

# LEVERAGING CHILD NUTRITION REAUTHORIZATION TO REDUCE FOOD WASTE



FOOD LAW  
*and* POLICY CLINIC  
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**ReFED**



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# TABLE OF CONTENTS

- Executive Summary.....1**
- Introduction.....5**
- I. Food Waste Prevention and Food Donation.....6**
  - Recommendation I.1: Expand the liability protections of the Emerson Act and delegate authority over the Act to the USDA.....7
  - Recommendation I.2: Standardize and clarify date labels to establish a federal system that guides consumers on food safety and quality.....9
  - Recommendation I.3: Direct the FDA to offer clear, standard food safety guidance for food donations.....9
  - Recommendation I.4: Fund a consumer education campaign on food waste.....11
- II. School Meals.....12**
  - Recommendation II.1: Incentivize school food waste audits.....13
  - Recommendation II.2: Mandate an offer versus serve model across more levels of the school system.....14
  - Recommendation II.3: Authorize financial incentives to schools that register with the EPA Food Recovery challenge.....14
  - Recommendation II.4: Offer grant funding to schools to implement food waste reduction and recovery programs.....15
  - Recommendation II.5: Modify existing school program grant selection processes to preference applicants that have a food waste reduction or food donation plans.....17
- III. Child and Adult Care Food Program.....17**
  - Recommendation III.1: Mandate that CACFP operators receive food waste reduction training in order to stay licensed.....18
  - Recommendation III.2: Incentivize CACFP operators to conduct food waste audits.....18
  - Recommendation III.3: Offer financial incentives to CACFP centers that register with the EPA Food Recovery Challenge.....19
- IV. Special Supplemental Program for Women, Infants, and Children.....19**
  - Recommendation IV.1: Require food waste prevention as part of WIC nutrition education.....20
  - Recommendation IV.2: Ensure that local WIC authorities are trained in food waste reduction.....20
- Conclusion.....21**
- Appendix A.....22**

# EXECUTIVE SUMMARY

Each year, the United States generates a huge amount of food that goes uneaten or unsold—over 80 million tons. Of that, 54 million tons of food winds up in landfills or otherwise goes to waste. The cost to grow, process, transport and dispose of this wasted food totals \$285 billion each year. This waste also carries with it enormous environmental and social costs, especially as food insecurity is prevalent and increasing in the United States. In recent years, the federal government has initiated efforts that acknowledge the importance of reducing food waste. In 2015, the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA) jointly announced a national food waste reduction goal, aiming to cut U.S. food waste by 50 percent by the year 2030, and in 2019 the USDA, the EPA, and the Food and Drug Administration (FDA) launched the Federal Interagency Food Loss and Waste Collaboration (*Winning on Reducing Food Waste Interagency Strategy*). Rising levels of food insecurity due to the economic fallout from the COVID-19 pandemic emphasize the importance of using our surplus food resources more efficiently as a strategy to reduce hunger. 42 million people, including 13 million children, are expected to experience food insecurity in 2021—a significant increase from pre-COVID levels—and Census Bureau data collected during the pandemic has found that 42 percent of children live in households struggling to meet their basic needs. Reducing food waste and ensuring that surplus food is redirected to beneficial uses can make a vital contribution to the fight against food insecurity.

In order to meet our national food waste reduction goal, Congress and the administration should make food waste reduction a priority in all relevant policy and programmatic areas. One particularly appropriate policy vehicle is the Child Nutrition Reauthorization (CNR). CNR is Congress's periodic process of updating the permanent statutes that authorize the child nutrition programs, including the National School Lunch Program (NSLP) and School Breakfast Program (SBP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program (CACFP), and other related programs.

This report outlines opportunities for Congress to leverage the next CNR legislation to reduce food waste in federal child nutrition programs. It also highlights several administrative opportunities through which the USDA's Food and Nutrition Service (FNS) and the FDA could prioritize food waste reduction independent of Congressional action. This report suggests general changes to the Child Nutrition Act and changes specific to the child nutrition programs through the NSLP/SBP, CACFP, and WIC.

## FOOD WASTE PREVENTION AND FOOD DONATION

The next CNR legislation is an appropriate policy vehicle to enact several high priority food waste reduction policies. The goals of reducing food waste and addressing food insecurity are intertwined, and the CNR statutes are already the home to other food waste- and donation-related policies. For example, the Bill Emerson Good Samaritan Food Donation Act (Emerson Act), which encourages food donation by providing comprehensive liability protection to food donors and nonprofit organizations that distribute donations to those in need, was included as a section of the Child Nutrition Act at the time of its passage. The recommended changes in this section merit inclusion in the next CNR legislation because, like the Emerson Act, they have a nexus to food waste, food donation, and food insecurity. Including these policy changes can strengthen the nation's nutrition programs and help to feed food-insecure individuals.

# Food Waste Prevention and Food Donation Recommendations

## **Expand the liability protections of the Emerson Act and delegate authority over the Act to the USDA.**

The Emerson Act provides liability protection to food donors and nonprofit organizations that distribute donations to those in need. Though the Emerson Act has been part of U.S. law since 1996, many potential food donors, including grocers and retailers, cite fear of liability as a primary deterrent to donating food. To maximize the impact of the Emerson Act on food donations, increased awareness of the liability protections is needed and several substantive changes should be adopted. Congress should delegate to the USDA the responsibility to provide guidance related to the Emerson Act. Additionally, Congress should broaden the Emerson Act liability protections to cover food producers and licensed food service establishments that donate food directly to individuals in need, rather than only donations made to a nonprofit intermediary. Congress should also expand Emerson Act liability protections to cover donations to food rescue organizations that charge recipients a low price, rather than just those donations to organizations that give away food for free.

## **Standardize and clarify date labels to establish a federal system that guides consumers on food safety and quality.**

Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. There is currently no federal system regulating “sell by,” “best by,” “use by,” and other date labels used on food. Instead, each state decides individually whether and how to regulate date labels. Through CNR, Congress can mandate a standard date label system wherein manufacturers or retailers who choose to affix date labels on foods would need to use either a standard quality label “BEST If Used By” or standard safety label “USE By”, with a prohibition on all state requirements of differing language. Congress should also require that the USDA and the FDA educate the general public on the meaning of the two standard date label phrases to ensure that the labeling changes have a strong impact on consumer behavior.

### **Additional Food Waste Prevention and Food Donation Recommendations:**

- Direct the FDA to modernize and clarify food safety guidance for food donations.
- Fund a consumer education campaign on food waste.

## SCHOOL MEALS

The largest and best-known child nutrition programs are the school meal programs—the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). Food waste in schools has long been a serious issue, and research indicates that school food waste could cost as much as \$1.7 billion every school year. More should be done to reduce school food waste, both because of the sheer size and impact of the school meal programs—NSLP and SBP provided over 7 billion meals in 2017—and because schools can play a special role in teaching the next generation of consumers how and why to limit their own household waste.

## Top School Meals Recommendations

### **Incentivize school food waste audits.**

Food waste audits can help school administrators understand the scope of their food waste problem and identify specific areas for improvement. They can also provide a valuable educational opportunity to engage students on the issue of food waste. Although audits can serve as important tools for assessing and addressing food waste in schools, their impact is limited due to the lack of widespread implementation. Congress can provide additional incentives to schools, such as grant funding, to help schools overcome the financial and administrative barriers to implementing food waste audits. These investments could be small, but would likely have a big impact on a school's participation.

### **Authorize financial incentives to schools that register with the EPA Food Recovery challenge.**

Under the EPA Food Recovery Challenge, organizations make a pledge to improve their sustainable food management practices and submit to the EPA the results of their activities. Upon their pledging, the EPA provides participants with technical assistance to help them quantify their food recovery and improve their food waste reduction practices. The participants keep track of their progress and submit annual progress reports to the EPA. Currently, only 86 of the EPA Food Recovery Challenge's 1,179 total participants are schools. More schools would be likely to join the Food Recovery Challenge if the EPA provided funding incentives to cover the costs of participating in the program. Congress should authorize the EPA to provide financial rewards to schools that register with the EPA Food Recovery Challenge in order to offset the costs of investing in food recovery.

### **Additional School Meals Recommendations:**

- Mandate an offer versus serve model across more levels of the school system.
- Offer grant funding to schools to implement food waste reduction and recovery programs.
- Modify current school program grant selection processes to preference applicants that have a food waste reduction or food donation plans.

## CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

The Child and Adult Care Food Program (CACFP) is a federal program that provides reimbursements for meals and snacks served to eligible low-income children and adults in early childhood, day care, and after-school settings. While smaller than the school meal programs (CACFP funded 2 billion meals and snacks in 2018), CACFP operations have similar rates of food waste. Reducing food waste in CACFP institutions would help the limited federal dollars going to CACFP better serve the program's beneficiaries.

## Top CACFP Recommendation

### **Mandate that CACFP operators receive food waste reduction training in order to stay licensed.**

In order to be an eligible operator under CACFP, institutions must be licensed by the appropriate Federal, State, or local licensing authority. Congress sets out certain eligibility criteria for institutions participating in the program as CACFP operators. Ensuring that CACFP operators are trained in food waste reduction

techniques as a part of their licensure requirements could significantly decrease food waste in the program. Congress should change the eligibility criteria of CACFP operators to require such training for center-based CACFP providers to maintain licensure, as well as require that both USDA and state agencies provide adequate food waste reduction training and technical assistance.

**Additional CACFP Recommendation:**

- Incentivize CACFP operators to conduct food waste audits.
- Offer financial incentives to CACFP centers that register with the EPA Food Recovery Challenge.

## SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federal grant program that provides supplemental nutritious foods, nutrition education and counseling, and referrals to health care and other social services to low-income, pregnant, and postpartum women, infants, and children up to the age of 5. WIC is the third largest nutrition assistance program in the country, serving nearly half of all infants born in the United States in 2018. WIC can be a useful tool in helping reduce the 37 percent of food waste in America that comes from households. Encouraging WIC participants to reduce their household food waste also aligns well with WIC's goals of helping women make healthful and economical meal planning decisions.

### Top WIC Recommendation

**Require food waste prevention as part of WIC nutrition education.**

WIC's nutrition education program teaches WIC recipients about healthy eating habits, grocery shopping on a budget, and food safety. Congress should require that household food waste prevention be included as part of nutrition education under WIC. Incorporating food waste into WIC's nutrition education would equip WIC participants with the tools to maximize their dollars and ensure nutritionally adequate meals at the lowest cost, by properly storing perishable items, reusing and repurposing leftovers, and ultimately reducing food waste. Implementing food waste reduction strategies can help WIC participants make the most of their benefits and ensure that Congress's appropriations to WIC are used efficiently.

**Additional WIC Recommendation:**

- Ensure that local WIC authorities are trained in food waste reduction.

# INTRODUCTION

In the United States, 30-40 percent of the food supply goes to waste.<sup>1</sup> This means that each year, over 80 million tons of food go uneaten or unsold and, of that, 54 million tons of food wind up in landfills or otherwise go to waste; the cost to the U.S. to grow, process, transport and dispose of food that goes to waste totals \$285 billion each year.<sup>2</sup> Agricultural land, water, storage space, and shipping fuels are all wasted when food ends up in a landfill. To illustrate, food waste consumes 21 percent of all fresh water, 19 percent of fertilizer, and 18 percent of cropland in the U.S.<sup>3</sup> In addition, food production emits greenhouse gases such as carbon dioxide and nitrous oxides:<sup>4</sup> agriculture in particular accounted for 9 percent of United States greenhouse gas emissions in 2017.<sup>5</sup>

Reducing food waste is an important area for resource conservation and climate change mitigation that remains underdeveloped in federal policy. However, in recent years the federal government has initiated efforts that acknowledge its important role in the effort to reduce food waste. In 2015, the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA) jointly announced a national food waste reduction goal, aiming to cut U.S. food waste by 50 percent by the year 2030.<sup>6</sup> In 2018, Congress for the first time ever included measures related to food waste in the Farm Bill.<sup>7</sup> In April 2019, the USDA, the EPA, and the Food and Drug Administration (FDA) launched the Federal Interagency Food Loss and Waste Collaboration (*Winning on Reducing Food Waste Interagency Strategy*).<sup>8</sup> These efforts evince a growing interest on the part of the federal government to reduce food waste.

In order to meet our national food waste reduction goal, the federal government must make food waste reduction a priority in all of its policy areas. One particularly appropriate policy vehicle is the Child Nutrition Reauthorization (CNR). CNR is Congress's periodic process of updating the permanent statutes that authorize child nutrition programs, including the National School Lunch Program (NSLP) and School Breakfast Program (SBP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program (CACFP), and other related programs.<sup>9</sup>

Embedding food recovery and food waste reduction incentives and requirements into CNR legislation presents an important opportunity to reduce food waste. Furthermore, the programs CNR authorizes provide unique and impactful settings to educate children and consumers about reducing food waste. Reducing food waste aligns well with CNR programs' goals of strengthening the nation's nutrition programs and reducing food insecurity.<sup>10</sup> Food waste reduction efforts in schools, in particular, hold promise as a way to educate and influence a child's behavior to reduce household food waste today and in the future.

The COVID-19 crisis has led to significant changes in recent months that further underscore the need to bolster CNR programs, and to ensure these programs take all available opportunities to reduce needless food waste. 42 million people, including 13 million children, are expected to experience food insecurity in 2021—a significant increase from pre-COVID levels<sup>11</sup>—and Census Bureau data collected during the pandemic has found that 42 percent of children live in households struggling to meet their basic needs.<sup>12</sup> Reducing food waste and ensuring that surplus food is redirected to beneficial uses can make a vital contribution to the fight against rising food insecurity.<sup>13</sup> Additionally, CNR programs have received increased funding and heightened enrollment due to the COVID-19 crisis and several of the COVID-19 stimulus bills.<sup>14</sup> With the growth of these programs, there is an even greater opportunity to drive change in the amount of food wasted in the United States and to help schools and families use their food resources more efficiently—making food waste reduction efforts in these programs more impactful than ever.




