

Policy Approaches to Healthier Food Banking



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Policy Approaches to Healthier Food Banking is available online, free of charge at <https://cspinet.org/resource/policy-approaches-healthier-food-banking>

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Executive Summary

The COVID-19 pandemic has triggered unprecedented financial and health hardship for millions of U.S. households and placed tremendous stress on the charitable food system (CFS). At least 1 in 5 people, or 60 million individuals, turned to the CFS in 2020,¹ and food banks are serving 55 percent more people than before the pandemic.²

Due to discrimination and structural racism, food and nutrition insecurity disproportionately affect racial and ethnic minorities. While the national food insecurity rate of 10.5 remained constant from 2019 to 2020,³ the rate increased for Black households (19.1 percent to 21.7 percent),⁴ Hispanic households (15.6 percent to 17.2 percent),⁵ and households with children.⁶

The CFS, our nation's network of emergency feeding programs, is meant to be a last resort. Federal food assistance programs, like the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), serve as a first line of defense against food insecurity. SNAP alone provides nine meals for every one that Feeding America food banks provide.⁷ Yet, food assistance benefit levels and coverage are inadequate.⁸ Despite USDA recently increasing SNAP benefits by adjusting the basis for calculating them,⁹ when current pandemic boosts to SNAP end benefits will only average about \$1.80 per person, per meal.¹⁰ And eligibility rules, like SNAP's income and work requirements,¹¹ limit participation. For many, SNAP remains inaccessible and insufficient to meet their needs, leaving them with little choice but to turn to an already overburdened and under-resourced CFS.

Food insecurity and inadequate nutrition often co-exist in populations with low incomes, leading many to conceptualize food insecurity as a social welfare problem. Food insecurity is better framed as a public health issue: adults and children in food insecure households are at greater risk of developing chronic disease and illness than adults and children in food secure households.¹²

People who rely on the CFS both want and deserve nutritious food and beverages that support their health.¹³ Yet a 2018 report

by MAZON: A Jewish Response to Hunger and the Rudd Center for Food Policy and Obesity found that, on average, 25 percent of food bank distributions remain unhealthy.¹⁴ Many food banks have adopted nutrition policies to encourage healthier donations and discourage donations of “junk food,” such as candy and soda, and one in seven formally ban certain unhealthy items.¹⁵ Yet even food banks with formal bans still struggle with unwanted donations and insufficient donations of healthy food.

Improving the nutritional quality of CFS offerings requires prioritizing nutrition across all donation streams. Food banks receive most of their inventory from the food industry (retailers, distributors, manufacturers, farmers, growers, hotels, and restaurants) (60 percent) or the government (23 percent) and purchase the rest.¹⁶ Federal and state public policies impact both industry and government donation streams. Therefore, policy interventions have great potential to shape the nutritional quality of CFS food.

We conducted research to determine how federal and state governments can better leverage public policy to increase the amount of nutritious food and decrease the amount of unhealthy food donated to food banks.¹⁷

Our methods were: 1) a policy scan of the laws, regulations, and administrative decisions affecting food donations to food banks, sorting these policies into ten categories, and analysis of whether the policies support or hinder nutritious donations; and 2) structured key informant interviews (KIIs) of food bank executives, food retail company executives, and other CFS stakeholders and subject matter experts on eight of the policy categories¹⁸ roles in encouraging or hindering nutritious donation, and challenges and barriers to donation.

We found that of 295 laws, regulations, and administrative decisions related to the CFS—42 federal and 253 state—only 43 (14.6 percent) prioritize nutritious food donation over unhealthy food donation.

KII interviewees reported that:

- USDA Food Distribution Programs and state direct-

- spending programs largely provide nutritious food.
- Organic waste bans have either a positive or neutral impact on the nutritional quality of donations.
 - Date labeling policies hinder the amount of nutritious, packaged food that donors send to the CFS.
 - Tax incentives have either a neutral or unclear impact on donation generally and nutritious donation specifically.
 - Game donation policies promote nutritious donation but food banks only receive these donations in modest quantities or not at all.
 - Policies impacting school donation have little impact on nutritious donation because food banks receive a small amount of food via school donation.
 - Food safety policies are inadequate in providing regulatory guidance on food donation and strengthening them could boost donation, particularly of often-nutritious, highly perishable food.
 - Liability protection policies encourage donation of all food, regardless of nutritional quality.

Informed by the KIIs, we formed 18 public policy recommendations to improve the proportion of healthy food donated to the CFS ranging from improvements to federal food assistance programs to amending regulations governing food safety. The three most impactful policy reforms, because they would result in high volumes of nutritious donations, would be to:

The three most impactful policy reforms...

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

We encourage legislators and advocates to use the following policy recommendations to ensure that CFS clients have sufficient access to quality, nutritious food.



Introduction

The Scale of Hunger and Malnutrition in the U.S. Is Staggering

Charitable food system: The network of food banks, food pantries, and other emergency feeding organizations and programs that may feed as many as 42 million people in 2021.

Food insecurity: The inability to acquire adequate food due to insufficient money or other resources.¹⁸⁷

Nutrition insecurity: A broader concept than food insecurity, definitions of which are still evolving. One proposed definition is the lack of consistent access to available and affordable food that supports health and prevents (or if necessary, treats) disease.¹⁸⁸

Food bank: An organization that sources, stores, and distributes food to food pantries and other emergency feeding organizations. Food banks address individual food insecurity (through referral to federal nutrition programs) and some also work on food insecurity's root causes through policy advocacy.

Food donor: Food retailers, manufacturers, distributors, farmers, growers, government food distribution programs, or individuals donating food to food banks or emergency feeding organizations for ultimate distribution to the people experiencing food insecurity.

Client: Individual or family receiving food from the charitable food system.

The pandemic is placing tremendous stress on the CFS as millions of households turn to food banks and food pantries to help feed their families. In 2020, at least 60 million people turned to the CFS.¹⁹ A summer 2020 National Food Access and COVID Research Team survey found that food pantry use among newly food insecure households increased by 67 percent compared to pre-pandemic levels.²⁰ Media reports of long lines and new patrons at food banks and pantries heartbreakingly illuminate these statistics.²¹

Due to discrimination and structural racism, food and nutrition insecurity disproportionately affect racial and ethnic minorities. For example, disparate treatment limits access to employment and educational opportunities for racial and ethnic minorities,²² which can lead to fewer resources for purchasing food.²³ And disparate impact—such as higher rates of African American incarceration—can also result in social and economic circumstances that are risk factors

CHARITABLE FOOD SYSTEM SUPPLY CHAIN



for food insecurity.²⁴ The 2019 national household food insecurity rate of 10.5 percent was unchanged in 2020,²⁵ but the rate increased for Black households (19.1 percent to 21.7 percent),²⁶ Hispanic households (15.6 percent to 17.2 percent),²⁷ and households with children (6.5 percent to 7.6 percent).²⁸

Food insecurity is also higher in rural communities than in urban communities, despite rural agricultural communities growing most of our food.²⁹ Rural counties are 63 percent of all counties in the United States and 87 percent of counties with the highest food insecurity rates.³⁰ In rural Jefferson County, Mississippi, which has the country's highest county-level food insecurity rate, fully one-third of the population experiences food insecurity.³¹ These communities also experience higher rates of poverty than urban areas: in 2019, the rural poverty rate was 13.3 percent, compared to 10 percent in urban areas.³²

Policies that aim to reduce hunger must also emphasize nutrition.³³ Food insecurity is linked to obesity and chronic, diet-related disease and illness in adults and children—including heart disease, type 2 diabetes, iron-deficiency anemia, and acute infection. Food insecurity is also associated with an increased risk of poor mental health outcomes in adults.³⁴ Research also indicates that food insecurity may increase risk for hypertension, although findings are mixed and further research is needed.³⁵ Obesity and diet-related chronic disease rates are skyrocketing in the U.S., and food insecure households, especially those in rural communities and communities of color, are at greatest risk.

Healthier Food Banking Deserves Policymakers' Attention

Federal food assistance programs, including SNAP and WIC, are meant to be the first line of defense against food and nutrition insecurity; yet people experiencing food insecurity regularly turn to the charitable food system. For example, 58 percent of SNAP clients who are also using food pantries frequently visit those pantries to more fully meet their food needs.³⁶ In 2018, the Urban Institute found that the "SNAP per meal benefit does not cover the cost of a low-income meal in 99 percent of US continental counties

and Washington, DC.”³⁷ While the USDA recently increased SNAP benefits by adjusting the basis for calculating them,³⁸ when current pandemic boosts to SNAP end, benefits will only average about \$1.80 per person, per meal.³⁹ The Urban Institute estimates that 21 percent of counties will still have a SNAP meal cost gap.⁴⁰



Additionally, many adults and children experiencing food insecurity cannot access federal food assistance programs. Eligibility rules, like SNAP’s income and work requirements,⁴¹ limit participation. Ineligible people include those whose income exceeds SNAP’s gross annual income limit of \$16,596,⁴² people with felony drug convictions (in some states),⁴³ undocumented immigrants, and certain lawfully present immigrants.⁴⁴ One in three people experiencing food insecurity are unlikely to qualify for federal food assistance programs, leaving the CFS as their best option for obtaining food.

Historically, food banks were intended and designed to serve only short-term hunger needs. But they have become a regular source of food for millions of people.⁴⁵ Especially during widespread emergencies like the pandemic, food banks and pantries are often a primary food source for people newly facing food insecurity and who do not qualify for federal food assistance.⁴⁶

CFS Clients Want and Deserve Food that Supports Their Health and is Culturally Appropriate

At their inception in the late 1960s and early 1970s, food banks focused on sourcing calorie-dense, shelf-stable foods like bread and canned goods, rather than fresh fruit, vegetables, and proteins.⁴⁷ As more food bank clients rely on the CFS as their

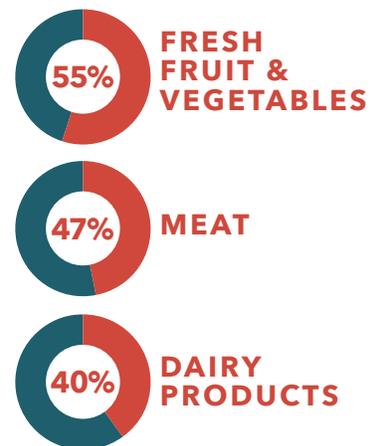
primary food source, food banks have increasingly over the last two decades trying to source and distribute more nutritious food.⁴⁸ Approximately one in seven food banks no longer accepts certain unhealthy items, like soda and candy.⁴⁹

To encourage more food banks to adopt formal nutrition policies, in 2020, HER published Nutrition Guidelines for the Charitable Food System.⁵⁰ Feeding America has endorsed these guidelines and recommends that CFS organizations adopt them.⁵¹ The guidelines place foods into “Choose Often,” “Choose Sometimes,” and “Choose Rarely” categories based on thresholds for key nutrients of concern—fat, sugar, and salt—and whole grains. These standards inform the definition of “nutritious food” used in our research: an emphasis on fruits, vegetables, low-fat dairy, protein, and whole grains with low added fat, sugar, and salt, and less emphasis on processed and packaged snacks, sugar-sweetened beverages, and desserts.

