda.gov/media/press-releases/2017/09/07/secretary-perdue-announce-s-usda-improvements-customer-service>; see also *Improving Customer Service*, 82 F.R. 42,781 (Oct. 17, 2017), <https://www.federalregister.gov/documents/2017/09/12/2017-19337/improving-customer-service>.

⁴⁶⁸ LEADING WITH NUTRITION: LEVERAGING FEDERAL PROGRAMS FOR BETTER HEALTH: RECOMMENDATIONS FROM THE BPC SNAP TASK FORCE 7, BIPARTISAN POL’Y CTR. (2018), <https://bipartisanpolicy.org/library/leading-with-nutrition-leveraging-federal-programs-for-better-health/>.

⁴⁶⁹ *Deputy Administrator, Center for Nutrition Policy and Promotion, United States Department of Agriculture Food and Nutrition Service, FNS-SES-2019-1301*, USAJOBS, <https://www.usajobs.gov/GetJob/ViewDetails/531510600> (last visited Aug. 30, 2019).

⁴⁷⁰ *Dietary Guidelines for Americans*, U.S. DEP’T AGRIC., FOOD & NUTRITION SERV. (Dec. 19, 2018), <https://www.fns.usda.gov/resource/dietary-guidelines-americans>.

⁴⁷¹ Julie E. Obbagy, et al., *Systematic Review Methods for Pregnancy and Birth to 24 Month Project*, 109 J. CLINICAL NUTRITION 698s, 698s (Mar. 2019), https://academic.oup.com/ajcn/article/109/Supplement_1/698S/5184397.

⁴⁷² *About NESR*, U.S. DEP’T AGRIC., NUTRITION EVIDENCE SYSTEMATIC REV., <https://nesr.usda.gov/> (last visited May 14, 2019).

⁴⁷³ H.R. 2642, *supra* note 203.

opportunities for improving the overall process.⁴⁷⁴ In the fiscal year 2019 Agricultural Appropriations package, Congress asked the USDA to report within six months on how it is modifying its approach to drafting the *Dietary Guidelines for Americans* and appropriated more than twelve million dollars through September 2021 towards this developmental process.⁴⁷⁵ The process for developing the *Dietary Guidelines for Americans* is behind schedule and was impacted by the historic shutdown.⁴⁷⁶ Recently, the twenty-member 2020 Dietary Guidelines Advisory Committee was announced.⁴⁷⁷ Known as the DGAC, this Federal advisory committee kicked off about eighteen months of work at their first public meeting this past March 2019.⁴⁷⁸ While the new *Dietary Guidelines* will come out sometime closer to 2020 and CNPP will subsequently roll out relevant nutrition messages and materials, Secretary Perdue recently introduced the *Start Simple with MyPlate* campaign since most Americans “lack the motivation and skills to make changes to their eating routines.”⁴⁷⁹ In May 2019, Secretary Perdue met with developers of mobile technology and leaders of rescue missions, among other stakeholders, to discuss how to help people get access to nutritious food and achieve self-sufficiency.⁴⁸⁰ More work is needed to understand the impacts the dietary guidelines process, messages, and related activities on SNAP and SNAP-Ed policy and programmatic approaches has on the participation, eating patterns, and health outcomes of SNAP participants and those eligible to participate.

⁴⁷⁴ *Review of the Process to Update the Dietary Guidelines for Americans*, NAT’L ACAD. SCI. ENG’G & MED. (Oct. 8, 2018), <http://nationalacademies.org/hmd/Activities/Nutrition/DietaryGuidelinesforAmericans.aspx>.

⁴⁷⁵ DIVISION A – AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, *supra* note 136.

⁴⁷⁶ Sarah Reinhardt, *What’s for Dinner? A Preview of the People, Process, and Politics Updating Federal Dietary Guidelines*, UNION OF CONCERNED SCIENTISTS (Sept. 17, 2018), <https://blog.ucsusa.org/sarah-reinhardt/whats-for-dinner-a-preview-of-the-people-process-and-politics-updating-federal-dietary-guidelines>.

