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## Healthy School Meals for All: The Role of Food Law and Policy

Thomas J. Vilsack, JD\*

On September 28, 2022, I had the tremendous privilege of kicking off the second, historic White House Conference on Hunger, Nutrition, and Health.<sup>1</sup> As I discussed in my opening remarks and in the United States Department of Agriculture (USDA) post-Conference report, the first Conference held more than 50 years ago by President Nixon in 1969 had significant impacts on our Department and the prevalence of food insecurity in our country.<sup>2</sup> Most notably, the Conference sparked significant expansions to Food Stamps, now known as the Supplemental Nutrition Assistance Program (SNAP), from 2 million in 1968 to 11 million by 1971.<sup>3</sup> The Conference also increased the reach of the National School Lunch Program (NSLP), which served 2.9 million low-income children at the time of the Conference and expanded to serving nearly 8 million low-income children by 1971.<sup>4</sup> Permanent authorization of the

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\* The 32<sup>nd</sup> United States Secretary of Agriculture who was nominated by President Joe Biden to return to the role where he served for eight years under President Barack Obama. I am truly indebted to the staff at the United States Department of Agriculture (USDA) and the entire Federal family that worked to make the historic White House Conference on Hunger, Nutrition, and Health a meaningful reality and who are tirelessly working with our partners at the State, Tribal, US Territories, and local governmental levels, as well as with school districts, childcare centers and homes, community organizations, and other sites across the nation that help deliver our services. Citation support was provided by Sheila Fleischhacker, PhD, JD, RDN, Senior Technical Advisor for Nutrition Security at USDA, in addition to reviews provided by Sara Bleich, PhD, Former Director of Nutrition Security and Health Equity at USDA, leadership teams at the USDA Food and Nutrition Service Child Nutrition Program and Office of Policy Support, Kumar Chandran, MS, MPH, Senior Advisor for Nutrition USDA Office of the Secretary, along with other communication and general counsel staff at USDA.

<sup>1</sup> *President Biden Delivers Remarks at the White House Conference on Hunger, Nutrition, and Health*, YOUTUBE, <https://www.youtube.com/watch?v=Xfp9Cn5A5Mc> (last visited Apr. 26, 2023).

<sup>2</sup> *Id.*; see also FOOD & NUTRITION SERV., *Leveraging the White House Conference to Promote and Elevate Nutrition Security: The Role of the USDA Food and Nutrition Service* (Sept. 2022), U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/nutrition-security/fns-role> (last visited Apr. 26, 2023).

<sup>3</sup> FOOD & NUTRITION SERV., *supra* note 2 at 5; see also FOOD & NUTRITION SERV., *Yearly Trends in SNAP Participants, Unemployment, and Poverty*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/yearly-trends> (last visited Apr. 26, 2023).

<sup>4</sup> FOOD & NUTRITION SERV., *supra* note 2 at 5; see also FOOD & NUTRITION SERV., *National School Lunch Program: Participation and Lunches Served* (Data as of Apr. 14, 2023), U.S. DEP'T OF AGRIC., <https://fns-prod.azureedge.us/sites/default/files/resource-files/slsummar-4.pdf> (last visited Apr. 26, 2023).

School Breakfast Program occurred in 1975, which was also inspired by The Black Panther Party's Free Breakfast for School Children Program, started in 1969.<sup>5</sup> In addition, Congress authorized the pilot for the Supplemental Feeding Program for Women, Infants, and Children (WIC) in 1972, laying the foundation for WIC which now serves about half of all infants in the US.<sup>6</sup> Besides significantly expanding Federal nutrition assistance, the 1969 Conference set the stage for the development of the *Dietary Guidelines for Americans*, which serve as the cornerstone for ensuring the latest nutrition science guides the Federal nutrition assistance programs and our Federal nutrition education and promotion activities including MyPlate.<sup>7</sup>

Each and every day since the first Conference, our Federal nutrition safety net has helped put food on the table, especially when our country faces economic hardship.<sup>8</sup> Our suite of more than 15 Federal nutrition assistance programs complement and build on each other to meet nutritional needs from birth through childhood and beyond.<sup>9</sup> Our programs help provide access to healthy food, foster the development of healthy eating habits, and connect participants to other critical resources.<sup>10</sup> During the COVID-19 pandemic, the USDA leveraged every tool at our disposal and applied creative solutions with our partners across this great country to address unprecedented challenges.<sup>11</sup> Some of our actions included temporarily increasing the SNAP maximum benefit amount for tens of millions of participants and providing Emergency Allotments that boosted monthly benefits to the maximum amount for the household

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<sup>5</sup> FOOD & NUTRITION SERV., *supra* note 2 at 5; *see also* Erin Blakemore, *How the Black Panthers' Breakfast Program Both Inspired and Threatened the Government*, HISTORY CHANNEL (Jan. 29, 2021), <https://www.history.com/news/free-school-breakfast-black-panther-party>.