This focus on healthy offerings is vital to clients. Surveys show that CFS clients prefer fruits, vegetables, meat, poultry, and fish over soda, candy, and snack foods.⁵² Feeding America’s Hunger in America 2014 National Report found that 55 percent of CFS clients identified fresh fruit and vegetables as the most desired item that they did not receive, 47 percent identified meat, and 40 percent identified dairy products.⁵³

Food bank adoption of formal nutrition policies is a positive step and can help communicate to donors the type of foods they seek and are willing to accept, but more work is needed. The gap between offerings and client preferences remains large. A survey of 196 food banks by MAZON and the Rudd Center for Food Policy and Obesity, *A Tipping Point*, found that, on average, 25 percent of food bank distributions are still unhealthy foods and beverages, such as

Percentage of CFS clients who identified the **most desired item** they **didn't** get





sweet and savory snacks, candy, and sugar-sweetened beverages.⁵⁴

There is also a gap between clients' cultural food preferences and what they receive from the CFS. A 2019 Natural Resources Defense Council (NRDC) food pantry client survey found that misalignment between culture or beliefs and food available at pantries was the most commonly reported barrier to food assistance, with 38 percent of respondents citing this concern.⁵⁵

Public Policy Is A Necessary Lever To Advance Nutrition-Focused Food Banking

In this report, we identify and examine public policies impacting nutritious donations to food banks and make policy recommendations to increase the proportion of healthy food donated to the CFS.

Previous reports by food and environmental policy leaders, including the Harvard Law School Food Law and Policy Clinic (Harvard FLPC), NRDC, and ReFED examined the public policies affecting food donation through a food loss and waste lens,⁵⁶ citing food donation as a win-win strategy for combating climate change and tackling hunger.⁵⁷ Below, we demonstrate that some of the same policies can also improve nutritious donations to food banks.

This investigation is timely given the increased demand on the CFS during the COVID-19 pandemic due to unprecedented financial and health hardships. Although the system is under great strain as food banks try to source and distribute more food than ever, this is also a pivotal moment for pushing the CFS toward more nutritious offerings.

Methods:

(1) Policy Scan and Analysis

To understand the policy landscape impacting food donation, CSPI collaborated with researchers at the JHSPH Lerner Center on a federal and state food donation policy scan. Researchers used the search string “(food-bank or food-pantr* or glean** or food-insecur*** or “food donations” or “donor of food”) & (donat**** or donor) & food” on Westlaw and “((food bank! or food pantr! or glean! or food insecur! or “donated foods” or “donor of food”) and (donat! or donor)) and food” on LexisNexis.

Researchers included federal and state statutes, regulations, and administrative decisions affecting food donation to food banks, and excluded case law, policies affecting food banks in a general manner not relevant to donations, and US policy on international food donation. The legal search engines often returned individual provisions of statute or regulation chapters separately, which we combined for our analysis.

Two researchers—an attorney and a public policy PhD specializing in food and nutrition policy—organized the policies into ten categories to facilitate analysis and organization of KII questions by policy type. Some of the categories were based on donation source (government programs, policies authorizing donation of certain food(s), game donation, donation via schools), while others capture types of policies that impact donations (grant programs, organic waste bans, tax incentives, date labeling, food safety, liability protection). The categories were not mutually exclusive and 19 of 295 policies appeared in more than one category.

The ten policy categories, in order of percent of policies found in each category, were:

- 1. Liability protection**
Laws insulating food donors from civil and/or criminal liability, should the donated items cause recipient injury or death.
- 2. Date labeling**

Laws requiring date labeling of certain foods. Date labels often influence when food is donated or discarded.

3. Government programs

Federal and state government programs affecting donation, including but not limited to USDA Food Distribution Programs, like TEFAP, through which the federal government buys commodities for ultimate distribution to food banks via State agencies,⁵⁸ state direct-spending programs supporting farm-to-food bank donation, and laws that encourage food donation by federal and state agencies.

4. Donation via schools

Federal and state policies addressing and impacting donation of food by schools.

5. Game donation

State government programs subsidizing hunter donation of wild game to food banks.

6. Tax incentives

Federal and state deductions and tax credits for food donation.

7. Grant programs

Federal and state grants and funds available to food banks or donors to support donation efforts.

8. Food safety

Safety parameters for food donation.

9. Authorizing donation of certain food(s)

Federal and state policies making donation of certain foods legal.

10. Organic waste bans

State-level laws prohibiting producers of food waste above a tonnage threshold from diverting it to a landfill; donation is a means of compliance with these laws.

The researchers then qualitatively analyzed whether each policy supports or hinders donation of nutritious food. For example, we identified California's tax credit for food bank donations as prioritizing nutrition, as it only applies to specific types of foods,

which are largely healthy, including produce and nuts.⁵⁹

(2) Key Informant Interviews

CSPI then conducted key informant interviews (KIIs) of food bank executives, food retail company executives, and other CFS stakeholders and subject matter experts. CSPI identified stakeholders based on their prominent work on food donation and nutrition related to the CFS, and related policy issues affecting this area. We also solicited suggestions from our advisory committee. Our goal was to understand the identified public policies' impact on supporting or hindering nutritious donation, attitudes and perceptions about nutritious food donation, and challenges and barriers to nutritious donation.

We spoke to 13 executive and management-level staff at seven food banks and hunger relief organizations, 10 executive and management-level employees at three food retailers, and 10 experts with knowledge of food donation or other relevant policy expertise (stakeholders). Each organization, rather than each individual, represented one interviewee in our analysis. To ensure a variety of perspectives, the food bank and hunger relief organizations ranged geographically across six states, and included those serving urban, rural, and tribal communities. The food retailers included two national chain supermarkets and one regional chain grocery store. Questions posed in KIIs are in Appendix A.

CSPI analyzed the KIIs to determine whether interviewees perceived each policy category as positively, neutrally, or negatively impacting nutritious food donation. We also pulled key insights and relevant quotes from the KIIs, some of which appear below.

(3) Advisory Committee

After the policy scan and while conducting key informant interviews, CSPI convened a 13-member advisory committee of food bank and retail executives, and CFS experts, which provided insight into the system and feedback on our policy scan analysis, key informant interviewees and interview questions, and policy recommendations. We list advisory committee members at the beginning of this report.