⁴⁷⁷ Press Release, U.S. Dep’t Agric. Members of the 2020 Dietary Guidelines Advisory Committee Announced (Feb. 21, 2019), <https://www.usda.gov/media/press-releases/2019/02/21/members-2020-dietary-guidelines-advisory-committee-announced>.

⁴⁷⁸ *2020 Dietary Guidelines Advisory Committee*, DIETARY GUIDELINES COMM., <https://www.dietaryguidelines.gov/work-under-way/review-science/public-meetings/meeting-1> (last visited May 14, 2019); NAT’L ACAD. SCI. ENG’G & MED., *REDESIGNING THE PROCESS FOR ESTABLISHING THE DIETARY GUIDELINES FOR AMERICANS* 26 (2017), <https://www.nap.edu/read/24883/chapter/3#26>.

⁴⁷⁹ U.S. Dep’t Agric., *Start Simple with MyPlate*, YOUTUBE (Mar. 13, 2019), https://www.youtube.com/watch?v=W7_j5tY-5BY&feature=youtu.be.

⁴⁸⁰ *Perdue Enlists American Innovators to Advance Self-Sufficiency*, U.S. DEP’T AGRIC. FOOD & NUTRITION SERV. (May 8, 2019), <https://www.fns.usda.gov/press-release/2019/fns-000419>.

vi. Reorganization of the USDA Civil Rights Activities

Consistent with Executive Order 13781 calling for Executive Branch reorganization, Secretary Perdue is reorganizing the USDA's civil rights activities.⁴⁸¹ These activities include managing complaints regarding the fair and equitable treatment of USDA customers and employees participating in or working on the suite of fifteen federal food and nutrition assistance programs the USDA administers.⁴⁸²

vii. President Trump's Administrative Actions Summary

Altogether, a variety of administrative proposals and actions taken by the Trump administration to date have direct and indirect SNAP implications and should be monitored to ensure the relevant SNAP personnel and agencies produce the most efficient, effective, and positive impacts on SNAP participants and SNAP-eligible individuals and households. In particular, the short- and long-term implications of the CNPP and Civil Rights activities reorganizations merit further attention and could provide timely insights on the Department's capacity to reorganize and move much larger agencies, ERS and NIFA.

V. Conclusion

The evolution of the legislative, executive, and judiciary actions aiming to address food insecurity and improve nutrition through the Food Stamp Program now known as SNAP provides fundamental insights. Together, these insights help to analyze the strengths and limitations of the SNAP provisions of the 2018 Farm Bill, recent and pending agricultural appropriations, Congressional oversight (in)activities, along with the actions taken thus far by the Trump administration. Without question, ensuring SNAP promotes food security and improves nutrition requires innovative approaches. Multidisciplinary data from independent, objective sources is a critical ingredient to help sustain or implement new federal food and nutrition assistance policy and programmatic approaches at the federal, tribal, state, and local levels. Evidence demonstrates SNAP directly and indirectly affects participants, farmers, food retailers, food and beverage manufacturers, and taxpayers in the short- and

⁴⁸¹ Strengthening Civil Rights Management, 83 F.R. 10,825 (Mar. 25, 2018), <https://www.federalregister.gov/documents/2018/03/13/2018-05051/strengthening-civil-rights-management>.

⁴⁸² *Id.*

long-term across a variety of economic and health outcomes. More data driven, bipartisan work is needed to positively shape SNAP's public health impacts—from participation, product, and retailer eligibility to infrastructural, technical assistance, and innovative nutrition education and obesity prevention grant funding. This data must garner interdepartmental and multi-jurisdictional insights and ideally factor in participant and retailer perspectives. And gradually, we will hopefully see an evolution of SNAP and the nation's social safety net that better meets participant and stakeholder needs and adapts, as necessary, to modern technology, up-to-date science, and ever-changing circumstances.