CNR bills are typically passed every five years, as many of the programs and funding authorizations expire after that time. However, the most recent CNR legislation was the Healthy, Hunger-Free Kids Act (HHFKA) of 2010, which reauthorized and granted authority to a number of nutrition-related programs and policies.<sup>15</sup> Some of the HHFKA's authorizations expired in 2015, but Congress has not yet enacted another CNR bill.<sup>16</sup> While many of the programs continued to operate through permanent authorization acts, important considerations relating to the programs have not been addressed for several years. For some programs, funding has been renewed through annual appropriations bills, and for some the funding has lapsed.<sup>17</sup>

The COVID-19 pandemic has led to increased uncertainty and need among those served by the programs included in CNR legislation, making the 117<sup>th</sup> Congress an opportune time to revisit CNR. While there are many important goals to be addressed by the upcoming CNR, including ensuring children and families in need have ready access to food by expanding program benefits,<sup>18</sup> this report focuses in particular on opportunities within CNR to reduce wasted food.

This report outlines opportunities for Congress to leverage CNR to reduce food waste in federal child nutrition programs. It also highlights several administrative opportunities through which the USDA's Food and Nutrition Service (FNS)<sup>19</sup> could prioritize food waste reduction independent of new Congressional action. Section I recommends several general food waste policy priorities that fit within the scope of CNR. Section II proposes changes that target food waste within schools. Section III focuses on opportunities to reduce waste in the Child and Adult Care Food Program (CACFP), and Section IV proposes opportunities to reduce waste through the Special Supplemental Program for Women, Infants, and Children (WIC).

## **U.S. Food Loss & Waste Policy Action Plan:**

On April 6, 2021, The Harvard Law School Food Law & Policy Clinic (FLPC), the Natural Resources Defense Council (NRDC), ReFED, World Wildlife Fund (WWF)—along with many additional supporters, including American Hotel and Lodging Association, Center for Ecotechnology, Food Recovery Network, Hellmann's, Marriott International, the Kroger Company, Unilever, several local government agencies, and other businesses and nonprofit organizations<sup>20</sup>—published the U.S. Food Loss & Waste Policy Action Plan for Congress & the Administration.<sup>21</sup> The Action Plan calls upon Congress and the Biden administration to take ambitious action to achieve the goal of cutting U.S. food loss and waste in half by 2030. It recommends five key policy recommendations ranging from investing in infrastructure and programs that measure and prevent food waste to requiring a national date labeling standard. This report pulls in several key recommendations from the Action Plan that fall within the legislative purview of CNR, along with including additional recommendations that are specific to CNR. The recommendations in this report that are also included in the Action Plan, and thus endorsed by a broad set of partners, are notated with a  symbol. They are also listed together in Appendix A.

## **I. FOOD WASTE PREVENTION AND FOOD DONATION**

The next CNR legislation is an appropriate policy vehicle to enact several high priority food waste reduction policies. The goals of reducing food waste and addressing food insecurity are intertwined, and the CNR statutes are already the home to other food waste and donation related policies. For example, the Bill Emerson Good Samaritan Food Donation Act (Emerson Act) encourages food donation by providing comprehensive liability protection to food donors and nonprofit organizations that distribute donations to those in need.<sup>22</sup> Congress chose to include it as a section of the Child Nutrition Act, explaining that the intent of the Emerson Act was “closely aligned” with the intent of the Child Nutrition Act because both pieces of legislation address the nutritional needs of low-income individuals.<sup>23</sup>

Because the Emerson Act is embedded within the Child Nutrition Act, changes to the Emerson Act can be included in CNR legislation. Standardizing date labels, providing clear guidance on food safety rules that apply to food donations, and supporting general public education about food waste reduction also merit inclusion in CNR because, like the Emerson Act, they have a nexus to food waste, food donation, and food insecurity. Including these policy changes in the upcoming CNR legislation can strengthen the nation's nutrition programs and help to feed food-insecure individuals.

## RECOMMENDATION I.1: EXPAND THE LIABILITY PROTECTIONS OF THE EMERSON ACT AND DELEGATE AUTHORITY OVER THE ACT TO THE USDA

The Emerson Act provides liability protection to food donors and nonprofit organizations that distribute donations to those in need. Though the Emerson Act has been part of U.S. law since 1996, many potential food donors, including grocers and retailers, cite fear of liability as a primary deterrent to donating food.<sup>24</sup> A 2016 survey conducted by the Food Waste Reduction Alliance, a joint industry task force comprised of leading companies and trade associations in food, beverage, food service, and food retail, found that 25 percent of retailers and wholesalers and 50 percent of food manufacturers cite liability concerns as one of the main barriers to food donation.<sup>25</sup>

To receive liability protection under the Emerson Act, donors and nonprofit food rescue organizations must meet the following four criteria:

- (1) The food must be donated to a nonprofit organization in good faith, meaning that the food must be donated with the honest belief that it is safe to eat;<sup>26</sup>
- (2) The food must meet all federal, state, and local quality and labeling requirements, even if it is not “readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions;”<sup>27</sup>
- (3) The nonprofit organization that receives the donated food must distribute it to needy individuals;<sup>28</sup> and
- (4) The end recipient must not pay anything of monetary value for the donated food.<sup>29</sup>

To maximize the impact of the Emerson Act on food donations, increased awareness of the liability protections is needed and several substantive changes should be adopted. The Food Donation Improvement Act of 2019,<sup>30</sup> introduced in the 116<sup>th</sup> Congress, would implement several of the below changes, and its provisions could be incorporated into CNR.

***Congress should broaden the Emerson Act to protect food producers and licensed food service establishments that donate food directly to individuals in need.*** The Emerson Act only protects food donors if they give food to a nonprofit organization which then distributes it to those in need.<sup>31</sup> This means businesses cannot receive protection if they give food directly to those in need. The COVID-19 emergency has highlighted the need to create more flexibility, such as by expanding this liability protection to cover restaurants, retailers, schools, and other licensed food service establishments that donate directly to beneficiaries. Most of these establishments have already undergone food safety training and know how to safely handle food donations. An expansion of protection is also appropriate for farmers because they typically donate low-risk foods, such as surplus produce. Protecting direct donations by these donors can allow individuals in need to pick up food from more accessible locations right at the source (such as directly from farmers who have surplus due to supply chain breakdowns during COVID-19) and prevent the challenges that donors face with finding a viable nonprofit organization and coordinating a drop-off or pick-up before the food items are served to recipients. Several states already provide liability protection for donations made directly to individuals in need, and the experience from those states shows that the protection has not resulted in food safety concerns.<sup>32</sup>

As an alternative, Congress could broaden the Emerson Act to protect schools that donate food directly to individuals in need. In the 116<sup>th</sup> Congress, the Feeding Hungry Students in Schools Act of 2019 similarly proposed to allow schools to donate food on campus through school-affiliated charitable organization “officials.”<sup>33</sup> Several state laws offer examples of this in action. In 2017 Texas passed the Student Fairness in Feeding Act, which authorized schools to donate excess foods to school affiliates, such as teachers or parents, who are “officials” of nonprofits.<sup>34</sup> These “officials” can then redistribute food on the school campus.<sup>35</sup> To become an “official,” school affiliates can simply provide documentation to campus administrators showing their status as volunteers with the nonprofit.<sup>36</sup>

***Congress should amend the Emerson Act to provide liability protection for donations to food rescue organizations that charge recipients a low price.*** Emerson Act protection is only available when food is given to the end recipients for free or “without requiring anything of monetary value from the recipient.”<sup>37</sup> This restriction inhibits the operation of nonprofit food rescue models that aim to sell food at a low price. It posed an even greater challenge during COVID-19, as food rescue organizations needed additional financial resources to procure, package, and deliver donated foods while also respecting social distancing requirements. Allowing nonprofit organizations to retain Emerson Act protection for themselves and their donors if they sell products at a “Good Samaritan Reduced Price,”<sup>38</sup> or an amount that covers the cost of handling, administering, and distributing the food, can better support many models of food donation. For example, Daily Table is a nonprofit grocery store in Massachusetts that sells grocery staples and freshly prepared meals at a reduced price in primarily low-income areas.<sup>39</sup> The organization’s sales revenue covers 70 percent of its operating costs, so it does not have to rely solely on donations to procure its inventory.<sup>40</sup> Its inventory often comes from sourcing foods close to their “sell-by” dates and foods that are manufacturing surpluses.<sup>41</sup> “Social supermarkets” in Europe, which sell donated food or surplus items at a very low cost, utilize a similar model.<sup>42</sup> Organizations that sell foods at a low price, like Daily Table and social supermarkets, can provide an alternative for low-income customers who cannot use food pantries or are looking for ways to supplement their pantry use. More than fifteen states<sup>43</sup> already provide liability protection to food rescue organizations that sell donated food to the end consumers at a level sufficient to “cover the cost of handling such food.”<sup>44</sup>

***Congress should improve the administration of the Emerson Act by delegating administrative authority over the Act to the USDA and directing USDA to write regulations clarifying the Act.*** Numerous existing and prospective donors remain unaware of the Emerson Act’s protections or lack clarity as to whether the protections cover their specific donation activities. For example, questions remain about the term “apparently wholesome food”: though the term is defined in the Emerson Act, the definition fails to include examples or illustrations that would assist a food business in evaluating the Act’s applicability to specific food items. Moreover, the Emerson Act’s protections have never been used in court, and no federal agency has been given the mandate to provide regulations, guidance, or resources related to it. To remedy this issue, Congress should delegate administrative authority over the Emerson Act to the USDA and direct the USDA to write regulations clarifying the Act’s provisions and answering typical legal questions associated with it. Congress could also raise awareness of the Act by requiring the USDA to implement an education campaign on donation liability protection for potential food donors and food rescue organizations.

In the 2018 Farm Bill, Congress took a step toward increasing USDA responsibility for the Emerson Act by mandating that the USDA create a Food Loss and Waste Liaison position.<sup>45</sup> However, the USDA still needs clearer language delineating its authority in order to promulgate regulations under the Emerson Act. The Food Donation Improvement Act of 2019 provided, for example, that the USDA must issue regulations to clarify the quality and labeling standards that donated foods must meet to qualify for Emerson Act protection (an element of a food being considered “apparently wholesome”).<sup>46</sup> Such a clear directive would enable the USDA to write the regulations necessary to clarify the protections of the Emerson Act.

## **RECOMMENDATION I.2: STANDARDIZE AND CLARIFY DATE LABELS TO ESTABLISH A FEDERAL SYSTEM THAT GUIDES CONSUMERS ON FOOD SAFETY AND QUALITY** ✓

Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. There is currently no federal system regulating “sell by,” “best by,” “use by,” and other date labels used on food.<sup>47</sup> Instead, each state decides individually whether and how to regulate date labels. Manufacturers also have broad discretion over how the dates on foods are selected.<sup>48</sup> These dates typically reflect quality and taste rather than safety,<sup>49</sup> yet businesses, individuals, and even state regulators frequently misunderstand the dates and interpret them to be indicators of safety.<sup>50</sup> Even though most date labels do not indicate safety, some states even restrict or forbid the sale or donation of past-date foods, creating unnecessary barriers to the donation of safe, wholesome food.<sup>51</sup> ReFED, a multi-stakeholder nonprofit committed to reducing food waste, found that date label standardization is the most cost-effective solution to food waste reduction, indicating that date label standardization could potentially divert 650,000 tons per year of food waste at an economic value of \$2.4 billion per year.<sup>52</sup>

Through CNR, Congress can mandate a standardized date label system wherein manufacturers or retailers who choose to affix date labels on foods would use one of two prescribed labels, with a prohibition on all state requirements of differing language. The prescribed phrases would be “BEST If Used By,” to indicate a product labeled for quality purposes and “USE by,” to indicate a product that should be discarded past-date for safety reasons. The “USE By” language should be limited to use on high-risk, ready-to-eat foods that have a high likelihood of causing a foodborne illness if consumed past-date—foods such as deli meats and unpasteurized cheeses.<sup>53</sup> Manufacturers should also have the option to include the words “or Freeze By” after the standard label language. The Food Date Labeling Act of 2019, introduced in the 116<sup>th</sup> Congress, would have codified these standard labels.<sup>54</sup>

In addition to standardizing date labeling language, Congress should expressly allow for the sale or donation of foods after the quality date. Currently, 20 states restrict or prohibit the sale or donation of past-date food, even though the date generally is intended to indicate quality rather than safety.<sup>55</sup> Because foods are still safe for consumption past their peak quality date,<sup>56</sup> federal legislation should bar states from prohibiting the sale or donation of food that is merely past the “BEST If Used By” date. States would still be allowed to restrict the past-date sale or donation of foods bearing the “USE By” date labels that communicate when a food item should be discarded.

Finally, Congress should require that the USDA and the FDA educate the general public on the meaning of the two standard date label phrases required by this proposed legislation. An education campaign is necessary for the date labeling changes to have the desired impact, because for consumers to change their behavior they need to understand that “BEST If Used By” date labels are not the same as “expiration” dates. As trusted government agencies charged with protecting consumers, the USDA and the FDA are in a unique position to reduce this confusion around date labels, especially if they can partner with the private sector to streamline messaging about date labels. If date labeling language is standardized, educating consumers about the meaning of the standard date labeling terms would ensure that consumers make informed decisions about when to discard food products.

## **RECOMMENDATION I.3: DIRECT THE FDA TO OFFER CLEAR, STANDARD FOOD SAFETY GUIDANCE FOR FOOD DONATIONS** ✓

Lack of clear food safety guidance poses a challenge to food donors. Food donors and food rescue organizations often have trouble figuring out how food safety regulations apply to the food they wish to

donate or distribute. Food processing is generally regulated under federal law, with the USDA in charge of inspections for meat and poultry processing, and the FDA overseeing the rest of the food supply. For food establishments—restaurants, cafeterias, retail stores, and school food service—the food safety laws vary by state and locality.<sup>57</sup> Confusion over food safety risks and requirements for donated food results in food being wasted rather than rescued, as potential donors tend to err on the side of caution and avoid donating perfectly safe food over fear of running afoul of food safety laws.<sup>58</sup> The FDA does not offer guidance for the donation of foods prepared in manufacturing facilities that the FDA inspects. In addition, most state food safety laws do not have clear donation-specific sections because they are generally based on the FDA Food Code,<sup>59</sup> a model food safety code that lacks language on food donations. The health inspectors that conduct safety inspections also do not have adequate guidance on how to evaluate food donations and often provide conflicting or overly risk-averse messages to food donors.<sup>60</sup> Health inspector training is based on the FDA Food Code, which, as noted above, does not include any mention of food donation.

