

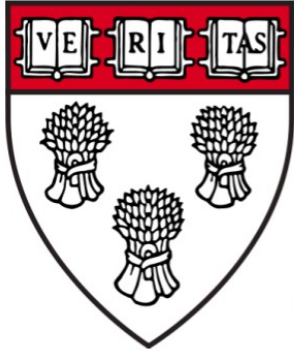
GOOD LAWS, GOOD FOOD:



PUTTING **STATE FOOD POLICY TO WORK FOR
OUR COMMUNITIES**

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TABLE OF CONTENTS

INTRODUCTION	1
About This Toolkit.....	2
About the Authors	4
SECTION I: GENERAL LEGAL SETTING	5
Overview.....	5
Federalism and the Interplay of Federal, State, Local, & Tribal Law	5
Understanding Legislation & Regulation	10
Getting to Know Your State Government.....	14
State Food System Assessment	16
Conclusion	17
SECTION II: FOOD SYSTEM INFRASTRUCTURE	18
Overview.....	18
Production.....	18
Processing	24
Aggregation & Distribution.....	25
Retail.....	26
Food Waste Management.....	27
Conclusion	27
SECTION III: LAND USE & PLANNING	28
Overview.....	28
Basic Concepts of Land Use & Planning	28
Farmland Preservation Techniques: State Land Use Policies	29
Farmland Preservation Techniques: Restricting Land to Agricultural Uses	30
Other Farmland Preservation Techniques	36
Conclusion	39
SECTION IV: FOOD ASSISTANCE PROGRAMS	40
Overview.....	40
SNAP	40
WIC.....	44
Maximizing Food Assistance Program use to Benefit the Local Food Economy	48
Conclusion	53
SECTION V: CONSUMER ACCESS & CONSUMER DEMAND	54
Overview.....	54
Improving Consumer Access	54
Improving Consumer Demand for Healthy Foods.....	60

Conclusion	62
SECTION VI: FARM TO INSTITUTION.....	63
Overview.....	63
What is Farm to Institution?	63
Farm to State Agencies	65
Farm to School	68
Farm to University Programs	73
Farm to Other Institutions	74
Conclusion	76
SECTION VII: SCHOOL FOOD & EDUCATION	77
Overview.....	77
School Nutrition	77
Health & Nutrition Education	84
Conclusion	88
SECTION VIII: FOOD SAFETY & PROCESSING.....	89
Overview.....	89
Overview of Food Safety Regulations: Federal & State	89
Quality Certification Programs for Agricultural Producers	91
Food Safety Regulations for Processed Foods	93
Meat, Poultry, & Egg Processing for Small-Scale Producers.....	96
Conclusion	101
SECTION IX: RESOURCES	102

INTRODUCTION

As an increasing number of consumers look to influence the system that brings food from the field to their dinner plates, they often find that it is policy that they are looking to change. “Food policy”—a term used to describe the set of laws and regulations that inform how, why, and when food is produced, transported, distributed, and consumed—has only recently emerged as an identified field of study. This recent emergence is largely a result of the piecemeal nature of food and agricultural policy in the United States. The U.S. food system is governed by a combination of laws and regulations spanning various agencies and decision-makers from the federal, state, and even local level. Because no one governmental body sets or creates food policy independently, advocates only recently began to realize the important impacts of these often scattered policy decisions on the foods that end up in their grocery stores or on their tables.

The laws and policies that shape our nation’s food system affect all of the processes that bring us food from farm to fork, including, for example, crop subsidies and financial support for farmers, food safety decisions, nutritional guidance, and food assistance programs. These laws and programs are often set at a federal level, such as the subsidies for commodity crops created by the federal Farm Bill, or the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps), the framework of which is determined by federal law but implemented by individual states. States, however, also have considerable latitude to enact, implement, regulate, and enforce their own food programs and policies, shaping their own unique food systems. The tools they are given to create healthy, economically viable, and equitable food systems range from identifying where school lunches will be sourced to determining what funding and training will be provided to help local farms expand. Yet, as consumers, policymakers, and food advocates are realizing, many state governments have not necessarily been utilizing these tools to create just, sustainable, or comprehensive state food policies. Though this is not a simple task, there is immense opportunity to influence a state’s food system through the collaborative efforts of stakeholders and advocates within the states.

In response to this increasing interest in and concern about the production of food in this country, citizens and communities have come together via state and local food policy councils with the intention to strengthen local and state food systems. A food policy council provides a unique forum for diverse stakeholders to address the common concerns about food policies that arise in their city, county, or state, including topics such as food security, farm policy, food regulations, environmental impacts, health, and nutrition. Stakeholders include a range of people invested in the food system, such as farmers, city and state officials, non-profit organizations, chefs, food distributors, food justice advocates, educators, health professionals, and concerned citizens. With the lack of government agencies (at any level) devoted to the sole task of regulating and improving food policy, food policy councils have emerged as innovative and much-needed mechanisms to identify and advocate for food system change.

This change has already begun. Over the past few years, the number of local and state food policy councils has ballooned. According to the Community Food Security Coalition and Mark Winne Associates, the number has nearly doubled, increasing from around 111 food policy councils in 2010 to 193 councils in 2012.¹ The proliferation of food policy councils has been incredibly exciting, as they have proven their ability to serve as representative and effective coalitions to advocate for healthy, environmentally sustainable, economically beneficial, and socially just food policies. They have been quite successful at strengthening connections between various stakeholders, researching and reporting on food policy issues, educating and promoting awareness, and achieving food law and policy change.

¹ Mark Winne and Andrea Sauer, “2012 FPC List Update Analysis,” COMM’Y FOOD SEC. COAL. 1 (May 2012), *available at* http://www.foodsecurity.org/FPC/doc/FPC_List_Update_Analysis-May2012.pdf.

Once created, however, food policy councils often find themselves overwhelmed in attempting to identify the specific laws and regulations that impact their food policy goals, analyzing these laws and policies, and ascertaining the legal or policy levers that can be used to improve outcomes. This toolkit was created to provide a starting place for state food policy councils to understand the basic legal concepts surrounding state food systems, develop a base of knowledge about the main policy areas, and discover examples and innovations from other states. As described below, this toolkit is the second part of a two-part series, the first of which focuses on local-level food law and policy recommendations. As individuals and organizations seek to inform and influence food law and policy in their cities, counties or states, we hope these toolkits will provide helpful starting places for their endeavors.

ABOUT THIS TOOLKIT *Good Laws, Good Food: Putting State Food Policy to Work for Our Communities* was formulated in response to the recent growth in the number of new state food policy councils. As such, these state food policy councils are intended to be our main audience. However, this toolkit should also be helpful to a wide range of individuals and groups—extending from non-profits to state agencies to policy coalitions—interested in enacting change in their state food systems. The information and advice provided here is general enough to assist any interested individual or organization, but as our main goal is to serve state food policy councils, we have emphasized specific suggestions and details geared towards these entities.

Though many aspects of this guide are applicable to and may reference policy change at several levels of government, it is important to keep in mind that this is a *state* food policy toolkit. It thus assumes a focus on state policy, meaning the laws and policies that are created at the state level, and on state systems of production, distribution, and consumption. As mentioned above, *Good Laws, Good Food: Putting State Food Policy to Work for Our Communities* is the second part of a two-part series, and follows a local food policy toolkit, *Good Laws, Good Food: Putting Local Food Policy to Work for Our Communities*, which provides more specific guidance and examples for local food policy councils and local-level policy change.

These food policy council toolkits are intended as elements of a greater set of information to help food policy councils with their formation and success. These toolkits were produced in partnership with Mark Winne Associates, which recently published a manual entitled *Doing Food Policy Councils Right: A Guide to Development and Action*.² This manual helps to provide guidance to interested stakeholders and groups hoping to form new food policy councils or expand existing food policy councils.

Using this Guide This toolkit is intended to serve as a reference for food policy councils, food advocates, state policymakers, and non-profit entities. To effectively utilize our toolkit, we recommend following these steps.

- **Take a realistic appraisal** of how some of the suggestions, examples, and methods contained in this toolkit may fit within your state. Because our toolkit aims to provide an overview that can be useful to food policy councils operating in *most* states in the U.S., it is important to remember that not every component of a state food system or every policy suggestion described within will be appropriate to your state. You should make sure to consider the *applicability* and the *feasibility* of these policy recommendations in order to make sure the laws or policies suggested are right for your community.

² MICHAEL BURGAN & MARK WINNE, *DOING FOOD POLICY COUNCILS RIGHT: A GUIDE TO DEVELOPMENT AND ACTION* (Sept. 2012), <http://www.markwinne.com/wp-content/uploads/2012/09/FPC-manual.pdf>.

- Use this toolkit piece-by-piece. Our toolkit is designed to provide overviews of a variety of specific food policy topics and is not necessarily intended to be read cover-to-cover at one time. Instead, each chapter aims to give as complete a summary as possible of a specific topic. We recommend that you choose the section that fits with the policy area you are trying to investigate and review that section, rather than trying to absorb all of the information in the entire toolkit in one sitting. There may be some overlap between sections in order to ensure that each section is complete. We have indicated places where you may need to jump between sections in order to get a more complete perspective of a particular policy area.
- Read, digest, and explore. In order to keep this toolkit to a manageable size, we have attempted to include sufficient detail while also acknowledging the need to limit the scope. We hope that it provides a starting place to learn about the governmental, legal, and policy aspects of state food policy (to name a few examples of topics covered within). The Resources section includes a range of websites, organizations, and reports to provide readers with a wealth of additional food policy examples and references to help you enact or strengthen a food policy initiative in your state.

What's Inside? This toolkit is composed of nine sections that cover a range of potential topics that a state food policy council may wish to explore. Each section can be treated as an independent entity so that you may easily access it to reference a particular issue. As mentioned above, where cross-reference to another section would be helpful, we have included a note to that effect.

- **Section I: General Legal Setting** lays out some of the basic information relevant to the state government's authority to make laws. This section gives an overview of the types of food law and policy regulations that can be implemented at the state level; the relationship between federal, state, local, and tribal law; the differences between legislation and regulation; as well as some state government agencies with which councils should partner.
- **Section II: Food System Infrastructure** describes the important roles of the major entities and processes that make up a state food system. This section details various policies for which states can advocate that encourage and support local food-related businesses at every step of the supply chain, including production, processing, aggregation and distribution, retail, and food waste management.
- **Section III: Land Use & Planning** describes how states can play a role in influencing land use policies to facilitate the development of local food systems. This section discusses various farmland preservation strategies and ways to restrict land to agricultural uses in order to protect the capacity for future local food production.
- **Section IV: Food Assistance Programs** presents an introduction to the various federal food assistance programs, discusses the legal framework and the balance of federal and state control for some of the largest programs, and identifies policy changes that states can implement to improve participation in the programs and the distribution of benefits.
- **Section V: Consumer Access & Consumer Demand** lays out some of the ways states can increase consumer access to healthy food, by providing more retail food options (such as permanent retail establishments, farmers markets, community gardens, and mobile vending retailers) and improving transportation options. This section also gives an overview of ways consumer demand can be influenced, through labeling, taxes, and bans.
- **Section VI: Farm to Institution** discusses the variety of ways in which state food policy councils can advocate that their states increase the amount of local and regional food served in public institutions. This section focuses not only on farm to school (the most well-known type of farm to

institution program), but also shows how other institutions, such as state agencies, universities, hospitals, and prisons, can be important places for serving local food.

- **Section VII: School Food & Education** details the ways in which state food policy councils can work with state and local agencies and school districts to improve the quality of food served in school meals, as well as create or enhance nutrition education programs. This section also discusses how states can change policies regarding reimbursable school meals, competitive foods, and vending machines to improve health outcomes.
- **Section VIII: Food Safety & Processing** presents an overview of the food safety regulations at the federal and state level and explores ways state food policy councils can advocate for state food safety regulations that protect the public health while not stifling the development of new food producers and vendors. This section includes a discussion of food safety regulations with regard to processing of meat, poultry, and eggs, as well as “cottage foods” (foods produced in a home kitchen).
- **Section IX: Resources** includes a variety of general and specific resources that may be helpful to state food policy councils in order to access additional details and information.

ABOUT THE AUTHORS This toolkit is the product of hard work by numerous staff, students, partners, and volunteers who have been working with the Harvard Food Law and Policy Clinic and Mark Winne Associates.

The primary authors of this toolkit are Emily Broad Leib, Director of the Harvard Food Law and Policy Clinic, and Alli Condra, Clinical Fellow in the Harvard Food Law and Policy Clinic. The Food Law and Policy Clinic, a division of the Harvard Law School Center for Health Law and Policy Innovation, was established in 2010 to connect Harvard Law students with opportunities to provide pro bono legal assistance to individuals and communities on various food policy issues. The Clinic aims to increase access to healthy foods, prevent diet-related diseases such as obesity and type 2 diabetes, and assist small farmers and producers in participating in local food markets. One of its key initiatives is to assist with the development, promotion, and legal and policy research needs of state and local food policy councils. Numerous Harvard Law School students, interns, and volunteers spent countless hours researching and drafting this toolkit. The student and volunteer authors involved in producing this guide were: Emilie Aguirre, Kathleen Eutsler, Duncan Farthing-Nichol, Caitlin Foley, Yasmin Ghassab, Shannon Itoyama, Emma Kravet, Abram Orlansky, and Jacob Slowik.

This toolkit was created in partnership with Mark Winne, community food activist, writer, and trainer with over 40 years of experience, and the principal of Mark Winne Associates. Prior to the development of Mark Winne Associates, Mark Winne was the co-founder of the Community Food Security Coalition, where he worked from 2005 to 2012 on federal food and farm policy issues and food policy councils. From 1979 to 2003, he was the executive director of the Hartford (Connecticut) Food System, which developed dozens of local and statewide food projects including the City of Hartford Advisory Commission on Food Policy and the State of Connecticut Food Policy Council. Winne’s extensive background in food and agricultural policy includes his previous honors as a 2001 recipient of the U.S. Department of Agriculture Secretary’s Plow Honor Award and more recent placement as a Visiting Scholar at John Hopkins University School of Public Health for the 2010/11 academic year. Mark Winne is the author of two books—*Closing the Food Gap: Resetting the Table in the Land of Plenty* and *Food Rebels, Guerilla Gardeners, and Smart-Cookin’ Mamas*—both published by Beacon Press.

SECTION I: GENERAL LEGAL SETTING

The main task of a state food policy council is to identify and facilitate passage of state laws, regulations, and policies that positively impact the state's food system. This requires an understanding of whether these laws and policies can be enacted at the federal, state, or local level. The interplay between federal, state, and local laws can be complicated. This section lays out some of the basic information relevant to the structure and legal authority of state governments, the types of food law and policy regulations that can be implemented at the state level, and some strategic planning and execution advice for improving a state food system.

OVERVIEW One of the main activities undertaken by state food policy councils is legislative and administrative advocacy. Before a council engages in advocacy, there are a few things that the council should know in order to structure and guide its efforts. The council should also be aware of possible issues it may face when trying to improve the state food system. This section gives an overview of the breakdown between federal, state, local, and tribal authority; the different paths that ideas travel before becoming laws; and important groundwork a council should do before beginning its advocacy efforts.

1. Federalism and the Interplay of Federal, State, Local, & Tribal Law This section provides a general overview of the way that the U.S. system of federalism impacts the breakdown of authority between federal, state, local, and tribal governments.

2. Understanding Legislation & Regulation In order to achieve their goals, it is important for councils to understand the difference between legislation and regulation, and how the two are formed.

3. Getting to Know Your State Government State food policy councils should learn how their state governments are structured in order to know what government entities would be useful.

4. State Food System Assessment Conducting a state food system assessment can serve as an important starting point for food policy councils. This section provides some resources and information about food system assessments.

FEDERALISM AND THE INTERPLAY BETWEEN FEDERAL, STATE, LOCAL, & TRIBAL LAW The division of power and responsibility between state and federal governments can be difficult to fully understand, but it is important for state food policy councils to gain a broad knowledge of the areas in which state government can operate in order to know what policy changes they can achieve. This section describes in more detail the delicate balance between state and federal authority.

State & Federal Government The United States is governed using a system of federalism. Federalism means that both the federal and state governments have their own spheres of responsibility and authority. The federal government has a variety of powers, but its authority is limited by the U.S. Constitution.¹ For example, the federal government has the authority to regulate interstate commerce,² to tax,³ to enter into treaties,⁴ and to declare war.⁵ Anything outside the federal government's constitutionally limited authority is left for the states to govern exclusively.⁶ In areas where the federal government has authority to govern, those federal laws will, subject to some exceptions, generally override state laws.⁷ Both the federal government and state governments have authority over food policy issues.

¹ See U.S. CONST. art. 1.

² U.S. CONST. art. I, § 8, cl. 3.

³ U.S. CONST. art. I, § 8, cl. 1.

⁴ U.S. CONST. art. I, § 10, cl. 1.

⁵ U.S. CONST. art. I, § 8, cl. 11.

⁶ U.S. Const. amend. X.

⁷ A discussion of preemption issues is included in this section.

Federal Authority The three most important powers that the federal government has in relation to food policy issues are the authority to regulate interstate commerce, the taxing power, and the ability to attach conditions to federal funds given to states.

First, the Interstate Commerce Clause provides one of the most important sources of authority to the federal government, granting Congress the power to regulate interstate commerce, or commerce “among the several states.”⁸ This is especially important for food policy because it means that any food item that enters, or may possibly enter, interstate commerce is subject to regulation by the federal government. By contrast, foods that are produced and sold within a state are generally subject only to state regulation. Furthermore, the federal government’s ability to regulate interstate commerce has given rise to what is called the Dormant Commerce Clause. The Dormant Commerce Clause prohibits states from passing legislation that will adversely impact interstate commerce in the absence of federal law granting permission for them to do so.⁹ This means that states are not allowed to pass laws that discriminate against products from other states, for example by taxing out-of-state products more than similar in-state products, unless Congress has passed legislation sanctioning it.¹⁰ The idea behind the Dormant Commerce Clause is that states may not give preferential treatment to businesses within their borders because producers in other states have the same right to access a state’s market that a local producer does. There are a few exceptions to this rule, such as when it is the government itself is making the purchases, in which case, it may prefer in-state products (for more information on this, see [Section VI: Farm to Institution](#)).

Second, Congress has the power to raise money through taxing, which it can generally use to achieve regulatory goals that are otherwise outside the scope of its other enumerated powers. Where Congress has a regulatory goal, such as requiring all Americans to buy health insurance, it can achieve that goal by exacting a tax from all those who do not comply.¹¹

Third, related to its power to tax, Congress has the power to spend the money it brings in, and when it provides federal funds to states it often attaches conditions to those funds. This funding with conditions is a major “carrot” that drives state policy, as states want to comply with the federal government’s wishes in order to receive federal funding. Congress thus has a broad power at its disposal to achieve its regulatory goals by tying them to funding decisions.

Federal Preemption of State Laws As mentioned above, anything outside the federal government’s constitutionally limited authority is left for the states to govern exclusively.¹² States have primary authority to pass laws regarding the health, safety, and morality of its citizens (referred to as “police power”).¹³ The federal government has the power to preempt state and local governments from imposing laws and regulations in areas in which the federal government has constitutionally-given authority to act. Food policy councils must keep this preemption authority in mind when proposing state legislation.

⁸ U.S. CONST. art. 1, § 8, cl. 3.

⁹ U.S. Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 338 (2007).

¹⁰ Am. Trucking Ass’n, Inc. v. Mich. Public Serv. Comm’n, 545 U.S. 429, 433 (2005).

¹¹ See, e.g., Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012). See also United States v. Kahriger 345 U.S. 22 (1953).

¹² U.S. Const. amend. X.

¹³ *Id.*

Federal preemption can either be express or implied. Express preemption occurs when a federal statute explicitly states the intention of Congress to preempt state law. For example, states are preempted by the Nutrition Education and Labeling Act (NLEA) from imposing labeling requirements for processed and packaged foods that are not identical to the labeling requirements in the Federal Food, Drug and Cosmetic Act.¹⁴ The NLEA gives specific examples of the actions that are preempted and those that are not.¹⁵ Those that are listed as preempted in the Act are thus expressly preempted. Food policy councils need to ensure that any proposed state legislation is not the type of law (or in an area of law) that is expressly preempted by a federal statute. Implied preemption, on the other hand, occurs when the language and content of the law suggests Congress intended to preempt state law, but Congress has not clearly said in the law what it intends to preempt.¹⁶ This type of preemption can be more difficult to identify and avoid, but it is important for food policy councils to know that it exists.

As an example of the interplay between state and federal government, in 2008, **California** passed a menu labeling law that required chain restaurants of a certain size to include calorie and other nutritional information on their menus and display boards.¹⁷ At that time, this was an area of law in which the NLEA did not preempt states from taking this kind of action, and therefore, California was able to impose these additional requirements. A few years later, in the Patient Protection and Affordable Care Act of 2010, Congress included provisions to require the same kind of menu labeling of chain restaurants on a national scale.¹⁸ Now that Congress has passed a law on this issue, states are preempted from regulating menu labeling at the chain restaurants that fall under the federal law, though they can still require menu labeling at other types of restaurants within the state. California's lead on menu labeling is a good example of how policy change on a state level (in an area not preempted by Congress) can lead to national policy change, but it also shows a place where state rules can be preempted by federal ones.

It is important to remember that states have broad regulatory powers and that the federal government is limited by those powers enumerated in the Constitution. Federal preemption can thus only occur within the field of those limited federal powers, leaving states with ample regulatory freedom and flexibility.

State & Local Government The interplay between state and local governments works slightly differently. Local governments do not have any express authority under the U.S. Constitution. Instead, local governments have only the power given to them by their state under that state's constitution and statutes. All states have the same amount of constitutionally-derived power and authority, but determine on their own how to apportion this power between the state and local governments. For more information on the powers available to local governments and the interplay between state and local government, see Part I of this two-part series: *Good Laws, Good Food: Putting Local Food Policy to Work for Our Communities*.

¹⁴ 21 U.S.C. § 343-1(a) (2012). See also *Turek v. General Mills, Inc.*, 662 F.3d 423, 426–27 (7th Cir. 2011).

¹⁵ 21 U.S.C. §343-1 (2012).

¹⁶ *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 532 (1992) (Blackmun, J., concurring in part and dissenting in part). Implied preemption can be further broken down into two types: conflict preemption and field preemption. Conflict preemption occurs whenever it is impossible to follow both the federal and the state law or regulation, in which case the federal law preempts. *Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861, 899 (2000). Field preemption occurs when the federal regulatory scheme is so pervasive that it can be said to completely occupy the field of regulation in that area, even absent a direct conflict between the federal and state law. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984).

¹⁷ Sen. B. 1420, 2008 Leg. Sess. (Cal. 2008).

¹⁸ Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 4205, 124 Stat. 119 (2010) (codified at 21 U.S.C. § 343(q)(5)(H) (2012)).

TABLE I-1: ROLE OF VARIOUS LEVELS OF GOVERNMENT IN FOOD POLICY

ISSUE	FEDERAL LEVEL	STATE LEVEL	LOCAL LEVEL
FOOD SAFETY	The Food and Drug Administration (FDA) creates the FDA <i>Food Code</i> , which recommends (but does not require) food safety provisions for retail stores and restaurants. It is not mandatory but has been adopted in some form by most states. ¹⁹ The federal government oversees food safety for products moving in interstate commerce, as well as regulating poultry and meat processing, monitoring general food safety, and exercising its food recall authority. ²⁰	State governments implement laws and regulations affecting restaurants and retail stores, based on federal guidance. Most states adopt a modified version of the FDA <i>Food Code</i> . States can create their own meat and poultry processing inspection regime, but it must be at least as stringent as the federal regime. ²¹	Local public health departments are often tasked with enforcing state food safety requirements. Some local governments also have their own set of food safety ordinances applicable to local restaurants or grocery stores.
LAND USE AND ZONING	Zoning and land use law are primarily state and local issues. However, federal law (particularly individual rights protected by the Constitution) can restrain state and local government land use regulations in some instances.	While it is within the state's power to regulate zoning, most states delegate this power to local governments. Nonetheless, statewide planning can mandate or encourage certain local zoning and land use practices. ²²	Most states delegate zoning and land use powers to local governments. As these are predominantly local issues, zoning and land use powers are important tools for local food policy councils to understand and utilize.
GEOGRAPHIC PREFERENCE IN FOOD PROCUREMENT	Food purchased using federal dollars, such as meals under the National School Lunch Program (NSLP), must follow federal procurement guidelines. Federal law now authorizes schools using NSLP dollars to prefer food grown locally. ²³ Programs using state or local dollars do not need to follow federal rules.	State agencies or institutions using state funds must follow state procurement guidelines. An increasing number of states have tailored their procurement regulations to encourage local purchasing by state agencies/institutions. ²⁴ When using federal money, federal rules still apply.	Local agencies, schools, and institutions may prefer local food when spending federal funds, as authorized under federal law. ²⁵ When using state funds or local funds, they may give preference to local food if authorized under the relevant state or local authority.

¹⁹ *Real Progress in Food Code Adoptions*, FDA (July 1, 2011), <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FederalStateCooperativePrograms/ucm108156.htm>.

²⁰ Three government agencies share responsibility for federal food safety. The USDA's Food Safety and Inspection Service (FSIS) inspects meat and poultry processing and reviews product labels. See Poultry and Poultry Products Inspection Act, 21 U.S.C. §§ 451–72 (2012); Meat Inspection Act 21 U.S.C. §§ 601–95 (2012). The FDA monitors the safety and labeling of most non-meat and processed foods, and licenses food-use chemicals other than pesticides. See Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301–99 (2012). The EPA registers pesticides and sets pesticide tolerances that are enforced by the FDA or the FSIS. See 7 U.S.C. § 136(a)–(y) (2012); 21 U.S.C. § 342(a)(2)(B) (2012).

²¹ See Poultry and Poultry Products Inspection Act, 21 U.S.C. §§ 451–72 (2012); Meat Inspection Act 21 U.S.C. §§ 601–95 (2012).

²² See, e.g., *Goals, Or. Dep't of Land Conservation & Dev.*, OREGON.GOV, <http://www.oregon.gov/LCD/goals.shtml> (last visited Sept. 26, 2012); see generally Jeffrey D. Kline, *Forest and Farmland Conservation Effects of Oregon's Land-Use Planning Program*, 35 ENVTL. MGMT. 368 (2005).

²³ Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 7 C.F.R. §§ 210, 215, 220, 225, 226 (2011).

²⁴ As of 2010 at least twelve states had passed legislation allowing purchasing preferences for in-state agricultural products. *State Farm to School Legislation*, NAT'L FARM TO SCH. NETWORK (Nov. 2, 2010), www.farmtoschool.org/files/publications_177.pdf.

²⁵ Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 7 C.F.R. §§ 210, 215, 220, 225, 226 (2012).

FOOD LABELING	<p>The federal government regulates ingredient and nutrition labeling for all packaged foods that travel in interstate commerce (e.g., go across state lines).²⁶ However, state and local governments can choose to require menu labeling or other labeling for items not included in the federal laws. Federal law also regulates nutrition labeling of certain chain retail food establishments and chain vending machine operators.²⁷</p>	<p>States are preempted from enacting labeling laws for packaged foods or certain chain restaurants/vending machines, as these are regulated by federal law. However, states may: require labeling for non-packaged foods, require labeling for non-chain restaurants, pass labeling rules for foods that do not cross state lines, and require other label information (e.g. Alaska requires the labeling of farm-raised salmon products).²⁸</p>	<p>If allowed under state law, local governments can pass some food labeling rules for foods not covered under federal law. For example, local governments can require labeling for non-chain restaurants.</p>
FOOD ASSISTANCE BENEFITS	<p>Most food assistance programs, like SNAP, WIC, etc., are authorized and funded at the federal level, though states may contribute funds for program administration or to increase the amount of benefits available to participants.</p>	<p>State governments are responsible for administering food assistance programs in terms of authorizing participants and, in some cases, vendors. States sometimes contribute additional funds to the programs.</p>	<p>Local governments generally do not play a role in administering food assistance programs, but they can encourage their residents to participate in the programs, which are often underutilized, or provide incentives to those who purchase healthy options with their benefits.</p>

State & Tribal Government The relationship between Native American tribal governments and state and federal governments is a bit more complicated. In the U.S., Native American tribes have “tribal sovereignty,” a term that embodies “the right of federally recognized tribes to govern themselves and the existence of a government-to-government relationship with the United States.”²⁹ This means that a Native American tribe has “the right to form its own government, adjudicate legal cases within its borders, levy taxes within its borders, establish its membership, and decide its own future fate.”³⁰ As a result, state law can only preempt tribal law when Congress has given that state the authority to do so. Instead of focusing on whether a state government can impose a food policy law on tribal governments, state food policy councils should work to collaborate with tribal governments within their state on food policy matters.

State Authority In order to change food policy at the state level, a food policy council must understand which level of government has the authority to govern the policy it seeks to change (e.g. whether the law or regulation was or can be implemented at the local, state, tribal, or federal level).

- If it is a **local law or regulation**, it may be best left to local governments and the work of local-level food policy councils. However, a state food policy council can evaluate why the locality has the authority to govern in that area and whether there may be reasons to have uniform state-wide regulation. If that is the case, the state food policy council will want to explore what steps are required for a state law to preempt local laws.

²⁶ Nutrition Labeling and Education Act of 1990, 21 U.S.C. § 343-1 (2012).

²⁷ 21 U.S.C. § 343(q)(5)(H)(ii) (2012).

²⁸ Alaska Food, Drug, and Cosmetic Act, ALASKA STAT. § 17.20.040(a)(12) (2012).

²⁹ *Answers to Frequently Asked Questions about Native Peoples*, NATIVE AMERICAN RIGHTS FUND, <http://www.narf.org/pubs/misc/faqs.html> (last visited Sept. 26, 2012).

³⁰ *Id.*

- If it is a **state law or regulation**, the state has the authority to change the law or regulation.
- If it is a **federal law or regulation**, the council should identify whether the state government has the power to create legislation changing the federal law in some way. Sometimes federal laws and regulations are established as baselines of conduct, and state governments can impose a rule that is stricter than the federal rule. Even if the regulation at issue was promulgated at the federal level, state food policy councils should remember that they can get together with other state food policy councils and stakeholders nearby or throughout the country and advocate for change at the federal level.

In summary, each level of government has a specific sphere of authority, and state food policy councils must identify the level or levels of government most relevant to each particular issue in order to decide how to proceed. Understanding which level of government has jurisdiction over an issue will help a state food policy council assess the amount of time and resources it should invest in the issue as well as identify the level of government to which it should direct its energies.

UNDERSTANDING LEGISLATION & REGULATION

In addition to understanding the different levels of government at which a law or regulation can be promulgated or preempted, it is important to understand the difference between legislation and regulation. Legislation and regulations are formed and enforced in different ways. Legislation refers to the laws that are passed by governing legislative bodies, like the U.S. Congress or state legislatures. Legislation can directly create laws that people must follow, but it often simply authorizes an administrative agency to write regulations to carry out the purpose of that legislation. Regulation refers to the rules and procedures that agencies use to achieve the goals promulgated by the legislation.

In this section, we will describe the general legislative process of how a bill is introduced and the steps involved in the bill becoming law. We will focus primarily on the process used for federal legislation, which most states use as a framework for their own legislative processes. You should make sure to understand your state's legislative process. For example, in **California**, citizens can propose legislation through the initiative process, which provides an additional mechanism for creating policy change, rather than having to rely on elected representatives to introduce legislation.³¹ Further, it is important to know your state's legislative calendar. In many states, the legislature only meets a few months each year. In some states, the legislature only meets a few months every other year.

BALLOT PROPOSITIONS FOR FOOD AND FARMS

California's proposition system, in which members of the public can propose significant changes to state policy which are then subject to passage by a popular vote, has been making headlines recently with a couple of major ballot propositions dealing with food and agriculture.

In 2008, Californians passed Prop. 2, which "requires that calves raised for veal, egg-laying hens and pregnant pigs be confined only in ways that allow these animals to lie down, stand up, fully extend their limbs and turn around freely."

In 2012, Californians defeated a proposition to require labeling of genetically modified organisms (GMOs) in food. Prop. 37 would have required that foods manufactured using genetic engineering be labeled, and also would have set rules about when the term "natural" could be used.

Sources: Standards for Confining Animals, Initiative Statute, CAL. SEC. OF STATE, <http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop2-title-sum.htm> (last visited Oct. 23, 2012). Susan Schneider, *Lauren Handel on Prop 37*, THE LL.M. PROGRAM IN AGRICULTURAL AND FOOD LAW BLOG (Sept. 20, 2012, 12:28pm), <http://www.agfoodllm.com/2012/09/lauren-handel-on-prop-37.html>.

³¹ CAL. CONST. art. 2, § 8.

Legislation The legislative process consists of six main steps: (1) formulation of the bill, (2) introduction of the bill, (3) development of the bill by the appropriate committee(s), (4) debate on the legislature floor followed by a vote, (5) referral to the other legislative chamber, sometimes followed by a conference, and (6) action by the President or state governor.

1) Formulation of the Bill A lot of important work on legislation happens before it ever gets introduced. Before bills are proposed, representatives often solicit input from citizens and interest groups on what issues they should attempt to address through the legislative process. Often, representatives will become the point member or “sponsoring member” of bills and will be responsible for researching the proposed bill, gauging support among fellow legislators, and developing the ideas that will form the substance of the bill. State food policy councils do not have to wait for a legislator to solicit input from the public, instead they can seek out legislators in their state to introduce a particular bill, or encourage those legislators to craft legislation that furthers the food policy council’s advocacy goals.

2) Introduction of the Bill Any member of Congress (Senator or Representative) can introduce legislation while Congress is in session. As mentioned above, in some states, legislation can even be introduced by members of the public.³² Part of the formulation and introduction of legislation involves choosing to which committee the bill will be directed (usually decided by the leadership of the legislature), though in some cases a bill is referred to multiple committees. Committees cover topical areas such as agriculture, public health, education, and appropriations. The exact names and make up of committees vary from state to state and sometimes between different chambers of the legislature within a state.

3) Committee Action After a bill is proposed, the bill is then assigned to the committee (or committees) with primary jurisdiction over the area of legislation. The bill will be developed in the chamber of origin (either Senate or House of Representatives), but sometimes identical or similar bills are presented simultaneously in both chambers. Sometimes a bill is referred to multiple committees and sometimes a bill is referred to subcommittees of those committees. While “in committee,” bills are often marked up with changes discussed and approved by drafting/editing members of the committee, and then the bills are put to a committee vote. If the bill passes the vote, it will then be presented to the entire body of that chamber for debate. The great majority of bills never make it out of committee. However, if the bill is presented to the full chamber body, the committee generates a report to accompany the bill describing the intent of legislation, the legislative history such as hearings in the committee, the impact on existing laws and programs, and the position of the majority of members of the committee. It would be particularly advantageous for food policy councils to identify the food policy-related committees, when these committees generally meet, and what the political dynamic is like among committee members and between the committee and the larger legislative chamber.

4) Floor Debates & Votes If a bill survives the committee, it goes to a vote by the full legislative body in the chamber in which it originated. Each legislative body has its own, often very distinct, procedures governing proposals, debates, and amendments. The most effective way for a food policy council to

³² For example, under California’s initiative system, if members of the public write a proposed law, obtain signatures from a certain percentage of the registered voters in the state, and comply with a few other procedural requirements, the initiative measure will be submitted to voters in the statewide election. If the measure passes, it becomes state law. See *Statewide Initiative Guide*, SEC’Y OF ST. DEBRA BOWEN, <http://www.sos.ca.gov/elections/ballot-measures/initiative-guide.htm> (last visited Sept. 26, 2012). For a list of the states that have the initiative and referendum process, see INITIATIVE & REFERENDUM INSTITUTE, http://www.iandrinstitute.org/statewide_i%26r.htm (last visited Oct. 15, 2012).

advocate during this stage is to keep track of the legislation in which the council has a strong interest and to keep an open dialogue with its sponsoring member(s). During this time, council members should contact legislators to inform them of their views on the issue and to provide input regarding changes that may be beneficial to the council's overall food policy goals. This is also a good time for food policy councils to do education and outreach around the state to get people to call their legislators to express support for the pending bill. Additionally, it is important for food policy councils to watch for bills that might negatively impact their food policy efforts; in those situations, food policy councils should contact their legislators to show their disapproval of the bill. Contacting legislators during this time can be effective since many will be engaged in thinking about the bill and the issues involved.

5) Referral & Conference After either the House or the Senate passes a bill, it is then given to the other part of the legislative body (either the House or the Senate) where it follows a similar route through committee and floor debates. If the second chamber makes significant changes to the bill, the two chambers then meet in what is called a “conference committee” to try and reconcile the differences and then present the resulting conference committee report on the bill to each chamber. The report, including the bill as drafted by the conference committee, must be passed by both chambers in order for the bill to be presented to the President/governor for approval. If the bill is approved in the second chamber without changes, it can proceed directly to the President/governor without a conference committee.

6) Action by President (or, at the state level, governor) At this point, the final bill is sent to the President (or governor) for approval or veto. The bill must be signed by the executive to become law. In some states, the bill will become a law after a certain number of days whether or not the governor formally gives approval. If the bill is vetoed, the federal Constitution, as well as most state constitutions, allow for the legislature to override the veto with a large measure of support from the joint chambers (2/3 in the case of the U.S. Congress), although overriding a veto is rare. If the legislature overrides the veto, the bill becomes law without the signature of the President/governor.

Regulation As discussed above, legislation can create laws that allow or prohibit certain behaviors directly. More often, legislation just authorizes an *administrative agency* to pass rules and regulations to carry out the legislation's purpose. An administrative agency is a “governmental body with the authority to implement and administer particular legislation.”³³ A good example of an administrative agency at the federal level is the Food and Drug Administration (FDA), which creates and enforces rules regarding food and drug safety to carry out, among other legislative acts, the federal Food, Drug and Cosmetic Act.³⁴

To distinguish legislation from regulation, think of Congress as the entity that creates a law's general outline and the administrative agency as the entity that fills in the details. Congress understands the broad issues, and the agencies with their experts are able to craft regulations to accomplish Congress' goals. This grant of power consequently gives administrative agencies broad discretion, within some limits set by Congress, to regulate. Federal agencies are required by the federal Administrative Procedures Act (APA) to follow certain administrative procedures regarding how they develop, enact, and enforce regulations.³⁵ The Act requires public notice and comment periods when proposing new regulations and also provides rules on when and how agency actions are subject to judicial review.³⁶

³³ BLACK'S LAW DICTIONARY (9th ed. 2009).

³⁴ 21 U.S.C. § 341 (2012). The Act delegates powers to the Secretary of the Department of Health and Human Services (21 U.S.C. §§ 341, 321(d) (2012)), which is fulfilled by the FDA as an agency within this department.

³⁵ Administrative Procedure Act, 5 U.S.C. §§ 500–596 (1946).

³⁶ *Id.*

Many states have used this model for their state administrative agencies. It is very important for your food policy council to understand your state's unique administrative rules to effectively engage in advocacy with the state administrative agencies. The regulating process of most administrative agencies can be separated into three distinct steps: (1) rulemaking, (2) notice and comment, and (3) judicial review.

1. Rulemaking Every agency has certain procedures it must follow when proposing an administrative rule. Rules are like additional laws in that they set forth various requirements in order to comply with the law; for example, rules might lay out the steps that must be taken in order to get a permit to sell food from a mobile food cart, the kinds of restaurants that are covered by menu labeling laws, or the penalties that will be imposed if a rule is not followed. By understanding the state's procedures and timelines, state food policy councils can identify when and how to approach agencies to ask them to make certain rules or policies, or engage with the process that agencies are conducting as they create new rules or policies.

2. Notice & Comment Most states have a notice and comment period during which the administrative agency opens a forum to the public and receives comments regarding its proposed rule or rules. These comments can come from any members of the public, including various stakeholders such as nonprofit organizations, think tanks, legislators, academics, businesses, affected consumers, and many others. Submitting comments during this period is a great opportunity for councils to engage in advocacy around issues of interest to them. Sometimes agencies will also hold public hearings, where stakeholders can publicly present their support for or concerns about a proposed rule.

Your state food policy council should become familiar with both federal notice and comment procedures, as well as state procedures, given that the process could be different at each level. Even though state food policy councils focus on state level law and policy change, they can and should submit comments on federal rules and regulations that have the potential to impact their food policy goals.

3. Review Once an agency promulgates a rule and enforces that rule against an individual or entity, the individual or entity can challenge the administrative rule or decision via an appeals process, similar to appealing a regular court ruling. For example, if the USDA bans a certain additive to commercially sold beef and then fines a processing plant for including the additive, the processing plant can challenge the rule after the fine has been levied. This means the adjudication process can also be an indirect way to challenge the legality of rules that have already been passed. In the preceding example, in the course of challenging the fine, the processing plant could argue that the rule itself is improper. A regulatory agency's adjudication process should not be the first place policy councils should seek to engage in advocacy, and should be considered as a last-ditch option for changing or challenging rules that might negatively affect the state's food system.

Monitoring Legislation & Regulations One very important step a state food policy council can take is to implement a *legislative and regulatory monitoring system*—whereby an individual or a committee from the food policy council monitors legislative and regulatory activity, condenses the complex information, and reports the findings through a channel that is widely available. Setting up a website or blog and routinely reporting on the legislative and regulatory developments via email is a good way to engage the food policy council membership as well as keep tabs on proposed laws and regulations. As legislative and regulatory developments occur, archiving or labeling them by category will be especially helpful for future

advocacy activities (e.g. reviewing the legislative or regulatory history to better inform the council's comments on a particular issue).

GETTING TO KNOW YOUR STATE GOVERNMENT The next step in maximizing your food policy council's advocacy outcomes is to understand the makeup of your state government. Having a good sense of the structural and political operation of your state government will enable your council to be more effective in developing and targeting proposals for improving your state's food system. Your food policy council should determine which of the state's various departments and agencies are relevant to food policy goals and seek to partner with those entities.

Identify Significant State Agencies, Entities, & Contacts First your council should identify the appropriate agencies with which it should seek to partner, or to which it should be advocating for policy change. While specific responsibilities and titles can vary from state to state, there are generally five state departments that have the most influence on food system outcomes: (1) Department of Agriculture, (2) Department of Public Health, (3) Department of Education, (4) Department of Human Services, and (5) Department of Environmental Protection/Quality. Once you have a firm grasp on each department's role in establishing or enforcing food-related policies in your state, you should work to create relationships with people inside those departments. It is important to recognize that your state may have a similar agency to one of those listed below that is operating under a different name. Your state may also split up duties of the agencies differently than what is laid out here, but this list can be used as a good starting point for identifying the types of agencies that are relevant to your work.