Table 1: Selected policy and programmatic developments emerging from the legislative, executive, and judicial branches of the United States Government shaping the United States Department of Agriculture Supplemental Nutrition Assistance Program⁴⁸³

<p>Agricultural Adjustment Act – 1935 (P.L. 74-320) Provided funding to encourage domestic consumption of agricultural commodities.</p>
<p>The First Food Stamp Program (FSP) – 1939 Secretary of Agriculture cites problems with the commodity distribution program and initiates the first, experimental food stamp program where people on relief were able to buy orange stamps equal to their normal food expenditures and for every \$1 worth of orange stamps purchased that could be used to buy any food, 50 cents worth of blue stamps were received and could be used to buy food determined by the Department to be surplus.</p>

⁴⁸³ See *A Short History of SNAP*, U.S. DEP'T AGRIC. FOOD & NUTRITION SERV. (Sept. 17, 2018), <https://www.fns.usda.gov/snap/short-history-snap>; *Supplemental Nutrition Assistance Program (SNAP) Legislation*, U.S. DEP'T AGRIC. FOOD & NUTRITION SERV. (Oct. 24, 2018), <https://www.fns.usda.gov/snap/legislation>; COMMITTEE ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS ET AL., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: EXAMINING THE EVIDENCE TO DEFINE BENEFIT ADEQUACY (Caswell JA & Yaktine AL eds., 2013); AUSSENBERG RA & COLELLO KJ, CRS, DOMESTIC FOOD ASSISTANCE: SUMMARY OF PROGRAMS (2018), <https://fas.org/spp/crs/misc/R42353.pdf>; Rachel Ehrenberg, *The Growth of US farming and the Farm Bill*, KNOWABLE MAGAZINE (Sept. 6, 2018), <https://www.knowablemagazine.org/article/society/2018/growth-us-farming-and-farm-bill>.

Agricultural Trade Development and Assistance Act – 1959
(P.L. 86-341)

Authorized the Secretary of Agriculture to distribute surplus food and issue food stamps redeemable by eligible needy persons through January 31, 1962. But this authority was not used by the Eisenhower administration.

President Kennedy’s First Executive Order 10914 – Providing for an Expanded Program of Food Distribution to Needy Families - 1961

Authorized the Secretary of Agriculture to expand and improve the program of food distribution throughout the US and initiated Food Stamp pilot programs which required participants to purchase food stamps but eliminated special stamps for surplus foods and ultimately expanded to forty counties and three cities in twenty-two states with 380,000 participants.

Food Stamp Act – 1964 (P.L. 88-535)

Authorized the Secretary of Agriculture to administer a permanent food stamp program that would provide eligible households to obtain a nutritionally adequate diet through the issuance of a coupon allotment which shall have a greater monetary value than their normal expenditures for food; required states to develop participant eligibility standards; and established eligibility standards for foods permitted to be purchased with food stamps.

The Food Stamp Act Amendment – 1970 (P.L. 91-671)

Established uniform national standards for eligibility and work registration requirements; required that allotments be equivalent to the cost of a nutritionally adequate diet; and instituted an outreach requirement.

Kentucky Fried Chicken of Cleveland v. United States – 1971
(449 F.2d 255)

Secretary of Agriculture acted within his scope of authority granted under the Food Stamp Act of 1964 in denying the applicant fast-food restaurant request to participate as a “retail food store” in the Food Stamp Program and only approved grocery establishments which stock a large number of low-cost staples.

United States Department of Agriculture v. Moreno – 1973
(413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d 782, 1973)

An amendment to the Food Stamp Act prevented households made up of unrelated individuals from participating in the federal food stamp program and a class action suit was brought and the amendment was found to violate the Due Process clause of the Fifth Amendment since it is without any rational basis for not allowing unrelated people to participate in the program.