In December 2020, the USDA issued draft guidance for meat and poultry establishments regulated by USDA that seek to donate their products to nonprofit establishments.<sup>61</sup> The USDA's guidance is particularly useful because it sets a default presumption that all surplus meat and poultry should be eligible for donation, instructing donors to assume that food products are eligible for donation unless they are included in one of the few enumerated categories that raise safety concerns. The FDA does not have any similar guidance for manufacturing facilities inspected under FDA authority, or in the model food safety guidance it provides to states in the FDA Food Code.

***Congress should direct the FDA to develop guidance, similar to the USDA's recent guidance, that lays out food safety practices for donating food from FDA-inspected facilities.*** Clear guidance from the FDA that sets out a presumption of food being able to be donated and specifies provisions or requirements that apply to donated food would ease concerns of food donors and food rescue organizations, and lead to increased and safer donation. The FDA should coordinate with donors and food rescue organizations to produce useful guidance.

***Congress should direct the FDA to include donation-specific language in the FDA Food Code or produce and disseminate guidance that helps states identify how the FDA Food Code applies to food donations.*** Food retail and food service establishments are regulated under state or local law, which is based on the model FDA Food Code. Congress should instruct FDA to include language in the FDA Food Code that expresses support for safe food donations, makes clear which safety regulations are relevant for food donation, and helps bring uniformity to health inspectors' understandings of food donation.<sup>62</sup> The large majority of state food safety officials support the creation of such guidance or inclusion of language in the FDA Food Code, according to a survey of officials from state food safety agencies in all 50 states.<sup>63</sup> Including clear language in the Food Code will not only provide guidance to food establishments, but will also ensure such information is included in food safety training for health inspectors, helping them to make better decisions regarding what food donations to allow.

### **Administrative Opportunity:**

The FDA has wide discretion in determining the contents of its Food Code every four years. In creating each new edition of the Food Code, the FDA receives input from the Conference for Food Protection (CFP), a nonprofit organization consisting of industry, regulators, academia, consumers, and professional organizations.<sup>64</sup> The FDA could, of its own accord or on the recommendation of the CFP, act without Congress's direction to produce and disseminate clarifying guidance that helps states and food establishments identify how the FDA Food Code and other FDA food safety laws apply to donations.

## RECOMMENDATION I.4: FUND A CONSUMER EDUCATION CAMPAIGN ON FOOD WASTE

The largest quantity of food waste in United States occurs at the household level. Household consumers throw away roughly 30 million tons of food, which accounts for 37 percent of the total food waste in America.<sup>65</sup> However, American consumers do not perceive themselves as wasteful: nearly three-quarters of Americans believe they discard less food than the average American.<sup>66</sup> Furthermore, a study by the NRDC found that there was no significant relationship between surveyed households' levels of food waste and their income level.<sup>67</sup> As such, low-income households are disproportionately impacted by confusion surrounding household food waste, as a greater percentage of their financial resources is spent on food that ultimately goes to waste. Given consumers' naiveté with respect to household food waste and the widespread nature of the problem, a national campaign to educate consumers on household food waste has the potential for dramatic reduction in food waste at the consumer level.

A national food waste campaign spearheaded by the USDA or the EPA could effectively raise awareness about the issue and change behavior across all sectors of the food chain. The creation of this campaign can be included in CNR because, like the Emerson Act, it has a nexus to food insecurity: increasing awareness of strategies to reduce household food waste can help low-income individuals avoid food insecurity. A national campaign could illustrate how much food goes to waste in households across the country, highlight methods for preserving and storing foods, clarify the meaning of date labels,<sup>68</sup> provide consumers with tips to identify whether a food item is still safe and edible, and teach them how to compost food scraps.<sup>69</sup> ReFED reports that a national consumer awareness campaign is another cost-effective solution to reducing food waste—such a campaign could annually divert 1.38 million tons of food and create \$6 billion of economic value.<sup>70</sup>

National education campaigns have proven effective in other contexts. Relevant to food waste, the United Kingdom's Waste and Resources Action Programme's (WRAP) "Love Food Hate Waste" nationwide campaign reduced consumer food waste by 21 percent in five years<sup>71</sup> and had a total benefit-cost ratio of 250:1.<sup>72</sup> In addition, the U.K. avoided 3.4 million tons of greenhouse gas emissions and saved 1 billion cubic meters of water—about 400,000 Olympic-sized swimming pools—each year after launching the campaign.<sup>73</sup> Here in the United States, the Centers for Disease Control's nine week, national anti-smoking education campaign, "Tips From Former Smokers," motivated almost 2 million Americans to attempt to quit smoking<sup>74</sup> and was hailed as highly cost-effective, amounting to only about \$480 per participant.<sup>75</sup>

Several domestic food waste campaigns could serve as models for a larger-scale national education campaign. In 2016, the Ad Council and the Natural Resources Defense Council (NRDC) launched "Save the Food," a public awareness campaign that encourages Americans to reduce food waste.<sup>76</sup> In its first year, the campaign received more than \$35 million in donated media and survey results demonstrated that those who had seen "Save the Food" advertisements were more than twice as likely to say they sought information about wasting less food, compared to those who had not seen the advertisements.<sup>77</sup> Another resource is the EPA's "Food: Too Good to Waste" Implementation Guide and Toolkit, which provides guidance for community organizations and local governments to implement campaigns targeted at specific groups, such as residential associations or farmers markets.<sup>78</sup> Although these tools were created for smaller audiences, they provide a solid foundation to build a more robust national campaign.

Legislative language in support of a national media campaign to reduce food waste could be taken from Section 501 of the Food Recovery Act of 2020, a bill introduced in the 116<sup>th</sup> Congress.<sup>79</sup> Section 501 proposes providing the Secretary of Agriculture with \$8 million in funding from the Commodity Credit Corporation to support a national media campaign to decrease food waste for fiscal year 2021.<sup>80</sup> While this bill is a step

in the right direction, it underestimates the cost of a national campaign. Using the U.K.'s WRAP as a starting point, in the upcoming CNR legislation Congress should appropriate at least an equivalent amount—approximately \$32.5 million over five years—for a robust U.S. consumer education campaign.

## II. SCHOOL MEALS

The largest and best-known child nutrition programs are the school meal programs,<sup>81</sup> the National School Lunch Program (NSLP)<sup>82</sup> and the School Breakfast Program (SBP).<sup>83</sup> NSLP is the second largest federal nutrition program after the Supplemental Nutrition Assistance Program (SNAP).<sup>84</sup> In 2017, it subsidized 4.9 billion lunches in nearly 96,000 schools and had an average daily participation of 30 million students.<sup>85</sup> SBP subsidized over 2.4 billion breakfasts in over 88,000 schools in 2017 and had an average daily participation of 14.7 million children that year.<sup>86</sup> In both programs, the federal government provides funding to reimburse schools for all or a portion of the cost of children's meals during the school day.<sup>87</sup> Schools must comply with federal rules regarding the nutrition of foods provided through these programs,<sup>88</sup> as well as for other a la carte items sold in schools that take part in NSLP.<sup>89</sup>

### **Universal School Meals: A Promising Opportunity During COVID-19 and Beyond:**

During the COVID-19 pandemic, unexpected school closures led to the provision of school meals through the Summer Food Service Program (SFSP) and the Seamless Summer Option (SSO)—two programs that typically provide school meals during school closures over the summer<sup>90</sup>—as well as the implementation of the Pandemic EBT (P-EBT) program, which provides the families of eligible children whose schools have closed with temporary emergency nutrition benefits loaded on EBT cards.<sup>91</sup> Additionally, because the pandemic has created logistical barriers to accessing school meals, the USDA has issued regulatory waivers to provide schools and other program operators with additional flexibility to meet the needs of their communities.<sup>92</sup> In October 2020, the USDA announced a regulatory waiver allowing schools to serve free meals to all students regardless of their household's income for the entire 2020-2021 school year.<sup>93</sup> Universal free school meals, which had already been implemented in several school districts, including Boston, Chicago, and New York, prior to the pandemic<sup>94</sup> (using authority under the Community Eligibility Provision created by the 2010 Healthy, Hunger-Free Kids Act), will ensure that no child goes hungry during school or accrues stigmatizing and burdensome unpaid meal debts.<sup>95</sup> Some policymakers and many advocates are now calling for universal free school meals to become permanent,<sup>96</sup> a change that would not only reduce stigma and meal debt, but would also make school meals a more integrated part of the academic day, improve the nutritional quality of meals, and reduce the administrative cost and burden on schools.<sup>97</sup> If universal free school meals do become permanent at the federal level, reducing food waste in school meal programs will become even more important as a means to increase program efficiency and keep program costs manageable.

Food waste in schools has long been a serious issue, with rates mirroring larger trends in consumer food waste. A 2013 study published by the Harvard School of Public Health examined plate waste in several Boston middle schools and found that 40 percent of food served was discarded uneaten, estimating the nationwide cost of school food waste to be over \$1 billion annually,<sup>98</sup> and 2019 research by the World Wildlife Fund (WWF) indicates that school food waste could cost as much as \$1.7 billion every school year.<sup>99</sup> Although studies have shown that changes implemented by the Healthy, Hunger-Free Kids Act did not increase food waste<sup>100</sup> and may have even reduced it,<sup>101</sup> more should be done to reduce school food waste because of the sheer size and impact of the school meal programs. Moreover, schools are an important venue for change because they can teach the next generation of consumers the value of food as a resource as well as how and why to limit their own household waste.<sup>102</sup>

A number of proven strategies can reduce food waste in schools. However, schools are often hesitant to

adopt these and other strategies, either because of the costs of implementation or because they need better guidance on how to implement such changes. In order to make progress on reducing school food waste and maximize the opportunity to educate children about the importance of making better food waste decisions, Congress should mandate certain changes related to school food recovery and provide the resources to support state and local efforts to educate students and prevent school food waste.

Through the next CNR legislation, the federal government can play an important role in supporting schools undertaking food waste reduction efforts. It can do so by offering schools various financial incentives to implement food waste reduction policies and by mandating certain changes, such as utilizing the offer versus serve (OVS) method of providing school meals.<sup>103</sup>

## RECOMMENDATION II.1: INCENTIVIZE SCHOOL FOOD WASTE AUDITS

Food waste audits can help school administrators understand the scope of their food waste problem and identify specific areas for improvement.<sup>104</sup> For example, Washington Elementary School in Fayetteville, Arkansas conducted lunch audits in 2015 and found that milk was one of the most frequently wasted items.<sup>105</sup> The auditor discovered that a number of surveyed students and administrators mistakenly thought that the USDA required all students to take milk during lunch regardless of students' preferences.<sup>106</sup> In offer versus serve (OVS) schools, however, milk is not a mandatory component.<sup>107</sup> The audit results inspired the school administrators to provide 8-ounce cups for water, install a sign in the serving station explaining that students do not have to take milk, and set up a share table<sup>108</sup> for students to leave unopened milks. These measures led to a 20 percent decrease in overall milk waste.<sup>109</sup>

Audits can serve as important tools for assessing and addressing food waste in schools, but their impact is limited due to the lack of widespread implementation. The USDA and EPA have released a food waste audit guide to inform school administrators on the benefits of audits and to help them plan their own.<sup>110</sup> It is likely, then, that resource constraints or inertia, rather than lack of federal guidance, are the primary factors preventing widespread implementation of food waste audits. It may be difficult for many schools to overcome these barriers and implement food waste audits without additional incentives. This section proposes several ways that the next CNR legislation can incentivize school food waste audits.

***Congress could provide grants to fund school food waste audits.*** These grants could compensate school food authorities who implement an audit, or they could pay the salary of a full-time waste diversion official who would coordinate food audits in all of a district's schools. These investments could be small, but would likely have a big impact on a school's participation. Along these lines, the School Food Recovery Act of 2020, introduced in the 116<sup>th</sup> Congress, would have created a grant program that supports local educational agencies in carrying out food waste reduction programs, including school food waste audits that can be conducted with students where possible to help turn cafeterias into classrooms and more effectively engage students on the issue of food waste.<sup>111</sup> Congress can incorporate this language into the next CNR bill to encourage food waste audits. Congress should provide that external organizations such as nonprofits or university partners may be included as subgrantees, in order to assist schools by facilitating workshops, training staff to conduct audits, and creating curricula to incorporate food waste audits into students' education. These grants should be conditioned on measurable activities, such as the performance of a specified number of audits per year.

***Congress could broaden the school "local wellness policy" requirement to require schools to report on their food waste.*** Schools participating in the NSLP are required to create a written plan, called a "local wellness policy," that provides "goals for nutrition promotion and education, physical activity, and other school-



based activities that promote student wellness.<sup>112</sup> Each participating school must write a local wellness policy, then periodically update the school community on the policy's implementation and allow the public to participate in its revision.<sup>113</sup> Congress could require that local wellness policies include a discussion of food waste concerns and a plan for tracking and measuring food waste. Because inertia is likely a factor preventing many schools from implementing food waste audits, requiring schools to include information on food waste in their NSLP-required local wellness policies could provide the impetus for schools to undertake food waste audits or other measures to track their waste and recovery.

## **RECOMMENDATION II.2: MANDATE AN OFFER VERSUS SERVE MODEL ACROSS MORE LEVELS OF THE SCHOOL SYSTEM**

Students waste food when they are forced to take items they do not plan to eat. To remedy this problem, the USDA encourages schools to adopt a method called “offer versus serve” (OVS). Meals that are eligible for NSLP reimbursement must consist of five components: fruit, vegetable, whole grain, meat/alternative, and milk.<sup>114</sup> The OVS policy allows students to decline up to two of these five components, as long as they take a fruit or a vegetable.<sup>115</sup> By contrast, students in schools without an OVS policy would be required to accept all five components, regardless of whether they intend to eat all of the foods they are given. USDA regulations stipulate that OVS is required in high schools, but merely optional in elementary and middle schools.<sup>116</sup> Congress should mandate OVS across all schools, but preserve some flexibility for schools to decline to use OVS for the youngest grade levels if doing so is difficult to implement or if it is deemed inappropriate for the school population.

