

A Review of Food System Policies in Maryland



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FOOD LAW
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Introduction

I. About This Report

During the development of the Maryland Food Charter, the Johns Hopkins Center for a Livable Future commissioned the Food Law and Policy Clinic of Harvard Law School (with funding from Town Creek Foundation) to update a policy scan of Maryland's food systems. The preliminary findings of that scan were discussed at a meeting of stakeholders in Annapolis and are further fleshed out in this report. Aligned with the Maryland Food Charter, this report delivers an assessment of Maryland's current policies and provides examples and suggestions of related policies throughout the United States that Maryland could emulate. The report was written by Emma Clippinger, Clinical Fellow in the Harvard Law School Food Law and Policy Clinic and Ariel Ardura, Kaitlin Beach, Sydney Montgomery, and Katherine Sandson, law students in the Food Law and Policy Clinic.

The Harvard Law School Food Law and Policy Clinic, a division of the Center for Health Law and Policy Innovation, is an experiential teaching program at Harvard Law School that links students with opportunities to work with clients and communities on various food law and policy issues. The Clinic strives to increase access to healthy foods, assist small and sustainable farmers in breaking into new commercial markets, and reduce waste of healthy, wholesome food, while educating law students ways to use law and policy to positively impact the food system.

We would like to thank the following individuals for taking the time to share their insights and experiences for this report: Anne Palmer, Karen Bassarab, Christine Bergmark, Evelyn Kelly, Heber Brown, Nancy Nunn, Brenda Platt, Joe Tassone, and Jason Lambros, and the members of the Maryland Food Charter Advisory Committee: Sydney Daigle, Kelly Dudeck, Holly Freishtat, Christy Gabbard, Phillip Gottwals, Michele Levy, and Michael Wilson.

Goal 1: Food Production

Support food producers in both physical infrastructure and streamlined regulations.¹

I. Background

Food production plays an important role in Maryland's economy. Maryland's agriculture industry employs approximately 350,000 people and produces over \$2 billion in revenue each year, making it Maryland's largest commercial industry.² With 2 million acres (of a total land area of 6 million acres) dedicated to farming, agriculture also constitutes the single largest land use in the state.³ Maryland's major areas of agricultural production include corn, soybeans, wheat, barley, fruits and vegetables, dairy

¹ The Summary of Public Input identifies the following strategies: 1) Research and map market demand for local food; 2) Increase access to production assets for farmable land and equipment; 3) Increase efficiency of sustainable agriculture production through applied research and development; 4) Provide sustainable agricultural training and technical assistance to new and beginning farmers; and 5) Encourage statewide food production entrepreneurship and growth by streamlining county and state permits, regulations and zoning so they are flexible for a thriving local food economy.

² See *Maryland at a Glance: Agriculture*, MARYLAND.GOV, <http://msa.maryland.gov/msa/mdmanual/01glance/html/agri.html> (last visited Jul. 9, 2017).

³ *Id.*

and livestock, honey, poultry and eggs, and wine. Maryland also has a thriving organics industry, with 100 farms and over 7,679 acres certified as organic.⁴

Due to its location on the eastern seaboard, Maryland also has a strong seafood industry. It is a national leader in supplying blue crabs and soft clams, providing 50 percent of the total blue crab harvest in the United States.⁵ It is also a supplier of striped bass, oysters, flounder, perch, spot, croaker, catfish, sea trout, and bluefish.⁶ With annual commercial seafood sales averaging 56.9 million pounds since 2000, Maryland's seafood industry contributes about \$600 million to its economy annually and employs over 4,500 commercial watermen throughout the state.⁷

Food production encompasses many different types of producers, and each faces a unique set of challenges. Maryland has seen a loss of farmland over the years and the value of farmland has increased, making it difficult for producers to afford land for production.⁸ In addition, as with the rest of the country, the farming population in the state is aging, and environmental factors like climate change, soil erosion, and nutrient loss make food production more difficult.⁹ Within the seafood industry, overfishing is a constant challenge as fish are often caught faster than they are able to reproduce, leading to declining stocks.¹⁰

Despite these challenges, Maryland has a strong food production industry, and has already implemented many programs and policies that bolster infrastructure for local producers. By continuing to create and administer programs and policies that improve access to land and resources and incentivize food production, Maryland can ensure that its food production industries continue to thrive.

II. Preserving and Incentivizing Agricultural Land Use

Maryland has a number of programs in place that support agriculture and farmland preservation. These help to ensure that healthy farmland is available to and affordable for existing and new farmers.

a. Land Preservation

The **Maryland Agricultural Land Preservation Foundation (MALPF)**, administered by the Maryland Department of Agriculture (MDA), was created in 1977 and was one of the first programs in the nation dedicated to the preservation of agricultural lands.¹¹ The Foundation, which receives discretionary state funding,¹² purchases easements that permanently restrict any future development of farmlands or

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ For example, in 2014, the average value of an acre of cropland in Maryland was close to \$6500, while the national average value of an acre was \$4100. See Paul Goeringer, *Maryland Farmland Values*, UNIV. OF MD. EXTENSION (Aug. 19, 2014), <https://extension.umd.edu/learn/maryland-farmland-values>.

⁹ See *The 2007 Census of Agriculture: Farms and Farmland in Maryland*, MARYLAND.GOV http://www.mdp.state.md.us/msdc/census_agriculture/2007/Farm_Farmland/Census_Agriculture2007_Farms_and_Land-FINAL.pdf.

¹⁰ See, e.g., *Maryland at a Glance: State Symbols*, MARYLAND.GOV <http://msa.maryland.gov/msa/mdmanual/01glance/html/symbols/fish.html> (last visited Jul. 9, 2017).

¹¹ See *Maryland: Agricultural Land Preservation Foundation*, MARYLAND.GOV <http://mda.maryland.gov/malpf/Pages/Overview.aspx> (last visited Jul. 9, 2017).

¹² See MD. CODE ANN., AGRIC. §§ 2-505 (West 2017).

woodlands.¹³ The current level of funding, averaging at about \$20 million per year, is insufficient to meet the General Assembly's goal of preserving 1,030,000 acres by the year 2022.¹⁴ Nevertheless, because of the work of the Foundation and its state and local partners, Maryland has been able to preserve more agricultural land than any other state in the country.¹⁵ At present, over 300,000 acres on approximately 2,218 farms have been preserved, representing a public investment of over \$682 million.¹⁶ This work helps to ensure that productive farmland and woodland will be preserved for the continued production of food and fiber, rather than bought out for urban development.

Legislation (**HB0217/SB285**) was introduced in the 2017 Session that would have prohibited a landowner whose land is subject to an agricultural land preservation easement from granting or allowing a person to establish an overlay easement, a right-of-way, or any other servitude on the land without prior written permission from MALPF.¹⁷ This would have provided an additional layer of protection for MALPF farmland; however, the bill did not pass.¹⁸

b. Property Tax Incentives

Maryland also has property tax programs in place that incentivize agricultural producers to continue using agricultural land for food production and to convert land to food production. For example, **Maryland's Agricultural Use Assessment** provides a property tax break for land that is "actively used" in agricultural production.¹⁹ The assessment ensures that the land is appraised according to its current use and not according to its actual market value, which can be much higher. The result is that the owner of the agricultural land pays lower property taxes and there is less pressure to convert the land to more intensive uses.²⁰ A major funding source for the Agricultural Land Preservation program is **Maryland's Agricultural Land Transfer Tax**, which is imposed on the sale of land receiving the agricultural use assessment.²¹ The law specifies that the tax is due on all transfers of agricultural land unless the purchaser is willing to promise to keep the land in agricultural use for five full taxable years after the transfer. The tax thus serves a dual purpose—it's a deterrent to conversion of the land, and it's a penalty when the land is sold for development.²²

c. New Farmer Incentives

With an aging farmer population, it is important for Maryland to incentivize younger farmers and help ensure that agricultural production is a viable means to make a living. The Maryland Agricultural & Resource-Based Industry Development Corporation (MARBIDCO), a quasi-public corporation established

¹³ See *Maryland at a Glance: Agriculture*, MARYLAND.GOV, <http://msa.maryland.gov/msa/mdmanual/01glance/html/agri.html> (last visited Jul. 9, 2017).

¹⁴ *Maryland Agricultural Land Preservation Foundation*, PARTNERS FOR OPEN SPACE (2014) <http://www.partnersforopenspace.org/preservation-programs-2/maryland-agricultural-land-preservation-foundation/>.

¹⁵ See *Maryland: Agricultural Land Preservation Foundation*, MARYLAND.GOV <http://mda.maryland.gov/malpf/Pages/Overview.aspx> (last visited Jul. 9, 2017).

¹⁶ PARTNERS FOR OPEN SPACE, *supra* note 14.

¹⁷ M.D. Gen. Assemb. House Bill 217. 2017 Reg. Sess. <http://mgaleg.maryland.gov/2017RS/bills/hb/hb0217f.pdf>.

¹⁸ *Id.*

¹⁹ See MD. CODE ANN., TAX-PROP. § 8-209 (West 2017).

²⁰ *Department of Assessments & Taxation*, MARYLAND.GOV <http://dat.maryland.gov/realproperty/Pages/The-Agricultural-Use-Assessment.aspx>

²¹ See MD. CODE ANN., TAX-PROP. § 13-303 (West 2017).

²² *SDAT Agricultural Transfer Tax*, MARYLAND.GOV <http://dat.maryland.gov/realproperty/Documents/agtransf.pdf>.

by the Governor and General Assembly in 2004,²³ recently launched the **Next Generation Farmland Acquisition Program**. The program is designed to both help facilitate the transfer of farmland to a new generation of farmers and to preserve agricultural land from future development.²⁴ Through the program, MARBIDCO can provide a qualified “beginner farmer”²⁵ with a farm-purchase down payment to help meet the equity requirements of a commercial lender. MARBIDCO will pay up to 51% of the fair market value of the agricultural land, with a cap of \$500,000, as a down payment at a real estate settlement.²⁶ The farmer must then sell the permanent conservation easement on the farmland to a rural conservation program, thereby extinguishing the development rights on the property.²⁷ The program, which is funded by the state, expects to receive \$2.4 million for the 2018 fiscal year.²⁸

The Southern Maryland Agricultural Development Commission (SMADC), established in 2000 by the Governor’s Task Force, also helps to make farming more accessible to new farmers through its **Maryland FarmLINK** program, which includes a property exchange page where buyers and sellers of farmland in Maryland can connect.²⁹

d. Maryland Healthy Soils Program

It’s important for Maryland to not simply preserve land for agricultural use, but to also preserve healthy land. Maryland recently passed HB1063, establishing the **Maryland Healthy Soils Program**.³⁰ The program’s goal is to increase biological activity and carbon sequestration in Maryland’s soils by promoting practices based on emerging soil science.³¹ It requires MDA to provide incentives – these include research, education, technical assistance, and, subject to available funding, financial assistance – to farmers to implement farm management practices that contribute to healthy soils.³² This program, expected to take effect in October of 2017, will help ensure that Maryland’s agricultural land remains viable for farming.³³

III. Grants, Loans, and Other Subsidies for Equipment, Machinery, and Other Inputs

Maryland helps make agricultural inputs and equipment more accessible and affordable for producers in several ways. Tax incentives, loans, and grants can go a long way toward easing the financial strain of production, particularly as producers have to make increased investments to sustain and grow their operations.

²³ See *About Us*, MD. AGRIC. & RESOURCE-BASED INDUS. DEV. CORP., http://www.marbidco.org/about/about_us.html (last visited Jul. 14, 2017).

²⁴ *Next Generation Farmland Acquisition Program*, MARYLAND AGRICULTURAL & RESOURCE-BASED INDUSTRY DEVELOPMENT CORPORATION <http://www.marbidco.org/land/nextgen.html>.

²⁵ A “beginner farmer” is defined by MARBIDCO as one who has not operated a farm or ranch for more than 10 years; has at least one year of farming experience or has completed a qualified farm management training program that includes substantial fieldwork experience (must be documented in an appropriate fashion); and expects to substantially participate in the farm operation on the subject property. *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See MD. CODE ANN., ECON. DEV. § 10-523(d) (West 2017).

²⁹ See *Maryland FarmLINK*, SOUTHERN MARYLAND AGRICULTURAL DEVELOPMENT COMMISSION <http://www.smadc.com/programs/farmlink.html>.

³⁰ M.D. Gen. Assemb. House Bill 1063. 2017 Reg. Sess. <http://mgaleg.maryland.gov/2017RS/bills/hb/hb1063f.pdf>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

a. Sales Tax Incentives

Maryland employs various sales tax incentives to encourage investments in agricultural inputs and equipment. The state provides tax deductions for certain, specified farm equipment that promotes enhanced agricultural management—for example, for no-till planters.³⁴ Additionally, Maryland’s sales tax does not apply to “agricultural products” sold by farmers or to purchasers of eligible farm inputs (like seeds, livestock, and fertilizer) and equipment.³⁵ **HB1112/SB0720**, a bill that was introduced in the 2017 Session and later withdrawn, would have provided an exemption from the sales and use tax for all-terrain or utility-terrain vehicles when purchased by a farmer and used exclusively for an agricultural purpose on the farmer’s property.³⁶

b. Loans & Grants

Maryland makes a number of loan and grant opportunities available to agricultural producers. These tools not only make inputs and equipment more accessible, but can also be used to promote certain production methods or crops. While some loans and grants are federal programs administered by the state of Maryland, such as the **USDA Specialty Crop Block Grant Program**,³⁷ most are programs established by the state itself. MARBIDCO offers several loan programs for farmers, including its most popular program, the Maryland **Resource-Based Industry Financing Fund Loan (MRBIFF)**.³⁸ With this program, MARBIDCO works in partnership with commercial banks and the Farm Credit System to make low-interest loans to producers. MRBIFF has helped a number of agricultural enterprises diversify or expand their operations, including several poultry house construction projects and young and beginning farmer farm land purchases.³⁹ Another loan offered through MARBIDCO is the **Rural Business Equipment and Working Capital Fund Loan (RBEWCL)**, which offers low-interest (5% APR) loans to agricultural firms and producers for working capital and equipment purchases, with a maximum loan amount of \$75,000.⁴⁰ MARBIDCO also offers a number of grant incentive programs to help producers with partial matching funds for processing projects. For example, the **Maryland Value Added Producer Grant – Capital Assets Option (MVAPG-CAO)** provides grants of between \$2,500 and \$15,000 for capital assets projects related to value-added production.⁴¹

c. Equipment Rentals

An innovative way to make equipment more accessible is to make it available to farmers to rent. SMADC’s **Farm Share** program provides funds to purchase farm equipment that is then shared and rented by farmers across the Southern Maryland region.⁴² The equipment is managed by local agricultural entities, and rental fees are only expected to cover routine maintenance and other costs of

³⁴ See MD. CODE ANN., TAX–GEN. § 10-208(d) (West 2017).

³⁵ See MD. CODE ANN., TAX–GEN. § 11-201 (West 2017).

³⁶ M.D. Gen. Assemb. House Bill 1112. 2017 Reg. Sess. <http://mgaleg.maryland.gov/2017RS/bills/hb/hb1112f.pdf>.

³⁷ See *Specialty Crop Block Grant Program*, MD. DEP’T OF AGRIC., http://mda.maryland.gov/maryland_products/Pages/Specialty-Crop-Grants.aspx (last visited Jul. 9, 2017).

³⁸ Offers low-interest loans to established agriculture and rural business (Ag/RB) firms for the purchase of land and capital equipment for production and processing activities.

³⁹ See *2016 Annual Report*, MD. AGRIC. & RESOURCE-BASED INDUS. DEV. CORP., <http://www.marbidco.org/2016%20AR.pdf>.

⁴⁰ *Id.*

⁴¹ *Department of Commerce*, MARYLAND.GOV <http://commerce.maryland.gov/fund/programs-for-businesses/direct-loans-and-grants> (last visited Aug. 30, 2017).

⁴² See *About SMADC: Reports*, SOUTHERN MARYLAND AGRICULTURAL DEVELOPMENT COMMISSION <http://smadc.com/aboutsmadc/Report.2016.pdf>.

the program, such as insurance.⁴³ As of December 2016, 37 pieces of equipment had been purchased and were available for farmers in Southern Maryland to rent.⁴⁴ In order to support *all* Maryland farmers, this program should be expanded statewide, or a similar program should be created to provide equipment rentals for Northern Maryland farmers.

Maryland's various Soil Conservation Districts (SCDs) also provide equipment rentals to farmers within their district.⁴⁵ As the SCDs of Maryland are a political subdivision of the state, most of their funding comes from grants from the state or from the District's respective county.⁴⁶

IV. Encouraging Urban Agriculture

Maryland is actively encouraging urban agriculture in the state in a number of ways. Urban agriculture is not only a means to combat challenges like air pollution, abandoned lots, and food insecurity, but it can also be a tool for growing healthier, safer, and more sustainable communities. Urban agriculture encompasses a range of production activities, from backyard and rooftop gardens to small scale poultry and farming operations.

a. Tax Credits, Grants, and Other Funding

In 2014, Maryland passed a law giving counties and the City of Baltimore the authority to pass urban agriculture tax credits.⁴⁷ While the law defines "urban agriculture purposes," it leaves counties and the City of Baltimore the discretion to define 1) the amount of the tax credit, 2) any additional eligibility criteria, and 3) regulations and procedures for applications.⁴⁸ The City of Baltimore,⁴⁹ Prince George's County,⁵⁰ and Montgomery County⁵¹ have all implemented the law and passed their own ordinances establishing urban agriculture tax credits; however, the specific provisions of these ordinances vary. For example, while Baltimore requires that the gross value of agricultural products produced on the property meet or exceed \$5,000 per year, Prince George's County sets this threshold at \$2,500 per year.⁵² The ability to use urban land in agricultural production, or for specified agricultural uses, is also subject to local zoning requirements and permitting processes.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See e.g., *Equipment Rental Program*, CALVERT SOIL CONSERVATION DISTRICT <http://www.calvertsoil.org/c/265/equipment-rental-program>.

⁴⁶ See *Conservation Districts*, Maryland Association of Soil Conservation Districts <http://www.mascd.net/districts/default.html>.