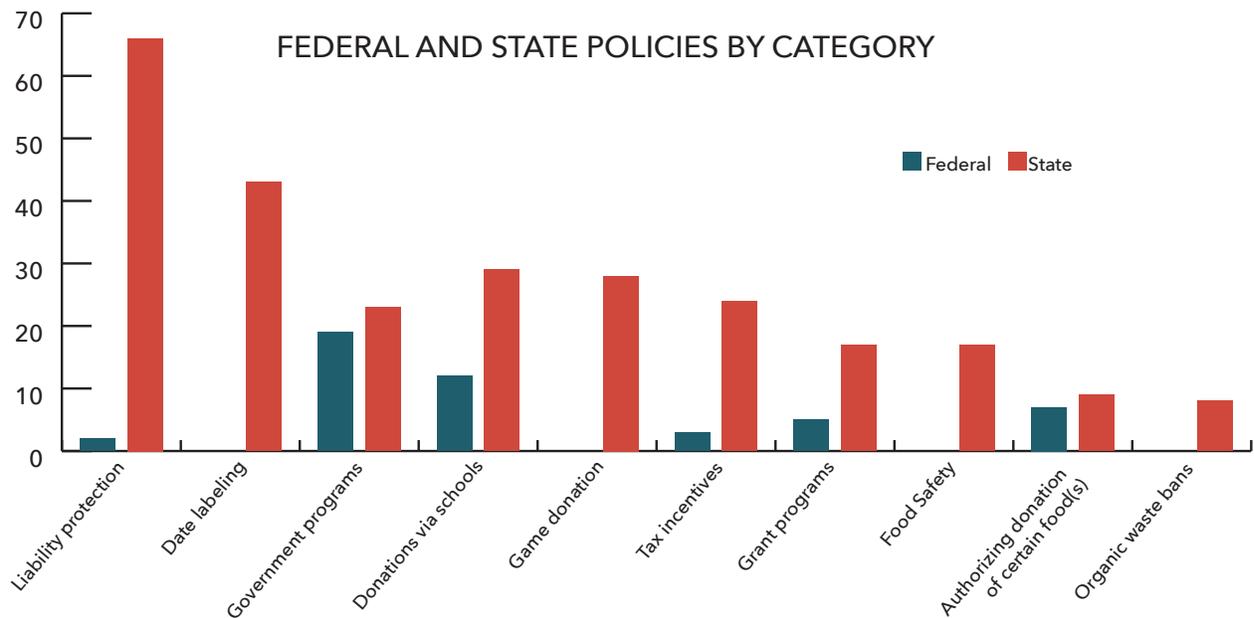
RESULTS AND ANALYSIS

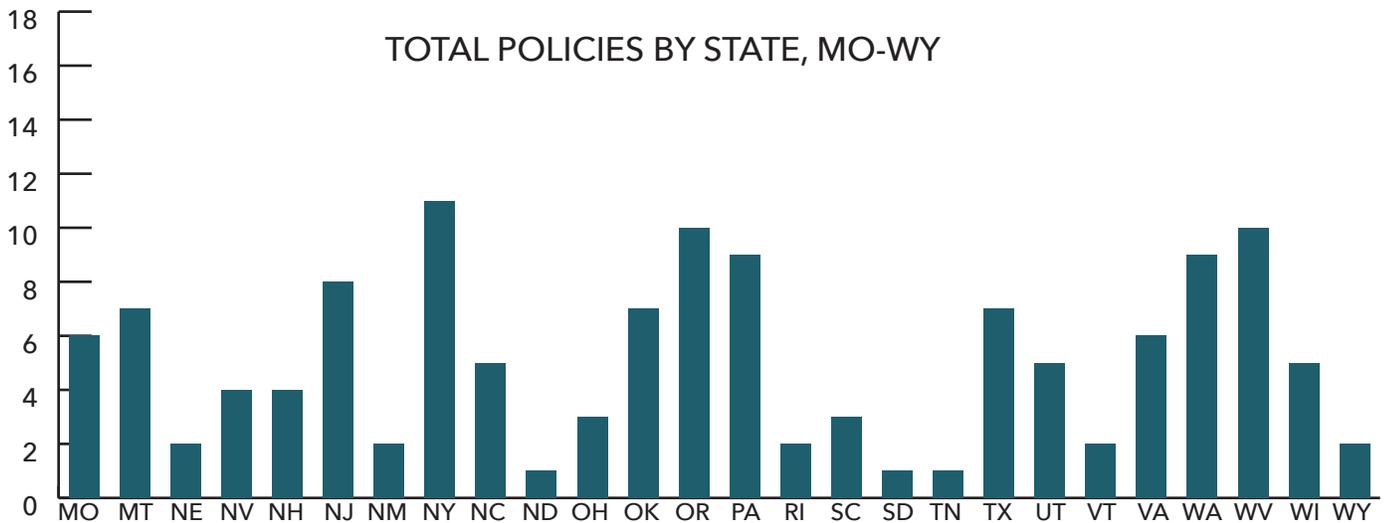
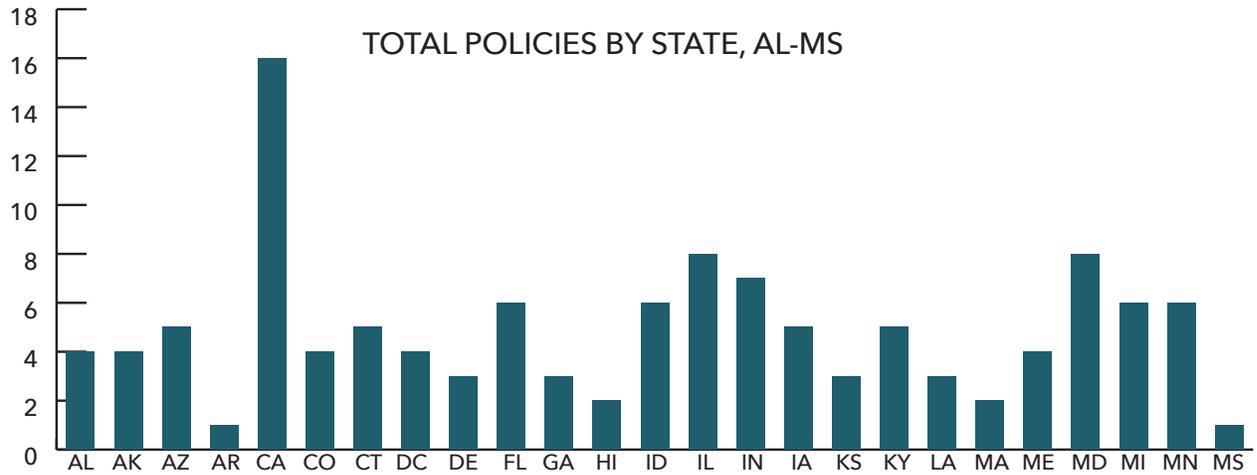
Policy Scan

Policy Category	Federal*	State*	Total**
Liability protection	2 (2.9%)	66 (99.1%)	68 (23.2%)
Date labeling	0	43 (100%)	43 (14.7%)
Government programs	19 (45.2%)	23 (54.8%)	42 (14.3%)
Donation via schools	12 (29.3%)	29 (70.7%)	41 (14%)
Game donation	0	28 (100%)	28 (9.6%)
Tax incentives	3 (11.1%)	24 (88.9%)	27 (9.2%)
Grant programs	5 (22.7%)	17 (77.3%)	22 (7.5%)
Food safety	0	17 (100%)	17 (5.8%)
Authorizing donation of certain food(s)	7 (43.8%)	9 (56.2%)	16 (5.5%)
Organic waste bans	0	8 (100%)	8 (2.7%)
TOTALS	48 (15.4%)	264 (84.6%)	312

*Row percentages in parentheses

**Column percentages in parentheses, expressed as a percentage of 295 policies





The scan yielded 295 total policies—42 (14.2 percent) federal and 253 (85.8 percent) state—affecting food donation to food banks. Because we assessed some of these policies as falling into more than one category the below chart indicates that there are 312 policies, most of which (84.6 percent) were state policies. For all policies studied, state policies were substantially more common than federal ones. The most common categories were liability protection (23.2 percent of policies), followed by date labeling (14.6 percent), and government programs (14.7 percent).

Policies within categories tended to be similar, with the degree of

similarity varying depending on the category.

1. Liability protection (23.2 percent of policies)

The two federal policies in this category are the Bill Emerson Good Samaritan Food Donation Act, and the 1997 Department of Justice Office of Legal Counsel opinion stating that the Emerson Act preempts state laws providing less civil and criminal liability protection for good faith food donors.

Every state has its own liability protection law modeled on the Emerson Act, with some variations. For example, most states provide protection from both civil and criminal liability. However, some provide only civil liability protection. In addition, there are 66 rather than 50 state level policies because some states have additional liability protection laws aimed at specific groups, such as gleaners.

2. Date labeling (14.7 percent of policies)

While state date labeling laws are similar in spirit in that states tend to regulate date labeling of certain highly perishable food types like dairy and eggs, the content of the laws vary widely. For example, by statute Arizona requires that most eggs carry an expiration date reading either “sell by” or “buy thru” that is not more than 24 days after the eggs were candled.⁶⁰ An Indiana regulation requires an expiration date reading “sell by,” “best by,” or “use by” not more than 45 days after the eggs were packed, with an exception for AA shell eggs, which must have an expiration date not more than 15 days after the pack date.⁶¹

3. Government programs (14.3 percent of policies)

There is a fairly even distribution between federal and state policies in this category. The federal policies

are largely similar in that they are predominantly the statutes and regulations governing USDA’s Food Distribution Programs, and other federal programs that subsidize donation, such as the Milk Donation Reimbursement Program.⁶² The state policies are largely statutes related to state government programs subsidizing or otherwise facilitating food donation, but are more diverse than the federal policies as different states are pursuing different solutions for encouraging donation. For example, N.J. Rev. Stat. §§ 4:10-25.2c establishes a state-run clearinghouse website for farmers to offer produce to feeding organizations, including food banks.

4. Donation via schools (14 percent of policies)

Federal policies in this category are statutes and regulations governing the USDA Schools/Child Nutrition Programs authorizing donation of school foods and laying out program nutrition standards, which dictate the nutritional quality of food that may subsequently be donated. State policies in this category are largely administrative guidance known as “Share Table” policies, in which state agencies provide information about how schools can donate food to the CFS.

5. Game donation (9.6 percent of policies)

Game donation policies fall into two categories: policies establishing state support of a program subsidizing game meat donation—Kan. Stat. Ann. § 32-99563, for example—and policies laying out procedures for donating game meat. For example, Conn. Gen. Stat § 26-78a contains labeling requirements.⁶⁴

6. Tax incentives (9.2 percent of policies)

The three federal policies relate to the Enhanced Federal Tax Deduction for Food Donation—the

statute and regulation governing the deduction, and its temporary increase under the Coronavirus Aid, Relief, and Economic Security Act. The state tax incentives are largely credits, rather than deductions, and largely support farm-to-food bank donation.

7. Grant programs (7.5 percent of policies)

All grant programs included in this category are available to food banks or donors and could support donation, but vary in their specific aims and criteria. For example, under 7 U.S.C. § 7511a, federal Emergency Food Program Infrastructure Grants are available to emergency feeding organizations to, among other things, provide recovered foods to food banks.⁶⁵ And, Ky. Rev. Stat. Ann. § 247.981 governs Kentucky's program awarding grants to nonprofits for collecting and distributing Kentucky agriculture products to the CFS.⁶⁶

8. Food safety (5.8 percent of policies)

The limited number of existing state food safety policies are more regulatory and administrative than statutory—13 policies are regulations and administrative decisions and nine are statutes. For example, Minnesota has an administrative guidance on Food Safety for Food Donation.⁶⁷ Several of the policies merely give state agencies the power to inspect food donated to the CFS for safety issues, rather than substantively setting food safety parameters for donation.

9. Authorizing donation of certain food(s) (5.5 percent of policies)

Policies in this category are all similar: they authorize donation of certain types of foods or foods from certain sources. For example, 10 U.S.C. § 2485, governs what types of military foods the Secretary of Defense may donate to the CFS.⁶⁸

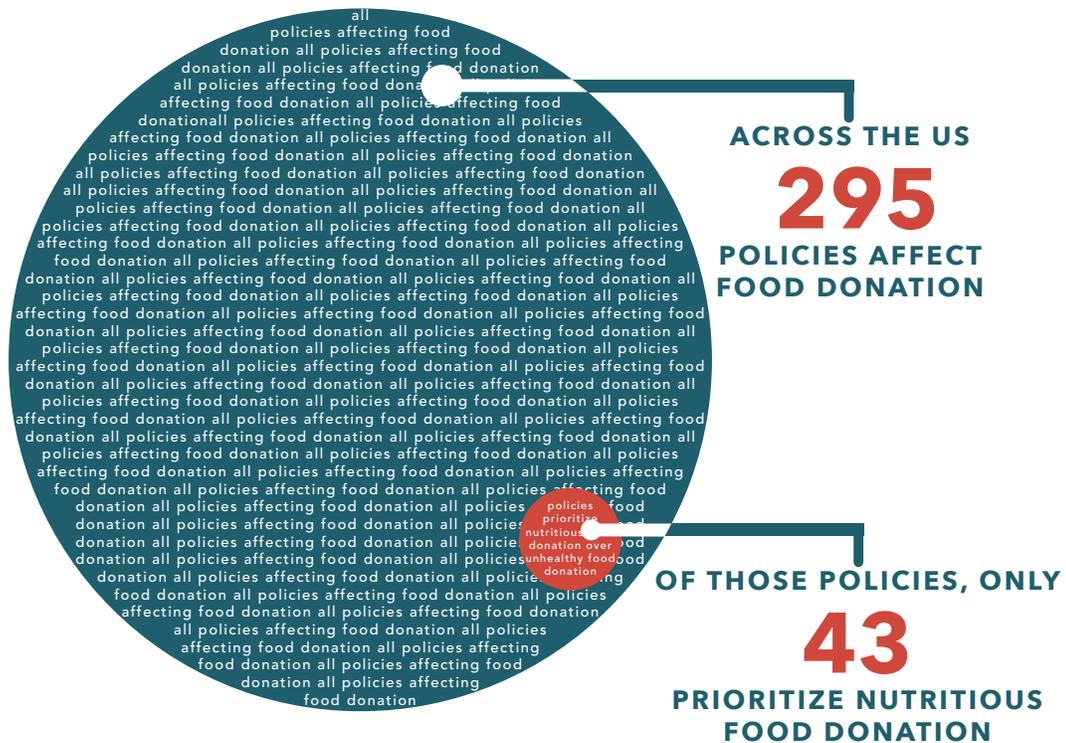
10. Organic waste bans (2.7 percent of policies)

All organic waste bans exist at the state level, bar landfilling of food waste by producers over a certain tonnage, and with one exception—Massachusetts—include a radius component and are in statute, rather than regulation.

