



Health Law and Policy Clinic of
Harvard Law School



Mississippi WIC for the 21st Century

Harvard Law School Health Law and Policy Clinic
and the
Harvard Law School Mississippi Delta Project

June 2011

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I. Executive Summary

This report undertakes a review of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program in Mississippi, focusing particularly on the current direct distribution food delivery system, as Mississippi is the only state in the nation in which such a system is currently utilized. As a result of this direct distribution system, Mississippi WIC faces multiple barriers, which prevent it from fulfilling its programmatic purpose as fully, efficiently, or effectively as it otherwise could. The key findings and recommendations are as follows:

1. Multiple barriers exist in the current direct distribution system, which negatively affect WIC participants, small grocers and retailers, farmers markets, the non-WIC general public, and the State of Mississippi.
 - Mississippi WIC recipients face serious time and transportation difficulties in accessing the food distribution centers, which at best serve as a considerable inconvenience and at worst, work to deny them nutrition benefits. The direct distribution system results in WIC recipients having significantly less choice in the nutritious foods they receive, potentially resulting in fewer health benefits for the recipient.
 - Small grocers, retailers, and farmers markets are completely excluded from any part of the WIC transactions in Mississippi, thus hindering their ability to grow and succeed.
 - Non-WIC Mississippians, especially in rural and low-income areas, are not given access to as many healthy foods as would be possible under a retail system.
 - Finally, the current system is not economically efficient for the State of Mississippi; all other WIC state agencies have found that this type of system is not feasible, and Mississippi currently has the highest average food cost per person of all other WIC state programs.
2. In order to address these serious and wide-reaching problems, Mississippi should move from its current direct distribution system to a retail food delivery system, the system implemented in all forty-nine other states.
 - A retail system would provide more flexibility and convenience, as participants would have increased access to food stores and significantly more choice, increasing their ability to purchase the healthy foods they enjoy.
 - A retail system would stimulate small grocer and retailer growth and would economically aid farmers markets, for these entities would be receiving the WIC spending, providing a steady and substantial stream of revenue.
 - A retail system would improve access to healthy foods for rural and low-income non-WIC Mississippians because small grocers across the state would have the financial incentive (and under WIC guidelines would be required) to stock nutritious WIC-approved foods, enabling those who previously did not have access to now have access to healthy foods.
 - Finally, a retail system would be more efficient and cost-effective for the State of Mississippi, decreasing the administrative burdens of running the warehouses as well as decreasing the state's cost per person.

3. Mississippi should also consider the implementation of WIC through an Electronic Benefit Transfer (EBT) system in conjunction with a transition to retail.
 - Over half of the states have already started and/or completed the WIC EBT transition process, with great success as WIC EBT has proved to be well received by all stakeholders involved.
 - Recent federal legislation now mandates nation-wide WIC EBT implementation by October 2020. Because Mississippi will be required to transition to EBT, it is more efficient in terms of time (training vendors, staff, and participants on one vs. two systems) and cost (setting up the infrastructure, technology, and guidelines for one vs. two systems) to change to EBT in conjunction with the food distribution transition.
4. Even if Mississippi WIC does not move to a retail system, there are other important changes the state agency can make to the current direct distribution system as well as other portions of the WIC program.
 - Within the current direct distribution system, Mississippi WIC can work both to increase the selection and availability of as well as storage capacity for fresh fruits and vegetables.
 - Mississippi can explore ways to facilitate participant access to food centers.
 - Within the WIC program generally, the state should continue to advance marketing and outreach strategies in order to improve participation rates and decrease the number premature program dropouts.
 - Mississippi WIC should also work to create a stronger and more comprehensive nutrition education program.
 - Finally, the state should work to grow and enhance the WIC Farmers' Market Nutrition Program (FMNP) through various means.

Although there are barriers to the state transitioning to a retail system (and to a retail EBT system), Mississippi can overcome these barriers. Through a substantial planning and pilot period, reviewing and discussing hurdles with other WIC state agencies, receiving guidance from the Food and Nutrition Service (FNS) and the FNS Southeast Region Office (SERO), and obtaining both federal and private grant money via the WIC administrative grant, FNS grant funds, regional operational adjustment funds, EBT grants, and other private foundation projects, Mississippi WIC can make the transition to retail (and retail EBT) and can generally improve its current functioning. In do so, Mississippi WIC will enhance its current system and better fulfill its crucial purpose as a safety net for the most vulnerable members of society – women, infants, and children.

II. Introduction¹

This report examines the state of the Mississippi WIC program, and is divided into four main sections: Background on WIC (providing basic information on the WIC program overall, including eligibility requirements, benefits provided, food delivery systems, funding, and recent changes); Mississippi WIC (offering details specifically about the structure and function of WIC in Mississippi); Barriers in the Mississippi WIC Program (highlighting challenges and impediments within the current structure of Mississippi WIC, focusing on the direct distribution food delivery system); and Recommendations for Mississippi WIC (offering various suggestions for ways in which Mississippi WIC may be reformed so as to become more effective and efficient in its operation).

WIC is a crucial food and nutrition assistance program serving the most vulnerable members of society – women, infants, and children.

WIC is a crucial food and nutrition assistance program serving the most vulnerable members of society – women, infants, and children. Thousands of Mississippi women, infants, and children receive and depend on the supplemental food, nutrition information, and social service referrals that this program ensures. Because of the significance of WIC to these individuals, it is essential that the program function as effectively as possible, and therefore this report aims to suggest additional ways in which the system may do so.

On a broader level, this consideration of the WIC program in Mississippi is especially timely, as health, obesity, nutrition, and access to food have become topics of increasing prominence across the state (and the nation). The problem of food deserts, the lack of access to nutritious foods, the growing obesity epidemic, the dearth of general health knowledge – and the connections between all of these – have rightly become important topics within state and federal government as well as the general public. The WIC program is a central aspect of this larger discussion for low-income women, infants, and children. This report therefore seeks not only to examine WIC as a single benefit program, but also to contextualize WIC as part of these larger discussions on food access, health, and diet-related disease.

III. Background on WIC

The Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) was created by the federal government in 1972 to safeguard the health of low-income women, infants, and children by providing supplemental nutritious food, nutrition education, and

¹ This report was prepared by Eleanor Simon, student in the Harvard Law School Health Law and Policy Clinic and member of the Harvard Law School Mississippi Delta Project under the supervision of Emily Broad Leib, Senior Fellow in the Harvard Law School Health Law and Policy Clinic. Special thanks to Kathy Burk, Mississippi State Department of Health; Ellen Holtzman, The Food Trust; and Robert Greenwald, Harvard Law School Health Law and Policy Clinic; Samantha Watts, Harvard Law School Health Law and Policy Clinic Summer Intern.

referrals to health care and other social services.² WIC was intended to function as an additional support and resource to facilitate good health care and nutrition during critical times of growth and development.

As the third-largest food and nutrition assistance program, WIC has grown to become one of the central components of the Nation's food and nutrition system. WIC federal expenditures reached \$6.2 billion in fiscal year 2008, trailing only the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) and the National School Lunch Program.³ WIC served an average of 9.3 million participants per month during 2009.⁴ The program continues to grow, with Congress appropriating \$7.252 billion for WIC in fiscal year 2010.⁵

WIC legislative requirements are contained in Section 17 of the Child Nutrition Act of 1966, which was recently reauthorized as the Healthy, Hunger-Free Kids Act of 2010.⁶ The WIC program functions through a federal/state/local government partnership. The federal government fully funds the WIC program, such that state matching funds are not required.⁷ Via the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS), the federal government provides separate cash grants to the ninety WIC state and tribal agencies for food benefits and for the Nutrition Services and Administration (NSA).⁸ The food and NSA grant amounts are allocated to state agencies through a formula based on caseload (number of participants), inflation, and poverty indices.⁹ The food grants cover the costs of supplemental food packages and the NSA grants cover nonfood costs, including certifying participants, determining nutritional risks, providing outreach and nutrition education, printing food instruments, providing health and social services referrals, administering the food delivery system, and staff salaries.¹⁰ In fiscal year 2010, seventy-one percent of the \$7 billion total WIC expenditures were spent on food (\$5 billion) and the remaining twenty-nine percent (\$2 billion) were spend on NSA.¹¹ In addition to administering the grants, FNS also issues regulations, monitors state agency compliance, and provides technical assistance.¹²

On the state level, WIC state agencies structure and administer benefits within their own jurisdictions. State agencies allocate funds to local WIC agencies, negotiate rebate contracts

² Elizabeth Frazão & Victor Oliveira, "The WIC Program: Background, Trends, and Economic Issues, 2009 Edition," USDA Economic Research Report (ERR No. 73), April 2009, at 1, *available at* <http://www.ers.usda.gov/Publications/ERR73/ERR73Fm.pdf>.

³ *Id.*

⁴ United States Department of Agriculture, Food and Nutrition Service, "WIC State Agencies," *available at* <http://www.fns.usda.gov/wic/Contacts/statealpha.htm>.

⁵ *Id.*

⁶ Child Nutrition Act of 1966 (Healthy, Hunger-Free Kids Act of 2010), 42 U.S.C. §§ 1771-1792.

⁷ Frazão & Oliveira, *supra* note 2, at 11.

⁸ The ninety state WIC agencies consist of an agency for each of the fifty states plus an agency for each of the forty Indian tribal organizations that run their own, separate WIC programs. *See* United States Department of Agriculture, Food and Nutrition Service, "WIC Fact Sheet," *available at* <http://www.fns.usda.gov/wic/WIC-Fact-Sheet.pdf>.

⁹ Frazão & Oliveira, *supra* note 2, at 39; *see also* 7 C.F.R. § 246.16(c)(2010).

¹⁰ Frazão & Oliveira, *supra* note 2, at 11. Note also the existence of some federal restrictions on the NSA expenditures, including a restriction providing that at least a sixth of the state's NSA monies must be used for nutrition education and that an additional portion of NSA funds must be used for breastfeeding promotion and support. *See* 7 C.F.R. § 246.14(c) (2010).

¹¹ Food and Nutrition Service, Women, Infants and Children, "Summary of FY 2010 Grants," *available at* <http://www.fns.usda.gov/wic/fundingandprogramdata/grants2010.htm>.

¹² *Id.* at 10.

with infant formula manufacturers, assist local WIC agencies with their operations, and make food package decisions such as the specific brands, forms, and package sizes to include in their list of approved WIC foods.¹³ Further, although states are not required to contribute funds, some states choose to do so: in 2001, thirteen states contributed about \$45 million to WIC.¹⁴

Finally, there are about 2,000 local WIC agencies serving WIC clients through clinics, most of which are state and county health departments, but also include hospitals, mobile clinics, community centers, schools, public housing sites, migrant health centers and camps, and Indian Health Service facilities.¹⁵ These local WIC agencies work to certify applicants, provide nutrition education, make referrals to health care providers and other necessary social services, and distribute food instruments.¹⁶

WIC Eligibility and Certification

To qualify for the WIC program, applicants must meet categorical, residential, income, and nutritional risk eligibility requirements.¹⁷ To receive WIC benefits, a person must be a pregnant woman, a non-breastfeeding woman up to six months postpartum, a breastfeeding woman up to one year postpartum, an infant up to his/her first birthday, or a child up to his/her fifth birthday.¹⁸ WIC applicants must reside within the state where they apply for eligibility. The family income of WIC applicants must fall at or below 185 percent of the Federal poverty guidelines (185 percent of the Federal poverty level is an annual income of \$40,793 for a family of four living in the contiguous United States).¹⁹ Applicants who participate in the SNAP, Medicaid, or Temporary Assistance for Needy Families programs are automatically income eligible so that they are not required to provide additional documentation when applying for WIC. Finally, WIC applicants must be deemed to be at nutritional risk by a qualified health professional. USDA policy requires that applicants apply in person for WIC benefit certification at their local WIC clinics.²⁰

The duration of the initial WIC certification varies by participant category. By federal regulation, pregnant women are certified for the duration of their pregnancy and up to the last day of the month in which the infant becomes six weeks old or the pregnancy ends; postpartum women are certified up to the last day of the sixth month after the baby is born or the pregnancy ends; breastfeeding women, infants, and children must be recertified every six months for the duration of their eligibility (for children, this ends with the last day of the month in which a child reaches his/her fifth birthday).²¹ Most states exercise their statutory discretion to certify breastfeeding women and their infants for one year.²² Under the recent reauthorization of the WIC program, states may also elect to certify children for one year as well.²³ Federal regulations

¹³ *Id.*

¹⁴ *Id.* at 11 (U.S. General Accounting Office, “Food Assistance: WIC Faces Challenges in Providing Nutrition Services,” GAO-02-142, December 2001).

¹⁵ Food Research & Action Center, Child Nutrition Fact Sheet, Women, Infants, and Children (WIC), *available at* <http://frac.org/newsite/wp-content/uploads/2009/09/cnwic.pdf>.

¹⁶ Frazão & Oliveira, *supra* note 2, at 10.

¹⁷ 7 C.F.R. § 246.7 (2010).

¹⁸ 7 C.F.R. § 246.7(g) (2010).

¹⁹ United States Department of Agriculture, Food and Nutrition Service, “WIC Fact Sheet,” *available at* <http://www.fns.usda.gov/wic/WIC-Fact-Sheet.pdf>.

²⁰ 7 C.F.R. § 246.7(b)(4) (2010).

²¹ 7 C.F.R. § 246.7(g) (2010).

²² 7 C.F.R. § 246.7(g) (2010); Frazão & Oliveira, *supra* note 2, at 4. Mississippi does not choose to exercise this option.

²³ See Healthy, Hunger-Free Kids Act of 2010 § 131 (42 U.S.C. § 1786(d)(3)(A)).

also allow state agencies to authorize shorter certification periods.²⁴ After the certification period ends, the applicant must be recertified to continue to receive WIC benefits.