<p>Agriculture and Consumer Protection Act – 1973 (P.L. 93-86) Required states to expand the program to every political jurisdiction; expanded program to individuals in treatment and rehabilitation centers for substance abuse; established bi-monthly issuance; authorized the USDA to establish temporary eligibility standards for disasters; and added a new category of seeds and plants as eligible purchases with SNAP benefits.</p>
<p>Agriculture and Consumer Act Amendments – 1974 (P.L. 93-347) Authorized the USDA to pay fifty percent of all states' costs for administrating the program and established the requirement for efficient and effective administration by the states.</p>
<p>The Agricultural Act of 1970 Amendments – 1974 (P.L. 93-86) Authorized the food stamp program to operate nationwide.</p>
<p>The Food and Agriculture Act – 1977 (P.L. 95-113) Eliminated the purchase requirement; eliminated categorical eligibility; established statutory income eligibility guidelines at the poverty line and a number of other provisions related to eligibility; established a job search requirement for nonexempt work registrants; restricted eligibility for students and aliens; established that authorized stores must sell a substantial amount of staple foods; introduced demonstration project authority; and established various access and integrity provisions.</p>
<p>Omnibus Budget Reconciliation Act – 1981 (P.L. 97-35) Established various income eligibility provisions and prohibited program funds supporting outreach activities.</p>
<p>Omnibus Budget Reconciliation Act – 1982 (P.L. 97-253) Established various income eligibility provisions; adjusted the Thrifty Food Plan; and permits alternative issuance system.</p>
<p>Emergency Food Assistance Act – 1983 (P.L. 93-86) Grants authority to the Secretary of Agriculture to establish temporary emergency standards of eligibility for the direction of an emergency without regard to income and other financial resources.</p>
<p>The Food Stamp Act – 1985 (P.L. 99-198) Required states to implement an Employment and Training program.</p>
<p>The Hunger Prevention Act – 1988 (P.L. 100-435) Permitted pilot projects to test whether the use of benefit cards or other automated or electronic benefit delivery systems could enhance efficiency and effectiveness of operations for both program administrators and receipts.</p>

The Food, Agriculture, Conservation, and Trade Act – 1990 (P.L. 101-624)

Established electronic benefit transfers as an issuance alternative and allowed for electronic benefit transfer demonstration projects; and authorized food stamp program nutrition education cost sharing option with states, which only seven states utilized in fiscal year 1992.

The Mickey Leland Childhood Hunger Relief Act – 1993 (P.L. 103-66)

Encourages state agencies to develop and establish electronic benefit transfer systems.

Aiman Ghatts, Doing Business as A & M Food Shop v. United States Department of Agriculture – 1994 (40 F.3d 281, 8th Cir. 1994)

The court reversed the Secretary of Agriculture's permanent retailer disqualification of the plaintiff that was imposed by the Secretary under the authority granted by the Food Stamp Act, as a result of the plaintiff's employee's role in trafficking benefits and remanded the case for further administrative proceedings addressing the alternative monetary sanction issue.

The Personal Responsibility and Work Opportunity Reconciliation Act and Other Legislative Actions – 1996 (P.L. 104-193)

Mandated states implement electronic benefit transfer systems; placed a time limit on able-bodied adults without dependents who are not working at least twenty hours a week or participating in a work program; restricted benefits for legal immigrants; and reduced maximum benefits.

The Balanced Budget Act – 1997 (P.L. 105-33)

Put forth provisions for how to fund state agencies' nutrition education plans and employment and training activities.

The Agricultural Research, Education, and Extension Act – 1998 (P.L. 105-185)

Reduces funding of employment and training programs and payments for administrative costs to State agencies; revises eligibility for certain disabled aliens, Indians, elderly individuals, children, and Hmong and Highland Laotians.

The Electronic Benefit Transfer Interoperability and Portability Act – 2000 (P.L. 106-171)

Puts forth a national standard for electronic benefit transfer systems.

Agriculture Appropriations – 2001 (P.L. 106-387)

Increased the excess shelter cap and indexed the cap to changes in the Consumer Price Index for all consumers; and allowed states flexibility in the vehicle limit.