⁴⁷ See MD. CODE ANN., TAX-PROP. § 9-253 (West 2017).

⁴⁸ *Id.*

⁴⁹ *Article – Tax – Property*, GEN. ASSEMBLY OF MD., <http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?article=gtp§ion=9253&ext=html&session=2015RS&tab=subject5> (last visited Jul. 9, 2017).

⁵⁰ *Subdivision 5L – Urban Agricultural Property Tax Credit*, PRINCE GEORGE'S CTY. MD., https://www.municode.com/library/md/prince_george%27s_county/codes/code_of_ordinances?nodeId=PTIIT117PULOLAPRGE_COMA_SUBTITLE_10FITA_DIV8TAASLECO_SD5LURAGPRTACR (last visited Jul. 9, 2017).

⁵¹ *Urban Agricultural Property Tax Credit*, MONTGOMERY CTY. MD. DEP'T OF FINANCE, <https://www.montgomerycountymd.gov/Finance/bill-31-16.html> (last visited Jul. 10, 2017).

⁵² *Urban Agriculture*, BALTIMORE OFFICE OF SUSTAINABILITY, <http://www.baltimoresustainability.org/projects/baltimore-food-policy-initiative/homegrown-baltimore/urban-agriculture-2/>.

Maryland also supports urban agriculture through MARBIDCO's **Maryland Urban Agriculture Commercial Lending Incentive Grant** (MUACLIG).⁵³ This grant, offered through a partnership with MidAtlantic Farm Credit, provides an incentive for beginning urban farmers to seek commercial lender financing for the development of their agricultural enterprises by offering grants of between \$1,000-\$7,500 to farmers who have secured project financing from a commercial bank, farm credit association, or FSA.⁵⁴ Maryland could further increase its support for commercial urban agriculture by increasing the scope and amount of grant funding, and providing additional support services. For example, **Massachusetts's** Urban Agriculture Program supports commercial urban agriculture through a combination of grants, statewide conferences, targeted workshops and symposia for planners, and publications.⁵⁵ The program is run by the Department of Agricultural Resources and funded by the 2014 Massachusetts Five-Year Capital Plan.⁵⁶ Since its inception in 2013, the program has provided grants, ranging from \$5,000 to \$75,000, to over 50 projects; these projects have addressed a range of priorities, including soil management, green infrastructure, rezoning, and strengthening the connection between rural and urban agriculture.⁵⁷

V. Training and Technical Assistance

Putting resources into farmer training and technical assistance is a high-impact way that Maryland can help support agricultural production in the state. Such programs can help promote new techniques and facilitate the transfer of knowledge.

Government, non-profits, and other partners offer a range of training programs targeting different types of producers, production methods, and critical skills. **UMD Extension** statewide programs and regional offices offer group support with specialized programming, some of which is available online.⁵⁸ Individual assistance is also provided, such as the **Agricultural Marketing Program**, which helps individual producers develop plans to reach consumers.⁵⁹ The Department of Agriculture periodically provides direct trainings on specific food production topics.⁶⁰ Nonprofits like **Future Harvest CASA** also provide educational resources to producers.⁶¹

a. New and Beginning Farmers

As Maryland's farming population is aging, the transfer of knowledge between generations is especially important. Currently, Maryland provides support to new farmers through the **UMD Extension Beginning Farmer Success Program**, a partnership between UMD Extension, UMD Eastern Shore, Future Harvest, and the Southern Maryland Agriculture Development Commission. Through these partners, the program

⁵³ See *About Us*, MD. AGRIC. & RESOURCE-BASED INDUS. DEV. CORP., http://www.marbidco.org/about/about_us.html (last visited Jul. 14, 2017).

⁵⁴ See *Maryland Urban Agriculture Commercial Lending Incentive Grant*, MD. AGRIC. & RESOURCE-BASED INDUS. DEV. CORP., <http://www.marbidco.org/business/muaclig.html> (last visited Jul. 14, 2017).

⁵⁵ *Urban Agriculture Program*, MASS.GOV <http://www.mass.gov/eea/agencies/agr/urban-agriculture-program.html>.

⁵⁶ *Id.*

⁵⁷ *Urban Agriculture Program*, MASS.GOV <http://www.mass.gov/eea/agencies/agr/urban-agriculture-program.html>.

⁵⁸ See *About the University of Maryland Extension: Locations*, UNIV. OF MD. EXTENSION, <https://extension.umd.edu/locations> (last visited March 11, 2017).

⁵⁹ See *Ag Marketing*, UNIV. OF MD. EXTENSION, <https://extension.umd.edu/agmarketing> (last visited Apr. 24, 2017).

⁶⁰ See, e.g., *Department Offers Acidified Foods Training Program*, MD. DEP'T OF AGRIC. (Apr. 4, 2017), <http://news.maryland.gov/mda/press-release/2017/04/04/departments-offers-acidified-foods-training-program/>.

⁶¹ See *Who We Are*, FUTURE HARVEST, <https://www.futureharvestcasa.org/about-us/who-we-are>.

provides free and low-cost resources and emphasizes practical training for beginning farmers.⁶² The Summary of Public Input identified training in sustainable agriculture practices as a priority and, while training in such practices is available for beginning farmers,⁶³ the UMD Extension Program could develop more targeted training opportunities. For example, **California** has an apprenticeship program at University of California Santa Cruz that focuses on training potential farmers in small-scale farming and organic gardening.⁶⁴

SMADC supports beginning farmers through its **Maryland FarmLINK Mentor Match Program**, which pairs experienced farmers with new or transitioning farm owners/operators for one-on-one training, advice, and interaction.⁶⁵ The year-long program, which is free to mentees and pays a \$750 stipend to mentors, is open to beginning farmers in Southern Maryland who have operated a farm for ten years or fewer and are currently farming.⁶⁶ Experienced farmers in Southern Maryland that are transitioning into new specialty areas are accepted on a case-by-case basis, contingent on funding.⁶⁷ This low-cost program should be expanded or replicated in other regions throughout the state.

Maryland could further support beginning farmers by creating a center dedicated to the success of new farmers. For example, the **Iowa** passed legislation establishing the Beginning Farmer Center at Iowa State University Extension.⁶⁸ The Center focuses exclusively on the needs and issues facing beginning farmers. Like the FarmLINK Mentor Match Program, the Center also matches beginning farmers with existing farmers who want to transition their farm businesses to the next generation.⁶⁹

VI. Ensuring Food Safety

Promoting food safety best practices and certification programs not only helps to reduce the incidence of foodborne illnesses, but also strengthens buyer confidence in state and local producers. However, overly burdensome food safety regulations can serve as a significant barrier some producers, particularly those who are operating at a small scale or starting out, and ultimately stifle entrepreneurship and growth. Maryland makes food safety trainings, workshops, and certification programs widely available and has even take steps to make important programs, like USDA GAP/GHP certification, more affordable for some farmers. The state could explore additional measures to further streamline food safety regulations and reduce the costs of compliance.

a. FSMA Training

The 2011 **Food Safety Modernization Act (FSMA)** has changed the way food producers across the country are being regulated with regard to food safety, transforming the system from one based on

⁶² *Beginning Farmer Success*, UNIV. OF MD. EXTENSION, <http://extension.umd.edu/newfarmer> (last visited Jul. 15, 2017).

⁶³ *See Beginner Farmer Training Program*, FUTURE HARVEST, <https://www.futureharvestcasa.org/new-farmers/how-apply>.

⁶⁴ *Apprenticeship Information*, UNIV. OF CA. SANTA CRUZ, <https://casfs.ucsc.edu/apprenticeship/apprenticeship-information/index.html> (last visited Jul. 10, 2017).

⁶⁵ *See Mentor Match Program*, SOUTHERN MARYLAND AGRICULTURAL DEVELOPMENT COMMISSION http://www.marylandfarmlink.com/resources_mentormatch.php.

⁶⁶ *Id.*

⁶⁷ *See Mentor Match FAQs*, SOUTHERN MARYLAND AGRICULTURAL DEVELOPMENT COMMISSION http://www.marylandfarmlink.com/dynamic_page.php?id=17.

⁶⁸ *Beginning Farmer Center*, IA. STATE UNIV. <http://www.extension.iastate.edu/bfc/history> (last visited Jul. 15, 2017).

⁶⁹ *Id.*

responding to contamination to one based on the prevention of foodborne illnesses.⁷⁰ FSMA requirements are still difficult to understand for many producers, but Maryland is supporting farmers with food safety training and technical assistance. For example, the Maryland Department of Agriculture provides trainings on the federal FSMA requirements and related certifications,⁷¹ as does UMD Extension.⁷²

b. GAP/GHP Certification

Through its **Food Quality Assurance Program**, MDA also provides **Good Agricultural Practices (GAP)** and **Good Handling Practices (GHP)** training and certification programs to improve food safety in the production and packing of fruits and vegetables. These programs assist farmers in providing safe, wholesome produce to consumers, and in meeting increasing buyer demand for food safety certification.⁷³ MDA developed a state GAP/GHP certification program, which is geared towards farmers and marketers that have never had a GAP/GHP audit.⁷⁴ The state certification program requires a MDA inspection.⁷⁵ In addition, MDA conducts USDA GAP/GHP audits as part of its cooperative agreement with USDA.⁷⁶ MDA uses some of its USDA Specialty Crop Grant funds to help offset the costs to farmers of a USDA GAP/GHP audit.⁷⁷

Maryland could also explore GroupGap as a means to ease the financial burdens on producers of undergoing a GAP audit and make this certification more accessible for small farms. GroupGAP is a USDA farm food safety program that allows producers to band together and pool their resources to obtain certification.⁷⁸ GroupGAP thereby lowers the cost of certification for individual producers. A GroupGAP pilot program in Michigan's Upper Peninsula found that farms saved about \$700 by participating in GroupGAP instead of obtaining individual certification.⁷⁹ **Chesapeake Harvest**, a Maryland food distributor, is currently in the process of developing a GroupGAP program for their grower network.⁸⁰ Maryland could support GroupGAP by providing financial assistance to organizations like Chesapeake Harvest for such training. For example, **Iowa's** Department of Agriculture and Land Stewardship distributed some of its Specialty Crop Block Grant funding to the Iowa Food Hub to support its GroupGAP program.⁸¹

c. Streamlining Food Safety Regulations

⁷⁰ 21 U.S.C. §§ 350g, 350d (2012).

⁷¹ See *Food Safety Modernization Act (FSMA)*, MD. DEP'T OF AGRIC., <http://mda.maryland.gov/foodfeedquality/Pages/Food-Safety-Modernization-Act.aspx> (last visited Jul. 15, 2017).

⁷² See, e.g., *A Training Workshop in FSMA Produce Safety and Preventive Control Rules*, UNIV. OF MD. EXTENSION (Oct. 12, 2016), <https://extension.umd.edu/news/training-workshop-fsma-produce-safety-and-preventive-control-rules-0>.

⁷³ *Good Agricultural Practice/Good Handling Practices*, MD. DEP'T OF AGRIC. http://mda.maryland.gov/foodfeedquality/Pages/good_ag_practices.aspx (last visited Jul. 15, 2017).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *GroupGAP Food Safety Program*, U.S. DEP'T OF AGRIC. <https://www.ams.usda.gov/services/auditing/groupgap>.

⁷⁹ MICH. STATE UNIV., CNTR. FOR REGIONAL FOOD SYSTEMS, *SMALL FARMERS CAN MAKE FOOD SAFETY WORK: THE GROUPGAP PILOT PROJECT IN MICHIGAN'S UPPER PENINSULA 13* (2015), http://foodsystems.msu.edu/uploads/files/resources/Group_GAP_Michigan_Upper_Peninsula.pdf.

⁸⁰ *PASA Education Event*, PA. ASSOC. FOR SUSTAINABLE AGRIC. <https://www.pasafarming.org/events/pasa-events/pasa-education-event-creating-a-farm-food-safety-manual>.

⁸¹ *GAP Certification Assistance Available to Iowa Growers*, IA. STATE UNIV. <https://www.extension.iastate.edu/localfoods/gap-certification-assistance-available-to-iowa-growers/>.

Because Maryland is a home-rule state, county and local regulations can be stricter than state requirements.⁸² Identifying and meeting these varying requirements is challenging for small producers, who are already struggling just to compete in local markets.⁸³ The Maryland Legislature recognized that varying food safety regulations can be burdensome on mobile food vendors and passed **SB 262/HB 771**, which streamlines the health inspection process for food trucks operating in multiple counties. The bill allows a mobile food vendor to operate within 90 miles of its home base without having to obtain a separate health department license for each county it visits.⁸⁴ Maryland could take a similar approach to other food safety regulations and look for ways to streamline regulations across counties, thereby easing administrative and financial burdens for producers.

Goal 2: Distributing Food

*Maryland has a thriving and sustainable infrastructure for delivering food from farm to table.*⁸⁵

I. Background

As noted in the previous section, Maryland has a large and thriving agricultural sector. Yet, the demand for local food, particularly produce, within the state and region outstrips the current supply.⁸⁶ Establishing a robust food distribution sector – one that operates at the state, regional, and local levels – is critical for continuing to support the growth of Maryland’s agriculture sector and meeting consumer demand, both within the state and region, for local food.⁸⁷ In connecting producers to buyers, food distribution involves tangible components such as infrastructure, equipment, and technology. At the same time, distribution encompasses more intangible dimensions, such as networks, markets, and communication.

In Maryland, as in many states, small and mid-sized farms have trouble gaining access to distribution networks because the distribution system is highly centralized and caters to large farming operations, contract farmers growing food for large corporations, and processed food operations.⁸⁸ Smaller farms often do not produce enough to create the economies of scale that would allow them to sell their crops

⁸² Maryland’s 23 counties have one of three types of government. Under Home Rule, counties and municipalities may issue their own rules and regulations, though Maryland follows “Dillon’s Rule,” meaning any local authority must be granted by the state legislature. See *Narrow Government Authority: Dillon’s Rule*, NAT’L LEAGUE OF CITIES, <http://www.nlc.org/local-government-authority> (last visited Apr. 17, 2017).

⁸³ *Regulation*, MD. FARMERS MARKET ASSOC. <http://www.marylandfma.org/resources/regulations/>.

⁸⁴ M.D. Gen. Assemb. Senate Bill 0262. 2017 Reg. Sess. <http://mgaleg.maryland.gov/2017RS/bills/sb/sb0262t.pdf>.

⁸⁵ The Summary of Public Input identifies the following strategies: 1) Encourage partnerships between government (local and state) and food and agricultural entrepreneurs to develop the land financing, and support necessary for regional aggregation and distribution centers (e.g. food hubs); 2) Identify geographic areas around the state that lack access to healthy food retail and encourage public and private policies that attract retail to those areas of need.

⁸⁶ Chesapeake Harvest estimates estimates that the unmet demand for local fruits and vegetables in the state totals \$937 million. *About Us*, CHESAPEAKE HARVEST, <http://chesapeakeharvest.com/about-us/> (last visited Sep. 10, 2017). See also S. M.D. AGRIC. DEV. COMM., MARYLAND FOOD HUBS: SCALING FOOD SYSTEM Impact 7 (2016), http://smadc.org/food_farms_nutr/Maryland_Food_Hubs_%20Scaling_Food_System_Impact.pdf.

⁸⁷ MAYOR’S OFFICE OF SUSTAINABILITY, *Chapter 2. Food Production: Regional and Urban Agriculture*, in OAKLAND FOOD SYSTEM ASSESSMENT 19 (2006), http://oaklandfoodsystem.pbworks.com/f/OFSA_Production.pdf (last visited June 12, 2017).

⁸⁸ M.D. DEP’T PLANNING, *MANAGING MARYLAND’S GROWTH: PLANNING FOR THE FOOD SYSTEM* (2012), <http://www.mdp.state.md.us/PDF/OurProducts/Publications/ModelsGuidelines/mg28.pdf>.

at a reduced price to a wholesale distributor or broker.⁸⁹ However, in order to meet the demand for local food, these smaller farms need to be able to move beyond direct sales of small quantities to larger wholesale transactions with restaurants, supermarkets, and other institutions.⁹⁰

While marketing “local” and “regional” food is essential to building a distribution system that can support and create new opportunities for smaller farms, it is important to keep in mind that these terms do not have standardized definitions. Not all states regulate the definition of “local” or “regional” when used to market foods, and those that do take a variety of approaches. In Maryland, the Department of Agriculture published regulations in 2011 that simply require that the state of origin be disclosed when an agricultural product is advertised as local, locally-grown, regional, or “any term that may lead a consumer to believe that the product is local or locally grown.”⁹¹ MDA’s website includes a complaint form for violations of these regulations and, under the regulations, those who knowingly violate the regulations are guilty of a misdemeanor and subject to a fine of up to \$500.⁹²

Indeed, Maryland can benefit from a more flexible definition of local. While promoting Maryland-grown food is important for the state’s economy, Maryland’s small geographic area makes this a particularly restrictive definition of local.⁹³ A number of major metropolitan areas -- including Washington D.C., Philadelphia, and Richmond – lie within 100 miles of the state’s borders and Maryland farmers want to meet the demand in those local markets. Likewise, producers that lie just outside of the state consider counties and cities within Maryland to be their key markets. One potential framework for evaluating the local region is an ecological one; the Southern Maryland Agricultural Development Commission (SMADC) published a food hub report in 2016 and identified the Chesapeake Bay Watershed Region as critical for understanding Maryland’s food system.⁹⁴

II. Food Hubs

Food hubs serve as a bridge between smaller producers and larger, regional markets. USDA defines a food hub as “a business or organization that actively manages the aggregation, distribution, and marketing of source-identified food products primarily from local and regional producers to strengthen their ability to satisfy wholesale, retail, and institutional demand.”⁹⁵ Fresh fruits and vegetables often make up the majority of food hubs sales, but meat and dairy products are also common, as well as value-added products such as jams and dried fruits.⁹⁶ Food hubs can have numerous benefits, including

⁸⁹ *Id.*

⁹⁰ LINDSEY DAY-FARNSWORTH ET AL., SCALING UP: MEETING THE DEMAND FOR LOCAL FOOD, i (2009), http://www.cias.wisc.edu/wp-content/uploads/2010/01/baldwin_web_final.pdf [<https://perma.cc/E8US-U9D5>] (last visited June 12, 2017).