WIC Benefits

The WIC program provides three categories of benefits to those who qualify: a supplemental food package, nutrition education, and referrals to health and other services. The supplemental food package provides specific food items in set quantities, valid for a one-month period.²⁵ The food items provided are determined based upon the nutritional needs of that category of WIC beneficiary. Federal regulations stipulate seven types of food packages, designed to meet the specific needs of each participant category.²⁶ The seven categories are as follows: (1) Infants up to 5 months; (2) Infants 6-11 months; (3) All individuals with medical needs, including infants; (4) Children 1-4 years; (5) Pregnant and partially breastfeeding women; (6) Postpartum women; and (7) Fully breastfeeding women.²⁷

Each category of WIC recipient is first provided with a set nutritional package, based upon their nutritional needs, comprised of a selection of certain amounts of the following categories of foods: iron-fortified infant formula; iron-fortified infant cereal; infant food fruits and vegetables; infant food meat; adult cereal; vitamin C-rich fruit juice and/or vegetable juice; eggs; milk; cheese; peanut butter and/or dried beans; tuna; whole wheat bread or other whole grains; and fruits and vegetables.²⁸ State agencies have the ability to tailor an individual's food package based upon their nutritional risk factors, food restrictions, intolerances and preferences.²⁹ A beneficiary forfeits any benefits not used during the month's valid purchasing period.

In 2007, USDA significantly revised the content of the above-discussed food packages with the purpose of "align[ing] them more closely with updated nutrition science . . . , promot[ing] and support[ing] more effectively the establishment of successful long-term breastfeeding, provid[ing] WIC participants with a wider variety of food, and provid[ing] WIC State agencies with greater flexibility in prescribing food packages"³⁰ These changes were required to be implemented by October 1, 2009 and represent the most significant changes in the WIC program since its inception, close to forty years ago. The most substantial amendments under this 2007 regulation include the addition of fruits and vegetables, an increased amount of whole

²⁴ 7 C.F.R. § 246.7(g) (2010).

²⁵ Note that there are two major differences with SNAP, which provides an absolute dollar value for authorized food purchases (rather than restricting the types and amounts of specific foods) and which varies in the amount provided based upon household income.

²⁶ 7 C.F.R. § 246.10(c) (2010).

²⁷ *Id.* These seven categories were revised in food package revisions of the USDA in 2007. Prior to 2007, there were still seven categories but they were: Infants through 3 months; Infants 4-11 months; Children or women with special dietary needs; Children ages 1-4; Pregnant and breastfeeding women (basic); Non-breastfeeding postpartum women; and Breastfeeding women (enhanced). See Frazão & Oliveira, *supra* note 2, at 5-6.

²⁸ For example, a fully breastfeeding women (category 7) WIC participant may receive a monthly food package consisting of twenty-four quarts of milk, two dozen eggs, ten dollars in cash value vouchers for fruits and vegetables, thirty-six ounces of cereal, 144 fluid ounces of juice, one pound of whole wheat bread or other whole grains, one pound of cheese, thirty ounces of canned tuna fish, and one pound of dry beans and eighteen ounces of peanut butter. 7 C.F.R. § 246.10 (2010), Table Two.

²⁹ 7 C.F.R. § 246.10(c) (2010).

³⁰ Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages, 75 Fed. Reg. 243, 79484 (Dec. 20, 2010) (to be codified at 7 C.F.R. § 246).

grains, a greater variety in choices (such as soy beverages and tofu instead of milk), and less milk, cheese, eggs, and juice in the food packages.³¹

In addition to the revised food packages, the WIC Farmers' Market Nutrition Program ("WIC FMNP") enables participants to access fresh fruits and vegetables. WIC FMNP was created in 1992 to supplement the basic WIC program by providing vouchers for the purchase of fresh, locally grown fruits and vegetables to WIC participants (who, at that time, did not receive any fresh fruits or vegetables as part of WIC) and to expand awareness of and sales at farmers markets.³² WIC participants are issued separate FMNP coupons, currently valued at between \$10 and \$30 per recipient per year, which may be used to buy foods from eligible farmers, farmers markets, and roadside stands approved by the state.³³

In addition to the food benefits described above, the second type of benefit provided to all WIC participants (or to the parents or caretakers of infant or child participants) is nutrition education. The nutrition education has two broad goals: "(1) Emphasize the relationship between nutrition, physical activity and health . . . and raise awareness about the dangers of using drugs and other harmful substances during pregnancy and while breastfeeding; [and] (2) Assist the individual who is at nutritional risk in improving health status and achieving a positive change in dietary and physical activity habits, and in the prevention of nutrition-related problems through optimal use of the supplemental foods and other nutritious foods."³⁴ Non-participation by an individual in the nutrition education component does not, however, provide cause to deny that participant from receiving a food package.³⁵

Finally, WIC recipients also receive referrals to health and other services as part as the third part of their benefits package. Local WIC agencies are required to assist WIC participants in obtaining health care and social services, including immunizations, SNAP benefits, and Medicaid, either through onsite health services or referrals to other agencies.³⁶

Food Delivery

Federal regulations grant WIC state agencies the ability to use three types of food delivery systems (or any combination thereof): retail distribution; home delivery distribution; and/or direct distribution.³⁷ A retail distribution system is one in which WIC participants obtain their supplemental food packages by exchanging a food instrument (i.e. a check, voucher, or EBT card) at an authorized retail outlet; a home delivery distribution system is one in which the supplemental food is delivered to the WIC participant's home; and a direct distribution system is one in which WIC participants pick up their supplemental food from storage facilities operated by the state or local WIC agency.³⁸

³¹ See Kenneth Hanson & Victor Oliveira, *Economic Linkages Between the WIC Program and the Farm Sector*, USDA Economic Brief (EB No. 12), March 2009, available at <http://www.ers.usda.gov/Publications/EB12/EB12.pdf>.

³² 7 C.F.R. § 248.1 (2010). Cash value vouchers ("CVVs") are now provided to some WIC participants, in addition to the regular WIC vouchers, in set dollar amounts to purchase desired fruits and vegetables. CVVs are provided because most fresh fruits and vegetables are sold via weight and without uniform bar codes, so that item prices vary considerably by time, geography, and stores, making it difficult to use the traditional WIC voucher.

³³ Frazão & Oliveira, *supra* note 2, at 10.

³⁴ 7 C.F.R. § 246.11(b) (2010).

³⁵ 7 C.F.R. § 246.11(a)(2) (2010).

³⁶ Frazão & Oliveira, *supra* note 2, at 7.

³⁷ 7 C.F.R. § 246.12 (2010).

³⁸ Frazão & Oliveira, *supra* note 2, at 9.

All but two states – Mississippi and Vermont – currently use a retail distribution system.³⁹ In a retail distribution system, WIC state agencies provide the participant with a food instrument that specifies the types and quantities of food that may be purchased and the dates within which the instrument is valid. These instruments may be issued to participants every one, two, or three months.⁴⁰ Most states currently issue vouchers, which are then picked up by WIC participants at the local clinics or agencies. WIC state agencies, however, may issue the food instrument through alternative means, such as electronic benefit transfer (“EBT”), which functions much like a debit card and represents the future of the WIC system.

EBT is an electronic process that replaces the paper food instrument by apportioning food prescriptions to a participant account, which is then accessed electronically during the checkout process at an authorized retailer; the WIC-eligible food purchases are then electronically reconciled against the available food balance.⁴¹ As of September 2010, five states had implemented statewide EBT systems (Michigan, Nevada, New Mexico, Texas, and Wyoming); one state had piloted a statewide EBT system (Kentucky); three states were in the design and development stage for a statewide EBT system (Oklahoma, Virginia, and West Virginia); and an additional nineteen states were in the planning stages for EBT statewide.⁴² Under the Healthy, Hunger-Free Kids Act of 2010, each state is now required to implement WIC EBT systems by October 1, 2020, although the EBT mandate does include an exemption provision for a state facing “unusual barriers” to implementation.⁴³

Under a retail distribution system, WIC state agencies must authorize a sufficient number of vendors to serve as authorized WIC vendors, with the ability to accept WIC food instruments.⁴⁴ Federal regulations do not require that state agencies authorize every vendor to accept WIC instruments but rather, stipulate that the state “authorize an appropriate number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplement foods and to ensure effective State agency management, oversight, and review of its authorized vendors.”⁴⁵ In authorizing vendors, the state WIC authorities are also obligated to establish minimum requirements for the variety and quantity of WIC foods that the vendors must stock.⁴⁶ After authorization, states are required to monitor authorized WIC vendors to ensure compliance with regulations. Vendors are authorized for a maximum of three years and then are required to apply for reauthorization.⁴⁷ To ensure that vendors charge competitive prices for WIC foods, WIC state agencies must also establish a

³⁹ *Id.* Mississippi employs a direct distribution food delivery system while Vermont utilizes a home delivery system in combination with a retail system. *Id.*

⁴⁰ 7 C.F.R. § 246.12(r)(5) (2010).

⁴¹ Frazão & Oliveira, *supra* note 2, at 9, n. 15.

⁴² United States Department of Agriculture, Food and Nutrition Service, “WIC Electronic Benefit Transfer Activity Map,” available at <http://www.fns.usda.gov/wic/EBT/EBTActivityMap-September2010.pdf>.

⁴³ See Healthy, Hunger-Free Kids Act of 2010 § 352(d) (42 U.S.C. §§ 1786(h)). The specific language from the reauthorization statute is: “Not later than October 1, 2020, each State agency shall be required to implement electronic benefit transfer systems throughout the State, unless the Secretary grants an exemption under subparagraph (C) for a State agency that is facing unusual barriers to implement an electronic benefit transfer system.” Healthy, Hunger-Free Kids Act of 2010 § 352(d)(12)(B)(i).

⁴⁴ 7 C.F.R. § 246.12(g) (2010).

⁴⁵ 7 C.F.R. § 246.12(g)(1) (2010).

⁴⁶ 7 C.F.R. § 246.12(g)(3)(i) (2010). These federal requirements include that the vendor stock at least two varieties of fruits, two varieties of vegetables, and at least one whole grain cereal authorized by the state agency. *Id.*

⁴⁷ 7 C.F.R. § 246.12 (g)(9) (2010).

vendor peer group system with distinct competitive price criteria and allowable reimbursement levels for each peer group. In other words, the state agency must group vendors together using specific characteristics and compare the prices each vendor charges against other peer vendors, as well as against the agency’s own price criteria, to ensure that the vendor is not artificially inflating its prices and is not reimbursed above an authorized amount.⁴⁸

As of the end of 2005, there were 44,458 authorized WIC vendors nationwide, ninety percent of which were regular retail vendors.⁴⁹ The remaining ten percent were pharmacies (six percent), “WIC-only” or “above-50-percent” vendors (three percent), vendors that participated in home or direct distribution systems (one percent), and military commissaries (less than one percent).⁵⁰

As of 2005, there were 44,458 authorized WIC vendors nationwide.

Although a retail food system is the food delivery system used by the vast majority of states, as noted above, there are two other options: a home delivery system and a direct distribution system. In a home delivery system, a participant’s supplemental food package is delivered directly to the participant at their home address.⁵¹ Currently, Vermont is the only state agency that uses a home delivery system, and they have recently moved to a hybrid system of home delivery and retail.⁵² In Vermont, a participant receives their first delivery of food items about ten days after their first WIC appointment, and then will receive a home food delivery about twice per month.⁵³ Vermont WIC encourages all recipients to be at home for their delivery, although they will leave items outside of a recipient’s home if the recipient provides a cooler for the food. The WIC state agency employs a private company for delivery and utilizes Proof of Delivery (“POD”) forms to keep record of when a delivery was made, what foods the participant received, and whether all the foods were in the proper condition.⁵⁴

Currently, Mississippi is the only WIC state agency that utilizes a direct distribution food delivery system.

Finally, the last food delivery system option is a direct distribution system, in which the participant picks up their supplemental food package from storage facilities operated by the

⁴⁸ 7 C.F.R. § 246.12(g)(4)(ii) (2010). The state agencies must include at least two criteria for establishing these requisite peer groups, one of which must be participant access by geographic area (i.e. metropolitan or other statistical areas that form distinct labor and product markets) and the other may be chosen by the state agency. *Id.*
⁴⁹ Frazão & Oliveira, *supra* note 2, at 9 (USDA, Food and Nutrition Service, Supplemental Food Programs Division, “The Integrity Profile (TIP) Report, Fiscal Year 2005,” <http://www.fns.usda.gov/wic/tip/tipreport2005.htm>).
⁵⁰ *Id.* A “WIC-only” vendor is a vendor that derives all or nearly all of its annual food sales revenue from WIC food instruments; an “above-50-percent” vendor is a vendor who derives more than fifty percent of its annual food sales revenue from WIC food instruments. *Id.*
⁵¹ Frazão & Oliveira, *supra* note 2, at 9.
⁵² Vermont Department of Health, For Vendors, <http://www.healthvermont.gov/wic/vendors.aspx>.
⁵³ Vermont Department of Health, About WIC FAQ, <http://www.healthvermont.gov/wic/about.aspx#foods>.
⁵⁴ *Id.*

state or local WIC agency.⁵⁵ Currently, Mississippi is the only WIC state agency that utilizes such a system.⁵⁶ As will be described in more detail below, Mississippi participants receive a paper voucher from the local WIC clinic, which the participant then takes to their county food center to select their allotted food items. In Mississippi, a WIC participant picks up their food allotment once per month.

WIC Program Impact

The WIC program has been shown to improve the health of its recipients in various ways.⁵⁷ WIC participation has proven beneficial in improving numerous birth outcomes as well as in enhancing diet and diet-related outcomes.⁵⁸ For example, WIC participation has been found to be associated with increased birth weight, fewer preterm births, and longer gestational age.⁵⁹

Approximately 113,000 children and young adults are alive today who would have died without WIC intervention.

USDA studies have also shown that WIC lowers infant mortality by approximately one-quarter to two-thirds among the Medicaid beneficiaries who participate in WIC compared to Medicaid beneficiaries who do not participate in WIC, and it estimates that approximately 113,000 children and young adults are alive today who would have died without WIC intervention.⁶⁰

With respect to diet and diet-related outcomes, studies demonstrate that WIC participation has positive outcomes for women and children.⁶¹ For example, in the area of iron-deficiency anemia, a serious health concern, studies illustrate a positive correlation between WIC participation and mean levels of hemoglobin or hematocrit, leading to a reduction in the incidence of anemia.⁶² Further, the nutritional quality and density of the diet of WIC recipients is enhanced through the provision of a healthy diet, specifically tailored so that recipients have higher mean intakes of iron, vitamin C, vitamin B6, and other crucial nutrients, and there are positive effects on the intakes of ten key nutrients without an adverse effect on fat or cholesterol for recipients.⁶³

Through these types of improved birth and diet-related outcomes for women and children, WIC

⁵⁵ Frazão & Oliveira, *supra* note 2, at 9.