1. The Department of Agriculture (DOA), sometimes referred to as the Department of Food and Agriculture, is the agency most food policy councils first think of when identifying where food policies are promulgated. Some typical goals of a DOA include ensuring food safety in certain settings, promoting the state's agriculture and food products, regulating farmers markets, and promoting environmentally sustainable agricultural practices. Some states' DOAs focus entirely on agriculture, while others take a broader approach to promoting a state's agricultural economy, including conserving natural resources, combating deceptive business practices, providing consumer information, supporting rural communities, and fostering healthy lifestyles, among other aims.³⁷

2. The Department of Public Health (DPH) aims to protect and promote the health of the citizens of the state. Public health may include well-being, safety, disaster preparedness, preventive healthcare, safe water, food safety, food monitoring, and a number of other areas. State DPHs may administer certain types of federal food assistance programs for low income people (particularly through administering the federal Supplemental Nutrition Program for Women, Infants and Children (WIC)), regulate restaurants' health and safety standards, and oversee other food permitting and inspection issues (such as cottage food operations and mobile vending operations).³⁸

³⁷ See, e.g., *Mission Statement of the California Department of Food and Agriculture*, CAL. DEP'T OF FOOD & AGRIC., <http://www.cdfa.ca.gov/CDFA-Mission.html> (last visited Sept. 27, 2012); *About FDACS*, FLA. DEP'T OF AGRIC. & CONSUMER SERV., http://www.freshfromflorida.com/about_fdacs.html (last visited Sept. 27, 2012); *Agency Info.*, TEX. DEP'T OF AGRIC., <http://texasagriculture.gov/Home/AgencyInformation.aspx> (last visited Sept. 27, 2012).

³⁸ See, e.g., MISS. ST. DEP'T OF HEALTH, <http://msdh.ms.gov/> (last visited Sept. 27, 2012); ST. OF LA. DEP'T OF HEALTH & HOSP., <http://new.dhh.louisiana.gov/> (last visited Sept. 27, 2012); UTAH DEP'T OF HEALTH, <http://health.utah.gov/index.html> (last visited Sept. 27, 2012).

3. The Department of Education (DOE) sets education curriculum standards, supports the state's public schools, and helps administer food and nutrition programs for the state's schools.³⁹ In some states, such as **Florida**, the DOE will work with the DOA to administer school meals, through programs like farm to school.⁴⁰ The DOE also has authority over the educational curriculum, which means state food policy councils can advocate to the DOE to make health and nutrition classes a mandatory part of the state curriculum.

4. The Department of Human Services (DHS) aims to assist a state's economically disadvantaged citizens through financial, employment, protective and rehabilitative services.⁴¹ This department is usually in charge of administering the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) and, in some states, may also oversee other federal food assistance programs, such as the Child and Adult Care Food Program or the Summer Food Service Program.⁴² States have differing methods for SNAP enrollment, which advocates can work with their state DHS to reform. For example, fifteen states currently do not have any form of online application for SNAP and three states allow residents in only some counties to apply for SNAP benefits online.⁴³ This is an area for potential reform, as it is one way to help improve food security for those in the state who are most in need.

5. The Department of Environmental Protection (DEP), which is often known by variations of this name, can also be relevant to state food law and policy. For example, in **Alaska** the Department of Environmental Conservation is the agency that oversees food safety regulations.⁴⁴ In **Massachusetts** and **Connecticut**, the state DEPs run composting, organic recycling, and other food waste programs.⁴⁵

Assess your State's Food Policy

Environment Once you have gained an understanding of your state's specific agencies and actors, it is important to assess the political and functional realities of your state. How well do the state agencies work with one another? How well does the legislature communicate with the state agencies? Who within the state government is passionate about food policy issues? Does the state collaborate well with the federal government? Are certain geographical regions, like big cities or counties, getting a disproportionate level of benefits or resources directed to

FARM TO TABLE CAUCUS

Texas' Farm to Table Caucus is the first of its kind in the country. Caucus members hope to consider issues such as reducing barriers to tax exemptions for urban farms, allowing on-site processing of wild hog and deer meat for soup kitchens, increasing, and expanding Texas' Cottage Food Law.

Source: Becca Aaronson, *Farm to Table Caucus Advances Local Food Movement*, THE TEXAS TRIBUNE, Sept. 17, 2012, available at <http://www.texastribune.org/texas-legislature/texas-legislature/farm-table-caucus-advances-local-food-movement/preview/>.

³⁹ See, e.g., *Food and Nutrition Programs*, PA. DEP'T OF EDUC.

http://www.portal.state.pa.us/portal/server.pt/community/food_nutrition_services/7483 (last visited Sept. 27, 2012).

⁴⁰ See, e.g., *Food, Nutrition and Wellness*, FLA. DEP'T OF AGRIC. & CONSUMER SERV., <http://www.freshfromflorida.com/divisions/fnw/> (redirected from *Food and Nutrition Homepage*, FLA. DEP'T OF EDUC.) (last visited Sept. 27, 2012).

⁴¹ *Human Services, About Us*, TENN. DEP'T OF HUMAN SERV., <http://www.tn.gov/humanserv/us.html> (last visited Sept. 27, 2012).

⁴² See, e.g., *Programs and Services*, TENN. DEP'T OF HUMAN SERV., <http://www.tn.gov/humanserv/progserv.html> (last visited Sept. 27, 2012).

⁴³ *Supplemental Nutrition Assistance Program: To Apply*, USDA FOOD & NUTRITION SERV., http://www.fns.usda.gov/snap/applicant_recipients/apply.htm (last visited Sept. 27, 2012).

⁴⁴ ALASKA DEP'T OF ENVTL. CONSERVATION, DIVISION OF ENVTL. HEALTH, FOOD SAFETY & SANITATION PROGRAM, <http://www.dec.alaska.gov/eh/fss/index.htm> (last visited Oct. 15, 2012); ALASKA FOOD CODE, DEP'T OF ENVTL. CONSERVATION (July 2012), available at <http://dec.alaska.gov/commish/regulations/pdfs/18%20AAC%2031.pdf>.

⁴⁵ *Composting and Organics*, MASS. DEP'T OF ENVTL. PROT., <http://www.mass.gov/dep/recycle/reduce/composti.htm> (last visited Sept. 27, 2012); *Composting and Organics Recycling*, CONN. DEP'T OF ENERGY & ENVTL. PROT., http://www.ct.gov/dep/cwp/view.asp?a=2718&q=325344&depNav_GID=1645 (last visited Sept. 27, 2012).

them? Conversely, are too many resources going to areas with relatively little agricultural production? These investigations should help the council in both learning about the intricacies and backdoor ways their food system is regulated, as well as simultaneously pointing out some potential areas to focus the council’s advocacy efforts.

One important question for councils to consider is: how important do the state agencies and the state legislature consider food system issues to be? For example, although farms can be a significant or even the most significant source of pollution in a state, the state environmental protection agency—because it regulates more than just farms—may place its priorities somewhere else. Similarly, state public health departments may administer many types of programs, but may put a big emphasis on infectious disease rather than on nutrition programs. Additionally, the legislature may be preoccupied with addressing other topics during the legislative session, and may not emphasize food issues as much as the council would like.

You may find that legislators are taking innovative steps towards addressing food policy concerns. In **Texas**, for example, Representative Eddie Rodriguez founded the Farm to Table Caucus, which is “the nation’s first bipartisan legislative caucus focused on advancing the local production of healthy food.”⁴⁶ Rep. Rodriguez hopes the caucus will be able to address various food issues, such as obesity, increasing the number of healthy food retail outlets in poor areas, and evaluating regulations that may be impeding local food production.⁴⁷

Food policy councils should identify those individuals within the state agencies and legislature who are sympathetic to food policy issues. Having a contact person within an agency or the legislature may help move the food policy council’s agenda forward. It may also be helpful to reach out to those agency officials and legislators who are not as concerned about or responsive to food system issues. Perhaps their lack of concern is due to an absence of education on the topic. Set up a meeting to introduce the council and its work, or invite the official or legislator to be an integral part of the council’s reform efforts. After all, food policy is a growing field and it is important for food policy councils to educate and inspire the community around them.

LOCAL FOOD, FARMS, AND JOBS ACT

Illinois passed broad-ranging legislation that incorporated many food policy goals. The Local Food, Farms, and Jobs Act created the Illinois Local Food, Farms, and Jobs Council, whose purpose is “to facilitate the growth of an Illinois-based local farm and food product economy that revitalizes rural and urban communities, promotes healthy eating with access to fresh foods, creates jobs, ensures a readily available supply of safe food in an emergency event, and supports economic growth through making local farm or food products available to all Illinois citizens.” The Council is tasked with researching and fostering numerous food policy goals in order to fully implement the objectives of the Act.

Source: Illinois General Assembly, 30 I.L.C.S. 595, Local Food, Farms, and Jobs Act (2009), available at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3137&ChapterID=7>.

STATE FOOD SYSTEM ASSESSMENT As a first step in the process of identifying potential state food policy changes, food policy councils can work with state government and state agencies to conduct a state food system assessment (FSA). An FSA is a tool for analyzing the elements of the food supply chain, which includes food production, processing, distribution, consumption, waste management, and all

⁴⁶ Becca Aaronson, *Farm to Table Caucus Advances Local Food Movement*, THE TEXAS TRIBUNE, Sept. 17, 2012, available at <http://www.texastribune.org/texas-legislature/texas-legislature/farm-table-caucus-advances-local-food-movement/preview/>.

⁴⁷ *Id.*

associated regulatory institutions and activities. The data collected through an FSA can provide a state food policy council with the information it needs to identify specific gaps or weaknesses in the current food system, make informed decisions for developing successful food system programs, strengthen state-wide community networks, increase awareness and understanding of food-related issues, promote health, and preserve state wealth through the economic activity of the state food system.

Though FSAs can serve as a great way to get organized and identify targeted needs for the state food system, they can require a significant amount of time and effort to undertake. Partnerships with local governments and agencies can provide support for state food policy councils as they undertake an FSA. There are also a number of resources available to help food policy councils get started in performing an FSA, such as the Community Food Security Assessment Toolkit, published by the Economic Research Service of the USDA.⁴⁸ Another resource is Ken Meter, president of Crossroads Resource Center (CRC), a non-profit organization that works with communities and their allies to foster democracy and local self-determination.⁴⁹ Meter is one of the most experienced food system analysts in the United States, and specializes in devising new tools that states and communities can use to assess their food system and create a more sustainable future.⁵⁰

CONCLUSION The laws and regulations surrounding food and agriculture can be complex, and the division of authority between states and the federal government can be confusing. Although the federal government exercises its authority over the food system in a variety of ways, states have ample opportunities to experiment with creative solutions to food system problems. Having a basic understanding of how food laws and regulations are created and modified will help state food policy councils in achieving their food policy goals.

⁴⁸ BARBARA COHEN, COMMUNITY FOOD SECURITY ASSESSMENT TOOLKIT (U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., July 2002), *available at* http://www.ers.usda.gov/media/327699/efan02013_1_.pdf; *see also* KAMESHWARI POTHUKUCHI ET AL., WHAT'S COOKING IN YOUR FOOD SYSTEM? A GUIDE TO COMMUNITY FOOD ASSESSMENT (CMTY. FOOD SEC. COALITION, 2002), *available at* http://foodsecurity.org/pub/whats_cooking.pdf.

⁴⁹ *See About Crossroads Resource Center*, CROSSROADS RESEARCH CTR. (2009), <http://www.crcworks.org/?submit=about> (last visited Oct. 15, 2012).

⁵⁰ *Id.*

SECTION II: FOOD SYSTEM INFRASTRUCTURE

A food system's infrastructure encompasses the entire food supply chain: production, processing, distribution, retail sales, marketing, and food waste management. Without reliable facilities and services, food markets within a state cannot reach their full potential. Food policy councils should promote policies that encourage states to facilitate local business development at each level of the supply chain, in order to bolster the state's food system infrastructure.

OVERVIEW This section identifies specific policy strategies for improving your state's food system infrastructure. Food system infrastructure broadly refers to the entities that shape the process along the continuum from seed to food to consumption. Think of food system infrastructure as the backbone behind all aspects of food system—from growing and cultivation to consumption and safety, as well as everything in between. This section offers policy suggestions for improving the efficiency of this infrastructure and discusses ways to alter the infrastructure to accomplish your council's food policy goals. The section is organized around different functions of the food system, namely: production, processing, distribution, retail, consumption, and waste.

1. Production Production includes any infrastructure that helps with planting and growing of healthy foods. This section describes the resources provided by the state that help encourage farmers to grow healthy foods, including economic support, tax incentives, loan programs, and farmer training programs.

2. Processing This step includes activities such as washing, packaging, chopping, drying, freezing, or otherwise preparing meat and poultry, fruits and vegetables, and cottage foods for sale and consumption.

3. Aggregation & Distribution Creating a centralized system for distribution of agricultural products (e.g. in food hubs) is an important part of the food infrastructure system and a way food policy councils can aid the growth and development of local food industries.

4. Retail This subsection introduces the entities that sell or serve food to consumers, such as grocery stores, restaurants, farmers markets, and community supported agriculture (CSAs).

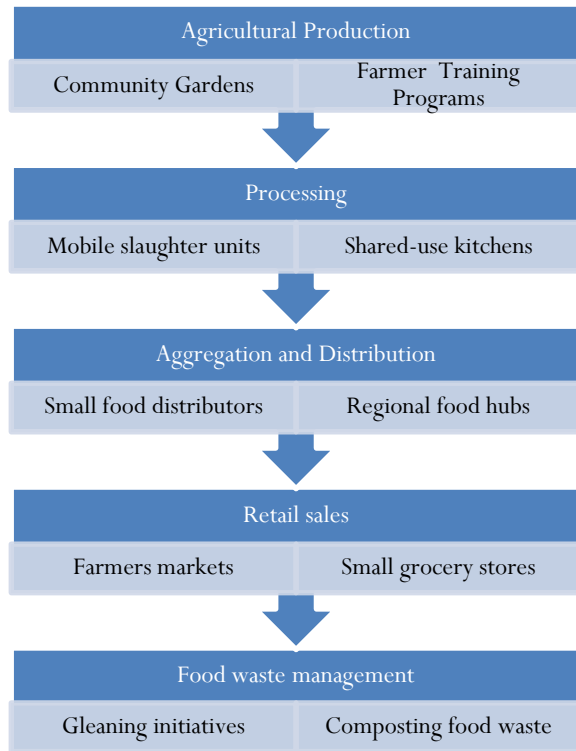
5. Food Waste This subsection explores the strategies that reduce waste by integrating food waste management into the food system through composting or recycling programs.

PRODUCTION Food policies and initiatives can have a tremendous effect on the amount, type, and method of food production utilized in a particular state. It is important to give financial support to build up the infrastructure for agricultural production (namely for fruits and vegetables) because financial support makes the risky business of agriculture more feasible. Most of the financial support provided by the federal government currently goes to production of crops like corn, soy, and cotton, which is why the United States produces so much of those crops. Advocating for policies that increase funding for the crops we actually eat will help those farmers grow their businesses and will increase the amount of those crops available for consumers. This section will explore a number of ways food policy councils can support the infrastructure for the production of healthy foods.

Economic Support for Healthy Crop Production The federal government provides various levels of support to agriculture and food production through the Farm Bill, which is reviewed and updated every five to seven years. Economic supports in the form of subsidies primarily go to commodity crops, like corn, wheat, cotton, rice, and soybeans.¹ In 2011, the federal government paid out nearly \$5 billion in

¹ EWG Farm Subsidy Database: The United States Summary Information, ENVTL. WORKING GRP., <http://farm.ewg.org/region?fips=00000®name=UnitedStatesFarmSubsidySummary> (last visited Sept. 28, 2012).

**FIGURE II-1: FOOD SUPPLY CHAIN
EXAMPLES OF EACH LEVEL**



subsidies to commodity crops in direct and countercyclical payments (which does not include other supports, such as conservation, disaster, and crop insurance subsidies).² *Specialty crops*, defined as “fruits and vegetables, tree nuts, dried fruits and horticulture and nursery crops, including floriculture”³—receive some federal funding as well, albeit much less than commodity crops. These crops received a total of \$55 million (in 2011 and again in 2012).⁴

Farm Bill funds for specialty crops generally come through a program called the Specialty Crop Block Grant Program.⁵ This program is funded by the federal government and administered by state governments. In 2012, the federal government awarded \$55 million in grants to the states.⁶ The amount awarded to each state and the types of funded projects varied greatly. The grants to states ranged from \$95,000 to \$18 million, with most grants falling in the \$200,000-300,000 range.⁷ These block grants to the state are then allocated by the state to various specific projects, which are chosen through application processes managed by each state.

In most states, the state agency in charge of administering the Specialty Crop Block Grant Program solicits applications from organizations, businesses, and entities within the state, and then compiles the strongest of those together into a general application to the federal government. The federal government allocates funding for each state in this way:

- (1) states whose applications are approved will receive at least \$100,000 or 1/3 of 1% of the total amount of funding available that fiscal year, whichever is higher; and

² The total amount of subsidies paid out in 2011 for all four kinds of subsidies (conservation, disaster, commodity, and crop insurance) totaled around \$15 billion. *EWG Farm Subsidy Database: Farm Subsidy Payments by Category*, ENVTL WORKING GRP., <http://farm.ewg.org/regionsummary.php?fips=00000&statername=theUnitedStates> (last visited Oct. 17, 2012).

³ *Specialty Crop Block Grant Program—Farm Bill*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/> (go to homepage, click on Grant Programs on Browse by Subject toolbar) (last visited Sept. 26, 2012).

⁴ *Definition of Specialty Crops*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/scbgpdefinitions> (last visited Sept. 26, 2012). *2011 Specialty Crop Block Grants Announced*, NAT’L SUSTAINABLE AGRIC. COALITION, <http://sustainableagriculture.net/blog/2011-scbg/> (last visited Oct. 17, 2012); Press Release, California Agriculture Leads the Nation in Funding for Specialty Crops (Oct. 1, 2012), available at http://www.cdfa.ca.gov/egov/Press_Releases/Press_Release.asp?PRnum=12-035.

⁵ *Specialty Crop Block Grant Program—Farm Bill*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/> (go to homepage, click on Grant Programs on Browse by Subject toolbar) (last visited Sept. 26, 2012).

⁶ News Release, Agriculture Secretary Vilsack Announces Investments in Specialty Crops to Help Strengthen New Markets, Provide Additional Economic Opportunity for Farmers and Ranchers (Oct. 1, 2012), available at <http://usda.gov/wps/portal/usda/usdahome?contentid=2012/10/0315.xml&contentidonly=true>; *Fiscal Year 2012 Description of Funded Projects*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5100734> (last visited Oct. 15, 2012).

⁷ *Fiscal Year 2012 Description of Funded Projects*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5100734> (last visited Oct. 15, 2012). Press Release, California Agriculture Leads the Nation in Funding for Specialty Crops (Oct. 1, 2012), available at http://www.cdfa.ca.gov/egov/Press_Releases/Press_Release.asp?PRnum=12-035.

- (2) any additional funding is determined by taking the proportion of the value of specialty crop production in the state as compared to the national value of specialty crop production.⁸

As the funding equation shows, each state has a baseline of funding it will receive, and any additional funding is dependent on the proportion of specialty crops your state produces compared to the rest of the country.⁹ **California** received the most money from the Specialty Crop Block Grant Program in 2012 (\$18 million).¹⁰ California’s proportion of national specialty crop production is quite high, which results in a higher grant award. Most of the grant awards were in the \$200,000 range, suggesting the proportion of specialty crop funding is about equal across many states.

Examples of the projects that were funded through the Specialty Crop Block Grant program in 2012 include the following:

- In **Alabama**, a project to promote the production of hydroponic specialty crops (grown in water).¹¹
- In **California**, a project to “to raise awareness of honey bee Best Management Practices (BMPs) through an easily accessible social media campaign.”¹²
- In **Connecticut**, a project to “increase institutional use of Connecticut Grown produce in foodservice operations . . . by determining what infrastructure currently exists and what additional infrastructure would be required to aggregate produce from Connecticut specialty crop producers and transform it into the products needed by institutions.”¹³
- In **Iowa**, a project to “gather both economic and social impact data for compilation and distribution to regional stakeholders in support of building the regional infrastructure necessary for increasing specialty crop production.”¹⁴

SOURCES OF FUNDING

In addition to Specialty Crop Block Grants, another significant source of grant funding comes from environmental- and conservation-based grants. For example, organic producers and those transitioning to organic production can receive funds through the Organic Initiative of the Environmental Quality Incentives Program.

Source: 16 U.S.C. § 3839aa-2(i) (2012).

Here are some actions a state food policy council can take with regard to federal specialty crop block grants:

- Review the state’s polices regarding applying for and awarding these grants.¹⁵ The state Department of Agriculture’s website and USDA’s Agricultural Marketing Service website provide helpful information about how to apply for a specialty crop block grant.¹⁶
- Work to ensure specialty crop growers are aware of these grants and work with the state Department of Agriculture to be more proactive in applying for these grants.

⁸ Specialty Crop Block Grant Program—Farm Bill, 74 Fed. Reg. 13313, 13314 (Mar. 27, 2009).
⁹ *Id.*
¹⁰ Press Release, California Agriculture Leads the Nation in Funding for Specialty Crops (Oct. 1, 2012), available at http://www.cdfa.ca.gov/egov/Press_Releases/Press_Release.asp?PRnum=12-035.
¹¹ Fiscal Year 2012 Description of Funded Projects, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5100734> (last visited Oct. 15, 2012).
¹² *Id.*
¹³ *Id.*
¹⁴ *Id.*
¹⁵ See IDALS Specialty Crop Block Grant Program Guidelines and Request for Proposals, IOWA DEP’T OF AGRIC. AND LAND STEWARDSHIP, http://www.iowaagriculture.gov/Horticulture_and_FarmersMarkets/pdfs/SpecialtyCropGrant2012/2012GuidelinesandRFPwlogicmodel.pdf (last visited Sept. 26, 2012).
¹⁶ Specialty Crop Block Grant Program—Farm Bill, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV. <http://www.ams.usda.gov/AMSV1.0/SCBGP> (click on “Apply for a Grant” on the right-hand side of the page) (last visited Sept. 26, 2012).

- Work with other stakeholders and apply for a specialty crop block grant to provide technical assistance or tutorials to specialty crop farmers in the state about ways to increase their production or marketing techniques.

In addition to working to ensure that your state is taking advantage of the federal Specialty Crop Block Grant Program, remember that there are other ways to incentivize specialty crop production in your state. In particular, states themselves can also support specialty crop growers. State food policy councils can advocate for *state* grant programs to support the production of healthy foods. When crafting a new grant program, your council could push for the state to fund grants directed to farmers who are going to produce specialty products, farms that are switching to sustainable practices, experimental growers, young farmers, and/or farmers who are redeveloping or reclaiming land and making it suitable for agriculture.

Tax Incentives Using state tax rules to promote production of specialty crops and healthy products may be a state food policy council's most flexible and wide-ranging policy tool. Tax incentives refer to different tax rules or rates that are intended to promote certain behaviors or transactions.

State food policy councils should push their state to adopt a tax incentive program to promote specialty crop production. Food policy councils can also advocate that their state take advantage of or develop programs that help producers navigate the complex tax code. For example, **North Carolina** State University Cooperative Extension regularly holds workshops regarding several different issues involving taxes for farmers, from sales tax on food to taking advantage of these different tax incentives.¹⁷

Here are a few different forms of tax incentives for which food policy councils can advocate:

- **Reduced tax rates** can be applied to certain incomes or transactions. For example, farm property may be taxed less than commercial property and farming income may be taxed at a lower rate than other personal income. **North Dakota** and **Pennsylvania** provide a property tax exemption or tax reduction for farm property and farmsteads; however, it only applies to farms that are 10 acres or

Federal Crop Insurance Primer

Federal crop insurance has been a hot topic of discussion in the food and agriculture community lately. Recent discussions around the 2012 Farm Bill reauthorization have focused on eliminating direct payment subsidies to farmers in favor of strengthening subsidized crop insurance programs. Federal crop insurance programs and subsidies, like farm subsidies, are mainly designed for commodity crops. If this happens, the main beneficiaries will continue to be commodity crop producers.

There are a few crop insurance programs that can be used by specialty crop producers. The primary programs are AGR (adjusted gross revenue) and AGR-Lite administered by the USDA Risk Management Agency, and NAP (the non-insured crop disaster assistance program) administered by the USDA Farm Service Agency.

Food policy councils should be aware that these programs exist and should find out what programs for specialty crops are offered in the state.

Source: *Crop Insurance Primer*, ENVTL. WORKING GRP., http://farm.ewg.org/crop_insurance_analysis.php (last visited Oct. 17, 2012); *Adjusted Gross Revenue-Lite (AGR-L)*, U.S. DEP'T OF AGRIC., RISK MGMT. AGENCY, <http://www.rma.usda.gov/policies/agr-lite.html> (last visited Oct. 17, 2012); *Adjusted Gross Revenue (AGR)*, U.S. DEP'T OF AGRIC., RISK MGMT. AGENCY, <http://www.rma.usda.gov/policies/agr.html> (last visited Oct. 17, 2012); *Noninsured Crop Disaster Assistance Program*, U.S. DEP'T OF AGRIC., FARM SERV. AGENCY, http://www.fsa.usda.gov/Internet/FSA_File/nap08.pdf (last visited Oct. 17, 2012).

¹⁷ *Enhancing Sustainability Workshops*, CHATHAM COUNTY CENTER OF NORTH CAROLINA COOPERATIVE EXTENSION, <http://chatham.ces.ncsu.edu/growingsmallfarms/workshops.html> (last visited Sept. 27, 2012).

larger.¹⁸ If your state does not have a reduced tax rate for farms, your state food policy council should advocate implementing a program that includes smaller farms from the beginning. If your state already has a reduced tax rate for farms, your state food policy council should advocate to lower the acreage limit to include smaller farms.

- **Tax credits** are set amounts of money that eligible individuals can deduct from their tax bill for various reasons. With regard to agriculture, some states (and local governments) have instituted tax credits for organic farming,¹⁹ for young or new farmers,²⁰ and for certain agricultural industries like dairy or livestock.²¹ Tax credits can also be used to incentivize particular procurement practices, like

a tax credit for purchasing local food, which in turn may stimulate more food production. In **Iowa**, there was an effort to implement a 20% tax credit for restaurants and other retail food markets that purchase local food.²² Although it has not yet passed the state legislature, the language of the legislation provides a good model for other states seeking to use tax credits to incentivize local food purchasing.

- **Tax rebates** require the government to return a portion of the amount the taxpayer paid. For example, Woodbury County, **Iowa**, provides a tax rebate for farms that transition from conventional to organic farming (see text box).²³

- **Tax deductions** reduce the amount of one's taxable income, usually based on expenses that were part of the cost of doing business or used to produce income. A deduction could be used as a way to reduce the tax rate by money spent on farm inputs

TAX REBATES

In 2005, Woodbury County, **Iowa**, passed a tax rebate program for farmers who transitioned their land from conventional to organic production. The program provides up to \$50,000 in real property tax rebates for farms that are transitioning to meet the organic requirements set forth in the National Organic Program. Even though this is a county-level action, it could be done at the state level.

Source: *Resolution, Woodbury County Policy for Rural Economic Revitalization "Organics Conversion Policy"*, WOODBURY COUNTY, IOWA, <http://old.woodburyiowa.com/departments/EconomicDevelopment/wc%20organics%20policyv4.pdf> (last visited Sept. 27, 2012).

Overall, state tax incentives may be used to help promote healthy food production, sustainable food production, local purchasing, and other responsible farming practices that can lead to healthy, robust citizens. The examples above are all potential policies that state food policy councils may choose to support in their mission to improve state agriculture.

¹⁸ *Property Tax Frequently Asked Questions #3*, N.D. STATE GOV'T, <http://www.nd.gov/tax/misc/faq/property/#Question3> (last visited Sept. 27, 2012); *Application for Property Tax Exemption for a Farm Residence*, N.D. STATE GOV'T, <http://www.nd.gov/tax/property/forms/farm-exempt.pdf> (last visited Sept. 27, 2012); *The Taxpayer Relief Act Frequently Asked Questions for Taxpayers*, PA. DEP'T OF EDUC., http://www.portal.state.pa.us/portal/server.pt/community/property_tax_relief/7452 (last visited Sept. 27, 2012).

¹⁹ *Resolution, Woodbury County Policy for Rural Economic Revitalization "Organics Conversion Policy"*, WOODBURY COUNTY, IOWA, <http://old.woodburyiowa.com/departments/EconomicDevelopment/wc%20organics%20policyv4.pdf> (last visited Sept. 27, 2012).

²⁰ Beginning farmers in Nebraska receive: (1) a three-year lease rather than the typical one-year lease; (2) a \$500 tax credit reimbursement for a required financial management course; and (3) eligibility for the personal property tax exemption. *Beginning Farmer Programs – tax credit programs*, NEB. DEP'T OF AGRIC., http://www.agr.ne.gov/beg_farmer/taxcpbfr.html (last visited Sept. 27, 2012).

²¹ *Dairy Farmer Tax Credit Program*, MASS. DEP'T OF AGRIC. RES., http://www.mass.gov/agr/dairy/dairy_tax_credit.htm (last visited Sept. 27, 2012).

²² Iowa Senate Study Bill 3236, Iowa Local Farmer and Food Security Act (2010), available at <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=billbook&GA=83&hbill=SSB3236>.

²³ *Resolution, Woodbury County Policy for Rural Economic Revitalization "Organics Conversion Policy"*, WOODBURY COUNTY, IOWA, <http://old.woodburyiowa.com/departments/EconomicDevelopment/wc%20organics%20policyv4.pdf> (last visited Sept. 27, 2012).

Loans Loans are another great way for states to increase production of certain crops and/or promote specific production methods. Many state loan programs are already available for various purposes, including for new or young farmers,²⁴ to incentivize production of certain agricultural products,²⁵ and for environmental purposes (e.g. land reclamation, conservation projects, and renewable energy projects).²⁶

Loans are similar to grants and tax incentives in that they provide funds to farmers to do projects the farmers might not otherwise do. Loans are usually less costly to the state than grants and tax incentives because they are designed to be paid back at some point. Although loan programs cost the state some money for personnel and administrative costs, the advantages of government-supported loan programs are significant. Farmers have the opportunity to utilize a low interest rate and the state has the opportunity to identify particular types of production or crops of interest that it hopes to support through the loan program. State food policy councils should find out about the financing needs of small-scale farmers in their state and advocate that their state implement a loan program addressing those gaps.

Loan programs in Minnesota and Iowa provide great examples. **Minnesota** has a Sustainable Agriculture Loan Program that provides funds to farmers who are seeking to make improvements to their farms that will increase the environmental and economic viability of the farms.²⁷ **Iowa's** Beginning Farmer Loan Program assists new farmers in purchasing agricultural land.²⁸ Part of the program provides lenders tax-exempt interest on the income earned, which allows the lenders to charge the beginning farmers a lower interest rate.²⁹

Farmer Training Programs Advocating for the state to put resources in farmer training programs is a high-impact way that food policy councils can help shape agricultural production in their states. While training programs may not directly result in big increases in agricultural investment or development, the role these programs play in introducing new techniques and in transferring knowledge between generations cannot be emphasized enough, particularly with regard to organic and sustainable growing methods, for which there may be a dearth of training in the state. Training programs can be designed to assist farmers in many areas, including agricultural best practices, environmental and sustainability improvements, risk management, entrepreneurship, marketing and sales, and technology.

Food policy councils can both advocate for state governments to provide funding for these training programs and also work

WHERE ARE THE NEW FARMERS?

One way to advocate for new farmers (and the development of more local food production) is to work with state universities to develop new farmer training programs.

California has an apprenticeship program at University of California Santa Cruz. The program focuses on training potential farmers in small-scale farming and organic gardening.

Source: *Apprenticeship Information*, THE CTR. FOR AGROECOLOGY & SUSTAINABLE FOOD SYS., <http://casfs.ucsc.edu/apprentice-training/apprenticeship-information> (last visited Oct. 16, 2012)

²⁴ *Farm Funding Resources (Loans and Grants): 4) Links to State Loan Programs*, BEGINNING FARMERS, <http://www.beginningfarmers.org/funding-resources/> (last visited Oct. 15, 2012). For a federal example, see *Beginning Farmers and Ranchers Loans*, U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fmlp&topic=bfl> (last visited Sept. 27, 2012).

²⁵ *Connecticut Dairy Farm Reinforcement Program Loans*, CONN. DEP'T OF AGRIC., <http://www.ct.gov/doag/cwp/view.asp?a=1368&q=331334> (last visited Sept. 27, 2012).

²⁶ *Sustainable Agriculture Loan Program*, MINN. DEP'T OF AGRIC., <http://www.mda.state.mn.us/grants/loans/esaploan.aspx> (last visited Sept. 27, 2012).

²⁷ *Id.*

²⁸ *Beginning Farmer Loan Program*, IOWA AGRIC. DEV'T AUTH., <http://www.iada.state.ia.us/BFLP/index.html> (last visited Oct. 15, 2012).

²⁹ *Id.*

with agricultural experts from vocational schools and universities to develop and host effective programming.

PROCESSING Agricultural processing refers to any food preparation activities that transform a raw agricultural product into a different food product. The discussion about processing covers raw agricultural products (meat, poultry, egg products, fruits and vegetables) as well as cottage food operations (e.g. baked goods, granolas, preservatives made in home kitchens). Access to processing infrastructure is essential to building a sustainable food system within your state.

Processing facilities allow food producers to provide a wider array of products, extend the shelf life of products, and increase producers' income because they can sell value-added or processed foods at a higher price than the raw products. Even minimal processing of foods, such as chopping and washing leafy greens, can help to add value and thus increase the take-home pay for growers and producers. Increased pay not only encourages more individuals to grow and produce food, but it also has an economic multiplier effect on both the local and state economy. In addition, processing allows for increased utilization of raw commodities and livestock, which means the community experiences less waste, improves profitability and job creation, and decreases reliance on infrastructure outside the region.

Examples of food processing infrastructure include cold storage facilities; shared-use food processing centers and agricultural facilities (for grading, storing, and packaging foods); grain milling facilities; dairy processing facilities (for milk bottling and cheese making); and meat and poultry slaughter and processing facilities (including mobile processing facilities).

North Carolina has done extensive research on shared-use processing facilities. The Center for Environmental Farming Systems held a summit in North Carolina to discuss ways to expand independent farmers' access to affordable value-added processing and agricultural facilities while ensuring profitability and food safety. Summit participants came to the following conclusions:

- The success of shared-use facilities is highly dependent on a variety of factors, including: location (proximity to food entrepreneurs and consumer markets); client access to technical assistance and training in business management; and availability of capital.
- The improvement of supply chain management is necessary to enable sufficient aggregation and entry of farmers' products into local markets.
- The confluence of federal, state, county, and local regulatory requirements, taken together, can impede development of and investment in small-scale facilities at the local level.

MOBILE PROCESSING

To foster local processing, the Island Grown Farmers Cooperative in **Washington** became the first cooperative to receive a USDA-inspected mobile meat-slaughtering unit in 2002. Local farmers who are part of the cooperative have the advantage of using the mobile slaughtering unit, which allows them to sell USDA-inspected meat interstate without having to have a USDA approved facility.

A state-inspected mobile slaughter unit is also an option for states. The processors using state-inspected mobile slaughter units would be limited to selling their products within the state.

Source: *About IGFC*, ISLAND GROWN FARMERS COOP, <http://www.igfcmcats.com/2.html> (last visited Sept. 28, 2012).

- There is a need for a “one-stop” shopping source of regulatory, educational, and technical assistance at the state level for farmers, food entrepreneurs, and food system businesses.³⁰

There are a few innovative ways states can support the processing infrastructure in their state, such as funding mobile slaughter and processing units or local slaughterhouses, or introducing or improving cottage food laws. These topics are discussed in Section VIII: Food Safety & Processing because food processing brings with it increased food safety regulation and oversight.

AGGREGATION & DISTRIBUTION Whether food items are processed or raw, getting those products to market remains an issue. To meet this challenge, it is important to establish a strong food aggregation and distribution sector. As the demand for local produce increases and small to mid-size farmers respond by scaling up production, these farmers will need to move beyond direct sales of small quantities to larger transactions. An aggregation sector that fosters these larger transactions by buying farmers’ products in bulk and at competitive prices, or coordinating larger purchasers to do so, can help farmers continue to expand their markets and grow their farm business.

Aggregation and distribution services create networks that link small and mid-sized farmers and bring their food to wider markets. Aggregators source produce from multiple farms in order to achieve volumes suitable for larger buyers. Aggregators sometimes take the role of “food hubs,” which are organizations (private or nonprofit) that act as centralized supply chain coordinators.³¹ Food hubs offer a variety of services centered on bringing together producers and consumers,³² such as product storage, branding and market promotion, and food safety and good agricultural practices (GAP) training.³³

The size and scale of food hubs vary, from the small food hub serving only Charlottesville, **Virginia**, to the regional food hub serving five states in the **Pacific Northwest**.³⁴ Food hubs buy products from local growers and processors and then resell products to local restaurants, schools, and grocery stores. The advantages of food hubs include: creating economies of scale; enabling sales at greater prices with reduced transactions costs; providing greater access to local and conventionally farmed foods; and providing a way for smaller growers to engage in commercial selling without having to buy expensive liability insurance, because food hubs often carry their own liability insurance policies.³⁵

To promote the growth of food hubs, the USDA has begun partnering with the Wallace Center at Winrock International, the National Good Food Network, and others, to form the National Food Hub Collaboration.³⁶ This Collaboration is working to support the growth and development of food hubs and has

³⁰ *Processing & Food Systems Infrastructure*, CTR. FOR ENVTL. FARMING SYS., <http://ncsustainablefood.wordpress.com/working-issue-groups/processing-food-systems-infrastructure> (last visited Dec. 16, 2011).

³¹ *Food Hubs: Building Stronger Infrastructure for Small and Mid-Sized Producers*, U.S. DEPT. OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/FoodHubs> (last visited Oct. 3, 2012).

³² “A regional food hub is a business or organization that actively manages the aggregation, distribution, and marketing of source identified food products primarily from local and regional producers to strengthen their ability to satisfy wholesale, retail, and institutional demand.” *Regional Food Hub Resource Guide*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV. 4 (Apr. 2012), <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5097957>.

³³ *Id.* at 6.

³⁴ *About Us: Mission*, LOCAL FOOD HUB, <http://localfoodhub.org/about/mission/> (last visited Oct. 3, 2012); *About Food Hub*, FOOD HUB, <http://food-hub.org/pages/about> (last visited Oct. 3, 2012).

³⁵ For more positive impacts of regional food hubs, see *Regional Food Hub Resource Guide*, U.S. DEPT. OF AGRIC., AGRIC. MKTG. SERV. 14–23 (Apr. 2012), <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5097957>.

³⁶ *National Good Food Network Food Hub Collaboration*, WALLACE CTR. AT WINROCK INT’L, <http://www.wallacecenter.org/our-work/current-initiatives/food-hub-collaboration> (last visited Oct. 3, 2012).

created and compiled a wealth of resources available to the public.³⁷ The USDA's *Regional Food Hub Resource Guide* offers guidance on where and how states can secure financial support for starting a food hub.³⁸

Here are some ways state food policy councils can support the development of the aggregation and distribution infrastructure in their states:

- Identify whether local or regional food hubs are already in operation in their state.
- If there are local or regional food hubs in place, seek to collaborate with the food hubs on helping them improve their services and reach, as well as seek funding or regulatory change that can help the food hub to increase their operational capacity.
- If there are no local or regional food hubs in operation, gather interested stakeholders and work to create one. Identify which sources of funding (grants or otherwise) are available to provide seed financing for the endeavor.³⁹
- In either case, advocate for the state government to appropriate further financial support for either a state food hub or a regional food hub in collaboration with other states. Here, food policy councils can serve an integral role by making connections with other state food policy councils or state governments to attempt to organize an interstate food hub, which might be especially appropriate in regions with smaller states like New England or the Southeast.

RETAIL There are many opportunities for policy changes to a state's food system at the retail level. "Retail" refers to the point of purchase where consumers obtain food. Retailers can include:

- restaurants
- school cafeterias
- institutions (such as universities, state agencies, hospitals)
- wholesale clubs
- grocery stores
- farmers markets
- roadside fruit stands
- community supported agriculture operations (CSAs) and
- mobile vending operations.

Increasing food retail opportunities is a significant way to support the growers in your state. For more information about opportunities for local growers to increase their markets, see [Section VI: Farm to Institution](#). For information about increasing the number and distribution of retailers, see [Section V: Consumer Access & Consumer Demand](#). In addition to promoting farm to institution policies, state food policy councils can also encourage local grocery stores and restaurants to purchase local foods in order to increase market for those foods and improve the local food system overall.

³⁷ *Id.*

³⁸ *Regional Food Hub Resource Guide*, U.S. DEPT. OF AGRIC., AGRIC. MKTG. SERV. 34–70 (Apr. 2012), <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5097957>.

³⁹ In addition to the resources listed in the USDA Regional Food Hub Resource Guide, here are more sources of funding: *Potential USDA Programs to Support Regional Food Hub Development*, U.S. DEP'T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5091483> (last visited Oct. 3, 2012); *The National Sustainable Agriculture Coalition's Guide to USDA Funding for Local and Regional Food Systems*, NAT'L SUSTAINABLE AGRIC. COAL. (2010), <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5097198>.

FOOD WASTE MANAGEMENT In a well-constructed food system, every element of the food supply chain contributes to the improvement of the food system. Despite high rates of hunger and food insecurity, recent years have seen huge growth in the amount of food that goes to waste. Improving the food system infrastructure to reduce the amount of food that is wasted (e.g. by reducing spoilage from field to market, increasing markets, improving donation laws, etc.) and/or enacting policies that utilize the food waste (e.g. through composting) are important areas for policy advocacy. Composting is discussed below, while expiration dates and gleaning/food donation laws are discussed in Section V: Consumer Access & Consumer Demand.

Food that is no longer safe to eat can be used as compost. Composting is a process often used in organic farming and involves using decomposed organic matter, such as plants and food waste, as fertilizer for crop growth. It is vastly preferable to other common methods of waste disposal because it not only improves environmental impacts by reducing waste, but also provides on-farm benefits by enriching the soil. It can prevent further pollution, remedy polluted soil, prevent erosion, generally reduce the amount of water, pesticides, and fertilizers needed, and increase overall food production.⁴⁰ States can play a role in supporting or requiring food waste to be composted. For example, in 2011, **Connecticut** passed a law that requires certain food establishments to compost their organic waste.⁴¹ The **Illinois** Department of Commerce & Economic Opportunity provides funding for innovative compost projects through a grant program called the Food Scrap Composting Revitalization & Advancement (F-SCRAP) Program.⁴² The grants support projects that divert food and organic material from landfills towards composting.⁴³ There are great examples of how states can improve their composting infrastructure by requiring entities to compost and by encouraging and financially supporting creative solutions from their citizens.