<sup>6</sup> FOOD & NUTRITION SERV., *supra* note 2 at 5; *see also* FOOD & NUTRITION SERV., *WIC Data Tables*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/pd/wic-program> (last visited Apr. 26, 2023).

<sup>7</sup> FOOD & NUTRITION SERV., *supra* note 2 at 5; *see also* *Dietary Guidelines for Americans: Work Under Way: 2025 Advisory Committee*, <https://www.dietaryguidelines.gov/2025-advisory-committee> (last visited Mar. 27, 2023); *and* FOOD & NUTRITION SERV., *MyPlate*, U.S. DEP'T OF AGRIC., <https://www.myplate.gov/> (last visited Apr. 26, 2023).

<sup>8</sup> FOOD & NUTRITION SERV., *FNS-101: Fact Sheets (All)*, U.S. DEP'T OF AGRIC., <https://fns-prod.azureedge.us/sites/default/files/resource-files/FNS-101-Factsheets-All.pdf> (last visited Apr. 26, 2023).

<sup>9</sup> FOOD & NUTRITION SERV., *supra* note 2 at 27-31.

<sup>10</sup> FOOD & NUTRITION SERV., *USDA Actions on Nutrition Security*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/sites/default/files/documents/usda-actions-nutrition-security-infographic.pdf> (last visited Apr. 26, 2023).

<sup>11</sup> FOOD & NUTRITION SERV., *supra* note 2 at 8-9.

size or by \$95 per month, whichever was larger.<sup>12</sup> We also replaced lost school meals through Pandemic-Electronic Benefits Transfer (P-EBT) that provided families with around \$35 in grocery benefits per week per eligible child.<sup>13</sup> In addition, we rapidly expanded the ability for SNAP benefits to be used online, from only 5 States participating in March 2020 to 49 and the District of Columbia in March 2023.<sup>14</sup> We increased funding to The Emergency Food Assistance Program (TEFAP) and the Food Distribution Program on Indian Reservations (FDPIR).<sup>15</sup> We also allowed waivers for WIC services to be provided remotely.<sup>16</sup> Within our Child Nutrition Programs, we provided free meals to all children and permitted a variety of flexibilities that helped program operators and parents get food for their children.<sup>17</sup> None of this work would have been possible without the dedication and commitment of the USDA staff and their local, State, US Territory, and Tribal partners.<sup>18</sup>

COVID-19 shined a light on the power of our programs.<sup>19</sup> According to the USDA Economic Research Service's annual food security report, 33.8 million Americans lived in households that struggled against hunger in 2021.<sup>20</sup> This is a sobering number, but the report showed that the number of Americans experiencing food insecurity decreased by 5 million.<sup>21</sup> The report also found food insecurity among households with children was at a two-decade

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<sup>12</sup> FOOD & NUTRITION SERV., *SNAP COVID-19 Emergency Allotments Guidance*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/snap/covid-19-emergency-allotments-guidance> (last visited Apr. 26, 2023).

<sup>13</sup> FOOD & NUTRITION SERV., *State Guidance on Coronavirus P-EBT*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/snap/state-guidance-coronavirus-pandemic-ebt-pebt> (last visited Apr. 26, 2023).

<sup>14</sup> FOOD & NUTRITION SERV., *Stores Accepting SNAP Online*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/snap/online-purchasing-pilot> (last visited Apr. 26, 2023).

<sup>15</sup> FOOD & NUTRITION SERV., *The Emergency Food Assistance Program*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/tefap/emergency-food-assistance-program> (last visited Apr. 26, 2023); and FOOD & NUTRITION SERV., *USDA Boosts Food Assistance for Tribes During Pandemic* (July 17, 2020), <https://www.fns.usda.gov/news-item/fns-000920> (last visited Apr. 26, 2023).

<sup>16</sup> FOOD & NUTRITION SERV., *WIC COVID-19 Waivers*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/disaster-assistance/wic-covid-19-waivers> (last visited Apr. 26, 2023).

<sup>17</sup> FOOD & NUTRITION SERV., *Child Nutrition COVID-19 Waivers*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/disaster-assistance/child-nutrition-covid-19-waivers> (last visited Apr. 26, 2023).

<sup>18</sup> FOOD & NUTRITION SERV., *supra* note 2 at 23.

<sup>19</sup> *Id.* at 8-9.

<sup>20</sup> Alisha Coleman-Jensen et al., *Household Food Security in the United States in 2021*, U.S. DEP'T OF AGRIC., ECON. RSCH. SERV., Economic Research Report Number 309 (Sept. 2022), <https://www.ers.usda.gov/publications/pub-details/?pubid=104655> (last visited Apr. 26, 2023).