⁵⁶ *Id.*

⁵⁷ It should be noted that while the majority of existing studies do find a positive impact of WIC on birth rates and other outcomes, there is some debate. Research across the different participation groups has been uneven and some researchers highlight the selection bias, simultaneity bias, and the complexity of health outcomes as problems in definitively finding a positive program impact. See Frazão & Oliveira, *supra* note 2, at 58.

⁵⁸ It should also be noted that in addition to the birth and dietary outcomes discussed as follows, WIC has also been found to significantly improve the rates of childhood immunization, increase the likelihood that enrolled children have a regular source of medical care, improve the growth of nutritionally at-risk infants and children, improve the dietary intake of pregnant and postpartum women, improve weight gain in pregnant women, increase the likelihood of pregnant women receiving earlier prenatal care, and help get children ready to start school. *Id.*

⁵⁹ Food Research & Action Center, WIC in The States: Thirty-One Years of Building a Healthier America, available at http://frac.org/newsite/wp-content/uploads/2009/09/full_report.pdf.

⁶⁰ *Id.*

⁶¹ United States Department of Agriculture, Food and Nutrition Service, "How WIC Helps," available at <http://www.fns.usda.gov/wic/aboutwic/howwichelps.htm>.

⁶² Frazão & Oliveira, *supra* note 2, at 61.

⁶³ United States Department of Agriculture, Food and Nutrition Service, "How WIC Helps," available at <http://www.fns.usda.gov/wic/aboutwic/howwichelps.htm>. *Id.*

It is estimated that every dollar spent on prenatal WIC results in savings of between \$1.77 and \$3.13 in Medicaid costs for newborn infants and their mothers.

has been shown to be effective in decreasing health care costs. For example, it is estimated that every dollar spent on prenatal WIC results in savings of between \$1.77 and \$3.13 in Medicaid costs for newborn infants and their mothers.⁶⁴ In this way, WIC impacts not only individual recipients, but also the health care system as a larger whole.

Finally, through the provision of supplemental food, nutrition education, and referrals, WIC may

provide an important tool in the fight against the growing United States obesity epidemic. Obesity has become a serious and widespread health problem, affecting everybody – women and men, adults and children.⁶⁵ In 2009, only two states in the nation (Colorado and the District of Columbia) had an obesity rate of less than twenty percent.⁶⁶ Thirty-three states had a prevalence of obesity equal to or greater than twenty-five percent and nine of these states (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and West Virginia) had a prevalence of obesity equal to or greater than thirty percent.⁶⁷ In 2008, 14.6 percent of American children between two and five years old were obese, which is almost triple the rate in 1971.⁶⁸ Although “[d]etermining whether food assistance programs have a direct or indirect effect on obesity is a complex issue,”⁶⁹ there is increasing evidence that the WIC program may be effective in aiding to combat this growing health problem, as those who are food insecure often eat the least nutritious food.⁷⁰ Because of this connection, WIC may prove to be an increasingly important tool in the fight against obesity.

⁶⁴ Food Research & Action Center, WIC Fact Sheet, available at <http://www.frac.org/pdf/cnwic.pdf>; see also Frazão & Oliveira, *supra* note 2, at 58 (referring to a study published in 1990 by Devaney et al. based on data from five states).

⁶⁵ *Id.* Adults with a body mass index (BMI) of 30 or above are considered obese.

⁶⁶ Centers for Disease Control & Prevention, Obesity and Overweight for Professionals: Data and Statistics: U.S. Obesity Trends, available at <http://www.cdc.gov/obesity/data/trends.html#State>.

⁶⁷ *Id.*

⁶⁸ Food Research & Action Center, Making WIC Work for Multicultural Communications: Practices in Outreach and Nutrition Education, available at http://frac.org/newsite/wp-content/uploads/2009/09/wic_multicultural_communities.pdf [hereinafter Food Research & Action Center, Making WIC Work].

⁶⁹ Helen H. Jensen & Parke E. Wilde, *More Than Just Food: The Diverse Effects of Food Assistance Programs*, 25 CHOICES (2010).

⁷⁰ See, e.g., Alvin Powell, *Twin Dangers: Malnutrition and Obesity*, HARVARD GAZETTE, April 27, 2011, <http://news.harvard.edu/gazette/story/2011/04/twin-dangers-malnutrition-and-obesity/> (discussing a Harvard Medical School symposium on the connection between the “twin dangers” of malnutrition and obesity); *Spotlight: Fighting Hunger – and Obesity*, Agriculture and Consumer Protection Department, Food and Agriculture Organization of the United States (May 15, 2011), <http://www.fao.org/ag/magazine/0602sp1.htm> (commenting on the “double burden” of malnutrition, particularly in developing countries, consisting of the persistence of undernutrition and the “rapid rise in overweight, obesity and diet-related chronic diseases”); Malnutrition and Obesity Increasingly Co-Exist in Global Community, Science Daily (August 5, 2005), <http://www.sciencedaily.com/releases/2005/08/050805111232.htm> (noting studies that demonstrate and document the increasing connection between malnutrition and obesity within one community, and often within one household such that “food insecurity . . . exists side by side with problems of obesity and chronic nutrition-related diseases . . .”).

IV. Mississippi WIC

The WIC program in Mississippi is managed by the Mississippi State Department of Health (“MSDH”) and in fiscal year 2009, the program served 110,537 persons, constituting close to four percent of the state’s total population.⁷¹ The number of persons served in fiscal year 2010 is slightly lower, at 102,224 individuals.⁷² The distribution across the categories of WIC participants in Mississippi for fiscal year 2010 was as follows (average per month): 9,679 pregnant women, 1,984 breastfeeding women, 8,205 postpartum women, 26,552 infants, and 53,038 children.⁷³

In fiscal year 2010, Mississippi received a total federal grant of \$98,986,082, with \$74,910,764 of that constituting the state’s food grant and \$24,075,318 constituting the NSA grant.⁷⁴ The Mississippi State Board of Health spent \$63,655,415 on food benefits and \$20,501,173 on administrative NSA costs in 2010.⁷⁵ The unspent federal money is returned to USDA to be redistributed, and under-spending affects the size of the federal grant Mississippi will receive in the following year.⁷⁶

WIC Certification

Mississippi WIC applicants, under federal policy, must apply in person for WIC benefits. Applicants therefore must go to their local WIC office (located at county health departments and community clinics situated throughout the state) with proof of income,⁷⁷ proof of residence,⁷⁸ and proof of identification.⁷⁹ A nutritional assessment, consisting of height and

⁷¹ United States Department of Agriculture, Food and Nutrition Service, Program Data, “WIC Program Annual Participation,” available at <http://www.fns.usda.gov/pd/26wifypart.htm>. This population number and those that follow do not include persons that are part of Indian tribes. In 2009, 940 Choctaw Indians in Mississippi also received WIC benefits, which were administered by the tribe and not by MSDH. *Id.* The percent population was calculated using the U.S. Census Bureau estimate of Mississippi’s population in 2009 as 2,951,996. U.S. Census Bureau, State & County Quick Facts, Mississippi, available at <http://quickfacts.census.gov/qfd/states/28000.html>.

⁷² United States Department of Agriculture, Food and Nutrition Service, Program Data, “WIC Program Annual Participation,” available at <http://www.fns.usda.gov/pd/26wifypart.htm>. Kathy Burk, the Mississippi WIC Program Director, did not have a specific explanation for the slightly lower number of persons served by WIC in Mississippi in 2010, but did note that she believed the number of persons served by WIC across the country had also dropped. Telephone Interview with Kathy Burk, Program Director, Mississippi WIC (Jan. 28, 2011).

⁷³ United States Department of Agriculture, Food and Nutrition Service, “WIC Agenda Level Monthly Spreadsheet,” dated as of Jan., 2011, <http://www.fns.usda.gov/pd/wicmain.htm>.

⁷⁴ United States Department of Agriculture, Food and Nutrition Service, “Summary of FY 2010 Grants,” available at <http://www.fns.usda.gov/wic/fundingandprogramdata/grants2010.htm>. This number and those that follow do not include awards given to Indian tribes.

⁷⁵ United States Department of Agriculture, Food and Nutrition Service, “WIC Program: Food Cost,” available at [http://www.fns.usda.gov/pd/23WICAdm\\$.htm](http://www.fns.usda.gov/pd/23WICAdm$.htm); United States Department of Agriculture, Food and Nutrition Service, “WIC Program: Nutrition Service and Administrative Costs,” available at [http://www.fns.usda.gov/pd/23WICAdm\\$.htm](http://www.fns.usda.gov/pd/23WICAdm$.htm).

⁷⁶ Telephone Interview with Kathy Burk, Program Director, Mississippi WIC (Jan. 28, 2011).

⁷⁷ Proof of income can include a current pay stub, current tax forms, or proof of Medicaid, TANF, or SNAP enrollment. Mississippi State Department of Health, WIC Nutritional Program, available at http://www.msdh.state.ms.us/msdhsite/_static/41,0,128.html.

⁷⁸ Can include a piece of mail with address, a valid driver’s license, or a mortgage/rental agreement. Mississippi State Department of Health, WIC Nutritional Program, available at http://www.msdh.state.ms.us/msdhsite/_static/41,0,128.html.

weight measurements, blood tests, and question/answers on diet and exercise, is also completed at the time of application at the WIC office. The determination that an applicant is qualified to receive WIC benefits is typically made the same day as the application.

WIC participants are generally eligible to receive benefits for a six-month period, with federal statutory discretion to states to lengthen that period.⁸⁰ Mississippi does not utilize that discretion, choosing to certify applicants for six-month periods.⁸¹

WIC Benefits

Once an applicant has been approved for WIC benefits, they become entitled to the supplemental food packages, nutrition education, and referrals to other health and social services guaranteed by the program. As mentioned above, in contrast to the forty-nine other states in the nation, Mississippi utilizes a direct distribution food delivery system for recipients, such that WIC participants pick up their authorized supplemental food from storage facilities operated by MSDH.

Mississippi has nine Public Health Districts, each of which is composed of between six and eleven counties, and contains between eight and ten WIC distribution centers.⁸² Of the eighty-two Mississippi counties, seventy-three have only one WIC food center; of the nine counties with more than one center, seven have two centers, one has three, and one has four.⁸³ Eight of the ninety-three WIC food distribution centers are open less than five days a week and only one distribution center is open on the weekend (Saturdays from 8am until noon).⁸⁴ With the exception of six food centers located in larger counties (that stay open until between 6pm and 8pm), the WIC distribution centers are open from 8am until 5pm.⁸⁵

After certification, the WIC participant is authorized as a “30 day-1 pick up” or a “60 day-2 pick ups,”⁸⁶ and given an appointed time at which he/she may go to the approved distribution

⁷⁹ Proof of residence can include a valid driver’s license, a social security card, or a valid passport. Mississippi State Department of Health, WIC Nutritional Program, *available at* http://www.msdh.state.ms.us/msdhsite/_static/41,0,128.html.

⁸⁰ 7 C.F.R. § 246.7 (2010).

⁸¹ Mississippi State Department of Health Women, Infants, and Children (WIC), FY 2011 WIC Policy and Procedure Manual, Section I, page 5.

⁸² See Mississippi State Department of Health, County Health Offices by District, *available at* http://www.msdh.state.ms.us/msdhsite/_static/19,0,166.html (for county health offices and WIC distribution center locations).

⁸³ The counties with more than one WIC distribution center are: Tallahatchie (two distribution centers); Marshall (two distribution centers); Bolivar (two distribution centers); Sunflower (two distribution centers); Washington (two distribution centers); Chickasaw (two distribution centers); Monroe (two distribution centers); Hinds (four distribution centers); and Harrison (three distribution centers). *Id.* See also Mississippi State Department of Health, Women, Infants and Children (WIC), FY 2010 State Policy and Procedure Manual, Section X, page 1.

⁸⁴ The distribution centers that are open less than five days a week are: Carrollton (two days/week); Ruleville (three days/week); Okolona (three days/week); Ackerman (three days/week); Eupora (three days/week); Utica (three days/week); DeKalb (three days/week); and Raleigh (three days/week). *Id.* The distribution center open Saturday from 8 to noon is Meridian. Interview with Kathy Burk, Program Director, Mississippi WIC, Jackson, Miss. (June 9, 2011).

⁸⁵ Telephone Interview with Kathy Burk, Program Director, Mississippi WIC (Jan. 28, 2011) (providing the hours of the Mississippi food centers).

⁸⁶ Mississippi State Department of Health, Women, Infants, and Children (WIC), FY 2011 WIC Policy and Procedure Manual, Section IV, page 29.

center, although the applicant may choose to ignore the allotted time.⁸⁷ At the distribution center, the WIC participant is given a piece of paper – similar to the vouchers given to WIC participants in other states – listing the amount and type of approved foods in their benefits package. According to federal requirements, participants are allotted some or all of following: milk, eggs, beans, juice, canned tuna, cereals, peanut butter, cheese, fruits and vegetables, and infant formula. The person may then choose specific types and brands of appropriate foods from the selection available at the warehouse, which is set up in a similar manner to a regular retail store. At a typical distribution center, the selection available to participants is moderate but not extensive, including for instance, a selection of up to eight cereals, up to four juices, up to seven fruits and vegetables, and up to four legumes.⁸⁸

In addition to the supplemental foods, WIC recipients receive health education and health referrals. The nutrition education provided to WIC participants takes the form of both individual counseling and group classes (including group discussion, audiovisual materials and kiosk-based trainings), which may take place at the county health department and/or the food distribution center, depending on the space available. The nutrition counseling covers a range of topics, including healthy eating, healthy beverages, the importance of exercise, the dangers of alcohol/drug use, and the importance of breastfeeding.⁸⁹ Mississippi WIC participants are required to participate in a nutrition education class at least twice during each certification period (i.e. at least every three months).⁹⁰ The health referrals are to programs such as Medicaid, TANF, SNAP, Maternity Services, Immunizations, and Early Periodic Screening, Diagnosis and Treatment (EPSDT).⁹¹

Farmers' Market Nutrition Program

The Mississippi WIC Farmers' Market Nutrition Program (FMNP) was started in 1998, at first targeting a small number counties and providing benefits of \$14 per recipient. Today, WIC FMNP is operational in seven counties (Bolivar, Hinds, Holmes, Lauderdale, Noxubee, Sunflower, and Warren) and provides benefits of \$15 per recipient per year (five checks valued at \$3 each).⁹² Specially printed checks are provided on a one-time basis to WIC participants in the selected counties. These checks may be used from the time they are issued (in June or July) until October at authorized farmers markets. Farmers markets are selected, authorized, and trained by the Mississippi Department of Agriculture and Commerce ("MDAC") and MSDH based on specific criteria, including proximity to WIC centers, WIC target nutrition areas, the stability and viability of the farmers market, and types of farm produce available.⁹³ Farmers or market vendors who are authorized to accept the FMNP vouchers deposit them into a bank account, the same as

⁸⁷ The following information on the workings of the distribution centers and nutrition education was collected through telephone conversations conducted between January and March 2011, with various staff persons at a selection of Mississippi health department offices and food distribution centers.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Mississippi State Department of Health, Women, Infants and Children (WIC), FY 2010 State Policy and Procedure Manual, Section VII, page 1.