Food policy councils can increase community and government support for collecting compost materials by:

- Emphasizing the noted economic and environmental benefits to farmers and the state by referencing successful composting programs in other states;
- Working to reduce restrictions on what foods can be included in compost, such as proteins, fats, and oils, as well as other agricultural byproducts;
- Pushing for laws like that in **Connecticut** that require composting to be utilized in certain cases; and
- Advocating for funding for both government-funded large-scale composting initiatives as well as privately-supported small-scale composting initiatives, like **Illinois**.

CONCLUSION From production to processing through aggregation and distribution, all the way to retail and food waste, each level of a state's food system infrastructure has opportunities for food policy councils to effect state-level change. State food policy councils should evaluate the current policies at play in their state's food supply chain and identify areas most in need of change.

⁴⁰ *Environmental Benefits*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/osw/conserves/rrr/composting/benefits.htm> (last visited Oct. 17, 2012).

⁴¹ An Act Concerning the Recycling of Organic Materials by Certain Food Wholesalers, Manufacturers, Supermarkets and Conference Centers, 2011 Conn. Pub. Acts 11-217.

⁴² *Recycling*, IL. DEP'T OF COMMERCE & ECON. OPPORTUNITY, http://www.ildceo.net/dceo/Bureaus/Energy_Recycling/Recycling/ (last visited Nov. 6, 2012).

⁴³ *Id.*

SECTION III: LAND USE & PLANNING

Land use and planning can have a significant impact on food systems by determining how land is utilized throughout the state. Although local governments are primarily in charge of setting their own land use policy (using authority granted by the state), state governments still play an important role. States can set comprehensive state land use plans, as well as implement a variety of programs that encourage the preservation of farmland.

OVERVIEW Land use and planning can significantly impact food systems by impacting whether land is available for farming. This section presents an overview of land preservation techniques and discusses the importance of protecting land that is being farmed sustainably. It describes ways that food policy councils can advocate to improve the existing legal scheme governing land use in order to advance their goals.

1. Basic Concepts of Land Use & Planning This subsection introduces the background concepts of land use regulation and planning.

2. Farmland Preservation Techniques: State Land Use Policies This section outlines how a state can adopt a statewide land use plan or land use policies to preserve land for agricultural use.

3. Farmland Preservation Techniques: Restricting Land to Agricultural Uses This section lays out ways states can preserve farmland by encouraging farmers to voluntarily restrict their rights to develop their farmland in exchange for compensation or tax benefits, through donation of conservation easements, purchase of development rights, and transfer of development rights, among others.

4. Other Farmland Preservation Techniques As described in this section, states can adopt several less costly options to preserve farmland and protect local farmers, including right to farm laws, agricultural district programs, and programs linking young farmers with experienced farmers.

BASIC CONCEPTS OF LAND USE & PLANNING Land use and planning refers to the various ways in which state and local governments regulate how land within their jurisdictions is utilized. Zoning is a common example of this field: governmental agencies (typically at the local level) draw zoning maps of cities that indicate which areas are to be used for residential purposes, for commercial purposes, for industry, for mixed-use, etc. Once these zones are designated, certain activities are allowed or disallowed in each of the zones. Governments also engage in other types of land use and planning policy, including restricting the scope or type of development in certain areas or protecting natural resources.

The state government's role in land use and planning varies depending on the state. As described in more detail in [Section I: General Legal Setting](#), the U.S. Constitution reserves certain powers to the states rather than the federal government,¹ such as the police power, which includes the right to create regulations about the use of land.² What states do with this power—for example, whether the power is kept in the hands of the state or is delegated to localities and municipalities—is determined by the state.³ With some limitations to protect the rights of individuals, the constitution generally gives states the authority to dictate all land use policies enacted within their borders, but most states delegate a large portion of their land use and planning authority to the local governments.⁴ However, some states utilize more central planning techniques to craft statewide land use policies and delegate less power to localities. In other words, all states *have* the power to

¹ U.S. CONST. amend. X.

² PETER W. SALSICH & TIMOTHY J. TRYNIECKI, *LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW* 3 (Aen. W. Webster et al. eds., 2d ed. 2004).

³ For a more in-depth discussion about the local government authority, see HARVARD LAW SCHOOL FOOD LAW & POLICY CLINIC, *GOOD LAWS, GOOD FOOD: PUTTING LOCAL FOOD POLICY TO WORK IN OUR COMMUNITIES* 5–10 (June 2012).

⁴ For more information about local government's role in land use and planning, see *id.* at 30–45.

regulate land use and planning, but they vary as to whether they *exercise* that power at the state level. Whether or not states delegate a large portion of their land use power to localities, state governments still have many opportunities to exercise their authority to support farmland preservation.

FARMLAND PRESERVATION TECHNIQUES: STATE LAND USE POLICIES One of the state government’s primary roles in farmland preservation is to enact policies that either create statewide protection of agricultural land or enable and encourage local governments to adopt land use planning techniques that preserve farmland to the greatest extent possible in the face of urban or suburban sprawl. These statewide plans can take the form of individual policies and programs that protect farmland or can be combined into a comprehensive statewide farmland preservation plan. State legislatures can create farmland preservation programs with state financial assistance that are open to county governments for participation. Such “opt-in” programs, if properly incentivized, can give states significant influence over local land use planning. This type of technique can be effective even where state governments have delegated significant land use authority to local governments.

States may also want to take a hybrid approach, combining attempts to influence local governments with some amount of central planning to ensure their food production systems are not swallowed up by urban and suburban expansion.

As described above, there are several different alternatives to structure statewide farmland preservation policies or plans. State food policy councils may wish to use some of the following examples as models for their own advocacy efforts:

- **Rhode Island** has a plan called *Land Use 2025*.⁵ In it, the state government takes control of many aspects of land use planning for the entire state, including designations of Urban Services Boundaries throughout the state, within which urban growth should be contained to protect rural areas located outside the boundaries.⁶ Rhode Island’s statewide land use plan approach has the advantage of establishing a cohesive policy for the entire state designed to meet all of the state’s land use needs in the future: in other words, it allows the state to ensure that residential, urban, agricultural, and rural land use are all considered on a statewide basis rather than having municipalities establish a patchwork of policies that may not fit together well for the benefit of the entire state.⁷
- **Oregon**’s statewide land use plan has the preservation of agricultural land as one of its top three goals. Similar to Rhode Island, it is an example of a state taking control of the agricultural preservation process by mandating certain statewide standards for the preservation of Oregon’s agricultural lands. The plan states that agricultural lands (as defined in state law) will be preserved

STATEWIDE LAND USE PLAN

Oregon has adopted 19 statewide planning goals in the area of land use and related subjects. The goals include establishing a land use planning process and policy framework to ensure all land use decisions have a factual basis. The state’s Land Conservation and Development Commission (LCDC) is charged with checking for consistency between local comprehensive plans and Oregon’s 19 statewide planning goals.

Source: *Statewide Planning Goals*, OR. DEP’T OF LAND CONSERVATION & DEV., <http://www.oregon.gov/LCD/Pages/goals.aspx> (last visited Oct. 5, 2012).

⁵ See *Land Use 2025: Rhode Island State Land Use Policies and Plan*, R.I. DEP’T. OF ADMIN. DIV. OF PLANNING STATEWIDE PLANNING PROGRAM (Apr. 2006), <http://www.planning.ri.gov/landuse/121/landuse2025.pdf>.

⁶ *Id.* at vi.

⁷ It is important to note that Rhode Island has no governance at the county level, only at the local and state level.

and maintained for farm use.⁸ It allows for certain specified non-farm uses of agricultural land, but strongly discourages such uses in order to maximize agricultural productivity.⁹ Still, the plan leaves a certain amount of discretion to county governments, directing them to establish rules (within the state requirements) for the designation and zoning of agricultural lands.¹⁰ Oregon also has a robust set of growth management laws, which are laws that control the timing and phasing of urban growth, and which can be used to help protect farmland from conversion. Under these laws, every county in the state has implemented agricultural protection zoning, resulting in the protection of more than 16 million acres of agricultural lands.¹¹

- The **Florida** Rural Land Stewardship Program is one example of how a state can use a series of policies to preserve farmland even if it has already delegated much land planning power to local governments.¹² Under the program, counties can designate Rural Land Stewardship Areas that require certain non-urban uses of large swathes of land for a set period of years.¹³ Counties can designate areas as agricultural, rural, open, or open-rural under the program.¹⁴ While it is not geared exclusively toward preserving farmland, preserving agricultural land use is one of the key goals of the policy.¹⁵ In setting up this program, Florida's lawmakers were able to set land use and planning policy *through* the local governments.¹⁶ The legislature set program goals, such as agricultural economy preservation, that clearly have statewide reach and intent.¹⁷ Yet it did not mandate the program's implementation or withdraw any of the land use planning power it had traditionally delegated to counties; rather, it gave counties a tool with which to accomplish these goals on a local level.¹⁸

State food policy councils should find out if their states already have some sort of statewide land use plan or programs in place and review these programs to ensure they include strong protection for farmland. For example, do the plan or programs specifically provide for farmland preservation? Do they set preservation goals?¹⁹ Food policy councils can then advocate for the state to either implement a more coordinated statewide land use or farmland preservation plan or push for the state to develop tools and incentives that would encourage localities to adopt more farmland preservation measures.

FARMLAND PRESERVATION TECHNIQUES: RESTRICTING LAND TO AGRICULTURAL USES In addition to using statewide planning as a tool for farmland preservation, there are a set of tools that state and municipal governments, as well as nonprofit organizations, can use in order to restrict future uses of agricultural land and thus preserve more land for food production.

⁸ *Oregon's Statewide Planning Goals & Guidelines, Goal 3: Agricultural Lands*, OR. DEP'T. OF LAND CONSERVATION & DEV., <http://www.oregon.gov/LCD/docs/goals/goal3.pdf> (last visited Oct. 5, 2012).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Fact Sheet: The Farmland Preservation Toolbox*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. 4, http://www.farmlandinfo.org/documents/27761/fp_toolbox_02-2008.pdf (last visited Nov. 8, 2012).

¹² *Rural Land Stewardship Program*, FLA. ATL. UNIV. CTR. FOR URBAN & ENVTL. SOLUTIONS, <http://www.cues.fau.edu/toolbox/subchapter.asp?SubchapterID=34&ChapterID=1> (last visited Oct. 5, 2012).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See generally Guidelines for Developing Municipal Comprehensive Farmland Preservation Plans*, NJ STATE AGRIC. DEV. COMM. (May 2007), <http://www.nj.gov/agriculture/sadc/farmpreserve/programs/pigmunicipalplanguidelines.pdf>.

Conservation Easements One way to accomplish farmland preservation is through the use of a *conservation easement*. A conservation easement is a deed restriction voluntarily placed on a landowner's property to protect resources presently on the land from future development.²⁰ In the context of farmland preservation, the easement is referred to as an "agricultural conservation easement" because the resource being protected is productive agricultural land.²¹ Conservation easements can be purchased, transferred, or donated, as described below.

Almost all states have passed some form of legislation allowing conservation easements,²² either by adopting the 1981 National Conference of Commissioners on Uniform State Laws' Uniform Conservation Easement Act²³ (23 states and Washington, DC) or by enacting their own enabling statutes (26 states).²⁴ The Uniform Conservation Easement Act is available to any state wishing to pass a law allowing public agencies and private organizations to accept, acquire, and hold conservation easements. North Dakota is the only state that has not embraced legislation enabling conservation easements.²⁵

Every conservation easement needs a monitoring entity to ensure that the terms of the easement are enforced. One of the most important types of monitoring entities is called a *land trust*. A land trust is a nonprofit organization whose mission is to conserve land; the main method they use to accomplish that goal is to facilitate acquisition of conservation easements, serve as stewards for such easements that others have bought or accepted, and help negotiate private agreements to conserve land.²⁶ Land trusts exist in all 50 states,²⁷ and there are roughly 1,700 of them across the country.²⁸ Land trusts are already responsible for conserving 37 million acres of land in the United States—roughly the size of New England.²⁹ The Land Trust Alliance, an organization devoted to promoting land trusts across the country, maintains a list of the

DRAWBACKS OF CONSERVATION EASEMENTS

It is important to note that conservation easements have three major drawbacks, which may influence whether conservation easements will provide enough protection for farmland:

- They only guarantee the land will not be *developed*, so there is no assurance that the land will actually continue to be farmed forever.
- Monitoring the use of land requires a strong commitment from the easement holder (e.g. the monitoring organization, usually the state or a non-profit), and many of these organizations lack the resources to adequately monitor large numbers of farms subject to easements.
- Subsequent landowners may not be willing to uphold the terms of the easement despite the easement being considered permanent.

Source: *Fact Sheet: Agricultural Conservation Easements*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Jan. 2004), http://www.farmlandinfo.org/documents/27762/ACE_1-04.pdf.

²⁰ *Fact Sheet: Agricultural Conservation Easements*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Dec. 2010), http://www.farmlandinfo.org/documents/27762/ACE_01-2011_.pdf.

²¹ *Id.*

²² *Id.*

²³ UNIF. CONSERVATION EASEMENT ACT (1981), available at <http://www.cals.ncsu.edu/wq/lpn/PDFDocuments/uniform.pdf>.

²⁴ *Fact Sheet: Agricultural Conservation Easements*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Dec. 2010), http://www.farmlandinfo.org/documents/27762/ACE_01-2011_.pdf.

²⁵ Robert H. Levin, *A Guided Tour of the Conservation Easement Enabling Statutes*, LAND TRUST ALLIANCE, 7 (Jan. 2010), <http://www.landtrustalliance.org/policy/emerging-issues/cestatutesreportnoappendices.pdf>.

²⁶ *Land Trusts*, LAND TRUST ALLIANCE, <http://www.landtrustalliance.org/land-trusts> (last visited Sept. 27, 2012).

²⁷ *Fact Sheet: Agricultural Conservation Easements*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Jan. 2004), http://www.farmlandinfo.org/documents/27762/ACE_1-04.pdf.

²⁸ *Land Trusts*, LAND TRUST ALLIANCE, <http://www.landtrustalliance.org/land-trusts> (last visited Sept. 27, 2012).

²⁹ *Id.*

TAX CREDITS FOR CONSERVATION EASEMENTS

New York's conservation easement tax credit allows landowners to receive an annual refund of 25% of their property taxes (up to \$5,000).

Source: *NYS Conservation Easement Tax Credit*, N.Y. DEP'T OF ENVTL. CONSERVATION, <http://www.dec.ny.gov/lands/26428.html> (last visited Oct. 22, 2012).

accredited land trusts in each state.³⁰

State food policy councils should push for their state government to provide financial incentives to encourage farmers to place conservation easements on their land. These incentives can take several forms, including cash compensation, transferred property rights, tax breaks, lower property taxes, and tax credits.

Despite the drawbacks (mentioned in the text box above), the overall utility of agricultural conservation easements is clear, and state food policy councils should ensure that farmers are able to preserve their farmland through this mechanism should farmers choose to do so. Whether a state prefers to encourage sales of

development easements, transfers of development rights, or donations of conservation easements, the key features are the same: they require land to be used only for agricultural purposes while ensuring that present landowners retain title to and use of their farmland. Farmers gain two major benefits from all three of these devices: a financial boon in the form of payment up front or tax benefits, and a guarantee that their land will remain available for them to farm rather than falling victim to sprawling development. In turn, all of the state's citizens benefit from the preservation of more local farms and the locally produced food they provide. The following sections describe different methods for utilizing conservation easements to preserve farmland.

Purchase of Development Rights One way to preserve farmland is through the purchase of development rights (PDR), also known as purchase of agricultural conservation easements (PACE).³¹ Farmers who sell development rights surrender their rights to develop their land for anything *other* than agriculture, while retaining their ability to continue farming their land.³² The farmer thus holds title to his or her land—meaning he or she is still the owner of the property—and simply sells off the right to use the land in a manner he or she does not want to take advantage of anyway. These development restrictions remain in force for any future owners as well. This ability to maintain ownership while selling off one of the rights that goes along with ownership is based on the notion that property ownership is a bundle of rights; the owner can sell a certain aspect of land ownership while retaining the rest of the bundle.

The price of a PDR is determined by calculating the difference between the value of the land without development restrictions (e.g. before the sale of the development right) and the value of the land with development restricted to agricultural use.³³ As of May 2011, 25 states had PDR or PACE programs in place.³⁴ PDRs have several benefits both to individual farmers and for broader farmland preservation:

- Farmers selling development rights receive both immediate and long-term financial benefits.³⁵ By cashing in part of their equity, these farmers receive immediate funds that enable them to pay off

³⁰ *Accredited Land Trusts*, LAND TRUST ALLIANCE, <http://www.landtrustalliance.org/land-trusts/accredited-land-trusts> (last visited Sept. 27, 2012).

³¹ Some states, such as New Jersey, refer to PDRs as development easements.

³² *Farmland Preservation Overview*, STATE OF N.J. DEP'T OF AGRIC., <http://www.nj.gov/agriculture/sadc/farmpreserve/> (last visited Sept. 27, 2012).

³³ *Id.*

³⁴ *Fact Sheet: Status of State PACE Programs*, Farmland Info. Ctr. (2011), http://www.farmlandinfo.org/documents/38371/PACE_State_07-20111.pdf.

³⁵ *Farmland Preservation Overview*, STATE OF N.J. DEP'T OF AGRIC., <http://www.nj.gov/agriculture/sadc/farmpreserve/> (last visited Sept. 27, 2012).

debt, purchase new equipment and tools for the long-term health of the farm, or recapitalize their farming operation.³⁶

- Selling development rights may help young or new farmers to enter the market. Selling development rights reduces the cost of the land to reflect its agricultural production value, since development of the land is no longer possible. This reduction of value creates a supply of good, affordable agricultural lands for new farmers who would not otherwise be able to purchase farmland.³⁷
- Selling development rights is a flexible tool that can and should be tailored to each individual property to achieve the best results for each landowner, community, and state. A PDR can be written to include or restrict current or future (as yet undetermined) agricultural practices. Landowners may want to sell development rights for only part of their property, or may want to retain future rights to build home sites for family members on their land.³⁸ Because PDRs are flexible, these differences are possible.
- PDRs are permanent, so the deed restrictions transfer to future owners—meaning that if the farmer who sold the development easement later sells title to the land to another person, that person would also be prevented from developing the land for anything other than agricultural use.³⁹

State food policy councils can push for the use of PDRs as a way to preserve farmland by:

- Advocating for a state law allowing severability of development rights from agricultural lands (if not already allowed). In order for PDRs (and TDRs, see below) to take place, state law must allow for the severability of development rights from agricultural lands. Most state laws allow this through an enabling statute, but if your state does not, you should advocate for such a change.
- Encouraging the state to create a fund that can be used to purchase development rights. Some ways to secure funding include: redirecting a portion of state property taxes to this fund; using public funds raised through voter-approved bond measures to purchase development rights to agricultural lands, as **Connecticut** and **Maryland**, and other states, counties, and towns have done;⁴⁰ or selling non-

STATE MONEY FOR PDRS

Even when states provide funding for local PDR programs, such programs can generate controversy. In March 2012, Tennessee provided grant money to Washington County to help fund its PDR program. The County's Board of Supervisors voted 5-2 to accept the \$46,000 in state grant money, though the decision was not without vocal opposition. Some who opposed the grant money saw the program as an overreaching of government into property rights, while other who were in opposition to the program would have rather seen the state funding for local PDR programs, which totaled \$1.2 million in 2012, go to other areas such as education.

Source: Debra McCown, *Washington Board Accepts State Grant Money for Purchase of Development Rights Program*, TRICITIES.COM, Mar. 14, 2012, <http://www2.tricities.com/news/2012/mar/14/washington-board-accepts-state-grant-money-purchase-1763595/>.

³⁶ John B. Wright and Rhonda Skaggs, *Purchase of Development Rights and Conservation Easements: Frequently Asked Questions*, N.M. STATE UNIV. AGRIC. EXPERIMENT STATION TECHNICAL REP. 34, 4 (2002) <http://aces.nmsu.edu/pubs/research/economics/tr34.pdf>.

³⁷ N.M. State Univ., *Purchase of Development Rights and Conservation Easements: Frequently Asked Questions* 1, 4 (2002), available at <http://aces.nmsu.edu/pubs/research/economics/tr34.pdf>.

³⁸ John B. Wright and Rhonda Skaggs, *Purchase of Development Rights and Conservation Easements: Frequently Asked Questions*, N.M. STATE UNIV. AGRIC. EXPERIMENT STATION TECHNICAL REP. 34, 4 (2002) <http://aces.nmsu.edu/pubs/research/economics/tr34.pdf>.

³⁹ *Farmland Preservation Overview*, STATE OF N.J. DEP'T OF AGRIC., <http://www.nj.gov/agriculture/sadc/farmpreserve/> (last visited Sept. 27, 2012).

⁴⁰ John B. Wright and Rhonda Skaggs, *Purchase of Development Rights and Conservation Easements: Frequently Asked Questions*, N.M. STATE UNIV. AGRIC. EXPERIMENT STATION TECHNICAL REP. 34, 5 (2002) <http://aces.nmsu.edu/pubs/research/economics/tr34.pdf>.

agriculturally viable government-owned land for development, the proceeds from which can be used to purchase development easements on land whose agricultural viability should be preserved, as **Nevada** has done.⁴¹

- Advocating for the state to provide tax incentives to those organizations or individuals that purchase development rights.

Transfer of Development Rights A similar approach to farmland preservation is called a transfer of development rights (TDR). In a TDR, the development rights on one parcel of land are transferred to another parcel.⁴² The most common scenario for this practice involves a transfer of rights between a parcel of farmland that is located in a portion of a county that is somewhat far from a municipality, and a parcel of land that is closer to the municipality but is not viable farmland. Transferring the development rights from the farmland to the other parcel allows the second parcel to be developed more densely than zoning laws would otherwise allow while preserving the farmland parcel from future development.⁴³ This action has two sprawl-controlling benefits: it preserves the farmland further away from municipal services while reducing the need for outward growth by allowing more dense development of urban and suburban areas.

New Jersey passed a State Transfer of Development Rights Act, which both authorized local TDR programs and empowered the State TDR Bank Board to provide planning assistance grants to municipalities.⁴⁴ With regard to TDRs, state food policy councils should follow New Jersey's lead and:

- Advocate for legislation explicitly authorizing local governments to enact TDR programs.
- Encourage state government to provide grants or other funding for these programs.

Donation of Conservation Easements Farmers also have the option of donating agricultural conservation easements, rather than selling or transferring them. The process is similar to the PDR process—farmers give up development rights to their farmland to the government or a conservation non-profit—except in return, they receive tax benefits rather than cash compensation.⁴⁵

Donating agricultural conservation easements gives farmers federal income tax benefits, since such donations count as a charitable gift under the Internal Revenue Code.⁴⁶ States can also encourage donations by enacting state income tax benefits to incentivize such donations.⁴⁷ Most states offer state tax deductions for donations, and some states (at least fifteen, including **California** and **South Carolina**)⁴⁸ offer tax credits. In addition, many states lower the property tax rates on land where farmers have donated

⁴¹ *Id.*

⁴² *Fact Sheet: Transfer of Development Rights*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (April 2008), http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf.

⁴³ *Id.*

⁴⁴ N.J. STAT. ANN. §§ 40:55D-137 – 40:55D-163, 4:1C-52 (West 2012); *see also Fact Sheet: Transfer of Development Rights*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. 5 (April 2008), http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf.

⁴⁵ *See Fact Sheet: Agricultural Conservation Easements*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Dec. 2010) http://www.farmlandinfo.org/documents/27762/ACE_01-2011_.pdf.

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ *State and Local Tax Incentives*, LAND TRUST ALLIANCE, <http://www.landtrustalliance.org/policy/tax-matters/campaigns/state-tax-incentives> (last visited Sept. 30, 2012); Christen Linke Young, *Conservation Easement Tax Credits in Environmental Federalism*, YALE LAW JOURNAL ONLINE (Mar. 2008), <http://yalelawjournal.org/the-yale-law-journal-pocket-part/legislation/conservation-easement-tax-credits-in-environmental-federalism/>.

conservation easements, acknowledging the reduced value of the land when development is restricted.⁴⁹ **Florida** goes so far as to exempt permanently protected land from up to 100% of state property taxes.⁵⁰

Food policy councils can encourage farmers to donate conservation easements on their land by encouraging the state to provide tax incentives to farmers who donate their development rights. Conservation easements are a useful tool for preserving farmland, and providing tax incentives to farmers may encourage more farmers to place a conservation easement on their land.

Sale of Entire Property to the State Department of Agriculture Conservation easements are one way to preserve farmland through limitations on future land use. Several states have enacted other innovative policies to restrict future land use and protect farmland. For example, one portion of **New Jersey's** Farm Preservation Program allows a farmer to sell his or her entire property to the state.⁵¹ In this situation, the farm owner decides he or she no longer wishes to farm the land. Rather than sell it to a private entity that may or may not continue to use it as farmland, the farmer can sell the land at fair-market value to the state Department of Agriculture instead.⁵² The Department then auctions the land to a third party buyer with an agricultural deed restriction (like a conservation easement) attached, ensuring the land continues to be used for agricultural purposes.⁵³

The sale of entire property option has the benefit of preserving farmland, providing the selling farm owner with full fair market value for his or her property, and providing the third-party buyer with a reduced price for the land because it can only be used for agricultural purposes.⁵⁴ However, such a program can be expensive because the state buys land at market value and resells it at a low cost with a deed restriction.

State food policy councils should:

- Advocate for their state to adopt a sale of property program similar to the one included in New Jersey's Farm Preservation Program.
- Encourage their state to set aside funding in order to purchase such land, for example by establishing a fund or seeking bond funding to cover these costs.

Eight-Year Preservation Program A less comprehensive and less expensive option for restricting future use of land, also part of **New Jersey's** Farm Preservation Program, is what is known as an "eight-year preservation program." This program is similar to a donation of a conservation easement but is time-limited. A farm owner can voluntarily place a restriction on the non-agricultural development of his or her land for a period of eight years.⁵⁵ The farmer receives no compensation for this public service, but in exchange for making this restriction, the farmer can apply to the state of New Jersey for cost-sharing grants

⁴⁹ See *Fact Sheet: Agricultural Conservation Easements*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Dec. 2010) http://www.farmlandinfo.org/documents/27762/ACE_01-2011_.pdf.

⁵⁰ See *Fact Sheet: Agricultural Conservation Easements*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Dec. 2010) http://www.farmlandinfo.org/documents/27762/ACE_01-2011_.pdf; see also *Fact Sheet: Agricultural Conservation Easements*, FARMLAND INFO. CTR. (2004), http://www.farmlandinfo.org/documents/27762/ACE_1-04.pdf.

⁵¹ *Farmland Preservation Overview*, STATE OF N.J. DEP'T OF AGRIC., <http://www.nj.gov/agriculture/sadc/farmpreserve/> (last visited Sept. 27, 2012).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Farmland Preservation Program: Eight-Year Preservation*, N.J. STATE AGRIC. DEV. COMM., <http://www.nj.gov/agriculture/sadc/farmpreserve/programs/eightyearprogram.pdf> (last visited Sept. 30, 2012).

to help with up to fifty percent of the cost of any soil or water conservation projects.⁵⁶ Program participants also receive non-monetary benefits in the form of greater protection against: nuisance complaints (when neighbors try to stop farmers from using their land in noisy or smelly ways, for example); zoning law changes (which change the purposes for which land can legally be used); emergency fuel and water rationing; and eminent domain actions (which give the government the right to seize private land for public use after paying reasonable compensation for the land).⁵⁷ New Jersey administers this program in conjunction with municipalities and county governments.⁵⁸

State food policy councils should push their state to adopt an eight-year (or similarly time-limited, say, ten-year) preservation program. This policy alone does not cost the state any money. However, state food policy councils can further advocate that the state provide funding for cost-sharing grants as an incentive for program participation as well as a method to encourage farmers to improve their use of the land, as illustrated by the New Jersey example.

OTHER FARMLAND PRESERVATION TECHNIQUES Conservation easements, property sales, and time-limited restrictions on land use encompass just one category of the methods by which states can preserve farmland. Several states have enacted other types of land use policies that benefit food production, including strengthening right to farm laws to protect agricultural operations from encroaching cities, facilitating the transfer of land from experienced farmers to beginning farmers, and implementing farm mitigation laws and policies. For more information on other methods state food policy councils can advocate for when seeking to preserve farmland, see American Farmland Trust's *Fact Sheet: The Farmland Protection Toolbox*.⁵⁹

Right to Farm Laws As businesses and residences edge closer to farms, the farms' new neighbors may not love living near all the sights, sounds, and smells that go along with agriculture. States can pass appropriate "right to farm" laws designed to shield farmers from potential nuisance suits that might arise from their normal farming activities, which become problematic when they are near residential developments.⁶⁰ Right to farm laws exist in some form in all 50 states and provide a range of protections to different agricultural operations.⁶¹ Some only protect farms that were established before neighbors moved in. Others protect farmers more generally if they follow certain agricultural and management practices as well as federal and state laws. Still others prevent the enactment of any ordinances imposing unreasonable restrictions on agriculture.⁶²

Because of the wide range of the content of right to farm laws, there is a lot of room for state food policy councils to advocate for laws that will best help their states to preserve farmland while ensuring that bad

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Fact Sheet: The Farmland Preservation Toolbox*, AM. FARMLAND TRUST, http://www.farmlandinfo.org/documents/27761/fp_toolbox_02-2008.pdf (last visited Nov. 7, 2012).

⁶⁰ See *Fact Sheet: Right to Farm Laws*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Sept. 1998), <http://www.farmland.org/programs/states/wa/documents/APPENDIXI-Righttofarmlaws.pdf>. See e.g., WASH. REV. CODE § 7.48.300-48.310 (2012).

⁶¹ Elizabeth R. Springsteen, *States' Right to Farm Statutes*, NAT'L AGLAW CTR. RESEARCH PUBLICATION, <http://www.nationalaglawcenter.org/assets/righttofarm/> (last visited Nov. 4, 2012) (provides a database of states' right to farm laws).

⁶² *Fact Sheet: The Farmland Protection Toolbox*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. 5 (Feb. 2008), http://www.farmlandinfo.org/documents/27761/fp_toolbox_02-2008.pdf

actors are not allowed to harm the health of nearby citizens. State food policy councils can use “right to farm” laws to preserve farmland by:

- Pushing the state to broadly define the right to farm to include a wide range of agricultural and agriculture-related activities conducted on any day or at any time.⁶³
- Encouraging the state legislature to redefine the right to farm laws to include only those types of farms the state wishes to protect (such as urban agriculture, specialty crop production, backyard farming, etc.). This can be done by setting a maximum size for farms protected by the laws, by explicitly excluding environmentally unsustainable operations (such as CAFOs) from their protection, or by creating a legal definition of “family farm” as opposed to “industrial farm” and applying the laws only to family farms.

Agricultural District Programs Another system a state can employ to protect farmland is called an agricultural district program. First utilized in **California**

in 1965, this state-authorized program allows city or county governments to designate areas as “agricultural preserves” on which agricultural activity is encouraged and protected.⁶⁴ Individual landowners within those preserves can contract with their city or county to declare their land an agricultural preserve or farmland security zone, which restricts the activities permitted on the land to agricultural uses.⁶⁵ In return, these landowners receive a set of benefits that vary by state.⁶⁶ For example, in California, farmers receive significant property tax relief.⁶⁷ According to the USDA, as of 2001, sixteen states had such programs.⁶⁸ These programs are generally authorized by state legislatures and implemented by local governments.⁶⁹ The advantage of agricultural preserves is that they grant tax benefits (especially with respect to property taxes) and prevent local governments from passing laws adverse to farming.⁷⁰ In addition, these programs are voluntary for farmers and they allow sufficient flexibility to meet local needs and objectives. State food policy councils should:

RIGHT TO FARM AND CAFOs

“Right to farm” laws were, in most cases, originally intended to protect small family farms when individuals moved away from cities and found themselves confronted with smelly new agricultural neighbors. But, as large industrial farms like concentrated animal feeding operations (“CAFOs”) became more common, the definition of “normal operations” of farms changed significantly. Today, right to farm laws sometimes have the effect of shielding CAFOs and industrial farms from accountability for their considerable environmental destruction and negative local health impacts. Food policy councils should help reevaluate these laws to ensure that polluting farms are not receiving the same protections as their smaller, less destructive counterparts, which the laws were originally intended to protect.

Source: *Issue: CAFO Zoning*, State Env’tl Resource Ctr. (2004), <http://www.serconline.org/cafoZoning.html>.

⁶³ *State Agriculture Development Committee Model Right to Farm Ordinance*, N.J. DEP’T OF AGRIC., available at <http://www.nj.gov/agriculture/sadc/rtfprogram/resources/modelrtfordinance.pdf>.

⁶⁴ Williamson Act, CAL. GOV’T CODE §§ 51200–51297.4, 51201(d), 51230 (West 2012). See also *Environmental & Resource Economics: National, State and Local Land Preservation Programs*, U.S. DEP’T OF AGRIC. NAT’L INST. OF FOOD & AGRIC. (2011), http://www.csrees.usda.gov/nea/nre/in_focus/ere_if_preserve_programs.html. See also *Fact Sheet: Agricultural District Programs*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Jan. 2004), http://www.farmlandinfo.org/documents/37067/ag_districts_05-2008.pdf.

⁶⁵ CAL. GOV’T CODE §§ 51201(d), 51240, 51243, 51296.1 (West 2012).

⁶⁶ *Fact Sheet: Agricultural District Programs*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Jan. 2004), http://www.farmlandinfo.org/documents/37067/ag_districts_05-2008.pdf.

⁶⁷ CAL. GOV’T CODE § 51296.2 (West 2012).

⁶⁸ *Environmental & Resource Economics: National, State and Local Land Preservation Programs*, U.S. DEP’T OF AGRIC. NAT’L INST. OF FOOD & AGRIC. (2011), http://www.csrees.usda.gov/nea/nre/in_focus/ere_if_preserve_programs.html.

⁶⁹ *Fact Sheet: Agricultural District Programs*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. (Jan. 2004), http://www.farmlandinfo.org/documents/37067/ag_districts_05-2008.pdf.

⁷⁰ *Id.*

- Advocate that their state create an agricultural district program.
- Encourage the state to implement tax incentives or other benefits to encourage participation.
- Push the state to make the enrollment process streamlined and straightforward.

Farmland Mitigation Laws and Policies States may want to look at farmland mitigation laws and policies as another way to counterbalance the conversion of farmland by requiring permanent protection of “comparable” agricultural land in exchange.⁷¹ **Connecticut**, for example, requires all municipalities, towns, boroughs, cities, and districts to mitigate the conversion of active agricultural land taken by eminent domain.⁷² In certain situations governments have the right to seize private land for public use after paying reasonable compensation for the land. Such a taking of private land is called *eminent domain*. Local governments are required to mitigate these farmland conversions, either by buying an agricultural conservation easement on similar land in their jurisdiction or else paying a mitigation fee to the state farmland protection program to protect comparable land elsewhere in the state, subject to approval by both the state farmland preservation program and the state commissioner of agriculture.⁷³ Farmland mitigation laws help ensure that even where farmland conversion is necessary in one area, the negative effects are at least partially alleviated by the permanent protection of agricultural land elsewhere in the state.

State-level Oversight of Conversion of Agricultural Land As another policy tool to preserve land for farming, it may be helpful for states to establish a task force to investigate farmland conversion that may be occurring in the state and recommend possible solutions.⁷⁴ States can help ensure broad oversight of this issue at the state level by establishing a lead agency that reviews other state agency activities that may result in farm land conversion.⁷⁵ These high-level options have the advantage of taking into account the overall big picture of the conversion of farmland that is occurring in the state. State food policy councils can push for designation of a single agency to take on this process, or for the creation of an inter-agency task force that will bring together all relevant agencies to discuss policies that are leading to loss of farmland and identify tailored, state-specific solutions.

Programs Linking Young Farmers with Experienced Farmers Programs linking young farmers with experienced farmers not only provide mentorship and farming education for new farmers, but may also lead to access to or the transfer of productive farmlands to a new generation of farmers. These linking or mentoring programs can be short- or long-term, formal or informal, can occur on or off the farm, and can lead to agreements through which younger farmers buy or inherit land from experienced farmers after extensive mentoring, as with so-called *land transition programs*.⁷⁶

As the average age of farmers continues to climb and barriers to entering the agricultural market continue to increase, these kinds of farmer mentorship programs are invaluable to ensure that farming knowledge and land are passed on to new farmers. In 1970 the average age of a farmer was 50.⁷⁷ As of 2007, it was 57,

⁷¹ *Fact Sheet: The Farmland Preservation Toolbox*, AM. FARMLAND TRUST 5, http://www.farmlandinfo.org/documents/27761/fp_toolbox_02-2008.pdf (last visited Nov. 8, 2012).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 3.

⁷⁵ *Id.*

⁷⁶ Megan Mills-Novoa, *Sustaining Family Farming Through Mentoring: A Toolkit for National Family Farm Coalition Members*, NAT'L FAMILY FARM COAL. 12–13 (Jan. 2011), http://www.nffc.net/Issues/Local%20Food/NFFC_Mentoring_Report2011.final.pdf.

⁷⁷ *Id.* at 6.

INCENTIVIZING PARTICIPATION IN FARMER MENTORING PROGRAMS

Though farmer mentoring programs have great benefits for inspiring and training a new generation of farmers, one of the primary challenges to such programs stems from the difficulty in incentivizing experienced farmers, who are short on time, money, and energy, to participate.

One solution, used by Midwest Organic and Sustainable Education Service, is to provide mentors with a stipend, which has the simultaneous benefits of making mentees feel more comfortable asking for guidance (since the mentor is being paid), making clear the value of the mentor's time, and increasing mentor accountability.

Source: Megan Mills-Novoa, *Sustaining Family Farming Through Mentoring: A Toolkit for National Family Farm Coalition Members*, NAT'L FAMILY FARM COAL. 2 (Jan. 2011), http://www.nffc.net/Issues/Local%20Food/NFFC_Mentoring_Report2011.final.pdf

with 25% of farmers over age 65.⁷⁸ In contrast, only 10% of total agricultural production comes from beginning farmers, defined as those who have operated a farm or ranch for ten years or less.⁷⁹

Programs that facilitate and coordinate mentoring for young farmers attempt to address these issues by making it easier for young farmers to enter the agricultural field and by increasing the likelihood that productive farmland passes to willing young farmers.⁸⁰ Food policy councils looking to encourage young farmers to enter the market should:⁸¹

- Research which organizations already exist in the state that match young farmers with more experienced mentors and help increase access to these programs.
- Encourage the state to fund existing matching programs in the state or to provide funding to create new programs in underserved areas.
- Work with stakeholders to create mentorship programs where they are currently lacking, with the aim of offering farmers a range of options near them, including online linkages where feasible and appropriate.

Related to mentoring programs are *farm viability programs* that provide technical assistance and sometimes small grants to help farmers improve their profitability.⁸² Under these programs, which are generally administered by state departments of agriculture or non-profit organizations, experts consult with

farmers to assess their current operations and devise individualized plans for the future. Areas of consultation may include better management of existing resources, changing marketing techniques, or altering the products a farm raises and sells.⁸³

CONCLUSION The United States is losing farmland at an alarmingly fast rate.⁸⁴ Between 1982 and 2007, more than 23 million acres of farmland were lost to development.⁸⁵ Because having productive agricultural land is inseparable from our country's ability to produce food, it is critical that state and localities work to preserve farmland. Whatever mix of strategies advocates and state legislatures prefer, any action to preserve farmland is an action to maintain sources of local food available to the state.⁸⁶

⁷⁸ *Id.*

⁷⁹ *Id.* at 7.

⁸⁰ *Id.* at 2.

⁸¹ *See id.*

⁸² *Fact Sheet: The Farmland Preservation Toolbox*, AM. FARMLAND TRUST 4, http://www.farmlandinfo.org/documents/27761/fp_toolbox_02-2008.pdf (last visited Nov. 8, 2012).

⁸³ *Id.*

⁸⁴ *Farmland by the Numbers*, AM. FARMLAND TRUST, <http://www.farmland.org/programs/protection/American-Farmland-Trust-Farmland-Protection-Farmland-by-the-numbers.asp> (last visited Oct. 11, 2012).

⁸⁵ *Id.*

⁸⁶ For additional ways states can work to preserve farmland, *see generally Fact Sheet: The Farmland Protection Toolbox*, AM. FARMLAND TRUST: FARMLAND INFO. CTR. 5 (Feb. 2008), http://www.farmlandinfo.org/documents/27761/fp_toolbox_02-2008.pdf.

SECTION IV: FOOD ASSISTANCE PROGRAMS

The phrase “food assistance programs” is used to describe a set of federally-funded programs designed to help low-income Americans access food. The largest of these programs is the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps, a program that currently reaches over 45 million Americans each month. Though these programs are federally-funded, states are responsible for regulating and administering food assistance programs to varying degrees at the state level. There are, therefore, significant opportunities to influence the administration of these programs within each state.

OVERVIEW “Food assistance programs” refer to federally-funded programs that provide food and nutrition education to low-income Americans. This section focuses on the largest federal food assistance programs, which are the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Other federal food assistance programs, some of which are discussed in this Toolkit, include: school meal programs (National School Lunch and Breakfast Programs, Fresh Fruit & Vegetable Program, and Special Milk Program), the Summer Food Service Program, the Child and Adult Care Food Program, Food Assistance for Disaster Relief, and various food distribution programs (Schools/Child Nutrition Commodity Programs, Food Distribution on Indian Reservations, Commodity Supplemental Food Program, and the Emergency Food Assistance Program).¹

Food policy councils can play a significant role in improving consumer access to healthy foods by ensuring that all those who are eligible for these federal programs are enrolled and able to participate in them. There are numerous opportunities for food policy councils to influence the shape, size, and scope of these food assistance programs on a state level.

1. SNAP Food policy councils should aim to eliminate the barriers that prevent SNAP-eligible individuals from enrolling in the program. This includes working with state agencies to increase the amount of eligible recipients that sign up for benefits and identify methods to fund healthy food programming.

2. WIC State food policy councils can work with state governments to increase participation in WIC by working to remove barriers to participation and increasing the amount of outreach to WIC-eligible women and children.

3. Maximizing Food Assistance Program Use to Benefit the Local Food Economy Food policy councils can achieve two goals—contributing to their state’s economy and increasing the consumption of healthy foods by WIC and SNAP recipients—by pushing for increased funding for the WIC and Senior Farmers Market Nutrition Programs (WIC FMNP and S-FMNP, respectively) and fostering increased SNAP use at farmers markets.