The Farm Security and Rural Investment Act – 2002 (P.L. 107-171)

Restored eligibility to qualified aliens and immigrants meeting specified criteria; allowed states options to simplify the program; reduced employment and training funding; eliminated the cost neutrality requirement for electronic benefit transfer systems; and allowed group homes and institutions to redeem electronic benefit transfer benefits through banks in areas where electronic benefit transfer systems had not been implemented.

The Food, Conservation, and Energy Act – 2008 (P.L. 110-234)

Changed the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP) to emphasize the program's nutrition impacts; institutionalized various policies to enhance program access, administration, and integrity; provided mandatory funding for the Healthy Incentives Pilot to test point-of-purchase incentives for healthful foods; and stipulated states must issue monthly benefit allotments to individuals in one lump sum unless a benefit correction is necessary.

American Recovery & Reinvestment Act – 2009 (P.L. 111-5)

Increased SNAP benefit levels between April 1, 2009 and October 31, 2013.

Healthy, Hunger-Free Kids Act – 2010 (P.L. 111-296)

Restructured SNAP-Ed as the Nutrition Education and Obesity Prevention Grant Program, allowing states to focus on policy, systems, and environmental change interventions.

Agricultural Act – 2014 (P.L. 113-79)

Required the USDA to update the stocking standards for authorized SNAP retailers; required retailers pay for electronic benefit transfer equipment; required states to submit plans and reports if they elect to operate a restaurant meals program for the homeless, elderly, and/or disabled; and permitted physical activity as a nutrition education activity.

Workforce Investment Act – 1998 (P.L. 113-128)

Amended employment and training program provisions of the Food and Nutrition Act of 2008.

Argus Leader v. United States Department of Agriculture – 2018 (740 F.3d 1172-75 (8th Cir. 2014) and 2018 appeal from Intervenor Defendant, Food Marketing Institute)

Ruled Exemption 3 and 4 of the Freedom of Information Act does not apply to data showing how much retailers participating in SNAP receive each year. The Supreme Court Justice Neil Gorsuch stayed the lower court's order requiring the disclosure of how much money retail food outlets earn from SNAP transactions until the plaintiff, Argus Leader, responds to the Food Marketing

<p>Institute’s request to appeal to the US Supreme Court. On June 24, 2019, the Supreme Court held that commercial information submitted to the federal government qualifies as “confidential” under the Freedom of Information Act’s Exemption 4 when, at a minimum, it is “actually” and “customarily” “kept private” and the federal government provides assurances that the information will be maintained in confidence.</p>
<p>The Agricultural Improvement Act – 2018 (P.L. 115-334) Establishes an interstate data system to prevent the simultaneous issuance of SNAP benefits to an individual by more than one state; increased mandatory commitments to the Food Insecurity Nutrition Incentive Program over five years and proposed to rename the program to Gus Schumacher Food Insecurity Nutrition Incentive Program in honor of an integral champion of this program who recently passed away and requires the USDA Secretary to issue guidance clarifying the process for retailers to seek waivers to offer SNAP consumers incentives for purchasing SNAP-eligible staple foods, which were expanded to include whole grains and dairy; preserves states’ option to eliminate asset tests; enhances and increases funding for SNAP Employment and Training operations; requires Secretary of Agriculture to reevaluate and publish The Thrifty Food Plan every five years; makes slight modifications to SNAP Nutrition Education (SNAP-Ed) including directs the Administrator of USDA’s Food and Nutrition Service to consult with the Director of the National Institute of Food and Agriculture (NIFA); eliminates state performance bonuses; makes slight adjustments to electronic benefit transfer system rules; and establishes a pilot Produce Prescription Program.</p>

Table 2: A summation of the emerging legislative branch developments affecting the United States Department of Agriculture Supplemental Nutrition Assistance Program

Legislative Development	Status
Block Grants	Initial 2018 Farm Bill discussions re-explored combining safety net programs into a meta-block grant to States where each State would receive a fixed, annual amount of funding for several safety net programs including SNAP, an entitlement program. The 2018