<sup>21</sup> *Id.* at 7-12.

low.<sup>22</sup> One possible reason for this progress is how our Federal nutrition assistance programs and the critical additional investments we have been making during the pandemic like SNAP Emergency Allotments and Pandemic EBT helped combat hunger.<sup>23</sup> While there was progress, the report also found that Black and Hispanic/Latino households were disproportionately impacted by food insecurity in 2021 with rates of 19.8 percent and 16.2 percent, respectively.<sup>24</sup> These rates were triple and double the rate of white households, which is 7.0 percent.<sup>25</sup> Native Americans are under-sampled in our report but other studies indicate high levels of food insecurity.<sup>26</sup>

It is truly humbling to know how the USDA plays a fundamental role in our nation's ability to improve the lives of all Americans. But the COVID-19 pandemic also exposed the negative repercussions of diet-related diseases and disparities.<sup>27</sup> One study estimated that nearly two-thirds of COVID-19 hospitalizations in the US were related to obesity, diabetes, hypertension, and heart failure.<sup>28</sup> According to the Centers for Disease Control and Prevention, heart diseases, cancer, and diabetes are the leading causes of death and disability in the US and all of these diseases have strong associations with diets low in fruits and vegetables and high in saturated fats, sodium, and added sugars.<sup>29</sup> Increasingly, individuals experience the co-existence of food insecurity and diet-related diseases.<sup>30</sup> People of color and from lower socioeconomic backgrounds experienced a disproportionate burden of COVID-19

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<sup>22</sup> *Id.* at 9, 12.

<sup>23</sup> *Id.* at 33.

<sup>24</sup> *Id.* at 17-19.

<sup>25</sup> *Id.* at 18.

<sup>26</sup> *Id.* at 18; see also Valerie Blue Bird Jernigan et al., *Addressing Food Insecurity in a Native American Reservation Using Community-Based Participatory Research*, 27 HEALTH EDUC. RES. 645, 645-655 (2012).

<sup>27</sup> Sara N. Bleich & Jamy D. Ard, *COVID-19, Obesity, and Structural Racism: Understanding the Past and Identifying Solutions for the Future*, 33 CELL METAB. 234, 234-241 (2021).

<sup>28</sup> Meghan O'Hearn et al., *Coronavirus Disease 2019 Hospitalizations Attributable to Cardiometabolic Conditions in the United States: A Comparative Risk Assessment Analysis*, 10 J AM. HEART ASSOC. 7-9, 1-17 (2021).

<sup>29</sup> CTR. FOR DISEASE CONTROL AND PREVENTION NAT'L CTR. FOR HEALTH STATS., *Leading Causes of Death*, U.S. DEP'T OF HEALTH & HUMAN SERVS., <https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm> (last visited Apr. 26, 2023).

<sup>30</sup> Edward A. Frongillo E & Jennifer Berna, *Understanding the Coexistence of Food Insecurity and Obesity*, 2 CURR. PEDIATR. REP. 285-288, 284-290 (2014); Barbara A. Laraia, *Food insecurity and Chronic Disease*, 4 ADV. NUTR. 205-210, 203-212 (2013); and Sylvia L. Chowder et al., *A Review of Food Insecurity and Chronic Cardiovascular Disease: Implications During the COVID-19 Pandemic*, 60 ECOL. FOOD NUTR. 596-597, 596-611 (2021).

cases and death.<sup>31</sup> This increased risk was attributed in part to disparities in diet-related diseases that are associated with decades of structural inequalities in health and healthcare and other social and economic factors including limited access to retail food outlets that sell healthier foods.<sup>32</sup> These disparities are also rooted in other long-standing historical inequities spanning across our institutions and economy.<sup>33</sup> Therefore, much more needs to be done to address diet-related diseases and disparities and the corresponding economic, equity, and national security implications.<sup>34</sup>

To meet this challenge, we continue to leverage all our assets to support moves towards healthier eating patterns in an equitable way.<sup>35</sup> On March 17, 2022, I launched our whole-of-Department approach to expand our aperture to focus on advancing food *and* nutrition security.<sup>36</sup> At USDA, nutrition security means having consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-being.<sup>37</sup> This new approach aims to recognize that structural inequalities make it hard for many people to eat healthy and be physically active; and emphasizes taking an equity lens to our efforts.<sup>38</sup> The USDA's food and nutrition security initiative is scaffolded by the following four pillars: (1) Providing meaningful nutrition support from pregnancy to birth and beyond;<sup>39</sup> (2) Connecting all Americans with healthy, safe, affordable food sources;<sup>40</sup> (3) Developing, translating, and enacting nutrition science through partnership;<sup>41</sup> and (4) Prioritizing equity every step of the

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<sup>31</sup> Ahmad Khanijahani et al., *A Systematic Review of Racial/Ethnic and Socioeconomic Disparities in COVID-19*, 20 INT. J. EQUITY HEALTH 5, 1-30 (2021).