Congress should also mandate OVS for SBP. Like NSLP, SBP requires schools to offer students all three required food components: grains, juice/fruit/vegetable, and milk.<sup>117</sup> Under OVS, schools must offer at least four food items daily as part of the required components and students must select at least three offered food items, one of which must be fruit or vegetables.<sup>118</sup> The current law, however, gives local school authorities discretion with respect to whether to adopt OVS for their SBP.<sup>119</sup> Similar to the recommendation for NSLP, Congress should also mandate OVS for all K-12 schools, but preserve some flexibility for younger grades. It should further require the USDA to publish additional guidance and implement training for teachers and staff to adequately prepare for the transition. Widespread use of the OVS model will lead to more efficient practices in both the NSLP and SBP.

### **Administrative Opportunity:**

The USDA could change its regulations<sup>120</sup> to mandate OVS for all K-12 school lunches.<sup>121</sup> The Child Nutrition Act provides that local school authorities have discretion over whether to use OVS for school breakfast programs, so the USDA cannot mandate OVS for school breakfast programs,<sup>122</sup> but it can publish guidance encouraging local school authorities to adopt OVS for school breakfasts.

## **RECOMMENDATION II.3: AUTHORIZE FINANCIAL INCENTIVES TO SCHOOLS THAT REGISTER WITH THE EPA FOOD RECOVERY CHALLENGE**

Under the EPA Food Recovery Challenge, businesses or organizations (including schools) make a pledge to improve their sustainable food management practices and submit to the EPA the results of their activities.<sup>123</sup> Participating organizations work to reduce their food waste through various food recovery efforts. Upon their pledging, the EPA provides participants with access to data management software and technical assistance to help them quantify their food recovery and improve their practices.<sup>124</sup> The participants keep

track of their progress and submit annual progress reports, as well as updated goals, to the EPA.<sup>125</sup>

Through this program, a number of schools have made notable progress in their food waste reduction. For example, Christa McAuliffe Elementary School in Lenexa, Kansas was a 2018 Food Recovery Challenge national award winner.<sup>126</sup> The school initiated cafeteria composting and recycling in the 2015–16 school year, and was able to compost 5,625 pounds of food waste.<sup>127</sup> By 2017, it had improved its recycling and composting equipment signage sufficiently to compost 11,875 pounds of food that otherwise would have been wasted.<sup>128</sup> Along with implementing the successful composting program, the school administration switched from using Styrofoam and plastic serving materials to using sustainable materials such as compostable trays with paper boats and paper cups.<sup>129</sup>

Currently, only 86 of the EPA Food Recovery Challenge’s 1,179 total participants are schools.<sup>130</sup> This is likely because food waste measures are expensive to implement; not only are they financially costly, but they require significant time investments by school food administrators. The EPA does not currently provide schools with financial benefits to offset these costs. According to the EPA’s website, the benefits of participating in the challenge are public recognition through awards and social media, “potential tax benefits,” “saving money by purchasing less and lowering waste disposal fees,” and nonfinancial benefits such as helping the community.<sup>131</sup> While many businesses may be sufficiently incentivized to join the challenge by public relations benefits and potential tax savings, these benefits are generally not applicable to schools. Thus, the Food Recovery Challenge provides little or no financial benefit to schools to offset the costs of participation.

More schools would be likely to join the Food Recovery Challenge if the EPA provided funding incentives. Congress should authorize the EPA to provide financial rewards to schools that register with the EPA Food Recovery Challenge in order to offset the costs of investing in food recovery. These incentives could be similar to those offered in the HealthierUS Schools Challenge (HUSSC), a USDA program created in 2004 that offered public recognition and small financial awards of up to \$2,000 for schools that met the program’s criteria for food quality, participation in meal programs, physical activity opportunities and nutrition education.<sup>132</sup> By 2012, 3,717 schools had registered with HUSSC.<sup>133</sup> Similar financial incentives could greatly increase schools’ awareness of and participation in the EPA Food Recovery Challenge.

#### **RECOMMENDATION II.4: OFFER GRANT FUNDING TO SCHOOLS TO IMPLEMENT FOOD WASTE REDUCTION AND RECOVERY PROGRAMS**

School food service operates with low financial margins, and as such may require significant financial assistance to implement food waste and recovery measures. Through the next CNR legislation, Congress should create a grant program that encourages schools to undertake food waste reduction and recovery measures. Grants could be offered on a competitive basis to schools to implement reforms that reduce food waste, such as the following:

- **Administer “share tables.”** Share tables are tables or stations where children may return uneaten food or beverages in their original containers or peels.<sup>134</sup> Share tables allow children to make food they do not want to eat available to other children, while simultaneously allowing schools to retain SBP or NSLP reimbursement eligibility for that item.<sup>135</sup> Other children can take from the share table at no cost, or the school can choose to reoffer items left on the share table at later meal services or to donate the leftover foods.
- **Install bulk milk dispensers and dishwashing equipment.** Milk is a major source of waste in school cafeterias.<sup>136</sup> Data from WWF analyzing 46 schools in nine cities across the U.S. found that on average,

each of the schools produced approximately 28.7 cartons of milk waste per student per year.<sup>137</sup> Bulk milk dispensers and dishwashing equipment installations have been shown to reduce schools' milk waste, milk carton and packaging waste, and energy and trash fees.<sup>138</sup> Grant funding can help schools make upfront investments in these installations and accelerate their payback periods.

- **Support school food donation programs.** Schools can donate leftover food, such as food left on share tables, to a non-profit organization.<sup>139</sup> However, donating food can be expensive for schools because it requires money to store and transport food that otherwise would be discarded. Grant funding can help offset those expenses and incentivize school food authorities to set up the infrastructure to make regular donations.
- **Install refrigerator and other food storage facilities for students to store food that is not finished during the lunch period.** These facilities would allow students to keep their lunches from spoiling and have the option to bring them home.<sup>140</sup>
- **Establish compost facilities on site.** These compost facilities could be used as part of schools' food waste reduction efforts as well as educational efforts.
- **Conduct school food waste audits.** As suggested in section II.1, these grants could compensate school food authorities who implement an audit, or they could pay the salary of a full-time waste diversion official who would coordinate food audits in all of a district's schools.
- **Redesign school lunch periods to implement changes proven to decrease food waste at school lunches.** Several specific changes to school meal service are proven to reduce food waste, such as increasing the length of school lunches,<sup>141</sup> moving recess to before lunchtime,<sup>142</sup> and utilizing student taste tests to get input before introducing new menu items.<sup>143</sup>

Grant programs directed at reducing school food waste will not only provide schools with needed funding to administer specific programs—it also will encourage schools to devote more time and attention to food waste generally, and reward schools for engaging in these beneficial activities.

### **Administrative Opportunity:**

The USDA can increase school cafeterias' usage of share tables. FNS recommends this practice as an “innovative strategy to encourage the consumption of nutritious foods and reduce food waste.”<sup>144</sup> Instead of merely encouraging the use of share tables, the USDA could issue regulations requiring schools to implement share tables where feasible.

### **Administrative Opportunity:**

Implementing 30-minute lunchtimes could reduce plate waste by nearly one-third.<sup>145</sup> The Current USDA regulation “encourages schools to provide sufficient lunch periods” for students to eat their lunches.<sup>146</sup> Through guidance, the USDA encourages schools to offer at least 30 minutes of lunchtime.<sup>147</sup> However, nearly half of school districts nationwide do not require or recommend that schools provide students with even 20 minutes to eat lunch once they receive their meal.<sup>148</sup> The USDA could update its regulation to define a mandated “sufficient lunch period” or issue guidance for schools on how to increase the time that students have to eat their meals.<sup>149</sup> Additionally, the USDA could publish guidance encouraging lunch after recess, since this structure has also been shown to reduce food waste by nearly a third.<sup>150</sup>

## **Administrative Opportunity:**

The USDA could encourage schools to involve students in meal planning through taste tests. Involving students in the menu planning process based on taste test feedback can increase the foods students are likely to eat and reduce the risk of large amounts of waste the first few times an item is served.<sup>151</sup> The USDA could publish guidance encouraging schools to adopt this practice and laying out practical steps for implementation. It could also encourage schools to engage in other practices that help students become familiar with new foods, such as “try days” and cooking demos.<sup>152</sup>

### **RECOMMENDATION II.5: MODIFY EXISTING SCHOOL GRANT PROGRAM SELECTION PROCESSES TO PREFERENCE APPLICANTS THAT HAVE FOOD WASTE REDUCTION OR FOOD DONATION PLANS**

The USDA administers several grant programs for schools, including the NSLP Equipment Assistance Grants<sup>153</sup> and the Farm to School Grant Program.<sup>154</sup> Congress should demonstrate its commitment to food waste reduction by requiring the USDA to encourage grantees from these and similar programs to design and implement food waste reduction and recovery plans.

Through the CNR process, Congress should direct the USDA to consider food waste reduction plans as a factor during grant selection processes for relevant grant programs, either by asking a question about food waste reduction plans in the grant application, or by awarding extra points to schools that have or commit to develop such a plan. This process could consider whether schools have successfully implemented a food waste reduction plan, or whether they have created or pledged to create one. School food waste reduction plans could include efforts to implement changes to the meal period, launch or expand donation programs, and develop metrics to track food waste and waste reduction. Having a criterion in grant evaluation that looked at whether schools have such a plan would create a strong incentive for prospective USDA grantees to take the necessary steps to begin donating surplus food and reducing their waste. However, any requirement or bonus points for the creation of a school food waste reduction plan should take into account the challenges this may pose for high-need schools, and should either provide additional assistance to such schools in creating a plan or should balance the bonus points for development of a food waste reduction plan with important equity considerations.

## **III. CHILD AND ADULT CARE FOOD PROGRAM**

The Child and Adult Care Food Program (CACFP) is a federal program that provides reimbursements for meals and snacks served to eligible low-income children and adults in early childhood, day care, and after-school settings.<sup>155</sup> The purpose of CACFP is to “contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired disabled persons.”<sup>156</sup> While the USDA provides the reimbursements, it is state agencies that administer the program, provide training and technical assistance, monitor program performance of CACFP operators, and establish CACFP application review procedures.<sup>157</sup> Eligible beneficiaries receive program-funded meals at participating childcare centers, adult day care centers, afterschool care programs, and shelters.<sup>158</sup> CACFP funded 2 billion meals and snacks served to 4.5 million children and to 131,000 persons in adult day care in 2018.<sup>159</sup>

Reducing food waste aligns well with CACFP’s goals of promoting the health and wellness of its participants. While smaller than the school meal programs, CACFP operations have similar rates of food waste. Studies have found that preschoolers enrolled in CACFP waste more than 40 percent of total food served,<sup>160</sup> a rate

that mirrors the average rate of consumer food waste produced in the U.S.<sup>161</sup> Reducing food waste in CACFP institutions would help the limited federal dollars going to CACFP better serve the program’s beneficiaries. Congress could make several changes to the CACFP program in order to require, encourage, or facilitate food waste reduction measures at CACFP institutions.

### **RECOMMENDATION III.1: MANDATE THAT CACFP OPERATORS RECEIVE FOOD WASTE REDUCTION TRAINING IN ORDER TO STAY LICENSED**

In order to be an eligible operator under CACFP, institutions must be “licensed, or otherwise have approval, by the appropriate Federal, State, or local licensing authority.”<sup>162</sup> Congress requires state agencies to provide sufficient training and technical assistance to institutions, and requires the USDA to assist state agencies in fulfilling these requirements.<sup>163</sup> Congress also sets out certain eligibility criteria for institutions participating in the program as CACFP operators.<sup>164</sup>

Unsurprisingly, federal law does not require CACFP operators to receive food waste reduction training in order to be licensed.<sup>165</sup> However, given that 2 billion meals and snacks were served to over 4.5 million people through the program in 2018 alone,<sup>166</sup> ensuring that CACFP operators are trained in food waste reduction techniques could make a significant impact on food waste reduction. Through the next CNR legislation, Congress should change the eligibility criteria of CACFP operators<sup>167</sup> to require such training to maintain licensure as well as require that both USDA and state agencies provide adequate food waste reduction training and technical assistance. Such training should be required for center-based CACFP programs or CACFP operators above a certain size threshold, and should be optional for CACFP operators at smaller facilities or in-home care programs.

#### **Administrative Opportunity:**

The USDA could change the regulatory eligibility criteria of CACFP operators<sup>168</sup> to require food waste training as part of CACFP licensure.

#### **Administrative Opportunity:**

The USDA also could increase awareness of food waste practices by shaping state agencies’ training to CACFP operators. The USDA could do this in one of two ways. First, the USDA could change its federal regulations to require food waste reduction training be a part of state agencies’ training to CACFP operators.<sup>169</sup> Second, the USDA could add food waste reduction information to the training materials that it provides to state agencies.<sup>170</sup>

### **RECOMMENDATION III.2: INCENTIVIZE CACFP OPERATORS TO CONDUCT FOOD WASTE AUDITS**

Food waste audits help daily meal-providing institutions understand the scope of their food waste problem and identify specific areas of improvement.<sup>171</sup> They can also galvanize these institutions to implement waste-reducing interventions such as administering share tables, improving their signage, or composting. Food waste audits are appropriate for CACFP institutions because they can provide opportunities to teach children about food waste reduction (through, for example, the creation of share tables), while helping CACFP operators use their federal reimbursements more effectively. As the USDA has explained, CACFP plays a “vital role” in reducing costs at day care centers and other CACFP institutions.<sup>172</sup> However, like schools, CACFP operators are unlikely to conduct food waste audits without financial incentives. Congress

should authorize the USDA to reimburse CACFP operators for the expenses incurred for food waste audits as part of the CACFP reimbursement process.