SNAP SNAP, formerly known as the federal food stamp program, is the largest food assistance program in the nation. As of July 2012, more than 45 million people, or about 15% of the U.S. population, were enrolled in SNAP.² Although SNAP is a federally-funded program, the federal government splits the costs and responsibilities of administering the program with states.³ This division of funding and administrative duties presents food policy councils with the opportunity to foster state policy changes that can influence the state’s implementation of SNAP and increase access to healthy foods for those who would not otherwise be able to afford them.

¹ *Nutrition Assistance Programs*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/fns/> (last visited Nov. 6, 2012).

² *SNAP/Food Stamp Participation: SNAP Participation Inched Up Slightly in July 2012*, FOOD RESEARCH AND ACTION CENTER <http://frac.org/reports-and-resources/snapfood-stamp-monthly-participation-data/#2jul> (last visited Oct. 29, 2012).

³ *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. 2 (April 2012), <http://www.fns.usda.gov/ORA/menu/Published/SNAP/FILES/Other/BuildingHealthyAmerica.pdf>.

The federal government focuses on the “big picture” of SNAP, setting basic eligibility requirements for the program. The major parts of the program for which the federal government sets regulations include:

- **Program Eligibility:** The primary test for eligibility is based on one’s income. To qualify, households must have gross monthly income less than 130% and net monthly income less than 100% of the federal poverty level, and assets totaling less than \$2,000.⁴ Expenses like shelter and health care are deducted from applicants’ incomes for the purpose of determining eligibility, while income from Supplementary Security Income (SSI) is not counted at all, making it easier for applicants to qualify for the program and receive the other benefits that they need.⁵
- **Categorical Exclusions:** Under federal rules, certain people are automatically ineligible for SNAP, including: people on strike, undocumented immigrants, certain legal immigrants, and certain convicted felons.⁶ Under federal rules, convicted drug felons are ineligible for federal SNAP benefits, but states have the discretion to opt out of this federal categorical exemption and decide their own eligibility rules for these individuals.⁷
- **Application Standards:** The federal government sets national standards for application filing and processing that states administering the program must meet.⁸
- **Vendor Qualifications:** The federal government (via USDA) controls which retailers may accept SNAP benefits and sets the standards for qualifying as a SNAP vendor.⁹ To qualify as a vendor, a store must either “(1) stock and sell food for home preparation and consumption in all four categories of staple foods . . . or (2) obtain more than 50 % of gross total sales from the sale of one or more staple food categories.”¹⁰ Staple foods are defined as breads, dairy, fruits and vegetables, and protein (meat, fish or poultry).¹¹ Stores or farmers markets apply directly to the USDA for approval and must accept payment by Electronic Benefit Transfer (EBT).¹² EBT allows benefit recipients to use a debit-like card

Economic Benefits of SNAP

Increasing SNAP participation in a state increases the number of dollars invested in the local economy. USDA estimates that for every \$5 spent in SNAP benefits, \$9.20 in overall economic activity is generated.

Source: *Supplemental Nutrition Assistance Program: Putting Healthy Foods Within Reach, State Outreach Toolkit*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. 1 (May 2011), http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/State/toolkit_Complete.pdf.

⁴ *Id.* Households may have \$3250 in accountable resources if at least one member of their household is 60 years of age or over or disabled.

⁵ *Id.*

⁶ *A Quick Guide to Food Stamp Eligibility and Benefits*, CTR. ON BUDGET & POLICY PRIORITIES, <http://www.cbpp.org/cms/index.cfm?fa=view&id=1269> (last visited Oct. 13, 2012).

⁷ *Supplemental Nutrition Assistance Program State Options Report*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. (2011), http://www.fns.usda.gov/snap/rules/Memo/Support/State_Options/9-State_Options.pdf.

⁸ *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. 2 (April 2012), <http://www.fns.usda.gov/ORA/menu/Published/SNAP/FILES/Other/BuildingHealthyAmerica.pdf>.

⁹ *Id.*; *Apply Online to Become Authorized to Accept SNAP at your Retail Food Store or Farmers Market*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/retailers/application-process.htm> (last visited Oct. 11, 2012).

¹⁰ *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. 34 (April 2012), <http://www.fns.usda.gov/ORA/menu/Published/SNAP/FILES/Other/BuildingHealthyAmerica.pdf>.

¹¹ *Id.*

¹² *Supplemental Nutrition Assistance Program: Retailers*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/retailers/merchants.htm> (last visited Oct. 11, 2012); *Apply Online to Become Authorized to Accept SNAP at your Retail Food Store or Farmers Market*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/retailers/application-process.htm> (last visited Oct. 11, 2012).

ONLINE SNAP APPLICATIONS

Kansas is one of 30 states that have implemented an online application for SNAP benefits, as well as other services such as Medicaid and TANF. This streamlined application process provides applicants with an eligibility quiz to determine if they qualify for benefits. Applicants can have their cases reviewed as early as the next business day. Having an online application process eliminates the access problem for many disabled, elderly, or working households who cannot come into SNAP offices with ease, making SNAP a more accessible program and ensuring that those who are eligible to utilize the program are able to do so.

Source: *Kansas Food Assistance Program*, KAN. DEP'T FOR FAMILIES AND CHILDREN, ECONOMIC AND EMPLOYMENT SERV., http://content.dcf.ks.gov/EES/KEESM/forms/ES-2007_food_asst_brochure.pdf (last visited Oct. 13, 2012).

to conduct their transactions and automatically receive their monthly benefits.¹³ EBT is now the only method by which SNAP benefits can be used (as of June 17, 2009).¹⁴

➤ **Eligible Food Items:** The federal government also decides what food items may be purchased using SNAP benefits.¹⁵ A SNAP beneficiary may purchase basic food items (such as bread, fruits, vegetables, etc.) as well as seeds and plants that will grow food for home consumption.¹⁶ SNAP benefits may not be used for purchasing alcohol, tobacco products, hot prepared food, food to be eaten in the store, non-food items, and vitamins and supplements.¹⁷

Everything states do with regard to SNAP must conform to these broad federal rules and regulations. Therefore, councils should focus their energies on affecting the state level policies and programs over which state officials do have control, such as conducting SNAP outreach, distributing and collecting SNAP applications, certifying that households are eligible for benefits, and distributing benefit funds.¹⁸ As long as states conform to the broad federal guidelines for application filing and processing, they can set up the system however they choose.

One of the largest hurdles facing state SNAP programs is getting eligible individuals to participate in the program. Nationwide approximately 30% of people eligible for SNAP do not participate in the program.¹⁹ This rate is even higher in some states. According to USDA, in some states 47% of SNAP-eligible individuals and households are not enrolled.²⁰ A 2008 report from the Food Research & Action Center found a number of barriers to SNAP participation among eligible individuals, including stigma, inconvenience of traveling to and from the food stamp offices (including limited office hours, lengthy waiting periods, and costs associated with the travel), inadequate caseworker to applicant ratios, and challenges with the required paperwork.²¹

¹³ *Supplemental Nutrition Assistance Program: Retailers*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/retailers/merchants.htm> (last visited Oct. 11, 2012).

¹⁴ *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. 33 (April 2012), <http://www.fns.usda.gov/ORA/menu/Published/SNAP/FILES/Other/BuildingHealthyAmerica.pdf>.

¹⁵ 7 C.F.R. § 271.2 (2012) (definition of "eligible food"); *Eligible Food Items*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/retailers/eligible.htm> (last visited Nov. 5, 2012).

¹⁶ 7 C.F.R. § 271.2 (2012) (definition of "eligible food").

¹⁷ *Eligible Food Items*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/retailers/eligible.htm> (last visited Nov. 5, 2012).

¹⁸ *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. 2 (April 2012), <http://www.fns.usda.gov/ORA/menu/Published/SNAP/FILES/Other/BuildingHealthyAmerica.pdf>.

¹⁹ FOOD RESEARCH & ACTION CTR., A REVIEW OF STRATEGIES TO BOLSTER SNAP'S ROLE IN IMPROVING NUTRITION AS WELL AS FOOD SECURITY 7 (Feb. 2012), <http://frac.org/wp-content/uploads/2011/06/SNAPstrategies.pdf>.

²⁰ *Reaching Those in Need: State Supplemental Nutrition Assistance Program Participation Rates in 2009*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. (Dec. 2011), <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/Participation/Reaching2009Summary.pdf>.

²¹ FOOD RESEARCH & ACTION CTR., ACCESS AND ACCESS BARRIERS TO GETTING FOOD STAMPS: A REVIEW OF THE LITERATURE 1, 22, 27, 37, 44 (2008), available at <http://frac.org/newsite/wp-content/uploads/2009/09/fspaccess.pdf>.

SNAP-ED

SNAP-Ed, the Nutrition Education and Obesity Prevention Grant Program, provides funding to states to create nutritional education programs and activities that increase healthy eating habits and promote a physically active lifestyle for SNAP participants. Grant funding for SNAP-Ed programs is based on a state's expenditures on SNAP-Ed activities in the past as well as a state's share of SNAP participation. The formula for calculating grant funding is changing and will be based more on your state's SNAP participation rates, which gives states an incentive to increase SNAP participation. State food policy councils should advocate that their state work to increase SNAP participation and apply for funds to implement nutrition education activities.

Sources: *Supplemental Nutrition Assistance Program Education (SNAP-Ed) Facts*, U.S. Dep't of Agric., Nat'l Agric. Library, <http://www.nal.usda.gov/snap/SNAP-EdFactsheet2012.pdf> (last visited Nov. 5, 2012); U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EDUCATION GUIDE, NUTRITION EDUCATION AND OBESITY PREVENTION GRANT PROGRAM3 (2012), <http://www.nal.usda.gov/fsn/Guidance/FY2013SNAP-EdPlanGuidance.pdf>.

In order to reduce the barriers and increase participation in SNAP, state food policy councils can advocate that their state:

➤ Eliminate or raise the asset test imposed by the federal guidelines, which many states have done.²² The federal rule is that those meeting the income requirements and having assets worth less than \$2,000 are eligible for SNAP; it does not preclude a state from giving benefits to those who meet the income requirements but whose assets exceed \$2,000 because of their collection of other benefit programs, such as Temporary Assistance for Needy Families (TANF).²³ Although more than two-thirds of the states have eliminated or increased the asset test, Alaska, Montana, Wyoming, Utah, South Dakota, Kansas, Arkansas, Indiana, Tennessee, and Virginia still operate under the lower federal asset test guidelines.²⁴

➤ Institute measures such as broad-based categorical eligibility (BBCE), which creates an automatic qualification for SNAP benefits for households who receive TANF.²⁵ This helps to simplify the application process and ensure that more eligible individuals and families will be enrolled in SNAP. Although 43 states have implemented BBCE, the income tests for TANF eligibility varies.²⁶ For example, the gross income limit for TANF eligibility in **Alabama** is at 130% of the

federal poverty guidelines, whereas in **Florida** the gross income limit is at 200% of the federal poverty guidelines.²⁷ State food policy councils should advocate that their states both increase their TANF gross income limit to 200% of the federal poverty guidelines and implement BBCE.²⁸

➤ Push the state to implement policies that ensure that potential beneficiaries are aware of their eligibility and that the SNAP offices are able to accommodate any and all eligible citizens. This can be done by engaging in outreach campaigns to educate the public about the eligibility criteria and available benefits, guaranteeing that SNAP application processing offices are fully staffed, extending

²² *A Quick Guide to Food Stamp Eligibility and Benefits*, CTR. ON BUDGET & POLICY PRIORITIES, <http://www.cbpp.org/cms/index.cfm?fa=view&id=1269> (footnote 4) (last visited Oct. 11, 2012).

²³ *Id.*

²⁴ *Expanding Access to SNAP*, FOOD RESEARCH & ACTION CTR., http://frac.org/newsite/wp-content/uploads/2009/05/map_eliminating_asset_test.pdf (last visited Nov. 5, 2012).

²⁵ 7 C.F.R. § 273.2(j)(2) (2012).

²⁶ *Broad Based Categorical Eligibility*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/rules/Memo/BBCE.pdf> (last visited Nov. 5, 2012).

²⁷ *Id.*

²⁸ *Id.*

office hours to accommodate working families, providing child care areas in waiting rooms, streamlining the eligibility and application processes, and utilizing shorter and clearer applications.²⁹

- Advocate for the state to remove bureaucratic hurdles in the application process, for example, by creating multiple ways for participants to enroll in the program. States should allow applications to be submitted online or via fax or mail rather than requiring applicants to visit in person at a state SNAP office.³⁰ Currently, over two-thirds of states allow eligible individuals to apply for SNAP benefits online (although not all counties within those states use online applications).³¹
- Advocate that the state allow recertification interviews to be conducted off-site or over the phone. Because state authorities must interview applicants to certify their eligibility, an eligible applicant may have to return to the local enrollment office, which may be a barrier to accessing services.³² According to USDA's SNAP state outreach toolkit, interviews can take place over the phone or at locations other than the SNAP offices.³³

It is clear that increasing participation in SNAP is good for a state's citizens and good for the state's overall economy. Food policy councils should advocate for policies that increase participation by SNAP-eligible individuals and families to make sure their most vulnerable citizens have access to healthy food while improving their state's economy.

WIC The other major federal food assistance program is the Special Supplemental Nutrition Program for Women, Infants and Children—more commonly known as “WIC.”³⁴ Approximately 8.9 million individuals utilized the WIC program in 2011,³⁵ and according to the USDA, 53% of all

STATE DISCRETION IN WIC

States are required to report their program administration and implementation plans for WIC every year, in addition to submitting funding requests in the form of budgets.

Though these documents must be approved by USDA Food and Nutrition Service, the state is given latitude to determine items such as: (1) delivery of WIC to homeless individuals; (2) acceptance of WIC at mobile stores; (3) criteria used to determine eligibility (though some federal guidelines must be followed), such as what qualifies as income and what income can be excluded from a household's income eligibility test; and (4) methods of WIC package distribution.

Source: 7 C.F.R. §§ 246.3(c), 246.4(a)(2), (6), (11)(i)(D), (14)(xiv) (2012).

²⁹ *Supplemental Nutrition Assistance Program: Putting Healthy Foods Within Reach, State Outreach Toolkit, Communication Channels: Partnerships*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. 1 (May 2011), http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/State/toolkit_Complete.pdf; *SNAP/Food Stamp Participation*, FOOD RESEARCH & ACTION CTR., <http://frac.org/reports-and-resources/snapfood-stamp-monthly-participation-data/> (last visited Oct. 12, 2012). This FRAC site tracks the number of participants in SNAP on a monthly basis and notes that “[i]mplementing SNAP policies that improve access, ensuring staff capacity to process applications, and mounting outreach campaigns to get the word out to the public can help communities maximize the federal recovery dollars available to help local families and businesses.”

³⁰ *Policy Basics: Introduction to the Supplemental Nutritional Assistance Program*, CTR. ON BUDGET & POLICY PRIORITIES, <http://www.cbpp.org/cms/index.cfm?fa=view&id=2226> (last visited Oct. 12, 2012). The CBPP also provides a handy survey of all state SNAP websites including how accessible they are, what services are provided on them, what can be accomplished directly online, and what resources are provided. *SNAP On-Line: A Review of State Government SNAP Websites*, CTR. ON BUDGET & POLICY PRIORITIES, <http://www.cbpp.org/cms/index.cfm?fa=view&id=618> (last visited Oct. 12, 2012).

³¹ *To Apply, Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., http://www.fns.usda.gov/snap/applicant_recipients/apply.htm (last visited Oct. 12, 2012).

³² *Supplemental Nutrition Assistance Program: Putting Healthy Foods Within Reach, State Outreach Toolkit, Basics: Introduction*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. 8 (May 2011), http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/State/toolkit_Complete.pdf.

³³ *Id.*

³⁴ *Women, Infants, and Children*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/> (last visited Oct. 12, 2012).

³⁵ *WIC Program Participation and Costs*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. (Sept. 28, 2012), <http://www.fns.usda.gov/pd/wisummary.htm>.

infants born in the U.S. benefit from the WIC program.³⁶ As its name indicates, this program is narrower than SNAP. Rather than being available for all low-income Americans, it is available exclusively to the following specific populations:

- Pregnant women (continuing up to 6 weeks after pregnancy ends);
- Breastfeeding women (continuing through infant's 1st birthday);
- Non-breastfeeding postpartum women (through 6 postpartum months);
- Infants (up to 1st birthday); and/or
- Children (up to 5th birthday).³⁷

WIC enrollment is subject to several other restrictions as well. First, the family income of WIC applicants must fall at or below 185% of the federal poverty level.³⁸ WIC applicants must be deemed to be at nutritional risk by a qualified health professional.³⁹ Finally, WIC applicants must be able to prove residency in the state in which they apply.⁴⁰

Unlike SNAP, WIC is not an entitlement program. In other words, while the SNAP program can continue to grow in size to accommodate every eligible individual, WIC has a set dollar amount allotted to each WIC state agency to utilize for administering the program within that state.⁴¹ The types of items available through WIC also differ from SNAP: while SNAP can be used for a wide range of food items with a few exclusions, WIC provides a specific package of foods to participants (though the package varies based on the different eligibility categories, e.g., pregnant women versus infants).⁴²

Similar to SNAP, there are a number of reasons eligible women do not participate in the WIC program. Some of those barriers include stigma, lack of awareness of and information about WIC and its eligibility requirements, inconvenient WIC office locations and hours, lack of transportation, language barriers, and a perception of insufficient benefits.⁴³ WIC participation also suffers from low retention rates due to women

SUGGESTED PLACES FOR OUTREACH

According to a focus group done as part of a 2001 California study, the best places to reach WIC-eligible women depend largely on racial and ethnic background. States should focus their information distribution efforts on the following (and similar) places: (1) church bulletin boards; (2) public schools; (3) community colleges; (4) Wal-Mart and similar low-cost stores; (5) doctors' offices; (6) supermarkets; and (7) Hispanic media outlets (specifically to reach Hispanic women).

Source: *Reaching the Underserved*, CAL. DEP'T OF HEALTH SERV. WIC SUPPLEMENTAL NUTRITION BRANCH 8–9 (2001), <http://www.cdph.ca.gov/programs/wicworks/Documents/NE/WIC-NE-Outreach-ReachingTheUnderserved.pdf>.

³⁶ *About WIC: WIC at a Glance*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/aboutwic/wicataglace.htm> (last visited Oct. 12, 2012).

³⁷ *Id.*

³⁸ *WIC Fact Sheet*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. <http://www.fns.usda.gov/wic/WIC-Fact-Sheet.pdf> (last visited Oct. 29, 2012) (applicants who participate in the SNAP, Medicaid, or Temporary Assistance for Needy Families programs are automatically income eligible so that they are not required to provide additional documentation when applying for WIC).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *About WIC: WIC at a Glance*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/aboutwic/wicataglace.htm> (last visited Oct. 12, 2012).

⁴² *WIC Food Packages*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/benefitsandservices/foodpkg.htm> (last visited Oct. 12, 2012).

⁴³ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., NAT'L SURVEY OF WIC PARTICIPANTS II xi–xii, 27–32 (2012), available at <http://www.fns.usda.gov/Ora/menu/Published/WIC/FILES/NSWP-II.pdf>; *Barriers that Prevent Low-Income People from Gaining Access to Food*

voluntarily leaving the program.⁴⁴ According to one study, two of the main reasons women give for leaving the program are: (1) long waiting times when dealing with WIC (in particular, waiting over an hour to be re-certified);⁴⁵ and (2) overcrowded and noisy WIC facilities, with little for their children to do.⁴⁶

Because WIC funding is provided to states in the form of grants, states have more responsibility than in SNAP regarding program administration and distribution of benefits, but must still meet federal standards.⁴⁷ State food policy councils can help to improve WIC participation in the state by:

- Pushing the state to provide supplemental funding for its WIC program. **Massachusetts** supplements the federal funding with its own state money to ensure that all eligible individuals can be served.⁴⁸
- Encouraging the state to improve the provision of services, for example, by ensuring WIC agencies are fully staffed, by cultivating staff members that are friendly and approachable, by including a staffed childcare room extending office hours,⁴⁹ and ensuring WIC sites are in areas that are easy to access with sufficient parking and public transportation options.⁵⁰ WIC offices should remain open on designated evenings and weekends, in order to increase access for working women. For example, in Duplin County, **North Carolina**, the main WIC office is open until 7pm on Mondays.⁵¹
- Pushing for the state to increase its outreach efforts using methods such as partnering with faith-based and other community organizations, disseminating brochures and other informational fliers, and getting out into the community. Brochures or other informational materials serve the dual purpose of informing women that they may be eligible and helping them understand what services WIC can

FUNDING A STATE'S WIC EBT TRANSITION

According to new USDA rules, WIC must transition to using EBT exclusively by 2020. Finding funds for EBT implementation can be the biggest challenge to states trying to initiate this change. However, funding sources are available to help a state successfully transition to EBT use. Some federal grants include:

- **EBT Planning Grants:** Used to assess the cost of WIC EBT implementation.
- **EBT Implementation Grants:** Used to fund the technological transition needed to accept WIC EBT.
- **Technical Innovation Grants:** Used for a variety of projects, including the purchase of WIC-approved items using EBT.

Source: *WIC Electronic Benefits Transfer (EBT) Fiscal Year 2011 Funding Awards*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/ebt/grants11.htm> (last visited Oct. 13, 2012).

and Nutrition Programs, FOOD RESEARCH & ACTION CTR. 1–5 (2011), available at <http://www.hungercenter.org/wp-content/uploads/2011/07/Barriers-to-Food-and-Nutrition-Programs-FRAC.pdf>.

⁴⁴ *Barriers to Retention Among NYS WIC Infants and Children*, N.Y. STATE DEP'T OF HEALTH DIV. OF NUTRITION EVALUATION & ANALYSIS UNIT 2–3 (2001), <http://www.fns.usda.gov/ora/menu/DemoProjects/WICSPG/Reports/barriers.pdf>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ “Steering a middle course between the problem of entitlements and the inherent vagueness of block grants, WIC is a federal program that allows for local and state administration. This has satisfied WIC’s state and local managers, allowing them to be creative within a framework of broadly shared goals and a time-tested program structure.” LEIGHTON KU, DOUGLAS J. BESHAROV, & PETER GERMANIS, *Debating WIC*, THE PUBLIC INTEREST (1999), available at <http://www.welfareacademy.org/pubs/foodassist/debatingwic.shtml>.

⁴⁸ MASS. GEN. LAWS ch. 111I § 2 (2012).

⁴⁹ *Reaching the Underserved and Improving WIC Services: Executive Summary*, CAL. DEP'T OF HEALTH SERV. WIC SUPPLEMENTAL NUTRITION BRANCH 15 (2001), <http://www.cdph.ca.gov/programs/wicworks/Documents/NE/WIC-NE-Outreach-ReachingTheUnderserved.pdf>.

⁵⁰ *Id.* at 11.

⁵¹ *Duplin County Health Department WIC Offices*, DUPLIN COUNTY, http://www.duplincountync.com/governmentOffices/healthServices_wic.html (last visited Oct. 13, 2012).

provide for them.⁵² **California** sets a good example of a broad state outreach strategy for WIC. The state WIC authorities formed an outreach committee made up of ten local WIC stakeholders that meets quarterly to shape the state’s WIC outreach program.⁵³ California disseminates information about WIC in multilingual brochures distributed to various community institutions, and operates an automated telephone hotline where people can find out things like where the nearest WIC clinic is located and to what WIC benefits they may be entitled.⁵⁴ California also commissioned a new state WIC logo in order to rebrand the program and raise awareness.⁵⁵

- Advocating for the state to transition to using EBT for WIC benefits as quickly as possible (rather than paper vouchers). The use of EBT simplifies accessing benefits and reduces stigma attached to participation. The Healthy, Hunger-Free Kids Act of 2010 requires all state WIC agencies to utilize WIC EBT systems by 2020, but state food policy councils can push for their states to make the transition even sooner.⁵⁶ Some states, like **Michigan**, have even implemented a program to incorporate both SNAP and WIC benefits onto one EBT card.⁵⁷ Food policy councils should push for their states to streamline WIC and SNAP benefits in this way in order to make program participation and benefit utilization much easier for dually-enrolled individuals.
- Advocating that the state lengthen the state-determined recertification period for WIC benefits.⁵⁸ Depending on an individual’s status (pregnant, postpartum, breastfeeding, etc.), USDA requires that participants apply for recertification at a minimum of either every six

EBT: MAKING WIC BENEFITS ACCESSIBLE

All states will be required to deliver WIC benefits on EBT cards by the year 2020. Many states, including **Michigan**, have already switched to EBT cards to disperse their WIC benefits. Michigan’s WIC program couples WIC benefits with SNAP benefits on what is called a “Bridge Card.” This allows households who receive more than one food assistance benefit to easily use their Bridge Card for all purchases of qualifying food products at participating retail vendors.

Source: *WIC Policy Memorandum # 2011-3, Implementation of WIC-Related Electronic Benefit Transfer (EBT)*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/policyandguidance/wicpolicy/memos/2011-3-ImplementationofWICRelatedEBTProvisions-PL111-296.pdf> (last visited Oct. 13, 2012); *Electronic Benefits Transfer (EBT) and the Michigan WIC Bridge Card*, <https://www.ebt.acs-inc.com/ebtcard/miwic/index.jsp> (last visited Oct. 13, 2012).

⁵² See e.g., *You & Your Child: Healthy & Well Fed. WIC Can Help.*, MINN. DEP’T. OF HEALTH, <http://www.health.state.mn.us/divs/fh/wic/outreach/e1color.pdf> (last visited Oct. 13, 2012).

⁵³ *Marketing and Outreach*, CAL. DEP’T OF PUB. HEALTH, <http://www.cdph.ca.gov/programs/wicworks/Pages/WICOutreachAndMarketing.aspx> (last visited Oct. 13, 2012). See also Eleanor Simon & Emily Broad Leib, *Mississippi WIC for the 21st Century*, HARVARD LAW SCHOOL HEALTH LAW & POLICY CLINIC & HARVARD LAW SCHOOL MISS. DELTA PROJECT 34 (2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/WIC-FINAL.pdf>.

⁵⁴ *Women, Infants, and Children Program*, CAL. DEP’T OF PUB. HEALTH, <http://www.cdph.ca.gov/programs/wicworks/Pages/default.aspx> (last visited Oct. 13, 2012). See also Eleanor Simon & Emily Broad Leib, *Mississippi WIC for the 21st Century*, HARVARD LAW SCHOOL HEALTH LAW & POLICY CLINIC & HARVARD LAW SCHOOL MISS. DELTA PROJECT 34 (2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/WIC-FINAL.pdf>.

⁵⁵ Eleanor Simon & Emily Broad Leib, *Mississippi WIC for the 21st Century*, HARVARD LAW SCHOOL HEALTH LAW & POLICY CLINIC & HARVARD LAW SCHOOL MISS. DELTA PROJECT 34 (2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/WIC-FINAL.pdf>.

⁵⁶ *WIC EBT Update, EBT Planning: Just Beginning*, CAL. DEP’T OF PUB. HEALTH, <http://www.cdph.ca.gov/programs/wicworks/Pages/WICEBTUpdate.aspx> (last visited Oct. 13, 2012).

⁵⁷ *Electronic Benefits Transfer (EBT) and the Michigan WIC Bridge Card*, <https://www.ebt.acs-inc.com/ebtcard/miwic/index.jsp> (last visited Oct. 13, 2012).

⁵⁸ 7 C.F.R. § 246.7(g) (2012).

months or every year.⁵⁹ However, states have the prerogative to require recertification more often.⁶⁰ The more often participants have to reapply, however, the more difficult it is for individuals to stay enrolled in the program. Increasing the time allowed between certifications is a cost-free method that food policy councils can advocate for states to use to improve WIC program participation and retention.

WIC is designed to provide nutritional help to some of the most vulnerable members of society: pregnant and postpartum women, infants, and very young children. With assistance from WIC, these participants have the opportunity to start early with access to sufficient food and healthy eating habits that can combat negative health outcomes later in life. Therefore, it is important that states take steps to increase WIC enrollment and participation.

MAXIMIZING FOOD ASSISTANCE PROGRAM USE TO BENEFIT THE LOCAL ECONOMY Food policy councils can encourage their states to take steps to maximize the food assistance program benefits being used to purchase nutritious foods that improve the health of benefit recipients while having a positive impact on the state's food economy. In particular, states can enable food assistance program participants to utilize their benefits at farmers markets and engage in various programs that incentivize participants to utilize program benefits at these markets.

WIC FMNP & WIC Cash Value Vouchers (CVV) The WIC Farmers Market Nutrition Program (FMNP) is a program within WIC that is designed to serve two purposes: (1) to provide fresh, nutritious food from farmers markets to WIC participants; and (2) to expand program awareness and sales at farmers markets.⁶¹ The federal FMNP benefit is low, only between \$10 and \$30 per participant, per year, but states can supplement that amount with additional funds if they so choose.⁶² In fiscal year 2011, 46 states, agencies, and tribal governments received federal funding to operate WIC FMNP in their jurisdictions.⁶³

States can also increase access to farmers market products for WIC participants through the Cash Value Voucher (CVV) program. CVV is a monthly supplement of \$6, \$8, or \$10 per participant to buy fresh fruits and vegetables and was added to the WIC program in 2007.⁶⁴ Although these vouchers are generally used at traditional WIC vendors, states are allowed to authorize farmers to accept CVV as payment for their products at either farmers markets or roadside farm stands.⁶⁵ According to USDA, only about one-third of states authorize farmers to accept CVV: California, Oregon, Alaska, Montana, Colorado, Arizona,

⁵⁹ *Who Gets WIC and How to Apply*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/howtoapply/whogetswicandhowtoapply.htm> (last visited Oct. 13, 2012).

⁶⁰ 7 C.F.R. § 246.7(g)(2) (2012).

⁶¹ 7 C.F.R. §§ 248.1–248.26 (2012); *WIC Farmers Market Nutrition Program Fact Sheet*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/WIC-FMNP-Fact-Sheet.pdf> (last visited Oct. 13, 2012).

⁶² *WIC Farmers Market Nutrition Program Fact Sheet*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/WIC-FMNP-Fact-Sheet.pdf> (last visited Oct. 13, 2012).

⁶³ *Id.*

⁶⁴ 7 C.F.R. § 246.12 (2012); Nell Tessman & Andy Fisher, *State Implementation of the New WIC Produce Package: Opportunities and Barriers for WIC Clients to Use Their Benefits at Farmers Markets*, COMMUNITY FOOD SECURITY COALITION 2, 5 (2009), available at <http://www.foodsecurity.org/pub/WIC-FarmersMarketReport.pdf>.

⁶⁵ Nell Tessman & Andy Fisher, *State Implementation of the New WIC Produce Package: Opportunities and Barriers for WIC Clients to Use Their Benefits at Farmers Markets*, COMMUNITY FOOD SECURITY COALITION 5 (2009), available at <http://www.foodsecurity.org/pub/WIC-FarmersMarketReport.pdf>.

Oklahoma, Minnesota, Michigan, Ohio, South Carolina, Maryland, District of Columbia, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, and Maine, as well as the Choctaw Nation, Guam, and the Northern Mariana Islands.⁶⁶

Some of the barriers to acceptance of CVV and FMNP at farmers markets include: limited staff and resources to enroll and train farmers to accept CVV; concern over inability to meet the increased demand that WIC users would present; lack of accessibility of farmers markets to WIC users, both in terms of transportation and hours of operation; increased strain on farmers to differentiate WIC FMNP from CVV; and lack of agency coordination between both programs, which may be run by different agencies in some states.⁶⁷ Many of these concerns have been successfully confronted by states who have implemented CVV and FMNP at farmers markets. However, as mentioned above, there are still many states that have not yet authorized the use of CVV at farmers markets.

Additional barriers exist that prevent both the FMNP and CVV from being more widely used.⁶⁸ To illustrate the problem, many states give out program vouchers but then have to send hundreds of thousands of dollars back to the USDA at the end of the year, as these benefits are not utilized. Food policy councils can take several steps to help increase benefit utilization, as well as strengthen WIC FMNP and WIC CVV program implementation overall:

- Push the state to participate in the FMNP if it is not yet doing so.
- Advocate that the state provide supplemental funding for WIC FMNP, as the federal funding is quite limited and the low levels of benefits discourage some WIC participants from utilizing their FMNP vouchers. For example, in some states, the WIC FMNP benefit for the entire year is only \$15, meaning that it may not be worthwhile for program participants to travel to eligible vendors to spend their benefits.
- Encourage the state to increase the number of authorized vendors. Because vendors must be authorized to accept FMNP benefits as payment, states have control over the number and type of entities that are authorized.⁶⁹ Increasing the number of authorized vendors can significantly increase utilization of benefits by making it more likely that participants will be able to find a vendor nearby.
- Push the state to use innovative methods to improve access to authorized vendors. For example, in **Georgia**, most of the clinics that distribute FMNP benefits host small farmers markets on state

FMNP & CVV: A BENEFIT TO THE LOCAL ECONOMY

In 2011, 52,500 people purchased fruits and vegetables from **Washington** growers using the WIC FMNP, and farm sales from the Washington WIC FMNP totaled \$764,000.

The potential impact of CVV is even greater both for benefit users and the local farm economy—even if only 5% of CVV were redeemed at farmers markets, it would surpass the buying power of the entire WIC FMNP.

Sources: *Washington State WIC Farmers Market Nutrition Program*, WASH. STATE UNIV. EXTENSION, <http://extension.wsu.edu/farmersmarket/Pages/WICFMNP.aspx> (last visited Oct. 13, 2012). See NELL TESSMAN & ANDY FISHER, *STATE IMPLEMENTATION OF THE NEW WIC PRODUCE PACKAGE: OPPORTUNITIES & BARRIERS FOR WIC CLIENTS TO USE THEIR BENEFITS AT FARMERS MARKETS 3* (2009), available at <http://www.foodsecurity.org/pub/WIC-FarmersMarketReport.pdf>.

⁶⁶ *States that Authorize Farmers to Accept WIC Cash Value Vouchers (revised as of October 4, 2012)*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/WIC-CVV-map.pdf> (last visited Nov. 5, 2012).

⁶⁷ See Nell Tessman & Andy Fisher, *State Implementation of the New WIC Produce Package: Opportunities and Barriers for WIC Clients to Use Their Benefits at Farmers Markets*, CMTY. FOOD SEC. COAL. 6–7 (2009), available at <http://www.foodsecurity.org/pub/WIC-FarmersMarketReport.pdf>.

⁶⁸ See generally *id.*

⁶⁹ 7 C.F.R. 248.10(a) (2012).

Health Department property on the FMNP voucher distribution days.⁷⁰ By bringing the markets to FMNP participants rather than giving them benefits and making them find their way to the limited number of authorized markets, Georgia has managed to reach a 95% rate of redemption for the vouchers it distributes.⁷¹ While Georgia brings farmers to the beneficiaries, **Louisiana** has taken the opposite approach by distributing FMNP vouchers at participating farmers markets.⁷² This means that only those WIC participants who are at the markets already get the vouchers, increasing the utilization rate of the vouchers (and ensuring that less money is sent back to the federal government at the end of the year). Both states make it easier for beneficiaries to spend their vouchers by ensuring that farmers markets are accessible at the moment participants receive their benefits, and advocates should encourage their states to follow this lead.

- Advocate for the state to take steps to authorize farmers and farmers markets as vendors that can accept CVV or, if your state already allows CVV use at farmers markets and farm stands, encourage the state to educate vendors and recipients about how to utilize the CVV program.
- Ask the state to work to identify barriers to WIC FMNP and CVV acceptance, for example by conducting focus groups and stakeholder interviews to evaluate concerns and successes of the programs, or by creating a WIC FMNP and CVV advisory council.

Seniors FMNP Also housed within the WIC program is the Seniors Farmers Market Nutrition Program (S-FMNP), which is a federal food assistance program in which states and territories receive federal funding to distribute coupons to senior citizens to purchase fresh fruit and vegetables.⁷³ These coupons, which range from \$20 to \$50 per participant per year, can be used at farmers markets, roadside stands, or to pay for shares in community-supported agriculture programs (CSAs).⁷⁴ S-FMNP is available to individuals who are at least 60 years old and have household incomes of not more than 185% of the federal poverty guidelines.⁷⁵ The program seeks to increase seniors' access to fresh, local foods and to increase consumption of local farmers' products.⁷⁶ Fifty-one states and territories currently participate in the program.⁷⁷ The program mirrors the WIC FMNP in many ways: the state can place restrictions on where purchasable foods originate and the state controls authorization of vendors that can accept S-FMNP payments.⁷⁸ S-FMNP utilization rates have historically been higher than those of WIC FMNP, likely due to the fact that program benefits are higher per year, meaning that it is more worthwhile for participants to ensure they utilize their vouchers.

State food policy councils can increase participation in the S-FMNP and improve program outcomes by:

⁷⁰ Emily Broad et al., *Food Assistance Programs and Mississippi Farmers Markets*, HARVARD LAW SCHOOL MISS. DELTA PROJECT 21 (2010), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/Mississippi-Farmers-Markets-Food-Assistance-Benefits-FORMATTED.pdf>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Senior Farmers Market Nutrition Program Fact Sheet*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/SFMNP-Fact-Sheet.pdf> (last visited Oct. 13, 2012).

⁷⁴ *Id.*

⁷⁵ *Senior Farmers Market Nutrition Program*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/SeniorFMNP/SeniorFMNPOverview.htm> (last visited Oct. 29, 2012).

⁷⁶ *Senior Farmers Market Nutrition Program Fact Sheet*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/SFMNP-Fact-Sheet.pdf> (last visited Oct. 13, 2012).

⁷⁷ *Id.*

⁷⁸ 7 C.F.R. §§ 249.8(a), 249.10 (2012); *Senior Farmers Market Nutrition Program Fact Sheet*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/SFMNP-Fact-Sheet.pdf> (last visited Oct. 13, 2012).

- Pushing the state to increase the number of authorized vendors and to adopt policies that make it easier for farmers markets, roadside stands, and CSAs to accept S-FMNP as payment.⁷⁹
- Advocating that the state increase its outreach efforts to eligible participants. In **California**, the state Department of Food and Agriculture (CDFA) partnered with the state’s Area Agencies on Aging to distribute S-FMNP voucher booklets.⁸⁰ This partnership allowed the CDFA to use already existing distribution networks to distribute the vouchers.⁸¹ In 2011, the S-FMNP vouchers were used to purchase fresh, locally grown products from 1,000 farmers at 450 certified farmers markets approved to participate in the S-FMNP in California.⁸²

SNAP at Farmers Markets The use of SNAP benefits at farmers markets is growing in popularity. Food policy councils should advocate that states allow and encourage the use of SNAP benefits via EBT cards at farmers markets. State food policy councils should pay attention to three main avenues to increase EBT use at farmers markets: (1) ensuring that markets are authorized to accept EBT cards and assisting them in obtaining wireless EBT readers so that they have the machinery required to accept EBT benefits; (2) educating both consumers and vendors about the availability of SNAP EBT use at farmers markets and the substantial benefits of such utilization; and (3) encouraging use of benefits at farmers markets through policies that incentivize such use.

The first way that food policy councils can help increase SNAP use at farmers markets is by breaking down barriers to EBT use at markets. By their nature, farmers markets almost always lack access to electricity and telephone lines, so they are unable to use regular EBT card readers that require wired telephone connections.⁸³ Food policy councils can push states to take active roles in ensuring that markets in the state have access to the needed *wireless* EBT readers. **Washington** provides a good example of how a state can take the initiative to ensure that low-income citizens have access to healthy, local foods.⁸⁴ In its Local Farms—Healthy Kids bill, the state provided funding to a group of farmers markets to allow those markets to purchase wireless EBT readers, which means that these markets now have the infrastructure to process EBT payments.⁸⁵ In states where

MODEL DOUBLE BENEFIT PROGRAM

Incentive programs or “double up” programs are great ways to encourage SNAP participants to use their benefits at farmers markets while also increasing the take home pay to farmers. One of the best examples is the “Double Up Food Bucks” program administered by **Michigan’s** Fair Food Network. The Fair Food Network, a non-governmental entity, raises money from various foundations to fund the project. When SNAP users buy food at Michigan farmers markets using their EBT cards, they receive a voucher matching the amount they spent (up to \$20 per visit) in “Double Up Food Bucks” tokens that can be spent as cash at the farmers market.

Source: *Double Up Food Bucks*, FAIR FOOD NETWORK, <http://www.fairfoodnetwork.org/what-we-do/projects/double-food-bucks> (last visited Oct. 13, 2012).

⁷⁹ See *How Do I Participate in the Farmers Market Nutrition Program for Seniors, Women and Children?*, CAL. DEP’T OF FOOD & AGRIC., http://www.cdffa.ca.gov/SeniorFarmersMrktNutritionPrm/docs/Become_a_CFMNP.pdf (last visited Oct. 13, 2012).

⁸⁰ *About the Senior Farmers Market Nutrition Program*, CAL. DEP’T OF FOOD & AGRIC., <http://www.cdffa.ca.gov/SeniorFarmersMrktNutritionPrm> (last visited Oct. 13, 2012).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Carley Bollen, Anne Vernez-Moudon, Karen Kinney, & Adam Drewnowski, *How Farmers Markets Can Promote Access to Healthy Food*, UNIV. OF WASH. CTR. FOR PUB. HEALTH NUTRITION 4 (2010), available at http://depts.washington.edu/uwcpfn/reports/fm_brief.pdf.

⁸⁴ *Id.*

⁸⁵ 2008 Wash. Sess. Laws 215; Carley Bollen, Anne Vernez-Moudon, Karen Kinney, & Adam Drewnowski, *How Farmers Markets Can Promote Access to Healthy Food*, UNIV. OF WASH. CTR. FOR PUB. HEALTH NUTRITION 4 (2010), available at

many markets still do not have access to wireless EBT readers, food policy councils should push for the state government to either ask the USDA to help provide readers in the state or use state funding to purchase and provide readers to farmers markets in areas around the state.

TABLE IV-1: RECOMMENDATIONS TO EXPAND FOOD BENEFIT USE AT FARMERS MARKETS			
	SNAP	WIC/CVV	WIC/SENIORS-FMNP
CURRENT USE AT FARMERS MARKETS	No limit on funds used at farmers market. Can be used at any markets that are authorized SNAP vendors and have EBT machines.	\$6-10/month for fruits and vegetables allowed <i>if</i> state approves Cash Value Voucher (CVV)* checks at market.	WIC FMNP offers \$10-30/recipient/year to spend at registered farmers markets. S-FMNP generally has higher voucher rates. Both programs have limited availability.
STEPS TO INCREASE FARMERS MARKET PARTICIPATION	Work with state government, such as the department of health, to support the free distribution of wireless EBT machines or push for those markets that do not have free machines to purchase machines. Advocate for a requirement that all state farmers markets accept SNAP. Push existing markets to transition by a certain date.	Advocate for state regulations that allow WIC CVV checks to be spent at farmers markets in addition to grocery stores or other authorized WIC vendors. Where allowed, push for an educational campaign for farmers markets about WIC CVV that encourages them to take steps to become authorized WIC CVV vendors.	Advocate for expansion or implementation of these programs by asking elected officials to push for an expansion of federal FMNP funding. Push for state government to appropriate additional funds to supplement these programs and bring them to more areas, or to increase the voucher amounts.