⁹¹ *Id.* at Section I, page 7.

⁹² Mississippi Department of Agriculture and Commerce, Mississippi Farmers Market Nutrition Program, Program Overview, available at http://www.mdac.state.ms.us/n_library/programs/mfmnp/mfmnp_program.html. Note that the WIC FMNP program is separate from the Senior FMNP program which also operates in Mississippi but is funded separately and operates in different counties with different voucher amounts.

⁹³ *Id.*

they would a normal personal check. The most recent annual redemption rate for the state is forty-four percent, relatively low in comparison to other FMNP state programs.⁹⁴

The median annual funding level for a state FMNP is around \$300,000, and in general, but not exclusively, there is a correlation between state population and FMNP funding.⁹⁵ In fiscal year 2010, Mississippi received \$78,117 from the USDA for FMNP, a just over \$3,000 increase from the previous four years, but still a small amount of funding for the program.⁹⁶ Thirty-one states received higher FMNP grants that same year, including states similarly situated to Mississippi, such as Alabama (\$137,252), Arkansas (\$189,632), Georgia (\$1,056,293), Florida (\$283,709), New Mexico (\$304,101), South Carolina (\$128,669), and Texas (\$1,277,117).⁹⁷ The reason for the limited funding in Mississippi is that the Mississippi WIC FMNP program started small, targeting a few counties and limiting benefits to \$14 per recipient. However, before the program could grow, the USDA changed the WIC state funding structure and as a result froze state funding levels, leaving Mississippi with a small program.

V. Barriers in the Mississippi WIC Program

In October 2010, there were twenty-six counties in Mississippi with WIC participation rates at or below 70%. . . . In some counties, the participation rate is as low as 50%.

Various barriers exist within the Mississippi WIC program, which undermine the efficient execution of the program. Most of these barriers are a result of the current food distribution system. The use of the direct distribution system in Mississippi leads to decreased access to and consumption of nutritious foods, by both WIC participants and the non-WIC general public; it requires the state government to staff and operate food

centers, which operate as less efficient retail outlets; and it hinders the development of and potential revenue to small, and particularly rural, grocers and farmers markets. While the direct distribution system originally served as an effective way to provide a high number of WIC participants their benefits,⁹⁸ the system has outlived its utility.

The direct distribution system is not ideal for WIC beneficiaries, as it is often inconvenient and not customer-friendly. The WIC participation rates in Mississippi demonstrate some of the problems. In October 2010, of the 131,155 potentially eligible WIC recipients statewide (based on income and population data), 75.8% actually participated (meaning they in fact registered for

⁹⁴ Harvard Law School Mississippi Delta Project and Delta Directions, Food Assistance Programs and Mississippi Farmers Markets, Prepared May 2010, Updated November 2010, *available at* http://www.deltadirections.org/programs_initiatives/initiative.php?id=32.

⁹⁵ United States Department of Agriculture, Food and Nutrition Service, "FMNP Grant Levels," *available at* <http://www.fns.usda.gov/wic/fmnp/FMNPgrantlevels.htm>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ One common rationale for the initial success and popularity of the direct distribution system is the system's connection to and integration within the county health department system as a whole. Mississippi traditionally has centered its health care in county health departments across the state and reflected a strong primary care mind-set. The direct distribution system, with its county food centers, fit squarely within such a system.

WIC), totaling 99,458 persons.⁹⁹ In certain counties, however, the participation rates are much lower, for example: 54.7% in Coahoma County, 52.6% in Quitman, 55% in Carroll, 57.5% in Washington, 50.8% in Lowndes, and 45.7% in Sharkey/Issaquena.¹⁰⁰ In total, in October 2010, there were twenty-six counties with participation rates at or below 70%.¹⁰¹

These low WIC participation rates stand in contrast to SNAP participation rates in similar areas, which are generally higher, even though SNAP often serves the same or a similar population.¹⁰² For example, in Lowndes County, approximately 78% of persons eligible for SNAP participate in the program (compared to 50.8% for WIC), in Coahoma County, 85% eligible participate (compared to 54.7% for WIC), and in Washington County, SNAP participation is approximately 90% (compared to 57.5% for WIC).¹⁰³ This quick comparison of WIC to SNAP participation rates demonstrates that it is likely the structural and procedural barriers to the WIC program – and not a general lack of knowledge about or failure to use federal assistance programs – that are causing the low participation rates.

The following section will highlight the barriers that exist in the current system for WIC participants (namely transportation difficulties, lack of real choice, and increased stigma), non-WIC participants (less income and missed revenue streams), and for the state of Mississippi itself (higher cost and less efficiency).

Transportation Difficulties for WIC Participants

The direct distribution system in Mississippi does not serve WIC participants as efficiently and effectively as possible due to the fact that transportation is a huge barrier for those attempting to redeem their WIC benefits. Participants are not only required to travel to their county health department at least every six months for recertification and at least every three months for nutrition education, but in the Mississippi direct distribution system, WIC beneficiaries are further required to travel once a month to the food warehouse to pick up their allotment of food – and sometimes are forced to travel more than once a month for food if they are unable to pick up their entire package due to shortages at the food center on their initial trip.

⁹⁹ Mississippi WIC Newsletter, December 2010.

¹⁰⁰ *Id.*

¹⁰¹ Those counties are: Coahoma, Panola, Quitman, Benton, Carroll, Leflore, Washington, Choctaw, Lowndes, Noxubee, Hinds, Sharkey/Issaquena, Simpson, Yazoo, Warren, Clarke, Jasper, Lauderdale, Neshoba, Smith, Adams, Jefferson, Walthall, Greene, Jackson, and Pearl River. *Id.*

¹⁰² As noted above, SNAP is the country's largest food and nutrition assistance program, providing monthly benefits to help low income households obtain the nutritious and healthy foods that they need. Eligibility criteria are set by the federal government; and broadly, the requirements stipulate that a household may have no more than \$2,000 in countable resources (although certain resources are not included in this calculation), and must meet both gross and net income tests, based upon 130% and 100% of poverty respectively. See United States Department of Agriculture, Food and Nutrition Service, "Supplemental Nutrition Assistance Program, Applicants and Recipients" available at http://www.fns.usda.gov/snap/applicant_recipients/eligibility.htm. In contrast, WIC participants must meet categorical, income, and nutritional risk eligibility criteria. Broadly, to receive WIC, a person must be a pregnant or breastfeeding woman, an infant, or young child; family income must fall below 185% of the poverty line; and a person must be deemed to be at nutritional risk. See *supra* notes 17–24 and accompanying text. Accordingly, while both groups of beneficiaries must meet income requirements (and also residential – in state – requirements), only WIC participants must meet categorical and nutritional risk requirements. The categorical and nutritional risk eligibility criteria consequently restrict WIC to a smaller category of persons, but, importantly, the income restrictions to receive SNAP are more restrictive than to receive WIC, making WIC available to a financially broader set of persons.

¹⁰³ County-by-County Review of SNAP/Food Stamp Participation, Food Research and Action Center, http://frac.org/wp-content/uploads/2010/07/ny_times_snap_poverty_formatted.pdf. Note that there are limitations to these numbers. See Technical Notes Regarding Limitations of the Data. *Id.*

Transportation in Mississippi, especially in very rural and low-income areas, is often difficult and sometimes impossible to obtain. Public transportation is not available in most parts of the states, and people often do not have access to cars, money for gas, and/or free time to travel during the WIC center hours (which are primarily during the work day).¹⁰⁴ For example, one study reported that in Coahoma County, close to twenty percent of residents do not have a vehicle (and the number of WIC eligible women with cars would likely be significantly lower).¹⁰⁵ While this statistic is merely illustrative of car ownership rates in one Mississippi Delta county, it is clear that many households do not have access to a vehicle, and with the exception of a few limited programs, public transportation is unavailable in most parts of the state. WIC recipients in Mississippi are obligated to make multiple trips within a single month – more than WIC recipients in other states – in order to receive their benefits, despite the fact of their limited access to transportation.

Further, because the WIC food centers only provide food for WIC recipients, it is much more difficult for WIC recipients to obtain a ride with a friend or family member to get there. Requiring WIC recipients to redeem their food benefits in a location that is separate from a place where neighbors and family need to go (i.e. a grocery store) makes it harder to simply carpool with someone to get access to their food. WIC recipients without their own cars are therefore required to request a separate trip to get to the food centers, a fact that clearly reduces redemption rates. A connected consequence of WIC food centers only providing WIC food benefits is the fact that individuals who are recipients of both SNAP and WIC cannot redeem their two sets of food benefits at the same place. These individuals are therefore forced to make at least two separate trips to obtain their food, which, as discussed, is problematic.

Reaching a food center therefore requires time and access – neither of which is consistently available to WIC beneficiaries. The inability for these persons to reach the food centers means that they are not consistently able to obtain the crucial supplemental nutrition they are designated to receive. The use of the direct distribution system in conjunction with the widespread transportation difficulties at best serves as a considerable inconvenience and at worst works to deny benefits to WIC participants.

Lack of Choice for WIC Participants

In addition to the problems in accessing the food warehouses, WIC participants in Mississippi do not benefit from as much choice as WIC participants do in a retail food delivery system. Although many of the food centers are set up as mini stores, enabling beneficiaries to walk

¹⁰⁴ See, e.g., HEALTH LAW & POLICY CLINIC OF HARVARD LAW SCHOOL & THE TREATMENT ACCESS EXPANSION PROJECT, MISSISSIPPI STATE SHARP REPORT, 59, available at <http://www.taepusa.org/LinkClick.aspx?fileticket=gC4f2VuUeIE%3d&tabid=56&mid=377>. The report discusses obstacles to accessing care for those living with HIV/AIDS in Mississippi and notes that:

Transportation is a challenge in both rural and more urban areas. Public transportation is virtually nonexistent in rural areas, and is limited even in more urban areas. Where public transportation exists (usually bus routes), service is often infrequent, or is set up in such a way that it is not efficient to get from place to place. . . . In poor, rural areas, many residents do not have cars. Even if households have a vehicle, family members may have to share access to it, and may not be able to afford gas, maintenance, or insurance costs. Cars may be unreliable over longer distances, such as highway travel; because of the rural nature of Mississippi, the nearest provider may be far away.

¹⁰⁵ John J. Green, Working Notes Relevant to Understanding Development, Location of Services and Transportation in the Mississippi Delta, Jan. 2009 (on file with authors).

around and choose their items, the available selection is limited, especially compared to the choices that participants would receive in a retail system. Selection is limited for Mississippi WIC participants due to the official state guidelines but also due to the amount of food the centers can and do stock in actuality. For example, one of the highest-choice WIC items is cereal. The Mississippi state guidelines allow for warehouses to stock twelve different types of adult cereals;¹⁰⁶ however, inquiries made of food centers demonstrated that most food distribution sites only have up to eight choices in types of cereal.¹⁰⁷ In looking at the selection available at a miscellaneous selection of other states, however, the choice is much greater: for example, Texas allows for eighteen different types of non-infant cereal,¹⁰⁸ Georgia allows for thirty-six different types of non-infant cereal;¹⁰⁹ and Arkansas allows for twenty-seven different types of non-infant cereal.¹¹⁰

The selection of fresh fruits and vegetables is another noteworthy example: Mississippi guidelines allow for non-infant WIC participants to choose from two fresh fruits (apples and oranges) and two fresh vegetables (carrots and sweet potatoes).¹¹¹ This is already a very limited set of options. However due to spoilage (improper refrigeration and/or storage)¹¹² and stocking problems (mis-ordering and/or delivery problems),¹¹³ WIC food centers do not always even have a choice of two fruits or vegetables.¹¹⁴ The majority of other states allow WIC beneficiaries to choose *any* fresh fruit and vegetable, with some limitations, such no white potatoes and no purchases from a prepared salad bar.¹¹⁵ Although clearly WIC participants in retail food delivery systems do not always have a choice of twenty-seven different types of cereal or every different type of fruit or vegetable every time they visit the store, the average retail store would likely have a greater selection than that available in the typical Mississippi food center, and further, WIC participants in other states are able to choose to shop at those retailers that stock their preferred cereal or produce items.

A further limitation on the choice – and nutritional benefit – available to WIC participants in Mississippi is the fact that fruits and vegetables spoil and the number of monthly food pick-ups

¹⁰⁶ Mississippi State Department of Health, WIC Food List, *available at* http://msdh.ms.gov/msdhsite/_static/41,0,128,508.html.

¹⁰⁷ Based on phone calls made to a selection of distribution centers across the state on January 13, 2010.

¹⁰⁸ Texas Department of State Health Services, Women, Infants, and Children Program (WIC), “Texas WIC Approved Foods,” *available at* http://www.dshs.state.tx.us/wichd/WICCatalog/PDF_Links/WIC-34%20Texas%20WIC%20Shopping%20Guide%20brochure.pdf.

¹⁰⁹ Georgia Department of Community Health, Georgia’s WIC Food Packages, *available at* http://wic.ga.gov/pdfs/wic/WEBGWICEnglishAFL_2.pdf.

¹¹⁰ Arkansas Department of Health, Arkansas WIC Approved Food List, *available at* <http://www.healthy.arkansas.gov/programsServices/WIC/Documents/FoodLists.pdf>.