Under CACFP, state agencies use the funds they receive from the USDA to reimburse CACFP operators for the meals they provide to their participants.<sup>173</sup> Operating within this administrative framework, Congress could authorize reimbursements for CACFP operators that successfully complete food waste audits. These reimbursements could cover the costs of food waste audits or they could be in the form of performance-based payments similar to those offered under NSLP.<sup>174</sup> Currently, the reimbursements given to CACFP operators differ based on whether the operators are child care centers or day care homes: child care centers receive reimbursements on a per-meal basis, whereas day care home operators receive reimbursements based on the number of families they serve.<sup>175</sup> Both of these reimbursement rates could be increased for CACFP operators that successfully complete food waste audits as part of a “performance-based” reimbursement system.

### **Administrative Opportunity:**

The USDA currently only permits share tables<sup>176</sup> to be used in the At-Risk Afterschool Meals component of CACFP.<sup>177</sup> The USDA could publish guidance or regulations requiring the use of share tables in the At-Risk Afterschool Meals program where feasible. USDA could also consider permitting share tables in the adult day care and family day care components of CACFP.

## **RECOMMENDATION III.3: OFFER FINANCIAL INCENTIVES TO CACFP CENTERS THAT REGISTER WITH THE EPA FOOD RECOVERY CHALLENGE**

As previously discussed, under the EPA Food Recovery Challenge, organizations pledge to make their food management practices more sustainable and report the results of their activities to the EPA.<sup>178</sup> Upon pledging, the EPA provides participants with technical assistance to help quantify their progress and guide improvements. Implementing food waste reduction measures can be expensive for CACFP operators, which tend to be small in scale.<sup>179</sup> Congress should authorize the EPA to provide financial rewards to CACFP operators that register with the Food Recovery Challenge, so as to encourage these operators to implement food waste reduction measures.

## **IV. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN**

Authorized by section 17 of the Child Nutrition Act of 1966, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federal grant program that provides supplemental nutritious foods, nutrition education and counseling, and referrals to health care and other social services to low-income, pregnant, and postpartum women, infants, and children up to the age of 5.<sup>180</sup> WIC-authorized supplemental foods include infant cereal, baby foods, fruits and vegetables, tofu, peanut butter, canned fish, and whole wheat bread.<sup>181</sup> WIC is the third largest nutrition assistance program in the country, serving nearly half of all infants born in the United States in 2018 and an average of 6.9 million recipients per month in 2019.<sup>182</sup> WIC received \$6 billion of appropriations for fiscal year 2020.<sup>183</sup>

WIC can be a useful tool in helping reduce the 37 percent of food waste in America that comes from

households.<sup>184</sup> Although WIC does not currently have a stated goal of encouraging participants to reduce their food waste, doing so aligns well with WIC's goals of helping women make healthful and economical meal planning decisions. The USDA has found that the average four-person household loses \$1,500 to uneaten food every year,<sup>185</sup> meaning that reducing food waste can ensure that limited food dollars go further. Rising levels of food insecurity during the COVID-19 pandemic<sup>186</sup> further highlight the need to reduce food waste at the household level. The recommendations in this section will help local WIC programs to effectively incorporate food waste reduction measures into their programming.

## RECOMMENDATION IV.1: REQUIRE FOOD WASTE PREVENTION AS PART OF WIC NUTRITION EDUCATION

Nutrition education is the primary service that distinguishes WIC from other nutrition assistance programs: WIC is the only FNS program with legislative and regulatory requirements to provide nutrition education to its participants.<sup>187</sup> WIC's nutrition education programs teach WIC recipients about healthy eating habits, grocery shopping on a budget, and food safety.<sup>188</sup> WIC nutrition education could provide an opportunity to increase awareness about how to reduce food waste in low-income households, a change that can help WIC participants make food dollars go further and reduce food insecurity. Implementing food waste reduction strategies can help WIC participants make the most of their benefits and ensure that Congress's appropriations to WIC are used efficiently.

Household food waste prevention should be included as part of nutrition education under WIC. This can equip WIC participants with the tools to maximize their dollars to ensure nutritionally adequate meals at the lowest cost, by properly storing perishable items, reusing and repurposing leftovers, and ultimately reducing food waste.<sup>189</sup> Additionally, the Healthy, Hunger-Free Kids Act amended the Child Nutrition Act to authorize WIC agencies to share nutrition education resources with CACFP institutions.<sup>190</sup> Thus, making food waste reduction techniques a part of WIC's nutrition education curriculum could mean that these techniques will reach an even wider audience than simply WIC participants.

Congress should amend the Child Nutrition Act to explicitly mandate the inclusion of food waste reduction as a part of WIC nutrition education. The definition of "nutrition education"<sup>191</sup> could be revised to emphasize the importance of meal planning and food waste reduction.<sup>192</sup> Congress could also specify that if states have online WIC nutrition education resources, these resources should also include online resources for food waste.

### **Administrative Opportunity:**

The USDA can amend its regulations to more specifically identify food waste reduction practices as a part of the "meal planning" practices that are taught in nutrition education as part of WIC's effort to improve participants' health status.<sup>193</sup> Without needing to amend its regulations, the USDA can issue guidance to state agencies underscoring how economical food purchasing and food waste reduction habits can lead to healthier diets and thus should be taught as part of WIC's nutrition education.

## RECOMMENDATION IV.2: ENSURE THAT LOCAL WIC AUTHORITIES ARE TRAINED IN FOOD WASTE REDUCTION

Congress should ensure that the local authorities who provide nutrition education under WIC recognize the value of food waste reduction as part of maintaining healthful diets on a budget and are trained in teaching household food waste reduction techniques.

The Child Nutrition Act already addresses the importance of training WIC nutrition education professionals, stating that “[t]he State agency shall provide training to persons providing nutrition education, including breastfeeding support and education.”<sup>194</sup> In order to ensure that local WIC nutrition authorities receive training on household food waste reduction techniques, Congress could explicitly add this requirement into this section.

### **Administrative Opportunity:**

USDA can add guidance on including food waste education in WIC education. In guidance to state agencies designing their training for local WIC authorities, the USDA can instruct state agencies to draw techniques from the EPA’s “Food: Too Good to Waste” toolkit, which provides local governments and community organizations with behavior change and outreach tools that can be used to assist households in reducing their food waste.<sup>195</sup>

### **Administrative Opportunity:**

One source of WIC participant food waste is confusion surrounding the transition to EBT cards:<sup>196</sup> where WIC participants once had to use their entire paper vouchers in one monthly shopping trip, the program now allows participants to use EBT cards over multiple transactions throughout the month. The USDA should instruct state agencies that their training for nutrition education professionals should include instructions to remind WIC participants that EBT cards, unlike vouchers, can be used on multiple transactions on an as-needed basis and thus do not need to be used on one large grocery purchase per month.<sup>197</sup>

## CONCLUSION

Every year, 30–40 percent of all food produced in the United States goes to waste, most of which ends up in landfills.<sup>198</sup> This food waste drains the nation’s water, land, fuel, and other resources, and exacerbates nationwide environmental pollution.<sup>199</sup> It also represents a missed opportunity to use our food as a resource to provide for food-insecure individuals. In order to meet the nation’s food waste reduction goal<sup>200</sup> and address rising levels of food insecurity,<sup>201</sup> Congress must make food waste reduction a legislative priority in the next few years. In light of this urgency, CNR provides a significant opportunity for the federal government to take concerted action to reduce food waste. The next CNR legislation can support this cause by expanding or adapting existing programs and policies as well as by creating new food waste reduction and food recovery policies.

This report recommends numerous changes that Congress may incorporate in the next CNR legislation, including expanding liability protection for food donations, standardizing food date labels, making food waste reduction a priority in school administration and education, and implementing food waste reduction strategies in CACFP and WIC. Even without Congressional action, the USDA could help reduce food waste through several highlighted administrative opportunities. Food waste presents a monumental challenge to this nation’s economy, food security, public health, and to the environment, and Congress can take a proactive role in tackling this issue through CNR.



# APPENDIX A: U.S. FOOD LOSS & WASTE POLICY ACTION PLAN RECOMMENDATIONS AND ADDITIONAL REPORT RECOMMENDATIONS

The Food Loss & Waste Policy Action Plan for Congress & the Administration, discussed on page 6 of this report, was published in 2021 by the Harvard Law School Food Law & Policy Clinic (FLPC), the Natural Resources Defense Council (NRDC), ReFED, World Wildlife Fund (WWF), along with many additional supporters. The Action Plan calls upon Congress and the Biden administration to take ambitious action to achieve the goal of cutting U.S. food loss and waste in half by 2030. It recommends five key policy recommendations ranging from investing in infrastructure and programs that measure and prevent food waste to requiring a national date labeling standard. This report pulls in several key recommendations from the Action Plan that fall within the legislative purview of CNR, along with including additional recommendations that are specific to CNR. The recommendations in this report that are also included in the Action Plan are listed below (as well as the additional recommendations outlined in the report).

## Policy Recommendations Included in the U.S. Food Loss & Waste Policy Action Plan

- Expand the liability protections of the Emerson Act and delegate authority over the Act to the USDA.
- Standardize and clarify date labels to establish a federal system that guides consumers on food safety and quality.
- Direct the FDA to offer clear, standard food safety guidance for food donations.
- Fund a consumer education campaign on food waste.
- Incentivize school food waste audits.

## Additional Report Recommendations

- Mandate an offer versus serve model across more levels of the school system.
- Authorize financial incentives to schools that register with the EPA Food Recovery challenge.
- Offer grant funding to schools to implement food waste reduction and recovery programs.
- Modify existing school program grant selection processes to preference applicants that have a food waste reduction or food donation plans.
- Mandate that CACFP operators receive food waste reduction training in order to stay licensed.
- Incentivize CACFP operators to conduct food waste audits.
- Offer financial incentives to CACFP centers that register with the EPA Food Recovery Challenge.
- Require food waste prevention as part of WIC nutrition education.
- Ensure that local WIC authorities are trained in food waste reduction.

## ENDNOTES

- <sup>1</sup> See *Food Loss and Waste: The Impact of Food Waste*, U.S. Dep't of Agric., <https://www.usda.gov/foodlossandwaste> (last visited Apr. 19, 2020). Food waste refers to food that reaches retail and consumer stages of the supply chain but ultimately goes uneaten. Distinct from food waste is “food loss”, defined as the decrease of available food resulting from decisions and actions by food suppliers in the chain, excluding retailers, food service providers and consumers. See *Food Loss and Food Waste*, Food and Agric. Org. of the United Nations, <http://www.fao.org/food-loss-and-food-waste/en/> (last visited Mar. 30, 2021). This memorandum focuses on food waste.
- <sup>2</sup> See ReFED, Roadmap to 2030: Reducing U.S. Food Waste by 50% and the ReFED Insights Engine 3 (2021), <https://d1qmdf3vop2l07.cloudfront.net/brawny-garden.cloudvent.net/hash-store/a013dff6534d1409dcf3fe652a4691fc.pdf> [hereinafter Roadmap to 2030].
- <sup>3</sup> See *27 Solutions to Food Waste*, ReFED, <https://www.refed.com/?sort=water-conservation> (last visited Apr. 19, 2020).
- <sup>4</sup> See Renee Cosme, *Reducing Food-Related Greenhouse Gas Emissions Through Modification of Human Diet*, Climate Institute (Jan. 27, 2017), <https://climate.org/reducing-food-related-greenhouse-gas-emissions-through-modification-of-human-diet/>.
- <sup>5</sup> See Sources of Greenhouse Gas Emissions, U.S. Evtl. Prot. Agency, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (last visited Mar. 27, 2020).
- <sup>6</sup> See EPA and USDA Join Private Sector, Charitable Organizations to Set Nation's First Food Waste Reduction Goals, U.S. Evtl. Prot. Agency (Sept. 16, 2015), <https://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2015/09/0257.xml&printable=true>.
- <sup>7</sup> See generally Agriculture Improvement Act, H.R. 2, 115th Cong. § 12504(e)(1) (2018).
- <sup>8</sup> *Winning on Reducing Food Waste Federal Interagency Strategy*, U.S. Evtl. Prot. Agency (Apr. 9, 2019), <https://www.epa.gov/sustainable-management-food/winning-reducing-food-waste-federal-interagency-strategy>.
- <sup>9</sup> Kara Clifford Billings & Randy Alison Aussenberg, Cong. Research Serv., IF 10266, *Child Nutrition Reauthorization (CNR): An Overview 1* (2021), <https://crsreports.congress.gov/product/pdf/IF/IF10266>.
- <sup>10</sup> See, e.g., Janice Phillips, *Reducing Food Waste Can Help Address Food Insecurity*, U.S. News and World Report (Oct. 22, 2019), <https://www.usnews.com/news/healthiest-communities/articles/2019-10-22/commentary-the-link-between-food-waste-and-food-insecurity>.
- <sup>11</sup> In 2019, 35 million people, including 11 million children, were food insecure in the United States. See Feeding America, *The Impact of the Coronavirus on Food Insecurity in 2020 & 2021 1-2* (2021), [https://www.feedingamerica.org/sites/default/files/2021-03/National%20Projections%20Brief\\_3.9.2021\\_0.pdf](https://www.feedingamerica.org/sites/default/files/2021-03/National%20Projections%20Brief_3.9.2021_0.pdf).
- <sup>12</sup> See Arloc Sherman, *4 in 10 Children Live in a Household Struggling to Afford Basics*, Ctr. for Budget and Pol'y Priorities (Oct. 21, 2020), <https://www.cbpp.org/blog/4-in-10-children-live-in-a-household-struggling-to-afford-basics>.
- <sup>13</sup> For example, increasing donation of leftover school meals can reduce food insecurity. As another example, incorporating household food waste reduction methods into nutrition education for WIC participants can help WIC participants reduce their food insecurity by using their food budgets more efficiently.
- <sup>14</sup> For example, the Families First Coronavirus Response Act (FFCRA) provided \$500 million in supplemental appropriations to WIC, see Pub. L. No. 116-27 Division B, Title I (2020), and the Coronavirus Aid, Relief, and Economic Security (CARES) Act provided \$8.8 billion of supplemental funding to child nutrition programs, see Pub. L. No. 116-136 (2020). The 2021 Consolidated Appropriations Act, signed into law on December 27, 2020, appropriated \$6 billion to WIC and \$25.1 billion to child nutrition programs. Pub. L. No. 116-260, Division A, Title IV. It also granted emergency funding to CACFP for meal reimbursements for adults up to age 25 residing in emergency shelters. See *id.* The American Rescue Plan, signed into law on March 11, 2021, appropriates \$490 million to temporarily increase WIC food benefits and \$390 million to carry out carry out outreach, innovation, and program modernization efforts. See American Rescue Plan Act of 2021, Pub. L. No. 117-2, §105(e), §1006 (2021).
- <sup>15</sup> See Child Nutrition Reauthorization (CNR): An Overview, *supra* note 9, at 1.
- <sup>16</sup> *Id.*
- <sup>17</sup> *Id.*
- <sup>18</sup> For additional recommendations, see Emma Clippinger et al., *Child Nutrition Act Reauthorization 2015/16: School Food*, Harv. Food Law & Pol'y Clinic, (2016), [http://www.chlpi.org/wp-content/uploads/2016/01/FLPC\\_Child-Nutrition-Reauthorization-Policy-Brief-Jan-2016.pdf](http://www.chlpi.org/wp-content/uploads/2016/01/FLPC_Child-Nutrition-Reauthorization-Policy-Brief-Jan-2016.pdf).
- <sup>19</sup> The Food and Nutrition Service (FNS) administers 15 federal nutrition assistance programs including WIC, Supplemental Nutrition Assistance Program, and school meals. See *FNS Nutrition Programs*, U.S. Dep't of Agric. Food & Nutrition Serv., <https://www.fns.usda.gov/programs> (last visited Mar. 29, 2021).
- <sup>20</sup> Supporters include, for example, American Hotel and Lodging Association, Center for Ecotechnology, Food Recovery Network, Hellmann's, Marriott International, the Kroger Company, Unilever, several local government agencies, and other businesses and nonprofit organizations. See *A Call to Action on US Food Loss & Waste Policy*, Food Waste Action Plan <https://foodwasteactionplan.org/> (last visited Apr. 6, 2021).