⁹¹ Md. Code Ann., Agric. §§ 9 – .01 (2011), http://mda.maryland.gov/maryland_products/Documents/Buy-Local-Regulations.pdf.

⁹² See *Defining local, locally grown or regional*, MD. DEPT’T AGRIC., http://mda.maryland.gov/maryland_products/Pages/buy_local_advertising.aspx (last visited Aug. 17, 2017); Md. Code Ann., Agric. §§ 9 – .01 (2011).

⁹³ See S. MD. AGRIC. DEV. COMM., MARYLAND FOOD HUBS: SCALING FOOD SYSTEM Impact 4 (2016), http://smadc.org/food_farms_nutr/Maryland_Food_Hubs_%20Scaling_Food_System_Impact.pdf.

⁹⁴ *Id.*

⁹⁵ AGRIC. MARKETING SERVS., U.S. DEP’T AGRIC., REGIONAL FOOD HUB RESOURCE GUIDE 4 (2012), <http://www.ams.usda.gov/sites/default/files/media/Regional%20Food%20Hub%20Resource%20Guide.pdf>.

⁹⁶ RURAL DEV., U.S. DEP’T AGRIC., RUNNING A FOOD HUB: LESSONS LEARNED FROM THE FIELD VOLUME ONE 13 (2015), https://www.rd.usda.gov/files/SR_77_Running_A_Food_Hub_Vol_1.pdf.

increasing the viability of small producers, creating new businesses and jobs, keeping money in the regional economy, and increasing access to healthy foods.⁹⁷

Maryland has a vibrant food hub scene. As of 2015, there were four operating and six emerging food hubs in the state.⁹⁸ These food hubs vary in their size, years of operation, core functions, business models, and legal structure.⁹⁹ Food hubs generally operate according to one of three models: 1) wholesale, 2) direct-to-consumer, and 3) hybrid (combines elements of several operational models, such as by selling products both directly to end-consumers and to wholesale clients).¹⁰⁰ Wholesale markets include grocery stores, local restaurants, schools, and other institutions, while direct-to-consumer models include community supported agriculture (CSAs), online retail, and home delivery.¹⁰¹ In addition, food hubs can be classified according to five different legal structures: nonprofit, for-profit, cooperative, publicly owned, and other.¹⁰²

A 2015 national survey found that food hubs identified their top three challenges as balancing supply and demand, managing growth, and accessing capital.¹⁰³ Maryland can support existing and would-be food hubs by helping to address some of these challenges.

d. Value Chain Coordinators

The 2016 SMADC food hub report identifies value chain coordinators (VCCs) as key for the network building and data gathering needed to strengthen regional distribution networks.¹⁰⁴ VCCs are “organizations working within the food system but outside of the market” that provide services to foster communication and relationships, building the “soft infrastructure” of strong distribution networks.¹⁰⁵ The SMADC report and a contemporaneous food system assessment published by Arabella Advisors advocates for increased engagement by VCCs not only to promote regional food systems, but also to avoid potential redundancies, such as “creating too many food hubs and oversaturating the market for certain products.”¹⁰⁶

Maryland benefits from a number of active VCCs, both within the state and region. These include SMADC itself, as well as the broader Chesapeake Foodshed Network, and the Metropolitan Washington

⁹⁷ RURAL DEV., U.S. DEP’T AGRIC., *RUNNING A FOOD HUB: LESSONS LEARNED FROM THE FIELD VOLUME ONE 14-22* (2015), https://www.rd.usda.gov/files/SR_77_Running_A_Food_Hub_Vol_1.pdf.

⁹⁸ EXISTING AND EMERGING FOOD HUBS IN MARYLAND 2015, SOUTHERN MD. AGRIC. DEV. COMM’N (Sept. 2015), smadc.com/food_farms_nutr/Maryland%20Food%20Hub%20Report_September%202015.pdf.

⁹⁹ *Id.*

¹⁰⁰ JAMES MATSON ET. AL., *RUNNING A FOOD HUB: A BUSINESS OPERATIONS GUIDE VOLUME TWO 19-20, 23-24* (2015), http://www.rd.usda.gov/files/SR_77_Running_A_Food_Hub_Vol_2.pdf.

¹⁰¹ See MICHIGAN STATE UNIVERSITY CTR. FOR REGIONAL FOOD SYSTEMS & THE WALLACE CTR. AT WINROCK INT’L, *2015 NATIONAL FOOD HUB SURVEY 11* (2015), http://foodsystems.msu.edu/uploads/files/2015_National_Food_Hub_Survey_Findings.pdf (last visited June 12, 2017).

¹⁰² See MICHIGAN STATE UNIVERSITY CTR. FOR REGIONAL FOOD SYSTEMS & THE WALLACE CTR. AT WINROCK INT’L, *2015 NATIONAL FOOD HUB SURVEY 11* (2015), http://foodsystems.msu.edu/uploads/files/2015_National_Food_Hub_Survey_Findings.pdf (last visited June 12, 2017).

¹⁰³ Findings of the 2015 National Hub Survey, Michigan State University, <http://foodsystems.msu.edu/resources/report/2015%20National%20Food%20Hub%20Survey%20Findings.pdf>.

¹⁰⁴ S. MD. AGRIC. DEV. COMM., *MARYLAND FOOD HUBS: SCALING FOOD SYSTEM Impact 15* (2016), http://smadc.org/food_farms_nutr/Maryland_Food_Hubs_%20Scaling_Food_System_Impact.pdf.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* See also ARABELLA ADVISORS, *GOOD FOOD FOR ALL: AN ASSESSMENT OF FOOD SYSTEM EFFORTS IN THE CHESAPEAKE FOODSHED* (2016), <https://www.arabellaadvisors.com/wp-content/uploads/2016/08/Good-Food-for-All-Chesapeake-Food-System-Assessment.pdf>.

Council of Governments (MWCOG).¹⁰⁷ MWCOG partnered with Prince Charitable Trust, Agua Fund, and Town Creek Foundation to participate in USDA's **Food LINC** (Leveraging Local Investment for Network Coordination) program.¹⁰⁸ Launched in 2016, this three-year initiative leverages federal and philanthropic capital to build capacity among VCCs and thereby strengthen regional food systems.¹⁰⁹ Maryland can support existing efforts through this program, particularly once the three-year period ends, and also seek to replicate this model on a state level.

e. Loans, Grant, and other Funding

Maryland can continue to make grants and other investments available to food hubs – such investments should cover infrastructure and startup expenses, as well as short-term revolving credit to maintain adequate cash flow.¹¹⁰ MARBIDCO's **Maryland Value Added Producer Grant** (MVAPG – USDA Option) is designed to encourage participation in USDA's Value Added Producer Grant Program. The USDA VAPG program, offered annually, has both planning and working capital components. Recipients of MARBIDCO's grants can receive up to \$15,000 for planning and \$30,000 for working capital.¹¹¹ USDA VAPG grants have been used in Maryland and elsewhere to promote local food distribution. For example, in Kentucky, Grasshoppers Distribution Center used a VAPG grant to support their work with small-scale producers in Kentucky and southern Indiana; the center facilitates wholesale distribution to restaurants, groceries, and special events.¹¹²

Maryland has also provided direct investments in individual food hubs, notably the Baltimore Food Hub. The state provided \$3.3 million for the Baltimore Food Hub through the Department of Housing and Community Development's Neighborhood Revitalization and Business Lending programs, as well as through a 2016 state budget allocation.¹¹³ These lending programs are designed to support small business growth and economic development and can be used to support food hubs, and similar initiatives, throughout the state.

III. Local Food Promotion

Marketing local and regional food products helps to increase the demand for these foods and strengthen distribution networks. At the state and local levels, Maryland has undertaken a number of initiatives to promote local and regional foods. MDA's Marketing Office runs Maryland's Best, a statewide program that promotes in-state products and producers through advertising, media events, campaigns, and the Maryland's Best logo.¹¹⁴ The logo can be used on individual products, as well as by

¹⁰⁷ *Id.* At 16.

¹⁰⁸ *Federal, Philanthropic Partners to Strengthen Local Food Supply Chains, Boost Farm Sales, Grow Local Foods Sector in Ten Selected Regions*, U.S. DEP'T AGRIC., <https://www.ams.usda.gov/press-release/federal-philanthropic-partners-join-strengthen-local-food-supply-chains-food-linc> (last visited Aug. 17, 2017).

¹⁰⁹ *Id.*

¹¹⁰ S. MD. AGRIC. DEV. COMM., MARYLAND FOOD HUBS: SCALING FOOD SYSTEM Impact (2016), http://smadc.org/food_farms_nutr/Maryland_Food_Hubs_%20Scaling_Food_System_Impact.pdf.

¹¹¹ *See About Us*, MD. AGRIC. & RESOURCE-BASED INDUS. DEV. CORP., http://www.marbidco.org/about/about_us.html (last visited Jul. 14, 2017).

¹¹² *Regional Food Hub Resources from USDA*, NATIONAL GOOD FOOD NETWORK, <http://www.ngfn.org/resources/ngfn-database/knowledge/Regional%20Food%20Hub%20Resources%20from%20USDA%20v1.pdf>.

¹¹³ *A New Canvas for Baltimore: Food Hub Approaches Development Milestone*, Dep't of Housing and Community Development (May 3, 2017), <http://news.maryland.gov/dhcd/2017/05/03/a-new-canvas-for-baltimore-food-hub-approaches-development-milestone/> (last visited Sep. 10, 2017).

¹¹⁴ *See Maryland's Best*, MARYLAND'S BEST AGRIC., <http://marylandsbest.net/> (last visited March 11, 2017).

retailers and restaurants.¹¹⁵ The Maryland's Best website features information, including contact information and video interviews, on over 1,000 Maryland Farmers.¹¹⁶ The program is primarily funded by a USDA Specialty Crop Bloc Grant; however, because of restrictions on these funds, the program also uses state funds for some of its activities.¹¹⁷

Maryland can look to local food promotion programs in other, neighboring states for ideas to expand Maryland's Best. For example, New Jersey's **Jersey Fresh** promotion program is an example of state heavy investment in local food promotion that paid off. A 2004 study by Rutgers University found that every dollar spent on the program resulted in \$31.54 in additional sales of produce.¹¹⁸ However, whereas the program's annual budget once exceeded \$1 million, it has seen budget cuts since 2003.¹¹⁹ In 2017, the New Jersey Legislature unanimously passed a bill that will establish the Jersey Fresh Program Fund within the department of the Treasury and allow taxpayers to dedicate a portion of their gross income tax return to the fund or, alternatively, make direct contributions.¹²⁰ This measure is intended to supplement funds for the program, and also build taxpayer buy-in around New Jersey agriculture.¹²¹

Within Maryland, food promotion programs also operate at the local and regional levels. For example, Chesapeake Harvest¹²² and the "Buy Fresh, Buy Local" Chesapeake Chapter¹²³ promote products from the Eastern Shore region. UMD Extension also provides producers with marketing resources, including individualized marketing planning.¹²⁴ This support can help producers take advantage of local promotion programs, and also reach broader markets.

¹¹⁵ See *Maryland's Best*, MARYLAND'S BEST AGRIC., <http://marylandsbest.net/> (last visited March 11, 2017).

¹¹⁶ MD. DEP'T AGRIC., 2015 ANNUAL REPORT 15 (2015), http://mda.maryland.gov/Documents/15mda_ar.pdf.

¹¹⁷ *Id.*

¹¹⁸ Mary Jo Patterson, *Taking a Bite Out of Jersey Fresh*, NEW YORK TIMES (Mar. 27, 2009),

<http://www.nytimes.com/2009/03/29/nyregion/new-jersey/29farmnj.html> (last visited Sep. 2017).

¹¹⁹ *Id.*

¹²⁰ N.J. Gen. Assemb. Bill 3999/Senate Bill 2457, 2017 Reg. Sess., <https://legiscan.com/NJ/bill/A3999/2016>.

¹²¹ *Bill to Allow Contributions to Jersey Fresh Program through Gross Income Tax Returns Gets Final Legislative Approval*, CAPE MAY HERALD (June 25, 2017), http://www.capemaycountyherald.com/news/government/article_50e4f62a-5976-11e7-b6a6-971ddd337d6f.html.

¹²² See *About Us*, CHESAPEAKE HARVEST, <http://chesapeakeharvest.com/about-us/> (last visited Apr. 25, 2017).

¹²³ See *Buy Fresh Buy Local Chesapeake*, CHESAPEAKE BAY FOUND., <http://www.cbf.org/join-us/more-things-you-can-do/buy-fresh-buy-local/about> (last visited Apr. 25, 2017).

¹²⁴ See *Ag Marketing*, MD. DEP'T OF AGRIC., <https://extension.umd.edu/agmarketing> (last visited Apr. 25, 2017).

3. Accessing Food

Goal: Maryland has policies and an economic climate that supports diverse, flexible food retail models to provide healthy, culturally-relevant and sustainable food in every community.¹²⁵

I. Background

Though Maryland is one of the wealthiest states in the nation, it still reports high rates of food insecurity (12.8 percent)¹²⁶ and food deserts (27.34 percent).¹²⁷ A 2012 report found that 1.2 million Maryland residents, including approximately 300,000 children, live in low-income communities underserved by supermarkets.¹²⁸ Food assistance programs also offer a proxy for residents' food security, particularly with regard to economic access. In 2016, nearly 750,000 residents received Food Security Program (FSP) benefits – this is state's Supplemental Nutrition Assistance Program (SNAP), or food stamp program – representing 12 percent of the state population.¹²⁹ In addition, over 45 percent of students in Maryland free and reduced-price school meals.¹³⁰

¹²⁵The Summary of Public Input identifies the following strategies: 1) Adopt statewide legislation to require a universal/alternative breakfast program for schools with Free and Reduced Meals (FARMS) rates over 70%; 2) Reinstate Governor's budget for Maryland Out of School Opportunity Fund to enable more locations to serve as summer and afterschool feeding sites; 3) Eliminate administrative barriers to reimbursement to make it easier for small organizations to participate in SNAP Outreach; 4) Implement the recommendations in the Maryland 2012 Fresh Foods Task Force report; 5) Subsidize MD Department of Transportation fares to food venues with a healthy food availability index ranking of at least 24 for customers who use federal benefits; and 6) Identify and enable transit pick up and drop off stops that correlate with healthy food venues (i.e. availability index) with Maryland's regional transit authorities.

¹²⁶ *Maryland Food System Map: About*, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, <http://mdfoodsystemmap.org/about/> (last visited June 11, 2017).

¹²⁷ MARYLAND FOOD SYSTEM MAP, MARYLAND FOOD SYSTEM STATE SUMMARY (2016), http://mdfoodsystemmap.org/wp-content/uploads/2016/07/State-Summary_June2016.pdf; see also USDA Food Access Research Atlas, 2010 Note: USDA Food Deserts are defined as low-income census tracts where residents are >0.5 miles (urban) or >10 miles (rural) from the nearest supermarket.

¹²⁸ *Stimulating Supermarket Development in Maryland*, Maryland Fresh Food Retail Task Force, 2012, http://policylinkcontent.s3.amazonaws.com/MD_recommFINAL_web_0.pdf

¹²⁹ CTR. BUDGET & POL'Y PRIORITIES, MARYLAND FOOD SUPPLEMENT PROGRAM FACTSHEET (2017), https://www.cbpp.org/sites/default/files/atoms/files/snap_factsheet_maryland.pdf.

¹³⁰ MARYLAND FOOD SYSTEM MAP, MARYLAND FOOD SYSTEM STATE SUMMARY (2016), http://mdfoodsystemmap.org/wp-content/uploads/2016/07/State-Summary_June2016.pdf.

Increasing access to healthy foods involves a number of factors – economic, geographic, social, cultural, and behavioral – none of which act in isolation and most of which are interrelated. Policies are most effective when they are designed for specific communities, taking into account the various factors at play within those communities. The comprehensive **Maryland Food System Map**, created and regularly updated by the Johns Hopkins Center for a Livable Future, incorporates data from various organizations and government databases.¹³¹ It features 175 different data indicators, including food retail locations and types, locations of vendors that participate in federal assistance programs such as WIC and SNAP as well as geographical percentages of participants in those programs, and geographical percentages of obesity and diabetes rates.¹³² This resource provides a strong foundation for Maryland to identify gaps in food access and provide targeted solutions, both across the state and for individual communities.

II. Food Access for Children

Healthy food access for children is critical for ensuring their general health, wellbeing, and academic success, not only in the immediate but also over the course of their lives. Children consume food in a variety of settings, including school, home, and after-school and summer programs. While there are a number of federal, state, and local programs that provide children with food in these settings, they often face the same core challenges: participation and funding. States can take a number of steps to address these challenges and strengthen existing programs. While Maryland already has a number of key programs and policies in place, the Charter process and this paper identify opportunities for the state to go even further in guaranteeing healthy food access for children.

a. School Food

In 2016, over 891,000 students participated in Maryland’s school meal program and over 45% of these students received free and reduced-price meals.¹³³ Many of these students consume over 50% of their daily calories at school.¹³⁴ What children eat in school can have both an immediate and lifetime impact on their nutrition and health, as eating habits and preferences are formed early in life. As a result, school meals can have a significant impact on children’s nutrition and health.¹³⁵ All public schools are required to operate a free and reduced-price lunch program.¹³⁶ All public *elementary* schools are required to operate a free and reduced-price breakfast program.¹³⁷

¹³¹ *Maryland Food System Map: About*, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, <http://mdfoodsystemmap.org/about/> (last visited April 19, 2017).

¹³² *Id.*

¹³³ *Free and Reduced-Price Meal Statistics*, MD. DEP’T EDUC., <http://www.marylandpublicschools.org/programs/Pages/School-Community-Nutrition/FreeReducedPriceMealStatistics.aspx> (last visited Aug. 30, 2017).

¹³⁴ Lisa Manchino et al., USDA ECONOMIC RESEARCH SERVICE, *How Food Away From Home Affects Children’s Diet Quality 3*, http://www.ers.usda.gov/media/136261/err104_3_.pdf.