The second way that food policy councils can increase EBT use at farmers markets is through fostering outreach and education. In states where EBT is already accepted at farmers markets, some of the main barriers to its use stem from a lack of information. In particular, EBT users are largely unaware that they can pay for goods at farmers markets with their EBT cards and they tend to believe that farmers markets are more expensive than other food sources, even though in reality they may be less expensive.⁸⁶ Food policy councils should utilize outreach and education programs to ensure that SNAP participants know how and where they can use their farmers market benefits, and that they understand the positive outcomes they can have by using their benefits at farmers markets.

Finally, the third way that food policy councils can increase EBT use at farmers markets is by helping to incentivize utilization of SNAP benefits at farmers markets. Food policy councils can push their states to get involved by either underwriting or encouraging the private funding of “double benefit” programs for SNAP users who use their EBT cards to purchase food at farmers markets. These programs increase families’ buying power by matching their purchases at farmers markets up to a certain point, increasing the amount of money they have to spend on fruits and vegetables while increasing the amount of money that is funneled to local farmers. Double benefit programs already exist in many cities and states across the country, though

http://depts.washington.edu/uwcpfn/reports/fm_brief.pdf; see *Food Stamps and EBT at Farmers Markets*, WASH. STATE FARMERS MKT. ASS’N, <http://www.wafarmersmarkets.com/resources/foodstamps-market.html> (last visited Oct. 13, 2012).

⁸⁶ Christine Grace, Thomas Grace, & Nancy Becker, *Barriers to Using Urban Farmers’ Market: An Investigation of Food Stamp Clients’ Perception*, OR. FOOD BANK 8 (2005), available at <http://oregonfarmersmarkets.org/EBT/docs/BarrierstoUsingFarmersMarkets102206.pdf>.

often in different forms. **Minnesota**, for example, has a program called “Market Bucks”, a partnership between Blue Cross and Blue Shield and the Minneapolis Department of Health, in which the first \$5 of a customer’s EBT purchase is matched each market day. Similarly, **Michigan**’s “Double Up Food Bucks” program (see text box) provides SNAP participants with up to \$20 in matching funds per visit.⁸⁷ While the Michigan program and most others around the country are administered by private organizations, states could certainly run such programs on their own or at least provide support to organizations wishing to start these programs.⁸⁸ Food policy councils can identify these funding opportunities to implement a similar matching program, or aid state governments in doing so.

CONCLUSION As the economy has suffered and more Americans find themselves in need of assistance to meet their basic food needs, it is imperative that these programs are accessible and state food policy councils have an important opportunity to advocate for policies that increase access to state and federal food assistance programs. Pushing the state to remove barriers to participation, increase funding, and expand marketing and outreach efforts are just a few ways state food policy councils can improve these much needed food assistance programs.

⁸⁷ *Double Up Food Bucks*, FAIR FOOD NETWORK, <http://www.fairfoodnetwork.org/what-we-do/projects/double-food-bucks> (last visited Oct. 13, 2012).

⁸⁸ See *Innovative Program at Six Minneapolis Farmers Markets Helps Low-Income Minnesotans Eat Better*, INST. FOR AGRIC. & TRADE POLICY (July 2011), <http://www.iatp.org/documents/innovative-program-at-six-minneapolis-farmers-markets-helps-low-income-minnesotans-eat-bet>.

SECTION V: CONSUMER ACCESS & CONSUMER DEMAND

Increasing the number of retail opportunities for consumers, addressing and updating the laws about expiration dates on foods and food donation, and tackling transportation concerns all play in to increasing consumer access to healthy foods. Methods to educate consumers about eating healthy foods and increase their demand for healthy foods can include labeling, taxes, and bans.

OVERVIEW As discussions about “food deserts” and consumers’ lack of access to healthy foods increase, food policy councils can take action to support and facilitate the development of more retail options in places where consumers are lacking healthy options. State food policy councils can also advocate for laws that ensure that good, healthy, and safe food can be consumed, instead of thrown away. Finally, increasing consumer access to healthy options goes hand-in-hand with educating consumers to eat healthier foods, which can be done through a range of methods, including menu labeling, tax policy, and, somewhat controversially, food or ingredient bans.

1. Improving Consumer Access Many consumers lack access to healthy food retailers in underserved neighborhoods. Areas that lack food retailers such as grocery stores, farmers markets, and even community gardens and mobile vending can benefit from policy changes to incentivize retailers to open in those areas. Additionally, policies surrounding expiration dates of foods, food donation, and transportation can significantly impact consumers’ access to healthy foods.

2. Increasing Consumer Demand for Healthy Foods States can take steps to educate consumers about healthy foods and encourage consumption of healthy, as opposed to unhealthy, foods. State food policy councils can push for policies that influence consumer demand through labeling, taxes, and even bans on certain items.

IMPROVING CONSUMER ACCESS Increasing access to healthy foods requires more than just providing financial assistance to those who cannot afford these foods, it also means ensuring that all individuals and families have healthy food retailers in their community or easily accessible by public transportation. Making sure that every community in a state has access to healthy food retailers continues to be a challenge in low-income neighborhoods and rural areas. These underserved neighborhoods are often called “food deserts” or “food swamps.”¹ This section discusses ways state food policy councils can help increase the number of healthy food retail options in their states.

Permanent Retail Food Establishments Grocery stores continue to be the primary place most consumers purchase their food or would purchase their food if accessible. Construction of more full-service grocery stores in areas lacking permanent retail food establishments offers the convenience of longer operating hours, greater selection, and greater affordability, as well as opportunity for economic development through increased employment for the community.

One way food policy councils can increase the amount of permanent healthy food vendors in their state is by educating potential retailers about existing sources of funding and pushing for the state to set up

¹ Food deserts are defined as “communities in which residents are unable to easily purchase nutritious food due to distance from a market, price, lack of transportation or absence of healthy options.” *Healthy Food Financing Initiative*, U.S. DEP’T HEALTH & HUM. SERV., OFFICE OF CMTY. SERVS., ADMIN. FOR CHILDREN & FAMILIES (Jan. 2011), http://www.acf.hhs.gov/programs/ocs/ocs_food.html; see also Gina Kolata, *Studies Question the Pairing of Food Deserts and Obesity*, N.Y. TIMES, Apr. 18, 2012, at A1, available at http://www.nytimes.com/2012/04/18/health/research/pairing-of-food-deserts-and-obesity-challenged-in-studies.html?_r=0.

mechanisms that will provide additional funding, such as a state-operated Fresh Food Financing Initiative.² These programs help to fund projects that bring new sources of healthy, fresh foods into low-income communities currently lacking such options.³

The first Fresh Food Financing Initiative was established in **Pennsylvania** (with help from local nonprofit The Food Trust) to assist with financing retail food vendors in underserved communities by providing grants and loans to help them open new locations or expand existing operations in order to provide more fresh fruits and vegetables.⁴ As of 2012, this public-private partnership managed funds of \$85 million and provided funding for 88 fresh-food retail projects in 34 Pennsylvania counties.⁵ The Initiative estimates that this funding has created or preserved more than 5,000 jobs, while improving access to healthy food for more than 500,000 people.⁶ Several other states have followed suit and created their own state-level Fresh Food Financing Initiatives, including California, Illinois, Louisiana, New York, and New Jersey. In states that do not operate a Fresh Food Financing Initiative, state food policy councils can partner with various stakeholders like grocery stores, small retailers, community members, and other nonprofit organizations to push the state to create such a program.

CALIFORNIA'S HEALTHY FOOD FINANCING INITIATIVE

In 2011, **California** became one of several states to adopt a financing initiative that provides financial assistance to food retailers that wish to open in food deserts. The state also created a council to help implement the new initiative, as well as serving as a partner to operate the program in conjunction with local government and non-governmental agencies.

Source: CAL. HEALTH & SAFETY CODE §§ 104660–104664 (2012). See also Kay Cuajunco, *New CA Financing Initiative to Increase Access to Healthy Food in Oakland*, OAKLAND LOCAL, Oct. 13, 2011, <http://oaklandlocal.com/posts/2011/10/new-ca-financing-initiative-increase-access-healthy-food-oakland-community-voices>.

Farmers Markets Farmers markets have seen tremendous growth in popularity over the past few years, with the number of farmers markets in the U.S. increasing 17% between 2010 and 2011, and 9.6% between 2011 and 2012.⁷ Farmers markets offer consumers access to fresh, locally grown foods, and provide small- to mid-size producers with a market for their products. Additionally, farmers markets support the local economy by keeping the community's food dollars within the community (instead of sending local dollars to distant food producers). By supporting farmers markets, communities can help increase the demand for local produce, which will encourage increased production of fruits and vegetables.

There are several ways that state food policy councils can help to grow the farmers markets within the state.

➤ First, they should work to become familiar with the state rules and regulations governing farmers markets and other similar

² *Pennsylvania Fresh Food Financing Initiative*, THE FOOD TRUST, <http://www.thefoodtrust.org/php/programs/ffi.php> (last visited Nov. 2, 2012); Kay Cuajunco, *New CA Financing Initiative to Increase Access to Healthy Food in Oakland*, OAKLAND LOCAL, Oct. 13, 2011, <http://oaklandlocal.com/posts/2011/10/new-ca-financing-initiative-increase-access-healthy-food-oakland-community-voices>.

³ *Pennsylvania Fresh Food Financing Initiative*, THE FOOD TRUST, <http://www.thefoodtrust.org/php/programs/ffi.php> (last visited Nov. 2, 2012); Kay Cuajunco, *New CA Financing Initiative to Increase Access to Healthy Food in Oakland*, OAKLAND LOCAL, Oct. 13, 2011, <http://oaklandlocal.com/posts/2011/10/new-ca-financing-initiative-increase-access-healthy-food-oakland-community-voices>.

⁴ *Pennsylvania Fresh Food Financing Initiative*, THE FOOD TRUST, <http://www.thefoodtrust.org/php/programs/ffi.php> (last visited Nov. 2, 2012).

⁵ *Id.*

⁶ *Id.*

⁷ *Farmers Market Growth: 1994–2012*, U.S. DEP'T OF AGRIC., AGRIC. MKTG. SERV.,

<http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateS&leftNav=WholesaleandFarmersMarkets&page=WFMFarmersMarketGrowth&description=Farmers%20Market%20Growth&acct=frmrdirnkt> (last visited Oct. 3, 2012).

retail outlets, such as farm stands. Farmers markets have very little federal regulation, so most of the rules that apply to them will have been created by state and local government.

- Once the food policy council has a grasp of the rules that apply to farmers markets, it can push the state to create (or work with partners to create) easy-to-understand guidance documents about these rules and regulations. A good example of such a guide is a Purdue University Extension document summarizing the food safety regulations that apply to farmers markets in **Indiana**.⁸
- Food policy councils should also advocate for the state to break down the legal barriers that farmers and farmers markets face and push state government to create simpler and more streamlined permitting processes. For example, some food safety rules may disproportionately affect small producers that sell at farmers markets. States can ensure that regulations support farmers market development, by allowing for cottage food production or allowing food to be kept cool on ice during market hours rather than using mechanical refrigeration.
- Finally, food policy councils can work to secure increased funding for farmers markets using either federal or state resources. One source of funding is the federal Farmers Market Promotion Program, which is administered by the USDA Agricultural Marketing Service and offers grants for the operation of farmers markets.⁹ Food policy councils can research whether people in the state are applying for these federal grants; if not, they can encourage eligible groups to do so, and offer to assist with the application process. States can also create their own state-level version of the farmers market promotion program and offer grants or other funding to support the creation and growth of farmers markets. State food policy councils should not forget that they can always advocate to the state government to help invest in these important community resources.

Farmers markets are a key element in local food systems because they provide an easy way for new farmers to start selling their food products and they help increase access to healthy foods at more locations. Because they can be established more quickly and on less land than a retail grocery store, they can be a good opportunity to invest in the food system and increase food access in the short term in ways that will pay off with longer term food system success.

Community Gardens Community gardens are a great way to increase community access to fruits and vegetables.¹⁰ The **New York** State Department of Agriculture and Markets has a Community Gardens Program that offers a wide range of resources on starting a community garden, funding, applicable laws, and connecting with existing community gardens.¹¹ Using the New York Community Gardens Program as an example, state food policy councils can support the development of community gardens by:

- Advocating for creation of a state-level community garden program.
- Pushing for legislation that would allow community gardens to be established on state-owned land.¹² In New York, community gardens can be established on state-owned land such as Department of Transportation and N.Y. State Parks properties.¹³

⁸ Christa Hofmann, Jennifer Dennis, A. Scott Gilliam & Shirley Vargas, *Food Safety Regulations for Farmers' Markets*, PURDUE UNIV. EXTENSION, <http://www.extension.purdue.edu/extmedia/EC/EC-740.pdf> (last visited Oct. 11, 2012).

⁹ *Farmers Market Promotion Program*, U.S. DEP'T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMsv1.0/FMPP> (last visited Oct. 3, 2012).

¹⁰ *What is a Community Garden?*, AM. CMTY. GARDENING ASSOC., <http://communitygarden.org/learn/> (last visited Nov. 1, 2012).

¹¹ *The Community Gardens Program*, N.Y. STATE DEP'T OF AGRIC. & MARKETS, <http://www.agriculture.ny.gov/cg/CGHome.html> (last visited Nov. 1, 2012).

¹² *Community Gardens Law*, N.Y. STATE DEP'T OF AGRIC. & MARKETS, <http://www.agriculture.ny.gov/cg/CGLaw.html> (last visited Nov. 1, 2012).

- Advocating for funding at the state level. New York provides funding opportunities in the form of grants and matching funds. The grant opportunities are from the Department of Agriculture and Markets and the Department of Environmental Conservation.¹⁴ The matching funds program comes from the Office of Parks, Recreation and Historic Preservation.¹⁵ State food policy councils can advocate that resources from a variety of state offices be used to support community gardens.
- Encouraging the state to offer supplemental funding for projects that receive federal grants. For example, the U.S. Department of Housing and Urban Development (HUD) has a Community Development Block Grant program that can be used to develop community gardens,¹⁶ and states can provide further assistance by providing supplemental funds to support entities that receive these federal grants.

Mobile Vending Retail food establishments that offer healthy options do not have to be housed in permanent buildings. A growing number of cities and states throughout the U.S. are seeing an increase in mobile vending units. These mobile vending units are essentially farmers markets on wheels that can service areas with few or no healthy retail food options. State food policy councils can facilitate the development of this industry by:

- Pushing the state to create a permit for these entities so that they are allowed to operate throughout the state.
- Encouraging the state to allocate funding to support these mobile markets.
- Advocating that the state pass legislation to help develop the infrastructure needed for these markets. In **New Jersey**, the state legislature passed the New Jersey Fresh Mobiles Pilot Program.¹⁷ The Act “calls for the state Department of Agriculture to develop a network of mobile farmers markets that will travel to underserved communities and sell fresh produce.”¹⁸ The program also utilizes vouchers to provide a discount for low-income individuals and families using the mobile markets.¹⁹

Food Donations & Reducing Food Waste Despite persistently high rates of hunger and food insecurity, the amount of food that goes to waste has been steadily increasing. States can use a variety of tools to salvage safe foods that would otherwise go to waste and redirect them to the tables of the hungry. Food policy councils can encourage states to strengthen the legal protections that shield retailers and other entities that donate food from certain types of liability that may otherwise result from these donations, thus encouraging more food donations and gleaning programs. They can also push states to lift or soften regulations barring the sale of foods that have passed their sell-by dates but that are still safe to consume.

Gleaning and Food Donation Much of the food that goes to waste can be redirected and distributed to those in need. Many cities have nonprofits and networks involved in gleaning, which means taking produce

¹³ *Community Gardening Resources*, N.Y. STATE DEP’T OF AGRIC. & MARKETS, <http://www.agriculture.ny.gov/cg/CGResources.html> (last visited Nov. 1, 2012).

¹⁴ *Community Gardens Funding*, N.Y. STATE DEP’T OF AGRIC. & MARKETS, <http://www.agriculture.ny.gov/cg/CGFunding.html> (last visited Nov. 1, 2012).

¹⁵ *Id.*

¹⁶ *Community Development Block Grant Program*, U.S. DEP’T OF HOUSING & URBAN DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs (last visited Oct. 31, 2012).

¹⁷ N.J. STAT. ANN. § 4:10-25.3 (2012).

¹⁸ Annie Knox, *Mobile Farmers Markets Would Deliver the Garden to the Garden State*, N.J. SPOTLIGHT, Sept. 19, 2011, available at <http://www.njspotlight.com/stories/11/0918/2024/>.

¹⁹ *Id.*

or crops that are left over after fields have been harvested or from food service programs and donating those food items to nonprofits, food pantries, and shelters. For example, The Campus Kitchens Project, one of the DC Central Kitchen's satellite programs in **Washington, DC**, has partnered with 31 high schools, colleges, and universities around the country to help turn leftover food from cafeterias and food service businesses into complete meals for the hungry and homeless.²⁰ Similarly, in **Boston, MA**, Food for Free rescues food from wholesale distributors, grocery stores, farms, farmers markets, CSA distribution sites, bakeries, and other retailers and distributes it to isolated seniors and people with disabilities.²¹

WASTE & HUNGER

Americans waste at least one quarter of all food produced in the country, or about 100 billion pounds of food per year. This staggering statistic is all the more troubling when one recalls that nearly 15% of Americans were food insecure in 2010.

Sources: Tara Parker-Pope, *An Abundance of Food, Wasted*, N.Y. TIMES WELL BLOG (Nov. 27, 2008), <http://well.blogs.nytimes.com/2008/11/27/an-abundance-of-holiday-food-wasted/>; Alisha Coleman-Jensen et al., *Household Food Security in the United States in 2010*, U.S. DEP'T OF AGRIC, 4 (Sept. 2011), available at <http://www.ers.usda.gov/Publications/ERR125/ERR125.pdf>.

Many businesses are concerned about the liability issues associated with donating food, which may prevent them from donating such food, even when the food is perfectly safe to eat. In 1996, the U.S. Congress passed the Bill Emerson Good Samaritan Food Donation Act, which protects citizens, businesses, and nonprofit organizations that donate, recover, and distribute excess food.²² The Act provides refuge from civil and criminal liability for those who donate or distribute such food, absent gross negligence and/or intentional misconduct, so long as the food is wholesome and meets all federal, state, and local laws regarding quality and labeling standards.²³

In addition, every state has its own version of a food donor protection act, and some states have gone further to increase the protections available or the classes of food donors protected.²⁴ For example, **Massachusetts** provides additional protection from civil or criminal liability for a food donor or a nonprofit organization that distributes food either for no charge or "at cost," so long as the food complies with state health department regulations.²⁵ Many supermarkets and other large entities may feel emboldened to donate newly expired and other unwanted foods when offered legal immunity of this kind.²⁶

Food policy councils can seek to decrease the amount of food that goes to waste in their communities and help those in need by:

- Raising awareness among potential food donors and potential distributing organizations that the federal Bill Emerson Good Samaritan Food Donation Act (as well as various state food donation or "Good Samaritan" acts) protect against civil and criminal liability.
- Encouraging their states to pass more protective versions of their Good Samaritan Acts, as the federal statute provides a minimum level of donor immunity that does not cover every act of food donation.²⁷ In particular, they can advocate for legislative changes that would strengthen protections

²⁰ See THE CAMPUS KITCHENS PROJECT, <http://www.campuskitchens.org/> (last visited April 19, 2012).

²¹ See FOOD FOR FREE, <http://www.foodforfree.org/> (last visited April 19, 2012).

²² 42 U.S.C.A. § 1791 (2012).

²³ *Id.*

²⁴ See *A Citizen's Guide to Food Recovery*, U.S. DEP'T OF AGRIC., app. D (1996) available at <http://infohouse.p2ric.org/ref/40/39578.htm>; *Produce Rescue Program: Food for Free*, U.S. DEP'T OF AGRIC., <http://www.foodforfree.org/produce-rescue-program> (last visited Oct. 10, 2012).

²⁵ MASS. GEN. LAWS ch. 94, § 328 (2012).

²⁶ See *Supermarket Gleaning Program*, CMTY. FOOD BANK OF N.J., http://www.njfoodbank.org/_assets/docs/downloads/supermarket-gleaning-program.pdf (last visited Apr. 22, 2012) (highlighting protection from liability as a benefit to supermarket participation in a gleaning program).

²⁷ *A Citizen's Guide to Food Recovery*, U.S. DEP'T OF AGRIC., (1996), available at <http://infohouse.p2ric.org/ref/40/39578.htm>.

for food donors, for example by extending legal immunity to individuals who make direct donations to the needy (**Florida**), as well as to entities that resell donated foods to recover operating costs and other nominal fees (**Arkansas**).²⁸

- Raising awareness about the availability of federal tax credits for those who make charitable donations of food and helping to educate organizations to ensure that they take advantage of these credits.²⁹
- Pushing for the passage of additional local and state tax credits for these organizations. For example, **Oregon** has created a crop donation tax credit that gives a credit to a corporation or individual who donates crops to a gleaning cooperative, food bank, or other nonprofit organization.³⁰

Each of these changes would further encourage food industry stakeholders and consumers to donate unwanted food to needy local citizens rather than disposing of it.

Expiration Dates With the exception of infant formula, federal regulations do not require food manufacturers to place sell-by, best by, best-if-used-by, or other expiration dates on food package labels.³¹ There is no universal system for product dating, and manufacturers do not necessarily base their chosen dates on food safety alone.³² Nonetheless, many states have elected to regulate the sale of food items that have passed these dates.

These state regulations are meant to protect public health, and they may reflect a general public sentiment that the dates are meaningful.³³ However, they may also contribute to waste by forcing retailers to discard foods that can still be safely consumed. Similarly, consumers lacking awareness about the basis for these dates may discard countless pounds of food that may actually still be safe and healthy to consume.

State food policy councils should consider working with their local legislatures to soften the duty to discard expired foods by:

- Eliminating the regulations altogether (following the example of states like California, Illinois, New York, North Carolina, and Tennessee, which do

EXAMPLES OF STATE GOOD SAMARITAN ACTS

North Carolina's Good Samaritan Act covers all food, regardless of the "nature, age, condition, or packaging." The scope of the North Carolina immunity statute is thus broader than that of the federal Act, which is limited to "apparently wholesome food or ... apparently fit grocery products."

In **Florida**, individuals who receive and distribute donations enjoy the same legal immunity as do non-profit organizations.

Organizations in **Arkansas** that receive food donations and resell these foods "at nominal cost" enjoy the same level of legal immunity as organizations that distribute donated foods free of charge.

Sources: 42 U.S.C. § 1791(c) (2012); ARK. CODE ANN. § 20-57-103 (2012); FLA. STAT. ANN. § 768.136(2), (3) (2012); N.C. GEN. STAT. ANN. § 99B-10 (2012).

²⁸ See *id.* at app. D (listing all of the state Good Samaritan Act statutes).

²⁹ 26 U.S.C.A. § 170 (e)(3)(C) (2012).

³⁰ OR. REV. STAT. § 315.156 (2012). North Carolina, Colorado, and Arizona have similar tax incentive programs.

³¹ *Food Product Dating*, U.S. DEP'T OF AGRIC., FOOD SAFETY & INSPECTION SERV., http://www.fsis.usda.gov/Factsheets/Food_Product_dating/index.asp (last visited Sept. 16, 2011).

³² *Food Product Dating*, U.S. DEP'T OF AGRIC., FOOD SAFETY & INSPECTION SERV., http://www.fsis.usda.gov/Factsheets/Food_Product_dating/index.asp (last visited Sept. 16, 2011).

³³ See Gregory Karp, *Outdated Items at Dominick's Upsets Customers*, CHICAGO TRIBUNE, Feb. 18, 2011, available at http://articles.chicagotribune.com/2011-02-18/business/ct-biz-0218-dominicks-food-20110218_1_expiration-dates-dates-on-food-products-food-safety; but see Sherri Graslie, *Willing to Play the Dating Game with Your Food? Try a Grocery Auction*, NPR (Aug. 23, 2012), <http://www.npr.org/blogs/thesalt/2012/08/23/159601015/willing-to-play-the-dating-game-with-your-food-try-a-grocery-auction>.

not regulate the sale of foods after their sell-by or best-by dates);

- Enabling producers to sell expired food in specially-designated salvage grocery stores;³⁴ or
- Creating consumer awareness programs that help educate retailers and consumers that these dates are not reflections of food safety, that food may still be safe to eat and need not be discarded on its sell-by or best-by date, and that these dates are leading to unprecedented levels of food waste.

Improving Transportation to Healthy Food Sources In order to increase healthy food access, food policy councils should also work to ensure that public transportation options are available to provide residents with the ability to access retail food outlets. In addition to increasing transit options, improving access to modes of transportation that support consumers' ability to walk and bike can also expand food access while promoting healthy lifestyles and increasing community connections and safety. Food policy councils can:

- Push for states to provide funding for development of mass transit options, which can help low-income populations access many needed services, especially food retailers. A number of states, including **Connecticut**, have dedicated funding to the development of bus rapid transit (BRT). BRT combines the benefits of light rail's limited stops and dedicated lanes with the affordability and flexibility of buses. Connecticut dedicated more than \$1 million to support BRT development.³⁵ Councils may also want to push for cities and states to review existing mass transit routes and ensure that those in need have direct routes to local stores, or change the routes to make this possible.
- Work with state public transportation authorities to push for funding for innovative transportation projects that will increase underserved communities' access to healthy foods. For example, the **Washington** legislature created a "complete streets" grant program in conjunction with their Department of Transportation to encourage the state's local governments to adopt ordinances that provide safe transportation access to all users, including bicyclists, pedestrians, and public transportation users.³⁶ The grant encourages the ongoing design of major transportation arteries to include accessible means of transport, such as wider sidewalks and bicycle lanes.³⁷ This infrastructure can be targeted to areas with insufficient or inaccessible healthy food retail options, thus increasing opportunities for safer and faster means of purchasing healthy foods for underserved communities.

State governments have a huge role to play in deciding how to allocate transportation funds to cities and counties, which gives state food policy councils a great opportunity to push for the state to direct that money towards improving transportation infrastructure to support access to healthy food retail options.

INCREASING CONSUMER DEMAND FOR HEALTHY FOODS In addition to improving geographic access and transportation routes to healthy food retailers and increasing participation by those eligible for food assistance programs, there are a number of ways to boost the demand for healthy foods by targeting consumer behavior. This section highlights some ways state food policy councils can influence demand using the following policy tools: labels, taxes, and bans. It is important to note that many of these policy changes are still quite controversial, so each food policy council will have to make its own unique

³⁴ See Nadia Arumugam, *What Happens to Old and Expired Supermarket Foods*, FORBES (Jan. 6, 2012), <http://www.forbes.com/sites/nadiarumugam/2012/01/06/what-happens-to-old-and-expired-supermarket-foods/>.

³⁵ NAT'L CONFERENCE OF STATE LEGISLATURES, ON THE MOVE: STATE STRATEGIES FOR 21ST CENTURY TRANSPORTATION SOLUTIONS 47 (2012), available at <http://www.ncsl.org/documents/transportation/On-THE-MOVE.pdf>.

³⁶ WASH. REV. CODE § 47.04 (2012).

³⁷ WASH. REV. CODE § 47.04 (2012).

decision about whether these policies are feasible in their state and whether they want to spend the political capital needed to push one of these changes through.

Labeling Often the most realistic option for targeting consumer behavior to change eating habits is by providing more or better information, which most commonly takes the form of nutrition labeling. Nutrition labels are the way consumers get vital information about the foods they eat.

The U.S. Food and Drug Administration (FDA) requires certain information to be included on the labels of packaged food that is sold interstate.³⁸ A state may have its own nutrition labeling rules for foods that are sold intrastate. Many states have adopted the federal nutrition labeling rules (often with exceptions for cottage foods, see [Section VIII: Food Safety & Processing](#) for more information). State food policy councils may want to examine their state's nutrition labeling requirements to see whether, and how, the labeling requirements differ from the federal rules. For foods that are only sold intrastate, a food policy council can work to improve the labeling requirements to provide additional nutrition-related information and present that information in a more user-friendly way, while still allowing flexibility around labeling rules for fledgling entrepreneurs, like cottage food entities.

State food policy councils can also focus their attention on passing menu labeling laws for restaurants within their state that fall outside the federal menu labeling law that was passed as part of the Patient Protection and Affordable Care Act of 2010.³⁹ The federal menu labeling law requires chain stores with more than 20 locations to include nutritional information on their menus and display boards.⁴⁰ The federal law mirrors California's own menu labeling law, passed in 2008.⁴¹ Although California's own law is now preempted by the federal law, California (and other states) could still pass menu labeling laws for restaurants with fewer than 20 locations, which are not covered by the federal law.⁴² State food policy councils can advocate that their state expand menu labeling to other restaurants and food establishments to ensure consumers are well-informed about their food choices.

Taxes Taxes have the ability to alter consumer behavior by making foods more or less expensive than other alternatives. For example, a higher tax on soda or junk food might dissuade consumers from making that purchase whereas a reduced tax rate on healthier foods may entice consumers to make that purchase.

Most states already reduce taxes on food for home consumption—this should be encouraged in all states and may be an area where food policy councils can effect meaningful change. For example, in **Georgia**, food and beverages sold for home consumption are exempt from the state's 4% sales tax, but may be subject to local county sales taxes.⁴³ **Mississippi** and **Alabama**, however, currently offer no offsets or reductions of the sales tax that applies to food as compared to other consumer goods.⁴⁴ Taxes on grocery

³⁸ *Food Labeling and Nutrition Overview*, UNITED STATES DEP'T OF HEALTH & HUMAN SERV., FOOD & DRUG ADMIN., <http://www.fda.gov/Food/LabelingNutrition/default.htm> (last visited Oct. 2, 2012).

³⁹ Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 4205, 124 Stat. 119 (2010) (codified at 21 U.S.C. § 343(q)(5)(H) (2012)).

⁴⁰ *Id.*

⁴¹ See [Section I: General Legal Setting](#) for more information about the California law.

⁴² Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 4205, 124 Stat. 119 (2010) (codified at 21 U.S.C. § 343(q)(5)(H) (2012)).

⁴³ *FY 2012: A Tax Guide for Georgia Citizens*, GA. DEP'T OF REVENUE 2 (2012), https://etax.dor.ga.gov/taxguide/7-10-12__2012_Tax_Guide.pdf.

⁴⁴ *Which States Tax the Sale of Foods for Home Consumption in 2009?*, CTR. ON BUDGET AND POLICY PRIORITIES, <http://www.cbpp.org/cms/?fa=view&id=1230> (last visited Oct. 3, 2012).

items affect low-income consumers more heavily, as these taxes make up a larger proportion of their monthly income compared to a consumer with higher income.

States looking to encourage healthier eating habits also have the option of introducing or raising taxes on unhealthy foods. These types of initiatives have gained notoriety among some consumers and food industry groups, and have been quite controversial. However, as scientific evidence of the dangers of eating diets high in sugar and processed foods grows, states may see these “junk food taxes” or taxes on soda or sugar-sweetened beverages as a way to change consumer eating habits.⁴⁵ A number of states, such as Hawaii and Mississippi, have proposed legislation that would increase taxes on soda, and an even greater number of cities have considered this kind of legislation.⁴⁶ It is important to find out whether your state has introduced a junk food or sugar-sweetened beverages tax in the past. If so, learn what obstacles stood in the way of passage of the bill, so that those things can be addressed should your food policy council try to introduce similar legislation again.

Bans Another way to change consumers’ food purchases is through an outright ban of a specific food or ingredient. **New York City** made headlines in September 2012 when Mayor Bloomberg announced a city-wide ban on sweetened drinks in containers 16-oz. or larger.⁴⁷ The ban was approved by the Health Board and is scheduled to go into effect in March 2013.⁴⁸ Additionally, **California** banned trans fat from food products made in the state, but the ban is subject to some exceptions.⁴⁹ Several other cities and counties have also enacted trans fat bans over the past few years. If banning certain foods is a route that state food policy councils would like to explore, it would probably be most effective to advocate for the banning of certain ingredients that are proven to be harmful, or to push for limits on the amount a certain ingredient can be used in a food item.

CONCLUSION State food policy councils can work to increase consumer access to healthy foods by advocating for states to increase funding for healthy food retailers, such as grocery stores, farmers markets, community gardens, and mobile vendors. In conjunction with adding more retail options, state food policy councils can advocate for improving transportation to retail stores and making cities more walkable and bike-friendly. State food policy councils can also boost consumer demand for these healthy foods through the use of labeling, taxes, and bans.

⁴⁵ Anemona Hartocollis, *Failure of State Soda Tax Plan Reflects Power of an Antitax Message*, N.Y. TIMES, July 2, 2010, available at <http://www.nytimes.com/2010/07/03/nyregion/03sodatax.html?pagewanted=all>.

⁴⁶ Duane D. Stanford, *Anti-Obesity Soda Tax Fails as Lobbyists Spend Millions: Retail*, BLOOMBERGBUSINESSWEEK.COM, Mar. 13, 2012, <http://www.businessweek.com/news/2012-03-13/anti-obesity-soda-tax-fails-as-lobbyists-spend-millions-retail#p1>.

⁴⁷ Michael M. Grynbaum, *Health Panel Approves Restriction on Sale of Large Sugary Drinks*, N.Y. TIMES, Sept. 14, 2012, at A24, available at <http://www.nytimes.com/2012/09/14/nyregion/health-board-approves-bloombergs-soda-ban.html>.

⁴⁸ *Id.*

⁴⁹ According to the California Health and Safety Code, “commencing January 1, 2011, no food containing artificial trans fat . . . may be stored, distributed, or served by, or used in the preparation of any food within, a food facility.” Food that is sold or served in the manufacturer’s original, sealed packaging is exempt from this law. This ban also does not apply to public school cafeterias. CAL. HEALTH & SAFETY CODE § 114377 (2012); CALIFORNIA CONFERENCE OF DIRECTORS OF ENVIRONMENTAL HEALTH, CALIFORNIA TRANS FAT BAN GUIDELINES (2010), http://cchealth.org/eh/retail_food/pdf/ab97_transfat_ban_guidelines.pdf; Jennifer Steinhauer, *California Bars Restaurant Use of Trans Fats*, N.Y. TIMES, July 26, 2012, <http://www.nytimes.com/2008/07/26/us/26fats.html>.

SECTION VI: FARM TO INSTITUTION

Farm to institution programs facilitate transactions between local farms and institutions responsible for feeding large amounts of people, such as schools, universities, prisons, and hospitals. Food policy councils can advocate for state governments to adopt official procurement policies that favor locally produced foods for use by state agencies and public institutions. These programs host a variety of benefits, ranging from providing economic support to local farmers to supplying consumers with fresh, local food, to creating educational opportunities concerning nutrition and local agriculture.

OVERVIEW Farm to institution programs connect institutional food providers—such as schools, universities, hospitals, and prisons—with local farmers. Farm to institution programs create a host of benefits for all parties involved by providing farmers with new markets for their products and providing consumers with fresh, nutritious, and locally sourced foods. Further, they can provide participants with information concerning local agriculture, nutrition, and food policy. States have control over the procurement policies that are used by entities utilizing state money (such as state agencies, and, in some cases, state colleges and universities). Food policy councils can increase the sale and consumption of locally produced foods by advocating for state procurement preferences for local foods and encouraging the development and expansion of farm to institution programs.

1. What is Farm to Institution? Farm to institution programs entail institutions that feed large groups of people purchasing locally produced foods to use in their operations. This section provides an overview of farm to institution programs and describes the many benefits of such programs.

2. Farm to State Agencies Food policy councils can advocate for state procurement policies that support local farmers and provide state agencies access to fresh, local foods. State agencies are an ideal place for farm to institution initiatives because states have authority to determine agency procurement policies.

3. Farm to School “Farm to school” refers to programs connecting schools from kindergarten through 12th grade to local farms with the dual purpose of supporting local farmers and providing students with healthy food and educational opportunities.

4. Farm to University Programs For public universities, the state government can have an important role in incentivizing or mandating farm to university programs. Because universities provide a significant number of meals to students, the demand for food is high and such programs provide a great opportunity for local and regional producers to access that market.

5. Farm to Other Institutions Other institutions, such as hospitals and prisons, are also places to which state food policy councils can direct advocacy efforts in order to increase purchases of local food.

WHAT IS FARM TO INSTITUTION? The term “farm to institution” refers to programs in which local farms sell their products to institutions that feed large numbers of people. Specific types of farm to institution programs include farm to school, farm to prison, farm to university, farm to hospital, and farm to state government (such as state agencies, departments, and legislatures).

All of these programs have multiple benefits:

- Consumers benefit because of increased access to fresh, nutritious food produced locally.

- School children benefit from the involvement of farmers in directly supplying schools with food and providing educational opportunities related to agriculture, nutrition, and science, among other fields.¹
- Institutions gain the advantage of cutting the “middle man” out of the procurement process, at least for those foodstuffs they are able to obtain from local farms, which can potentially reduce the price per serving while allowing farmers to receive payment for the full value of their products.²
- Farmers benefit by connecting with high-volume customers paying fair market prices for their products. This relationship encourages local farmers to increase their production, which will help get fresh, healthy foods into more local institutions as well as in the hands of more local consumers through other outlets like farm stands and farmers markets.
- Communities and states benefit from farm to institution programs because they keep economic activity close to home and help make local agriculture economically viable.³

In short, more locally produced food in institutional kitchens means healthier citizens and healthier farms.

The state of **Washington** has been a leader in promoting farm to institution programs. The purpose of Washington’s Local Farms-Healthy Kids Act of 2008 was to make Washington-grown food available to as many Washington citizens as possible.⁴ Even though it deals with several different policy areas, not just procurement, it is useful as an example of a comprehensive policy supporting local food. The Act’s provisions include:

- State funding for low-income schools to purchase fresh, local food.
- Launch of a statewide farm to school program, housed within the state Department of Agriculture.
- A pilot “Farmer to Food Bank” program to enable food banks to partner with local farmers to receive fresh produce.⁵

In order to be most efficient in farm to institution advocacy efforts, food policy councils must understand who makes the vital decisions on procurement issues. There are often many layers of decision-making

PROCUREMENT POLICIES

Farm to institution program advocacy efforts are often focused on changing an institution’s procurement policies. The term “procurement policies” refers to an entity or agency’s guidelines for how it obtains materials it needs (including food), how different vendors can compete for its business, and from where it purchases these various materials.

Local school districts and municipal governments have their own procurement policies, and these policies can favor locally produced goods as long as the applicable rules are met (for example, the federal rules for school meals, in the case of school districts). State universities, however, do not have to worry about meeting federal school meal rules.

For state agencies, the state government has the authority to dictate the procurement policies that are used, because each agency is an arm of the state government itself.

Setting state procurement policies that encourage and enable more local food purchasing can make a big difference in helping to support local food production and increasing the amount of fresh fruits and vegetables available throughout the state.

¹ See generally NATIONAL FARM TO SCHOOL NETWORK, <http://www.farmtoschool.org/index.php> (last visited Oct. 3, 2012).

² *10 Reasons to Buy Local Food*, FARM TO SCHOOL, http://www.farmtoschool.org/files/publications_218.pdf (last visited Oct. 3, 2012).

³ *Id.*

⁴ Local Farms-Healthy Kids Act of 2008, WASH. REV. CODE ANN. § 15.64.060 (2012); *Local Farms – Healthy Kids*, THE WASH. SUSTAINABLE FOOD & FARMING NETWORK, <http://wsffn.org/our-work/local-farms-healthy-kids> (last visited Oct. 3, 2012).

⁵ See *id.*

responsibility when it comes to public institutions' procurement decisions. Schools serve as a good example of the layers of decision-making responsibility, which include:

- The federal government, which requires that schools serve children certain types of foods.
- The state department of education, which makes big, statewide decisions about how public schools should operate.
- School districts with local school boards that make big-picture decisions on a district level.
- The schools themselves, which principals and other administrators run on a day-to-day basis.
- School food service directors who run the daily cafeteria operations.

Each level of administration makes various decisions about the school's cafeteria operations. The same multi-layered decision making is true for other state institutions. Therefore, it is important that advocates at the state level understand what powers the legislature and other statewide authorities have in making institutional food and nutrition decisions before crafting an advocacy plan.

THE DORMANT COMMERCE CLAUSE

A state's ability to discriminate against out-of-state products in favor of those produced in-state is subject to a doctrine known as the Dormant Commerce Clause. As discussed above in Section I: General Legal Setting, certain powers are given to the federal government by the Constitution. One of these dedicated federal powers is the power to regulate interstate commerce. Because only the federal government can regulate interstate commerce, the Constitution does not allow a state to give preferential treatment to businesses within its borders because that would hinder interstate commerce by giving those businesses an unfair competitive advantage against out-of-state businesses, who have the same right to access the state's market.

For the purposes of food policy councils, there are two important caveats to keep in mind: the Dormant Commerce Clause does not apply (1) to *intrastate* commerce (that is, where goods and commerce do not cross state lines); and (2) when states act as "market participants" (as opposed to regulators) by directly buying (or selling) goods themselves. Thus states can craft legislation that prefers local goods or products without running afoul of the Dormant Commerce Clause. Keep in mind that as yet there have not been any Dormant Commerce Clause challenges to local preference laws, even though most states have laws that prefer local foods, so these points are just cautionary ones for advocates to remember as they work to shape state laws.

Source: see Gabe Johnson-Karp, *Local Food Systems and the Reawakening of Republicanism*, MARQUETTE UNIVERSITY LAW SCHOOL FACULTY BLOG (May 31, 2011), <http://law.marquette.edu/facultyblog/2011/05/31/local-food-systems-and-the-reawakening-of-republicanism/>.

FARM TO STATE AGENCIES State agencies are a great place for state food policy councils to work to increase local food procurement. Many state agencies buy food products in bulk, and may serve food in various settings to their clients, to state employees or other individuals during conferences and other events, or to state agency staff working on their premises. As governmental entities, they have the ability to set a positive example by purchasing and serving healthy and/or local food whenever possible. Most importantly, the state government has control over all state agency policies, so food policy councils can advocate that the state enact laws requiring state agencies to prefer local and/or healthier food options.