¹¹¹ Mississippi State Department of Health, WIC Food List, *available at* http://msdh.ms.gov/msdhsite/_static/41,0,128,508.html.

¹¹² For example, Mississippi WIC noted that “[t]here have been a lot of recent problems with sweet potato spoilage.” Mississippi WIC Newsletter, July 2010. The primary reason given for the recent problems with sweet potatoes was unfortunate weather conditions, resulting in the necessity of importing sweet potatoes from California. While this current issue has been resolved, the fact remains that combating spoilage, stocking, and delivery problems remain an issue.

¹¹³ On a January 2011 visit to the WIC food distribution center in Sumner (Tallahatchie County), for example, a sign on the front door stated that the center would not have oranges for another five days (until the next Wednesday).

¹¹⁴ It is important to note that, as discussed *supra*, fresh fruits and vegetables were only recently added to the WIC food packages. Accordingly, the spoilage problems may be attributable to the fact that Mississippi simply has not had time to update all the necessary food storage equipment.

¹¹⁵ See, for example, allowable foods in Georgia, Texas, Louisiana, Michigan, and Arkansas.

is limited. Because recipients are allowed one pick up per month and are required to pick up their entire allotment of food at that time there is no way to pick up a portion of their fruits and vegetables and then come back a week later to pick up another portion. Recipients, therefore, must either consume their entire thirty-day allotment of fruits and vegetables within a few days, so that they do not spoil, or they are left with spoiled fruits and vegetables, which they will not consume. In either scenario, recipients are not receiving the full nutritional benefit of the fruit and vegetable WIC allotment as they do not have the opportunity to eat fruits and vegetables throughout the entire month.

Increased Stigma for WIC Participants

There are also less tangible, but still legitimate, consequences for WIC participants through the use of the direct distribution system. The fact that beneficiaries of the WIC program are required to travel to a warehouse to collect food instead of having the ability to use a regular retail outlet may impact WIC participants as well. Among some populations, there exists a real stigma in receiving any type of government assistance. For example, in discussing the transition from paper vouchers to an EBT card (in both WIC and SNAP programs), many states cite the reduced stigma as a major benefit to participants.¹¹⁶ Enabling participants to use their WIC benefits in as discreet a manner as possible is an intangible, yet important, benefit to the recipient. Moving to a retail system would help to provide additional privacy and would enable WIC recipients to shop in a manner similar to everyone else. For example, a WIC recipient would be able to join someone on a trip to a general store and use her WIC benefits at that store, instead of requiring a separate trip to her food center.

Non-WIC Participants: The Cost to Small Grocers, Farmers and the General Public

The use of a direct distribution system also impacts a broader constituency in Mississippi, as many non-WIC participants are negatively impacted by the food center system. While the effects on non-WIC participants obviously are not the focus of the federally mandated WIC program, the broader, statewide effects should be of concern to MSDH and state policymakers. The continued use of a direct distribution system negatively impacts both small grocers and retailers and non-WIC recipients, especially those living in rural areas.

Small grocers and retailers are negatively impacted by the current WIC system in Mississippi, as they are not able to participate in the WIC revenue stream. In a direct distribution system, small grocers are not involved in any part of the economic transaction: the state purchases the food, the state stocks and distributes the food at a food centers, and the WIC participant brings the food home. The fact that small Mississippi retailers are completely shut out from this economic exchange hinders their development. In fiscal year 2010, Mississippi received \$74,910,764 for WIC food from the federal government;¹¹⁷ that approximately \$74 million went to the state to purchase food in bulk, at discount, from large suppliers. Small grocers and retailers across the state are not able to benefit from any of that federal money. Small retailers, especially in rural and low-income areas, already face many economic and business challenges in keeping their

¹¹⁶ See, e.g., State of Hawaii, Department of Human Services, SNAP Facts, *available at* <http://hawaii.gov/dhs/self-sufficiency/benefit/FNS> (stating that “EBT maintains the direct link between SNAP benefits and food purchases, while reducing the cost and stigma associated with the paper coupon system”); State of Missouri, Missouri Electronic Benefits Transfer (EBT) Info for Retailers, *available at* <http://www.dss.mo.gov/fsd/fstamp/ebt/retailer.htm> (finding “Many cardholders have said that EBT reduces the stigma associated with food stamp coupon use”).

¹¹⁷ United States Department of Agriculture, Food and Nutrition Service, “Summary of FY 2010 Grants,” *available at* <http://www.fns.usda.gov/wic/fundingandprogramdata/grants2010.htm>.

businesses afloat; the current WIC program, instead of helping, hinders the ability of these retailers to succeed and grow their own small businesses.

In addition to small grocers across the state, farmers markets are also negatively impacted by Mississippi's direct distribution system, as Mississippi farmers markets do not economically benefit from WIC and WIC FMNP in the way that farmers markets in other (retail distribution) states do. First, fresh fruits and vegetables now compose an important portion of the basic WIC food package. In many states that use a retail distribution system, WIC participants have the ability to use their WIC fruit and vegetable allotment at farmers markets, in addition to regular retailers and grocers.¹¹⁸ These vouchers would be able to be spent at farmers markets above and beyond the small amount of money made available through the WIC FMNP program each year (currently, WIC FMNP provides only \$15 per person per year in Mississippi). Just as the spending of WIC vouchers at small, local retailers helps those businesses, the spending of WIC vouchers at farmers markets provides an important economic boost for farmers.

Similarly, the direct distribution system also hinders the success of WIC FMNP by impairing redemption rates. Mississippi WIC FMNP participants receive \$15 per year to use at farmers markets. Unfortunately, this amount is often not large enough to make it economically viable or worthwhile for participants to make a separate trip to a farmers market in addition to the food center, which are often miles apart. In Mississippi, where many farmers markets are new and economically fragile, the ability of WIC participants to utilize their fruit and vegetable allotment as well as their WIC FMNP coupon at farmers markets would create a clear and significant economic incentive to shop at farmers markets and would encourage redemption of both the WIC benefits and FMNP vouchers, bringing more money into the hands of small farmers.

The current Mississippi WIC system also negatively impacts another crucial and broader state constituency: non-WIC Mississippians, especially those in rural and/or low-income areas, because they are not given access to as many healthy, nutritious foods (whole grains, fruits and vegetables, and other WIC-approved foods) as would be possible under a retail food delivery system. In many regions of Mississippi, primarily in rural, low-income areas, residents live in food deserts, meaning they do not have easy or convenient access to healthy foods.¹¹⁹ Research has shown, for example, that rural counties in the Mississippi Delta average one supermarket per 190.5 square miles and that over seventy percent of the low-income population in the region must travel thirty miles or more to visit a supermarket or large grocery store.¹²⁰ The presence of these food deserts across the state means that residents have extremely limited access to nutritious foods, thus fewer healthy foods are consumed in those areas. One study has found, for example, that adults living in food desert counties in rural Mississippi are twenty-

¹¹⁸ Such states include, for example, Montana, Oklahoma, Rhode Island, Massachusetts, and Wisconsin.

¹¹⁹ As it is still a relatively new term, the precise definition of a "food desert" varies. One set of research defines a food desert as an area where "50 percent or more of the population experiences low access to a supermarket, supercenter or wholesale club" with "low access" defined as a situation in which individuals are required to travel more than ten miles to such a retailer. Troy Blanchard & Thomas Lyson, *Food Availability and Food Deserts in the Nonmetropolitan South*, Number 12, April 2006, available at http://srdc.msstate.edu/publications/other/foodassist/2006_04_blanchard.pdf. Another definition, included in the 2008 Farm Bill, states more broadly that a food desert is an "area in the United States with limited access to affordable and nutritious food, particularly such an area composed of predominantly lower income neighborhoods and communities." Farm Bill, H.R. 6124, 110th Congress, 2d Session, Title VI, Sec. 7527.

¹²⁰ Blanchard & Lyson, *supra* note 119.

three percent less likely to consume the recommended fruits and vegetables than those in counties that have sufficient supermarkets (controlling for age, sex, race, and education).¹²¹

The scarcity of low cost, high quality food retailers in these areas thus clearly creates a serious health risk for all Mississippians. Although these food deserts exist for a variety of reasons, one factor is the current direct distribution system: Mississippi’s system of direct distribution means that small grocers have less financial incentive to stock the nutritious foods designated under the WIC guidelines. Under a retail WIC system, authorized WIC vendors are required to stock specific amounts of WIC foods, and under a retail WIC system those vendors know that WIC participants will spend their vouchers at their stores. Thus, retailers will stock these nutritious foods, and these foods will be available for purchase not just for WIC participants but also for all customers, providing a general public benefit.

Inefficiencies for the State of Mississippi

The current direct distribution system is also not ideal for the state of Mississippi. Mississippi is the only state in the nation that still uses a direct distribution food delivery system – every other state (with the exception of Vermont, which employs a home delivery system) uses a retail food delivery system. Although Mississippi’s current system does enable the state to purchase WIC food benefits in bulk, thereby taking advantage of discounts,¹²²

All other WIC state agencies “have found that [direct distribution] systems were not feasible due to the costs associated with administering the program or because of [their] impact on participants.”

The primary costs of running the food centers in Mississippi (as opposed to having a retail system) are: food center staff salaries (about \$500,000 per month),¹²³ building leases (eighty-nine leases, ranging from \$825 to close to \$13,000 in monthly rent payments, excluding utilities),¹²⁴ and buying the food itself (in fiscal year 2010, totaling \$63,655,415).¹²⁵ These food-related administrative costs come from the food grant portion of Mississippi’s federal WIC grant (which totaled \$74,910,764 in fiscal year 2010).¹²⁶ Despite buying in bulk, these and other system-related expenditures make Mississippi’s WIC program a very expensive program to run, and costs are higher in Mississippi than in comparable states. For example, Mississippi’s food

¹²¹ Sarah Treuhaf & Allison Karpyn, *The Grocery Gap: Who Has Access to Healthy Food and Why It Matters*, Policy Link & The Food Trust, at 8 (2010).

¹²² Frazão & Oliveira, *supra* note 2, at 9.

¹²³ About 250 persons work at food centers across the state, receiving salaries ranging from \$22,000 to \$25,000. Telephone Interview with Kathy Burk, Program Director, Mississippi WIC (Jan. 20, 2011 & Jan. 28, 2011) (providing the number of staff employed and the average salaries).

¹²⁴ Mississippi State Department of Health, Women, Infants & Children (WIC) Program, WIC Monthly Rent Payments, February 2011.

¹²⁵ United States Department of Agriculture, Food and Nutrition Service, Program Data, “WIC Program: Food Costs,” available at [http://www.fns.usda.gov/pd/24wicfood\\$.htm](http://www.fns.usda.gov/pd/24wicfood$.htm).

¹²⁶ United States Department of Agriculture, Food and Nutrition Service, “Summary of FY 2010 Grants,” available at <http://www.fns.usda.gov/wic/fundingandprogramdata/grants2010.htm>.

costs exceed that of Missouri by several thousand dollars, even though Missouri provides food packages to fifty thousand *more* people than does Mississippi.¹²⁷

The state WIC programs in Arkansas, Colorado, and Oklahoma serve the closest equivalent number of persons to Mississippi,¹²⁸ and yet Mississippi's food costs exceed the costs incurred by each of these three states by an average of \$15,000 in fiscal year 2010.¹²⁹ Breaking down those costs by individual participant, the average monthly food cost per person in Mississippi is \$52.36, compared to \$41.08, \$35.80, and \$36.58 in Arkansas, Colorado, and Oklahoma respectively.¹³⁰ In fact, Mississippi has the *highest average food cost per person* of all the state WIC programs.¹³¹ Thus, despite the fact that Mississippi is able to purchase food in bulk, the WIC food distribution system is clearly not economically efficient as it incurs higher food costs and other administrative costs not seen in other states.

VI. Recommendations for Mississippi

Mississippi has a unique opportunity in that MSDH has the ability to revolutionize the WIC program with minimal costs and widespread short- and long-term benefits to the state. Although change always comes with hurdles and trade-offs, and so will be the case here, we believe that the hurdles can be overcome and that the benefits outweigh the costs. Mississippi should consider a variety of changes to the current WIC system, with the primary change involving the current direct distribution food delivery system. In addition, important adjustments to the current food center system as well as to the existing nutrition program and program outreach should also be considered. We believe that making the following changes will do much small-scale and short-term good, improving the daily convenience and healthy food consumption of the average WIC participant. More importantly, we believe that making these changes would contribute much to Mississippi and its residents on a larger-scale and in the long-term, aiding in the state's fight against food insecurity, obesity, and the stagnant economic environment. Below are our recommendations.

(1) Switch from a direct distribution food delivery system to a retail food delivery system.

The Mississippi State Department of Health should change the food delivery system from a direct distribution system (participant obtains food package at state-run food center) to a retail delivery system (participant obtains food package by using state-issued food vouchers or EBT cards at authorized retailers). Making such a change would better serve WIC participants and the purpose of WIC, would stimulate small business growth and farmers market success, and

¹²⁷ In fiscal year 2010, total participation in Missouri was 151,224 and total food costs were 60,797,452. United States Department of Agriculture, Food and Nutrition Service, Program Data, *infra* notes 128, 129.

¹²⁸ Total participation in the state WIC program in fiscal year 2010 in Mississippi was 101,307; in Arkansas 98,963; in Colorado 109,459; and in Oklahoma 105,104. United States Department of Agriculture, Food and Nutrition Service, Program Data, "WIC Program: Total Participation," available at <http://www.fns.usda.gov/pd/26wifypart.htm>.

¹²⁹ Total food costs in the state WIC program in fiscal year 2010 in Mississippi was \$63,655,415; in Arkansas 48,790,571; in Colorado 47,028,153; and in Oklahoma 46,136,839. United States Department of Agriculture, Food and Nutrition Service, Program Data, "WIC Program: Food Cost," available at [http://www.fns.usda.gov/pd/24wicfood\\$.htm](http://www.fns.usda.gov/pd/24wicfood$.htm).

¹³⁰ United States Department of Agriculture, Food and Nutrition Service, Program Data, "WIC Program: Average Monthly Benefit Per Person," available at [http://www.fns.usda.gov/pd/25wifyavgfd\\$.htm](http://www.fns.usda.gov/pd/25wifyavgfd$.htm).