¹³⁵ See ELIZABETH POTAMITES & ANNE GORDON, MATHEMATICA POL’Y RES., CHILDREN’S FOOD SECURITY AND INTAKES FROM SCHOOL MEALS (2010), <http://naldc.nal.usda.gov/download/42320/PDF>; see also Catherine Forestell and Julie Mennella, *Early Determinants of Fruit and Vegetable Acceptance*, 120 PEDIATRICS 1247–1254 (2007), <http://pediatrics.aappublications.org/content/120/6/1247.full.pdf+html>.

¹³⁶ MD. EDUC. CODE. ANN. § 7-601.

¹³⁷ MD. EDUC. CODE. ANN. §§ 7-701, 7-702.

During the 2016-2017 school year, 229 schools (out of 384 eligible schools) utilized the **Community Eligibility Provision (CEP)**.¹³⁸ CEP is a federal program, authorized under the 2010 Healthy, Hunger-Free Kids Act (HHFKA), which makes it possible for schools in high-poverty areas to provide universal meals – that is, free breakfast and lunch to all students, regardless of household income. In order to qualify for CEP, a school must have at least 40% of its students “directly certified” as eligible for free meals.¹³⁹ The direct certification process matches records for means-tested assistance programs against school enrollment lists, eliminating the need for individual paper applications.¹⁴⁰

However, uptake of CEP was initially slow in Maryland because some school districts feared opting into CEP, and thereby reducing their use of individual paper applications, would decrease the amount of additional funding (compensatory education aid) that they received from the state because the formula for this funding relied individual application numbers.¹⁴¹ The Maryland General Assembly addressed this concern with passage of the **Hunger-Free Schools Act of 2015**, which changed the formula for the state’s compensatory education aid.¹⁴² The Act was recently extended through 2022.¹⁴³ As a result of this change, the number of CEP schools in Maryland increased from 23 in the 2014-2015 school year to 229 by the end of the 2016-2017 school year.¹⁴⁴ However, over 160 eligible schools are still not participating; this includes 26 “highly eligible” schools.¹⁴⁵

While many states face significant discrepancies between lunch and breakfast participation rates, Maryland has one of the highest breakfast participation rates in the country.¹⁴⁶ Through its **Maryland Meals for Achievement (MMFA)** program, the state provides funding for universal, free breakfast in the classroom in schools where at least 40 percent of students qualify for free or reduced-price meals.¹⁴⁷ The state reimburses \$0.30 for each reduced-price breakfast, and a formula is used to calculate the reimbursement for each paid meal.¹⁴⁸ Schools that have not opted into CEP can still utilize MMFA.¹⁴⁹ However, during the 2015-2016 school year, only 461 of the 896 MMFA-eligible schools participated in the program.¹⁵⁰

¹³⁸ M.D. PUBLIC SCHOOLS, 2017 CEP DATA,

http://marylandpublicschools.org/programs/_layouts/15/xlviewer.aspx?id=/programs/Documents/Nutrition/CEPData/2017CEPData.xlsx.

¹³⁹ U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., COMMUNITY ELIGIBILITY PROVISION: GUIDANCE Q&As – REVISED (2014), <http://www.fns.usda.gov/sites/default/files/cn/SP21-2014v2os.pdf>.

¹⁴⁰ U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., DIRECT CERTIFICATION IN THE SCHOOL LUNCH PROGRAM: STATE IMPLEMENTATION PROGRESS, SCHOOL YEAR 2013-2014 4 (2015), <http://www.fns.usda.gov/sites/default/files/ops/NSLPDirectCertification2014.pdf>.

¹⁴¹ Department of Legislative Services Maryland General Assembly 2015 Session, Fiscal and Policy Note (Revised): S.B. 334, The Hunger-Free Schools Act of 2015, http://mgaleg.maryland.gov/2015RS/fnotes/bil_0004/sb0334.pdf

¹⁴² M.D. Gen. Assemb. Senate Bill 334. 2016 Reg. Sess, <http://mgaleg.maryland.gov/2015RS/bills/sb/sb0334E.pdf>.

¹⁴³ M.D. Gen. Assemb. House Bill 287 2017 Reg. Sess, <http://mgaleg.maryland.gov/2017RS/bills/hb/hb0287T.pdf>.

¹⁴⁴ *Community Eligibility*, M.D. HUNGER SOLUTIONS, <http://www.mdhungersolutions.org/fedfoodprogs/communityeligibility.shtm> (last visited July 14, 2017).

¹⁴⁵ COMMUNITY ELIGIBILITY CREATES HUNGER-FREE SCHOOLS, M.D. HUNGER SOLUTIONS (2017), <http://mdhungersolutions.org/pdf/cep-eligible-schools-in-md.pdf>.

¹⁴⁶ FOOD RESEARCH & ACTION CENTER, SCHOOL BREAKFAST SCORECARD: 2015-2016 8 (2017), <http://www.frac.org/wp-content/uploads/school-breakfast-scorecard-sy-2015-2016.pdf>.

¹⁴⁷ MD. EDUC. CODE. ANN. § 7-704

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ MD. HUNGER SOLUTIONS, CREATING HEALTHIER STUDENTS & BETTER LEARNERS WITH THE SCHOOL BREAKFAST PROGRAM: MARYLAND REPORT CARD FOR THE 2015-2106 SCHOOL YEAR 25 (2017), <http://www.mdhungersolutions.org/pdf/maryland-school-breakfast-report-card-2017.pdf>.

Some states have gone even further in incentivizing school breakfast participation and *require* that schools in high-poverty areas provide universal breakfast and/or breakfast after the bell. Indeed, the Charter Summary of Public Input identifies such legislation (for schools with at least 70 percent of students receiving free and reduced-price meals) as a key strategy. States may require universal, free breakfast in schools above a certain percentage of free and reduced-price meals¹⁵¹ or breakfast after the bell.¹⁵² Other states require both universal breakfast and breakfast after the bell – for example, **Colorado** requires all schools with 70 percent or more free and reduced-price certified students to offer breakfast after the bell free to all students.¹⁵³ In addition, the state provides funding to eliminate the reduced-price fee of \$0.30 for breakfast in *all* schools (pre-K through high school).¹⁵⁴

b. After-School and Summer Meals

While school meals can serve a critical need for children from low-income and food-insecure households during the school day, that need continues once the school day and school year end. After-school meals can help combat food insecurity and ensure that children have healthy food options throughout the day. Summer can be a particularly challenging time for children from households who rely on school meals to supplement food budgets.¹⁵⁵ Without nutritious meals over the summer, these children are at a higher risk of weight gain and may develop behaviors that contribute to health complications and poor performance once school begins again.¹⁵⁶ After-school and summer meal programs can help ensure that children’s nutritional needs are being met on an ongoing basis.

The **Public School Opportunities Enhancement Program and Grant**, established within the Maryland State Department of Education (MSDE) in 2016, provides funding for afterschool programming.¹⁵⁷ This new program is currently funded at \$2,500,000;¹⁵⁸ however, unlike its predecessor program (the Maryland After-School Opportunity Fund), these funds may not be used for meals and snacks.¹⁵⁹ Maryland could broaden the Opportunities Enhancement Program and Grant to include funding for afterschool meals and snacks, or could establish a separate funding stream. For example, **Oregon** passed legislation in 2014 authorizing the Start-Up and Expansion Grants for At-Risk Afterschool Meals and Summer Meals Program, which provides individual grants of up to \$20,000 to summer and afterschool

¹⁵¹ See, e.g., FLA. STAT. § 570.981 (requiring all schools with 80 percent or more free and reduced-price certified students to offer universal free breakfast and that, to the maximum extent practicable, they make breakfast meals available at sites outside the cafeteria).

¹⁵² See, e.g., N.M. STAT. ANN. § 22-13-13.2 (requiring that all elementary schools with 85 percent or more free or reduced-price certified students to offer breakfast after the bell program, unless the school is granted a waiver); see also N.V. SB 503, 2015 (requiring all schools with 70 percent or more free and reduced-price certified students to offer breakfast after the bell).

¹⁵³ COLO. REV. STAT. § 22-82.8.

¹⁵⁴ *Id.* at § 22-82.8.

¹⁵⁵ *Facts: The Summer Food Service Program*, FOOD RESEARCH & ACTION CTR., http://frac.org/pdf/sfsp_fact_sheet.pdf (last visited March 18, 2016).

¹⁵⁶ *Id.*

¹⁵⁷ Dep’t Leg. Servs., M.D. Gen. Assemb, 2017 Sess., Fiscal and Policy Note: House Bill 454, http://mgaleg.maryland.gov/2017RS/fnotes/bil_0004/hb0454.pdf.

¹⁵⁸ M.D. DEP’T EDUC., PUBLIC SCHOOL OPPORTUNITIES ENHANCEMENT GRANT PROGRAM RFP 3 (2017), <http://www.marylandpublicschools.org/about/Documents/Grants/RFP05312017/PublicSchoolOpportunitiesEnhancementGrantProgramHB1402.pdf>.

¹⁵⁹ M.D. DEP’T EDUC., PUBLIC SCHOOL OPPORTUNITIES ENHANCEMENT GRANT PROGRAM FAQ (2017), <http://www.marylandpublicschools.org/about/Documents/DSFSS/Youth-Development/PSOEG/PSIOEnhancementGrantFAQ.pdf>.

meal programs.¹⁶⁰ This grants program, administered by the Oregon Department of Education, currently has funding of \$461,671 for the 2015-2017 biennium.¹⁶¹

The federal government offers other avenues of support for after-school and summer meals. MSDE administers the federally-funded **Child and Adult Care Food Program (CACFP)** and Maryland was one of the first states to pilot the **At-Risk Afterschool Meals Program**, under CACFP, beginning in 2009.¹⁶² The At-Risk Afterschool Meals Program provides reimbursements for schools, public agencies, private nonprofits, and some for-profit organizations to provide meals (not just snacks) in neighborhoods where at least 50 percent of children qualify for free and reduced-price meals.¹⁶³ In order to promote the Program, the **Partnership to End Childhood Hunger in Maryland** created the **Maryland At-Risk Afterschool Meals Working Group**, which includes members from MDSE and key nonprofits.¹⁶⁴ The Working Group conducts outreach; addresses statewide issues, such as health permits; maps existing meal sites and identifies gaps; helps afterschool programs identify sponsors; and disseminates resources.¹⁶⁵ Due, in large part, to the Working Group's efforts, participation in the Program increased from 126 afterschool meal sites in 2009 to 455 in 2016.¹⁶⁶ However, there is still room for growth; only 10% of children eligible for free and reduced-price meals are receiving afterschool meals and snacks.¹⁶⁷

MDSE also administers the federally-funded **Summer Food Service Program (SFSP)**. As of January 2017, Maryland had 879 summer meal sites.¹⁶⁸ Average daily participation in the SFSP has nearly doubled over the past seven years; however, the rate of participation by children eligible for free and reduced-price meals has hovered at around 25 percent for the past four years.¹⁶⁹ Maryland's mandates and funding for summer meals are minimal; only public schools with students in academic summer school are required to provide meals.¹⁷⁰

Other states require that high-poverty school districts provide summer meal service and/or provide grant funding.¹⁷¹ In **Missouri**, school districts in which at least 50 percent of children are eligible for free and reduced-price meals and service institutions where more than 40 children congregate must

¹⁶⁰ O.R. REV. STAT. §§ 327.527, 327.540.

¹⁶¹ *Special Grants*, O.R. DEP'T EDUC., <http://www.oregon.gov/ode/students-and-family/childnutrition/cacfp/Pages/SpecialGrants.aspx> (last visited July 17, 2017).

¹⁶² M.D. HUNGER SOLUTIONS, *SERVING MARYLAND'S CHILDREN: THE AFTERSCHOOL MEAL PROGRAM – THE FIRST THREE YEARS* (2013), [mdhs_july13_afterschool_meals_report%20\(4\).pdf](https://www.mdhs.gov/~/media/MDHS/Reports/2013/MDHS_July13_Afterschool_Meals_Report%20(4).pdf).

¹⁶³ M.D. HUNGER SOLUTIONS, *YOUR GUIDE TO THE AFTERSCHOOL MEAL PROGRAM 5* (2011), [Your%20Guide%20to%20the%20After%20School%20Meal%20Program%20\(1\).pdf](https://www.mdhs.gov/~/media/MDHS/Reports/2011/Your%20Guide%20to%20the%20After%20School%20Meal%20Program%20(1).pdf).

¹⁶⁴ *Afterschool*, CENTER FOR BEST PRACTICES, NO KID HUNGRY, <https://bestpractices.nokidhungry.org/afterschool/serving-models> (last visited July 14, 2017).

¹⁶⁵ *Id.*

¹⁶⁶ M.D. HUNGER SOLUTIONS, *SERVING MARYLAND'S CHILDREN: THE AFTERSCHOOL MEAL PROGRAM – THE FIRST THREE YEARS 4* (2013), [mdhs_july13_afterschool_meals_report%20\(4\).pdf](https://www.mdhs.gov/~/media/MDHS/Reports/2013/MDHS_July13_Afterschool_Meals_Report%20(4).pdf); NO KID HUNGRY, *MD COUNTY SUMMER AND AFTERSCHOOL DATA 2015-2016* (2017), <https://md.nokidhungry.org/after-school-resources>.

¹⁶⁷ CENTER FOR BEST PRACTICES, NO KID HUNGRY, *TO MEET NEED, GROWTH IN AFTERSCHOOL SNACKS AND MEALS MUST CONTINUE 8* (2016), https://bestpractices.nokidhungry.org/sites/default/files/resources/afterschool_snacks_meals_history_and_trends_0.pdf.

¹⁶⁸ NO KID HUNGRY, *MD COUNTY SUMMER AND AFTERSCHOOL DATA 2015-2016* (2017), <https://md.nokidhungry.org/after-school-resources>.

¹⁶⁹ *Summer Food Service Program Participation*, M.D. OPEN DATA PORTAL, <https://data.maryland.gov/Health-and-Human-Services/Summer-Food-Service-Program-Participation/adfi-nfw7/3> (last viewed July 17, 2017).

¹⁷⁰ M.D. EDUC. CODE ANN. § 7-603. Programs that are operating half or partial days may elect to serve either breakfast or lunch, or both meals. *Id.*

¹⁷¹ FRAC maintains an annual state-by-state analysis of summer meals legislation and funding. FRAC, *SUMMER NUTRITION LEGISLATION AND FUNDING* (2016), http://frac.org/wp-content/uploads/summer_legislative_table.pdf.

implement SFSP.¹⁷² **Washington** allocates \$70,000 to \$100,000 to SFSP sponsors each year for costs associated with startup, increasing participation, and improving quality.¹⁷³ The **Summer Meals Expansion Grant Program** bill, introduced in both chambers of the Maryland General Assembly during the 2017 Session, sought to establish state matching funds for SFSP expansion, transportation, outreach, and other measures to increase participation.¹⁷⁴ However, the bill was not passed.¹⁷⁵

III. Economic Access

While Maryland is one of the wealthiest states in the nation on a per capita basis, over 1 in 10 residents (nearly 575,000 individuals) live below the federal poverty line (FPL).¹⁷⁶ Low-income households are more likely to be food insecure.¹⁷⁷ It is, unfortunately, also a current reality that healthier diets cost more. A 2013 national cost analysis found that eating a healthier diet costs, on average, an additional \$1.50 per day, or \$550 per year.¹⁷⁸ This amount is significant for many low-income Americans.¹⁷⁹ Food assistance and incentive programs can help augment low-income households' food budgets and, in addition, help scarce resources go further towards the purchase of healthy foods.

a. Food Supplement Program (FSP)

The federal Supplemental Nutrition Assistance Program (SNAP) is the largest food assistance program, currently serving nearly 15 percent of the population (around 45 million individuals), nationwide, each month.¹⁸⁰ While the federal government provides all of the funding for SNAP benefits, it splits administrative costs and duties with states, giving states the opportunity to implement their own policies for some aspects of SNAP.¹⁸¹ In Maryland, the program is called the Food Supplement Program (FSP) and is administered by the Department of Human Services.¹⁸² In 2016, over 744,000 Maryland residents received FSP benefits, representing 97 percent of eligible individuals and 12 percent of the state population.¹⁸³

¹⁷² M.O. REV. STAT. §191.810. Districts can request a waiver. *Id.*

¹⁷³ *Child Nutrition Grants*, OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF WASHINGTON, <http://www.k12.wa.us/ChildNutrition/Grants.aspx> (last visited July 17, 2017).

¹⁷⁴ M.D. Gen. Assemb. House Bill 273/Senate Bill 1161 2017 Reg. Sess., <http://mgaleg.maryland.gov/2017RS/bills/hb/hb0273F.pdf>; <http://mgaleg.maryland.gov/2017RS/bills/sb/sb1161F.pdf>.

¹⁷⁵ *Id.*

¹⁷⁶ M.D. ALLIANCE FOR THE POOR, MARYLAND POVERTY PROFILES 1 (2016), <http://familyleague.org/wp-content/uploads/2016/01/Maryland-Poverty-Profiles-2016.pdf>.

¹⁷⁷ *See, e.g.*, ALISHA COLEMAN-JENSEN ET AL., HOUSEHOLD FOOD SECURITY IN THE UNITED STATE IN 2015 (2016), <https://www.ers.usda.gov/webdocs/publications/79761/err-215.pdf?v=42636>.

¹⁷⁸ Mayuree Rao et al., *Do Healthier Foods and Diet Patterns Cost More than Less Healthy Options? A Systematic Review and Meta-Analysis*, 3 BMJ OPEN (2013).

¹⁷⁹ *Id.*

¹⁸⁰ *See, e.g.*, U.S. DEP'T OF AGRIC., FOOD AND NUTRITION SERV., PROGRAM INFORMATION REPORT 4 (2016), <https://fns-prod.azureedge.net/sites/default/files/datastatistics/keydata-december-2016.pdf>; *see also* Kelsey Farson Gray & Shivani Kochhar, *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2014*, U.S. DEP'T OF AGRIC., FOOD AND NUTRITION SERV., OFFICE OF POL'Y SUPPORT 15, 18 (Dec. 2015), <https://fns-prod.azureedge.net/sites/default/files/ops/Characteristics2014.pdf>.