<sup>32</sup> Bleich, *supra* note 27 at 235; *see also* Andrew Y. Chang et al., *The Impact of Novel Coronavirus COVID-19 on Noncommunicable Disease Patients and Health Systems: A Review*, 289 J. INTERN. MED. 451-458, 450-462.

<sup>33</sup> Bleich, *supra* note 27 at 235-236.

<sup>34</sup> THE WHITE HOUSE, *Biden-Harris Administration National Strategy on Hunger, Nutrition, and Health* (Sept. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/09/White-House-National-Strategy-on-Hunger-Nutrition-and-Health-FINAL.pdf> (last visited Apr. 26, 2023).

<sup>35</sup> FOOD & NUTRITION SERV., *supra* note 2 at 5.

<sup>36</sup> FOOD & NUTRITION SERV., *USDA Announces Actions on Nutrition Security: Secretary Vilsack to Give Speech Highlighting the U.S. Department of Agriculture's Robust Efforts to Tackle Nutrition Insecurity*, U.S. DEP'T OF AGRIC. (Mar. 17, 2022), <https://www.fns.usda.gov/news-item/usda-0062.22>.

<sup>37</sup> *Food and Nutrition Security*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/nutrition-security> (last visited Apr. 26, 2023).

<sup>38</sup> *Id.*

<sup>39</sup> *Meaningful Support*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/nutrition-security/meaningful-support> (last visited Apr. 26, 2023).

<sup>40</sup> *Healthy Food*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/nutrition-security/healthy-food> (last visited Apr. 26, 2023).

<sup>41</sup> *Collaborative Action*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/nutrition-security/collaborative-action> (last visited Apr. 26, 2023).

way.<sup>42</sup> We are focused on strengthening and building new partnerships with all levels of government, the private sector, community-based organizations, and families.<sup>43</sup>

One critical partner is food law and policy professionals. Because, at the root of our powerful tools to shape food and nutrition security are laws and policies, along with the food law and policy professionals who work hard to develop, implement, evaluate, and sustain them.<sup>44</sup> So, as we look to leverage the momentum of the historic White House Conference and the corresponding National Strategy released the day before by the Biden-Harris Administration, this essay calls on food law and policy professionals to help us bring the Conference to life by collaborating on an all-of-society approach to end hunger, improve nutrition and physical activity, and reduce diet-related diseases and disparities.<sup>45</sup> I was truly impressed by the more than eight billion dollars in non-Federal commitments to advance the Conference goals and encourage others to consider new and enhanced ways you can take to help end hunger and build healthy communities.<sup>46</sup> I encourage food law and policy professionals to consider ways you can help advance all of USDA's actions in the National Strategy.<sup>47</sup> In this commentary, I want to draw your attention to one of my top priorities from the National Strategy – ensuring healthy school meals for all.<sup>48</sup>

As a father, grandfather, uncle, and policymaker, I know first-hand a healthier future for our country starts with our children.<sup>49</sup> The pathway outlined in the National Strategy would reorient the school meal programs from being an ancillary service to an integral

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<sup>42</sup> *Equitable Systems*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/nutrition-security/equitable-systems> (last visited Apr. 26, 2023).

<sup>43</sup> FOOD & NUTRITION SERV., *supra* note 2 at 23.

<sup>44</sup> *Id.* at 27-31.

<sup>45</sup> THE WHITE HOUSE, *supra* note 34 at 9.

<sup>46</sup> THE WHITE HOUSE, *FACT SHEET: The Biden-Harris Administration Announces More Than \$8 Billion in New Commitments as Part of Call to Action for White House Conference on Hunger, Nutrition, and Health* (Sept. 28, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/28/fact-sheet-the-biden-harris-administration-announces-more-than-8-billion-in-new-commitments-as-part-of-call-to-action-for-white-house-conference-on-hunger-nutrition-and-health/> (last visited Apr. 26, 2023); and U.S. DEP'T OF HEALTH & HUMAN SERV., *White House Conference on Hunger, Nutrition, and Health: White House Challenge to End Hunger and Build Healthy Communities*, <https://health.gov/our-work/nutrition-physical-activity/white-house-conference-hunger-nutrition-and-health/make-commitment> (last visited Apr. 26, 2023).

<sup>47</sup> FOOD & NUTRITION SERV., *supra* note 2 at 14-22.

<sup>48</sup> THE WHITE HOUSE, *supra* note 34 at 9.