Policy Scan Analysis

Only 43 policies out of 295 (14.6 percent) prioritize nutritious food donation over unhealthy food donation.

Eighteen policies (6.1 percent) in 12 states clearly prioritize the nutritious quality of donations. Fourteen policies (4.8 percent) in nine states relating to nutritious food donation or to farm-to-food bank tax credits,⁶⁹ three policies in three states that authorize state agencies to facilitate nutritious food or fruit and vegetable distribution to the CFS,⁷⁰ and the Pennsylvania Agricultural Support System (PASS), a program that provides state funds to



support the harvesting, processing, packaging, and transport of donated crops.⁷¹

A further 25 policies (8.5 percent), while not prioritizing nutritious donation as explicitly, either authorize donation of gleaned produce or provide liability protection for gleaning activity.⁷² Gleaning—the practice of collecting and donating leftover crops not harvested for sale—results in donation of inherently nutritious foods.

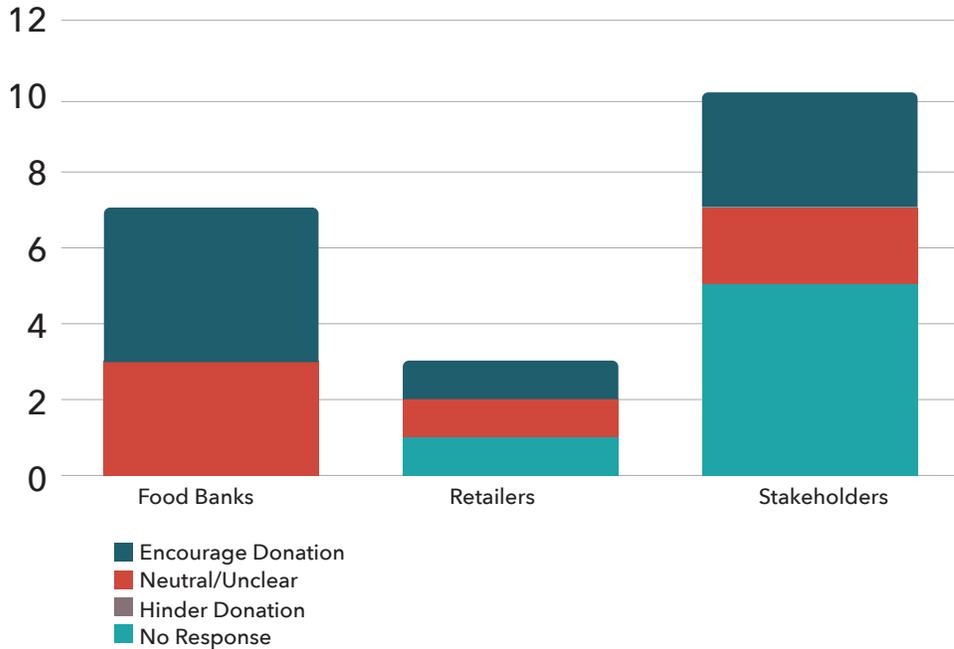
There is an important opportunity for federal action in several areas, including food safety and date labeling, where there are no federal policies. Comprehensive federal legislation would simplify complicated state-level legal landscapes in which different states have different requirements that can be confusing for food retailers, manufacturers, and producers that operate and donate food in multiple states.

However, states also have an opportunity to enact more policies that encourage nutritious donation. Most states (37) have six or fewer policies affecting donation. Only four states—California, Oregon, New York, and West Virginia—have 10 or more policies. For example, only seven states have organic waste bans, which result in increased donation of nutritious, perishable food. And that only 14.6 percent of policies prioritize nutritious food donation demonstrates a missed opportunity for policies affecting donation to improve the nutrition of CFS foods.

Key Informant Interviews

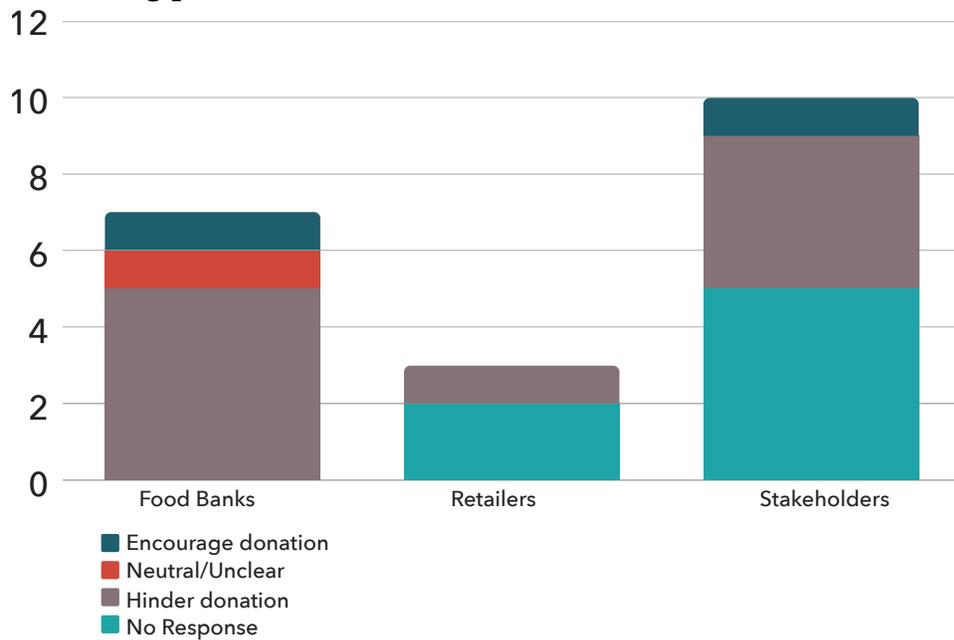
We asked interviewees about the impact of eight of the ten policy categories on donation generally and nutritious donation specifically. We did not ask interviewees questions about policies in two categories—grant programs and policies authorizing donation of certain food(s)—because policies in these categories were too disparate. Key insights for each category are:⁷³

 **Liability protection policies**



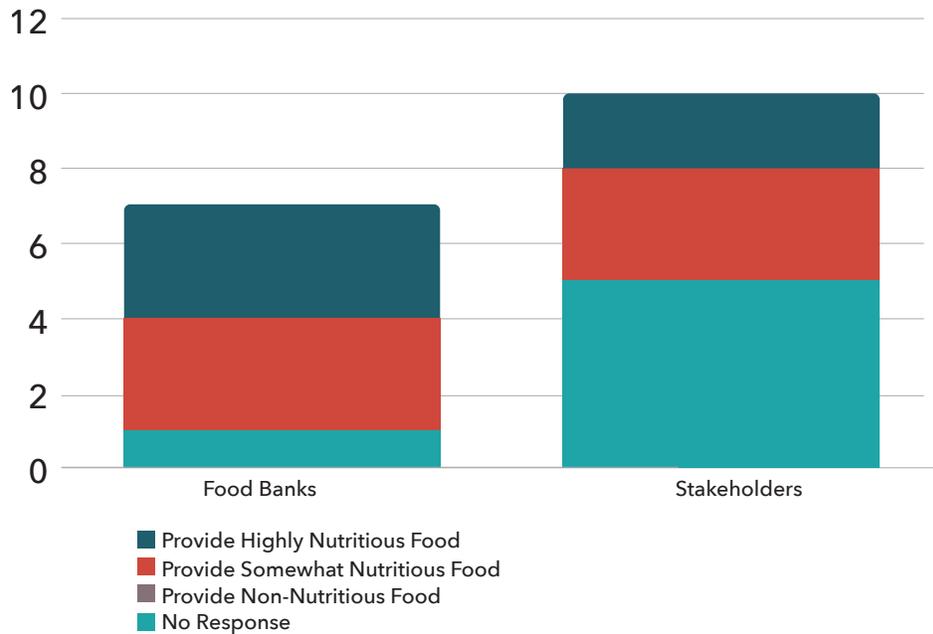
Liability protection laws were the largest category in the policy scan—23 percent of policies—however, most interviewees reported that existing federal and state liability protection laws encourage donation. This feedback suggests that these laws are robust enough and policymakers should look to other ways to legislate to encourage nutritious donation. Some interviewees suggested that amending these policies to cover only nutritious food, rather than all food, would better encourage nutritious donation, however, it may be difficult to narrow such a long-standing and heavily relied upon protection existing at both the federal level and in all 50 states.

 **Date labeling policies**



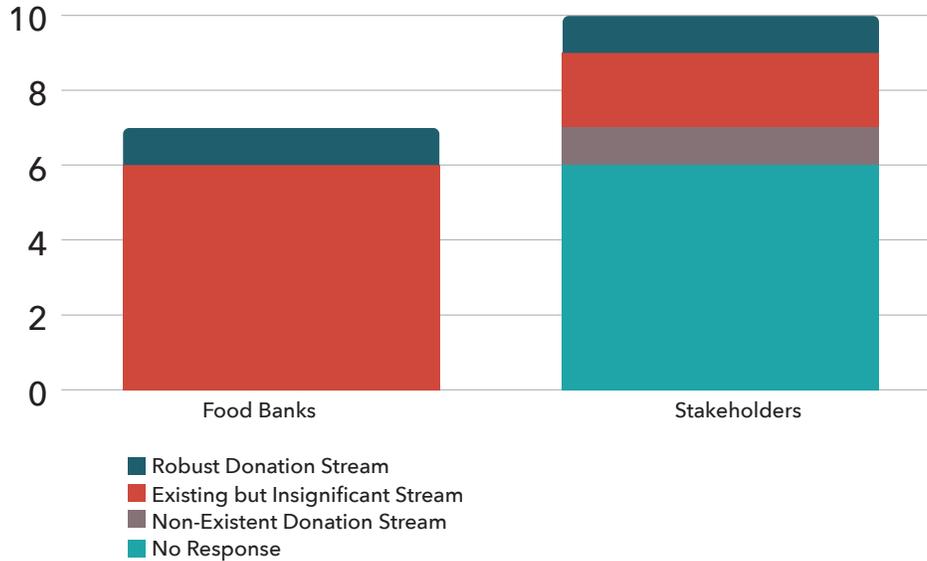
Most interviewees reported that date labeling laws hinder the amount of nutritious, packaged food that donors send to the CFS. Some interviewees noted that confusion about date labeling often affects whether perishable, nutritious food, like certain dairy products, is wasted or donated.

 **USDA Food Distribution Programs and state direct-spending programs⁷⁴**



To streamline the interview questions, we asked food bank executives and CFS stakeholders only about USDA Food Distribution Programs and state direct-spending programs, like PASS, rather than all government programs affecting donation. No interviewee felt that government programs provided a disproportionate amount of non-nutritious food. Most food bank and stakeholder respondents felt that these programs provide somewhat or highly nutritious food.