¹⁸¹ *Policy Basics: Introduction to the Supplemental Nutrition Assistance Program*, CTR. BUDGET & POL'Y PRIORITIES, <http://www.cbpp.org/research/policy-basics-introduction-to-the-supplemental-nutrition-assistance-program-snap> (last visited Jun. 13, 2017).

¹⁸² *Food Supplement Program*, M.D. DEP'T HUMAN SERVS., <http://dhr.maryland.gov/food-supplement-program/about-the-food-supplement-program/> (last visited Jul. 17, 2017).

¹⁸³ CTR. BUDGET & POL'Y PRIORITIES, MARYLAND FOOD SUPPLEMENT PROGRAM FACTSHEET (2017), https://www.cbpp.org/sites/default/files/atoms/files/snap_factsheet_maryland.pdf.

The federal government sets the baseline income eligibility criteria for SNAP: a household must have gross monthly income at or below 130 percent FPL and assets less than \$2,250.¹⁸⁴ States, however, can expand eligibility by implementing broad-based categorical eligibility, which streamlines the administration of SNAP with other federal assistance programs like Temporary Assistance for Needy Families (TANF).¹⁸⁵ Maryland has implemented broad-based categorical eligibility, raising income eligibility to 200 percent FPL and eliminating the asset limit altogether.¹⁸⁶ This is the most generous eligibility available under Federal law.

The Summary of Public Input identifies eliminating administrative barriers for SNAP/FSP outreach, particularly for smaller organizations, as a key strategy. States can receive federal reimbursements of up to 50 percent for SNAP outreach activities.¹⁸⁷ USDA places restrictions on what expenses and activities are eligible for reimbursement; establishes reporting and record-keeping requirements; and encourages states to develop a statewide outreach plan.¹⁸⁸ However, much of the program administration falls to the individual states. States can contract with non-profits to provide outreach services, but only the state agencies administering SNAP can receive the federal reimbursements.¹⁸⁹ Some states cover the full cost of outreach activities (and then receive the federal 50 percent reimbursement), while others require that the organizations providing outreach activities cover the remaining 50 percent of costs and simply act as a conduit for the federal reimbursements. Maryland falls into the latter category.¹⁹⁰ This can be difficult for smaller organizations, especially as they already have to cover 100 percent of outreach expenses upfront.

Other states highlight some of the opportunities, as well as challenges, with using state funds to augment the federal reimbursements. **New York's** Nutrition Outreach and Education Program (NOEP) is run by the non-profit Hunger Solutions New York, a contractor of the state's Office of Temporary and Disability Assistance.¹⁹¹ Using state funds to leverage the federal reimbursements, NOEP effectively acts as grant-making organization – it provides annual funding of \$75,000 to projects within New York City and \$65,000 to projects in the rest of the state.¹⁹² In 2017, NOEP supported 20 organizations in New York City and 32 organizations in the rest of the state.¹⁹³ NOEP also supports a broader range of activities because of fewer restrictions on state funds.¹⁹⁴ However, NOEP operates on a four-year funding cycle and uses a Request for Proposals (RFP) process, which awards points to organizations that have experience with reimbursement-based vouchering (4 points) and the ability to operate a program

¹⁸⁴ *Supplemental Nutrition Assistance Program: Eligibility*, U.S. DEP'T. OF AGRIC., FOOD & NUTRITION SERV.
<http://www.fns.usda.gov/snap/eligibility> (last visited Jul. 10, 2017).

¹⁸⁵ *Broad Based Categorical Eligibility*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/sites/default/files/snap/BBCE.pdf>.

¹⁸⁶ *Id.*

¹⁸⁷ U.S. DEP'T. OF AGRIC., FOOD & NUTRITION SERV., *SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM STATE OUTREACH PLAN GUIDANCE 4* (2009), https://www.fns.usda.gov/sites/default/files/Outreach_Plan_Guidance.pdf.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ M.D. HUNGER SOLUTIONS, *FOOD SUPPLEMENT PROGRAM OUTREACH GUIDE 10* (2013), http://www.mdhungersolutions.org/pdf/Outreach_Guide_2013_Update-Final_general_contact.pdf.

¹⁹¹ HUNGER SOLUTIONS N.Y., *NUTRITION OUTREACH AND EDUCATION PROGRAM RFP: 2018-2022 4*, http://hungersolutionsny.org/sites/default/files/included/noep_request_for_proposals_rfp_for_2018-2022_contract_cycle.pdf.

¹⁹² *Id.* at 4-8.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 14.

when reimbursements are delayed (4 points).¹⁹⁵ This system can make it harder for smaller organizations to access NOEP funds.

Indeed, most states seem to operate on a reimbursement model, even when the state is providing additional funds. **Hawaii** appropriated \$400,000 for SNAP outreach in fiscal year 2017 and used a simple, straightforward Request for Information (RFI) process to solicit proposals from organizations.¹⁹⁶ Proposals could be no more than three pages.¹⁹⁷ However, one of the RFI's few requirements was that organizations have their own funding and noted that they would be responsible for billing the state per the terms of a contract (not included in the RFI).¹⁹⁸ **Illinois**'s Charitable Trust Stabilization Fund offers a potential solution for engaging smaller organizations in SNAP outreach. The Fund is explicitly dedicated to supporting small non-profits with budgets under \$1 million and prioritizes certain projects, including SNAP outreach.¹⁹⁹ Smaller organizations could then, in theory, apply to the state's Department of Human Services to receive federal reimbursements.²⁰⁰

b. Maryland Market Money

Nutrition incentive programs help food assistance benefits go further towards the purchase of healthy foods. Across the country, states, localities, and non-profits are experimenting with different models that use a variety of assistance programs in a variety of settings. The Maryland Farmers Market Association (MDFMA) established **Maryland Market Money (MMM)** in 2013 to increase access to quality nutrition for food-insecure households, generate additional revenue for local farmers and producers, and support the viability and sustainability of farmers' markets.²⁰¹ MMM provides matching dollars to individuals who use FSP, WIC Fruit and Vegetables Checks (WIC FVC), and Farmers Market Nutrition Program (FMNP) benefits at participating farmers markets.²⁰² While most markets match up to \$5/day, some markets have fundraised to increase this amount.²⁰³ Typically, matching funds are provided via \$1 metal tokens that can be spent on any SNAP-eligible item at a participating farmers market. This means that individuals using WIC FVC or FMNP (which can only be used on fresh fruits and vegetables) can not only spend additional dollars, but can also expand their potential market basket. In 2016, nearly 20,000 individuals spent nearly \$285,000 in benefit and matching dollars at participating

¹⁹⁵ *Id.* at 22.

¹⁹⁶ HAWAII DEPARTMENT OF HUMAN SERVICES, REQUEST FOR INFORMATION FOR SNAP OUTREACH FOR FY17, <http://spo3.hawaii.gov/notices/notices/hms-903-16-03-5/getfile?filename=rfi-outreach.pdf>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Charitable Trust*, I.L. Office of the Treasurer, http://illinoistreasurer.gov/Office_of_the_Treasurer/Charitable_Trust (last visited July 17, 2017); *Charitable Trust Grant Eligibility*, I.L. Office of the Treasurer, http://illinoistreasurer.gov/Office_of_the_Treasurer/Charitable_Trust/Charitable_Trust_Grant_Eligibility (last visited July 17, 2017).

²⁰⁰ For FY2017, the state limited funding to organizations that had already received funding to support SNAP outreach.

Supplemental Nutrition Assistance Program – SNAP Outreach, I.L. DEPARTMENT OF HUMAN SERVICES, <https://govappsqa.illinois.gov/gata/csfa/Program.aspx?csfa=676> (last visited July 17, 2017).

²⁰¹ *Maryland Market Money*, MARYLAND FARMERS MARKET ASSOCIATION, <http://www.marylandfma.org/programs/maryland-market-money/>

²⁰² MARYLAND FARMERS MARKET ASSOCIATION, MARYLAND MARKET MONEY 2016 ANNUAL REPORT ii - iii (2017), <https://drive.google.com/file/d/0B5rqRWgqwrVeN3BITks2SDIqZnM/view>.

²⁰³ *Id.*

farmers markets.²⁰⁴ MMM is currently active in 23 farmers markets;²⁰⁵ however the state is home to nearly 145 markets.²⁰⁶

Currently, MMM receives funding from a broad array of donors that includes the Maryland Department of Health and Mental Hygiene, county councils, universities, and private foundations.²⁰⁷ However, MMM could benefit greatly from state and federal support, particularly the USDA's **Food Insecurity Nutrition Incentive (FINI)** Grant Program. Two recent pieces of legislation recognize this fact and seek to expand MMM through state and federal contributions. During the 2016 Session, the General Assembly passed legislation requiring that the Department of Human Resources submit a grant application to FINI and provide regular updates on the status of the application.²⁰⁸ (The Department's 2016 application was not awarded FINI funds.²⁰⁹) It is important to note, however, that FINI funds can only be used for SNAP purchases,²¹⁰ while MMM includes other assistance programs. Legislation passed during the 2017 Session established the **Maryland Farms and Family Program and Fund** within MDA.²¹¹ The Fund will provide grants to qualified non-profits that match purchases made with SNAP/FSP, WIC FVC, and FMNP at participating farmers markets.²¹² While state budget appropriations of \$500,000 towards the fund were proposed, no state money was appropriated in 2017.²¹³

IV. Geographic Access

Greater proximity to healthy food retailers is associated with a reduced risk for obesity, even after controlling for other factors such as income, race and ethnicity, and physical activity.²¹⁴ Relatedly, studies have also found that residents of neighborhoods with better geographic access to healthy food retailers have healthier food intakes.²¹⁵ The Summary of Public input identifies implementation of the **Maryland Fresh Food Retail Task Force's** 2012 recommendations as a key food access strategy. The Maryland Fresh Food Retail Task Force (Task Force) met from 2011-2012, convened by Advocates for Children and Youth, the Maryland Retailers Association, and the Food Trust, to "explore barriers to

²⁰⁴ *Id.*

²⁰⁵ MD. FARMERS MARKET ASSOC., 2017 FARMERS MARKETS OFFERING MARYLAND MARKET MONEY, <http://www.marylandfma.org/wp-content/uploads/2016/01/MMM-List-2017.pdf>.

²⁰⁶ *Maryland Food System State Summary*, MARYLAND FOOD SYSTEM MAP, June 2016, http://mdfoodsystemmap.org/wp-content/uploads/2016/07/State-Summary_June2016.pdf (citing The Maryland Farmers Market Association, 2015)

²⁰⁷ *Id.*

²⁰⁸ M.D. Gen. Assemb. House Bill 356. 2016 Reg. Sess., http://mgaleg.maryland.gov/2016RS/chapters_noln/Ch_718_hb0356T.pdf; see also Maryland Constitution Article II, §17(c)

²⁰⁹ *Secretary Perdue Announces \$16.8 million to Encourage SNAP Participants to Purchase Healthy Food*, U.S. DEP'T AGRIC. (Aug. 7, 2017), <https://nifa.usda.gov/press-release/secretary-perdue-announces-168-million-encourage-snap-participants-purchase-healthy>.

²¹⁰ U.S. DEP'T AGRIC., FINI FAQs FY2016 RFA (2016), <https://nifa.usda.gov/sites/default/files/resources/FAQs%20FY%202016%20RFA.pdf>.

²¹¹ M.D. Gen. Assemb. Senate Bill 278. 2017 Reg. Sess., <http://mgaleg.maryland.gov/2017RS/bills/sb/sb0278T.pdf>.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ See Kimberly Morland et al., *Supermarkets, Other Food Stores, and Obesity: The Atherosclerosis Risk in Communities Study*, 30 AM. J. PREVENTATIVE MED. 333 (2006); Lisa Powell et al., *Associations Between Access to Food Stores and Adolescent Body Mass Index*, 33 AM. J. PREVENTATIVE MED. S301 (2007); Gilbert C. Liu et al., *Green Neighborhoods, Food Retail, and Childhood Overweight: Differences by Population Density*, 21 AM. J. HEALTH PROMOTION 317 (2007).

²¹⁵ See Latetia Moore et al., *Associations of the Local Food Environment with Diet Quality – A Comparison of Assessments Based on Surveys and Geographic Information Systems*, 167 AM. J. EPIDEMIOLOGY 917 (2008); Donald Rose & Rickelle Richards, *Food Store Access and Household Fruit and Vegetable Use Among Participants in the US Food Stamp Program*, 7 PUB. H. NUTRITION 1081 (2004); Kimberly Morland et al., *The Contextual Effect of the Local Food Environment on Residents' Diets: The Atherosclerosis Risk in Communities Study*, 92 AM. J. PUBLIC HEALTH 1761 (2002).

supermarket and grocery store development in neighborhoods that lack access to nutritious foods.”²¹⁶ The Task Force issued a final report that included 10 recommendations to stimulate healthy food retail development – this includes grocery stores, supermarkets, and other outlets.²¹⁷

Most of the Task Force’s recommendations center around support for healthy food retailers and transportation, discussed below. Since 2012, progress has been made across the Task Force’s recommendations. For example, the Task Force recommended that the state extend SNAP/FSP benefit disbursements over a longer period of time each month, a change that was implemented by the Department of Human Services in 2015.²¹⁸ Many of the Task Force’s recommendations, however, are not state-centric, but apply broadly to local governments, non-profit organizations, and community groups. In some of these instances, the state can play an important role in issuing guidance and convening various groups, but local policy change is equally important.

a. Fresh Food Financing

“Healthy food financing” is a term that describes various state and federal programs that provide loans, grants, and other financial incentives to bring healthy food retailers into underserved neighborhoods. These programs not only increase healthy food access, but also spur job creation and economic development. The Task Force recommended that the state should develop – and actively market – such financing programs. Many of these efforts are underway with the creation of **Maryland’s Fresh Food Financing Initiative (MFFI)**.

In 2014, Maryland passed legislation authorizing the Department of Housing and Community Development (DHCD) to provide financial assistance to small businesses and other food-related enterprises that provide access to healthy foods in underserved neighborhoods.²¹⁹ Financial assistance is broad, and includes grants, loans, assurances, and “any other form of credit enhancement.”²²⁰ The law gives DHCD the authority to designate an area a food desert, upon consideration of a broad array of factors.²²¹ In addition, the law established the **Interagency Food Desert Advisory Committee** to facilitate interagency coordination to reduce food deserts in Maryland and make recommendations to DHCD on specific food desert designations and general program design.²²² The General Assembly authorized \$1 million in general obligation funds to MFFI through 2019.²²³

MFFI was launched in early 2015 and is administered by DHCD’s Neighborhood Business Works program.²²⁴ The initiative works with intermediary lenders to provide loans of up to \$500,000 to eligible

²¹⁶ MD. FRESH FOOD RETAIL TASK FORCE, STIMULATING SUPERMARKET DEVELOPMENT IN MARYLAND 1 (2012), http://thefoodtrust.org/uploads/media_items/maryland-supermarket-report.original.pdf.

²¹⁷ *Id.*

²¹⁸ The disbursement period was changed from 10 to 20 days. M.D. DEP’T HUMAN SERVS., FSP ISSUANCE SCHEDULE FLYER (2015), <http://www.dhr.state.md.us/blog/wp-content/uploads/2015/08/FSP-EBT-Issuance-Schedule-Flyer-Revised-to-reflect-Sept-amp-Jan-1-2-1-1.pdf>.

²¹⁹ M.D. Gen. Assemb. House Bill 1432. 2014 Reg. Sess., <http://mgaleg.maryland.gov/2014RS/bills/hb/hb0451t.pdf>.

²²⁰ M.D. Code, Housing & Comm. Dev. §6-305(c)–(d).

²²¹ *Id.* (The Department may consider the “(1) availability of fresh fruit, vegetables, and other healthy foods in the area; (2) income levels of local residents; (3) transportation needs of local residents and the availability of public transportation; (4) comments from local governments; and (5) any other factors that the Department considers relevant”).

²²² M.D. Code, Housing & Comm. Dev. §6-308.2.

²²³ M.D. Gen. Assemb. House Bill 451. 2014 Reg. Sess. 2014, http://mgaleg.maryland.gov/2014rs/fnotes/bil_0001/hb0451.pdf

²²⁴ *Maryland’s Fresh Food Financing Initiative*, M.D. DEP’T HOUSING & COMM. DEV., <http://dhcd.maryland.gov/Communities/Pages/freshfood/default.aspx> (last visited July 17, 2017).

businesses and nonprofits in designated food deserts.²²⁵ Rather than publish a list of designated food deserts, the MFFI website invites local governments to submit applications for such designation.²²⁶ The program also demonstrates a notable commitment to support small businesses and the local economy. While some fresh food financing initiatives focus on large retail development, MFFI supports small businesses and non-profits and, under the law, must “make a reasonable, good faith effort to make 25% of [program] loans and grants to microenterprises.”²²⁷ These businesses often face barriers to accessing capital, but can be an important part of a thriving local food economy. In addition, the law requires that MFFI applicants include plans to seek out Maryland- grown and produced foods.²²⁸

While MFFI’s focus on small, local businesses is commendable, it still leaves room for financing and incentive programs that target large grocery stores and supermarkets. A bill introduced during the 2016 Legislative Session sought to address this gap by creating a **Task Force to Examine Incentives and Funding Sources for Food Deserts**.²²⁹ The Task Force would focus, specifically, on identifying “ways to attract grocery stores and supermarket retailers in urban and rural food deserts throughout the state” and would provide the Governor with recommendations to this effect.²³⁰ The bill, however, did not pass.²³¹ Other legislative efforts to target larger food retailers include a Baltimore supermarket property tax credit, successfully passed by the General Assembly in 2015.²³²

b. Transportation

Lack of transportation can be a significant barrier to healthy food access, particularly for low-income individuals who do not own a car or who do not live near/cannot afford public transportation.²³³ The Summary of Public Input advocates utilizing Maryland’s public transportation systems to increase healthy food access. The Summary identifies two strategies: aligning public transit routes and stops with healthy food retailers and subsidizing fares for those receiving food benefits such as SNAP/FSP and WIC.