<p><i>Other</i></p>	<p>aiming to strengthen the criteria for mandatory SNAP work requirements and significantly restrict State waiver allowance. Legislation has been introduced to prevent the USDA from implementing the proposed rule. In addition, Title 1 of a Rules Committee package (H.Res. 6) directs the House of Representatives' Office of General Counsel to explore legal options for responding to the proposed SNAP rule, recognizing, in part, Congress had the opportunity to address work requirements in the 2018 Farm Bill and did not.</p> <p>Other eligibility related legislative actions in the 2018 Farm Bill included simplifying homeless housing cost provisions, preserving states' option to coordinate SNAP benefits with low-income energy payments assistance (i.e., helping households "afford to heat and eat"), rejecting a lifetime ban on individuals convicted of certain felonies, and eliminating state performance bonuses to recognize best or most-improved in SNAP operations that have been historically reinvested in supporting SNAP integrity and effectiveness.</p>
<p>Benefit</p> <p><i>Adequacy</i></p>	<p>The 2018 Farm Bill requires the USDA Secretary to re-evaluate and publish the Thrifty Food Plan every five years based on dietary guidance, food prices, food composition data, and consumption patterns. A legal battle is underway against the USDA regarding SNAP</p>

	<p>the summer but future legislative action might occur as the Child Nutrition Reauthorization processes get underway. The 2018 Farm Bill requires nationwide implementation of online acceptance for SNAP benefits after the pilots required in the 2014 Farm Bill are implemented. A Supreme Court decision protected SNAP redemption data at the retailer level (online or brick or mortar) as confidential business information; maintaining the existing standard and protecting traditional confidential business information that could be accessed through Freedom of Information Act (FOIA) requests.</p>
<p>Appropriations</p>	<p>Agriculture and related agencies' appropriations for fiscal year 2017 and fiscal year 2018 provided about \$74 billion to SNAP in required mandatory spending plus a reserve fund for any unexpected participation increases. For fiscal year 2019, the government was partially closed for a record-long thirty-five days due to a conflict between President Trump and Congress regarding the lack of funding of the US-Mexico border wall. Ultimately, a three week short-term continuing resolution was passed to end the shutdown. The inability to timely finalize fiscal year 2019 Agricultural Appropriations resulted in unprecedented SNAP benefit issuance logistical, communication, and health implications. In addition, the record long shutdown resulted in unpaid federal workers, contractors, among others, who had</p>

	<p>not been paid for almost two bimonthly paid dates that could potentially have been eligible for SNAP, among other federal food and nutrition assistance programs. Moreover, these furloughed workers were tapping into the charitable food system that many SNAP participants or SNAP eligible families depend on regularly. Near the end of the short-term resolution, fiscal year 2019 appropriations were finally passed and provided about \$74 million to SNAP plus a reserve fund, along with accompanying Congressional Directives relevant to SNAP. A two year budget deal was approved to increase budget caps (P.L. 116-37). The House Appropriations Committee proposed \$71.1 billion in required mandatory spending for SNAP. The Senate Appropriations Committee has conducted hearings regarding fiscal year 2020 appropriations. Another partial government shutdown is possible as Congress works to finalize bills for fifteen agencies after its August recess.</p>
<p>Oversight</p>	<p>A record number of hearings reviewing SNAP were held over the course of the 114th Congress, totaling sixty witnesses in sixteen hearings and a report was published synthesizing the findings. Congressional letters of inquiry have been submitted to the USDA regarding the proposed relocation of the Economic Research Service (ERS) and the National Institute of Food and Agriculture (NIFA) and a recent hearing regarding the proposed changes was held by the</p>