There are a number of ways states can increase the amount of local food procurement in state agencies; below are some examples:

➤ **Mandated Percent Price Preference:** Under a percent price preference law, state agencies are *required* to purchase locally-produced food when the cost of such food is within a certain percentage of the price of similar food from conventional sources. Advocates can look to **Alaska** for an example of such a law: there, any state entity or school district receiving state money *must* purchase its agricultural products from farms within the state as long as the in-state product costs no more than 7% above similar out-of-state products and the in-state product is of the same quality.⁶ Another example of percent price preference laws is found in **Massachusetts**, which requires all state agencies purchasing “agricultural products” (defined to include processed foods and seafood) to prefer products grown in the state or end products made using products grown in the state.⁷ When given the choice between Massachusetts-produced products and those from out of state, state agencies are required to buy the local products as long as they are not more than 10% more expensive than the out of state choices.⁸

GEOGRAPHIC PREFERENCE

Geographic preference refers to any policy or initiative in which a school or other institution seeks to purchase food from farms and producers within a certain geographic proximity by making it easier for such local producers to meet its bids. Geographic preference policies ensure that fresher foods are available to students or clients while helping local, often small-scale farmers, find a stable market for their goods.

Schools and institutions can implement a geographic preference by taking into account the location of origin of foods in the bidding process or by giving a percent price preference to locally grown foods, making their bids prices comparatively cheaper than those of non-local foods.

NUTRITIONAL STANDARDS FOR FOODS PURCHASED OR SERVED BY STATE AGENCIES

In addition to laws preferring local foods, states may pass laws that require foods purchased or served by state agencies to meet certain nutritional guidelines. These nutritional standards can follow the USDA/HHS federal dietary guidelines or can be set specifically for state agencies. In **Massachusetts**, Governor Deval Patrick issued an executive order requiring that all state agencies within the Executive Department that purchase or serve food follow nutrition standards set by the state Department of Public Health.

Source: Mass. Exec. Order No. 509 (2009), available at <http://www.mass.gov/governor/legislationexecorder/executiveorder/executive-order-no-509.html>.

➤ **Discretionary Geographic Price Preference or General Geographic Preference:** Under a discretionary geographic preference law, states can specify that state agencies have *discretion* to spend more on local products than out-of-state products. Here, state agencies are not required to purchase local food products, but are allowed to do so, even if the local products cost more. In a 2007 comprehensive local procurement statute, **Montana** gave broad discretion to decision-makers in *all* state institutions—agencies, schools, prisons, universities, hospitals, etc.—to purchase Montana-produced food directly from farmers and other producers rather than going through the state’s standard procurement procedures.⁹ The law also allows state institutions to accept an in-state bid over an out-of-state bid even where the in-state bid is more expensive, as long as the difference in price is “reasonable.”¹⁰ Under this law, institutional decision-makers have significant leeway to choose local products—so much so that the definition

⁶ ALASKA STAT. ANN. § 36.15.050(a) (2012). Other states have also enacted percent price preference laws, including Wyoming (WYO. STAT. ANN. § 16-6-105 (2012)).

⁷ MASS. GEN. LAWS ch. 7, § 23B(a) (2012).

⁸ *Id.* § 23B(c).

⁹ MONT. CODE ANN. § 18-4-132 (2012).

¹⁰ *Id.* § 18-4-132(4)(a)(iii).

of whether a price difference is reasonable is left to the institutional decision makers' discretion.¹¹

➤ **Target Percentage of Local Food Purchases:** Under a target percentage law, a certain percentage of all food purchases must be from local vendors. This type of law allows the state agency to decide how it will meet the percent requirement. **Illinois'** Local Food, Farms, Jobs Act of 2009 set a goal that all state institutions purchase at least 20% of their food from local sources by 2020.¹² Similarly, the **New York** Senate introduced (but has not yet passed) the "Buy from the Backyard Act" in 2012, which would require all state agencies to purchase at least 20% of their food from producers and/or processors in New York State.¹³ These laws have the benefit of simplicity: agencies have discretion to choose exactly which 20% of their food is purchased in-state, but they are mandated to buy a certain amount of local food in bulk.

➤ **Resolution or Statement of Support of Local Purchases:** States can also encourage increased procurement of local food without expending resources or altering regulations. A state legislature could pass a resolution expressing its support for increased local procurement, or a state food policy council or state legislature could launch a "10% campaign" wherein state agencies, public and private institutions, restaurants, and retail establishments are encouraged to buy 10% of their food from local sources.¹⁴ **North Carolina** established a 10% campaign, and as of October 2012, the campaign had achieved \$25 million in local food purchases.¹⁵ This option has the advantage of establishing a quantifiable goal for all institutions and expanding the support of local food into the private sector.¹⁶ It can also increase community support for using local products in a variety of settings, including schools.¹⁷

FARM TO WORK PROGRAMS

The **Texas** Department of State Health Services hosts a "Farm to Work Initiative," in which employees can order a basket of fresh produce from a local farm to be delivered to their workplace. This innovative idea does not involve procurement policies, but serves the same goal of increasing opportunities for the state and local businesses to support local food production.

Source: *Farm to Work Initiative*, TEX. DEP'T OF STATE HEALTH SERVICES, <http://www.dshs.state.tx.us/obesity/nutritionfarmtowork.shtm> (last visited Oct. 22, 2012).

State food policy councils have a number of innovative mechanisms to choose from when advocating to increase the amount of local food purchased and used by state agencies. The percent price preference is likely the strongest option because it mandates purchasing local food and though it may impose some additional costs on state agencies, those costs are likely not unreasonable because they are limited by the upper limit of the price preference. State food policy councils may want to implement a combination of these mechanisms; for example, the discretionary geographic preference that gives agencies the authority to spend more money on local food products, combined with a target percentage of local purchases or a

¹¹ *Id.*

¹² *Governor Signs Legislation Putting Illinois on Track to Vastly Expanded Local Farm Economy*, FAMILYFARMED.ORG (2010), <http://www.familyfarmed.org/governor-signs-legislation-putting-illinois-on-track-to-vastly-expanded-local-farm-economy/>.

¹³ S.B. 2468-2011, 2012 Reg. Sess. (N.Y. 2012). The bill was referred to the State Assembly and referred to that body's Agriculture Committee on March 19, 2012. It has not moved past that point in the legislative process as of Oct. 4, 2012. See *SB2468-2011: Enacts the "buy from the backyard act"*, N.Y. S. OPEN LEGIS., <http://open.nysenate.gov/legislation/bill/S2468-2011> (last visited Nov. 2, 2012).

¹⁴ Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 9 (Nov. 2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>.

¹⁵ *The 10% Campaign*, NORTH CAROLINA STATE UNIV., <http://www.ncsu.edu/project/nc10percent/index.php> (last visited Oct. 22, 2012).

¹⁶ Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 9 (Nov. 2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>.

¹⁷ *Id.*

memorandum or resolution supporting local food producers (such as a 10% campaign), would give agencies flexibility in how they achieve a higher percentage of local purchasing while ensuring that over time they increase their support for the local food system.

KEY FEATURES OF MONTANA'S PROCUREMENT LAW

In its 2007 comprehensive local procurement statute, Montana gave broad discretion to state agencies and institutions to increase their purchases of local food.

(1) The law gives broad authorization for state institutions to prefer in-state food in their purchasing plans. This feature serves to enable and encourage the purchase of local food products and costs the state nothing.

(2) The law allows institutions to pay more for in-state food than they would for products from other sources. While this provision does potentially cost the state money, the potential additional cost of local food is an investment in the state's own farmers and local food producers, supporting the future of the state's food system as well as providing a great opportunity for economic development. Advocates can point out that a little more money staying in the state is preferable to a little less going elsewhere.

(3) Montana does not force institutional decision-makers to overcome a number of bureaucratic hurdles in order to choose local food; rather, they can make these decisions essentially on their own and can go outside of the official procurement process, which breaks down some of the barriers for local food vendors. This encourages institutions to take full advantage of the local procurement powers granted to them.

Source: MONT. CODE ANN. § 18-4-132 (2012).

FARM TO SCHOOL The most often talked-about type of farm to institution program is farm to school. "Farm to school" refers to programs connecting schools from kindergarten through 12th grade to local farms with the dual purpose of supporting local farmers and providing students with healthy food and educational opportunities.¹⁸ Farm to school programs have been shown to have a variety of benefits, including but not limited to:

- Reducing hunger and obesity by providing fresh, healthy food to children;
- Lessening costs to school food budgets by providing minimally processed, local, seasonal foods that cost less to produce, cut out the middle man, and reduce transportation costs, and therefore sell for less money;
- Supporting the state's economic development and creating jobs in the agricultural sector;
- Decreasing emissions and environmental harms related to food production by reducing distances food must travel from farm to plate; and
- Improving kids' and families' understanding and awareness of issues surrounding food, agriculture, nutrition, and the environment.¹⁹

¹⁸ *About Us: Nourishing Kids and Community*, NAT'L FARM TO SCHOOL NETWORK, <http://www.farmtoschool.org/aboutus.php> (last visited Oct. 3, 2012). Farmtoschool.org is a great overall resource for food policy councils seeking more information.

¹⁹ *Id.*

Whether states have delegated a lot or a little authority over schools to their local governments, states still have a role in shaping farm to school programs. They can *enable* such programs by reducing restrictions on how schools spend their money or by specifically authorizing farm to school programs, and they can *encourage* these programs in a variety of ways, including setting up statewide farm to school initiatives.

Low-Cost State Opportunities to Foster & Promote Farm to School Programs

Advocates can push for state decision-makers to adopt policies that encourage farm to school programs. While many such policies impact the state budget, there are several low-cost and immediate ways states can make a major impact on communities' awareness of their options for adding fresh, local foods to school meals, such as:

- **Create a State Farm to School Week:** Creating a state farm to school week encourages schools to add locally produced farm products to school menus for a given week. These temporary or one-time purchases can build relationships between schools and farmers that can lead to more long-term purchasing arrangements.²⁰ Many states have such programs and have implemented them creatively. For example, **Maryland's** Department of Agriculture funds a Farm to School Week kick-off celebration at a local school, during which state and local officials visit the school for a healthy meal made from local foods in the school cafeteria.²¹ **Maine's** State Department of Education has posted enticing online descriptions of the menus for its Maine Lunch Harvest Week, including personalized information about the various local farms that produced the featured ingredients.²²
- **Pass a Legislative Resolution or Memorial Statement:** A second low-cost (free, actually) way for legislatures to raise awareness about farm to school is with a resolution or memorial statement.²³ Common among legislative bodies everywhere, these resolutions and memorial statements are non-binding, non-legal statements of the legislature expressing support for certain causes or programs, such as farm to school programs. Their main value in the farm to school context is to raise awareness about farm to school and encourage local decision-makers to look into establishing farm to school.²⁴ **New Mexico's** farm to school memorial statement asserts that state schools should serve in-state products to the extent possible, and it has helped lead to more concrete commitments to farm to school programs around the state.²⁵ **Mississippi** passed a legislative resolution supporting farm to school in 2012; its resolution was combined with language creating an annual farm to school week, similar to what is described above.²⁶
- **Form an Interagency Farm to School Task Force:** Another simple, low-cost option for states interested in promoting farm to school programs is to establish an inter-agency farm to school task force.²⁷ This task force would gather representatives from various state agencies that control policies that impact farm to school, such as the departments of agriculture, education, and public health, to

²⁰ Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 9 (Nov. 2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>.

²¹ *News Release: Officials Kick-off Maryland Homegrown School Lunch Week*, MARYLAND DEP'T OF AGRIC. (Sept. 9, 2011), <http://www.mda.state.md.us/article.php?i=35385>.

²² *Local Foods to Local Schools: Me. Harvest Lunch Announcements for Elementary Schools*, MAINE DEP'T OF EDUC. CHILD NUTRITION, <http://www.maine.gov/education/sfs/farm.html> (last visited Oct. 3, 2012).

²³ Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 11 (Nov. 2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>.

²⁴ *Id.*

²⁵ *New Mexico Profile*, NAT'L FARM TO SCH. NETWORK, <http://www.farmtoschool.org/NM/> (last visited Oct. 3, 2012).

²⁶ H.R. 112, 2012 Leg. Sess. (Miss. 2012).

²⁷ Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 11 (Nov. 2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>.

strategize about how best to go about increasing farm to school relationships across the state.²⁸ At least seven states have farm to school task forces, including **Colorado**.²⁹ Colorado’s task force was created by the state’s General Assembly to “study, develop, and recommend policies and methods to best implement a Farm to School program” and has since created a roadmap aimed at achieving “collaborative, sustainable implementation of farm to school statewide.”³⁰ Its next task is to formulate specific tasks to fulfill these goals.³¹ Creating an interagency task force can be incredibly productive, as it helps to ensure that all the relevant agencies are on the same page regarding the information they give out to farmers and schools, and that they are breaking down any unnecessary regulatory barriers standing in the way of creating successful farm to school relationships.

➤ **Set Target Local Procurement Goals for Schools:**

A state can also simply set local procurement goals for school districts. For example, **Illinois** has set a goal for its schools that they obtain 10% of their food from local sources by the year 2020.³² If such goals are set, a state agency or interagency task force should be responsible for monitoring implementation of the goals so that the state can ensure that the school districts are held accountable for their performance.

➤ **Increase the State Small Purchase Threshold:**

A state can also encourage the use of local food in schools by raising its small purchase threshold. A food purchase that qualifies as a “small purchase” is one for which the school district is not required to go through the formal bidding process.³³ This makes it easier for small farms to sell their products to schools because they avoid incurring administrative costs.³⁴ Federal law currently allows a district accepting federal funding for school meals to consider any purchase below \$150,000 a “small purchase,”³⁵ but some states set their standards lower.³⁶ For example, the small purchase threshold for food

COMPARE STATES: SMALL PURCHASE THRESHOLDS

According to federal law, school districts can make purchases under \$150,000 without utilizing the formal bidding process. However, states set their own small purchase thresholds.

In the 2007–2008 school year, **Michigan**’s small purchase threshold was \$19,650. In 2008, the Michigan legislature passed a bill to increase the small purchase threshold for school meals to \$100,000.

Massachusetts’s procurement law, on the other hand, sets the small purchase threshold for food items at only \$25,000.

Sources: Memorandum from Colleen Matts & Betty Izumi, C.S. Mott Group for Sustainable Food Systems at Michigan State University, *Small Purchase Threshold Considerations* (Apr. 10, 2008), http://www.fbcmich.org/site/DocServer/Small_Purchase_Threshold_Considerations.pdf?docID=1242; MICH. COMP. LAWS ANN. § 380.1274(4) (West 2012); MASS. GEN. LAWS ch. 30B § 4(d) (2012).

²⁸ *Id.* at 11-12.

²⁹ *Id.* at 12.

³⁰ *Colorado Farm to School Task Force*, COLO. FARM TO SCH., <http://coloradofarmtoschool.org/colorado-farm-to-school-task-force/> (last visited Oct. 3, 2012).

³¹ *Id.*

³² *Governor Signs Legislation Putting Illinois on Track to Vastly Expanded Local Farm Economy*, FAMILYFARMED.ORG (2010), <http://www.familyfarmed.org/governor-signs-legislation-putting-illinois-on-track-to-vastly-expanded-local-farm-economy/>.

³³ Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 18–19 (Nov. 2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>.

³⁴ *Id.* at 19.

³⁵ 41 U.S.C. §134 (2012); 7 C.F.R. §§ 3016.4(b) (applying these regulations to entitlement programs, including school meals), 3016.36(d) (allowing small purchases under \$100,000 to follow informal procurement procedures) (2012).

³⁶ The federal government recently increased the small purchase threshold from \$100,000 to \$150,000 in order to allow more transactions to go through the informal procurement process. Memorandum from the U.S. Dep’t of Agriculture Food & Nutrition Service (Oct. 2, 2012), http://www.fns.usda.gov/cnd/Care/Regs-Policy/policymemo/2013/SP01_CACFP01_SFSP01-2013.pdf.

items in **Massachusetts** is only \$25,000.³⁷ States with thresholds lower than the federal level should be encouraged to raise their thresholds so as to improve local farmers' ability to sell food to schools without dealing with a formal bidding process.

State Financial Support for Farm to School Programs Despite support at the state level, there are still various barriers to implementing farm to school programs at the local level. One of the major barriers is financial: in the short term, transitioning to the purchase of local foods can be more costly than continuing to purchase foods in bulk from distributors who may be sourcing food products from all over the country or the world. State legislatures that are willing to put money into supporting farm to school can spend a small amount that can go a long way. States can support farm to school programs through grants that allow the schools to craft their own programs or by creating and funding a position for a state farm to school director who would oversee farm to school programs within the state.

For example, states can invest in farm to school programs by supporting local *geographic preference policies*, similar to Alaska's percent price preference scheme referenced above, which requires state entities receiving state money to purchase in-state agricultural products when the in-state products are not more than 7% more expensive than similar out-of-state products.³⁸ The most common type of geographic preference policy awards a *percent price preference* to local farmers or producers by equating geographic proximity to a decrease in price on the bid, thus making local foods less expensive comparatively so that they win the bid, but ultimately forcing the school to pay more money for the food products if the local bid was in fact more expensive than the out-of-state bid.³⁹ While at first this may mean spending more on school food because local vendors may be more costly in the short term, increasing the purchase of local foods through school procurement can ultimately reduce the price of these foods over time by allowing local farmers to scale up their production, creating new economies of scale and decreased prices in the long term.⁴⁰ One way for states to encourage geographic preference policies is by helping school districts cover the initial increased cost of buying local food. Additionally, schools participating in the National School Lunch and Breakfast Programs and receiving federal reimbursements for their meals are now allowed and encouraged to utilize geographic preferences (preferring produce from within the state or within a certain number of miles from the school) in their food procurement policies.⁴¹

There are a few specific options that state governments can take to financially support the increase in local procurement and the growth of farm to school programs:

- **Provide Financial Incentives via Grants:** One way to strongly support farm to school programs in the state is to provide financial incentives for school districts to buy food from local farmers. An excellent example of this approach is the **Illinois** Farm Fresh Schools Act, which offers financial assistance in the form of state grants.⁴² The Act established a special fund to which local schools can apply for grants to implement local farm to school programs.⁴³ Its stated goals are to reduce obesity,

³⁷ MASS. GEN. LAWS ch. 30B, § 4(d) (2012).

³⁸ See ALASKA STAT. ANN. § 36.15.050 (2012).

³⁹ Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 76 Fed. Reg. 22,603 (Apr. 22, 2011).

⁴⁰ Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 18–19 (Nov. 2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>.

⁴¹ 42 U.S.C. § 1758(j) (2012); Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 7 C.F.R. § 22603-01 (2012).

⁴² 105 ILL. COMP. STAT. ANN. 124/15 (2012).

⁴³ *Id.* at 124/15-20.

improve nutrition in schools, and improve local farmers' access to purchasers.⁴⁴ By making funds available through a grant application process, the state requires school districts to lay out how they would go about spending the money before they can access funds. For instance, districts may explain that they will use the funds to help pay the startup costs associated with beginning a farm to school program, such as purchasing new kitchen equipment needed to prepare such food or defraying the costs of potentially more expensive local purchases.

➤ **Provide Financial Incentives via Increased Reimbursements:** State funds can also be used to reimburse school districts' purchase of local foods after the fact rather than providing money up front.⁴⁵ This approach has the advantage of allowing state authorities to ensure that local food has actually been purchased before disbursing the funds, rather than giving away the money and trusting that the school districts will utilize it effectively. **Oregon** has such a reimbursement program, in which the state specifies that it will reimburse school districts that purchase foods produced or processed in Oregon.⁴⁶ The state keeps costs reasonable for this program by specifying that all reimbursements are set at the amount that reflects the lesser of either the amount actually paid for the Oregon-based product or fifteen cents per school lunch in which it was used.⁴⁷

➤ **Establish a Statewide Farm to School Initiative:** In addition to the above suggestions, one of the strongest ways that states can support farm to school programs is by creating a statewide farm to school initiative. These initiatives take several forms, but the common thread is that the state (1) marshals resources and manpower to help provide training and support to schools and farms wishing to participate in a farm to school relationship and (2) actively coordinates farm to school programs around the state. **Alaska** passed legislation establishing a statewide farm to school program that coordinates with procurement officials to identify sources of local produce, helps to connect farmers with schools, and provides resources to support development of individual farm to school programs.⁴⁸ **Washington** also created a statewide farm to school initiative that funded a state farm to school

STATE FARM TO SCHOOL DIRECTOR

Perhaps the most important factor in establishing an effective farm to school program is to have a statewide entity oversee the initiative. One of the most-cost effective ways for a state to achieve this is to hire a single person to oversee the state's farm to school efforts. This person would facilitate relationships between farmers and school administrators, seek to raise private funds for the program, and generally serve as a point person for the whole system.

Oklahoma's state farm to school program is a great example. It has a full-time director who is mandated to work with the state's private (non-governmental) food policy council. No matter which version of a statewide initiative a state chooses, placing some entity or person in charge of fostering farm to school is a vital way to make sure the state continues to make progress and that this progress is monitored over time.

Sources: Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 4–6 (Nov. 2011), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>; OKLA. STAT. ANN. tit. 2, § 5-60.3 (2012).

⁴⁴ *Id.* at 124/10.

⁴⁵ Ona Balkus et al., *Legislative Recommendations for a Statewide Farm-to-School Bill in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 15–16 (Nov. 2011) available at [available at http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf](http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf).

⁴⁶ OR. REV. STAT. ANN. tit. 30, § 336.431 (2012).

⁴⁷ *Id.* § 336.431(3).

⁴⁸ ALASKA STAT. § 03.20.100(b) (2012).

coordinator to serve as a point person for the implementation of farm to school programs throughout the state.⁴⁹

Farm to school programs are vital to the growth of the local food movement. Not only do they provide business to local farms and nutritious food to schools, they also demonstrate to children the many benefits of eating fresh, local foods. The habits developed in school can help determine how strongly the next generation will believe in supporting local food systems. As such, farm to school is one of the most important legislative goals for food policy councils and other local food advocates. For more information on how farm to school programs can be incorporated as an element of health and nutrition education, see Section VII: School Food & Education.

FARM TO UNIVERSITY PROGRAMS Farm to university programs are very similar to farm to school programs, but provide additional positive features as compared to farm to school programs. Like farm to school programs, farm to university initiatives provide healthier foods to students and also offer the potential for educational activity to result from the school's relationship with local farmers. Students in university settings where local food is part of the institution's meal plan can also be introduced to issues surrounding local food and agriculture in a dedicated educational setting.⁵⁰ However, unlike elementary and high schools, university foodservice providers serve many more students, and these dining halls tend to be the sole source of the vast majority of their constituents' meals.⁵¹ Because students using their universities' meal plans eat so many of their meals on campus, a shift toward local food can have a major health impact on students and a major economic impact on the local food system.

Farm to university is an area where state advocates can make an impact. State policies dealing with food procurement at universities will generally affect public colleges and universities only. Private universities are not required to follow state food procurement policies (because they are privately chartered and funded). Because of this, state advocates asking state authorities for local food purchasing initiatives at universities should remain aware that their efforts will primarily impact only public colleges. However, if all the public universities in the state are showing success in purchasing and serving more local foods, private colleges and universities will likely move to ramp up their local procurement practices as well.

There are several ways that states can encourage farm to university programs at *public* colleges and universities, such as:

- Implementing a percent preference rule for colleges and universities. Under such a rule, colleges and universities would be required to buy local food any time the cost is within a certain percentage of the cost of the same food through conventional out-of-state channels.⁵²
- Giving state colleges and universities authority to purchase local foods, even if they are more expensive. State schools may have to comply with their state's procurement laws, which likely limit a school's ability to spend more on local produce. This type of law would allow colleges to use their discretion to spend more on local foods.

⁴⁹ Washington State Department of Agriculture, *Farm-to-School Program*, <http://agr.wa.gov/Marketing/Farmtoschool/> (last visited Nov. 4, 2012).

⁵⁰ Catherine H. Strohhahn and Mary B. Gregoire, *Local Foods: From Farm to College and University Foodservice*, IOWA ST. UNIV. 3, available at http://www.extension.iastate.edu/NR/rdonlyres/B0D64A49-9FA9-410E-849A-31865EFECE91/65253/manuscript2004003final_version.pdf.

⁵¹ *Id.* at 2.

⁵² See, e.g., ALASKA STAT. ANN. § 36.15.050 (2012).

- Setting a local food purchasing target goal for state colleges and universities. Just like **Illinois'** goal that schools purchase 10% of their food from local sources and state agencies purchase 20% from local sources by 2020, state food policy councils can advocate that state universities do the same.⁵³
- Pass a nonbinding resolution or statement of support for colleges and universities to buy and serve local food, which would encourage private colleges and universities to purchase more local foods.

Some state colleges and universities have already implemented their own farm to university programs. State food policy councils can use these innovative institutions as support for why states should pass legislation encouraging, enabling, or mandating local food purchasing at the university level. The University of **Montana** is one example of such a program. For nearly ten years it has had a farm to college program dedicated to buying locally to feed the campus community.⁵⁴ At present 15% of campus food comes from producers from around the state.⁵⁵ Similarly, Appalachian Food Services, at Appalachian State University in **North Carolina**, bought 10% of its food from local producers in 2011 and set a goal of purchasing 15% from local producers by 2013.⁵⁶

FARM TO OTHER INSTITUTIONS Prisons, universities, and hospitals are also examples of large-scale food purchasers who can develop mutually beneficial relationships with local farmers. Each type of institution has unique characteristics and, as such, the types of farm to institution programs that would work in the different institutions will certainly vary. However, they all have one important feature in common that makes them attractive partners for farms: they are high-volume buyers that can provide local farmers with a large, predictable, and desirable new market for their products.

Prisons Prisons provide meals on a daily basis and have the ability to serve as high-volume customers for local farmers. In fact, a given prison utilizes far more food per capita than any single school; at most, a school provides two meals a day, five days a week. A prison, on the other hand, provides three meals a day, seven days a week.

WORKING FARMS ON PRISON GROUNDS

Some prisons, such as the **Mississippi** State Penitentiary at Parchman, have farms of their own. In a 2005 survey of adult correctional facilities, 16% involved inmates in farming or related activities. Prisoners work on the farm to help them develop skills for post-release jobs, and the foods produced by the farm help to supply the prison with fresh, healthy meals.

Source: JAMES J. STEPHEN, CENSUS OF STATE AND FEDERAL CORRECTIONAL FACILITIES, 2005 (Bureau of Justice Statistics, 2008), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/csfcf05.pdf>.

For prisons that are state institutions, the state government has direct influence over the procurement policies. Most states have a state agency in charge of prisons (usually called the department of corrections) that could institute a farm to prison program. State food policy councils can support increased farm to prison sales using a few different methods similar to those described above:

- Encourage the state to set target procurement goals for local foods. In its Local Food, Farms, Jobs Act of 2009, **Illinois** set a goal that state institutions, including prisons, procure at least 20%

⁵³ *Governor Signs Legislation Putting Illinois on Track to Vastly Expanded Local Farm Economy*, FAMILYFARMED.ORG (2010), <http://www.familyfarmed.org/governor-signs-legislation-putting-illinois-on-track-to-vastly-expanded-local-farm-economy/>.

⁵⁴ *UM Farm to College*, UNIV. OF MONT. DIV. OF STUDENT AFFAIRS, http://life.umt.edu/dining/farm_to_college/default.php (last visited Nov. 2, 2012).

⁵⁵ *Greening UM: Farm to College*, THE UNIV. OF MONT., <http://www.umt.edu/greeningum/Operations/Food/Farm%20to%20College.aspx> (last visited Oct. 4, 2012).

⁵⁶ *Local Food*, APPALACHIAN STATE UNIV. FOOD SERV., <http://foodservices.appstate.edu/sustainability/local-food> (last visited Nov. 2, 2012).

of their food from local sources by 2020.⁵⁷ Recall that, by contrast, Illinois' goal for farm to *school* procurement was only 10% by 2020.⁵⁸ The higher goal for state agencies recognizes that it may be easier for institutions like prisons to obtain more food from local sources than it is for schools.

- Push the state to implement a program for farmers to sell their produce to prisons for fair market value, which can reduce the work on farmers and also increase or at least match farmers' usual take-home pay. The state of **Washington** has instituted a pilot program that is a partnership between the state Department of Agriculture and the state Department of Corrections.⁵⁹ Washington farmers have the opportunity to sell food products to two prisons at their fair market value, as determined by the "Seattle Terminal Market Value".⁶⁰ In order to keep farmers' costs down in terms of both time and money, they are encouraged to only field-pack their products; the Department of Corrections cleans, sorts, and processes the food within the prison facility.⁶¹ The state has designated two prisons to participate in the program.⁶² Farmers participating in the program can actually make better profits on their food than they would at a farmers market, despite selling products at the same price, because they can sell their produce without investing the cost in time, effort, and money to prepare these products for sale at market.
- Advocate that the state create a percent price preference that must be used by all state agencies, or at least those agencies (e.g. prisons) that serve food to members of the public as part of their operations.

Hospitals In addition to the environmental, nutritional, and economic benefits of farm to institution programs, hospitals have another reason to be particularly interested in serving fresh, local food: hospitals strive to promote health and well-being.⁶³ As a general rule, however, hospitals have seen foodservice as an opportunity to cut costs. Rather than further the institutional mission of promoting health, cafeterias and vending machines in hospitals tend to offer fast food meals and junk food snacks.⁶⁴ That said, some hospitals are starting to realize the importance of their food procurement choices, and are beginning to purchase food for patient and cafeteria meals from local farmers.⁶⁵ One hospital in **Vermont**, Fletcher Allen Healthcare, buys local foods and even brings in local chefs to the cafeterias to encourage the creation of new recipes.⁶⁶ Partnering with local farmers offers an opportunity for hospitals to improve their food environments and align their foodservice systems with their public health missions.⁶⁷

State food policy councils should focus their advocacy efforts on public hospitals, where the state has some authority over the procurement policies. State food policy councils can:

- Push the state to provide tax breaks for hospitals (both public and private) for increasing the amount of food procured locally.

⁵⁷ *Governor Signs Legislation Putting Illinois on Track to Vastly Expanded Local Farm Economy*, FAMILYFARMED.ORG (2010), <http://www.familyfarmed.org/governor-signs-legislation-putting-illinois-on-track-to-vastly-expanded-local-farm-economy/>.

⁵⁸ *Id.*

⁵⁹ *Washington State Farm-to-Prison Pilot*, WASH. STATE DEP'T. OF AGRIC. (May 24, 2011), <http://www.wafarmtoschool.org/Page/29/WSDA-Farm-to-Prison>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² These are the Monroe Correctional Facility and the Stafford Creek Correctional Center. *Id.*

⁶³ Madison Park, *Farmers Markets Bloom at Hospitals*, CNN.COM, June 3, 2009, <http://www.cnn.com/2009/HEALTH/06/03/farmers.markets.hospitals/index.html>.

⁶⁴ *Farm to Hospital*, CTR. FOR FOOD & JUSTICE, URBAN & ENVTL. POLICY INST., OCCIDENTAL COLL. 2, http://www.foodsecurity.org/uploads/F2H_Brochure-Nov08.pdf (last visited Oct. 4, 2012).

⁶⁵ *Id.*

⁶⁶ This hospital pays a premium for some of its local, organic produce, but cuts down on high pricing for other foods such as milk by negotiating deals as a large purchaser. The hospital also runs a composting program for its waste, which it sells back to the local community. *Id.* at 5.

⁶⁷ *Id.* at 2.

- Encourage the state to provide grants to subsidize the startup costs of procuring more local products.
- Advocate that the state set target procurement goals for local foods that apply to public hospitals.

In addition to impacting the local food system by procuring local foods, hospitals can also benefit local farmers by hosting farmers markets or community-supported agriculture organizations (CSAs) on their grounds.⁶⁸ In Oakland, **California**, Kaiser Permanente hosts a year-round farmers market on its grounds.⁶⁹ Kaiser Permanente’s Oakland Farmers Market participates in the Market Match incentive program, which provides a \$5 bonus when customers purchase at least \$10 in produce using CalFresh/SNAP EBT.⁷⁰ While hosting a farmers market or CSA may not directly impact patients’ nutrition during their stay at a hospital, it does allow the hospital to further its health and wellness mission in the community at large,⁷¹ and can lead to relationships between the hospital and farmers that later develop into purchasing arrangements. Hosting these types of events may be particularly attractive to nonprofit and charity hospitals, which are required to provide “community benefits” in exchange for retaining their tax status.⁷² The IRS defines qualifying community benefits broadly, essentially including any service to the community that promotes good health.⁷³ Financially supporting a CSA or farmers market located on hospital grounds could help a hospital satisfy this requirement and thus remain tax exempt. Food policy councils can work to educate some of the large hospitals in the state about these and other ways to contribute positively to the food system in ways that benefit the hospitals as well.

RESOURCE FOR IMPROVING HOSPITAL FOOD

For advocates looking for ideas and tools for improving food systems around hospitals and other healthcare institutions, Healthcare Without Harm is a vital resource. Healthcare Without Harm is an organization that deals with myriad issues in the healthcare industry, including food systems.

Healthcare Without Harm advocates that healthcare institutions adopt environmentally and socially responsible food procurement policies in order to improve the nutrition of patients, employees, and guests. Because of hospitals’ large purchasing power, Healthcare Without Harm sees their procurement practices as important keystones for improving public health within their communities. The organization’s website offers tools, resources, and detailed information on the issue of food systems and food procurement in healthcare institutions.

Source: *Healthy Food: Global Overview*, HEALTHCARE WITHOUT HARM, http://www.noharm.org/all_regions/issues/food/ (last visited Oct. 22, 2012).

CONCLUSION With options ranging from schools to state agencies, the possibilities for farm to institution programs are considerable. Favoring local products in institutions that feed large numbers of people has several benefits: constituents gain access to fresh, nutritious food and, in the process, learn about where their food comes from and how to eat more healthfully; farmers gain high-volume customers that ensure a fair price for their products; and, communities gain a vibrant local food system that continues to invest in itself. Food policy councils interested in cultivating healthier foods, healthier farms and, ultimately, healthier citizens can begin to meet those needs by supporting farm to institution programs.

⁶⁸ *Id.* The Center for Food and Justice report also recommends that hospitals plant their own gardens for patients to enjoy and to provide some food for the institution. While this initiative would have multiple benefits in its own right, it is outside the purview of this section because it does not involve hospitals in the existing local food market.

⁶⁹ *Kaiser Permanente Oakland Farmers Market*, PACIFIC COAST FARMERS MARKET ASSOCIATION, http://pcfma.com/market_home.php?market_id=9 (last visited Oct. 22, 2012).

⁷⁰ *Id.*

⁷¹ *Farm to Hospital*, CTR. FOR FOOD & JUSTICE, URBAN & ENVTL. POLICY INST., OCCIDENTAL COLL., http://www.foodsecurity.org/uploads/F2H_Brochure-Nov08.pdf (last visited Oct. 4, 2012).

⁷² *Nonprofit Hospitals and the Provision of Community Benefits*, CONGRESSIONAL BUDGET OFFICE 7 (Dec. 2006), <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/76xx/doc7695/12-06-nonprofit.pdf>.

⁷³ *Id.*

SECTION VII: SCHOOL FOOD & EDUCATION

Education for K-12 school children and young adults is a crucial component of creating a generation of eaters that is healthy, eco-literate, and concerned with the economic and environmental sustainability of our food system. Food policy councils can provide assistance to schools by advocating for policies that create nutrition, gardening, and wellness programs in school environments, as well policies aimed at increasing the amount of healthy, fresh foods served in schools.

OVERVIEW This section details the variety of ways in which food policy councils can push for policies that assist K-12 schools in creating healthier school food environments and healthier student bodies. States play a major role in creating healthy schools and healthy students, and food policy councils can participate by advocating for state-level change concerning school food and nutrition education. States can also make positive changes to the future health of their citizens by improving statewide curricular requirements around health and physical activity, pushing for the implementation of school wellness policies, and encouraging unique educational opportunities in agriculture, food production, and nutrition.

1. School Nutrition As institutions where students spend large amounts of time, schools are in a unique position to ensure that children and young adults receive nutritious meals. Food policy councils can provide significant assistance to schools by advocating for state policy changes that bring more fresh and nutritious food to students. This section discusses wellness policies, school nutrition policies (including reimbursable school meals, competitive foods, and vending machines), and issues of participation in school breakfast and school lunch programs.

2. Health & Nutrition Education Engaging students in the world of food, agriculture, and nutrition through school gardens, cooking classes, and agricultural partnerships can provide students with hands-on opportunities that have lasting effects on their health and understanding of food and agriculture. Food policy councils can advocate for state agencies to encourage school gardens and push the state to incorporate gardening and cooking courses into the curriculum. State food policy councils can also seek to create partnerships between schools and agricultural groups, such as farmers, agriculture departments at universities, or other agricultural programs.

SCHOOL NUTRITION Schools serve a range of functions beyond their formal educational settings: they teach children about the norms of society, how to appropriately interact with others, and how to lead healthy and productive lives. School food choices therefore carry a certain weight since they have the stamp of approval from the educational and societal authorities in children’s lives. For that reason alone, states have a responsibility to hold public schools to certain nutritional standards in the foods they provide to students at school meals and throughout the school day. In addition, more nutritious food in cafeterias means healthier students. State food policy councils can play a major role in advocating for their states to establish high nutritional standards for their public schools’ food service programs, as well as ensuring that all students who are eligible for free or reduced-price meals enroll in those programs so that all students can receive access to much-needed healthy and nutritious foods throughout the day.

Wellness Policies According to federal law, any school receiving federal funding for school lunch or school breakfast must implement a “school wellness policy.”¹ This federal regulation was strengthened as part of the Healthy, Hunger-Free Kids Act of 2010, and now includes minimum standards for what a school wellness policy must include, such as specific plans for nutrition education, physical education, and school

¹ Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1758b (2010).

nutrition guidelines.² According to the regulations, wellness policies must be reviewed by the community and must include an implementation plan that meets new assessment standards.³ Compliance levels should be increasing among school districts across the country due to the new regulations. It is important to note that this federal rule applies directly to schools and school districts, bypassing the states altogether. State governments thus have no direct obligation to act with regard to these school wellness policies, but they can take steps to help empower schools to better create and utilize these policies. State food policy councils can play a big role in influencing the state government to support these wellness policies by:

- Pushing states to mandate that school districts come up with their own wellness policies—essentially just repeating the federal requirement in the form of a state law that the state can then enforce and use to ensure that schools end up with strong, effective wellness policies. The National Association for Nutrition and Activity has created a model school wellness policy that states can encourage school districts to use as a basis for their own wellness policies.⁴
- Advocating for states to provide guidance where the federal government has failed to do so. Without mandating specific content or structure, states can establish basic standards for school wellness plans that help districts get off the ground, for example, by requiring a school wellness committee in addition to just a wellness policy (see text box on the **Mississippi Healthy Students Act**).
- Encouraging states to adopt a single wellness plan on a statewide basis and require schools and districts to implement it.

STATE WELLNESS POLICIES

The **Mississippi Healthy Students Act** requires school districts to establish local school wellness committees made up of various stakeholders to create and implement school wellness plans encompassing both healthy eating and physical activity. The committees are supposed to report to their local school boards to keep the wellness plans in line with the district's overall educational missions. The state Act thus mandates a particular infrastructure for districts to utilize and sets out broad categories for the content they should address, without giving specific instructions on what the plans must look like.

Sources: S.B. 2752, 127th Leg. Sess., Reg. Sess., 2012 Miss. Laws Ch. 555; Danielle Hamilton et al., *Mississippi Kids Count: Healthy Schools in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 5 (2010), available at http://www.ssrc.msstate.edu/mskidscount/downloads/Harvard/2010_2011/Healthy%20Schools%20FINAL.pdf.

Nutrition in School Food The nutritional quality of food served at schools through reimbursable school meals, competitive foods, and vending machines has been a hot topic in recent years. The federal government sets nutrition standards for school meals that are reimbursed using federal funds and the recent Healthy, Hunger-Free Kids Act now requires the USDA to implement rules that impose nutritional standards on so-called “competitive foods” (those foods or snacks that are available in schools but not as part of the free or reduced-price reimbursable meals programs). State food policy councils have the ability to advocate for higher standards for their state’s school meals and competitive foods, and can encourage the state to set standards for food sold in vending machines.

² *Id.* *Child Nutrition Reauthorization 2010: Local School Wellness Policies*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. 2 (July 8, 2011), http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2011/SP42-2011_os.pdf.

³ *Child Nutrition Reauthorization 2010: Local School Wellness Policies*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. 2 (July 8, 2011), http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2011/SP42-2011_os.pdf.

⁴ See *Model Local School Wellness Policies*, NAT’L ASS’N FOR NUTRITION & ACTIVITY, <http://www.schoolwellnesspolicies.org/WellnessPolicies.html> (last visited Oct. 9, 2012).

Reimbursable School Meals The term “reimbursable school meals” refers to those meals provided free or at reduced price to low-income families for which schools receive federal reimbursement via the National School Lunch and School Breakfast Programs.⁵ The federal government lays out comprehensive standards with which schools must comply in order to receive these reimbursements.⁶ These standards require specific quantities of servings for meat or meat alternatives, vegetables or fruits, grains or breads, and milk.⁷ The quantity varies depending on the meal and the age of the children. There are also restrictions on the amount of sodium, sugar, and trans fat that can be included in these meals as well as calorie minimums and maximums that must be met.⁸ USDA even provides specific recipes to help schools ensure they are meeting the regulations.⁹

New school meal standards that apply to the reimbursable meals were published in January 2012 and implementation of the new rules began in July 2012.¹⁰ The new regulations “require most schools to increase the availability of fruits, vegetables, whole grains, and fat-free and low-fat fluid milk in school meals; reduce the levels of sodium, saturated fat and *trans* fat in meals; and meet the nutrition needs of school children within their calorie requirements.”¹¹ Despite these new regulations, state food policy councils can still advocate for higher standards for school meals in their states by:

- Pushing for legislation that increases the nutritional quality of food by offering healthier options. **Mississippi’s** Healthy Students Act mandated that the state Board of Education adopt regulations to improve nutrition and increase participation in the school lunch and breakfast programs.¹² The rules address major health issues in schools, including requiring at least one fresh vegetable offered to students daily, offering milk of no more than 160 calories per 8-ounce serving, and serving at least three different fruits and five different vegetables, which are preferably dark green and/or orange, each week.¹³ Mississippi also encourages the elimination of fryers from all school kitchens and requires schools to develop a long-range plan

ARKANSAS REIMBURSABLE SCHOOL MEAL STANDARDS

Arkansas created a Child Health Advisory Committee that was directed to create nutrition and physical activity standards for elementary through high school students.

These standards apply to all foods and beverages made available to students at all public schools within the state. In elementary schools, for example, the standards limit the sale of French fries to not more than once a week, prohibit extra servings of dessert, and ban foods or beverages from being sold or given away outside of meal times.