¹³¹ *Id.* Note that some Indian tribes, as well as Guam, Puerto Rico, and the Virgin Islands, have higher average monthly food costs per person. *Id.*

would increase the efficiency and effectiveness of state administration. Although there are barriers to switching to a new program, these barriers are not insurmountable. We recommend that the switch in food delivery systems begin with a pilot program, in a select county or counties, which can then be expanded. Transition and testing through a pilot program, in conjunction with the additional planning, support, and guidance as detailed below, will help to overcome the anticipated barriers.

Mississippi's current direct distribution food delivery system can and should be reformed so as to more fully comply with the federal mandate to "ensure adequate participant access to supplemental foods."¹³² Moving to a retail distribution system would grant WIC participants easier access to their supplemental food packages and provide them with a greater choice of nutritious foods. In a retail system, WIC beneficiaries receive their food instruments from the WIC office (or via monthly transfers into their account, if the state uses WIC EBT) and are then able to use those instruments at any authorized retailer that is convenient for them. Therefore, under a retail system, a WIC participant in Mississippi would not be required to make a separate trip each month to a food center, rather, the WIC recipient would be able to choose to shop at whatever small retailer, larger grocer, or corner store convenient to her location, transportation options, and schedule.

Further, because WIC recipients would be redeeming their food benefits in the same location where their neighbors and family members get their food, carpooling would be much easier. Additionally, those individuals on SNAP and WIC would be able to redeem both their food benefits in the same location. As indicated by the higher SNAP redemption rates noted above, individuals are clearly using their SNAP benefits at grocery stores, so it can be assumed that individuals participating in both programs will also use their WIC benefits on those trips. Such flexibility and convenience would increase utilization of WIC food benefits. WIC beneficiaries would also be able to redeem their benefits multiple times in a month, allowing them to consume fresh produce throughout the month rather than just in the week or so after their once monthly food pick up.

Similarly, under a retail system, WIC beneficiaries would have significantly more choice in their supplemental food packages. A single store in a retail system would likely have more choice than the Mississippi food centers, but even if a single store does not, the WIC recipient can choose among the authorized vendors and patronize the one that best meets their preferences. With more choice, participants will have the ability to purchase the nutritious foods they enjoy and therefore will consume those nutritious foods in higher quantities.

In addition to proving more beneficial to WIC recipients, moving to a retail delivery system would aid non-WIC participants, both through increased economic development via the growth of small grocers and through improved nutrition of the general public. The retail spending of WIC vouchers would be extremely beneficial to small grocers in Mississippi, providing a steady and substantial stream of revenue. Because these small grocers would have financial incentives (and would be required) to stock specific quantities of WIC foods, the general non-WIC public would also benefit through increased access to healthy foods in their local grocery stores.¹³³

¹³² 7 C.F.R. § 246.12(b) (2010).

¹³³ See, e.g., Treuhaf & Karpyn, *supra* note 121, at 8 ("Studies find that residents with greater access to supermarkets or a greater abundance of healthy foods in neighborhood food stores consume more fresh produce and other

There are thus clear benefits to implementing this change to the food system in Mississippi, but there are some significant hurdles in making such a modification as well. Major hurdles include: job loss for WIC employees, access problems in food deserts, and the general problems inherent in making a major statewide policy change, such as coordination, new equipment, and staff training. As noted above, we recommend making the switch from direct distribution to retail through an initial pilot program followed by statewide expansion. We recommend implementing a retail system first in a confined location, such as one county or one public health district that currently has a sufficient number and diversity of retailers who are willing to participate. In this way, much of the basic infrastructure would be put into place, and the major hurdles discussed below would be more easily addressed. Other factors to consider in determining where to locate the pilot program include the willingness and enthusiasm of local WIC staff, the number of WIC recipients in the county, and the status of local contracts (i.e. building rental agreements and staff contracts that may be nearing termination). After a successful pilot implementation, a retail system could then be implemented across the state, taking into account and addressing any hurdles that emerge through evaluation of the pilot.

The first major barrier in moving to a retail system would be the loss of jobs for the 250 people who currently staff the WIC food centers across the state.¹³⁴ Any job loss is not to be taken lightly and is a real downside to changing WIC distribution methods. It is not, however, so significant as to outweigh the substantial and broad-based benefits that would result from such a change, as outlined above. Additionally, as it will take some time for the state to implement such a change – whether the state implements a pilot program or not – all 250 people may not still be employed when change actually comes. Staff members retiring, moving, or switching jobs will mean that the number who in fact lose their jobs will likely be less than 250, for as they leave, the WIC Division, anticipating change, can decline to hire replacements.

Further, the state can facilitate services to help with job transitions for those who will lose their WIC jobs. For example, the state can provide re-training for the food center personnel to enhance their job prospects; establish some type of job program with the local grocers who, due to the increased customer base and inventory, will likely need to hire additional workers; or re-train the food center workers so that they can then work within the new retail system, as the state will need new personnel to manage and administer the new vendor portion of the WIC program. Finally, the purpose of the WIC program should be kept in mind: it is a nutrition and health program. The switch to a retail system would increase WIC participants' access to healthy foods and that consideration must be made a priority, in keeping with the purpose of WIC. Thus, although the job loss is a negative outcome of the food system switch, it should not prevent such a change.

Second, the presence of food deserts and lack of grocery stores does present a difficulty for Mississippi in transitioning from a direct distribution system to a retail system. A retail WIC food system cannot function if there are no easily accessible retailers that sell WIC-approved foods. Although certain parts of Mississippi, particularly the Delta, are lacking in sufficient retailers and particularly sufficient retailers that stock nutritious, WIC-eligible foods, such a hurdle is not so

healthful items. For every additional supermarket in a census tract, produce consumption increases 32 percent for African Americans and 11 percent for whites”).

¹³⁴ Telephone Interview with Kathy Burk, Program Director, Mississippi WIC (Jan. 20, 2011) (providing the number of staff employed at the Mississippi food centers).

prohibitive that the state should not consider transitioning. Other similarly situated states, which also face retail difficulties and food deserts, employ a retail WIC system. For example, among the southern states, Texas, Alabama, Arkansas, and Oklahoma have the highest percentage of non-metropolitan counties that are classified as food deserts.¹³⁵ These states, however, all successfully utilize a retail food delivery WIC system. Even in food deserts, there are retailers – whether a large grocery chain or a small corner store – and these retailers that do exist can be authorized as WIC vendors. Moreover, switching to a retail system will ensure that additional stores will be established in the areas that need them, and those new stores, as well as the existing stores, will stock approved WIC foods. If consumers have money to spend in their neighborhood, retailers will respond. Further, if the state chooses to implement retail via a pilot program, as noted above, we recommend implementing retail systems in the counties that are not food deserts first. In this way, those counties that do not face concerns about the sufficiency of retailers will make the transition first, giving some extra time for those counties that need to build up the number of retailers to do so. With or without a pilot program, however, the current lack of sufficient retailers and/or sufficiently stocked retailers is not a barrier that cannot be overcome: demand drives supply, and in a retail system, a steady and significant demand will exist for stores with WIC foods.

There is also the possibility of outside financing and program development to help attract and improve grocery stores and corner stores in current food deserts and other areas lacking. For example, the Pennsylvania Fresh Food Financing Initiative (“FFFI”) is a public-private financing partnership, led by the Food Trust, designed to attract supermarkets and grocery stores to underserved communities (or encourage existing retailers to invest in new equipment to stock produce) in order to increase access to healthy foods, stimulate investment in low-wealth communities, remove financing obstacles for supermarkets in poor communities, create more jobs, and prepare a qualified workforce.¹³⁶ FFFI functions as a grant and loan program to encourage supermarket development in underserved rural and urban neighborhoods and in Pennsylvania, it has successfully funded eighty-eight fresh food retail projects in thirty-four counties, creating or preserving more than 5,000 jobs and improving access to healthy food for more than half a million people.¹³⁷ The Food Trust is currently exploring opportunities for FFFI type projects in other states including Mississippi, thus making the food desert barrier to a retail WIC system much less of a serious concern. In fact, moving to a retail WIC system would encourage such FFFI investments, for it would ensure that funded grocery stores and corner markets would have a sufficient customer base upon which they could rely if they received FFFI funding. The new Healthy Food Financing Initiative (HFFI), founded in 2010, is another funding resource available nationally to assist grocery stores in areas with low food access. President Obama allocated \$400 million to the program in February of 2010,¹³⁸ to be used among the Treasury, USDA, and HHS, aimed specifically at addressing the problem of food deserts. HFFI

¹³⁵ Blanchard & Lyson, *supra* note 120.

¹³⁶ The Food Trust, Pennsylvania Fresh Food Financial Initiative, *available at* http://www.trfund.com/resource/downloads/Fresh_Food_Financing_Initiative_Comprehensive.pdf.

¹³⁷ The Food Trust, Supermarket Campaign, <http://www.thefoodtrust.org/php/programs/super.market.campaign.php>.

¹³⁸ U. S. Department of Health and Human Services News Release, “Obama Administration Details Healthy Food Financing Initiative” *available at* <http://www.hhs.gov/news/press/2010pres/02/20100219a.html>.

funds the development of grocery stores, small retailers, corner stores, and farmers markets in these areas.¹³⁹

Finally, in moving to a retail system, MSDH will have to confront the general hurdles that exist whenever a broad-based and significant policy change is made, including coordination, equipment, and training. Moving to a retail system will be a significant change, requiring much planning and coordination, but in the end the change will require less state administration than the current system, and there is plenty of support to help the state in making such a change. FNS provides various grant opportunities to help fund the transition to a retail system (see below for examples of such grant opportunities) and will also work with Mississippi WIC in that transition.

Despite the hurdles of job loss, food deserts, and general difficulties in making an administrative transition, MSDH should work to replace the direct distribution system with a retail system. The barriers to change can be overcome with planning and federal support. The benefits provided to WIC participants, small grocers and farmers markets, the non-WIC general public, and the state administration make the change an important one to make sooner rather than later.

(1A) Implement an EBT retail system, and specifically an online EBT retail system, instead of a voucher retail system.

In moving to a retail system, Mississippi has a choice between the utilization of vouchers (paper coupons) or EBT cards as the food instruments provided to WIC participants. Under a voucher system, the allocated food items are printed on a paper food instrument, to be verified by a cashier at the time of purchase, and are issued to each participant within a household. By contrast, under an EBT system, food items for an entire household (benefits are aggregated onto one card) are tracked in an account using food item categorizations for approved WIC foods and a debiting method for available account balances.¹⁴⁰ When an EBT card is presented in an authorized retail checkout lane,¹⁴¹ the card enables the point of sale (“POS”) device to obtain the benefit balance associated with that WIC EBT account. The food item is then scanned so that the WIC vendor system can match the food against the list of approved WIC food items. If it is a proper purchase (that is, it is a WIC-approved food and there is a sufficient cardholder balance), the transaction is completed so that the cardholder’s account balance is reduced by the amounts of each item being purchased and a receipt showing details of the transaction and an updated account balance is printed for the WIC participant.

¹³⁹ U. S. Department of Health and Human Services, Administration for Children and Families, <http://www.acf.hhs.gov/grants/open/foa/view/HHS-2011-ACF-OCS-EE-0178/html>.

¹⁴⁰ United States Department of Agriculture, Food and Nutrition Service, “EBT Technology Facts Presentation, October 2010,” available at <http://www.fns.usda.gov/wic/EBT/2010ugmpresentations/EBTTechnologyFacts.pdf>. The categorization standards are tied to universal product codes (“UPCs”) and price look-up codes (“PLUs”). Food prescriptions are broken down into individual food items, defined using national standards (the UPC or PLU). Each UPC or PLU is assigned to a specific category and subcategory so that foods are represented by Category, Subcategory, Quantity, and Unit of Measure. In a WIC EBT account, each individual food has its own balance for that participant. A list of state approved WIC items is maintained and distributed by the WIC state agency to POS systems in the Approved Product List (“APL”) file. The foods in the APL are each uniquely identified by the Category, Subcategory, Quantity, and description. So, for instance, if a participant is allocated “16 oz of Dried Beans/Peas or 18 oz of Peanut Butter,” it would be reduced to: Legumes (Category 06); 16 oz Any Beans/Peas or 18 oz Peanut butter (Subcategory 000); Unit of Measure is Container; Quantity is 1 Container; and the participant’s food prescription is thus 06-000-001. *Id.*

¹⁴¹ EBT cards can be swiped, inserted or number key entered with the cardholder’s PIN.

We believe the implementation of a statewide WIC EBT system is ideal for several reasons. WIC EBT has already been implemented in five states with twenty-three additional states in the planning, development, or piloting stages.¹⁴² It is therefore proven technology, which has been well received by stakeholders and is highly successful where implemented. EBT has also been successfully implemented nationwide for the SNAP benefit program. For example, in Mississippi, the Mississippi Department of Human Services notes that the conversion of SNAP from paper to electronic processing “provides significant advantages” including reducing the costs of processing, handling and redeeming of SNAP coupons, increasing the speed and efficiency of transactions at checkout lanes, providing an automated approach to benefit delivery and reimbursement, and reducing fraud and abuse.¹⁴³

Recently passed legislation now mandates nation-wide WIC EBT implementation by October 2020.

Furthermore, for the past several years, FNS has made the transition to EBT for WIC benefits a key initiative.¹⁴⁴ Accordingly, FNS has been aiding states in transitioning to WIC EBT by investing in research, policy guidance, and funding to states developing and making the switch to such

technology. In addition, recently passed legislation now mandates nation-wide WIC EBT implementation by October 2020, meaning that even if Mississippi initially chooses to utilize vouchers, the state would be required to switch to EBT by 2020 anyway.¹⁴⁵ It is therefore more efficient – in terms of time (training vendors, staff and participants on one versus two systems) and cost (setting up the infrastructure, technology, and guidelines for one versus two systems) – to make the change to EBT at the same time as making the change in the food distribution system.

In the states in which WIC EBT has been implemented via statewide or pilot programs, it has produced positive outcomes for all stakeholders involved. It has proven better for WIC

¹⁴² United States Department of Agriculture, Food and Nutrition Service, “WIC Electronic Benefit Transfer Activity Map,” available at <http://www.fns.usda.gov/wic/EBT/EBTActivityMap-September2010.pdf>.