<p><i>Enhancing Minimum Stocking Standards</i></p>	<p>Secretary of Agriculture was authorized to use \$4,000,000 for each of fiscal years 2019 through 2023. For retailer funded incentive programs, the 2018 Farm Bill requires the USDA Secretary to issue guidance clarifying the process for retailers to seek waivers to offer SNAP consumers incentives for purchasing healthy SNAP-eligible staple foods.</p> <p>The Agricultural Act of 2014 required the USDA to update the stocking standards for authorized SNAP retailers. The USDA rule making process involved hosting listening sessions, calls for public comments, and conducting regulatory impact analyses, as well as extensions, delays, and technical assistance. Implementation of the final rule that now requires SNAP authorized stores to meet one of two staple food requirements was completed in January 2018. Fiscal Year 2019 Agricultural Appropriations prohibited the use of any funds to be used to implement, administer, or enforce the “variety” requirements of this final rule until the Secretary of Agriculture amends the definition of the term to increase the number of items that qualify as acceptable varieties in each staple food category. On April 5, 2019, the USDA published a proposed rule that would provide regulatory flexibility for retailers in SNAP in meeting the 2016 final rule, by only modifying the definition of the term “variety”.</p>
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<p><i>National Healthy Food Financing Initiative</i></p>	<p>In the Agricultural Act of 2014, the Secretary of Agriculture was given enhanced authority and appropriated \$125,000,000 to establish HFFI. In fiscal years 2017 and 2018, Congress appropriated one million to launch HFFI at USDA. The 2018 Farm Bill made slight amendments to the HFFI, including expanding eligible projects beyond retail to include food hubs, mobile markets, direct to consumer markets, and food business incubators. In fiscal year 2019, not less than \$22,000,000 was appropriated. In both the House (H.R. 1717) and Senate (S.786), bills have been reintroduced to amend the Internal Revenue Code of 1986 to establish a new tax credit and grant program to stimulate investment and healthy retail options in food deserts.</p>
<p><i>Nutrition Education and Promotion</i></p>	<p>The 2018 Farm Bill only made modest modifications to SNAP-Ed. The House proposal to merge SNAP-Ed and the Expanded Food and Nutrition Education Program (EFNEP) was rejected and instead the 2018 Farm Bill encourages better coordination across the two programs, including requiring an annual report to Congress detailing the evaluation of the level of coordination between SNAP-Ed, EFNEP, and other USDA nutrition education programs. The 2018 Farm Bill requires SNAP-Ed programs to use an electronic reporting system to measure and evaluate projects and account for state administrative costs. In addition, the 2018 Farm Bill establishes an online information</p>

	<p>clearinghouse to share best practices in planning, implementing, and evaluating SNAP-Ed programs. The USDA Secretary is required to provide technical assistance to state agencies in developing and implementing SNAP-Ed plans and state agencies are required to submit an annual SNAP-Ed report to the USDA Secretary. For fiscal year 2019, \$433,000,000 was appropriated for nutrition education services.</p>
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Table 3: A summation of the emerging executive branch developments affecting the United States Department of Agriculture Supplemental Nutrition Assistance Program

Executive Development	Status
<p>America’s Harvest Box</p>	<p>The America’s Harvest Box was put forth in the President’s fiscal year 2019 budget and reappeared again in Secretary Perdue’s fiscal year 2020 budget discussions. Under this proposed approach to support the President’s leadership on Buy American, all SNAP participating households receiving \$90 per month or more in SNAP benefits would receive a package of nutritious, one hundred percent US grown and produced food and the remainder of the benefits would be provided via electronic benefit transfer cards. States would be given flexibility in distributing these boxes to participants. Recent stories discuss the new “Meals to You” program offered through funding by the USDA FNS, which offers a box including the</p>

	equivalent of five breakfasts, lunches, and snacks per student delivered to each participating student's door via UPS during the summer months.
SNAP Budget Cuts	President Trump's fiscal years 2018, 2019, and 2020 budgets consistently proposed massive cuts to SNAP and included provisions to reconfigure the program by establishing a State match, limit categorical eligibility and the use of waivers that exempt able-bodied adults without dependents from work, and establish application fees for retailers seeking to participate in SNAP. The President also ordered all federal agencies to cut spending by five percent for fiscal year 2019 and again for fiscal year 2020.
Disaster Assistance through SNAP	The Trump administration has responded to a variety of hurricanes, wild fires, floods, and other natural disasters thus far using the USDA's Disaster Supplemental Nutrition Assistance Program (D-SNAP). Congressional supplemental appropriations have also helped provide relief and on June 6, 2019 a \$19.1 billion standalone disaster supplemental bill was enacted.
Immigration	President Trump has taken a variety of actions ranging from executive orders, budget cuts, and administrative agency initiatives that raise concern over immigrant participation in federal food and nutrition assistance programs including SNAP. The most recent explicit action that involved SNAP was a