<sup>49</sup> CTR. ON THE DEVELOPING CHILD, *The Foundations of Lifelong Health (InBrief)*, [www.developingchild.harvard.edu](http://www.developingchild.harvard.edu) (last visited Apr. 26, 2023).

component of the school day for all children across the nation.<sup>50</sup> Research consistently indicates that food insecurity negatively impacts a child's health, growth, development, and educational outcomes.<sup>51</sup> Children without consistent access to the nutrition they need are also at a higher risk for diet-related chronic conditions like hypertension and diabetes.<sup>52</sup> Unfortunately, the rates of children experiencing diet-related diseases are trending in the wrong direction.<sup>53</sup> The stakes are high and we can't afford to wait.<sup>54</sup> We must act now to improve child health and prevent more children from suffering the life-long impacts of poor nutrition.<sup>55</sup>

Strengthening school meals is one of the best ways we can keep kids healthy and help them reach their potential.<sup>56</sup> Recognized as a core intervention to improve our nation's health, school meals have been shown to establish healthy eating patterns early.<sup>57</sup> Each day, the National School Lunch and Breakfast Programs provide nutritious meals for around 30 million schoolchildren.<sup>58</sup> Participating in our school meal programs not only improves children's nutrition but has also been shown to support academic performance and attendance.<sup>59</sup> Evidence indicates meals students receive at school are the healthiest foods they eat all day.<sup>60</sup> But, we know that there is still

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<sup>50</sup> THE WHITE HOUSE, *supra* note 34 at 9.

<sup>51</sup> See generally Priya Shanka et al., *Association of Food Insecurity with Children's Behavioral, Emotional, and Academic Outcomes: A Systematic Review*, 38 JOUR. DEV. BEHAV. PEDIATR. 135-150 (2017).

<sup>52</sup> See generally Lauren E. Au et al., *Household Food Insecurity is Associated with Higher Adiposity among US Schoolchildren Ages 10-15 Years: The Healthy Community Study*, 149 JOUR. NUTR. 1642-1650; and see generally Heather Hartline-Grafton & Sandra Hassink, *Food Insecurity and Health: Practices and Policies to Address Food Insecurity among Children*, 21 ACAD. PEDIATR. 205-210 (2021).

<sup>53</sup> See generally Jean M. Lawrence et al., *Trends in Prevalence of Type 1 and Type 2 Diabetes in Children and Adolescents in the US, 2001-2017*, 326 JOUR. AM. MED. ASSOC. 717-727 (2021).

<sup>54</sup> Thiago Veiga Jardim et al., *Cardiometabolic Disease Costs Associated with Suboptimal Diet in the United States: A Cost Analysis Based on a Microsimulation Model*, 16 PLOS MED. 6-8, 1-15 (2019).

<sup>55</sup> Junxiu Liu et al., *Trends in Diet Quality among Youth in the United States, 1999-2016*, 323 JOUR. AM. MED. ASSOC. 1169-1173, 1161-1174 (2020).

<sup>56</sup> Juliana F.W. Cohen et al., *Universal School Meals and Associations with Student Participation, Attendance, Academic Performance, Diet Quality, Food Security, and Body Mass Index: A Systematic Review*, 13 NUTRIENTS 4-11, 1-41 (2021).

<sup>57</sup> *Id.* at 6-7.

<sup>58</sup> FOOD & NUTRITION SERV., *National School Lunch Program (NSLP) Fact Sheet*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/nslp/nslp-fact-sheet> (last visited Apr. 26, 2023).

<sup>59</sup> Cohen, *supra* note 56 at 9-11.

<sup>60</sup> Liu, *supra* note 55 at 1169-1173.



more we can do to make them even healthier.<sup>61</sup> Over the past decade, the strides made in school nutrition show that healthier school meals are possible when everyone who plays a part – school nutrition professionals, parents, students, school meal partners, and the food industry – works together.<sup>62</sup> Following the 2012 update of the nutrition standards, the nutrition quality of school meals increased by more than 40%.<sup>63</sup> Schools that served healthier meals had higher school meal participation (rates 10 percentage points higher) than schools that served less healthy meals.<sup>64</sup> School meals also had a positive effect on participating students' overall diets; for example, studies found that students who ate lunches from school were more likely than their peers to eat nutritious foods like fruits, vegetables and dairy and less sugary beverages.<sup>65</sup>

During the pandemic and thanks to the heroic efforts across the school nutrition landscape, all children across the country were eligible for free school meals.<sup>66</sup> This academic year, as schools transitioned back from pre-pandemic meal operations, some states have continued healthy school meals for all.<sup>67</sup> So far, California, Colorado, Maine, Massachusetts, Minnesota, Nevada, New Mexico, and Vermont have found ways to combine state funds with Federal

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<sup>61</sup> See generally FOOD & NUTRITION SERV., *School Nutrition and Meal Cost Study: Summary of Findings*, U.S. DEP'T OF AGRIC. (Apr. 2019), <https://www.fns.usda.gov/school-nutrition-and-meal-cost-study> (last visited Apr. 27, 2023); and FOOD & NUTR SERV., *SNMCS Webinar Series – Meeting the Updated Nutrition Standards and the Nutritional Quality of School Lunches*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/snmcs-webinar-series-update-nutrition-standards> (last visited Apr. 27, 2023).