Source: *State School Healthy Policy Database*, NAT’L ASS’N OF STATES BDS. OF EDUC., http://nasbe.org/healthy_schools/hs/bytopics.php?topicid=3110&catExpand=acdnbtm_catC (last visited Oct. 29, 2012).

⁵ *School Lunch and Breakfast Programs*, NUTRITION.GOV, <http://www.nutrition.gov/food-assistance-programs/school-lunch-and-breakfast-programs> (last visited Oct. 5, 2012); <http://www.fns.usda.gov/cnd/Breakfast/Default.htm> (last visited Oct. 5, 2012). See generally *Eligibility for School Meals*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/cnd/guidance/EliMan.pdf> (last visited Oct. 5, 2012).

⁶ 7 C.F.R. pt. 210 (2012). See also *Reimbursable Meal Requirements*, U.S. DEP’T OF AGRIC., http://teammnutrition.usda.gov/Resources/rec_quality.pdf (last visited Oct. 5, 2012).

⁷ 7 C.F.R. § 210.10 (2012).

⁸ *Id.*

⁹ *Reimbursable Meal Requirements*, U.S. DEP’T OF AGRIC., http://teammnutrition.usda.gov/Resources/rec_quality.pdf (last visited Oct. 5, 2012).

¹⁰ Nutrition Standards in the National School Lunch and School Breakfast Programs, 77 Fed. Reg. 4087, 4088 (Jan. 26, 2012) (to be codified at 21 C.F.R. pts. 210 & 220).

¹¹ *Id.*

¹² MISS. CODE ANN. § 37-13-137 (2012); see also Danielle Hamilton et al., *Mississippi Kids Count: Healthy Schools in Mississippi*, HARVARD LAW SCH. MISS. DELTA PROJECT 6 (2010), available at

http://www.ssrc.msstate.edu/mskidscount/downloads/Harvard/2010_2011/Healthy%20Schools%20FINAL.pdf.

¹³ 7-1 MISS. CODE R. § 51:4011 (LexisNexis 2012). *Mississippi Healthy Students Act Senate Bill 2369 Nutrition Standards*, HEALTHY SCHOOLS MISS. 1 http://www.healthyschoolsms.org/documents/MississippiHealthyStudentsActSenateBill2369NutritionStandards_000.pdf (last visited Oct. 9, 2012).

for reducing or eliminating fried foods.¹⁴ State food policy councils can advocate for policies similar to the Mississippi Healthy Students Act, requiring schools to adopt healthier policies for the foods that they serve and increasing participation in the free and reduced price school lunch and breakfast programs.

- Advocating for legislation that prohibits certain foods in schools (e.g., desserts, fries, ice cream). In **Arkansas**, elementary school cafeterias participating in the federal school meal programs are not permitted to serve desserts, French fries or ice cream.¹⁵ In middle, junior, and high schools in Arkansas, the school is permitted to sell only additional food items that are already part of the reimbursable meal, such as extra milk, fresh fruits, and other beverages that meet the federal school nutrition standards.¹⁶

THE IMPORTANCE OF PHYSICAL ACTIVITY

Food policy councils working on issues of school nutrition and health education should not forget that physical activity is also an important component of student health. The U.S. Department of Health and Human Services recommends that children participate in at least one hour of moderate physical activity per day and engage in vigorous physical activity at least three days a week. Schools can help students reach this goal through providing physical education classes and extra-curricular activity offerings.

Informal physical activity opportunities also make a huge difference. Providing a few minutes of recess each day has been shown to have excellent health benefits. Not only is the physical activity itself valuable, but research indicates that when recess is scheduled before lunch, students tend to choose more well-balanced, nutritious lunches to replenish their bodies.

Sources: *2008 Physical Activity Guidelines for Americans*, U.S. DEP'T OF HEALTH & HUMAN SERVS. vii (2008), <http://www.health.gov/paguidelines/pdf/paguide.pdf>. *Benefits of Recess Before Lunch: Fact Sheet*, HAMILTON CNTY. COORDINATED SCH. HEALTH COMM. 1 (2009), <http://www.peacefulplaygrounds.com/pdf/benefits-recess-before-lunch-facts.pdf>.

Advocates focused on state policies cannot change the federal school meal regulations but, so long as the federal guidelines are met, states can implement their own, more stringent nutritional standards for school meals. However, it is important to keep in mind that the new reimbursable school meal regulations are quite strong. As these new go into effect over the next few years, state food policy councils may not have to spend as much time focusing on the nutritional quality of the reimbursable meals. Food policy councils can instead turn their attention to competitive foods and vending machines, where there is less federal regulation regarding nutritional standards, and consequently, more area for improvement at the state level.

Competitive Foods “Competitive foods” are defined as any foods sold at school that are not part of the National School Lunch or School Breakfast programs.¹⁷ Currently, the only limitation placed on such foods under federal law is that the sale of “foods of minimal nutritional value” is not allowed in schools.¹⁸ Because of this limited federal regulation, states may have an easier time setting standards for what is available to students in this context. The Healthy Hunger-Free Kids Act of 2010 mandated that the USDA create nutrition guidelines for all food sold on school campuses,

¹⁴ *Id.*

¹⁵ 005-15-15 ARK. CODE R. § 8.01.3 (LexisNexis 2012); *Rules Governing Nutrition and Physical Activity Standards and Body Mass Index for Age Assessment Protocols in Arkansas Public Schools*, ARK. DEP'T OF EDUC. (Aug. 2007), available for download at http://www.arkansased.org/health/pdf/ade_215_nutrition_and_physical_activity_standards.pdf.

¹⁶ 005-15-15 ARK. CODE R. § 8.01.5 (LexisNexis 2012).

¹⁷ See, e.g., MASS. GEN. LAWS ch. 111, § 223 (2012).

¹⁸ Competitive Food Frequently Asked Questions, CAL. DEP'T OF EDUC., <http://www.cde.ca.gov/ls/nu/he/compfoodsfaq.asp> (last visited Oct. 5, 2012). A list of those foods is provided on USDA Food and Nutrition Service's website. See *School Meals: Food of Minimal Nutritional Value*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERVICE, <http://www.fns.usda.gov/cnd/menu/fmnv.htm> (last visited Oct. 5, 2012).

including competitive foods.¹⁹ At the time of publication, USDA had yet to release its draft rules, but this new mandate means that competitive foods will soon be subject to federal regulations similar to those that apply to the reimbursable school meals.²⁰ However, it is unclear how strict the federal regulations on competitive foods will be, so it is likely that states will still have ample room to go above and beyond the federal rules in regulating the nutritional makeup of competitive foods sold in their schools.

Massachusetts provides an example of what the substance of these regulations might look like. Its statute lays out a few specific rules and empowers the state Department of Public Health to add to those rules as it sees fit.²¹ The four regulations contained within the statute itself are:

- Free water must be available to students all day;
- Where refrigeration is available, fruits and non-fried vegetables must be offered as options;
- Nutritional information for all non-prepackaged food must be made available to students; and
- No “fryolators” (deep fryers) may be used to prepare any competitive food items offered.²²

By allowing the Department of Public Health to add more regulations on top of those basic regulations, the legislature gave the state the flexibility to deal with unhealthy items that may become problematic in the future while addressing the four major issues from the start. Massachusetts’ approach is a solid model for advocates in other states to follow when seeking statewide regulation of competitive foods in schools.

Similar to the Massachusetts example, state food policy councils can use a few different methods to influence states to take control of the types of competitive foods offered to students:

- Push the state legislature to require the state department of education or other relevant state agencies to promulgate regulations limiting calorie amounts in competitive foods.
- Encourage states to ban certain foods from being offered as competitive foods.

Vending Machines Vending machine offerings provide another type of competitive food in schools. While vending machines are almost always privately owned and operated, states can still regulate what vending machines are allowed to sell in public schools. Because many vending machine options can be quite unhealthy, this might be a good place for states to begin regulating competitive foods. The Healthy, Hunger-Free Kids Act of 2010’s mandate to set nutritional guidelines for competitive foods applies to vending machines as well.²³ Therefore, as with competitive foods, federal regulations will set a baseline for nutritional content of these foods. However, as with other competitive foods, the federal guidelines will likely not be too strict, so states will still have the ability to regulate the nutritional quality of foods sold in vending machines above and beyond the regulations set by the federal government. State governments have the power to prohibit vending machines in schools altogether, so promulgating regulations on what they are allowed to carry is well within state power.

¹⁹ 42 U.S.C. § 1779 (2012). See also *Summary of the Healthy, Hunger-Free Kids Act of 2010*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. 3, http://www.fns.usda.gov/cnd/Governance/Legislation/PL111-296_Summary.pdf (last visited Oct. 5, 2012).

²⁰ 42 U.S.C. § 1779 (2012).

²¹ MASS. GEN LAWS ch. 111, § 223 (2012).

²² *Id.*

²³ 42 U.S.C. § 1779 (2012).

States have taken various approaches to limit vending machine content. Some state regulations allow all types of food but limit fat or calorie content; others restrict vending machines to legitimately healthy food items. A few examples of state action on the issue include:

- The **Mississippi** regulations promulgated by the State Department of Education pursuant to the Healthy Students Act cover food sold in vending machines (in addition to school meals). These regulations restrict beverages by allowing only bottled water, low-fat or non-fat milk, or 100% fruit juices to be sold to elementary and middle school students during the day, with those options plus zero-calorie or low-calorie soft drinks and light sports drinks or juices for high school students.²⁴ For food items, the Department of Education maintains a list of products approved for sale at schools (including vending machines); no single item may have over 200 calories.²⁵
- **Oregon**'s regulations are more stringent: rather than allow vending machine items up to 200 calories for all students, Oregon limits the calorie count to 150 calories per item in elementary school vending machines, 180 in middle schools, and 200 in high schools.²⁶
- **Louisiana** bans the sale at school, including the 30 minutes before and after the school day, of any food with "minimal nutritional value."²⁷ It also prohibits snacks exceeding 150 calories per serving, those with more than 35% of their calories from fat, or those with more than 30 grams of sugar per serving, except for plain nuts and seeds.²⁸
- **New Mexico** only allows vending machines in middle and high schools to serve certain beverages, nuts, seeds, cheese, yogurt, or fruit, and limits other foods (subject to calorie, fat and sugar restrictions).²⁹ Vending machines in elementary schools are not allowed to sell food at all (only beverages).³⁰ The beverages served in vending machines are also subject to restrictions.³¹
- **West Virginia** not only limits the content of vending machines but also does not allow corporate logos to be displayed on vending machines' exteriors.³² The regulations also encourage school districts to place vending machines in low-traffic areas and to disallow any misleading marketing that may indicate that the food inside the machine has any health benefits.³³

As these various legislative choices illustrate, states have used a variety of different nutritional concepts and metrics to impact the quality of foods available in vending machines in schools. Food policy councils in states that do not currently regulate nutrition in school vending machines thus have an ample choice of state examples to use in pushing their states to regulate in this important area.

Participation in School Meal Programs Even though the federal government provides free and reduced meals to eligible students, not all eligible students take advantage of these programs because of various barriers to enrollment. Over the past few years, much of the discussion around school meals focused on increasing enrollment and participation in the National School Lunch Program (NSLP).

²⁴ 7-1 MISS. CODE R. § 51:4003 (LexisNexis 2012). *Beverage Regulations for Mississippi Schools*, STATE BD. OF EDUC. (Oct. 20, 2006), <http://www.cn.mde.k12.ms.us/documents/vendingregformsschools06.pdf>.

²⁵ 7-1 MISS. CODE R. § 51:4004 (LexisNexis 2012). *Snack Regulations for Mississippi Schools*, STATE BD. OF EDUC. (Oct. 20, 2006), <http://www.cn.mde.k12.ms.us/Regs&Policies/Vending/VendingRegSnk.pdf>.

²⁶ OR. REV. STAT. §336.423 (2012).

²⁷ LA. REV. STAT. ANN. § 17:197.1 (2012).

²⁸ *Id.*

²⁹ N.M. ADMIN. CODE § 6.12.5 (2012).

³⁰ *Id.*

³¹ *Id.*

³² Bd. of Educ. Legis. Rule 126 series 86 (W. Va. 2008), available at <http://wvde.state.wv.us/policies/p4321.1.pdf>.

³³ *Id.* Note that West Virginia also prohibits using food or beverages of any kind as a reward for students during the school day.

Increasing the participation rate of students in the NSLP is still an important goal, but just as important is increasing the number of schools that offer free and reduced price breakfasts and ensuring that eligible children participate in these programs as well. Many low-income children do not receive breakfast at home, and without a healthy meal to start the day it is difficult for children to concentrate and learn. Federal law provides for the federal government to reimburse school breakfast, similar to the NSLP.³⁴ The National School Breakfast Program (NSBP) has been underutilized: as of 2009, at least 16,000 schools that participated in the NSLP did not participate in the NSBP.³⁵ Of every 100 students who receive free or reduced-price lunch nationwide, only 48.2 receive free or reduced-price breakfast.³⁶

Direct Certification Children whose families receive SNAP benefits or emergency food assistance are automatically eligible for free meals at school.³⁷ In the 2010-2011 school year, 85% of schools in the U.S. used direct certification to enroll these “categorically eligible” students in school meal programs.³⁸ The Healthy, Hunger-Free Kids Act of 2010 requires states to improve their direct certification process in order to increase enrollment of these categorically eligible children in school meal programs.³⁹ In **Massachusetts**, the Department of Elementary and Secondary Education is piloting a program that allows school food service directors to access the names of the children in their schools that are enrolled in SNAP and the emergency food assistance programs from a database managed by Department of Transitional Assistance.⁴⁰ Previously, the data allowing schools to identify which students are categorically eligible was only available twice a year.⁴¹ Under this pilot program, school food service directors will be able to access this data in real time.⁴² State food policy councils should advocate that their states implement programs like the one in Massachusetts to ensure that categorically eligible children are being enrolled in the meal programs at their schools.

Universal Free Meals One of the obstacles to participation in school breakfast has to do with the stigma associated with free and reduced-price meals. At lunchtime, all students are either in or near the cafeteria whether or not they receive the reimbursable school meal; in the mornings, however, students arrive at different times and do various activities before the school day starts. If students eligible for the NSBP go to the cafeteria for breakfast, other students are more likely to know that those students are receiving a free meal, which may raise issues of stigma and embarrassment for those children. There are two main ways that schools can change their policies to help reduce the stigma associated with free and reduced-price meals and increase participation in both the NSLP and NSBP.

Provision 2 of the National School Lunch Act allows schools and institutions to provide universal free meals (breakfast and/or lunch) to all students in their schools.⁴³ The schools pay the difference between the

³⁴ 42 U.S.C. § 1773 (2012).

³⁵ *School Breakfast Program Resolution*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. (Mar. 9, 2009), <http://www.fns.usda.gov/cnd/Breakfast/resolution.htm>.

³⁶ *School Breakfast Program 2010-2011 Participation*, FOOD RESEARCH & ACTION CTR., <http://frac.org/federal-foodnutrition-programs/school-breakfast-program/> (last visited Nov. 2, 2012).

³⁷ *Direct Certification*, MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., CHILD NUTRITION OUTREACH PROGRAM, <http://meals4kids.org/direct-certification> (last visited Nov. 2, 2012).

³⁸ U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., DIRECT CERTIFICATION IN THE NATIONAL SCHOOL LUNCH PROGRAM: STATE IMPLEMENTATION PROGRESS SCHOOL YEAR 2010-2011 6 (2011), available at <http://www.fns.usda.gov/Ora/menu/Published/CNP/FILES/DirectCert2011.pdf>.

³⁹ 42 U.S.C. § 1758(b)(4) (2012). See also *Direct Certification*, MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., CHILD NUTRITION OUTREACH PROGRAM, <http://meals4kids.org/direct-certification> (last visited Nov. 2, 2012).

⁴⁰ *Direct Certification*, MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., CHILD NUTRITION OUTREACH PROGRAM, <http://meals4kids.org/direct-certification> (last visited Nov. 2, 2012).

⁴¹ *Id.*

⁴² *Id.*

⁴³ 42 U.S.C. § 1759a(a) (2012).

federal reimbursement rate and the cost of serving free meals to all the students.⁴⁴ Although the cost to schools will increase due to the school picking up the tab for the meals not covered by the federal government, schools can benefit from reduced paperwork, simplification of school meal logistics, and an increase in student participation in the meal programs.⁴⁵ Schools with a high percentage of low-income students (75% or more) are the most likely to benefit from Provision 2, as the marginal cost of increased meals that would be borne by the school would be offset by eliminating the high administrative costs of verifying and accounting for so many eligible students.⁴⁶

However, Provision 2 is not reserved for schools with a high number of low-income students. In **Washington, DC**, public schools started offering universal free breakfast in 2005 and recent legislation required that all DC elementary schools in which 40% or more of students qualify for free or reduced-price meals serve universal free breakfast in the classroom.⁴⁷ As a result of this policy, participation in school breakfast increased 32% in the following school year among low-income children, giving DC the highest school breakfast participation rate in the nation.⁴⁸ State food policy councils should advocate for schools to create universal free breakfast and lunch programs and advocate for state government to provide funding to assist such programs.

HEALTH & NUTRITION EDUCATION Ideally, schools should be places where students gain an appreciation for proper nutrition and healthy eating. In addition to improving the actual food served in schools, state food policy councils can focus on food and nutrition curricula.⁴⁹ An educational program focused on the food system and its impact on consumers, the environment, and nutrition, and how students can improve their health—and their life expectancies—has the potential to make a serious impact in students' lives.⁵⁰

State-level advocates are well-positioned to help states take advantage of this potential, as public school curriculum decisions are generally made at the state level, although there may be some variation depending on the state. It is important for food policy councils to find out where decisions about curriculum are made, whether at the state level from the department of education or the board of education, or at the local level by the school districts and local boards of education. Even if the curriculum decisions are made by school districts or individual schools, the state government can choose to take control of education policy at any time. The legislature can assert control either by passing laws specifying certain curricular decisions or by mandating that the relevant state agency enact certain curricular policies. Therefore, advocates are best served by taking a dual approach to the issue, utilizing both legislative advocacy (e.g. addressed to legislators) and agency-level advocacy (e.g. addressed to the department of education).

⁴⁴ *Provision 2 of the National School Lunch Act*, FOOD RESEARCH & ACTION CTR., <http://frac.org/newsite/wp-content/uploads/2009/05/provision2.pdf>.

⁴⁵ *Id.*

⁴⁶ *School Breakfast Program Reimbursement and Funding*, FOOD RESEARCH & ACTION CTR., <http://frac.org/federal-foodnutrition-programs/school-breakfast-program/> (last visited Nov. 2, 2012).

⁴⁷ *D.C. Healthy Schools Act: Breakfast/Lunch Access*, D.C. HUNGER SOLUTIONS, <http://dchealthyschools.org/whats-in-the-act-2#bla> (last visited Nov. 2, 2012).

⁴⁸ Press Release, "Breakfast in the Council" Celebrates D.C. for its #1 Ranking for School Breakfast Participation Under Secretary Kevin Concannon, FRAC President Jim Weill Join D.C. Hunger Solutions to Commemorate Achievement (Feb. 21, 2012), *available at* http://www.dchunger.org/press/dc_first_school_breakfast_2012_dc.htm.

⁴⁹ See *Why Schools Need a Mandatory Nutrition Curriculum*, NYC GREEN SCHOOLS (2010), <http://www.nycgreenschools.org/?p=620>.

⁵⁰ *Id.*

One approach food policy councils can take to advocate that their legislatures strengthen nutrition education offerings more generally is to require the state department of education to develop and implement a nutrition education program. In 2003, **California**'s legislature mandated that the state Department of Education create a curriculum focused on students' eating habits.⁵¹ The statute requires that the curriculum cover three key areas of learning: nutritional knowledge, nutrition-related skills, and tools for students to assess their own personal eating habits.⁵² The legislation sets general goals and describes these basic categories, then allows the Department of Education to decide how exactly to structure the curriculum, what topics to cover at what age, and what other implementation issues need to be addressed. Food policy councils can also push for targeted education curricula around school gardens, cooking skills, and agricultural partnerships, as described below.

School Gardens One exciting trend in health and nutrition education is the growth in school gardens. The concept is simple: planting a garden to grow fruits and vegetables on school grounds opens the door to learning opportunities in a variety of areas. Currently, around 300 farm- or garden-based education programs operate in schools around the U.S.⁵³ In many cases these hands-on school programs tie in with classroom lessons in science, math, reading, and many other subjects.⁵⁴

Here are some ways state food policy councils can effect change with regard to school gardens:

- Advocate that the state mandate that schools adopt a school garden program. **Oregon**'s school garden legislation required the state Department of Education to create and administer a program encompassing both school gardens and farm to school programs.⁵⁵ Oregon has taken the view that all school districts should reap the benefits of school gardens, and that the state should oversee the development of these programs. The Department must assist school districts in setting up school garden programs as part of larger school wellness plans.⁵⁶ The advantage of this approach from an advocate's perspective is that it guarantees that school gardens will become a reality in public schools. However, the comprehensive and mandatory nature of this approach may make it difficult to replicate in other states.
- Advocate that the state create a school garden program within the department of education to provide resources and curricular support for school gardens throughout the state. The **California** legislature established a statewide Instructional School Gardens Program under the auspices of the state Department of Education.⁵⁷ The Department serves as a resource for schools by administering instructional school gardens and providing curricular guidance. This support is designed to entice schools and districts to adopt school garden programs, and to assist them in identifying state and non-state resources and technical assistance to run their gardens.⁵⁸ This model strikes a balance: it does more than simply authorize school gardens with no guidance or support, but does not mandate or pay directly for garden programs. A similar approach that advocates could use is encouraging the state Department of Education to develop a school garden curriculum for schools to use that includes lesson plans connected to the state education standards.

⁵¹ CAL. EDUC. CODE § 51210.4 (West 2012).

⁵² *Id.*

⁵³ Bernice Yeung, *Cultivating Minds: Food-Related Curricula Take Root Nationwide*, EDUTOPIA (Nov. 5, 2008), <http://www.edutopia.org/food-school-garden-farm-curriculum>.

⁵⁴ *Id.*

⁵⁵ OR. REV. STAT. § 336.426 (2012).

⁵⁶ *Id.*

⁵⁷ CAL. EDUC. CODE § 51796 (2012).

⁵⁸ *Id.*

- Encourage the state to pass a resolution clarifying that schools are allowed to plant and maintain gardens as part of their educational missions and expressing support for such programs. **Washington**'s school garden statute shows support for school gardens by clearly stating that schools are allowed to operate gardens for educational and/or school food purposes.⁵⁹ This expresses the legislature's support for school gardens and opens the door for school districts to choose to create or invest in school gardens on their own. This type of statute is a good option for advocates meeting resistance from state lawmakers who do not want to spend money on school garden program or who do not want to micromanage the state's school districts.

Cooking Classes Teaching children about where their food comes from and what foods are healthy or unhealthy is an important task, but it has limited practical value if students lack the skills to turn nutritious ingredients into healthy meals. Teaching students to cook is a natural step toward creating smart, healthy eaters. Cooking classes can be successful on their own, but are particularly effective when integrated into a broader curriculum. They have the ability to provide practical skills that draw on lessons learned in farm to school programs, school gardens, agricultural partnerships, and nutrition classes. In short, cooking lessons help students gain the concrete skills to make healthy food choices.

Like nutrition education more broadly, state legislatures and/or departments of education can enable, encourage, administer, or mandate that cooking be part of public schools' curriculum. Cooking can be a standalone class or a unit within a broader nutrition education curriculum.

There do not appear to be any state-administered or state-mandated school cooking classes currently. However, there are several independent, local programs that can serve as models for any state interested in implementing cooking programs in schools around the state. One example is the "Cooking with Kids" program in Santa Fe, **New Mexico** elementary schools (see text box).⁶⁰ Programs like Cooking with Kids are usually more local than statewide, but the state can support their development on a state level if desired.

In sum, with regard to cooking classes, state food policy councils can:

- Advocate for state legislatures and/or departments of education to enable, encourage, administer, or mandate that cooking be part of public schools' curriculum.
- Advocate for the state legislature and/or department of education to pass a resolution in support of cooking programs.
- Advocate for the legislature to demonstrate support for nutrition and cooking education by allocating funds to schools designated for this purpose.

COOKING WITH KIDS

This independent program in **New Mexico** aims to improve nutrition through public school classes that engage students in hands-on learning with fresh, affordable food from a range of cultures. It does not require much school time, as it involves anywhere from one to five class periods with students in pre-kindergarten through sixth grade. Some of the sessions teach students how to prepare healthy, affordable recipes, and others offer "fruit and vegetable tastings" to introduce students to healthy and tasty produce.

Source: 2010-2011 Program Report, COOKING WITH KIDS, <http://cookingwithkids.net/2011/09/2010-2011-program-report/> (last visited Oct. 5, 2012).

⁵⁹ WASH. REV. CODE § 28A.320.185 (2012).

⁶⁰ *About Cooking with Kids*, COOKING WITH KIDS, <http://cookingwithkids.net/about/> (last visited Oct. 5, 2012).

- Advocate for the state department of education to incorporate a program similar to Cooking with Kids into the overall health education curriculum.

Agricultural Partnerships Agricultural partnerships are relationships between farmers and schools in which children can learn more about agriculture, the food system, and issues facing farmers.

The most common form of an agricultural partnership for schools stems from farm to school programs, in which the schools are purchasing food products from local farmers and encourage those farmers to get involved in education or mentoring with students at the school. This type of procurement relationship is discussed in more detail in [Section VI: Farm to Institution](#). Farm to school programs can be the basis for educational programs in which students learn more about where their food comes from.⁶¹

As an example of what can be done at the state level, state food policy councils can also look to the agricultural partnership program in **Vermont**. There, the legislature established a “Youth in Agriculture Consortium” designed to coordinate various agricultural learning opportunities and improve access to such programs.⁶² The Consortium is charged with coordinating several existing programs run by the state that could be replicated in other states, including “Ag in the Classroom,” a project of the state Agency of Agriculture, Food, and Markets that brings hands-on agricultural lessons to elementary and middle schools, and a “Forest, Fields and Futures” program sponsored by the University of Vermont Extension Service.⁶³ Students in kindergarten through eighth grade get lessons in things like dairy farming and maple sugaring based on a set curriculum that conforms to the state’s overall educational standards.⁶⁴ Vermont can serve as a model for statewide action on agricultural partnerships in schools: the legislature has taken action to encourage agricultural education, a state agency administers a specific curriculum, and the state university offers its resources to primary and secondary school students to help them engage in these issues.

State colleges and universities can provide great opportunities for agricultural partnerships. Most states have at least one public university with a dedicated agriculture program. These universities can sponsor statewide education programs designed to introduce students to careers in agriculture and give them hands-on experience in the field. Advocates seeking to encourage their state’s universities to engage in these programs can focus their efforts on the state agency in charge of public universities (the state board of higher education or similar agency) or can directly advocate to university administrators. University departments of agriculture should be viewed as public educational resources that can be shared with the state’s children.⁶⁵

In order to encourage and create more agricultural partnerships in schools, state food policy councils can:

- Advocate that the state enable, encourage, or mandate agricultural partnerships as part of school curricula (e.g., incorporating farm visits, bringing farmers to the classroom, or planning field trips to farmers markets).
- Push for the state to provide incentives such as grants for schools to build and incorporate agricultural partnerships.

⁶¹ Farm to school programs are discussed in more detail in [Section VI: Farm to Institution](#).

⁶² VT. STAT. ANN. tit. 21, § 1153 (2012).

⁶³ *Id.*

⁶⁴ *Vermont Ag in the Classroom—Curriculum*, VT. AGENCY OF AGRIC., <http://www.vermontagriculture.com/buylocal/learn/curriculum.html> (last visited Oct. 5, 2012).

⁶⁵ One resource for advocates seeking specific curricular ideas is the Farm-Based Education Association, a network of farm-based education practitioners who partner with schools to provide educational experiences on farms. See <http://www.farmbasededucation.org/>.

- Encourage the state to facilitate partnerships between agricultural universities and primary and secondary schools (e.g., creating an information database that schools can use to connect with one another).
- Encourage the state to provide support for programs like 4-H and Future Farmers of America operating in schools.

CONCLUSION Schools play a critical role in the development of our nation’s children, not only nourishing their minds but also in nourishing their bodies. Beyond the traditional reading, writing, and arithmetic, states have the opportunity to influence students’ learning about food systems, nutrition, and what they put into their bodies. But teaching students about food systems, nutrition, and healthy living will not be as effective if students are hungry or malnourished. States have the ability to ensure that students are getting fed by expanding school breakfast and lunch programs to include all eligible students or by implementing a universal free breakfast and lunch program for all students.

SECTION VIII: FOOD SAFETY & PROCESSING

This section offers a sketch of state and federal food safety regulations that apply to agricultural products (fruits and vegetables, meat, poultry, eggs, and egg products) and processed foods. The federal government plays a significant role in food safety regulations. However, there are a number of policy changes that state food policy councils can support in order to strengthen their local food systems. The sections that follow will introduce the food safety-related legal challenges facing agricultural producers, local in-home food processors (“cottage food” producers), and meat, poultry, and egg producers.

OVERVIEW Food safety is a key concern for many food producers, retail establishments, restaurants, entrepreneurs, and consumers. Existing producers and potential producers often cite high compliance costs, technical barriers, and difficulty understanding regulatory obligations as some of the primary barriers to their businesses. Although federal regulation is a large component of the food safety picture, particularly for food products that travel across state lines, state governments have a great deal of authority to design flexible legal regimes with more appropriate regulations for small-scale operators that sell at local markets or within state borders.

1. Overview of Food Safety Regulations: Federal & State This section provides a brief overview of the federal and state food safety regimes, with a particular focus on the role that each level of government plays in securing the national food supply and protecting public health. The descriptions are intended to provide a brief orientation to the legal landscape facing local food producers.

2. Quality Certification Programs for Agricultural Producers Fruit and vegetable producers are currently not heavily regulated with regard to food safety. However, some purchasers require vendors to be certified as using “good agricultural practices.” This section details ways in which state food policy councils can reduce certification-related barriers to local and small-scale production.

3. Food Safety Regulations for Processed Foods Processed foods are subject to a number of stringent state and federal regulations. This section provides a brief background of both the federal and state roles in regulating processed food, as well as discusses “cottage food” laws, through which states allow for certain low-risk foods to be produced in a home kitchen.

4. Meat, Poultry, & Egg Processing for Small-Scale Producers This section provides a brief overview of federal and state regulatory authority and exemptions for meat, poultry, and egg production. State food policy councils should understand how the systems work and help make small-scale producers aware of the relevant exemptions in order to encourage more local and small-scale producers.

OVERVIEW OF FOOD SAFETY REGULATIONS: FEDERAL & STATE Federal and state governments share regulatory authority with respect to many aspects of food safety. Some food safety issues are primarily regulated by the federal government (such as meat and poultry inspection), while others are primarily within the state’s jurisdiction (such as farmers market and restaurant regulations).

Overview of Federal Food Safety Laws In general, federal regulations apply to all foods that are sold in interstate commerce (meaning across state borders) or foreign commerce, and states have the power to regulate most foods that are only sold intrastate (see [Section I: General Legal Setting](#) for more information on the general breakdown in authority between federal and state governments).¹ With a number of specific exceptions, the U.S. Food & Drug Administration (FDA) has jurisdiction over processed

¹ Under the commerce clause, Congress has the authority to pass laws concerning and regulate interstate commerce. U.S. CONST. art. I, § 8, cl. 3.

foods, seafood, and food additives, while the U.S. Department of Agriculture (USDA) regulates fresh produce, livestock, poultry, and eggs.

In January 2011, President Obama signed into law the Food Safety Modernization Act (“FSMA”),² which was the first major overhaul to the federal food safety regime since 1938.³ There are two major parts of FSMA that are particularly important to small and local food producers. First, FSMA increases federal regulatory power over agricultural producers of fruits and vegetables, which were not heavily regulated in the past.⁴ The Act does, however, exempt many small-scale producers from most of its regulatory requirements.⁵ Agricultural producers whose operations gross less than \$500,000 annually and who sell a majority of their products in direct sales to consumers, restaurants, or retail stores, either within the state or within 275 miles of the farm or production facility, are exempt from the produce safety standards.⁶

Second, under FSMA facilities that “manufactur[e], process[], pack[], or hold[] food” are now required to maintain an extensive hazard analysis and critical control point (HACCP) plan.⁷ Small-scale processors and facilities are exempt from the specific hazard control requirements laid out in the statute, and instead must submit modified hazard control plans to the FDA.⁸ Similar to the produce safety standards rule, facilities whose operations gross less than \$500,000 annually and who sell a majority of their products in direct sales to consumers, restaurants, or retail stores, either within the producing state or within 275 miles of the production facility, are subject to the modified hazard control requirements.⁹ In the case of a foodborne illness outbreak or incident involving an exempt facility, the FDA retains the authority to conduct more comprehensive inspections and reinstate some of the standard requirements vis-à-vis that facility.¹⁰

KEY PROVISIONS OF THE FEDERAL FOOD SAFETY MODERNIZATION ACT (FSMA)

- Gives FDA the authority to unilaterally order a mandatory product recall.
- Requires FDA to develop safety standards for the production of fruits and vegetables.
- Gives FDA the authority to designate certain foods as “high-risk,” subjecting their producers to more stringent recordkeeping requirements.
- Requires packing/processing facilities to conduct risk assessments and develop hazard control plans that are meant to prevent food contamination.
- Exempts most small, direct farmer sales from the new FDA requirements.

Sources: 21 U.S.C. §§ 223(d)(1), 350g, 350h, 350l (2012); *Food Safety Legislation Key Facts*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/downloads/Food/FoodSafety/FSMA/UCM263777.pdf> (last visited Oct. 10, 2012).

Food policy councils should:

- Educate themselves on the requirements of FSMA and remain on the lookout for the small-entity guides to FSMA that FDA is required to produce.

² FDA Food Safety Modernization Act, 21 U.S.C. §§ 2201–2252 (2011). See also *Food Safety Legislation Key Facts*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/downloads/Food/FoodSafety/FSMA/UCM263777.pdf> (last visited Oct. 9, 2012).

³ See *Snapshot of Food Safety Milestones in the History of the FDA*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/downloads/Food/FoodSafety/FSMA/UCM263778.pdf> (last visited Oct. 9, 2012).

⁴ 21 U.S.C. § 350h (2012) (standards for produce safety).

⁵ *Id.* § 350h(f) (exemption for direct farm marketing).

⁶ *Id.* §§ 350h(f)(1), (4).

⁷ 21 U.S.C. §§ 350g, 350d (2012).

⁸ 21 U.S.C. § 350g(l) (2012).

⁹ *Id.*

¹⁰ *Id.* § 350g(l)(3)(A).

- Advocate that the state put out easy to understand guidance.
- Encourage the state to provide educational workshops on FSMA compliance.
- Educate producers and consumers about the small-scale producer exemptions.

Overview of State Food Safety Laws States share regulatory authority with the federal government in many areas, but states enjoy complete jurisdiction over farmers markets and other types of direct farm sales, retail sales, restaurants, and many types of small-scale agricultural production and processing entities. In any given state, a variety of government agencies may have collective responsibility for the safety of the retail and restaurant food supply. A non-exhaustive list of state agencies managing at least one aspect of food safety includes: Agriculture, Business and Professional Regulation, Consumer Protection, Environmental Conservation, Health & Human Services, Inspections & Appeals, and Social Services. These state agencies (1) administer federal food safety programs (if the state has adopted a cooperative agreement with the federal government), (2) create, implement, and enforce state-level food safety regulations, and (3) provide guidance to industry participants on compliance with these federal and state laws.

Every state requires food-related businesses to comply with a variety of food safety regulations and licensing requirements. While necessary to protect the public from foodborne illness and food contamination, these regulations often have the unfortunate side effect of making it difficult for small-scale producers and retailers to compete or even survive in the local food industry. Therefore, state food policy councils can:

- Push for the state to publish a readable food safety compliance guide for small businesses and to conduct frequent, accessible trainings for farmers and food producers to learn how these regulations apply to them.
- Advocate for the state to review its regulations to identify whether any of those that pose barriers for small-scale producers could be revised or eliminated.

GUIDANCE ON STATE FOOD SAFETY LAWS

Washington State's Department of Agriculture has an Office of Compliance and Outreach whose mission includes helping businesses ensure their operations are safe, increasing awareness of food safety laws and regulations, and protecting public health.

Source: *Office of Compliance & Outreach*, WA. STATE DEP'T OF AGRIC., <http://agr.wa.gov/FoodAnimal/OCO/> (last visited Oct. 25, 2012).

QUALITY CERTIFICATION PROGRAMS FOR AGRICULTURAL PRODUCERS Fresh fruits and vegetables are generally subject to the lowest level of food safety regulations. The produce safety standards that will be promulgated by FDA under its new FSMA mandate (discussed above) will clearly increase the amount of regulation in this area, but even with those regulations, fruits and vegetables will likely remain subject to the least number of food safety laws.

Because fruit and vegetable production is subject to the least amount of food safety regulations and inspections, historically many food distributors and institutional purchasers wanted to have a method of identifying food that had been safely produced. In October 1998, FDA and USDA released a jointly-authored industry guidance document entitled, "Guide to Minimize Microbial Food Safety Hazards for

Fresh Fruits and Vegetables.”¹¹ The Clinton administration prepared this guidance in response to growing concerns about the safety of the U.S. produce supply that had been fueled by a number of prominent foodborne illness outbreaks traced back to fruit and vegetable farms.¹² Many large buyers reacted to the Guide’s release by requiring their suppliers to undergo third-party audits.¹³ In 2002, USDA responded to industry pressure for a federal audit program and used the recommendations in the 1998 Guide as a basis for implementing USDA Good Agricultural Practices & Good Handling Practices (“GAP” & “GHP”) audit verification programs, which continue to be used today.¹⁴

While neither federal nor state law requires fruit and vegetable producers to participate in these voluntary quality certification programs, producers are increasingly finding that large-scale third-party buyers and distributors will not accept foods that do not bear this official stamp of approval. However, the GAP audit process is very costly for small-scale producers. USDA currently charges an administrative fee of \$50 plus \$92/hour, including auditor travel time, for the audit.¹⁵ Many producers also find that the cost of GAP compliance is itself prohibitive because audit standards often require them to make significant capital improvements, such as adding fencing, building bathrooms for workers, or setting up systems to test water quality. GAP audits are particularly expensive for those farmers who grow multiple crops, as each crop must be audited separately.¹⁶ If a farmer grows different crops in different seasons, the USDA auditor must come out multiple times per year. Because GAP audits must be performed annually, or even more often for farmers with multiple seasonal crops, the costs of certifying a polyculture farming operation can increase quite quickly.

State food policy councils can work to reduce barriers to local and small-scale agricultural production in a number of ways:

- Encourage state legislatures to provide mini-grants, matching grants, and other financial support to farmers who wish to obtain GAP/GHP certification.
- Partner with state government and private institutions to design a state certification program that can serve as an alternative to the expensive federal audit process, as **Massachusetts** has done.¹⁷ The state-run Commonwealth Quality Seal program that operates in Massachusetts provides training that, when complete, gives a seal to vendors to allow consumers (and food management companies) to “identify locally sourced products that are grown, harvested and processed . . . in Massachusetts using practices that are safe, sustainable and don’t harm the environment.”¹⁸

¹¹ *Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables*, U.S. FOOD & DRUG ADMIN. (1998), <http://www.fda.gov/downloads/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ProduceandPlanProducts/UCM169112.pdf>.

¹² *Id.* at 1.

¹³ *Good Agricultural Practices and Good Handling Practices Audit Verification Program: User’s Guide*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV. 1 (2011), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=stelprdc5097151>.

¹⁴ *Id.*

¹⁵ *USDA GAP & GHP Audit Program Information*, UNIV. OF VT. EXTENSION 1, <http://www.uvm.edu/vtvegandberry/GAPS/Audit%20Program%20Information%20-%20VT.pdf> (last visited Oct. 9, 2012); Phil Tocco, *Are You Ready for a GAP Audit?*, MICH. STATE UNIV. EXTENSION NEWS (May 25, 2011), http://msue.anr.msu.edu/news/are_you_ready_for_a_gap_audit.

¹⁶ The self-audit document produced by Penn State includes a box where the farmer will specify what crop is being audited. *GAP Grower Self-Audit*, PENN. STATE EXTENSION, <http://extension.psu.edu/food-safety/farm/how-does-my-farm-compare-with-national-gap-standards/Checklist-with-Points-November-2009-5-25-10-G12.pdf/view> (last visited Oct. 4, 2012).

¹⁷ Commonwealth Quality, <http://www.mass.gov/agr/cqp/> (last visited Nov. 13, 2012).

¹⁸ HARVARD FOOD LAW & POLICY CLINIC, INCREASING LOCAL FOOD PROCUREMENT BY MASSACHUSETTS STATE COLLEGES & UNIVERSITIES 21 (Oct. 2012), <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/Increasing-Local-Food-Procurement-by-Mass-State-Colleges-FINAL2.pdf>.

- Work with local organizations, both private and public, to develop training seminars and other materials that reduce barriers to participation in the GAP/GHP certification program by making the process less intimidating and confusing for small producers.

FOOD SAFETY REGULATIONS FOR PROCESSED FOODS Processed foods are subject to a number of stringent state and federal regulations. This section provides a brief background of both the federal and state roles in regulating processed foods, including “cottage food” operations (small-scale producers that are permitted to make low-risk foods in their home kitchens).

Federal Regulation of Processed Foods The Federal Food, Drug and Cosmetic Act (“FDCA”) is the overarching legal framework that sets out the basic authority of the FDA to regulate processed foods that travel in interstate or foreign commerce.¹⁹ The FDCA has been amended over the years by various acts (including the Nutrition Labeling and Education Act and the Fair Packaging and Labeling Act) to create the full set of laws by which food producers must abide. First, producers are barred from selling “adulterated” foods.²⁰ FDA has defined “adulterated foods” and set out regulatory standards for good manufacturing practices to protect processed foods from adulteration or foodborne illness.²¹ States are able to create exemptions for small-scale producers that do not sell their products across state lines (products that are limited to *intrastate* commerce).

Second, food producers are prohibited from selling “misbranded” food and must satisfy certain requirements for labeling of food packages.²² They are required to utilize uniform labels for foods sold in interstate commerce;²³ for example, they must list the item’s basic identity, nutrition, ingredients, and source information on the package label.²⁴ Additionally, food packages must clearly state the net quantity of contents and must not be deceptively sized.²⁵ There are a number of exemptions and modified requirements in these labeling regulations.²⁶ To illustrate, one of the exemptions covers small-scale producers who sell their products interstate: small-scale producers who sell their products direct to consumers and do not exceed \$500,000 in annual gross sales are not subject to the nutrition labeling rules, as long as the label makes no health or nutrition claims (as defined in the Code of Federal Regulations).²⁷ Note that there is not a distance limit in this provision, unlike the provisions in FSMA (discussed above).