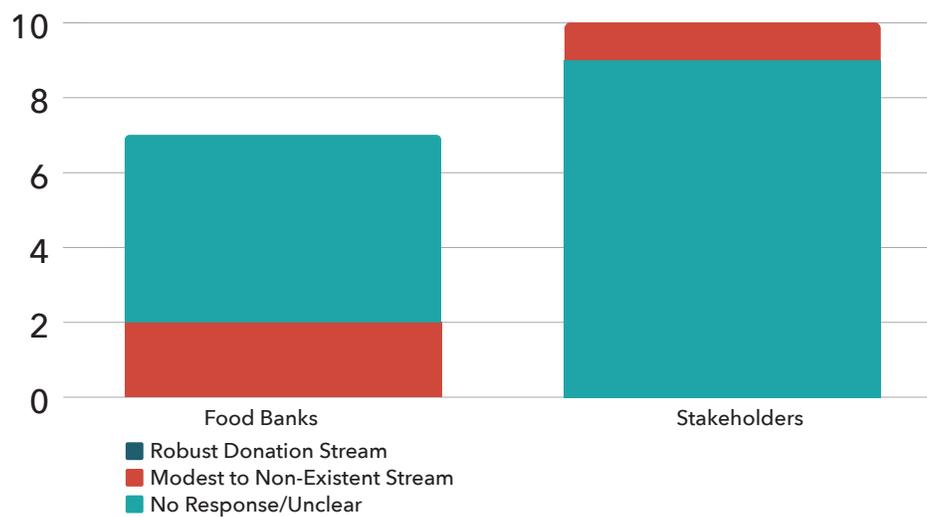
 **Donation via schools⁷⁵**



Most food bank and stakeholder respondents characterized donations from schools as either “insignificant” or “non-existent.” One interviewee highlighted an important caveat that schools sought donations *from* her food bank, not the reverse.

 **Game donation policies⁷⁶**

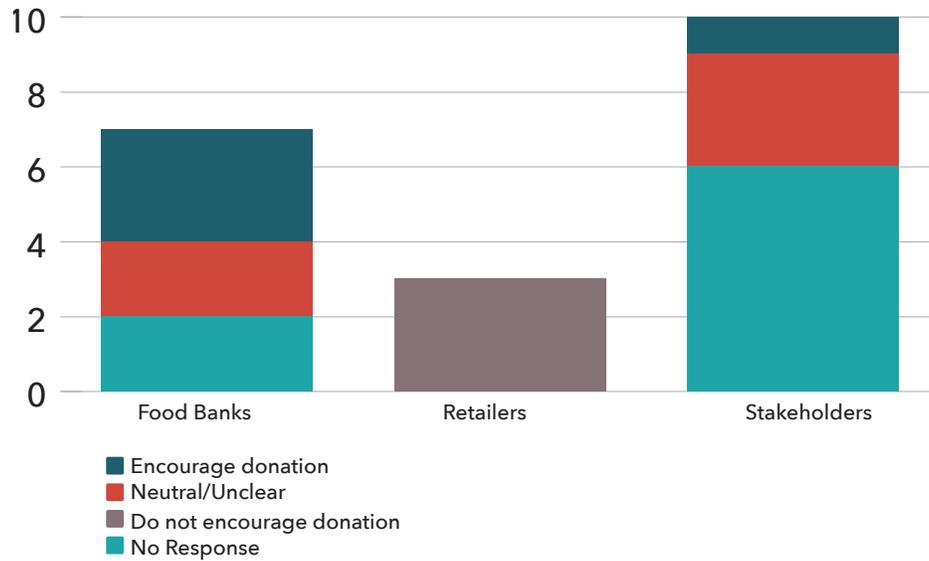
Stakeholders unanimously felt that game donation provides food



banks with highly nutritious protein but were unclear on how many food banks receive game donations and in what volume.

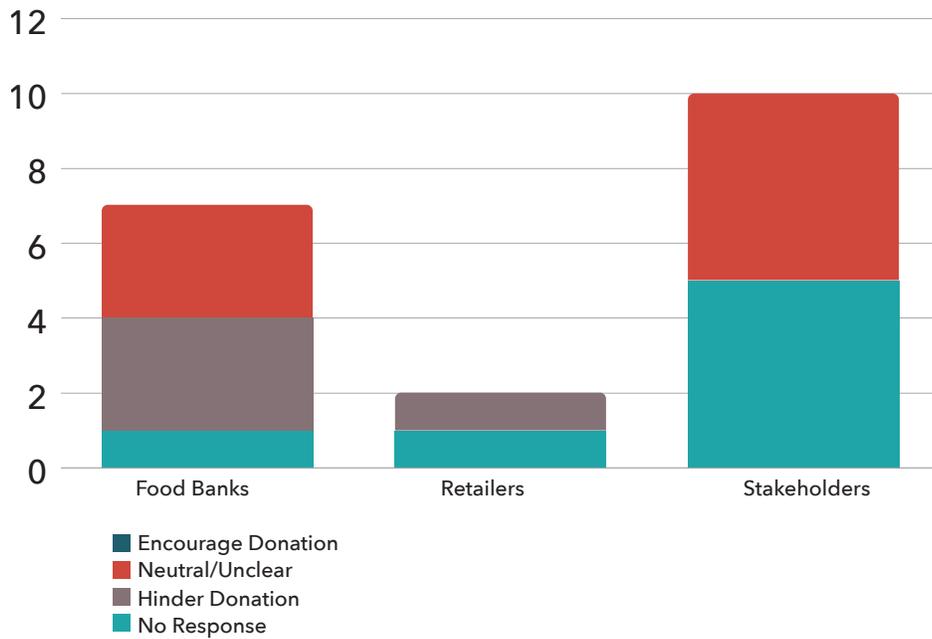
Food banks generally reported receiving game donations in modest quantities or not at all.

 **Tax incentives**



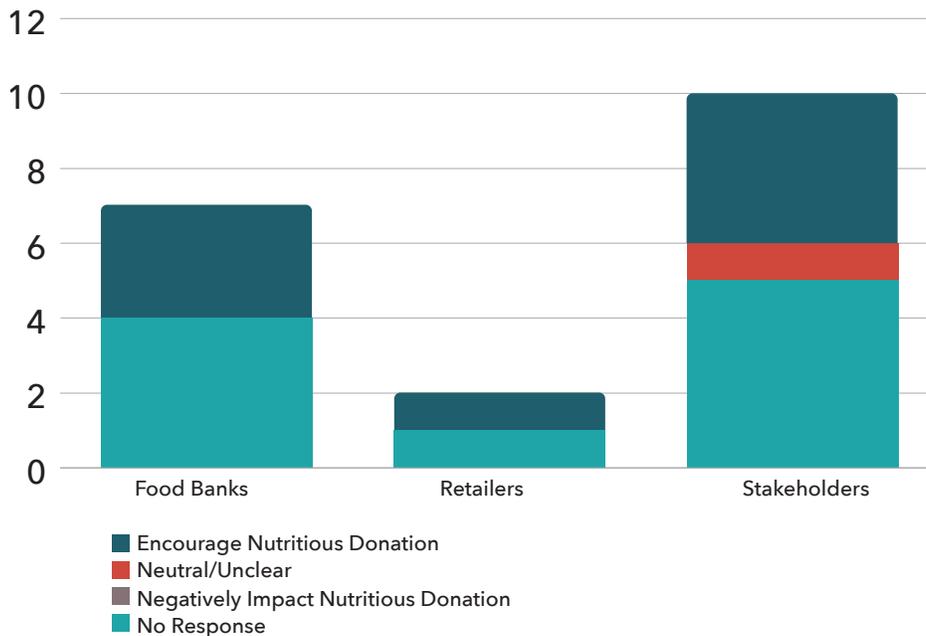
The majority of interviewees felt that federal and/or state tax deductions and credits do not encourage or have a neutral or unclear impact on donation.

 **Food safety policies**



Most respondents felt that food safety concerns are a barrier to donation. They largely cited logistical concerns, rather than concerns about adequate regulatory food safety guidance. However, several interviewees familiar with federal and state food safety regulations emphasized their inadequacy and believed that more food safety regulatory guidance could boost donation, particularly of often-nutritious, highly perishable food.

 **Organic waste bans**



No interviewees indicated that organic waste bans negatively affect donations' nutritional quality. The one responding retailer and nearly all food banks and stakeholders believed that such bans encourage nutritious donations.

The policy scan and analysis identified the universe of policies that affect donation to food banks, and if and how they address nutritional quality of donations. Knowledge of these policies gained through both the policy scan and the KIIs formed the policy recommendations on the following page.



Image: JackF/Adobestock

TOP RECOMMENDATIONS

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

ADDITIONAL RECOMMENDATIONS

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

Top Recommendations

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

In 2020, Feeding America sourced 1.7 billion of its 5 billion total distributed meals from federal and state governments.⁷⁷ The majority of donated food came from USDA Food Distribution Programs, including The Emergency Food Assistance Program, the Commodity Supplemental Food Program, Food Distribution Program on Indian Reservations, and the now-discontinued Coronavirus Food Assistance Program. Under these programs, USDA exercises statutory authority to purchase food at scale, often commodities from agribusiness, and to distribute it to the CFS. TEFAP, CSFP, and FDPIR are vital for providing the CFS with food and offer promise for improved nutrition.