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- 22 Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791 et seq. (2017).
- 23 H.R. Rep. No. 104-661, 104th Cong., 2d Sess. § 1(C) (1996), <https://www.congress.gov/congressional-report/104th-congress/house-report/661/1>.
- 24 See James Haley, *The Legal Guide to the Bill Emerson Good Samaritan Food Donation Act*, 2013 Ark. L. Notes (Aug. 8, 2013), <http://media.law.uark.edu/arklawnotes/2013/08/08/the-legal-guide-to-the-bill-emerson-good-samaritan-food-donation-act/>.
- 25 Food Waste Reduction All., Analysis of U.S. Food Waste Among Food Manufacturers, Retailers, and Restaurants 14 (2016), [http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report\\_Final.pdf](http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report_Final.pdf) [hereinafter *Analysis of U.S. Food Waste*].
- 26 42 U.S.C. § 1791 (c).
- 27 42 U.S.C. § 1791 (b)(1), (b)(2).
- 28 42 U.S.C. § 1791 (c)(2).
- 29 42 U.S.C. § 1791 (b)(3).
- 30 See Food Donation Improvement Act of 2019, S. 3141, 116<sup>th</sup> Cong. (2019).
- 31 42 U.S.C. § 1791 (c)(2).
- 32 See Emily Broad Leib Et al., Keeping Food Out of the Landfill: Policy Ideas for States and Localities, Harv. Food Law & Pol’y Clinic 8-9 (2016), [https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit\\_Oct-2016\\_smaller.pdf](https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf).
- 33 Feeding Hungry Students in Schools Act of 2019, H.R. 2706, 116<sup>th</sup> Cong. §2 (2019).
- 34 Student Fairness in Feeding Act, S.B. 725, 85<sup>th</sup> Leg. (Tex. 2017).
- 35 *Id.* (“A school district or open-enrollment charter school may allow a campus to elect to donate food to a nonprofit organization through an official of the nonprofit organization who is directly affiliated with the campus, including a teacher, counselor, or parent of a student enrolled at the campus. The donated food may be received, stored, and distributed on the campus.”)
- 36 See Hunger Free Texans, Food Rescue Tool Kit: A Guide for Schools 4 (2018), [https://www.foodrescue.net/uploads/4/3/2/6/43260919/hft-food-donation-in-schools-tool-kit\\_\\_4\\_.pdf](https://www.foodrescue.net/uploads/4/3/2/6/43260919/hft-food-donation-in-schools-tool-kit__4_.pdf).
- 37 42 U.S.C. § 1791 (b)(3).
- 38 Food Donation Improvement Act of 2019, *supra* note 30, at §2.
- 39 See About Us, Daily Table, <https://dailytable.org/about/#banner> (last visited Apr. 9, 2021).
- 40 See Frequently Asked Questions, Daily Table, <https://dailytable.org/faq> (last visited Apr. 9, 2021).
- 41 See *id.*
- 42 See Jay Rayner, *The Rise of Social Supermarkets*, The Guardian (May 19, 2019), <https://www.theguardian.com/society/2019/may/19/social-supermarkets-food-poverty-jay-rayner/>; see also Serri Graslie, *Social Supermarkets A ‘Win-Win-Win’ For Europe’s Poor*, NPR (Dec. 12, 2013), <https://www.npr.org/sections/thesalt/2013/12/11/250185245/social-supermarkets-a-win-win-win-for-europes-poor>.
- 43 Harv. Food Law & Pol’y Clinic & Nat’l Res. Def. Council, Don’t Waste, Donate: Enhancing Food Donations through Federal Policy 30 (2017), [http://www.chlpi.org/wp-content/uploads/2013/12/Dont-Waste-Donate\\_-March-2017.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Dont-Waste-Donate_-March-2017.pdf).
- 44 Mass. Gen. Laws ch. 94, § 328 (2017), <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94/Section328>.
- 45 Agriculture Improvement Act, H.R. 2, 115th Cong. § 12504(e)(1) (2018).
- 46 See Food Donation Improvement Act of 2019, *supra* note 30, at §3.
- 47 Harv. Food Law & Pol’y Clinic & Nat’l Res. Def. Council, The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America 2 (2013), <https://www.nrdc.org/sites/default/files/dating-game-report.pdf> [hereinafter *Dating Game*].
- 48 U.S. Food & Drug Admin., Opinion Letter from Frank Yiannas, Deputy Commissioner on Supporting the Food Industry’s Voluntary Industry-Wide Standardization of Date Labels (May 23, 2019), <https://www.fda.gov/media/125114/download>.
- 49 *Confused by Date Labels on Packaged Foods?*, U.S. Food & Drug Admin., (May 23, 2019), <https://www.fda.gov/consumers/consumer-updates/confused-date-labels-packaged-foods>.
- 50 Roni A. Neff et al., *Misunderstood Food Date Labels and Reported Food Discards: A Survey of U.S. Consumer Attitudes and Behaviors*, 86 Waste Mgmt 123, 123 (2019).
- 51 See *Dating Game*, *supra* note 47, at 2.
- 52 See *Package Design*, ReFED, <https://insights-engine.refed.com/solution-database/package-design> (last visited Mar. 24, 2021).
- 53 ReFed, ReFed Date Label Standardization Tool 6 (2017), <https://www.refed.com/downloads/ReFED-Standardization-Package.pdf>.
- 54 See Food Date Labeling Act, H.R. 3981, 116th Cong. (2019).
- 55 See Emily M. Broad Leib et al., *Date Labels: The Case for Federal Legislation*, Harv. Food Law & Pol’y Clinic 12 (2019), [https://www.chlpi.org/wp-content/uploads/2013/12/date-labels-issue-brief\\_June-2019.pdf](https://www.chlpi.org/wp-content/uploads/2013/12/date-labels-issue-brief_June-2019.pdf). See *Dating Game*, *supra* note 47, at 12.
- 56 See generally Marianne Gravely, *Before You Toss Food, Wait. Check it Out!*, U.S. Dep’t of Agric. (Feb. 21, 2017), <https://www>.

usda.gov/media/blog/2013/06/27/you-toss-food-wait-check-it-out#:~:text=Most%20shelf%2Dstable%20foods%20are%20safe%20indefinitely.&text=Packaged%20foods%20(cereal%2C%20pasta%2C,refer%20to%20quality%2C%20not%20safety; Shelf-Stable Food Safety, U.S. Dep't of Agric. Food Safety & Inspection Serv. (Mar. 24, 2015), <https://www.fsis.usda.gov/food-safety/safe-food-handling-and-preparation/food-safety-basics/shelf-stable-food>.

57 See generally Emily Broad Leib Et al., Food Safety Regulations & Guidance for Food Donations: A Fifty-State Survey of State Practices, Harv. Food Law & Pol'y Clinic (2018), [https://www.chlpi.org/wp-content/uploads/2013/12/50-State-Food-Regs\\_March-2018\\_V2.pdf](https://www.chlpi.org/wp-content/uploads/2013/12/50-State-Food-Regs_March-2018_V2.pdf) [hereinafter Fifty-State Survey].

58 See Emily Broad Leib et al., Keeping Food Out of the Landfill: Policy Ideas for States and Localities, Harv. Food Law & Pol'y Clinic 32 (2016), [https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit\\_Oct-2016\\_smaller.pdf](https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf).

59 See generally Food & Drug Admin., Food Code: 2017 Recommendations of the United States Public Health Service Food and Drug Administration (2017), <https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/UCM595140.pdf>.

60 See generally Fifty-State Survey, *supra* note 57, at 1.

61 U.S. Dep't of Agric. Food Safety & Inspection Serv., FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-Profit Organizations (2020), [https://www.fsis.usda.gov/sites/default/files/media\\_file/2021-01/FSIS-Guideline-Food-Donation.pdf](https://www.fsis.usda.gov/sites/default/files/media_file/2021-01/FSIS-Guideline-Food-Donation.pdf).

62 See generally Fifty-State Survey, *supra* note 57.

63 See *id.* at 9.

64 See Conference for Food Protection, Conf. for Food Protection, <http://www.foodprotect.org/> (last visited Apr. 20, 2020).

65 See Roadmap to 2030, *supra* note 2, at 4.

66 See Roni A. Neff, et. al, Wasted Food: U.S. Consumers' Reported Awareness, Attitudes, and Behaviors, 10.6 PLOS ONE (2015), <http://dx.doi.org/10.1371/journal.pone.0127881>.

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68 Refer also to our recommendation on date labels in section I.2, *supra*.

69 See ReFED, A Roadmap to Reduce U.S. Food Waste by 20 Percent 31 (2016), [https://www.refed.com/downloads/ReFED\\_Report\\_2016.pdf](https://www.refed.com/downloads/ReFED_Report_2016.pdf).

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73 See *id.* at 8.

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77 58 percent of people aware of the ads sought information on how they can reduce their food waste, compared to only 17 percent of "ad unaware." See Nat. Res. Def. Council, Tackling Food Waste in Cities: A Policy and Program Toolkit 32 (2019), <https://www.nrdc.org/sites/default/files/food-waste-cities-policy-toolkit-report.pdf> (citing Ipsos Public Affairs on behalf of the Ad Council (2017), Food Waste Continuous Tracking Survey, unpublished raw data. The study, commissioned by the Ad Council and conducted by Ipsos Public Affairs, surveyed approximately 1,800 respondents quarterly through December 2017).

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80 *Id.* § 501(b)(1).