State Regulation of Processed Foods State food codes or food safety regulations constitute another important piece of the regulatory puzzle for food producers, processors, and retailers. Every four years, the FDA publishes a new version of the federal “Food Code,” which is a model set of rules that is meant to guide states in promulgating their own regulations for food operations that do not fall under federal jurisdiction (such as restaurants, retail food sales, direct marketing, and processed foods that are only sold intrastate).²⁸ The FDA does not require states to adopt the code, but many states have chosen to

¹⁹ Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-392 (2012).

²⁰ 21 U.S.C. § 342 (2012).

²¹ 21 C.F.R. § 110.5 (2012).

²² 21 U.S.C. § 343 (2012).

²³ Nutrition Education and Labeling Act, 21 U.S.C. § 343-1 (2012).

²⁴ 21 C.F.R. §§ 101.3(a), 101.4, 101.5 (2012).

²⁵ Fair Packaging and Labeling Act, 15 U.S.C. § 1453 (2012).

²⁶ 21 C.F.R. § 101.9(j) (2012).

²⁷ *Id.* § 101.9(j)(1).

²⁸ *FDA Food Code*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/food/foodsafety/retailfoodprotection/foodcode/default.htm> (last visited Oct. 9, 2012).

do so because the code reflects the expertise and attention of dozens of the top food safety experts.²⁹ The FDA Food Code itself is not law and it only becomes binding when states adopt it by statute or regulation. States typically add their own modifications by statute or regulation. Thus, states are not bound to adopt the federal Food Code but, if they do, they can accept it in whole or in part and can always make modifications to the rules that apply at the state level.

The federal labeling rules discussed above do not apply to foods that are only sold within the state. States set the food naming and labeling requirements for foods that will not be sold in interstate commerce.³⁰ Although the naming and labeling requirements may be very similar to the federal rules, it is important to remember that foods sold intrastate are governed by state rules, not federal rules.

While the FDA Food Code and related laws were meant to safeguard public health and uphold sanitation standards, certain provisions may interfere with small-scale, local processing operations that might otherwise provide nutritious foods to residents of food deserts and other high-need regions. State food policy councils can work to:

- Push the state to publish guidance or educational materials for small-scale producers on its own food processing regulations.
- Advocate that the state review its regulations to eliminate, where possible without risking food safety, provisions that are barriers for small-scale food producers.

Cottage Food Regulations Although federal food processing laws do not apply to foods that will not be sold across state lines, state food regulations, particularly those that have adopted the FDA Food Code wholesale, often impose stringent requirements on small-scale food producers that make it difficult or impossible for them to produce and sell their wares.

Many state food safety laws were written with large, commercial food entities in mind. These broad laws tend to apply the same restrictions and requirements to all food processing entities, both large and small, and both those that produce low-risk foods and those that produce higher-risk foods. However, small, in-home food processing entities, called “cottage food producers,” prepare only small-scale, non-potentially hazardous foods, which are foods that do not support “pathogenic microorganism growth or toxin formation.”³¹ Examples include fruit jams, certain baked goods, dried herbs, fruit pies, granola, and teas.³² Although state food safety laws are well-suited to governing wholesalers and mass producers of food products, they may fail to achieve a proper balance when it comes to individuals who wish to sell on a local or small-scale basis at farmers markets or similar venues (and not across state lines).

²⁹ See *Real Progress in Food Code Adoptions*, U.S. FOOD & DRUG ADMIN. 1 (July 2011), <http://www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FederalStateCooperativePrograms/UCM230336.pdf> (noting that forty-nine of the fifty states have adopted some version of the FDA Food Code).

³⁰ Fair Packaging and Labeling Act, 15 U.S.C. § 1461 (2012); *Atl. Ocean Products, Inc. v. Leth*, 292 F. Supp. 615, 618 (D. Or. 1968), *aff'd sub nom.* *Atl. Ocean Products Inc. v. Leth*, 393 U.S. 127 (1968).

³¹ FDA 2009 Food Code 1-201.10. Meat, dairy, and shellfish are all examples of potentially hazardous foods. However, less obvious foods such as low-sugar jams, cooked vegetables, and low-acidity pickles and salsa are also considered potentially hazardous because they can support viral or bacterial growth if not properly stored. In effect, if the food has the potential to cause harm to consumers when not kept under proper temperature and storage conditions, the food is considered “potentially hazardous.” See *Legislative and Regulatory Recommendations to Allow Home-Processing of Low-Risk Foods in Mississippi*, HARVARD LAW SCH. HEALTH LAW & POLICY CLINIC 4–5 (2010), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/In-Home-Food-Safety-FORMATTED.pdf> (providing additional detail on the definition of “potentially hazardous” foods).

³² *What is Cottage Food and Other FAQs*, THE SUSTAINABLE ECONS. LAW CTR., <http://www.theselc.org/cottagefood/faq/> (last visited Oct. 2, 2012). See, e.g., OHIO ADMIN. CODE 901:3-20-04 (2012) (listing cottage food products allowed).

Overly burdensome regulations on cottage food production can pose significant barriers to the development of the local food economy. For many small agricultural producers, it is difficult to run profitable enterprises by simply selling what they grow. Processing their raw agricultural products into “value-added” foods allows them to earn more money to support their entire operation and keeps them from dropping out of the local food market. It also allows them to preserve and profit from excess produce that would otherwise spoil and go to waste.

Balancing public health concerns with the opportunity to encourage small-time food producers to make a profit without incurring significant startup costs, most states (42 as of the time of publication of this guide) have carved out exemptions in their food safety laws allowing for the sale of non-potentially hazardous foods processed in home kitchens, either without obtaining a permit or at least without undergoing traditional permitting requirements.³³ Although cottage food laws have similar elements across states, there are quite a number of differences in how the states have gone about enacting their cottage food laws. Examples of variation in these state laws include differences such as:

- To Whom Products Can Be Sold: In **California**, cottage food operators are permitted to sell directly to consumers or indirectly through restaurants or other retail establishments, subject to registration and permitting requirements.³⁴ By contrast, in **Arkansas**, cottage food operators may only sell their products directly to consumers from the place the food was made, a farmers market, a county fair, or a special event.³⁵
- Cap on Earnings: Some states do not have a cap on earnings for cottage food producers, but several states do include such caps, which cover a wide range. **Florida** sets its limit at \$15,000 annual gross sales.³⁶ **California**'s cottage food law allows for annual increases in earnings, starting with \$35,000 in 2013, \$45,000 in 2014, and capping out at \$50,000 in 2015.³⁷ **Michigan** has a \$20,000 limit until 2017 at which time the limit will increase to \$25,000.³⁸
- Licensure and Inspection: **Michigan** does not require any licensure or inspection for cottage food operations.³⁹ By contrast, **Washington** requires a cottage food operator to obtain a permit annually.⁴⁰
- Labeling Requirements: Many state cottage food regimes specify particular labeling requirements. The labeling requirements in **Maryland** are typical. They

GUIDANCE FOR COTTAGE FOOD OPERATIONS

New Mexico has published a guidance document for cottage food operations that covers how to complete the home-based food processing operation application and includes information on how to minimize food safety concerns.

Source: Guidance for Home-Based Food Processing Operations, NEW MEXICO ENV'T DEP'T, ENVTL. HEALTH BUREAU, http://www.nmenv.state.nm.us/fod/Food_Program/documents/HBGuidancesFinal05-12.pdf (last visited Oct. 25, 2012).

³³ *Legislative and Regulatory Recommendations to Allow Home-Processing of Low-Risk Foods in Mississippi*, HARVARD LAW SCH. HEALTH LAW & POLICY CLINIC, 6 (2010), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/In-Home-Food-Safety-FORMATTED.pdf>. Since the Mississippi Report was published, ten more states have adopted cottage food laws. Citation on file with author.

³⁴ Assem. B. 1616, 2011-2012 Gen. Assemb., Reg. Sess. (Cal 2012), available at <http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml>. *Cottage Food Law Bill Language*, THE SUSTAINABLE ECONS. LAW CTR., <http://www.theselc.org/cottage-food-laws/cottage-food-law-bill-language/> (last visited Oct. 2, 2012).

³⁵ ARK. CODE ANN. § 20-57-201(2)(B)(vi) (2012).

³⁶ FLA. STAT. ANN. § 500.80(1)(a) (West 2012) (Florida sets the limit at \$15,000 annual gross sales).

³⁷ CAL. HEALTH & SAFETY CODE § 113758(a) (2012).

³⁸ MICH. COMP. LAWS § 289.4102(5) (2012).

³⁹ *Id.* § 289.4102(1).

⁴⁰ WASH. REV. CODE ANN. § 69.22.030 (West 2012) (requiring an annual permit).

require the name of the product, name and address of the cottage food business, ingredients of the product in descending order of the amount of each ingredient by weight, net weight or net volume of the product, allergen information (as per federal labeling rules), nutritional information that complies with federal rules if a nutritional claim is made, and the statement (printed in 10 point or larger type): “Made by a cottage food business that is not subject to Maryland’s food safety regulations.”⁴¹

In order to support the growth of local food systems by allowing for cottage food production, state food policy councils can:

- Encourage their state legislatures or agencies to create new legal regimes that govern cottage foods.
- Advocate that their state publish easy to understand guidance on complying with the state’s cottage food law, as **New Mexico** did (see text box). **Florida’s** Department of Agriculture also published several guidance documents for cottage food operators, one of which is a compilation of frequently asked questions.⁴² The **Michigan** Department of Agriculture and Rural Development and the **Washington** State Department of Agriculture provide two more examples of attempts at organizing this information in a clear, concise manner.⁴³
- Create documents that educate cottage food producers on the applicable rules and regulations.
- Push the state to ensure the regulations of cottage food operations are not overly burdensome. Even after cottage food laws are passed, regulations promulgated by the relevant state agency may impose additional requirements that seem to defeat the purpose of passing cottage food laws in the first place.

MEAT, POULTRY, & EGG PROCESSING FOR SMALL-SCALE PRODUCERS The regulation of meat, poultry, and egg processing is an area of much confusion for local producers. The complexity of these federal and state legal regimes deter many would-be producers from entering the market and create huge costs for existing producers, preventing them from remaining competitive if they can stay in business at all. In addition, many state legal regimes fail to accommodate innovations like mobile slaughter and processing units that could help to strengthen local food systems and cultivate healthy agricultural industries. This section will provide an overview of federal and state inspection regulations and their many complex exceptions, review some of the challenges facing small-scale producers, and propose possible policy solutions that would make it easier for local producers to enter and remain in this business.

Federal Regulatory Scheme The federal government has the authority to regulate many aspects of processing and production for meat and poultry slaughterhouses and egg farms whose products are destined for interstate commerce. Meat, poultry, and eggs cannot be sold in interstate or foreign commerce without federal inspection by USDA’s Food Safety and Inspection Service (FSIS).⁴⁴ Different products are subject to different types of inspection under federal authority. The basic federal rules and exemptions from federal inspection that are available to many different small-scale producers are discussed below.

⁴¹ MD. HEALTH GEN. § 21-330.1(c)(2) (2012).

⁴² *Cottage Food Legislation Frequently Asked Questions*, FL. DEP’T OF AGRIC. & CONSUMER SERVS., <http://www.freshfromflorida.com/fs/CottageFoodFAQsandFormNumber.pdf> (last visited Oct. 25, 2012).

⁴³ *Michigan Cottage Foods Information*, MICH. DEP’T OF AGRIC. & RURAL DEV., http://www.michigan.gov/mdard/0,4610,7-125-50772_45851-240577--,00.html (last visited Oct. 2, 2012); *Cottage Food Operation*, WASH. STATE DEP’T OF AGRIC., <http://agr.wa.gov/FoodAnimal/CottageFoodOperation/> (last visited Oct. 2, 2012).

⁴⁴ Federal Meat Inspection Act, 21 U.S.C. §§ 603-606(a), 610 (2012); Poultry Products Inspection Act, 21 U.S.C. §§ 455, 458 (2012); Egg Products Inspection Act, 21 U.S.C. §§ 1034, 1037 (2012). There are certain situations, however, where meat that is processed in a state-inspected facility can be sold interstate; a new voluntary “cooperative interstate shipping program” allows the sale in interstate commerce of certain poultry products from certain small state-inspected establishments. 21 U.S.C. § 472 (2012); 9 C.F.R. § 381.187 (2012). “Small” establishments are those with an average of fewer than 25 employees. 21 U.S.C. § 472 (2012).

Meat

- Meat inspection must occur at each of several stages: the animal is inspected prior to slaughter, the carcass is inspected prior to processing, and the meat product is inspected prior to shipment or sale.⁴⁵ Slaughterhouses and processing facilities are also required to be federally inspected and products from unsanitary establishments are considered “adulterated” and may not be sold.⁴⁶ Meat sold in interstate commerce generally must be inspected by a federal inspector, while meat sold intrastate can be inspected by state inspectors in states that have created a state program.
- Meat is exempt from federal or state inspection if it is processed exclusively for personal consumption.⁴⁷ This exemption also applies to live animals that are sold through community-supported agriculture (“CSA”) networks and other custom meats that are sold when the animal is still alive.⁴⁸ Meat processing is also exempt when processed on-site at a retail establishment (such as a grocery store).⁴⁹

Poultry

- Inspection of the animal may be required prior to slaughter and inspection of the poultry product may be required prior to shipment or sale, but all carcasses must be inspected prior to processing.⁵⁰ Poultry sold in interstate commerce generally must be inspected by a federal inspector, while poultry sold intrastate can be inspected by state inspectors in states that have created a state program.
- Small scale poultry producers are eligible for two different types of exemptions from inspection.
 - 1) Those who slaughter or process fewer than 20,000 birds per year, sell only locally (e.g. not across state lines), and do not process their products at shared facilities are exempt from inspection for the following types of sales: (1) on-farm sales of poultry raised and processed on-site; (2) direct-to-consumer and direct-to-institution sales; (3) preparation of meals that will be sold directly to consumers; and (4) sales by small producers.⁵¹
 - 2) Those who process fewer than 1,000 birds per year and refrain from selling those birds in interstate commerce are exempt from the Act, provided that they sell only birds raised on their own farms.⁵²

Eggs & Egg Products

- Eggs and egg products are subject to continuous inspection during processing unless they qualify for one of several limited exemptions.⁵³ Eggs and egg products sold in interstate commerce generally

⁴⁵ 21 U.S.C. §§ 603-606(a), 610 (2012).

⁴⁶ 21 U.S.C. §§ 608, 610 (2012).

⁴⁷ 9 C.F.R. § 303.1(a) (2012).

⁴⁸ Katherine McNamara, *Update on On-Farm Slaughter*, VT. AGENCY OF AGRIC. 2–3 (Dec. 2010), available at http://www.vermontagriculture.com/fscp/meatinspection/documents/update_on_farm_slaughter.pdf.

⁴⁹ Retail-exempt entities must comply with other rules, namely retail markets are prohibited from selling to other retail markets and wholesalers. A retail-exempt entity is permitted to sell products they processed to food service entities, subject to certain monetary and quality requirements. Chad Carr, Larry Eubanks, & Ryan Dijkhuis, *Custom and Retail Exempt Meat Processing*, UNIV. OF FLA. INST. OF FOOD & AGRIC. SCI. EXTENSION (Nov. 2011), available at <http://edis.ifas.ufl.edu/pdf/AN/AN20400.pdf>.

⁵⁰ 21 U.S.C. §§ 455, 458 (2012). The FDA regulates the sale of chicken broth and similar products. See 9 C.F.R. § 381.15 (2012).

⁵¹ Exempted products must be both “sound and healthy” when slaughtered and they must be slaughtered and handled under “sanitary standards, practices, and procedures.” 9 C.F.R. §§ 381.10(a)(5)-(7), 381.10(b), 381.10(c) (2012). The shared facilities prohibition may be waived by FSIS. 9 C.F.R. § 381.10(b)(2) (2012).

⁵² 9 C.F.R. § 381.10(c) (2012).

⁵³ 21 U.S.C. §§ 1034, 1037 (2012).

must be inspected by a federal inspector, while eggs and egg products sold intrastate can be inspected by state inspectors in states that have created a state program.

- Egg producers may process and sell eggs from their own flocks directly to consumers without being subject to any inspections.⁵⁴

With regard to meat, poultry, and egg product processing, food policy councils should:

- Familiarize themselves with the legal landscape and exemptions, so that they can guide local producers in navigating their legal rights and duties.
- Push the state to publish guidance for small-scale producers describing the federal and state regulations that apply to them and laying out how to comply with these regulations.
- Consider partnering with public or private entities to produce guidebooks, trainings, and other resources for individuals who would like to start new meat or poultry production operations, which would decrease the cost and difficulty of complying with these complex regulatory obligations.

State Regulatory Scheme Federal inspection regulations apply to meat/poultry products that are sold in interstate or foreign commerce, and also to meat/poultry products that are sold intrastate, unless one of the exemptions applies or there is a state regulation program in place. A state regulation program allows states to have their own slaughtering and processing regulations for meat or poultry that is slaughtered and processed within the state and is only sold within the state.

State governments are permitted to establish their own inspection regimes that are “at least equal to” the federal programs set out in the meat, poultry, and egg inspection statutes for products that are to be sold intrastate.⁵⁵ According to USDA FSIS, as of 2007, 25 states had created such state-level programs for both meat and poultry, and two more had created state inspection programs for meat only.⁵⁶

These state-run programs can significantly reduce costs for slaughterhouse operators, as states may be able to operate their inspection programs more cheaply than the USDA program and they can pass these savings along to producers or parlay these savings into greater access and guidance for local producers. Putting the program in the hands of the state means that the state can take steps to help offset the costs or find ways to achieve more processing facilities for small-scale producers. States have a vested interest in making processing facilities available for their farmers and producers because these entities can have a major impact on economic opportunity and economic development in the state.

Because states have the authority to regulate slaughter and processing of meat and poultry products to be sold in-state, state food policy councils should:

- Advocate for their state to implement a state inspection program, if there is not one already in place.
- Push their state governments to review their regulations and revise or eliminate the ones that create unnecessary barriers to local production of meat and poultry.

⁵⁴ 9 C.F.R. §§ 590.100(e), (g) (2012).

⁵⁵ Federal Meat Inspection Act, 21 U.S.C. §§ 601–695 (2012); Poultry Products Inspection Act, 21 U.S.C. §§ 451–472, 454(a) (2012); 9 C.F.R. § 381.185 (2012); Egg Products Inspection Act, 21 U.S.C. §§ 1031–1056 (2012).

⁵⁶ *Listing of Participating States*, USDA FOOD SAFETY & INSPECTION SERV., http://www.fsis.usda.gov/regulations_and_policies/Listing_of_Participating_States/index.asp (last visited Oct. 10, 2012).

- Encourage the state to identify local needs and invest state funds in processing capacity that will improve access to these facilities for small producers and thus improve the state food system and foster opportunities for economic development.

There are two major areas in which state food policy councils can advocate for improved policies to support small-scale producers: local slaughter and processing facilities and mobile slaughter and processing units.

Local Slaughter & Processing Facilities Producers often have to travel long distances, sometimes out of the state, to get their meat and poultry slaughtered, which adds significant costs to their operations.⁵⁷ States have a unique opportunity to support the development of small-scale local slaughterhouses. Organizations around the U.S., such as the Cattle Producers of Washington, are popping up, with the intention of helping to build small, local slaughterhouses to cater to smaller-scale meat producers.⁵⁸

State food policy councils can help develop local slaughter infrastructure by:

- Pushing the state to provide grants or low-interest loans to ease the financial burden of building a local slaughterhouse. For example, the local legislature of Sullivan County, **New York** approved an appropriation of \$150,000 to build a regional slaughterhouse.⁵⁹ Although this is funded by local government, rather than state, it provides a good model of what a state could do and a great example for food policy councils to use when advocating for state funding to create such entities, similar to the Vermont mobile slaughter and processing unit example described below. Regarding loans, **Alaska** has operated an Agricultural Revolving Loan Fund (“ARLF”) since 1953, with the goal of promoting the development of the state’s agricultural sector.⁶⁰ Producers can obtain fixed-rate 4.5% loans of up to \$250,000 to “build and equip facilities to process Alaska agricultural products.”⁶¹
- Advocating that the state review its slaughter laws and regulations to make sure that local slaughterhouses do not face unnecessary obstacles with regard to construction, permitting, or operations.
- Encouraging the state to publish guidance and educational materials on the laws and regulations governing local slaughterhouses so small-scale producers and groups intending to build local slaughterhouses will have a streamlined resource to use in moving forward with their projects.

Mobile Slaughter & Processing Facilities Because it is expensive to construct the facilities and maintain regulatory compliance for traditional slaughterhouses, innovative local food advocates have begun to explore mobile processing options for a range of food products, including meat and poultry. Mobile slaughter and processing units for meat and poultry have been increasing in popularity recently.⁶² These mobile units have significant advantages over fixed slaughterhouses, including lower costs and the ability to provide their services to farmers in a larger geographic area, making it easier for them to recoup their

⁵⁷ Beth Hoffman, *Small-Scale Slaughterhouses Aim to Put the ‘Local’ Back in Local Meat*, NPR.ORG (June 4, 2012, 11:11am), <http://www.npr.org/blogs/thesalt/2012/06/04/153511889/small-scale-slaughterhouses-aim-to-put-the-local-back-in-local-meat>.

⁵⁸ *Meat Processing*, CATTLE PRODUCERS OF WA. LIVESTOCK PROCESSORS CO-OP. ASSOC., <http://www.cattleproducersofwa.org/Livestock-Processors-Co-Op.html> (last visited Oct. 25, 2012).

⁵⁹ *Sullivan OKs Funds for Slaughterhouse*, TIMES HERALD-RECORD ONLINE (Oct. 26, 2010, 2:00am), <http://www.recordonline.com/apps/pbcs.dll/article?AID=/20101026/NEWS/10260336>.

⁶⁰ *Agricultural Revolving Loan Fund*, ALASKA DEP’T OF NATURAL RES., http://dnr.alaska.gov/ag/ag_arlf.htm (last visited Oct. 10, 2012).

⁶¹ *Id.*

⁶² *Mobile Slaughter/Processing Units*, UNIV. OF MASS. EXTENSION, CTR. FOR AGRIC., <http://www.extension.org/pages/19234/mobile-slaughterprocessing-units> (last visited Oct. 17, 2012).

investments more quickly.⁶³ However, two major barriers have stood in the way of entrepreneurship in this area: state legal barriers and lack of funding.

Various legal barriers stand in the way of the creation of mobile meat and poultry slaughter and processing units. As discussed above, USDA regulations stipulate that state-equivalent inspections may be substituted for federal inspections for producers that do not ship their products in interstate commerce.⁶⁴ Because state-level inspection regimes vary widely between states, it is important for state food policy councils to determine whether their state has adopted a state inspection regime and, if state inspection is authorized, what rules or exemptions the state provides.

Even in states where the legal regime is friendly to local meat slaughter and processing and allows for mobile processing entities, funding and access to capital are huge barriers to the creation of mobile processing units. Even mobile processing units have high start-up costs and compliance regulations, and many food entrepreneurs find it difficult to enter the market without financial assistance. States have adopted a range of strategies to facilitate the proliferation of mobile processing units in their jurisdictions, such as:

- A private group of producers and professors in **Kentucky** received a \$50,000 grant from the state's Department of Agriculture and combined it with a private research grant to build a mobile poultry processing unit.⁶⁵ The team initially faced legal barriers but they were able to partner with the state's Department of Public Health and were authorized by the USDA to operate under a version of the 20,000-bird exemption to federal inspection.⁶⁶
- The **Vermont** legislature appropriated \$80,000 in grant money to be used in conjunction with \$16,000 from a private foundation to design and build a mobile poultry processing unit.⁶⁷ In its inaugural year (2009), the unit was used 25 times in 12 different locations.⁶⁸ Because the state was acting as the poultry inspector, it could not operate the unit directly, and had to lease the unit to an operator.⁶⁹ After the original operator declined to renew the lease, the state sold the unit in 2012 to new operators who are creating a plan

REMOVING LEGAL BARRIERS FACING MOBILE SLAUGHTERHOUSES

Grow Montana, a food policy advocacy group, has charted the course for advocacy to remove legal barriers to mobile slaughterhouses. In 2005, Grow Montana successfully pushed for the passage of a bill that amended Montana's livestock processing statute to define "mobile slaughter facility" and add language authorizing the Montana Department of Livestock to inspect such facilities.²⁵ This small change enabled the Montana Poultry Growers Cooperative to develop a new mobile processing unit that has been operating in the state since 2010.

Sources: *Policies*, GROW MONT., <http://www.growmontana.ncat.org/policies.php> (last visited May 8, 2012); Stephen Thompson, *Going Mobile*, RURAL COOPERATIVES (Nov.–Dec. 2010), <http://www.rurdev.usda.gov/rbs/pub/nov10/going.htm>.

⁶³ See *Mobile Slaughter Unit Compliance Guide*, U.S. DEP'T OF AGRIC. 2 (2010), available at http://www.fsis.usda.gov/PDF/Compliance_Guide_Mobile_Slaughter.pdf; Stephen Thompson, *Going Mobile*, RURAL COOPERATIVES (Nov.–Dec. 2010), <http://www.rurdev.usda.gov/rbs/pub/nov10/going.htm>.

⁶⁴ 21 U.S.C. § 464 (poultry and poultry products exemptions), § 623 (meat products exemptions) (2012).

⁶⁵ Tess Caudill et al., *Creating Kentucky's Mobile Processing Unit*, KY. DEP'T OF AGRIC. 1 (2002), available at http://www.ca.uky.edu/smallflocks/Factsheets/KY_mobile_processing_unit.pdf.

⁶⁶ *Id.*

⁶⁷ Press Release, Mobile Poultry Processing Unit Purchased by Middlesex-based Tangletown Farm (Jan. 26, 2012), available at <http://vtdigger.org/2012/01/26/mobile-poultry-processing-unit-purchased-by-middlesex-based-tangletown-farm/>.

⁶⁸ Helen Labun Jordan et al., *Analysis of Vermont's Food System: Food Processing and Manufacturing*, 3.4 Food Processing and Manufacturing, VT. SUSTAINABLE JOBS FUND 27 (2011), available at http://www.vsjf.org/assets/files/Agriculture/Strat_Plan/3.4_Food%20Processing.pdf.

⁶⁹ *Id.*

for how to use the unit to conduct humane slaughter on farms around the state.⁷⁰ This is a great example of how a state can support mobile processing. Vermont realized that processing capacity was essential to the state's economic development and food system success, and it was willing to utilize state funds to create such processing infrastructure.

- Although **Alaska's** Agricultural Revolving Loan Fund (described above) has not been used to finance a mobile slaughter and processing unit, money from a fund like this could be used for a mobile slaughter and processing unit.

Because funding is one of the main barriers to an increase in the scale of mobile meat and poultry processing at the state level, food policy councils should:

- Ensure that the state has regulations that allow mobile slaughter operations.
- Push states to purchase or invest in the creation of mobile slaughter and processing units to serve areas and producers that would otherwise be neglected by private entities.
- Work with the state to create loan or grant programs that would help support private entrepreneurs hoping to enter this market.
- Advocate that the state publish guidance on slaughter and processing regulations to facilitate small-scale producers in their efforts to develop mobile slaughter and processing facilities.

CONCLUSION Food safety is a concern at every level of the food chain. Striking a balance between adequately protecting consumers from foodborne illnesses and making the system affordable for producers—especially small-scale producers—is critical. State food policy councils should review their states' food safety rules, quality certification programs, meat, poultry and egg processing regulations, and cottage food laws, to ensure they are best tailored to balance these two crucial interests while meeting the state's unique needs.

MODEL STATE: VERMONT

In **Vermont**, the construction of a mobile poultry slaughtering unit and a mobile flash-freeze unit for berries were funded by an appropriation from the state legislature. These were provided in order to encourage and assist local farmers in processing locally. They were designed and constructed under the direction of the Vermont Agency of Agriculture and then operated by a local business.

Source: Vermont Legislature, Budget Bill, Act 65 of 2007, Sec. 82(a) (2012).

⁷⁰ See Steve Zind, *State Sells Mobile Poultry Processing Unit*, VT. PUB. RADIO NEWS (Jan. 26, 2012), http://www.vpr.net/news_detail/93202/state-sells-mobile-poultry-processing-unit.

SECTION IX: RESOURCES

GENERAL

Good Laws, Good Food: Putting Local Food Policy to Work for Our Communities

About: This toolkit is a resource primarily for local food policy councils (but also helpful to individuals and groups) seeking to inform and influence food law and policy in their city or county. It provides an in-depth analysis and set of recommendations for how food policy councils can enact change in their local food systems. This toolkit is the first of the two-part series, of which this state toolkit is the second part.

Find at: http://www.law.harvard.edu/academics/clinical/lsc/documents/FINAL_LOCAL_TOOLKIT2.pdf

Published by: The Harvard Food Law & Policy Clinic

Community Food Security Coalition Guidebooks and Reports

About: A general resource linking to a wide range of publications and handouts on a multitude of food law and policy topics. The database also includes a summary of each publication. It is an excellent place to start when looking for additional information on an aspect of food law and policy.

Find at: <http://foodsecurity.org/publications/>

Published by: Community Food Security Coalition

Doing Food Policy Councils Right: A Guide to Development and Action

About: *Doing Food Policy Councils Right* walks the reader through the various steps of creating and working as a food policy council. This guide covers the history food policy councils, provides examples of existing councils, and gives practical advice for councils (e.g., structure of the council, funding, and partnerships).

Find at: <http://www.markwinne.com/wp-content/uploads/2012/09/FPC-manual.pdf>

Published by: Mark Winne Associates

Food Policy Councils: Lessons Learned

About: *Food Policy Councils: Lessons Learned* describes the structure of, and methods used by, successful food policy councils as well as the barriers they commonly face. The report contains a wealth of information for councils, including an overview of relevant food policy issues, a discussion on the importance of local and state food policy, and examples of policy initiatives that councils have engaged in.

Find at: http://foodsecurity.org/pub/Food_Policy_Councils_Report.pdf

Published by: Food First and the Community Food Security Coalition

The National Agricultural Law Center's Local Food Systems Reading Room

About: Funded through federal appropriations and based at the University of Arkansas School of Law, the National Agricultural Law Center conducts legal research into issues facing food and agriculture. Its online "reading rooms" are comprehensive compilations of articles, notes, case summaries, and other resources on dozens of topics. The Center's "Local Food Systems" reading room contains federal statutes and regulations, case law, Congressional Service Research reports, and a wide range of other publications and resources on legal and regulatory issues affecting local food systems.

Find at: <http://www.nationalaglawcenter.org/readingrooms/localfood/>

Published by: The National Agricultural Law Center

FARM TO INSTITUTION

Farm to Hospital: Supporting Local Agriculture and Improving Health Care

About: A report on establishing farm to hospital programs. The programs seek to improve health in hospitals *outside* of the operating room, in hospital cafeterias and kitchens. The report provides guidance both on how hospitals can improve their food and how local growers can connect with hospitals. It also features two brief case studies of successful hospital programs.

Find at: http://www.foodsecurity.org/uploads/F2H_Brochure-Nov08.pdf

Published by: Center for Food and Justice of the Urban and Environmental Policy Institute of Occidental College

Farm to College Program

About: A great resource for advocates looking for general information on farm to university programs, how to get started, and what some current examples look like.

Find at: <http://www.farmtocollege.org>

Published by: Community Food Security Coalition

From Farm to Fork: A Guide to Building North Carolina's Sustainable Local Food Economy

About: This comprehensive guide is the product of a yearlong North Carolina “Farm to Fork” initiative. It explores the processes of strengthening systems of local food procurement and of developing statewide food system infrastructure. Targeted at the state level, the guide aims to provide key statewide and local recommendations for action ideas to build a sustainable food economy and offers examples for external policy makers and consumers to adapt for the transformation of their own food systems.

Find at: <http://www.cefs.ncsu.edu/resources/stateactionguide2010.pdf>

Published by: Center for Environmental Farming Systems, a partnership between N.C. State University, N.C. Agricultural and Technical State University, and the N.C. Department of Agriculture and Consumer Services.

Local Foods: From Farm to College and University Foodservice

About: A report identifying reasons why colleges and universities are increasing purchasing from local sources and obstacles to such programs. It also provides an overview of current farm to university programs and a profile of Iowa's programs.

Find at: http://www.extension.iastate.edu/NR/rdonlyres/B0D64A49-9FA9-410E-849A-31865EFECE91/65253/manuscript2004003final_version.pdf

Published by: Catherine H. Strohbehn and Mary B. Gregoire, Iowa State University

National Farm to College Program

About: A resource on farm to college programs—why we need them, how they work, and the type of assistance the National Farm to College Program offers.

Find at: http://www.foodsecurity.org/farm_to_college.html

Published by: Community Food Security Coalition

FOOD ASSISTANCE PROGRAMS

Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program

About: This report provides a detailed overview of the Supplemental Nutrition Assistance Program (SNAP).

Find at: <http://www.fns.usda.gov/ORA/menu/Published/SNAP/FILES/Other/BuildingHealthyAmerica.pdf>

Published by: USDA Food and Nutrition Service, Office of Research and Analysis

Review of Strategies to Bolster SNAP's Role in Improving Nutrition as well as Food Security

About: A report assessing how SNAP can play a bigger role in fighting obesity. There are several strategies featured that states can use to improve the SNAP benefits for residents in their states.

Find at: <http://frac.org/wp-content/uploads/2011/06/SNAPstrategies.pdf>

Published by: Food Research & Action Center

SNAP: Putting Healthy Foods within Reach, State Outreach Toolkit

About: A toolkit for states on how to increase SNAP participation of their residents. It includes tools for SNAP outreach to individuals who may be eligible for SNAP and tailoring outreach to unique audiences.

Find at: http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/State/toolkit_Complete.pdf

Published by: USDA Food and Nutrition Service

Access and Access Barriers to Getting Food Stamps: A Review of the Literature

About: A comprehensive report on participation rates in the food stamp program, general barriers to participation, barriers to participation for specific groups (including low-income, seniors, disabled individuals, immigrants, households with children, and able-bodied adults without dependents), and how to overcome these barriers.

Find at: <http://frac.org/newsite/wp-content/uploads/2009/09/fspaccess.pdf>

Published by: Food Research & Action Center

State Implementation of the New WIC Produce Package

About: This report outlines the opportunities and barriers facing WIC clients to use their benefits at farmers markets. It gives an overview of the WIC Package Rule and the issue of states authorizing farmers as vendors for the new cash value vouchers for fruits and vegetables.

Find at: <http://www.foodsecurity.org/pub/WIC-FarmersMarketReport.pdf>

Published by: Community Food Security Coalition

FOOD SAFETY

Vermont Farm to State Strategic Plan: 4.7 Food System Regulation

About: Part of Vermont's 10-year Farm to Plate strategic plan to strengthen the state's food system, this section addresses the regulatory framework in place for food safety, broadly conceived. It addresses health and safety, informing consumers about food origins, and expanding local food systems in Vermont.

Find at: http://www.vsjf.org/assets/files/Agriculture/Strat_Plan/4.7_Food%20System%20Regulation.pdf

Published by: Vermont Sustainable Jobs Fund, Farm to Plate Strategic Plan

Legislative and Regulatory Recommendations to Allow Home-Processing of Low-Risk Foods in Mississippi

About: A report on the benefits of in-home food production laws and overview of the current status of such laws in the U.S. It also includes a guide for Mississippi on how to implement such laws.

Find at: <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/In-Home-Food-Safety-FORMATTED.pdf>

Published by: The Harvard Food Law & Policy Clinic

A Citizens Guide to Food Recovery

About: A USDA guide on food recovery programs for businesses, community-based profit or non-profit organizations, citizens, and public officials. It includes legal considerations and food safety issues.

Find at: <http://infohouse.p2ric.org/ref/40/39578.htm>

Published by: USDA

LAND USE

Farmland Information Center

About: A public/private partnership between USDA Natural Resources Conservation Service and American Farmland trust, which collects and provides information about farmland protection and stewardship. The website includes an online database of relevant laws, literature and technical resources. Farmland Information Center also offers information specialists providing reference materials and basic technical assistance by phone, email and fax free of charge.

Find at: <http://www.farmlandinfo.org/>

Published by: USDA Natural Resources Conservation Service and American Farmland Trust

American Farmland Trust Publications

About: A database of publications on a wide range of land use topics, including planning for agriculture guides, landowner guides, and various fact sheets on conservation easements, land protection programs, tax and estate planning, purchase of conservation easements (PACE), and transfers of development rights (TDRs), among many others. A list of fact sheets can be found on the right hand side of the page. Individual links to the most relevant fact sheets are included here.

Find at: <http://www.farmland.org/resources/publications/default2.asp>

Conservation Easements: http://www.farmlandinfo.org/documents/27762/ACE_1-04.pdf

Agricultural Conservation Easements: http://www.farmlandinfo.org/documents/27762/ACE_01-2011_.pdf

Purchase of Conservation Easements (PACE) Programs:

http://www.farmlandinfo.org/documents/38371/PACE_State_07-20111.pdf

Transfer of Development Rights (TDRs): http://www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

Published by: American Farmland Trust

Fact Sheet: The Farmland Protection Toolbox

About: An overview of thirteen tools and techniques that can be used to protect farmland and support the economic viability of agriculture.

Find at: http://www.farmlandinfo.org/documents/27761/fp_toolbox_02-2008.pdf

Published by: American Farmland Trust: Farmland Information Center

Purchase of Development Rights and Conservation Easements: FAQs

About: A succinct overview of purchase of development rights (PDRs) and conservation easements and answers to frequently asked questions on the subject.

Find at: <http://aces.nmsu.edu/pubs/research/economics/tr34.pdf>

Published by: John B. Wright and Rhonda Skaggs, New Mexico State University

Purchase of Development Rights: Conserving Lands, Preserving Western Livelihoods

About: A general overview of PDRs, describing what, where and how they are used. Although the information is ten years old, it is still a great resource for background information on PDRs and their uses.

Find at: <http://westgov.org/wga/publicat/pdr.pdf>

Published by: Western Governors' Association, Trust for Public Land, and National Cattlemen's Beef Association.

SCHOOL PROCUREMENT POLICIES AND RESOURCES

Legislative Recommendations for a Statewide Farm to School Bill in Mississippi

About: A guide for implementing a statewide farm to school bill in Mississippi, written by Harvard Law School's Health Law and Policy Clinic and Mississippi Delta Project.

Find at: <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/FTS-legis-recs-FINAL-12-5.pdf>

Published by: The Harvard Health Law & Policy Clinic and Mississippi Delta Project

National Farm to School Network

About: A resource supporting the work of local farm to school programs around the country, including training and technical assistance, information services, and networking with leads in all 50 states.

Find at: <http://www.farmtoschool.org/>

Michigan Farm to School Purchasing Guide

About: *The Michigan Farm to School Purchasing Guide* outlines the steps required for a Michigan school to procure local farm ingredients, including processes such as sorting through vendor identification and creating the language and content of school wellness policies. The guide includes example forms for school use for every step of the procurement process as well as resources for assessing a school's interest in undergoing a Farm to School program.

Find at: http://www.mifarmtoschool.msu.edu/assets/farmToSchool/docs/MIFTS_Purchasing_Guide.pdf

Published by: Betty T. Izumi and Colleen Matts, C.S. Mott Group for Sustainable Food Systems at Michigan State University

Strategic Alliance: School Food Environment

About: This web resource compiles a wealth of school food policies across the United States and UK. Several organizations and programs are included that provide tools related to school food procurement and the regulation of competitive school food products such as vending machines.

Find at: http://eatbettermovemore.org/sa/enact/school/school_snacks_2b.php

Published by: Eat Better Move More, Strategic Alliance, ENACT

Local School Wellness Policies: How are Schools Implementing the Congressional Mandate?

About: This brief conducted by the Robert Wood Johnson Foundation evaluates the implementation successes and challenges of several local school wellness policies. The report includes compiled data on the “quality, evaluation and funding of the policies; nutrition standards and nutrition education requirements; and physical activity requirements” of local wellness policies. The brief provides statistics from various schools throughout the United States in each of these areas and concludes with recommendations for change and improvement.

Find at: <http://www.rwjf.org/files/research/20090708localwellness.pdf>

Published by: The Robert Wood Johnson Foundation

Tools for Evaluating School Wellness Policies

About: The School Wellness evaluation tools from the Yale Rudd Center for Food Policy and Obesity provide two questionnaires that may be used by schools and school districts within the state of Connecticut and across the country to determine the effectiveness of their school’s wellness policy.

Find at: http://www.yaleruddcenter.org/what_we_do.aspx?id=160

Published by: Yale Rudd Center for Food Policy and Obesity

Procurement Geographic Preference Q&As

About: A Question-and-Answer based memo that addresses some of the uncertainties and subtleties of School Food Authorities (SFA) and their procurement of local and/or farm-sourced food, particularly in reference to geographic preference in procuring locally unprocessed food.

Find at: http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP18-2011_os.pdf

Published by: USDA Food and Nutrition Service

School Nutrition . . . by Design!

About: The report of the Advisory Committee on Nutrition Implementation Strategies, *School Nutrition . . . by Design!*, recommends specific strategies which school districts can adopt to “model healthy eating habits for their students.” The report is structured around the creation of “standards” that assure each student receives equal access to “quality food and drink.” It does so by following nine Design Principles (values) and their corresponding Quality Indicators (best practices), all of which model an exemplary system of standards that are replicable and applicable as pieces of an improved school nutrition program.

Find at: <http://www.cde.ca.gov/ls/nu/he/documents/schnutrtn071206.pdf>

Published by: The California Department of Education

THE HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC

was established in 2010 to connect Harvard Law students with opportunities to provide pro bono legal assistance to individuals and communities on various food policy issues. The Clinic aims to increase access to healthy foods, prevent diet-related diseases such as obesity and type 2 diabetes, and assist small farmers and producers in participating in local food markets.

The primary authors of this toolkit

Emily Broad Leib, Director of the Harvard Food Law and Policy Clinic
&
Alli Condra, Clinical Fellow in the Harvard Food Law and Policy Clinic

MARK WINNE ASSOCIATES

was established in 2012 by Mark Winne. Winne was co-founder of the Community Food Security Coalition, where he worked from 2005 to 2012 on federal food and farm policy issues and food policy councils. He has extensive experience in food and agricultural policy beginning with his role as executive director of the Hartford Food System in 1979. Winne is the author of two books—*Closing the Food Gap: Resetting the Table in the Land of Plenty* and *Food Rebels, Guerilla Gardeners, and Smart-Cookin' Mamas*—both published by Beacon Press.

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