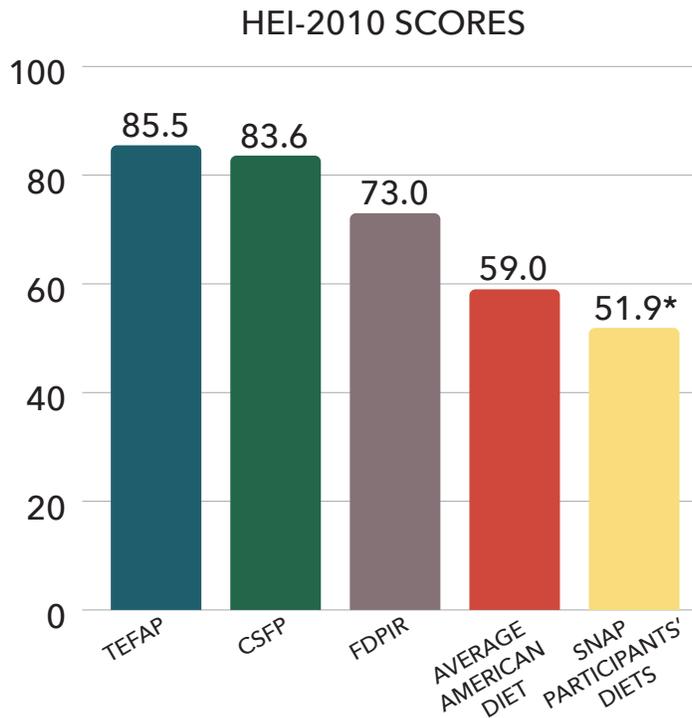
In 2019, TEFAP provided over \$1.8 billion of food.⁷⁸ The USDA purchases foods that it then distributes to State Agencies designated to administer the program locally. TEFAP Foods are quite nutritious. A 2014 USDA analysis found that fruits and vegetables accounted for 38 percent of the entitlement and bonus TEFAP foods delivered to emergency feeding organizations,⁷⁹ and that, in FY2014, TEFAP had a Healthy Eating Index-2010 (HEI-2010) score of 85.5 out of 100.⁸⁰ This score is higher than the average American diet (59 out of 100) and the average SNAP participant's diet (51.9 out of 100).⁸¹

CSFP provides pre-assembled food packages for low-income seniors over 60.⁸² CSFP's HEI-2010 score was 83.6 in FY2014.⁸³

FDPIR provides food to income-eligible tribal populations, typically as an alternative to SNAP in places where recipients do not have access to SNAP offices or authorized retailers.⁸⁴ Households cannot

simultaneously participate in FDPIR and SNAP.⁸⁵ In FY2014, FDPIR’s HEI-2010 score was 73.⁸⁶

FDPIR allows state agencies or tribal organizations administering the program to purchase locally and regionally grown foods and traditional indigenous foods, like blue corn and bison through the Traditional, Locally- and Regionally-Sourced Food Fund. First introduced as a pilot program in the 2014 Farm Bill, the 2018 Farm Bill made it permanent.⁸⁷ The 2018 Farm Bill also, separately, created a demonstration project allowing Indian Tribal Organizations, rather than USDA, to purchase program food by entering into self-determination contracts.⁸⁸



*1999-2004

The 2018 FDPIR Farm Bill measures were partly a response to a 2016 USDA report on FDPIR that included a survey on client satisfaction with respect to program foods’ nutrition and cultural appropriateness. That report found that “participant suggestions for improvements centered on building a more culturally relevant, local, and fresh food package.”⁸⁹

The statutes and regulations governing TEFAP, CSFP, and FDPIR do not contain comprehensive nutrition guidelines or stipulate that the programs follow the *Dietary Guidelines for Americans* (DGAs). The last comprehensive USDA study on the programs' nutritional quality examined data from 2014.⁹⁰ Based on the HEI scores discussed above, USDA Food Distribution Program foods are relatively nutritious, but there is clear room for improvement.

However, in recent years the USDA has tried to align the programs with the DGAs and has improved the nutritional quality of its offerings.⁹¹ These changes have included decreasing the levels of fat, sodium, and sugar in all USDA Foods.⁹²

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

- 🌱 A hunger relief organization executive called them: *"high-quality, high nutritional value."*
- 🌱 A food bank executive shared that: *"for the most part, those products really are nutritious products. Every once in a while there's a beef stew high in sodium...but... there's always canned vegetables, there's always canned fruits, there's whole grain cereal, there's shelf-stable milk, there's whole grain pasta or brown rice."*
- 🌱 An anti-hunger expert felt that: *"[c]ommodities have always been an under-appreciated but overly important resource in the charitable food stream...they're of higher nutritional quality than the other streams, not a bad thing to grow."*
- 🌱 Suggesting that there is still room for nutritional improvement, a food bank CEO stated that a: *"significant source [of our food] is the USDA, so when you think about what could actually impact the nutritional value of our food...it would be just through the nutritional quality of food we're able to source from the USDA."*

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

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

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

The USDA calculates Food Plans to illustrate a nutritious diet at four cost levels, using the Consumer Price Index.⁹³ Currently, TEFAP is indexed to the Thrifty Food Plan, meaning that the annual TEFAP appropriation is calculated based on changes to the Thrifty Food Plan.⁹⁴

The Thrifty Food Plan is the least costly of the four food plans that USDA calculates to represent a household's monthly food costs.⁹⁵ The USDA re-evaluated the Thrifty Food Plan in August 2021, increasing its assessment of food costs under the plan.⁹⁶ This change will increase TEFAP funding as well as SNAP benefits. However, the Thrifty Food Plan allowance breaks down to a meager \$1.80 per meal, which still undervalues the amount of food that CFS clients require.

To meet CFS clients' actual food needs, Congress should amend 7 U.S.C. § 2036 to index TEFAP against a more generous Food Plan. As the Food Research & Action Center has observed: the Low-Cost Food Plan "is generally in line with what low- and moderate-income families report that they need to spend on food...[and] allows for greater food variety and choices to support a healthful, palatable diet."⁹⁷

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

The 2018 Farm Bill introduced FTFB funding to TEFAP.⁹⁸ Farm-to-food bank describes the movement of food, either through donation

or purchase, directly from farmers to the CFS. Donated agricultural products, which are mostly fruits and vegetables, are a highly nutritious source of food. The farm-to-food bank supply chain is a key opportunity to fight hunger and increase nutritious donations while cutting food waste, as fourteen million tons of crops go unharvested annually.⁹⁹ This tonnage is roughly the same as the amount of waste that New York City produces each year.¹⁰⁰

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

Four million dollars of FTFB funding is available annually for each Fiscal Year 2019 through 2023 for harvesting, processing, packaging, and transporting donated commodities through TEFAP.¹⁰¹

The relatively low annual appropriation, combined with the TEFAP allocation formula (FTFB funds are allocated to states based on the TEFAP funding formula laid out in 7 C.F.R. § 251.3(h)), results in little incentive for some states to participate. For example, in FY20, only \$25,644 would have been available to West Virginia.¹⁰²

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

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

CSFP’s food packages, which feed low-income seniors, do not constitute a complete diet,¹⁰³ and are not intended to cover full dietary needs.¹⁰⁴ Yet many food banks supplement the packages with fresh produce to meet seniors’ nutrition needs. CSFP foods

already arrive in package form, and USDA could ease this burden on food banks by adding fresh produce.

Congress should provide infrastructure grants to help distribute increased amounts of produce through food banks participating in CSFP. The American Rescue Plan provides \$100 million dollars for food bank infrastructure grants in underserved areas.¹⁰⁵ Because these funds are specifically intended for underserved areas, they will not necessarily cover distribution of additional fresh produce through CSFP, which serves food banks across the country, not just in rural, remote, and low-income communities that the existing infrastructure grants are intended to serve.

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

The fund's current appropriation—\$5 million a year—is a drop in the bucket of FDPIR's total budget, which was \$153 million in 2019.¹⁰⁶ It should be increased to allow FDPIR to provide even more healthy, local, culturally desirable foods.

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

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

Qualifying tribal members can switch between SNAP and FDPIR from month-to-month. However, these changes require the tribal member to give notice of and administrators to register the change. Eliminating the prohibition on simultaneous SNAP and FDPIR participation would

simplify the benefits process for both recipients and administrators. It would also be more likely to address food insecurity needs in Tribal communities than either program alone.¹⁰⁷

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

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

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



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

Interest in growing the farm-to-food bank donation stream, through which farmers send crops to the charitable food system, has risen in recent years.¹⁰⁸ These donations are largely of inherently nutritious fruits and vegetables.

Some states have established or begun to support innovative programs to facilitate farm-to-food bank donation. For example, Pennsylvania has PASS,¹⁰⁹ a program that provides state funds to support the harvesting, processing, packaging, and transport of donated food.¹¹⁰ Current funding is \$1.5 million.¹¹¹ When funding was originally \$1 million, Philabundance, a Pennsylvania food bank and anti-hunger advocacy organization, wrote that the “appropriation only covers a portion of the nutritious bounty that could be brought into the charitable food system through PASS”¹¹² and advocated for increased state support.

In contrast, food bank, philanthropic, and ad hoc government funding supports farm-to-food bank programs in other states. For example, California food banks and philanthropic dollars have funded the California Food Bank Association’s Farm to Family program.¹¹³

And while federal TEFAP FTFB funding is available, states must apply for these grants and the funding is not enough to support the full extent of farm-to-food bank opportunities in each state. For example, Maine received \$19,630 in TEFAP FTFB funding in Fiscal Year 2021 for frozen blueberry harvesting and donation.¹¹⁴ Simultaneously, Mainers Feeding Mainers,¹¹⁵ the farm-to-food bank program run by the state’s largest food bank received \$1 million in the Maine Fiscal Year 2020-21 budget to harvest over two million pounds of food.¹¹⁶

A food bank executive in a state with state funding for such a program emphasized that robust continued funding is necessary for farm-to-food bank programs to thrive: “[t]hat’s our evergreen

state policy priority, to get state funding for [the program] included in the budget, and it's a battle every year."

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

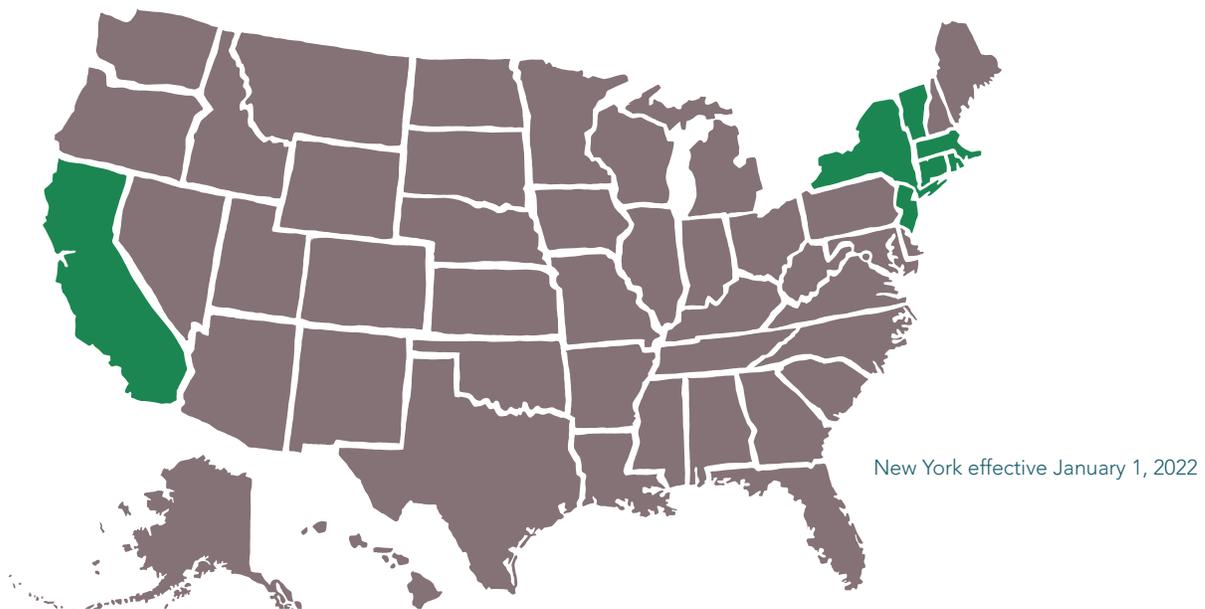
State legislatures already subsidizing farm-to-food bank programs, like Pennsylvania's, should fund these programs more robustly. States where food banks, food bank associations, or philanthropists subsidize farm-to-food bank donations without state funds, or without such programs, should appropriate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



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

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

Seven states—California,¹¹⁷ Connecticut,¹¹⁸ Massachusetts,¹¹⁹ New Jersey (effective October 14, 2021),¹²⁰ New York¹²¹ (effective January 1, 2022), Rhode Island¹²², and Vermont¹²³ have bans. The 2018 Farm Bill established a pilot program allowing Congress to appropriate \$25 million annually through 2023 in part for local governments to develop and test composting and food waste reduction plans in at least 10 states.¹²⁴ However, this grant money is unavailable for state-level programs.