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- <sup>84</sup> See Randy Alison Aussenberg et al., *Domestic Food Assistance: Summary of Programs*, Cong. Research Serv., R42353 8–14 (2019), <https://crsreports.congress.gov/product/pdf/R/R42353>.
- <sup>85</sup> See *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*, *supra* note 81, at 16; see also *National School Lunch Program: Participation and Lunches Served*, U.S. Dep’t of Agric. Food & Nutrition Serv., <https://fns-prod.azureedge.net/sites/default/files/resource-files/slsummar-3.pdf> (Feb. 12, 2021). In 2019 and 2020, the program subsidized \$4.87 billion and \$3.20 billion lunches, respectively. *Id.*
- <sup>86</sup> See *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*, *supra* note 81, at 18; see also *School Breakfast Program Participation and Meals Served*, U.S. Dep’t of Agric. Food & Nutrition Serv., <https://fns-prod.azureedge.net/sites/default/files/resource-files/sbsummar-3.pdf> (Feb. 12, 2021). In 2019 and 2020, the program subsidized \$2.45 billion and \$1.81 billion meals, respectively. *Id.*
- <sup>87</sup> 7 C.F.R. § 220.1 *et seq.*
- <sup>88</sup> 7 C.F.R. § 210.10, § 220.8.
- <sup>89</sup> 7 C.F.R. § 210.11.
- <sup>90</sup> See Kara Clifford Billings, *USDA Nutrition Assistance Programs: Response to the COVID-19 Pandemic*, Cong. research Serv., R46681 14 (2021), <https://crsreports.congress.gov/product/pdf/R/R46681>. SFSP reimburses schools and other local program operators who serve meals and snacks to children in low-income areas when school is not in session. See *Summer Food Service Program*, U.S. Dep’t of Agric. Food & Nutrition Serv., <https://www.fns.usda.gov/sfsp/summer-food-service-program> (last visited Mar. 29, 2021). SSO provides an additional option to schools during school closures: it allows school food authorities that participate in the NSLP and SBP to continue providing meals to students during school closures under the NSLP and SBP rules. See *An Opportunity for Schools*, U.S. Dep’t of Agric. Food & Nutrition Serv. (Aug. 13, 2013), <https://www.fns.usda.gov/cn/opportunity-schools>.
- <sup>91</sup> See *State Guidance on Coronavirus Pandemic EBT (P-EBT)*, U.S. Dep’t of Agric. Food & Nutrition Serv. (Apr. 6, 2021), <https://www.fns.usda.gov/snap/state-guidance-coronavirus-pandemic-ebt-pebt>.
- <sup>92</sup> For example, USDA waivers allow parents and guardians to pick-up meals for their children, permit meals to be served outside of the typically required group settings and meal times, and waive meal pattern requirements. See *Child Nutrition Programs: COVID-19 Waivers by State*, U.S. Dep’t of Agric. Food & Nutrition Serv., <https://www.fns.usda.gov/disaster/pandemic/covid-19/cn-waivers-flexibilities> (last visited Mar. 28, 2021).
- <sup>93</sup> See U.S. Dep’t of Agric., *Trump Administration Extends Free Meals for Kids for Entire School Year* (Oct. 9, 2020), <https://www.usda.gov/media/press-releases/2020/10/09/trump-administration-extends-free-meals-kids-entire-school-year>. Typically, only students from households with incomes below 130 percent of the poverty line are eligible for free school meals and only those from households with incomes below 185 percent of the poverty line are eligible for reduced price meals. See 42 U.S.C. 1758(b)(1) (National School Lunch Program); 42 U.S.C. 1773(e)(1)(A) (School Breakfast Program); see also *Child Nutrition Programs: Income Eligibility Guidelines*, 86 Fed. Reg. 12,594 (Mar. 4, 2021). However, under the 2010 Healthy-Hunger Free Kids Act, schools were given the option to provide universal free meals to all students in a school that met a minimum level (40%) of students who are identified as eligible for free meals through means other than individual household applications. See *Community Eligibility Provision*, U.S. Dep’t of Agric. Food & Nutrition Serv., <http://www.fns.usda.gov/school-meals/community-eligibility-provision> (last visited Dec. 10, 2015).
- <sup>94</sup> See Sean Piccoli & Elizabeth A. Harris, *New York City Offers Free Lunch for All Public School Students*, N.Y. Times (Sep. 6, 2017), [https://www.nytimes.com/2017/09/06/nyregion/free-lunch-new-york-city-schools.html?\\_r=0&referrer=https](https://www.nytimes.com/2017/09/06/nyregion/free-lunch-new-york-city-schools.html?_r=0&referrer=https); Healthy Schools Campaign & Chicago Pub. Schools, *Frequently Asked Questions: Chicago Public Schools’ School Meal Program 7* (2021), <https://healthyschoolscampaign.org/dev/wp-content/uploads/2020/01/FAQ-for-Parents.pdf>; Monica Eng, *Free Lunch For All in Chicago Public Schools Starts in September*, WBEZ Chicago (Jul. 3, 2014), <https://www.wbez.org/stories/free-lunch-for-all-in-chicago-public-schools-starts-in-september/4b6696cc-1522-4c3a-ad34-92f664d84c32>; *BPS Offers Universal Free Meals for Every Child*, Boston Pub. Schools, <https://www.bostonpublicschools.org/site/Default.aspx?PageType=3&DomainID=4&PageID=1&ViewID=047e6be3-6d87-4130-8424-d8e4e9ed6c2a&FlexDataID=3160> (last visited Apr. 7, 2021).
- <sup>95</sup> See School Nutrition Ass’n, *2021 Position Paper: Permanently expand the National School Lunch and School Breakfast Programs to offer all students meals at no charge as an integral part of the educational experience 1* (2021), [https://schoolnutrition.org/uploadedFiles/Legislation\\_and\\_Policy/SNA\\_Policy\\_Resources/2021-Universal-Fact-Sheet.pdf](https://schoolnutrition.org/uploadedFiles/Legislation_and_Policy/SNA_Policy_Resources/2021-Universal-Fact-Sheet.pdf).
- <sup>96</sup> See, e.g., School Nutrition Ass’n, *2021 Position Paper 1* (2021), [https://schoolnutrition.org/uploadedFiles/Legislation\\_and\\_Policy/SNA\\_Policy\\_Resources/2021-Position-Paper.pdf](https://schoolnutrition.org/uploadedFiles/Legislation_and_Policy/SNA_Policy_Resources/2021-Position-Paper.pdf); see also H. Claire Brown, *The Pandemic Has Made School Lunch Free for all Public School Students. Advocates Are Hoping to Make the Change Permanent*, The Counter (Feb. 12, 2021), <https://thecounter.org/california-senator-nancy-skinner-introduces-bill-free-school-meals-for-all/#:~:text=In%20California%2C%20State%20Senator%20Nancy,is%20not%20a%20new%20idea>; Food Research and Action Center et al., *Universal School Meals Sign On Letter* (Dec. 22, 2020), <https://frac.org/wp-content/uploads/12.22.20-Universal-School-Meals-Sign-On-Letter.pdf>.
- <sup>97</sup> See, e.g., Janet Poppendieck, *Free for All: Fixing School Food in America* (Univ. of Calif. Press, 2010); Michael W. Long, et al., *Universal Free Meals Associated with Lower Meal Costs While Maintaining Nutritional Quality*, *Nutrients* 2021, 13, 670, <https://doi.org/10.3390/nu13020670> (finding that schools that serve universal free meals spend up to 67 cents less per meal

than schools that do not).

- <sup>98</sup> Juliana F.W. Cohen et al., *School Lunch Waste among Middle School Students: Implications for Nutrients Consumed and Food Waste Costs*, 44 *Am. J. Preventative Med.* 114, 114–21 (2013), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3788640/>.
- <sup>99</sup> World Wildlife Fund, *Food Waste Warriors: A Deep Dive into Food Waste in US Schools 2*, 22 (2019), [https://c402277.ssl.cf1.rackcdn.com/publications/1271/files/original/FoodWasteWarriorR\\_CS\\_121819.pdf?1576689275](https://c402277.ssl.cf1.rackcdn.com/publications/1271/files/original/FoodWasteWarriorR_CS_121819.pdf?1576689275) [hereinafter *Food Waste Warriors*].
- <sup>100</sup> A study by the USDA found that plate waste has remained consistent since the 2012 nutrition reforms. See U.S. Dep’t of Agric. Food & Nutrition Serv., *School Nutrition and Meal Cost Study: Summary of Findings 21* (2019), [https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS\\_Summary-Findings.pdf](https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS_Summary-Findings.pdf). Another study found that students are eating more nutritious foods without increasing food waste. See Juliana F.W. Cohen et al., *Impact of the New U.S. Department of Agriculture School Meal Standards on Food Selection, Consumption, and Waste*, 46 *Am. J. Preventative Med.* 388, 388 (2015).
- <sup>101</sup> Some studies have found that the reforms have reduced food waste, particularly in vegetable and entree consumption. See, e.g., Marlene Schwartz et al., *New School Meal Regulations Increase Fruit Consumption and Do Not Increase Total Plate Waste*, 11 *Child Obesity* 242, 242 (2015).
- <sup>102</sup> See, e.g., *Reducing Food Waste at K-12 Schools*, U.S. Dep’t of Agric., <https://www.usda.gov/foodlossandwaste/schools> (last visited Apr. 20, 2020). Household-level food waste comprises a whopping 37% of all food waste in the U.S. See *Roadmap to 2030*, *supra* note 2, at 4.
- <sup>103</sup> See, e.g., *Updated Offer vs. Serve Guidance for the NSLP and SBP Beginning SY2015-16*, U.S. Dep’t of Agric. Food & Nutrition Serv. (Jul. 21, 2015), [https://www.fns.usda.gov/cn/updated-offer-vs-serve-guidance-nslp-and-sbp-beginning-sy2015-16#:~:text=Offer%20versus%20Serve%20\(OVS\)%20is,do%20not%20intend%20to%20eat.](https://www.fns.usda.gov/cn/updated-offer-vs-serve-guidance-nslp-and-sbp-beginning-sy2015-16#:~:text=Offer%20versus%20Serve%20(OVS)%20is,do%20not%20intend%20to%20eat.) (“Offer versus Serve (OVS) is a provision in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) that allows students to decline some of the food offered. The goals of the OVS are to reduce food waste in the school meals programs while permitting students to decline foods they do not intend to eat.”).
- <sup>104</sup> See U.S. Dep’t of Agric., *Guide to Conducting Student Food Waste Audits: A Resource for Schools* (2017), [https://www.usda.gov/sites/default/files/documents/Student\\_Food\\_Waste\\_Audit\\_FINAL\\_4-6-2017.pdf](https://www.usda.gov/sites/default/files/documents/Student_Food_Waste_Audit_FINAL_4-6-2017.pdf).
- <sup>105</sup> See Melissa Terry, *Reducing Student Food Waste With Farm to School in Arkansas*, Nat’l Farm to School Network (Oct. 27, 2016), <http://www.farmtoschool.org/news-and-articles/reducing-student-food-waste-with-farm-to-school-in-arkansas>
- <sup>106</sup> See *id.*
- <sup>107</sup> 7 C.F.R. § 210.10(e). For more information on offer-versus-serve models, refer to the discussion in section II.2, *infra*. This confusion regarding milk is common. See, e.g., *Setting the Record Straight: School Meal Patterns and Smart Snacks Myths, Facts and Flexibilities*, U.S. Dep’t. of Agric. 12–13, <https://www.blueeye.k12.mo.us/view/313.pdf> (last visited Apr. 20, 2020).
- <sup>108</sup> For more information on share tables, refer to the discussion in section II.4, *infra*.
- <sup>109</sup> See Melissa Terry, *supra* note 105.
- <sup>110</sup> *Guide to Conducting Student Food Waste Audits: A Resource for Schools*, *supra* note 104.
- <sup>111</sup> See *School Food Recovery Act of 2020*, H.R. 5607, 116<sup>th</sup> Cong. § 2 (2020). The bill allows local educational agencies to request funds for the education, training, and equipment necessary to plan and implement waste reduction projects. The federal government will match local educational agencies’ contributions up to 75% of the total cost of the food waste reduction projects. *Id.* § 2(a)(4).
- <sup>112</sup> 42 U.S.C. § 1758b (2010); see also 7 C.F.R. § 210.31(a) (2016).
- <sup>113</sup> 42 U.S.C. § 1758b (2010); see also 7 C.F.R. § 210.31(a) (2016).
- <sup>114</sup> 7 C.F.R. § 210.10(c).
- <sup>115</sup> 7 C.F.R. § 210.10(e).
- <sup>116</sup> *Id.*; *Food Service/Cafeteria Waste Reduction: Suggestions & Guidance*, Ne. Recycling Council 2 (2011), <http://nerc.org/documents/schools/FoodServiceWasteReductionInSchools.pdf> (last visited Apr. 20, 2020).
- <sup>117</sup> 7 C.F.R. § 220.8(c).
- <sup>118</sup> 7 C.F.R. § 220.8(e).
- <sup>119</sup> 42 U.S.C.A. § 1773 (e)(2).
- <sup>120</sup> The appropriate change would be to 7 C.F.R. § 210.10(e) (“Senior high schools (as defined by the State educational agency) must participate in offer versus serve. Schools below the senior high level may participate in offer versus serve at the discretion of the school food authority.”).
- <sup>121</sup> § 9(a)(3) of the Richard B. Russell National School Lunch Act allows a wide discretion for the USDA to impose OVS for K-12 schools: the law mandates OVS only to high schools and does not address the other grade levels.
- <sup>122</sup> § 4(e)(2) of the Child Nutrition Act of 1966 gives local school authorities, not the USDA, discretion to decide whether to adopt OVS in schools’ breakfast programs. 42 U.S.C. § 1773(e)(2) (“At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume.”).
- <sup>123</sup> *Sustainable Management of Food: Food Recovery Challenge*, U.S. Eenvtl. Prot. Agency, <https://www.epa.gov/sustainable-management-food/food-recovery-challenge-frc> (last visited Apr. 20, 2020).
- <sup>124</sup> See *id.*

125 See *id.*

126 See *About the 2018 Food Recovery Challenge National Award Winners*, U.S. Env'tl. Prot. Agency, <https://www.epa.gov/sustainable-management-food/about-2018-food-recovery-challenge-national-award-winners#Shawnee> (last visited Apr. 20, 2020).

127 See *id.*

128 See *id.*

129 See *id.*

130 See *Sustainable Management of Food: Food Recovery Challenge*, *supra* note 123.

131 *Id.*

132 See *Join the HealthierUS Schools Challenge*, Obama White House Archives, <https://letsmove.obamawhitehouse.archives.gov/join-healthierus-schools-challenge>. Schools that joined the challenge and met certain criteria received financial awards of up to \$2000, an award plaque, an award banner, and recognition on the USDA Team Nutrition Website. See D.C. Off. of the State Superintendent of Educ., *HealthierUS School Challenge Application Kit 5*, <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/HUSSC%20Application%20Kit%20Part%201.pdf>. Some states also contributed state funds to the HealthierUS Schools Challenge awards. For example, Mississippi provided \$6000 to “Gold with Distinction” award winners, bringing the financial award up to \$8000 for schools who won the highest award as part of the challenge. See Miss. Dep’t of Educ, *USDA’s Healthier US School Challenge: Recognizing Nutrition Excellence in Schools 3*, <https://www.mdek12.org/sites/default/files/documents/OCN/usdas-healthier-us-school-challenge-links-removed.pdf>. The program stopped accepting applications in 2018. See *id.* at 1.

133 See *USDA Exceeds First Lady’s HealthierUS School Challenge Goal*, U.S. Dep’t of Agric. Food & Nutrition Serv. (Jul. 16, 2012), <https://www.fns.usda.gov/pressrelease/2012/023612>.

134 See U.S. Dep’t of Agric., *The Use of Share Tables in Child Nutrition Programs 1* (2016), [http://www.fns.usda.gov/sites/default/files/cn/SP41\\_CACFP13\\_SFSP15\\_2016os.pdf](http://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf). For best practices related to share tables see Nat. Res. Def. Council, *Wasting Less Food in K-12 Settings: Best Practices for Success 3* (2018), <https://www.nrdc.org/sites/default/files/k-12-food-waste-best-practices-ib.pdf>; *Food Waste Warriors*, *supra* note 99, at 26.

135 See *The Use of Share Tables in Child Nutrition Programs*, *supra* note 134, at 1.

136 Word Wildlife Fund, *Reducing Food Waste in Schools: The Business Case 2* (2019), [https://c402277.ssl.cf1.rackcdn.com/publications/1278/files/original/FoodWasteWarrior\\_BusCase\\_121119.pdf?1576160473](https://c402277.ssl.cf1.rackcdn.com/publications/1278/files/original/FoodWasteWarrior_BusCase_121119.pdf?1576160473).

137 *Food Waste Warriors*, *supra* note 99, at 15. On average, elementary schools produced the most waste at 37.6 cartons of milk waste per student per year while middle schools produced 19.4 cartons of milk waste per student per year. *Id.*

138 *Got (Bulk) Milk? The Case for Bulk Milk in the School Lunchroom*, Chef Ann Found. (Aug. 4, 2015), <https://www.chefannfoundation.org/blog/got-bulk-milk>.