<sup>62</sup> FOOD & NUTRITION SERV., *supra* note 61 at 1-4.

<sup>63</sup> See generally FOOD & NUTRITION SERV., *School Nutrition and Meal Cost Study: Volume 2, Nutritional Characteristics of School Meals*, U.S. DEP'T OF AGRIC. (Apr. 2019), <https://fns-prod.azureedge.us/sites/default/files/resources-files/SNMCS-Volume2.pdf> (last visited Apr. 27, 2023).

<sup>64</sup> See generally FOOD & NUTRITION SERV., *School Nutrition and Meal Cost Study: Volume 4 – Student Participation, Satisfaction, and Dietary Intakes (Summary)*, U.S. DEP'T OF AGRIC. (Apr. 2019), <https://fns-prod.azureedge.us/sites/default/files/resources-files/SNMCS-Volume4-Summary.pdf> (last visited Apr. 27, 2023).

<sup>65</sup> Jacey Greece et al., *Effects of a School-based Intervention on Middle School Children's Daily Food and Beverage Intake*, 4 HEALTH BEHAV. POLICY REV. 28-30, 24-36.

<sup>66</sup> FOOD & NUTRITION SERV., *supra* note 2 at 8-9.

<sup>67</sup> *School Meals Legislation and Funding by State*, FOOD RSCH. & ACTION CTR (Aug. 2022), <https://frac.org/wp-content/uploads/School-Meals-State-Legislation-Chart.pdf> (last visited Apr. 26, 2023); and Leah Butz, *States that Have Passed Universal Free School Meals (So Far)*, HUNTER COLL. N.Y.C. FOOD POL'Y. CTR. (Feb. 21, 2023), <https://www.nycfoodpolicy.org/states-that-have-passed-universal-free-school-meals/> (last visited Apr. 27, 2023).

funds to provide healthy school meals for all.<sup>68</sup> These states are helping take the burden off parents to provide children consistent access to the healthy meals they need for a bright future.<sup>69</sup> Other states such as Virginia, Hawaii, and Washington have legislative initiatives underway to expand school meal access.<sup>70</sup> Additional States and school districts have utilized our expanded approach to the Community Eligibility Provision (CEP), which is a non-pricing meal service option for schools and school-districts in low-income areas.<sup>71</sup> CEP allows the nation's highest poverty schools and districts to serve breakfast and lunch at no cost to all enrolled students without

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<sup>68</sup>*California Universal Meals*, CA. DEP'T OF EDUC., <https://www.cde.ca.gov/ls/nu/sn/cauniversalmeals.asp> (last visited Apr. 27, 2023) (establishing California as the first state in the nation to provide free meals to all students); *HB22-1414: Healthy Meals For All Public School Students*, COLO. GEN. ASSEMBLY, <https://leg.colorado.gov/bills/hb22-1414> (last visited Apr. 27, 2023) (creates a program that reimburses school food authorities that choose to participate in the program for free meals provided to students who are not eligible for free or reduced-price meals under the federal school meals program, among other provisions); *LD 1679 (SP 540): An Act to Address Student Hunger through Expanding Access to Free School Meals*, STATE OF ME. LEGIS. <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280080767> (last visited Apr. 27, 2023) (making permanent that public schools in Maine provide free school lunches and breakfasts); *H.714: An Act Relative to Universal School Meals*, THE 193<sup>RD</sup> GEN. CT. OF THE COMMONWEALTH OF MASS., <https://malegislature.gov/Bills/192/H714> (last visited Apr. 27, 2023) (while universal school meals have not been made permanent yet, the State approved extending pandemic-era universal school free lunch into the 2022-2023 school year); *HF 5*, MINN. LEGIS. OFF. OF THE REVISOR OF STATUTES <https://www.revisor.mn.gov/bills/bill.php?f=HF5&b=house&y=2023&ssn=0> (last visited Apr. 27, 2023) (making permanent free school lunch and breakfast for students, and appropriating relevant funding); *Students in Nevada Won't Worry about School Meals Next Year: Free School Meals Will be Available in Nevada Public Schools this Upcoming School Year, 2022-2023*, NEV. DEP'T OF AGRIC., (June 27, 2022), [https://agri.nv.gov/News/2022/Students\\_in\\_Nevada\\_won%E2%80%99t\\_worry\\_about\\_school\\_meals\\_next\\_year/](https://agri.nv.gov/News/2022/Students_in_Nevada_won%E2%80%99t_worry_about_school_meals_next_year/) (last visited Apr. 27, 2023) (using funding from the American Rescue Plan to provide free school meals during the 2022-2023 school year and approved additional funding through 2023-2024); *SB 4: Healthy Universal School Meals*, N.M. LEGIS. (Mar. 27, 2023), <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=4&year=23> (establishing universal school meals); and *S.100 (Act 151): An Act to Universal School Meals*, VT. GEN. ASSEMBLY (May 31, 2022), <https://legislature.vermont.gov/bill/status/2022/S.100> (last visited Apr. 27, 2023) (extended free school meals into 2022-2023 while revising recommendations from a Task Force established by the state to make the program permanent).