Food loss and waste are immense problems: the U.S. wastes up to 40 percent of edible food,¹²⁵ which generates climate-damaging methane emissions when food sits in landfills.¹²⁶ During the first 20 years following its release into the atmosphere, methane is 84

times more potent as a global warming accelerant than carbon.¹²⁷ Donating food, rather than landfilling it, is an opportunity to fight food and nutrition insecurity and cut methane emissions, and our recommendations below take into consideration such positive climate impacts.

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

Bans generally apply to organic waste generators, most notably food retailers, above a certain tonnage within a specified timeframe, for example one ton per week. The bans are often structured so that the tonnage threshold progressively lowers in a ban's first few years.¹²⁸

Most existing bans do not prioritize donation. For example, the Frequently Asked Questions section of the Connecticut ban states that donation counts as compliance with the law, but this option is not explicit in the statutory text.¹²⁹ Vermont's ban has a food waste priority use hierarchy that includes "diversion for food consumption by humans" as the second option after reducing the amount of food waste generated at the source.¹³⁰ However, New York's law will be the first to require donation of edible food before recycling.¹³¹

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

There is strong evidence that nutritious, fresh food donation increases when states implement organic waste bans. For example, the second phase of Vermont's Universal Recycling Law took effect in 2015, prohibiting food waste generators of over one ton per week from landfilling that waste.¹³² Subsequently, the Vermont Foodbank saw a 30 percent increase in food rescue from donors, including a 200 percent rise in retail donation pickups.¹³³ This donation increase included an uptick in fruits and vegetables.¹³⁴

Several KII participants emphasized this effect:

- 🌱 An environmental agency employee in a state with an organic waste ban reported that: *"there were several large food retailers that*

weren't donating at the level they could have been, and when the law was going to come into play, they started donating more."

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

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

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

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

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

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

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

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

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

ADDITIONAL RECOMMENDATIONS

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

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

The FFDA requires inclusion of a clause encouraging the donation of excess, “apparently wholesome food”¹³⁵ in each federal agency or subcontractor food service contract above \$25,000.¹³⁶ It requires inclusion of the same clause in contracts above \$25,000 for federal property lease or rental for events at which food is served.¹³⁷

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

Illinois is the only state with a comparable state-level law. Illinois' law (30 Ill. Comp. Stat. § 500/55-20) forbids public entities from contracting to purchase food if the terms prohibit donation of the food, and requires state agencies with contracts for food purchase to adopt policies permitting leftover food donation.¹³⁸ Yet the Illinois law is even less likely than the FFDA to spur donation. It does not encourage or recommend donation; it merely requires agencies to adopt policies permitting it.

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

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

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

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

Date labeling on food either estimates the window in which a product is at its best quality, or when it was produced.¹³⁹ Date labels are commonly misunderstood to reflect food safety, but actually indicate the time period in which food will be freshest; depending on the food, it will still likely be safe to consume for days, weeks, months, or even years after the label date.¹⁴⁰ The federal government regulates date labeling only minimally: the FDA requires a “use by” date for infant formula and the USDA mandates a “pack date” for poultry and eggs.¹⁴¹

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

dairy products, eggs, meat, or packaged perishable foods,¹⁴² and many of these laws conflict with one another.¹⁴³ Fully 20 percent of the policies in our scan—the second highest of any federal or state policy category—are state date labeling laws, showing how the dearth of federal regulation has created a vacuum into which state laws have stepped.

Required date labels such as these do not necessarily reflect safety. For example, Montana does not allow the sale of milk more than twelve days after pasteurization, even though milk can be fresh for 2-3 weeks after pasteurization.¹⁴⁴ Retailers pay close attention to date labels, particularly on perishable foods, which are often nutritious. While food safety grounded in science is vital, strict adherence to labels that do not necessarily convey safety information and vary widely across the food industry is overkill and can result in wasted healthy food that could otherwise be donated to food banks.

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

The federal government's failure to comprehensively regulate date labeling has led to industry initiatives promoting use of voluntary, standardized labeling language. In 2017, the Food Marketing Institute and the Grocery Manufacturers Association, two of the largest food industry trade groups, launched the FMI-GMA Product Code Dating Initiative, which urges grocery manufacturers and retailers to use two labeling phrases: "BEST if Used By" to indicate freshness, and "USE By" safety phrasing for perishable products where there are safety concerns.¹⁴⁵

The FDA does not currently specifically regulate date labeling but issued a letter in May 2019 indicating that the agency "strongly supports" the industry's voluntary efforts to use the "BEST if Used by" language.¹⁴⁶ The letter stated, however, that the agency had not taken a position on the "USE By" language to convey safety risks.

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

found that the voluntary language conflicts with required date labeling language in at least 27 states.¹⁴⁷ For this reason, manufacturers and retailers in those states cannot use the FMI-GMA language *and* comply with state laws.¹⁴⁸ This conflict allows a confusing array of labeling practices to persist.

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

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

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

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

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

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

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

Overview of tax credits and deductions

Under the Federal Enhanced Tax Deduction for Food Donation, businesses can claim an itemized deduction for the value of donated food. Entities donating food to nonprofit organizations can deduct the lesser of (i) their tax basis for the food, plus one-half of the profit margin (fair market value less the tax basis), or (ii) twice the tax basis, up to 15 percent of net income.¹⁴⁹ The CARES Act temporarily increased the limitation to 25 percent of net income for Fiscal Year 2020.¹⁵⁰ The federal deduction applies to all donated food, regardless of nutritional quality.

Our policy scan found that at least fifteen states provide state-level tax deductions or credits for food donations.¹⁵¹ So-called farm-to-food bank credits in at least seven of these states—California,¹⁵² Iowa,¹⁵³ Maryland,¹⁵⁴ New York,¹⁵⁵ Oregon,¹⁵⁶ Virginia,¹⁵⁷ and West Virginia¹⁵⁸—apply to farmer and grower crop donations, which are inherently nutritious. Unique among these credits, California’s applies more broadly to certain processed, mostly healthy foods, like 100 percent fruit juice.¹⁵⁹

Credits differ from deductions in that they directly reduce a filer’s tax liability, as opposed to taxable income.¹⁶⁰ Credits are more beneficial than deductions for low-profit margin businesses, farms, and small businesses because they do not depend on the amount of taxable income.¹⁶¹

Existing policy recommendations often point to tax incentives as tools for encouraging donation.¹⁶² The main evidence that tax incentives motivate donation is that that food donations in the United States rose by 137 percent in the year after Congress expanded the Federal Enhanced Deduction to cover more businesses in 2005.¹⁶³ However, Congress acted in response to post-Hurricane Katrina hunger and there was heightened attention to and interest in food donation at that time.

Several of our KII interviewees, especially executives at food retailers, reported that existing tax incentives do not motivate

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

It is also unclear if tax credits motivate farms and small businesses to donate food. A Canadian study examining Ontario’s 2013 farm-to-food bank tax credit found that it did not motivate farmers and growers to donate because they were already doing so.¹⁶⁴ In fact, the farmers and growers were offended by the credit’s value—25 percent of the fair market value of donated agricultural products—because they perceived the value of their donations to be higher.¹⁶⁵

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



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

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

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

Overview of federal and state food donation regulatory guidance

The FDA Food Code (Food Code) is the federal model code outlining food safety regulations for restaurants and food retailers. State and local governments use the FDA Food Code as the basis for their own food codes.¹⁶⁶ The FDA updates the Food Code every four years based on contributions by regulatory officials, industry representatives, academics, and consumers participating in the Conference for Food Protection (the Conference).¹⁶⁷ Although it covers a wide range of food safety issues occurring in restaurant and retail settings, the Food Code does not address food donation.

The FDA and USDA maintain the Comprehensive Resource for Food Recovery Programs (Comprehensive Resource). This resource, last updated in 2016, does provide food safety guidance for retailers interested in establishing food recovery programs.¹⁶⁸ However, the Comprehensive Resource is a standalone document, separate from the Food Code, and does not offer model text for adoption into state and local food codes.¹⁶⁹ As a result, few states provide donation guidance in their food codes.¹⁷⁰ Amending the Food Code could increase the number of states that provide this guidance.

Our policy scan found that at least 18 states have a combined 21 laws and guidance addressing donation, either stipulating time and temperature requirements for donated foods, or establishing food safety measures for game donation.¹⁷¹ The state laws and guidance that do address donation often include time and temperature requirements for highly perishable foods. For example, a Texas food safety law addressing donated food includes time, temperature, and transportation requirements for “time/temperature controlled for safety foods.”¹⁷² Donors may shy away from donating highly perishable and perishable nutritious foods without such food safety guidance.

In 2017, the Harvard FLPC surveyed state and local regulators responsible for food safety in all 50 states and found that 78 percent of survey participants thought that model language would be or would have been helpful to those regulators in creating food safety guidance for donation.¹⁷³

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

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

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

Food bank clients want protein.¹⁷⁴ Game meat is a lean and nutritious protein source,¹⁷⁵ and hunters often have more meat than they can use. For this reason, states with existing game donation programs should fund them more robustly. States without them,

or where they are not state-funded, should establish or fund these programs.

At least 13 states subsidize hunter donation of wild game such as venison to food banks, representing 10 percent of the policies in our scan.¹⁷⁶ These programs, often called some variation of “Hunters for the Hungry,” differ in their structure but generally entail states appropriating funds to cover the cost of processing game meat that hunters donate to the CFS. In states without these programs, food banks may spend considerable funds to process donated game meat.

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

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

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

Despite its nutritional quality, game meat can pose unique food safety risks.¹⁷⁷ For example, lead contamination from ammunition presents health risks, including damage to the nervous, renal, cardiovascular, reproductive, immune and hematologic systems.¹⁷⁸ It also poses environmental risks, including lead build-up in areas with concentrated hunting activity.¹⁷⁹ CDC tests have shown that donated game is frequently lead-contaminated.¹⁸⁰

States with game donation programs should provide lead-free bullets to participating hunters. The deer cull in Washington, DC’s Rock Creek Park models this concept by using only lead-free ammunition and donating the venison to DC Central Kitchen, a hunger relief organization.¹⁸¹ Food banks can also set lead-free

parameters, for example, specifying that they prefer or only accept game hunted with lead-free ammunition.