139 See *Sustainable Management of Food: Food Recovery Challenge*, *supra* note 123, at 2.

140 See *Food Safety Education: Keeping “Bag” Lunches Safe*, U.S. Dep’t of Agric., (Aug. 16, 2016), [https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/safe-food-handling/keeping-bag-lunches-safe/ct\\_index](https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/safe-food-handling/keeping-bag-lunches-safe/ct_index).

141 Students often waste food when they do not have enough time during the lunch period. See Juliana F. W. Cohen, *Amount of Time to Eat Lunch is Associated with Children’s Selection and Consumption of School Meal Entrée, Fruits, Vegetables, and Milk*, 116 *J. of the Acad. of Nutrition and Dietetics* 123, 125 (2015), [http://www.andjrn.org/article/S2212-2672\(15\)01248-4/pdf](http://www.andjrn.org/article/S2212-2672(15)01248-4/pdf). Elementary school students in particular discard a great deal of their food due to a lack of sufficient time to eat. See *id.* at 124. School policies that encourage lunches with at least 25 minutes of seated time may reduce food waste, improve dietary intake, and reduce plate waste. See *id.* at 123.

142 Moving lunch to after recess has been shown to reduce food waste by nearly a third. See *Join the U.S. Food Waste Challenge!*, U.S. Dep’t of Agric. (Feb. 2015), [http://www.usda.gov/oce/foodwaste/webinars/K-12/Tips\\_Resources\\_for\\_Schools.pdf](http://www.usda.gov/oce/foodwaste/webinars/K-12/Tips_Resources_for_Schools.pdf); see also Sara Elnakib et al., *School Food Waste Reduction Toolkit 7* (2019), <https://njaes.rutgers.edu/school-food-waste/food-waste-summit-toolkit.pdf>.

143 Respondents to a national survey of 489 school nutrition directors said that holding taste tests with students was among the most effective ways to reduce food waste. See *Strategies to Reduce Food Waste in Schools & Child Nutrition Programs*, No Kid Hungry, [http://bestpractices.nokidhungry.org/sites/default/files/strategies-to-reduce-food-waste-in-schools--child-nutrition-programs\\_1.pdf](http://bestpractices.nokidhungry.org/sites/default/files/strategies-to-reduce-food-waste-in-schools--child-nutrition-programs_1.pdf) (last visited Apr. 22, 2020).

144 See *The Use of Share Tables in Child Nutrition Programs*, *supra* note 134, at 1.

145 See *Join the U.S. Food Waste Challenge!*, *supra* note 142.

146 7 C.F.R. § 210.10(l)(2).

147 See *Join the U.S. Food Waste Challenge!*, *supra* note 142.

148 *Making Time for School Lunch*, Ctr’s. for Disease Control and Prevention (Sept. 11, 2019), [https://www.cdc.gov/healthyschools/nutrition/pdf/310518-A\\_FS\\_SchoolLunchUpdate\\_508.pdf](https://www.cdc.gov/healthyschools/nutrition/pdf/310518-A_FS_SchoolLunchUpdate_508.pdf).

149 The California Department of Education Nutrition Services Division, for example, “strongly encourages schools to ensure their students have adequate time to eat after being served to maximize the nutritional benefits of the meal pattern” and

provides best practices to help ensure the adequacy of lunch periods, such as adding points of service to shorten lunch lines. See *Ensuring Adequate Time to Eat*, Cal. Dep't of Educ. (Jul. 2019), <https://www.cde.ca.gov/ls/nu/sn/timetoeat.asp#Lunchper>.

- 150 Join the U.S. Food Waste Challenge!, *supra* note 142; see also Sara Elnakib et al., *supra* note 142, at 7.
- 151 Respondents to a national survey of 489 school nutrition directors said that holding taste tests with students was among the most effective ways to reduce food waste. See *No Kid Hungry*, *supra* note 143; see also Jonathan Bloom, *A Food Waste Action Plan for Minneapolis Public Schools 8* (noting the importance of involving students in menu selection).
- 152 See *Food Waste Warriors*, *supra* note 99, at 28.
- 153 NSLP Equipment Assistance Grants, U.S. Dep't of Agric. (May 25, 2018), <https://www.fns.usda.gov/nslp-equipment-assistance-grants>.
- 154 *The Farm to School Grant Program*, U.S. Dep't of Agric. (Oct. 22, 2019), <https://www.fns.usda.gov/cfs/farm-school-grant-program>.
- 155 See *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*, *supra* note 81, at 2; see also *Ensuring Children and Adults Have Access to Nutritious Meals and Snacks*, U.S. Dep't of Agric. Food & Nutrition Serv., <https://www.fns.usda.gov/cacfp/child-and-adult-care-food-program> (last visited Apr. 1, 2020).
- 156 42 U.S.C. § 1766 (a)(1)(A)(ii).
- 157 7 C.F.R. § 226.6 (a), (b).
- 158 See *Ensuring Children and Adults Have Access to Nutritious Meals and Snacks*, *supra* note 155.
- 159 *Child and Adult Care Food Program (CACFP)*, Food Res. & Action Ctr., <https://frac.org/programs/child-adult-care-food-program> (last visited Apr. 22, 2020).
- 160 See Theresa A. Nicklas et al., *Characterizing Lunch Meals Served and Consumed by Pre-school Children in Head Start*, 16 *Pub. Health Nutrition* 2169, 2169 (2013); see also Allison M. Milodragovich, *Preschool Food Waste and Nutrition Behavior* (2017) (unpublished M.S. thesis on file with Theses and Dissertations at Montana State University), <https://scholarworks.montana.edu/xmlui/handle/1/14907>.
- 161 Every year, 30–40% of all food produced in the United States goes to waste. See *Why Should We Care About Food Waste?*, U.S. Dep't of Agric., <https://www.usda.gov/foodlossandwaste/why> (last visited Apr. 22, 2020).
- 162 42 U.S.C.A. § 1766 (a)(5).
- 163 42 U.S.C.A. § 1766 (k).
- 164 42 U.S.C.A. § 1766 (a)(6).
- 165 42 U.S.C.A. § 1766 (a)(5); see also 7 C.F.R. § 226.6 (a)
- 166 See *Child and Adult Care Food Program (CACFP)*, *supra* note 159.
- 167 42 U.S.C.A. § 1766 (a)(5).
- 168 7 C.F.R. § 226.6 (b).
- 169 7 C.F.R. § 226.6 (a)(2).
- 170 CACFP Training Tools, U.S. Dep't of Agric. Food & Nutrition Serv. (Mar. 20, 2020), <https://www.fns.usda.gov/tn/training-tools-cacfp>.
- 171 For more information on food waste audits, refer to the discussion of food waste audits in section II.1., *supra*. See also *Guide to Conducting Student Food Waste Audits: A Resource for Schools*, *supra* note 104.
- 172 See *Why CACFP is Important*, U.S. Dep't of Agric. Food & Nutrition Serv. (Jul. 16, 2013), <https://www.fns.usda.gov/cacfp/why-cacfp-important>.
- 173 7 C.F.R. § 226.9 (a).
- 174 Refer to the discussion of food waste audits in section II.1., *supra*, and note 210, *supra*.
- 175 See *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*, *supra* note 81, at 20–21.
- 176 For more information on share tables, refer to the discussion in section II.4, *supra*. Share tables are tables or stations where program participants may return uneaten food or beverages in their original containers or peels. Share tables allow program participants to make food they do not want to eat available to other program participants.
- 177 See U.S. Dep't of Agric. Food & Nutrition Serv., CACFP 13–2016, *The Use of Share Tables in Child Nutrition Programs* (2016), [https://fns-prod.azureedge.net/sites/default/files/cn/SP41\\_CACFP13\\_SFSP15\\_2016os.pdf](https://fns-prod.azureedge.net/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf); *Bulletin* CNP–03–2018, *The Use of Share Tables*, Cal. Dep't of Educ. (Feb. 2018), <https://www.cde.ca.gov/ls/nu/sn/mbcnp032018.asp>; U.S. Dep't of Agric. Food & Nutrition Serv., *At-Risk Afterschool Meals: A Child and Adult Care Food Program Guide* 49 (2016), <https://fns-prod.azureedge.net/sites/default/files/resource-files/atriskguide2016.pdf>.
- 178 For more information on the EPA Food Recovery Challenge, refer to the discussion in section II.3, *supra*. See also *Sustainable Management of Food: Food Recovery Challenge*, *supra* note 123.
- 179 The average CACFP day care home has only 7 CACFP participants, and the average adult day care center and child care center has 46 participants and 62 participants, respectively. Kara Clifford, Cong. Research Serv., RF46234, *School Meals and Other Child Nutrition Programs: Background and Funding* 29 (2021), <https://crsreports.congress.gov/product/pdf/R/R46234>.
- 180 *About WIC-WIC at a Glance*, U.S. Dep't of Agric. Food & Nutrition Serv. (Oct. 10, 2013), <https://www.fns.usda.gov/wic/about-wic-wic-glance>. Individuals must meet certain requirements to be eligible, including income eligibility, state residency, and



“nutrition risk” status, as determined by a health professional or a trained health official. See *WIC Fact Sheet*, U.S. Dep’t of Agric. Food & Nutrition Serv. (Dec. 12, 2018), <https://fns-prod.azureedge.net/sites/default/files/wic/wic-fact-sheet.pdf>.

181 See *WIC Fact Sheet*, U.S. Dep’t of Agric. Food & Nutrition Serv. (Dec. 12, 2018), <https://fns-prod.azureedge.net/sites/default/files/wic/wic-fact-sheet.pdf>.

182 *WIC Program*, U.S. Dep’t of Agric. Econ. Res. Serv. (Aug. 20, 2019), <https://www.ers.usda.gov/topics/food-nutrition-assistance/wic-program/>.

183 See *Child Nutrition Reauthorization (CNR): An Overview*, *supra* note 9, at 2.

184 Household consumers throw away roughly 30 million tons of food, which accounts for 37 percent of the total food waste in America. See *Roadmap to 2030*, *supra* note 2, at 4.

185 See *Consumers*, U.S. Dep’t of Agric., <https://www.usda.gov/foodlossandwaste/consumers> (last visited Mar. 29, 2021).

186 42 million people, including 13 million children, are expected to experience food insecurity in 2021—a significant increase from pre-COVID levels. In 2019, 35 million people, including 11 million children, were food insecure in the United States. Feeding America, *The Impact of the Coronavirus on Food Insecurity in 2020 & 2021 1-2* (2021), [https://www.feedingamerica.org/sites/default/files/2021-03/National%20Projections%20Brief\\_3.9.2021\\_0.pdf](https://www.feedingamerica.org/sites/default/files/2021-03/National%20Projections%20Brief_3.9.2021_0.pdf).

187 *The Cornerstone of WIC (Module Script)*, Minn. Dep’t of Health, <https://www.health.state.mn.us/docs/people/wic/localagency/training/nutrition/nst/nemodule/script.pdf> (last visited Apr. 1, 2020). The Child Nutrition Act of 1966 provides that “The State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program.” 42 U.S.C. § 1786(e). SNAP-Ed is a nutrition education program conducted by Food and Nutrition Service as part of the Supplemental Nutrition Assistance Program, the program is not required. 7 U.S.C. § 2036a(b) (“State agencies *may* implement a nutrition education program...”) (emphasis added).

188 U.S. Dep’t of Agric., *How WIC Helps 4* (2007), <https://wicworks.fns.usda.gov/wicworks//Topics/Helps/SinglepageAfricanAmerican.pdf>.

189 Surveyed consumers report that saving money is one of the most important motivations for reducing food waste in their households. As a result, framing food waste reduction in terms of better budgeting may be effective. See Roni A. Neff et al., *supra* note 62.

190 See *Healthy Hunger-Free Kids Act of 2010*, 111 P.L. 296 § 241; see also 7 U.S.C.A. § 2036a (c)(1)(B).

191 The current definition broadly describes nutrition education as “individual and group sessions and the provision of material that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.” 42 U.S.C. § 1786(b)(7).

192 Specifically, the mandate that “The State agency shall ensure that nutrition education and drug abuse education is provided to all . . . participants” (42 U.S.C. § 1786 (e)) could be revised to say “The State agency shall ensure that nutrition education, food waste reduction education, and drug abuse education is provided to all participants.”

193 The WIC regulations define nutrition education as “individual and group sessions and the provision of materials that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between meal planning, nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.” 7 C.F.R. §246.2 (emphasis added).

194 42 U.S.C.A. §1786(e)(2).

195 See *generally* *Food: Too Good to Waste Implementation Guide and Toolkit*, *supra* note 78.

196 Telephone interview with Kati Burton, R.D.N., former WIC nutritionist.

197 See *USDA Improves the WIC Shopping Experience to Better Serve our Nation’s Low-Income, New and Expecting Mothers and Their Young Children*, U.S. Dep’t of Agric. Food & Nutrition Serv. (Feb. 29, 2016), <https://www.fns.usda.gov/pressrelease/2016/005316>.

198 See *Why Should We Care About Food Waste?*, *supra* note 161.

199 See, e.g., *Don’t Waste, Donate: Enhancing Food Donations through Federal Policy* at 4.

200 *United States 2030 Food Loss and Waste Reduction Goal*, U.S. Evtl. Protection Agency (Aug. 31, 2020), <https://www.epa.gov/sustainable-management-food/united-states-2030-food-loss-and-waste-reduction-goal#:~:text=The%202030%20FLW%20reduction%20goal%20aims%20to%20reduce%20food%20waste,to%20109.4%20pounds%20per%20person>.

201 See, e.g., Julia A. Wolfson & Cindy W. Leung, *Food Insecurity During COVID-19: An Acute Crisis With Long-Term Health Implications*, 110 *Am. J. Pub. Health* 1763, 1765, <https://doi.org/10.2105/AJPH.2020.305953> (“Since mid-March 2020, numerous surveys have documented unprecedented levels of food insecurity that eclipse anything seen in recent decades in the United States, including during the Great Recession.”).



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