The **Maryland Transit Administration (MTA)**, a division of the Maryland Department of Transportation (MDOT), operates local buses, commuter buses, LightRail Link, Metro Subway Link, Mobility Link, and the commuter train service.²³⁴ In addition, the MTA directs funding and assistance to regional transit systems – or **Local Operated Transit Systems (LOTS)** – in Baltimore, Annapolis, Ocean City, and each of Maryland’s 23 counties.²³⁵ Though local transit agencies design and operate LOTS, MTA can still play a significant role in promoting healthy food access among local agencies. MTA provides LOTS with both technical and financial support (through grants and other awards) and MTA regional planners work closely with local authorities.²³⁶ In addition, the MTA issues an annual LOTS Program Manual that

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ M.D. Code, Housing & Comm. Dev. §6-308(a)(3).

²²⁸ *Id.*

²²⁹ M.D. Gen. Assemb. House Bill 1432. 2016 Reg. Sess. *Can be accessed at* <http://mgaleg.maryland.gov/2016RS/bills/hb/hb1432F.pdf>.

²³⁰ *Id.*

²³¹ *Id.*

²³² M.D. Gen. Assemb. Senate Bill 541. 2015 Reg. Sess. *Can be accessed at* <http://mgaleg.maryland.gov/2015RS/bills/sb/sb0541t.pdf>.

²³³ *See, .e.g.,* Dennis McDermot et al., *Assessment of Healthy Food Availability in Washington State – Questioning the Food Desert Paradigm*, 49 J. NUTRITION EDUC. & BEHAVIOR 89, 130 (2017).

²³⁴ About the MTA, M.D. Transit Administration, <https://mta.maryland.gov/about-mta> (last visited July 17, 2017).

²³⁵ *Id.*

²³⁶ M.D. TRANSIT ADMIN., 2013 ANNUAL REPORT 18 (2014), https://mta.maryland.gov/sites/default/files/MTA_AR13_final_for_web.pdf.

provides an overview of LOTS's legal requirements and also provides guidance on key issues, such as where to place bus stops.²³⁷

The MTA could use the Manual or issue additional guidance to encourage LOTS to enact policies that promote healthy food access. Local transit systems throughout the country provide free and reduced-price fares for low-income individuals.²³⁸ For example, San Francisco's Municipal Transportation Agency offers the **Lifeline Pass**, a 50% reduced-fare monthly Muni pass for individuals enrolled in SNAP (or other eligible benefit programs).²³⁹ LOTS could also offer free transportation to supermarkets as the Greater Lynchburg Transit Company in Lynchburg, VA does with its **Grocery Bus Saturdays**, a free bus service to a local supermarket that runs from 10am to 6pm every Saturday.²⁴⁰ The MTA could also encourage LOTS to link farmers markets to public transit stops. The Metropolitan Atlanta Rapid Transit Authority operates **Fresh MARTA Market**, which brings farmers markets to four public transportation stations in neighborhoods with limited healthy food access.²⁴¹ All markets accept SNAP/EBT and double the value of SNAP. Relatedly, the Los Angeles Metropolitan Transportation Authority publishes a map that shows which Metro Rail and Transitway stops have farmers markets close by.²⁴²

MTA could also LOTS to incorporate healthy food access into their strategic planning documents or utilize assessment tools that prioritize healthy food access. Philadelphia's public transit system, Southeastern Pennsylvania Transit Authority, included healthy food access as a key goal in its **Sustainability Plan** and tracks related indicators on an annual basis.²⁴³ Local transit systems are also increasingly using assessment tools to evaluate the impact of service and fare changes. The Tri-Metropolitan Transportation District of Oregon uses an **equity analysis** that focuses on low-income and minority populations.²⁴⁴ Other systems have used health impact assessment tools, which take into account healthy food access.²⁴⁵ Changes in service can have a significant impact on healthy food access. For example, Baltimore recently revised its bus routes and the new routes will serve an addition 12 supermarkets.²⁴⁶

Beyond public transportation, safe bicycle and pedestrian routes can also enhance geographic access. Maryland could expand its definition of **Complete Streets** to encompass healthy food access. The Complete Streets Coalition promotes policies at the national, state, and local levels that integrate[]

²³⁷ M.D. TRANSIT ADMIN., THE MARYLAND LOCALLY OPERATED TRANSIT MANUAL 7-12 (2017), http://taminc.org/Portals/11/1%20-%20MTA%202017%20LOTS%20Manual_1.pdf.

²³⁸ See THE COMMUNITY TRANSPORTATION ASSOCIATION OF AMERICA, CHART OF TRANSPORTATION REDUCED FARE AND FREE FARE PROGRAMS TO SERVE LOW-WAGE EARNERS (2011), http://web1.ctaa.org/webmodules/webarticles/articlefiles/Chart_ReducedFareAndFreePrograms.pdf.

²³⁹ Lifeline (Low Income) Pass, San Francisco Municipal Transportation Agency, <https://www.sfmata.com/getting-around/transit/fares-passes/low-income-lifeline-pass> (last visited July 17, 2017).

²⁴⁰ *Grocery Bus Saturdays*, GREATER LYNCHBURG TRANSIT COMPANY, <http://www.gltconline.com/grocery-bus-saturdays/> (last visited July 17, 2017).

²⁴¹ *Fresh MARTA Market*, Community Farmers Markets Atlanta, <http://cfmatl.org/marta/> (last visited July 17, 2017).

²⁴² *Go Metro to Farmers' Markets*, LOS ANGELES METRO, <https://www.metro.net/riding/farmers-markets/> (last visited July 17, 2017).

²⁴³ See SOUTHEASTERN PENNSYLVANIA TRANSIT AUTHORITY, SEP-TAINABLE ANNUAL REPORT (2015), <http://www.septa.org/sustain/pdf/septainable15.pdf>.

²⁴⁴ Equity Analysis of Fare & Service Changes, TriMet, <https://future.trimet.org/equity/analysis.htm> (last visited July 17, 2017).

²⁴⁵ See, e.g., ARIZONA ALLIANCE FOR PUBLIC COMMUNITIES, SOUTH CENTRAL NEIGHBORHOODS TRANSIT HEALTH IMPACT ASSESSMENT (2015), <http://www.pewtrusts.org/~media/assets/external-sites/health-impact-project/maricopa-cnty-ph-2015-scnthia-report.pdf?la=en>.

²⁴⁶ Colin Campbell, *MTA Releases Revised Baltimore Bus Route Proposal*, THE BALTIMORE SUN (July 5, 2016), <http://www.baltimoresun.com/news/maryland/bs-md-revised-bus-routes-20160705-story.html>.

people and place in the planning, design, construction, operation, and maintenance of our transportation networks."²⁴⁷ Maryland has affirmed its commitment to the Complete Streets approach through legislation and a formal Complete Streets Policy under the State Highway Administration.²⁴⁸ While the current definition focuses on protecting and promoting bicycle and pedestrian routes, it could be expanded to prioritize routes that facilitate healthy food access. The state could also make funds available to promote this approach. For example, **Washington** created a complete streets|| grant program under the Department of Transportation to encourage local governments to adopt ordinances that provide safe transportation access to all users, including bicyclists, pedestrians, and public transportation users.²⁴⁹

²⁴⁷ National Complete Streets Coalition, Smart Growth America, <https://smartgrowthamerica.org/program/national-complete-streets-coalition/> (last visited July 17, 2017).

²⁴⁸ See M.D. Transp. Code § 2-602; M.D. State Highway Admin., Complete Streets Policy, June 30, 2012, https://www.roads.maryland.gov/OPPEN/SHA_Complete_Street_Policy.pdf.

²⁴⁹ WASH. REV. CODE § 47.04 (2012).

4. Eating Food

Goal: Make the healthy choice the easy choice, and celebrate fresh and delicious foods²⁵⁰

I. Background

Promoting the consumption of healthy food among Maryland residents is critical for combatting diet-related disease and associated medical costs. In Maryland, 29.9 percent of adults and 15.1 percent of children ages 10-17 are obese.²⁵¹ An estimated 10.8 percent of the adult population has diabetes.²⁵² These and other nutrition-related health conditions are costing the state. By 2018, diseases caused by poor nutrition may cost Maryland's health care system at least \$7.6 billion in direct medical costs, half of which will be publicly funded.²⁵³

Maryland can play an active role in guiding its residents towards healthier foods and eating behaviors. These policies need not simply restrict unhealthy options, but can also make healthy options more widely available and appealing. Maryland is home to a consumer education and engagement campaign, Howard County's Unsweetened Campaign, that is gaining national attention for making measurable progress in lowering sugar-sweetened beverage consumption. In addition, Maryland use state-funded institutional settings, such as schools and government properties, to demonstrate that it is possible to serve nutritious, delicious meals within these institutions and thereby improve the nutritional status of large numbers of people.

II. Public Procurement

Geographic preference policies give preference to foods that are grown or produced locally. Such policies can increase access to healthy, fresh foods in public institutions by making it easier for local farmers to compete with larger distributors. Moreover, they support local farmers and build local economies. It is estimated that Maryland public schools currently spend approximately \$18 million on local food.²⁵⁴

Maryland's **percent price preference law** requires state schools and facilities to adopt a price preference, not to exceed five percent, for locally-grown foods.²⁵⁵ State schools and other facilities may, however, set price preferences below 5 percent. The law defines "locally grown food" as food grown within the state.²⁵⁶

²⁵⁰ The Summary of Public Input identifies the following strategies: 1) Encourage transparency about menu and a la carte options, nutrition information and ingredients of foods served in public institutions; 2) Reduce added sugar in all state meal programs; 3) Include food systems education in K-12 curriculum; and 4) Develop partnerships between the nonprofit, for-profit, and government sectors to create and disseminate effective, evidence-based nutrition education and engagement programs

²⁵¹ *Maryland*, The State of OBESITY, <https://stateofobesity.org/states/md> (last visited Aug. 30, 2017).

²⁵² *Id.*

²⁵³ Department of Legislative Services, Fiscal and Policy Note: Maryland Healthy Vending Act (H.B. 1498), 2016 Reg. Sess., http://mgaleg.maryland.gov/2016RS/fnotes/bil_0008/hb1498.pdf.

²⁵⁴ *Maryland Districts*, THE FARM TO SCHOOL CENSUS, <https://farmtoschoolcensus.fns.usda.gov/find-your-school-district/maryland> (last visited July 12, 2017).

²⁵⁵ M.D. STATE FIN & PRO CODE § 14-407 (203).

²⁵⁶ *Id.*

While Maryland’s law provides a strong foundation for local procurement, other states have gone further – either by awarding a higher price preference to local bids or by *requiring* that public institutions give preference to local bids. **Massachusetts**, for example, requires all state agencies purchasing “agricultural products” (which includes processed foods and seafood) to preference in-state bids as long as they are not more than 10% of out-of-state bids.²⁵⁷ **Montana** takes a slightly different approach and gives broad discretion to all state institutions to purchase Montana food *directly* from farmers and other producers instead of going through the state’s formal procurement procedures.²⁵⁸ The law also allows institutions to accept an in-state bid when its price “reasonably exceeds” the out-of-state bids.²⁵⁹ This law is significant because it not only preferences local food, but also removes some of the administrative barriers of procurement. However, it is important to keep in mind, with all of these laws, that even if a price preference is awarded during the bidding process, agencies are still responsible for paying the additional cost once a bid is selected.

Maryland could also consider additional strategies to bolster its commitment to local procurement, such as benchmark laws or grant programs to help institutions make up the additional costs of local procurement. **Illinois**’s Local Food, Farms, Jobs Act of 2009 set a goal that all state institutions purchase at least 20% of their food from local sources by 2020.²⁶⁰ **Maine** established a Local Produce Fund within the Department of Education that matches \$1 for every \$3 a school spends on produce or minimally processed foods purchased directly from a Maine farmer, fisherman, farmer’s cooperative or fisherman’s cooperative.²⁶¹ A school can receive a maximum of \$1,000 in matching funds per year.²⁶²

Finally, Maryland should consider amending its **small purchase threshold** to make it easier for schools and other public institutions to purchase food directly from farmers. By eliminating some of the formal bidding requirements, small purchases offer a simple way to facilitate connections between institutions and local producers. Small purchases can also help local producers better understand the specific food needs of public agencies and institutions, and determine whether and how they can meet those needs. While the federal government’s small purchase threshold is \$150,000²⁶³ (the upper limit for state small purchase thresholds), Maryland defines “small procurements” as anything below \$25,000.²⁶⁴ Moreover, for purchases between \$15,000 and \$25,000, Maryland requires many of the procedures of formal, competitive bidding, such as a public solicitation for bids and a requirement that bids be awarded to the “most favorable bid price, most favorable evaluated bid price, or most advantageous offer to the State” (using criteria clearly defined in the public solicitation).²⁶⁵

III. Nutrition Standards for Public Institutions

While states can incentivize the purchase of local, healthy foods in public institutions, they can also go further by setting nutrition standards for meals and snacks served in state-owned and operated institutions, such as schools, government office buildings, parks, prisons, elder care facilities, and child care facilities. Nutrition standards can promote transparency about the nutritional quality and content

²⁵⁷ MASS. GEN LAWS. ch. 7, § 23B(a) - (c).

²⁵⁸ MONT. CODE ANN. § 18-4-132 (2012).

²⁵⁹ *Id.* § 18-4-132(4)(a)(iii).

²⁶⁰ ILL. COMP. STAT. ANN. 595/10 (2009).

²⁶¹ M.E. REV. STAT ANN. tit. 20-A, § 6602.

²⁶² *Id.*

²⁶³ C.F.R. § 200.88.

²⁶⁴ COMAR 21.05.07.

²⁶⁵ *Id.*

of foods served in public institutions and decrease added sugar consumption (both of which are key strategies identified by the Summary of Public Input). However, particularly with regards to decreasing added sugar consumption, some states, including Maryland, are experimenting with increasingly creative policy solutions, some of which are discussed below.

a. Schools

Schools must meet the nutrition standards required under the federal 2010 Healthy, Hunger-Free Kids Act (HFFKA), but states, localities, and school districts can exceed these standards and set their own, stricter nutrition standards.²⁶⁶ There are two main categories of school food, each regulated by separate nutrition standards under the HFFK: reimbursable meals and competitive foods. **Reimbursable meals** are funded through federal per-meal reimbursements. The HFFKA updated the nutrition standards for school meals for the first time in 15 years, increasing the servings for fruits, vegetables, and whole grains while setting limits on fats, sugars, sodium, and total calories.²⁶⁷ **Competitive foods** are sold “in competition” with reimbursable meals. Competitive foods include “a la carte” food items sold in cafeterias (e.g. pizza), food sold in vending machines (e.g. snack foods and soda), and food sold at school fundraisers. Schools are not reimbursed for these foods, and thus students or parents pay full price. The HFFK regulated competitive foods for the first time; however, the nutrition standards for competitive foods are less stringent than those for reimbursable meals.

The Maryland State Department of Education (MSDE) has adopted its own nutrition standards, **Maryland Nutrition Standards for All Foods Sold in School**, which establish a baseline for both reimbursable meals and competitive foods in all Maryland schools.²⁶⁸ Maryland’s Standards mirror the federal standards for reimbursable meals, but exceed the federal standards for competitive foods by banning beverages with caffeine in high school settings.²⁶⁹ In addition, Maryland effectively eliminates the federal “fundraiser exemption” by applying its standards to *all* foods sold in school (including those sold during fundraisers).

Some states, however, have gone even further to regulate competitive foods. **Massachusetts**, for example, expanded the definition of competitive foods to include not just those *sold*, but also those *provided* at school, which foods offered at celebrations and other school events.²⁷⁰ **Connecticut** also has its own school nutrition standards, the Connecticut Nutrition Standards, which exceed some of the federal standards for competitive foods.²⁷¹ Schools that meet Connecticut’s Standards receive an additional \$0.10 per reimbursable lunch.²⁷² A number of states have also enacted restrictions on vending machines. **New Mexico** does not allow elementary schools to sell food items in vending machines and allows middle schools and high schools to only sell nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit during school hours.²⁷³ **West Virginia** not only limits the content of

²⁶⁶ See generally Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296 (2010).

²⁶⁷ See 7 C.F.R. § 210.10 (2013).

²⁶⁸ M.D. DEP’T EDUC., MARYLAND NUTRITION STANDARDS FOR ALL FOODS SOLD IN SCHOOL (2014),

<http://www.marylandpublicschools.org/programs/Documents/Nutrition/MDNutritionStandardsAllFoodsSold072016.pdf>.

²⁶⁹ *Id.*

²⁷⁰ 105 CMR 225.003, <http://www.mass.gov/eohhs/docs/dph/regs/105cmr225-nutrition-standards.pdf>

²⁷¹ *Connecticut Nutrition Standards*, CONNECTICUT STATE DEPT. OF EDUC., <HTTP://WWW.SDE.CT.GOV/SDE/CWP/VIEW.ASP?A=2678&Q=322422> (LAST VISITED JULY 11, 2017); *Comparison of USDA Smart Snacks and Connecticut Nutrition Standards*, CONNECTICUT STATE DEPT. OF EDUC. (Feb. 2016), <http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Nutrition/HFC/CNSComparisonChart.pdf>.