	<p>proposed rulemaking notice by the Department of Homeland Security that indicates immigrants could potentially be denied “lawful permanent residency” if they have received certain government benefits, including SNAP, or if the government anticipates they may seek government benefits in the future. Known as the “public charge rule,” the Trump administration would significantly expand the 1999 Interim Field Guidance that defined dependence on government assistance as participation in cash assistance or long-term institutionalized care. The sixty-day public comment period closed on December 10, 2018 and more than 216,000 comments have been submitted. A final rule was put forth on August 12, 2019.</p>
<p>Trade</p>	<p>In an effort to bail out farmers affected by the President’s recent tariffs on Chinese imports and resulting Chinese tariffs on US goods, the Trump administration purchased \$1.2 billion commodities from farmers and distributed them through the child nutrition and emergency food assistance programs. Another similar bailout followed.</p>
<p>Administrative Actions</p> <p><i>Hiring Freeze</i></p>	<p>On January 23, 2017, President Trump signed a Presidential Memorandum instituting a ninety-day hiring freeze for United States federal employees.</p>

	<p>Trump, one of the thirty-two organizational realignments to enhance mission and service delivery was to move the non-commodity nutrition assistance programs (i.e., the “near-cash” benefit programs such as electronic benefit transfers or vouchers) from the USDA to a newly named Department of Health and Public Welfare, which is currently known as the Department of Health and Human Services. These non-commodity nutrition assistance programs include: SNAP, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program (CACFP), and the Farmers’ Market Nutrition Programs. In addition, the Trump Administration’s Reform Plan proposes the establishment of a permanent Council on Public Assistance, housed in the new Department of Health and Public Welfare that would be composed of all intra- and inter-departmental agencies that administer public benefit programs, including within the new Department (e.g., TANF, CMS, and now SNAP and WIC), the USDA (e.g., remaining commodity-based programs), and the Department of Housing and Urban Development, among others. The Council would have statutory authority to establish certain cross-program policies, including on uniform work requirements. The Reform Plan</p>
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<p><i>Reorganization of ERS and Proposed Relocations of ERS and NIFA</i></p>	<p>acknowledges a proposed reorganization of this nature requires Congressional approvals and the 115th and initial signs from the 116th Congress have given these public assistance reform plans little attention.</p> <p>Secretary Perdue proposed ERS move out of the USDA's Research, Education, and Economics (REE) Mission Area and back into the Office of the Secretary, Office of the Chief Economist to enhance the effectiveness of economic analysis at USDA. In addition, the Secretary proposed to relocate ERS and NIFA out of the Washington, District of Columbia area to possibly the Midwest. Congressional letters of inquiry and a recent hearing have debated the rationale for these proposals. On June 13, 2019, Secretary Perdue announced the Kansas City region as the new location for ERS and NIFA and that ERS will remain in the REE Mission Area.</p>
<p><i>Reorganization of the USDA Center for Nutrition Policy and Promotion</i></p>	<p>Consistent with Executive Order 13781 calling for Executive Branch reorganization, Secretary Perdue already reorganized the USDA Center for Nutrition Policy and Promotion (CNPP).</p>
<p><i>Reorganization of the USDA Civil Rights Activities</i></p>	<p>Consistent with Executive Order 13781 calling for Executive Branch reorganization, Secretary Perdue is reorganizing the USDA's civil rights activities, which would include complaints</p>

	from the suite of federal food and nutrition assistance programs it administers.
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