Chronic wasting disease (CWD) is another game-related food safety concern. Certain species in the deer family (cervids)—deer, elk, reindeer, sika deer, and moose—are prone to CWD, a prion disease that causes weight loss and neurological symptoms in infected animals.¹⁸²

There has not been a documented case of CWD in humans; however, there is potential risk for animal-to-human transmission and the World Health Organization recommends keeping prion disease agents out of the human food chain.¹⁸³ Concerns over CWD have led some states to offer free CWD testing for certain priority areas.¹⁸⁴

States that subsidize game donation programs and where CWD is present should require that cervids harvested from areas with CWD in the wild population be tested to better ensure that donated game is disease-free. The Centers for Disease Control and Prevention recommend this precautionary measure.¹⁸⁵ Other game-related disease risks should be identified and addressed, either by screening donations or ensuring that donation recipients know to mitigate these risks through proper handling and cooking.

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

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

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

CONCLUSION:

The recommendations in this report are opportunities for policy reform at all levels: organizational, local, state, and federal, at a moment when feeding people experiencing food insecurity well matters more than ever.

Although hundreds of public policies affect food donation, relatively few are designed to encourage nutritious donation, let alone discourage unhealthy food donation. Ensuring that food donations are nutritious and culturally appropriate meets CFS clients' needs, supports their health, and improves public health.

Due to systemic racism and discrimination, people living in low-income communities and communities of color experience food and nutrition insecurity at greater rates than their higher income white counterparts. Consequently, they are at greater risk of developing chronic diseases and serious illness from COVID-19,¹⁸⁶ underscoring the importance of providing nutritious food through the CFS.

We urge policymakers and advocates to use these recommendations to work together toward a more nutritious CFS that supports improved health and wellbeing for people experiencing food insecurity.

APPENDIX A

Policy Approaches to Healthier Food Banking— Interview Questions

1. Please state your name, job title, and the name of your organization/company. Briefly describe your role at your organization/company.
2. What is your organization/company's role in issues related to food donation and food banking?

Attitudes and perceptions

3. Do you think food banks should help address access to healthy food for food insecure people?
4. **[Retailers]** Why does your company donate food to food banks?
5. **[Retailers/Food banks]** How does your company/organization define healthy food? Is this a formal definition?
6. **[Stakeholders]** How do you think the charitable food system should define healthy food?
7. **[Retailers/Food banks]** Does your company/organization have a policy regarding the nutritional quality of donations?
 - a. **If no [retailers]:** How does your company decide what to donate?
 - b. **If no [food banks]:** What are the key drivers of the food offerings that your organization provides to clients?
8. **[Stakeholders]** Do you think that food banks and food donors should have nutritional policies regarding donations?
 - a. **If no:** What do you think should be the key drivers behind the types of food donated to food banks?
9. **[Retailers/Food banks]** How much do guidelines from Feeding America influence the nutritional quality of your donations/the types of donations that your organization seeks and receives?
10. **[Stakeholder]** In your opinion, how much do nutritional guidelines from Feeding America influence the types of donations that food banks receive?

11. **[Retailers/Food banks]** Does your company/organization formally track donations, and if so, using what metric (nutritional quality, food category, pounds, etc.)?
 - a. **[Retailers]** Can you estimate the amount of food that your company donates to food banks annually?
 - b. **[Food banks]** Can you estimate the amount of donated food that your organization receives annually?
 - c. **If tracking by food category/nutritional quality**, what percentage of donated food and beverages could be categorized as healthy before the pandemic? During the pandemic? Please estimate if necessary.
12. **[Stakeholders]** Should food banks and food donors formally track donations, and if so, using what metric (nutritional quality, food category, pounds, etc.)?
13. **[Retailers/Food banks]** How else has the pandemic impacted the amount and type of food that your company donates to food banks/organization seeks and receives?
14. **[Stakeholders]** Are you aware of ways that the pandemic has impacted the amount and/or type of food that is donated to food banks?
15. **[Retailers/Food banks]** What challenges does your company/organization face in trying to donate/receive healthy food? **[Stakeholders]** What are the challenges to donation of healthy food?
 - a. Applicable areas may include:
 - i. Public policies
 - ii. Corporate policies
 - iii. Operations (including supply chain, logistics, availability)
 - iv. Finances (including landfill tipping fees)
 - v. Social
 - vi. Other
16. **[Retailers/Food banks/Stakeholders]** Please describe any efforts that your company/organization has made/you have witnessed during the past year to increase healthy food donations.
 - a. Were any of these efforts in response to the

pandemic?

b. **If none [Retailers/Food Banks]:** What strategies to increase healthy food donations have you observed at other companies/organizations?

17. **[Retailers/Food banks/Stakeholders]** We are aware that retail donations to food banks were declining pre-pandemic, and have heard that during the pandemic retail donations have declined further. Does your company plan to continue donating food after the pandemic/does your organization anticipate receiving pre-pandemic levels of retail donations after the pandemic/do you anticipate that after the pandemic retail donation will return to pre-pandemic levels?

Policy awareness

18. In your experience, what are the key federal or state policies that encourage or impede donation to food banks? Which of these policies encourage or impede donation of *healthy* foods in particular?
19. Policies, such as the Enhanced Federal Deduction for Food Donation and certain state laws, provide tax incentives for food donation.
- a. Do tax incentives encourage donation to food banks?
 - b. Can you think of any changes to tax laws that would further incentivize healthy food donations?
20. The Bill Emerson Good Samaritan Food Donation Act and state-level liability protection laws protect good faith food donors from liability.
- a. Do you think that these laws influence donation of fresh food?
 - b. Can you think of any changes to these laws that would further incentivize healthy food donations?
 - c. **If unfamiliar:** [Summarize laws and ask Question 15a].
21. **[Food Banks]** Does your organization received government-donated food through USDA or state commodity-purchasing programs such as The Emergency Food Assistance Program (TEFAP)?
- a. **If yes:** How much? How would you characterize the nutritional quality of the food received?

- b. Can you think of any changes that would improve the amount and nutritional quality of the food received through these donations?
- 22. **[Stakeholders]** Federal or state commodity-purchasing programs, such as The Emergency Food Assistance Program (TEFAP), provide food banks with government-purchased commodities.
 - a. How would you characterize the amount and nutritional quality of government-purchased commodities that food banks receive?
 - b. Can you think of any changes to these programs that would improve the nutritional quality and amount of healthy food that food banks receive?
- 23. **[Food banks]** Do local schools donate excess food to your organization/**[Stakeholders]** are you aware of schools donating excess food to food banks?
 - a. **If yes:** How would you characterize the amount and nutritional quality of the food received? To your knowledge, what amount of the food is excess school nutrition program food, and what amount is from Share Table programs?
- 24. **[Retailers/Food banks/Stakeholders]** Do date labeling laws affect the amount of healthy, packaged food that your company donates/organization receives/that is donated to or accepted by food banks?
- 25. To what extent are food safety concerns a barrier to fresh food donation?
- 26. **[Food banks in states with organic waste bans/Stakeholders]** Has your state's organic waste ban impacted the amount of healthy food donated to your organization?/ To your knowledge, do the organic waste bans in several states impact donation of healthy food? In what way?
- 27. **[Food banks in states with game donation programs]** Does your organization received donate game?
 - a. **If yes:** How much? Do you think that the state game donation program incentivizes donation?
- 28. **[Stakeholders]** How would you characterize the amount and nutritional quality of the food donated to food banks as a result of state game donation programs?

29. Have any new programs or policies in response to the pandemic been helpful in facilitating increased donation of healthy food?
30. Do you have ideas about other policies or programs that would facilitate increased donation of healthy food, outside of the pandemic context?

Project goals

As you may know, *The Tipping Point*, a 2018 report by the Rudd Center for Food Policy and Obesity and MAZON found that, on average, fresh produce accounts for one third of food bank distributions. Sugary beverages and sweet and salty snack foods account for roughly 25 percent of distributed items.

We are exploring how policies and programs facilitate or impede donations of healthy foods. A separate part of this project is to develop a Model Retail Donation Policy. It will be based on the *Nutrition Guidelines for the Charitable Food System* that the Robert Wood Johnson Foundation’s Healthy Eating Research program released in March 2020. These guidelines create a three-tiered “spotlight” system for ranking foods.

31. What are your reactions to the project’s goals? Any specific concerns?
32. Based on your experience, would it be helpful to have a model healthy food donation policy for retailers?
 - a. **[Retailers]** Would such a policy encourage your company to increase donation of healthy foods? Why or why not?
33. **[Retailers]** Would your company be more, less, or equally likely to donate food to a food bank that had a formal nutrition-based donation policy? Why?
34. **[Retailers]** To inform your company’s donations program, would it be useful for a food bank to provide data on the healthfulness of foods that it receives from your company?
35. **[Food banks]** Are there particular nutrition guidelines that would be important to include in such a policy for the populations that you serve?
36. **[Stakeholders]** Do you think that such a policy would

encourage retailers to increase their donation of healthy foods?

- a. Why or why not?

Demographics

I have a few final questions about you. You do not have to answer if you do not feel comfortable doing so.

1. Which age range applies to you?
 - a. 20-29
 - b. 30-39
 - a. 40-49
 - b. 50-59
 - c. 60-69
 - d. 70-79
 - e. Prefer not to answer
2. What is your gender identity? Please select all that apply.
 - a. Female
 - b. Male
 - c. Non-binary / Gender non-conforming
 - d. None of the above
 - e. If this is selected, but they do not elaborate:** Would you like to specify your current gender identity?
 - f. Prefer not to answer
3. Which of the following best describes your race/ethnicity? Please select all that apply.
 - a. American Indian or Alaska Native
 - b. Asian / Asian American
 - c. Black / African American
 - d. Middle Eastern or North African
 - e. Native Hawaiian or Pacific Islander
 - f. White / Caucasian
 - g. Other
 - i. If this is selected, but they do not elaborate:** Would you like to specify?
 - f. Prefer not to answer
4. Do you identify as Hispanic or Latino?
 - a. Yes
 - b. No

5. What is the highest level of education you have completed?
 - a. High school graduate / GED
 - b. Some college / trade school
 - c. Associate (two-year) degree
 - d. Four-year college degree
 - e. Graduate school degree or higher

Thank you so much for sharing your insights and experience.

6. Do you have suggestions of other organizations/companies/people in the same field with whom we could speak?
7. **If yes:** Would you be willing to share their contact information with us?

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