²⁷² *Healthy Food Certification*, CONNECTICUT STATE DEPT. OF EDUC., <http://www.sde.ct.gov/sde/cwp/view.asp?a=2626&q=322420> (last visited Jun. 21, 2016)

²⁷³ N.M. Admin. Code § 6.12.5 (2012)

vending machines, but also bans corporate logos on vending machine exteriors.²⁷⁴ The state's regulations also encourage school districts to place vending machines in low-traffic areas and to disallow any misleading marketing that may indicate that the food inside the machine has any health benefits.²⁷⁵

i. Targeting Added Sugars

The prevalence of added sugars, particularly in foods marketed to children, requires multifaceted policy approaches to reducing added sugar consumption. Over the past few years, Maryland has seen legislative attempts – and successes – that target added sugar consumption among children. Notably, in 2014, Maryland passed the **Healthy Eating and Physical Activity Act**, which established nutrition standards for beverages served in all licensed child care centers.²⁷⁶ The law requires compliance with the Child and Adult Care Food Program beverage standards, but goes further by banning all beverages with added sweeteners (except infant formula) or caffeine and limiting access to caffeine.²⁷⁷ The law also requires that child care centers establish training and policies promoting breastfeeding.²⁷⁸

During the 2017 Legislative Session, Maryland saw a couple of bills that sought to reduce added sugar among children within the school setting. **HB 366** sought to require that each county board of education include a strategy for reducing sugar consumption in its federally-mandated local school wellness policy.²⁷⁹ However, the bill was voted down by the Ways and Means Committee.²⁸⁰ The **Sugar-Free Schools Act (SB 60)** sought to require that each county convene a workgroup to study best practices for lowering students' sugar intake from school meals and make recommendations to the county board.²⁸¹ The bill was voted down by the Education Committee.²⁸²

b. Other Public Institutions

The state also has the authority to set restrictions on foods sold on state-owned and state-managed property. Maryland employs approximately 81,000 individuals and spends more than \$700 million each year to fund its employee health benefit program.²⁸³ Promoting healthy eating among state employees has the potential to not only promote employee health and wellbeing, but also save the state money in employee healthcare costs. Introduced during the 2017 Legislative Session, the **Maryland Healthy Vending Machine Act (HB 1498)** sought to establish stringent nutrition standards for foods sold in vending machines located on property owned or managed by the state, including state government office buildings, rest stops, state parks and recreation centers, and state colleges and universities.²⁸⁴

²⁷⁴ Bd. of Educ. Legis. Rule 126 series 86 (W. Va. 2008), <http://wvde.state.wv.us/policies/p4321.1.pdf>

²⁷⁵ *Id.*

²⁷⁶ M.D. Senate Bill 716, 2014 Reg. Sess. *Can be accessed at* <http://mgaleg.maryland.gov/2014RS/bills/sb/sb0716E.pdf>.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ M.D. House Bill 366, 2017 Reg. Sess. *Can be accessed at* <http://mgaleg.maryland.gov/2017RS/bills/hb/hb0366F.pdf>. The bill was also introduced in the Senate. M.D. Senate Bill 657, 2017 Reg. Sess. *Can be accessed at* http://mgaleg.maryland.gov/2017rs/fnotes/bil_0007/sb0657.pdf.

²⁸⁰ *Id.*

²⁸¹ M.D. Senate Bill 60, 2017 Reg. Sess. *Can be accessed at* <http://mgaleg.maryland.gov/2017RS/bills/sb/sb0060F.pdf>.

²⁸² *Id.*

²⁸³ Department of Legislative Services, Fiscal and Policy Note: Maryland Healthy Vending Act (H.B. 1498), 2016 Reg. Sess., http://mgaleg.maryland.gov/2016RS/fnotes/bil_0008/hb1498.pdf.

²⁸⁴ M.D. Gen. Assemb. House Bill 1498, 2016 Reg. Sess. *Can be accessed at* <http://mgaleg.maryland.gov/2016RS/bills/hb/hb1498f.pdf>.

However, the bill was voted down by the Senate Finance Committee.²⁸⁵ **Massachusetts** and **New York** also saw similar bills introduced in 2017 with both pending as of July, 2017.²⁸⁶

While healthy vending may not have passed at the state level, Maryland has experienced increasing momentum in this area at the county level. Prince George's County, Montgomery County, Howard County, and Baltimore City have all adopted healthy vending laws.²⁸⁷ In addition, the Maryland-National Capital Park and Planning Commission (M-NCPPC) recently passed a resolution that establishes healthy vending requirements for parks and recreation facilities in Prince George's and Montgomery counties.²⁸⁸

Maryland also need not wait for state legislation to pass to start to take action at the state level. State departments of health can create their own healthy vending policies. **Alabama's Department of Public Health** created a Healthy Vending Machine Policy establishing nutrition guidelines for vending machines and recommending that at least 30% of all food and beverages sold in state vending meet those guidelines.²⁸⁹ While such a policy is not binding, it can serve as an important starting point and useful tool for public institutions that want to provide healthier options. The **Colorado Department of Public Health and Environment (CDPHE)** has undertaken a number of activities to promote healthy vending. CDPHE initially piloted healthy beverage and snack standards in just five state agencies, and then gradually scaled to include more agencies.²⁹⁰ The Department also established a **Nutrition Standards Advisory Committee** to examine statewide nutrition standards, not only for vending and concessions, but also for a number of other settings including schools and CACFP programs. Finally, CDPHE sponsored the development of the *Healthy Beverage and Food Policy Practice Toolkit*, which provides model policies (in English and Spanish) and talking points for promoting these policies.²⁹¹

IV. Nutrition Education and Outreach

As noted by the Summary of Public Input, nutrition education and outreach play an integral role in promoting healthy eating. While the school setting, once again, plays an important role in shaping children's eating habits and nutrition, Maryland has recently been in the news for demonstrating the importance of broad-based nutrition education and outreach campaigns. Howard County's Unsweetened Campaign, discussed below, made national news for achieving a 20 percent reduction in soda sales through a multi-pronged, three-year public awareness campaign.²⁹²

²⁸⁵ *Id.*

²⁸⁶ See N.Y. Assemb. Bill 5511 2017 Reg. Sess. *Can be accessed at* <http://nyassembly.gov/leg/?bn=A05511>; M.A. Senate Bill 1217. 2017 Reg. Sess. *Can be accessed at* <https://malegislature.gov/Bills/190/S1217/BillHistory>.

²⁸⁷ Arelis Hernandez, *Prince George's Joins Other Jurisdictions to Require Healthy Vending Machine Foods*, WASHINGTON POST (Jul. 18, 2017), https://www.washingtonpost.com/local/md-politics/prince-georges-joins-other-jurisdictions-to-require-healthy-vending-machine-foods/2017/07/18/6edc6d84-6bcd-11e7-b9e2-2056e768a7e5_story.html?utm_term=.f0c3bcdbc740.

²⁸⁸ Maryland-National Capital Park & Planning Commission, *Restate Resolution for Adoption of Healthy Vending Requirements* (Apr. 19, 2017), http://mncppcapps.org/mncppc/meetings_agendas/2017/Comm_meeting_April_19_item_5G.pdf.

²⁸⁹ ALABAMA DEP'T PUB. HEALTH, *ALABAMA HEALTHY VENDING MACHINE POLICY* (2011), <http://www.adph.org/NUTRITION/assets/AlabamaHealthyVendingPolicyOct2011.pdf>.

²⁹⁰ C.O. DEP'T PUB. HEALTH & ENVI., *STATE AND FEDERAL INITIATIVES TO IMPROVE NUTRITIONAL STANDARDS IN VENDING AND CONCESSIONS* (2015), https://www.colorado.gov/pacific/sites/default/files/PW_CHHC_State-and-Federal-Initiatives-slides.pdf.

²⁹¹ HEALTHY BEVERAGE PARTNERSHIP, *HEALTHY BEVERAGE AND FOOD POLICY PRACTICE TOOLKIT* (2017), http://denverpublichealth.org/Portals/32/Public-Health-and-Wellness/Public-Health/Health-Promotion/Docs/Health_Promo_HBP_Policy_Practice_Toolkit.pdf?ver=2017-02-17-104424-717.

²⁹² See, e.g., Allison Aubrey, *Un-Sweetened: How a Maryland County Cut Soda Sales Without a Soda Tax*, NPR (Mar. 13, 2017), <http://www.npr.org/sections/thesalt/2017/03/13/520008877/un-sweetened-how-a-maryland-county-cut-soda-sales-without-a-soda-tax>.

a. Schools

Studies show that students who are exposed to nutrition and food education are more likely to care about their food environment and food choices throughout their lives.²⁹³ Indeed, the Summary of Public Input identified *food systems* education – not simply nutrition education – as a key strategy for furthering healthy eating and the celebration of food.

Maryland has a robust **Farm to School** program, which offers one avenue for incorporating food systems education into school curriculums. Operated by MDA, Maryland’s Jane Lawton Farm to School Program was established by legislation in 2008.²⁹⁴ While the program largely focuses on facilitating connections between local farmers and schools, it also includes the Homegrown School Lunch Week, which promotes local agriculture through meals, in-classroom activities, guest speakers, and field trips to farms.²⁹⁵ Maryland was the first state, nationwide, to have all of its public schools participate in a local food promotion week.²⁹⁶ Maryland could further its commitment to farm to school educational opportunities by establishing a farm to school grant program. For example, the **Oregon** Legislature established a Farm to School grant program in 2011 and appropriates funds for it on a biannual basis.²⁹⁷ Funding for the 2015-2017 biennium reached approximately \$4,500,5000.²⁹⁸ The Department of Education offers two grant programs using these funds, with one of them targeted specifically to education (the Garden-Based, Agriculture-Based, or Food-Based Educational Opportunities Grant).²⁹⁹

MDE or MDA could also develop a farm to school or food systems curriculum tied to Maryland’s curriculum standards.³⁰⁰ For example, California’s Department of Education published ***Nutrition to Grow On***, a curriculum for grades four through six that uses school gardens to integrate a variety of subjects, including Science, Math, History, Environmental Studies, Nutrition, and Health.³⁰¹ The curriculum includes lesson plans, quizzes, and handouts, and is tied to California’s academic standards.³⁰²

b. Howard County’s Unsweetened Campaign

Howard County recently made national headlines with its three-year **Unsweetened Campaign**. At a time when localities are debating soda taxes to reduce sugar-sweetened beverage consumption, the Unsweetened Campaign highlights the importance of strong public engagement and, moreover, well-rounded strategies that acknowledge the complexity of behavior change.

²⁹³ Carmen Perez-Rorigo & Javier Aranceta, School-based Nutrition Education: Lessons Learned and New Perspectives, 4 PUB. HEALTH NUTRITION 131 (2001),

<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=558848&fileId=S1368980001000209>.

²⁹⁴ M.D. Gen. Assemb. House Bill 696. 2008 Reg. Sess. *Can be accessed at*

<http://mgaleg.maryland.gov/2008rs/bills/hb/hb0696t.pdf>

²⁹⁵ *Id.*

²⁹⁶ *What is Maryland Farm to School*, M.D. Dep’t Agric., http://mda.maryland.gov/farm_to_school/Pages/farm_to_school.aspx (last visited April 23, 2017).

²⁹⁷ O.R. DEP’T EDUC., FAQ: OREGON FARM TO SCHOOL COMPETITIVE GRANT (2016), http://www.oregon.gov/ode/students-and-family/childnutrition/Documents/4199nc_faq_2_25_2016.pdf.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *See, e.g.*, MINNESOTA DEP’T AGRIC., MINNESOTA SCHOOL GARDENS: A GUIDE TO GARDENING AND PLANT SCIENCE (2013), <https://minnesota.agclassroom.org/educator/garden/guide.pdf>.

³⁰¹ C.A. DEP’T EDUC., NUTRITION TO GROW ON: A GARDEN-ENHANCED NUTRITION EDUCATION CURRICULUM FOR UPPER ELEMENTARY SCHOOL CHILDREN (2013), <http://www.cde.ca.gov/ls/nu/he/documents/ntgocomplete.pdf>.

³⁰² *Id.*

Launched in 2013 with support from the Horizon Foundation, the campaign was designed to “promot[e] change at the interpersonal, organizational, community, and policy levels” through a range of strategies.³⁰³ First, a media campaign (via cable and broadcast television, digital marketing, direct mail, outdoor advertising, and social media) reached more than 576,000 (non-unique) residents and created more than 17 million impressions.³⁰⁴ The Campaign included promotion of the “Better Beverage Finder,” an online tool to help residents identify healthier beverage options, and professional marketer “Street Teams” who went to sporting events and public places to talk to residents about improving their beverage choices.³⁰⁵ The Campaign also involved extensive engagement with a range of community partners, including faith-based groups, businesses, child-care providers, and healthcare professionals.³⁰⁶ At the policy level, the County updated its local school wellness policy and implemented healthy vending policies on county-owned and managed properties.³⁰⁷

A study, published in the *Journal of the American Medical Association (JAMA)*, found that, collectively, these efforts led to a 20% reduction in soda sales and 15% reduction in fruit drink sales.³⁰⁸ While these results have national (and international) significance, Maryland is in the best position to leverage Howard County’s approach and facilitate learning at the local and state level. Maryland could support similar efforts, undertaken by other counties, through technical assistance or grant funding.

V. Labeling and Marketing

Under the federal Nutrition Labeling and Education Act (NLEA), the FDA requires that certain information – such as the recently-updated Nutrition Facts Panel – be included on the labels of packaged food that is sold interstate.³⁰⁹ While the NLEA explicitly bars, or preempts, states from establishing their own labeling requirements for areas covered under the NLEA, this leaves room for states to set their own requirements for areas *not* covered by the NLEA (unless preempted by other federal statutes).³¹⁰ The Summary of Public input acknowledges the need for greater transparency around the nutritional content of food. While the Summary focuses on food served in public institutions, Maryland should bear in mind that labeling and marketing strategies, some of which are discussed below, have the potential to reach a broader population.

³⁰³ Marlene Schwartz et al., *Association of a Community Campaign for Better Beverage Choices with Beverage Purchases from Supermarkets*, 177 JAMA INTERNAL MED. 605, 666 (2017).

³⁰⁴ *Id.* at 667.

³⁰⁵ *Id.* at 668.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.* at 666.

³⁰⁹ Food Drug & Cosmetic Act, 21 U.S.C. §343-1 (2010); U.S. DEP’T OF HEALTH & HUMAN SERV., FOOD & DRUG ADMIN., *Changes to the Nutrition Facts Panel*,

<https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm385663.htm#dates> (last visited June 15, 2017). Though the compliance deadline was originally set for July, 2018, the FDA has extended this deadline, date to be determined. U.S. DEP’T OF HEALTH & HUMAN SERV., FOOD & DRUG ADMIN., *Changes to the Nutrition Facts Panel*,

<https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm385663.htm#dates> (last visited June 15, 2017).

³¹⁰ 21 U.S.C. § 343-1

a. “Local” Labels

One notable area where states do have authority is defining and labeling local foods, as there is currently no federal definition of “local.”³¹¹ Consumer perceptions of what it means for something to be “local” vary greatly from state to state, and locality to locality. As noted in Section 2 (Distributing Food), MDA published regulations requiring that foods marketed as local or regional also disclaim the foods’ place of origin.³¹²

b. Restaurant Meals and Prepared Foods

Research indicates that nutritional labeling of away-from-home food options can help consumers make healthier food choices.³¹³ The Patient Protection and Affordable Care Act of 2010 (the ACA) established calorie labeling requirements for chain restaurants and retailers with more than 20 locations.³¹⁴ These requirements were set to go into effect in May 2017, but the FDA extended the compliance deadline to May 2018.³¹⁵ While the ACA explicitly bans states from imposing additional requirements on food service establishment that are covered by the statute, states can still pass menu labeling laws for establishments that are not covered, e.g. smaller restaurants and retailers.³¹⁶ Such laws can go beyond the federal law, such as requiring additional nutritional information (e.g. sodium, fats, carbohydrates, etc.). Given the repeated delays in implementing the menu labeling requirement and repeated attempts to repeal the ACA, Maryland may want to consider enacting its menu labeling law, with requirements identical to those under the ACA. This would allow Maryland to impose – and enforce – menu labeling requirements in the event of continued delays or an ACA repeal.

c. Warning Labels on Packaged Food Items

The NLEA’s preemption of state and local food labeling requirements does not apply to labels “concerning the safety of the food or a component of the food.”³¹⁷ This has opened the door for states to pass laws requiring warning labels related to food safety. **California’s** Proposition 65, passed in 1986, imposes warning requirements for products, including food items, that contain chemicals “known to the state to cause cancer or reproductive toxicity.”³¹⁸ Updated regulations also extend the warning label to

³¹¹ RENEE JOHNSON, CONG. RESEARCH SERV. R44390, THE ROLE OF LOCAL AND REGIONAL FOOD SYSTEMS IN U.S. FARM Policy 3 (2016),

<https://www.fas.org/sgp/crs/misc/R44390.pdf>.

³¹² Md. Code Ann., Agric. §§ 9 – .01 (2011), http://mda.maryland.gov/maryland_products/Documents/Buy-Local-Regulations.pdf.

³¹³ See, e.g., Kamila M. Kiszko et al., *The influence of calorie labeling on food orders and consumption: A review of the literature*, 39 J. COMMUNITY HEALTH 1248-69 (2014); Pooja S. Tandon et al., *The Impact of Menu Labeling on Fast-Food Purchases for Children and Parents*, 41 AMER. J. PREVENTIVE MEDICINE 434-38 (2011).

³¹⁴ Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 4205, 124 Stat. 119 (2010) (codified at 21 U.S.C. § 343(q)(5)(H) (2012)).

³¹⁵ UNITED STATES DEP’T OF HEALTH & HUMAN SERV., FOOD & DRUG ADMIN., *Overview of FDA Labeling Requirements for Restaurants, Similar Retail Food Establishments and Vending Machines*, <http://www.fda.gov/food/ingredientpackaginglabeling/labelingnutrition/ucm248732.htm> (last visited June 27, 2017).

³¹⁶ Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 4205, 124 Stat. 119 (2010) (codified at 21 U.S.C. § 343(q)(5)(H) (2012)).

³¹⁷ 104 Stat. 2353, *6 (1990).

³¹⁸ 27 CAL. CODE REGS. tit. 27, § 25607.2 (2017). Food warning labels may appear 1) on the product itself, 2) on a shelf sign or shelf tag, or 3) via an electronic device that automatically provides the warning, e.g. not a barcode scanner. *Id.*

internet purchases.³¹⁹ Proposition 65 has resulted in litigation concerning whether various foods – from staple foods to more processed items – cause cancer.³²⁰

Some states have attempted to extend food safety warning labels to unhealthy foods. Bills have been introduced in California,³²¹ New York,³²² Hawaii,³²³ Vermont,³²⁴ and Washington³²⁵ to require labels on sugar-sweetened beverages that warn consumers of the health risks posed by drinking beverages with added sugars. As none of these bills have passed, this is a legislative strategy that is unlikely to succeed at present; however, it is one that Maryland should keep in mind as the state attempts to reduce added sugar consumption.

³¹⁹ 27 CAL. CODE REGS. tit. 27, § 25607.2 (2017).