<sup>69</sup> Cohen, *supra* note 56 at 9-11.

<sup>70</sup> Butz, *supra* note 67 (detailing how 21 states are currently planning, drafting, discussing or negotiating universal free school Meal legislation).

<sup>71</sup> FOOD & NUTRITION SERV., *Child Nutrition Programs: Community Eligibility Provision*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cn/community-eligibility-provision> (last visited Apr. 27, 2023).

collecting household applications.<sup>72</sup> Collectively, these are all important approaches that food law and policy professionals can help accelerate at the state and local levels as we work to ensure the support of healthy school meals for all nationwide.

The first major step toward ensuring healthy school meals for all is already underway as the Biden-Harris Administration proposed in our budget to expand access to healthy, free school meals for 9 million more children by 2032.<sup>73</sup> The USDA also recently published a proposed rule with the intent to expand access to the Community Eligibility Provision by lowering the minimum identified student percentage participation threshold from 40% to 25%.<sup>74</sup> If made final, this rule would give more high-need schools the option to elect Community Eligibility Provision and offer all students healthy school meals at no cost when it is financially viable for them to do so.<sup>75</sup> Another recent, related milestone reached by the Biden-Harris Administration ensures children are fed year-round.<sup>76</sup> That is, using new Congressional authority, the USDA is now allowed to provide benefits to families nationwide to purchase groceries during the summer months through the Summer EBT program.<sup>77</sup> In pilots of the program, Summer EBT helped combat severe food insecurity as participants ate more nutritious fruits, vegetables, and whole grains.<sup>78</sup> Building on pandemic-era flexibilities, Congress also permitted USDA to allow non-congregational summer meals in rural areas.<sup>79</sup>

In addition to ensuring wider access to healthy meals year round, the USDA is actively working to strengthen the nutrition

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<sup>72</sup> *Id.*

<sup>73</sup> THE WHITE HOUSE, *supra* note 34 at 9.

<sup>74</sup> FOOD & NUTRITION SERV., *Community Eligibility Provision - Summary of Proposed Rule*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cn/community-eligibility-provision-summary-proposed-rule> (last visited Apr. 16, 2023).

<sup>75</sup> *Id.*

<sup>76</sup> FOOD & NUTRITION SERV., *Consolidated Appropriations Act, 2023: Effect on Child Nutrition Programs*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cn/consolidated-appropriations-act-2023-effect-programs> (last visited Apr. 27, 2023).

<sup>77</sup> *Id.*

<sup>78</sup> Anne R. Gordon et al., *Summer Electronic Benefit Transfers for Children through the Supplemental Nutrition Assistance Program or the Special Supplemental Nutrition Program for Women, Infants, and Children: Benefit Use and Impacts on Food Security and Foods Consumed*, 117 JOUR. ACAD. NUTR. DIET. 370-373, 367-375 (2017).

<sup>79</sup> FOOD & NUTRITION SERV., *supra* note 76.

standards of school meals.<sup>80</sup> We are using the latest nutrition science and extensive feedback from our school meal partners to propose revisions to the school meal patterns that are consistent with the latest edition of the *Dietary Guidelines for Americans*.<sup>81</sup> For the first time, we are proposing standards for added sugars through a phased approach.<sup>82</sup> The proposed rule also takes a multi-year approach to sodium reduction aligned with the Food and Drug Administration's recommended sodium reduction goals for industry.<sup>83</sup> This approach aims to give school nutrition professionals time to implement the changes, the food industry time to develop new and improved products, and students time for their palates to adjust. For whole grains, we are proposing two options to prioritize whole grains, while providing flexibility for schools to occasionally offer non-whole, enriched grain options.<sup>84</sup> Taken together, these proposed changes will help us provide children and adolescents the right balance of nutrients for healthy and appealing meals. As we move forward with the rulemaking process and implementation, I encourage food law and policy professionals to elevate the importance of these updates. In addition, you can help us successfully implement and evaluate these critical changes thereby ensuring we have strong stakeholder and political support to maintain adequate appropriations for meal reimbursement and technical assistance.