¹⁴³ See Mississippi Department of Human Services, Electronic Benefits Transfer (EBT), available at <http://www.mdhs.state.ms.us/ebtfax.htm>.

¹⁴⁴ See, e.g., United States Department of Agriculture, Food and Nutrition Service, Program Analysis and Monitoring Branch, “WIC Electronic Benefit Transfer (EBT) System Development, Implementation, and Expansion – 5-year Plan (2003 – 2008),” Issued January 2003, Updated March 2006, available at <http://www.fns.usda.gov/wic/EBT/WICEBT5-yearPlan-FINAL3-1-06.pdf> [hereinafter FNS, “WIC Electronic Benefit Transfer (EBT) 5-year Plan”].

¹⁴⁵ It should be noted that there is a hardship exception built into the mandate, based on unusual technological barriers, unaffordable operational costs, or another reason making it in the best interest of the program not to implement EBT by that date. See Healthy, Hunger-Free Kids Act of 2010 § 352(d)(12)(C). If unable to comply, Mississippi WIC would likely be able to obtain such an exception, but would still be required to state a date on which it will comply with the EBT requirement. *Id.* at § 352(d)(12)(C). It is unclear if implementing EBT into the current direct distribution system would satisfy the new legislative requirement. The language of the mandated EBT provision indicates that what is required is “a food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to program benefits.” *Id.* at § 352(d)(12)(A). Thus, it may be possible to comply with the EBT mandate by inputting an electronic benefits program into the direct distribution system, and not moving to a retail distribution system. Even if complying with the mandate in such a manner were deemed appropriate, such a course of action would still not be advisable. Many of the hurdles that exist in implementing EBT in a retail system also would exist in implementing EBT in a direct distribution system – foremost of which is that given the current technological capacity of the food warehouses, significant expense would be required in order to bring the food centers up to the technological requirements of such an electronic system. Further, inputting EBT into the current system would not rectify the majority of the barriers presented by the current direct distribution system, as discussed *supra*, and therefore would not constitute any significant improvement.

participants by: allowing for a more mainstream method of benefit redemption; allowing for an unrestricted number of shopping trips, which increases fruit and vegetable consumption; improving benefit security; providing a convenient, easy and quick transaction; providing an available account balance before and after shopping; and increasing privacy in the utilization of the benefits.¹⁴⁶ It has proven better for the WIC state agency by: improving financial integrity and control, as it enables more secure transactions and fewer opportunities for fraud; ensuring that participants receive prescribed foods and that retailer claims are not artificially inflated; providing accurate data on the type and amount of foods purchased; allowing for a reduced amount of time and effort spent on retailer compliance activities and in monitoring retailers; and enhancing program management and administrative efficiency through increased accountability and reduced paperwork in reporting on EBT activity.¹⁴⁷ WIC EBT has proven better for the local WIC clinics by simplifying the benefit issuance process, and allowing for increased time for nutrition assessments, education, and referrals.¹⁴⁸ Finally, EBT has proven better for WIC retailers by: ensuring that participants purchase only WIC-authorized foods and guaranteeing that foods are not improperly substituted; improving checkout flow in the store by using only a single transaction for all items purchased; being a fast and easy operation to learn and employ (especially since many retailers currently use EBT for SNAP); reducing paperwork; providing a cost reduction because EBT requires less training of retailers; increasing the security of the transaction; and increasing purchases and revenue for the retailer by allowing for more trips to the store on the part of the WIC recipient.¹⁴⁹

In a WIC EBT system, the choice will need to be made between online and offline EBT technology. An offline EBT system uses smart cards (cards with microchips) that maintain benefit information on the card so that transactions occur between the card and the retail system. A daily claim file is transmitted to the EBT settlement

The majority of retailers authorized to accept SNAP are already equipped with the online EBT technology and are familiar with the online EBT process.

server for the processing of payments. Because benefits are stored on a chip in the card, an EBT offline system requires no connectivity between the retailer and the host server to distribute benefits. An online EBT system, on the other hand, uses magnetic stripe cards to access the participant's account information on the EBT host system. These transactions occur in real-time, and the host system determines the settlement amount based on transactions that occurred during a set timeframe. Accordingly, online EBT systems require connectivity between the retailer and the host server. This technology is widely used for credit, debit, and SNAP electronic transactions. The choice of an offline versus an online EBT system impacts the required card and vendor technology, card issuance, benefit issuance, redemption, settlement, and security. FNS as an agency is technology-neutral regarding online versus offline WIC EBT. Of the five states with statewide WIC EBT, three utilize offline/smartcard technology (Wyoming, New Mexico, and Texas) and two utilize online/magnetic stripe technology (Michigan and Nevada).¹⁵⁰

¹⁴⁶ FNS, "WIC Electronic Benefit Transfer (EBT) 5-year Plan," *supra* note 144.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ United States Department of Agriculture, Food and Nutrition Service, "WIC EBT Status Report (2009)," *available at* <http://www.fns.usda.gov/wic/EBT/EBTNovember2009StatusReport.pdf>.

There are benefits and drawbacks to each system, but *we recommend that Mississippi WIC implement online technology*. The primary reason for our online technology recommendation is that Mississippi SNAP currently utilizes online EBT technology.¹⁵¹ Thus, the majority of Mississippi retailers authorized to accept SNAP are already equipped with the online EBT technology and are familiar with the online EBT process by being connected with Affiliated Computer Services (“ACS”), which manages the SNAP retail participation.¹⁵² Retailers will be able to use WIC EBT cards on their existing POS devices and the reimbursement process will function in a similar manner. Accordingly, the initial implementation will be much less burdensome and the requisite training for retailers will be much lower if online technology is used. Eventually, WIC and SNAP benefits may even be combined and placed onto one EBT card.¹⁵³

**Eventually, WIC and SNAP benefits may even be
combined and placed onto one EBT card...**

In implementing an EBT retail system, there will also be costs to preparing, equipping and training vendors, WIC agency staff, and participants. However, as discussed above, EBT is not a completely unfamiliar technology to most vendors, as SNAP benefits are already on EBT and SNAP retailers thus will already be equipped and knowledgeable about EBT technology. Further, the WIC system infrastructure in Mississippi currently requires, and is going to undergo, a major update.¹⁵⁴ The technology (or lack thereof) surrounding WIC clinical operations as well as the WIC inventory-tracking system are outdated and must be replaced within the next two years. If Mississippi WIC is going to be incurring technological updating costs now anyway, and will be required to do so again by 2020 under the federal WIC EBT mandate, then it appears more economical and efficient to engage in the requisite updating to WIC EBT now. The system should not incur costs twice if they can be avoided.

Even though vendors will be familiar with the technology, and even though it is more efficient to only engage in structural updates once, there will still inevitably be costs to the transition. But Mississippi can apply for funding to cover these costs. There are numerous available funding opportunities, including some specific to EBT technology, which Mississippi should consider, including: NSA grants, regional operational adjustment funds, regional infrastructure funds, national office grants, special EBT grant funds, and state appropriated funds (although this final option is generally very rare and unlikely for Mississippi). For example, in September 2010 \$14 million in technology grants from the fiscal year 2010 agriculture appropriations bills were awarded to thirteen states to improve technology and enhance benefit delivery systems by

¹⁵¹ See Mississippi Department of Human Services, Electronic Benefits Transfer (EBT), *available at* <http://www.mdhs.state.ms.us/ebtfax.htm>.

¹⁵² We state that the “majority of retailers” authorized are already equipped with online EBT technology because some retailers who are unable to install and utilize a POS device are allowed to accept SNAP benefits via manual vouchers. *See id.*

¹⁵³ Although no state could be found that currently has all food assistance benefits for a family placed onto one EBT card, some states have considering doing so, including New Mexico and Texas.

¹⁵⁴ Telephone Interview with Kathy Burk, Program Director, Mississippi WIC (Jan. 20, 2011) (providing details on the technological updating that is currently underway and that will be started within the next two years).

implementing WIC EBT.¹⁵⁵ The American Recovery and Reinvestment Act of 2009 (“ARRA”) also allocated \$500 million to the WIC program with \$100 million of that specifically available for technology projects.¹⁵⁶ In total, fifty-three technology projects were funded under ARRA, with forty-one WIC state agencies receiving funds.¹⁵⁷ Although these two specific grant examples have already allocated all their available money, these and other types of grants will be available in the future, and Mississippi should stay abreast of these funding opportunities and apply for assistance to implement its transition to WIC EBT.

Finally, FNS is committed to working with states in the transition from voucher systems to EBT, and will work with Mississippi in its transition from direct distribution to retail (voucher or EBT). FNS recently released two comprehensive guideline documents that Mississippi can use to guide its transition process: an Operating Rules document and a Technical Implementation Guide.¹⁵⁸ The Operating Rules document provides a framework for states initiating or continuing the operation of WIC EBT by creating operating rules and responsibilities for WIC state agencies, WIC cardholders, retail system vendors, WIC vendors, and additional participating entities. The rules also attempt to provide consistency across states in the implementation of their electronic systems. The Technical Implementation Guide provides guidance for the technical implementation of both online and offline EBT, including data elements, messaging structures, and the like. While specific planning requirements and steps are laid out in these and other documents by FNS and should be developed in conjunction with Mississippi WIC, Appendix A of this report begins to lay out a broad outline of the types of questions and decisions that will have to be made in a transition to WIC EBT.

(2) If Mississippi chooses to retain a direct distribution food delivery system, improvements should be made to the current system.

Although we advocate for Mississippi to change its food delivery system to a retail delivery system so that it is aligned with other states and the best interests of Mississippians, we recognize that such a process may not occur and/or statewide implementation will take time. Accordingly, below are some recommended changes and improvements that the state may make to its WIC system to improve the quality of the *current* program.

First, MSDH should increase the selection and availability of fresh fruits and vegetables. As noted above, Mississippi guidelines allow for non-infant WIC participants to choose from two fresh fruits (apples and oranges) and two fresh vegetables (carrots and sweet potatoes).¹⁵⁹ This selection is inadequate and therefore should be increased. Such a limited selection of fresh fruits and vegetables does not confer as much of a nutritional benefit as possible. The purpose of offering fresh fruits and vegetables – and in fact the purpose of the WIC program as a whole – is to provide recipients with much needed nutritional foods. The limited selection does not allow participants to fully receive the plethora of nutritional benefits provided by fresh fruits and vegetables, as fruits such as bananas (important for potassium), green vegetables such as

¹⁵⁵ USDA Announces Technology Grants for the Special Supplemental Nutrition Program for Women, Infants and Children, Release No. 0477.10, September 21, 2010, <http://www.fns.usda.gov/cga/PressReleases/2010/0477.htm>.

¹⁵⁶ United States Department of Agriculture, Food and Nutrition Service, “American Recovery & Reinvestment Act of 2009,” available at <http://www.fns.usda.gov/fns/recovery/recovery-wic.htm>.

¹⁵⁷ *Id.*

¹⁵⁸ United States Department of Agriculture, Food and Nutrition Service, “WIC State Information Systems,” available at <http://www.fns.usda.gov/wic/EBT/operatingrules-implemguide.htm>.

¹⁵⁹ Mississippi State Department of Health, WIC Food List, available at http://msdh.ms.gov/msdhsite/_static/41,0,128,508.html.

spinach (which provides more nutrients than almost any other vegetable), and other nutritious fruits and vegetables may not be purchased by Mississippians at WIC distribution centers.

Similarly, certain WIC recipients may be getting even less nutritional benefit if they do not enjoy, and therefore would not consume, one or all of the offered fruits and vegetables. Accordingly, Mississippi WIC guidelines should expand the authorized fruits and vegetables offered to non-infant WIC participants and ensure that the food centers are fully stocked with a sufficient selection of those fruits and vegetables. Fruits and vegetables to add to the authorized WIC food list should include, for instance: bananas, blueberries, strawberries, peaches, grapefruit, spinach, lettuce, cucumbers, tomatoes, peppers, asparagus, and zucchini. Increasing the amount and diversity of fresh fruits and vegetables also offers a good opportunity to partner with local farmers markets.

Second, and in conjunction with the first recommendation, Mississippi WIC must improve the refrigeration at its food centers to ensure the ability to stock these fresh foods. Even if Mississippi improves the amount and selection of fresh fruits and vegetables offered, without updated refrigeration equipment, any benefits will be negated. As noted above, even though Mississippi now allows for recipients to choose between two fresh fruits and two fresh vegetables, due in part to spoilage problems,¹⁶⁰ WIC food centers often are not able to offer even that minimal choice. Thus without proper storage and refrigeration equipment, food will spoil and recipients will not receive the nutritious foods that they should. The expanded and consistent offering of fresh fruits and vegetables requires proper storage equipment in order to be successful.

Third, Mississippi WIC and MSDH should explore ways, through initiatives and/or collaborations, to facilitate access for WIC participants to the food centers. Transportation, particularly in rural portions of Mississippi, is a major barrier for many people in accessing various services but also specifically presents a barrier to accessing WIC food centers.¹⁶¹ As discussed above, most counties have only one WIC food center, but all counties cover more than 400 square miles, with several over 800 square miles.¹⁶² The distance that recipients are required to travel to obtain their WIC foods is at best inconvenient and at worse prohibitive. The WIC system, therefore, should explore initiatives and collaborations that would ease the transportation burden on recipients. One suggestion, for instance, is for the WIC program to create a closer link with existing state, county, and private transportation systems. For example, the Mississippi Division of Aging and Adult Services has close to three hundred vehicles, which are used by various civil and community groups as well as Area Agencies on Aging to drive seniors to various destinations. Further, schools and churches generally have vehicles that are not in constant use. Mississippi WIC should explore coordination and collaboration with these types of agencies and organizations so that WIC recipients may utilize easier and more reliable access to food distribution centers. Other possible avenues to explore include agency vehicle purchase and car sharing.

Fourth, and related to the above transportation discussion, Mississippi should consider extending the hours and days of operation of the WIC food centers. As noted above, only one food center is

¹⁶⁰ For example, Mississippi WIC noted that “[t]here have been a lot of recent problems with sweet potato spoilage.” Mississippi WIC Newsletter, July 2010.

¹⁶¹ See supra note 104 and accompanying text.