³²⁰ Jennifer Yu Sacro, *Proposition 65 and Food: You Have Been Warned*, 18 A.B.A. Business Law Today (2009), <http://apps.americanbar.org/buslaw/blt/2009-05-06/sacro.shtml>.

³²¹ S.R. 1000, 2013 Leg., Reg. Sess. (Ca 2014).

³²² S.R. 2320, 2015 Leg., Reg. Sess. (N.Y. 2015).

³²³ H.R. 1209, 29th Leg., Reg. Sess. (Haw. 2017).

³²⁴ H.R. 89, 2015 Leg., Reg. Sess. (Vt. 2015).

³²⁵ H.R. 2798, 2015 Leg., REg. Sess. (Wa. 2016).

Goal 5: Recovering Food

*Reduce food waste and provide food for hungry communities.*³²⁶

I. Overview

Approximately 40% of food goes to waste in the United States.³²⁷ This wasted food amounts to 63 million tons per year, approximately 52.4 million of which ends up in landfills.³²⁸ Uneaten food is the largest contributor of solid waste in our landfills,³²⁹ leading to local crises with landfills that are running out of space. And once in a landfill, food waste is a significant emitter of methane, a greenhouse gas 25 times more potent than carbon dioxide.³³⁰ Overall, the United States spends \$218 billion per year growing, manufacturing, processing, distributing, and disposing of food that is never eaten.³³¹

Food is wasted at all levels of the food system. On the farm, low market prices, high labor costs, and a market that demands perfect-looking produce leads farmers to leave food unharvested in the field.³³² Grocery stores and restaurants waste food because of over-ordering and trying to meet unrealistic consumer demands.³³³ Consumers waste food in their homes because of inefficient shopping and cooking practices, misunderstanding date labels, and lack of access to recovery mechanisms, like composting.³³⁴

According to a report issued by the Maryland Department of the Environment (, residents generate significantly more municipal solid waste (MSW) per person than the average U.S. resident, and the majority of this wasted food goes into landfills.³³⁵ In 2012, the total waste generated by the state included over 12.3 million tons of solid waste, much of which was food waste.³³⁶ Effective state policies can help ensure that not only is wasted food diverted from landfills, but also that healthy, wholesome food goes to consumers, helping to reduce food insecurity. With several new initiatives already in motion, Maryland is beginning to build the knowledge, infrastructure, and policy foundations necessary for a more efficient food system.

³²⁶ The Summary of Public Input identifies the following strategies: 1) Expand existing local processing facilities to recover edible food for distribution and inedible food for composting; 2) Create a State Food Recovery Commission (a collaboration/network of stakeholders, including food donors, distributors, coordinators, government agencies, foundations, and recipient organizations and individuals) to find funding for distribution models for bringing recovered food to hunger communities and inedible food to composting facilities; 3) Create a food recovery jobs program in partnership between members of the new State Food Recovery Commission and existing job training programs (including those for veterans); and 4) Encourage elected officials to support the proposed “Maryland Farm Food Donation Tax Credit” to provide local farmers a tax credit for donating their produce to eligible organizations.

³²⁷ ReFED, A ROADMAP TO REDUCE U.S. FOOD WASTE BY 20 PERCENT 10 (2016), http://www.refed.com/downloads/ReFED_Report_2016.pdf.

³²⁸ *Id.*

³²⁹ Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2013 ES-14, U.S. Env'tl. Prot. Agency (Apr. 15, 2015).

³³⁰ *Overview of Greenhouse Gases*, U.S. ENVTL. PROT. AGENCY, <https://www.epa.gov/ghgemissions/overviewgreenhouse-gases>.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ MD. DEP'T ENVI., ZERO WASTE MARYLAND: MARYLAND'S PLAN TO REDUCE, REUSE AND RECYCLE NEARLY ALL WASTE GENERATED IN MARYLAND BY 2040 (2014), http://www.mde.state.md.us/programs/Marylander/Documents/Zero_Waste_Plan_Draft_12.15.14.pdf.

³³⁶ *Id.*

II. Liability Protection

State statutes play an important role in liability protection for food donations by encouraging the development of innovative food recovery organizations and providing additional protections, beyond federal law. However, Maryland's current liability protections do not extend beyond those provided in the Federal Bill Emerson Good Samaritan Food Donation Act³³⁷—Maryland provides civil liability protection for food donors (including nonprofits, corporations, organizations, associations, and distributors) as long as no act or omission amounts to gross negligence or willful and wanton misconduct.³³⁸ Under the law, Maryland's liability protections only apply when the food is given away for free to end recipients.³³⁹ This means that the state does not provide liability protections for food donors or food recovery organizations when end recipients pay for the food, even at a reduced rate. This harms food recovery efforts because it excludes innovative approaches to sell surplus food at reduced prices. Maryland could strengthen its liability protection laws by expanding beyond what is offered in the federal Emerson Act.

a. Selling to End Recipients

To encourage these innovative models, Maryland can provide liability protection to food donors and food recovery organizations, even when these entities charges end recipients for donated food, so long as the food recovery organization maintains nonprofit status and distributes its food to those in need. For example, **Arizona** provides liability protection for nonprofit food recovery organizations that charge for food, defining donation as giving food “for a fee significantly less than the value of the item.”³⁴⁰ **Wisconsin**, likewise, provides liability protection to food recovery organizations who “sell at a price not to exceed overhead and transportation costs.”³⁴¹

III. Tax Incentives

Tax incentives make food donation more cost-effective and economically beneficial. In 2017, Maryland joined the growing number of states that offer tax incentives specifically targeted at food recovery efforts by passing **HB0472/SB0416**.³⁴² The bill creates a pilot program to provide tax credits to qualified farms for eligible food donations, for tax years 2017 through 2019. Under the programs, farms can receive a state income credit that is equal to 50% of the value of an eligible food donation or 75% of the value of donated certified organic produce, up to \$5,000.³⁴³ Qualified farms are farm businesses located in Anne Arundel County, Calvert County, Charles County, Montgomery County, Prince George's County, or St. Mary's County, and eligible food donations are any fresh farm products for human consumption.³⁴⁴ The total amount of the tax credit issued may not exceed \$250,000 per fiscal year.³⁴⁵ This new program incentivizes the donation of healthy, farm fresh food and reduces food waste. With the end of the pilot phase in 2019, it will be important for Maryland to reauthorize the program, ideally on a permanent basis, and extend it to other counties.

³³⁷ Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791 (2016).

³³⁸ M.D. Code, Cts. & Jud. Proc. § 5-634; M.D. Code, Health—Gen. § 21-322.

³³⁹ See M.D. Code, Cts. & Jud. Proc. § 5-634(b).

³⁴⁰ Ariz. Rev. Stat. § 36-916 (1991).

³⁴¹ Wis. Stat. Ann. 895.51 (2015).

³⁴² M.D. Gen. Assemb. Senate Bill 416. 2017 Reg. Sess. <http://mgaleg.maryland.gov/2017RS/bills/sb/sb0416f.pdf>.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

IV. Wasted Food in Schools

The logistical considerations of serving school lunch every day and the requirements of the National School Lunch Program, both real and perceived, result in high levels of wasted food in schools. Making changes in schools can help to reduce waste, manage tight meal budgets, and teach children about the need to treat food as a valuable resource. Maryland has already made headway by passing **HB0983**, which grants county boards of education the authority to develop and implement food recovery programs for schools under their jurisdiction.³⁴⁶ County boards were also granted the authority to apply for recognition of their food recovery program under any food recovery certification program.³⁴⁷

a. Guidance Documents

Maryland's Department of Education (MSDE) could further support food recovery programs in schools by creating guidance documents. For example, MSDE can support the sharing and donation of unopened and uneaten foods. **Indiana's** Department of Health³⁴⁸ and **California's** Department of Education³⁴⁹ created guidance documents on food donation best practices, such as how to implement "share tables." Likewise, MSDE could encourage schools to expand the federal Offer Versus Serve (OVS) program beyond high schools (where it is mandatory) to elementary and middle schools (where it is optional). Under federal guidelines, school lunches must consist of five components: a fruit, vegetable, whole grain, meat/alternative, and milk.³⁵⁰ The OVS policy allows students to decline up to two components, as long as they take a fruit or a vegetable.³⁵¹ By contrast, students in schools without an OVS policy would need to take a tray with of each food component in order for the meal to be considered reimbursable. Finally, MSDE could encourage schools to lengthen lunch periods as studies show that students who have less than 30 minutes to eat lunch waste a significantly larger proportion of food.³⁵²

b. Food Waste Audits

A food audit can help schools track and determine how much food they waste. There are two types of food waste audits: back of the kitchen waste audits and plate waste audits. Back of the kitchen waste audits track the amount of food wasted before the food is served to students. Plate waste audits track the food wasted once it is served to students. Both can help schools gauge food consumption and waste, and identify areas for food waste improvement. According to the USDA, the best way to minimize school food waste is to produce only the amount of food needed to serve students based on past history.³⁵³ Food waste audits help schools ensure that the proper amount of food is prepared and learn what items or meals students are least likely to eat. Maryland can make funds available for food waste audits, an investment that can save schools, and the state, money over the long run.

³⁴⁶ M.D. Gen. Assemb. House Bill 983 2017 Reg. Sess. <http://mgaleg.maryland.gov/2016RS/bills/hb/hb0983t.pdf>.

³⁴⁷ *Id.*

³⁴⁸ Guidance on Schools and Other Facilities Implementing "Sharing Tables" and "Food Recovery" Programs Recommended by USDA, Ind. State Dep't of Health (Dec. 23, 2015), [https://www.in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_\(2\).pdf](https://www.in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_(2).pdf).

³⁴⁹ Guidance on the Donation of Leftover Food, Cal. Dep't of Ed., (May 2012), <http://www.cde.ca.gov/ls/nu/sn/mbusdacnp042012.asp>.

³⁵⁰ 7 C.F.R. § 210.10(c)-(e).

³⁵¹ *Id.*

³⁵² Join the U.S. Food Waste Challenge!, U.S. Dep't of Agric. (Feb. 2015), http://www.usda.gov/oce/foodwaste/webinars/K-12/Tips_Resources_for_Schools.pdf.

³⁵³ *Id.*

V. Date Labels & Food Safety

Because there is no federal law regulating date labels on food items, Maryland and other states impose their own standards. This can lead to consumer confusion about when – and if – to throw away food.

a. Standardized Date Labels

While most date labels indicate food quality, some date labels signify an increased food safety risk for a small number of food categories (notably, certain ready-to-eat foods, like deli meats and unpasteurized cheeses).³⁵⁴ Maryland could follow national best practices and adopt a dual labeling system that clarifies the important distinction between quality-based and safety-based date labels. A recent voluntary industry initiative to standardize date labels launched by the Food Marketing Institute (FMI) and the Grocery Manufacturers Association (GMA) recommends using “BEST If Used By” to indicate food quality and “USE By” to indicate a food safety concern.³⁵⁵ These two phrases were found by a recent study to be well understood by consumers to mean quality and safety, respectively.³⁵⁶ A bill recently introduced in **Massachusetts** also follows this model, though with slightly different language: “best if used by” (quality) and “expires on” (safety).³⁵⁷

b. Date Label & Food Safety Education

The Maryland Department of Health (MDH) and local health departments could educate Maryland consumers, food vendors, donors, and food recovery organizations about the meaning behind date labels. Other state efforts can serve as models. For example, the **Florida** Department of Agriculture and Consumer Services disseminated a handout explaining that date labels, generally speaking, are not regulated and do not indicate food safety.³⁵⁸ Maryland, which currently does not have any specific legislation regarding food safety for food donation, could also take this as an opportunity to come up with clear regulations or policy guidance for food donors and health inspectors with regard to food safety for food donations. For example, **Washington** passed regulations clarifying which foods can be safely donated.³⁵⁹ **Minnesota** also has regulations that detail how distressed foods can be salvaged for donation.³⁶⁰ Such guidelines can instruct local Maryland health departments on how they should approach food donations and, moreover, encourage them to promote donation.

VI. Food Recovery Infrastructure and Awareness

While businesses may be willing to participate in food waste and recovery efforts, the financial burden is often a deterrent. Maryland can invest in food waste reduction and recovery at the state level, as additional resources can greatly alleviate the financial burden on individual businesses. Maryland has

³⁵⁴ See NAT'L RESOURCES DEFENSE COUNCIL & HARVARD FOOD LAW AND POL'Y CLINIC, THE DATING GAME (2013), <http://www.chlpi.org/wp-content/uploads/2013/12/dating-game-report.pdf>.

³⁵⁵ HARVARD FOOD LAW AND POL'Y CLINIC, NAT'L CONSUMERS INST., & JOHNS HOPKINS CTR. FOR A LIVABLE FUTURE, CONSUMER PERCEPTIONS OF DATE LABELS: NATIONAL SURVEY 1 (May 2016), http://www.chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptionson-Date-Labels_May-2016.pdf.

³⁵⁶ *Id.*

³⁵⁷ M.A. Gen. Assemb. Senate Bill 415. 2017 Reg. Sess. <https://malegislature.gov/Bills/190/S415>

³⁵⁸ Expiration Dates, Florida Dept. of Agric. & Consumer Serv., <http://www.freshfromflorida.com/content/download/65464/1567491/expirationdates.pdf> (last visited Jul. 23, 2017).

³⁵⁹ Wash. Admin. Code § 246-215-09415 (2017).

³⁶⁰ Minn. Stat. Ann. § 31.495 (2017).

already taken an important first step with the passage of **HB0171/SB099** which requires that MDE conduct a thorough study on organic waste diversion and infrastructure – which includes consulting specified individuals and evaluating the laws and regulations of other states, including Massachusetts, Vermont, Connecticut, California, and Rhode Island – and make recommendations for the state accordingly.³⁶¹ The Department will provide a final report of its findings and recommendations to the Governor and the General Assembly by July 1, 2019.³⁶²

While it is likely that MDE’s study and recommendations will guide future policy in this area, Maryland can take additional steps to support food waste and recovery efforts in the meantime.

a. Infrastructure Investments

The high costs of food rescue equipment and infrastructure can prevent some businesses and organizations from participating in food recovery. Sometimes, simply getting food from the donor (e.g., a local retailer, institution, restaurant) to a food recovery organization (e.g., a food bank, distributor, food pantry) can pose logistical challenges that deter would-be donors. For example, a refrigerated truck may be needed, which can increase costs.

Maryland could provide grants to offset some of these costs and spur innovation in the food recovery process. In **Oregon**, the Department of Health and Environmental Quality awards grants (totaling up to \$500,000) to projects that promote the prevention, recovery, and reuse of solid waste (including food).³⁶³ In 2016, the Department funded 34 projects that ranged from the purchase of a refrigerated truck to starting food recovery programs at 30 rural and low-income schools.³⁶⁴ In 2017, the Department expanded the eligibility criteria to include federally-recognized tribal nations and public universities, colleges, and schools (for projects that sought to reduce food waste).³⁶⁵ For 2017, **Tennessee’s** Department of Environment and Conservation has budgeted \$3,000,000 for waste reduction grants.³⁶⁶ Counties, municipalities, 501 (C)(3) non-profits, and for profit businesses are all eligible to apply, but applicants must provide a match of 10%-50%.³⁶⁷ The Department has three priorities for 2017 grantees: 1) fostering public/private partnerships, 2) providing new or expanded waste management services, and 3) reducing food waste through education, food recovery and donation, feeding animals, industrial uses, anaerobic digestion, composting, and other proven means.³⁶⁸

Maryland could also directly allocate funds to food recovery organizations and projects. This direct allocation allows legislators to fund targeted programs or projects for food recovery. **Pennsylvania**, for example, offers the State Food Purchasing Program (SFPP), which provides cash grants to counties for the purchase and distribution of food to low income individuals.³⁶⁹ SFPP is used to supplement the

³⁶¹ M.D. Gen. Assemb. Senate Bill 99. 2017 Reg. Sess., http://mgaleg.maryland.gov/2017RS/Chapters_noln/CH_383_sb0099t.pdf.

³⁶² *Id.*

³⁶³ *DEQ Expands Grant Opportunities for the Prevention, Reuse, and Recovery of Solid Waste (June 22, 2017)*, OR. DEP’T ENVI. QUALITY, <http://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=2120> (last visited Aug. 30, 2017).

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Waste Reduction Grants*, Tenn. Dep’t. Envtl. Conservation, <http://www.tennessee.gov/environment/article/GRANTS-organics-management-grant> (last visited Sep. 6, 2017).

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ *State Food Purchasing Program (SFPP)*, Pa. Dep’t of Agric., <http://www.agriculture.pa.gov/Encourage/food/State%20Food%20Purchase%20Program/Pages/default.aspx>.

efforts of food pantries, soup kitchens, food banks, feeding programs, shelters for the homeless, and similar food organizations dedicated to reducing hunger.³⁷⁰ Grants are allocated to the County Commissioners to purchase food at wholesale, competitively bid prices, or better.³⁷¹

b. Public Education and Awareness

Maryland requires MDE to maintain information on its website to educate the public about composting and promote composting as a part of the Department's efforts to encourage waste diversion.³⁷² MDE can expand this initiative to include information about food recovery. Most consumers are unaware of the amount of food being wasted. A public education campaign, such as the "Don't Waste Food S.C." campaign run by the **South Carolina** Department of Agriculture and South Carolina Department of Health and Environmental Control, helps get information in front of consumers and change behaviors.³⁷³ The state could also partner with outside business or nonprofit organizations to run such a campaign. For example, the Natural Resources Defense Council partnered with the Ad Council to create the national **Save the Food** campaign, which uses bold images and relatable statistics to combat food waste.³⁷⁴

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² M.D. Code, Environment. § 9-1722.

³⁷³ *Don't Waste Food S.C.*, S.C. DEP'T OF HEALTH & ENV'T'L. CONTROL, <http://www.scdhec.gov/HomeAndEnvironment/Recycling/FoodWaste/mindex.htm> (last visited Jul. 23, 2017).

³⁷⁴ SAVE THE FOOD, savethefood.com.

www.chlpi.org/flpc | flpc@law.harvard.edu Facebook/Twitter/Instagram: @HarvardFLPC