We know a key part of successful implementation of school meal nutrition standards is helping to increase access to local and regional food systems, which we are working on through our broader Food Systems Transformation efforts and particular to schools the Healthy Meals Incentives initiative.<sup>85</sup> Other activities include

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<sup>80</sup> FOOD & NUTRITION SERV., *Proposed Updates to the School Nutrition Standards*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cn/proposed-updates-school-nutrition-standards> (last visited Apr. 27, 2023).

<sup>81</sup> FOOD & NUTRITION SERV., *Comment Request on Proposed Rule: Child Nutrition Programs – Revisions to Meal Patterns Consistent with the 2020 DGAs*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cn/fr-0207123> (last visited Apr. 27, 2023).

<sup>82</sup> FOOD & NUTRITION SERV., *Added Sugars*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cn/nutrition-standards-proposed-rule-added-sugars> (last visited Apr. 27, 2023).

<sup>83</sup> FOOD & NUTRITION SERV., *Sodium*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cn/nutriton-standards-proposed-rule-added-sodium> (last visited Apr. 27, 2023).

<sup>84</sup> FOOD & NUTRITION SERV., *Whole Grains*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cn/nutrition-standards-proposed-rule-added-whole-grains> (last visited Apr. 27, 2023).

<sup>85</sup> FOOD & NUTRITION SERV., *Healthy Meals Incentives*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/cnp/healthy-meals-incentives#:~:text=USDA%27s%20Food%20and%20Nutrition%20Service%20%28FNS%29%20has%20established,of%20innovative%20ideas%20and%20tested%20practices%2C%20and%20grants> (last visited Apr. 27, 2023).

enabling more schools to cook meals from scratch by funding training and equipment purchases, investing in the school nutrition workforce, and expanding nutrition education for children.<sup>86</sup> We are also working on the following additional efforts to help schools provide nutritious meals to children: implementing updates and innovations that make our programs more convenient and effective for participants; lifting up what works through our Team Nutrition initiative; collecting and analyzing data and feedback on how our programs are working and using that to improve our efforts; testing out new ways to reach those who are eligible for our programs and make it easier for them to access our services; building on the incredible strides made by program partners to date to continue pursuing what's best for our children; and using lessons learned during the COVID-19 pandemic to propel our programs forward.<sup>87</sup>

Altogether, these activities have incredible promise. But the USDA cannot ensure healthy school meals for all alone. We will continue to leverage all of our programs, partners, initiatives, and influence to ensure children of all backgrounds have the food they need for good health.<sup>88</sup> In this essay, I am calling on food law and policy professionals to join us in this effort. Opportunities to help include making a White House Conference commitment to support children's health through healthier school meals.<sup>89</sup> Each of you can also play critical roles in advancing universal school meal legislation at the local, state, and federal levels, through advocacy, policymaking, and research. Without question, your research and evaluation can help shape our future child nutrition policies and programs. I appreciate the work of food law and policy professionals to examine the impact of our policies and identify where we can do better. You can also help us implement Summer EBT and the non-congregational summer meals in rural areas by helping administrating agencies as well as community-based outreach efforts. Whether a parent, caregiver, aunt, uncle, or grandparent, please help build awareness among decision makers, industry, child nutrition meal site operators, parents, and students about the

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<sup>86</sup> *Biden-Harris Administration Invests \$80 Million to Improve Nutrition in School Meals*, U.S. DEP'T OF AGRIC. (Oct. 11, 2022), <https://www.usda.gov/media/press-releases/2022/10/11/biden-harris-administration-invests-80-million-improve-nutrition> (last visited Apr. 27, 2023).

<sup>87</sup> FOOD & NUTRITION SERV., *Child Nutrition Success Stories*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/success-stories/child-nutrition-programs> (last visited Apr. 27, 2023).

<sup>88</sup> FOOD & NUTRITION SERV., *supra* note 2 at 14-22.

<sup>89</sup> *White House Challenge to End Hunger and Build Healthy Communities*, U.S. DEP'T OF HEALTH & HUMAN SERV., <https://health.gov/our-work/nutrition-physical-activity/white-house-conference-hunger-nutrition-and-health/make-commitment> (last visited Apr. 26, 2023).

importance of these changes and the role they each have in ensuring all children in this country thrive.

In closing, we appreciate the critical role of food law and policy professionals have had thus far and can have going forward to ensure a shared vision for healthy school meals for all. We encourage you to reach out and share your success stories or pain points in the process and please do not hesitate to ask us how best we can help you meet this moment. As a lawyer, I am very encouraged by the next generation of food law and policy professionals to help us advance food and nutrition security. Each of us – even if a small step – has a key role in shaping a healthier future for our children, our community, and our country.