¹⁶² National Association of Counties, Find a County, <http://www.naco.org/Counties/Pages/FindACounty.aspx>.

open on the weekend, some are open less than five days per week, and the majority of the centers are open only from 8am until 5pm on weekdays. In sum, the food centers are open only during working hours. This limitation in operating hours poses a significant barrier for working recipients, who are required to either rearrange their work schedules or request time off from work in order to pick up their food. By definition, recipients are low-income, thus requesting time off from work or having a restricted work schedule means a decrease in an already small income and may even lead to the loss of their jobs. Accordingly, it would very much augment the WIC program to expand the hours in which recipients can pick up their food packages.

Finally, and related to the transportation barriers, MSDH should consider creating a home delivery system for those WIC recipients who prove hardship. As difficult as the transportation barriers are for the “regular” WIC participant, those recipients who are particularly limited in transportation access are at a distinct disadvantage. For those who prove particular transportation hardship (such as lack of access to a car by anyone in the household), the program should use a home delivery method of food distribution. In other words, instead of requiring that those persons travel to the food center, Mississippi WIC should deliver the food packages to the recipients, similar to the food distribution method used in Vermont.

(3) Continue to improve on outreach and marketing strategies in order to increase participation rates and stem premature dropouts.

In fiscal year 2010, the number of participants in the Mississippi WIC program declined by close to 9,000, serving the lowest number of persons in four years (since fiscal year 2006).¹⁶³ As discussed above, Mississippi statewide WIC participation rates are consistently below 75%, and in October 2010, there were twenty-six counties with participation rates at or below 70%.¹⁶⁴ Whether or not Mississippi moves to a retail distribution system, Mississippi WIC must focus on making participation in the WIC program convenient and beneficial, and must make efforts to increase participation of those who are eligible but not participating as well as make efforts to ensure that recipients who are participating do not prematurely drop out of the program.

The Mississippi WIC program has been making efforts to improve its customer service as well as its outreach, both of which are important steps to increase participation rates and decrease premature dropout rates. Mississippi WIC recently received a grant from USDA to conduct a promotional media campaign, resulting in commercial and radio advertisements in Public Health Districts III, V, and IX, as well as signs at gas stations across the state.¹⁶⁵ Although it is too early to see any clear results, this type of public outreach and advertising is a good step forward.

In addition to the advertisements noted above, there are other outreach strategies that Mississippi WIC should consider implementing at the state level including: producing print outreach materials to be distributed across the state; collaborating with other state agencies and organizations serving WIC-eligible families; working with the media; conducting focus groups; branding WIC to increase recognition; utilizing direct mailings to potential participants; working with employers; working with WIC vendors (applicable if moving to a retail system); establishing an automated WIC hotline; and collaborating with foster care parents and health

¹⁶³ United States Department of Agriculture, Food and Nutrition Service, Program Data, “WIC Program Annual Participation,” available at <http://www.fns.usda.gov/pd/26wifypart.htm>.

¹⁶⁴ See Mississippi WIC Newsletter, December 2010.

¹⁶⁵ See Mississippi WIC Newsletter, October 2010.

and child care providers.¹⁶⁶ Additional strategies that could be implemented at the local level include: attending conferences and local community events, distributing outreach materials to local community organizations, conducting door-to-door outreach, and staffing a mobile unit.¹⁶⁷ Highlights of several states' successful outreach programs are briefly noted below, all of which employed some combination of the above recommendations.

- In the *District of Columbia*, the WIC agency has a comprehensive outreach strategy wherein they “basically go anywhere a pregnant woman, mom, or dad with young children may be.”¹⁶⁸ Their outreach strategy includes developing flyers, posters, brochures, postcards and factsheets in multiple languages; conducting door to door outreach in the community; utilizing their “Mama and Baby Bus,” which is a mobile unit that does outreach for the program; and conducting general outreach in churches, health fairs, schools, community centers, day care centers, grocery stores, and laundromats. In conducting this outreach, staff is not only able to distribute information about WIC but is also able to screen potential participants for eligibility and enroll those who meet the program guidelines. All outreach efforts are funded with FNS funds.
- The *California* WIC program has a broad-based outreach strategy. First, California WIC formed an outreach committee, which consists of about ten local agency members representing WIC directors, nutritionists, and outreach coordinators, who meet quarterly and work to shape and advise the WIC program in its outreach strategy and materials. Second, the California WIC outreach materials themselves are diverse and comprehensive – they include a variety of information in multiple different forms and are sent to a wide selection of individuals and families.¹⁶⁹ Third, California WIC also created 1-888-WIC-WORKS, an automated phone line that provides callers with information on the nearest WIC clinic, WIC benefits, and access to other services. Fourth, the outreach strategy focuses on collaborating with other social services agencies that work with potentially-eligible families, including Medicaid, Head Start, food banks, and health care providers. As part of this wide collaboration strategy, California WIC employees attend conferences and other community events,¹⁷⁰ and work with the media, developing a media outreach kit used by the local agencies. Finally, California WIC has worked on branding in order to raise awareness of the program across the state, including developing and displaying a new logo as well as ensuring that accurate information about the program and its eligibility guidelines are distributed. The rebranding effort was a result of focus groups conducted by the agency that showed

¹⁶⁶ Food Research & Action Center, *Making WIC Work for Multicultural Communities: Best Practices in Outreach and Nutrition Education*, at 1, available at http://frac.org/newsite/wp-content/uploads/2009/09/wic_multicultural_communities.pdf.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 4.

¹⁶⁹ For example, outreach materials include outreach pamphlets that provide information about WIC services, benefits, and eligibility; materials on WIC clients' rights and responsibilities, breastfeeding, formula feeding, and nutrition tips about health snacks; a one-page envelope stuffer sent to eligible families along with materials from other agencies included in things such as electricity bills and Medicaid application forms; posters for organizations serving low-income families; and a clinician outreach package that included a WIC fact sheet and referral guide.

¹⁷⁰ Importantly, the California WIC program thoroughly targets the conferences and community events that they attend, asking questions such as: Who is the sponsor; Where is the event being held; Who is the sponsor targeting; Will WIC eligible families be attending the event; Will those who serve WIC eligible families be attending; What is the average attendance; How will this event further our outreach efforts?

widespread misunderstanding and lack of knowledge about the program. Again, all outreach efforts are funded with FNS funds.

- One of the most important aspects of outreach in the WIC program in *Massachusetts* includes targeting not just WIC participants, but also companies that hire low-income employees, in order to increase participation rates. The Massachusetts program sent information to human resources offices in over 40,000 companies in Massachusetts, encouraging employers to advertise the WIC program at their offices by putting information about WIC in their employee benefit packages, customizing WIC's sample email and sending it to the company's employees, and providing information about WIC in employee newsletters.¹⁷¹ In addition to partnering with employers, Massachusetts WIC also focuses its efforts on four particular outreach goals: (1) employing the media by developing TV, radio and transit advertisements aiming not only to provide nutrition information but also to disrupt any stigma of WIC being a "welfare program"; (2) partnering with health, foster, and child care providers to distribute the outreach materials; (3) partnering with vendors to provide as much information as possible to vendors and to emphasize and thank them for the role that they play in the program; and (4) directly reaching out to eligible families through direct mailings (sending postcards on WIC to all those enrolled in Medicaid and to all those families in the state earning less than \$40,000). Massachusetts WIC, like California WIC, decided to rebrand after conducting focus groups, designing a new logo and changing the WIC tag line. All of the outreach materials advertised the Massachusetts WIC hotline number. Again, all outreach is funded by FNS.

(4) Work to create a more vigorous and comprehensive nutrition education program.

The nutrition education component of the WIC program is unique in providing an opportunity to improve the short- and long-term nutrition of the participant as well as the entire family. Currently, Mississippi WIC is not fully taking advantage of this opportunity. The nutrition education program within WIC is arguably even more important in Mississippi than in other states, as Mississippi is currently facing some of the most serious obesity and health problems in the country. Similar to the outreach strategies discussed above, various other state WIC agencies have successfully improved their nutrition education programs, which can provide guidance for Mississippi.

Two of the most important themes that emerged from other states on nutrition education are: first, that nutrition education cannot be confined to the nutrition education classes provided at the county health departments, rather it must be wide-ranging and multifaceted, taking a variety of forms and taking place in a variety of locations; and second, that much can be learned about the gaps and deficiencies in the current nutrition education program from focus groups with WIC participants or potential participants. General strategies from other states include: producing and widely distributing easy-to-use flyers, DVDs, and shopping guides targeted at specific ages and populations; using diverse and multicultural images in outreach and nutrition education materials; developing new logos and taglines to increase recognition; working with WIC vendors (applicable if the state moves to a retail distribution scheme); and collaborating

¹⁷¹ See Massachusetts Office of Health and Human Services, Women, Infants, and Children, Fast Facts for Employers, available at http://www.mass.gov/Eeohhs2/docs/dph/wic/fast_facts_employers.pdf.

with various community partners.¹⁷² Highlights of successful nutrition education programs from several states are below.

- The *California* WIC program developed California Fit WIC, which focused on physical activity in addition to nutrition. The program targeted three groups: WIC participants, WIC staff members, and the larger community. First, to target WIC participants the program developed a training manual and parent handouts to encourage families to be more active by engaging in easy and fun activities together. The program also produced materials specifically aimed at children, including children's books, music and videos that contained information on healthy eating and physical activity. Second, to target WIC staff, the program aimed to create more awareness of the problems of childhood obesity and of the staff's own health behaviors. For example, the program encouraged all the local WIC agencies to develop staff wellness programs. And finally, to target other community members, California Fit WIC developed community gardens, implemented task forces on physical activity and nutrition, distributed physical activity resource guides to the community, and partnered with local restaurants and farmers markets to increase fruit and vegetable consumption. All Fit WIC projects were funded by FNS under WIC Special Project Grants, and California Fit WIC received a \$300,000 operational adjustment grant from FNS Western Regional Office to develop a community garden.¹⁷³
- In *Rhode Island*, the Department of Health and Department of Environmental Management have worked with chefs from Johnson and Wales University to put on bilingual cooking demonstrations at ten WIC FMNP sites throughout the state in the summer months, called the Veggin' Out project. During the cooking demonstrations, the chefs demonstrate various simple recipes all made with fresh vegetables from the markets. In addition to the chefs, WIC nutritionists are present to highlight the nutritional content of each recipe as well as answer any questions that arise. After the demonstration, all audience members receive a Veggin' Out cookbook that includes simple and healthy recipes, and, through a raffle, there is a possibility of also winning kitchen utensils, farmers market gift certificates, and other similar prizes. The program is paid for jointly by WIC FMNP, the WIC nutrition education budget, and JWU.
- Weigh of Life...Taking Action Together is a *Massachusetts* WIC program that focuses on providing culturally sensitive services that promote healthy eating behaviors among Dominican and Puerto Rican children. The project first conducted several focus groups to identify culturally sensitive themes that related to health and nutrition. These themes were then used to develop educational messages and materials distributed by WIC staff. Materials included, for example, wall-sized and smaller posters developed in both English and Spanish conveying key messages that were displayed in health care provider offices and used by WIC nutritionists. The project also developed a tool kit that was distributed to physicians, which included a guide to providing standardized and age-appropriate nutrition messages to families, a CD containing electronic versions of the nutrition education materials, and a mock prescription pad allowing physicians to

¹⁷² Food Research & Action Center, Making WIC Work for Multicultural Communities: Best Practices in Outreach and Nutrition Education, at 1, available at http://frac.org/newsite/wp-content/uploads/2009/09/wic_multicultural_communities.pdf.

¹⁷³ *Id.* at 27.

“prescribe” a particular diet (more fruits and vegetables) and physical activities as well as refer parents to the closest WIC office. This project was funded by a USDA Specific Project Grant.

- The *Michigan* WIC Division in collaboration with Western Michigan University as well as several other partner states (Delaware, Illinois, Indiana, Minnesota, Ohio, North Carolina, Utah, Washing, and Wisconsin) started WIChealth.org, which delivers web-based education on nutrition and physical activity to WIC participants. The website is available in both Spanish and English and the wording is kept simple so as to be comprehensible for all literacy levels. The content consists of various nutrition education modules, developed by a steering committee composed of representatives from all involved WIC state agencies. Participants choose a module and answer a set of questions; the answers to those questions determine the participant’s placement in a category and thus the type of educational content provided. Participants are given easy and workable steps and goals, based on their category, to implement nutritional changes. The primary advantage of receiving such information in a web-based content is that it allows participants who cannot attend classes because of work, school, or lack of transportation to still receive the educational information when convenient. In a study conducted on WIChealth.org, a substantial majority of users stated that the website was their favorite way to receive nutrition education.¹⁷⁴ Initial funding for the website was provided by an operational adjustment grant of FNS Midwest Regional Office and all affiliated WIC agencies contribute money for website upkeep and maintenance.

(4A) Engage in an increased emphasis on the benefits of breastfeeding.

Mississippi has the lowest breastfeeding rates in the nation.¹⁷⁵ Encouraging breastfeeding is an important component of the WIC program – so important, in fact, that the Child Nutrition Reauthorization Act (the Healthy, Hunger-Free Kids Act of 2010) amended the original WIC statute so as include breastfeeding support and promotion as one of the primary goals of the WIC program.¹⁷⁶

Many of the above recommendations on improving outreach and nutrition education apply equally to encouraging breastfeeding. Additional suggestions for improvement include: designating a Breastfeeding Promotion Coordinator at each local WIC agency, who is responsible for WIC breastfeeding promotion activities and can serve as a resource;¹⁷⁷ conducting peer counseling programs and developing peer breastfeeding support programs;¹⁷⁸ funding the purchase and/or lending of breast pumps and equipment needed by women who are

¹⁷⁴ *Id.* at 44.

¹⁷⁵ See Mississippi WIC Newsletter, July 2010.

¹⁷⁶ See Healthy, Hunger-Free Kids Act of 2010 § 231 (42 U.S.C. §§ 1786) (amending the original Act to include breastfeeding support and promotion as one of the goals of the WIC program, providing incentives to state and local agencies to effectively promote breastfeeding, and setting aside funds for projects that promote breastfeeding and improve WIC services and nutritional education).

¹⁷⁷ The Washington WIC promotion uses such specialists on the local level. See Washington State Department of Health, WIC Nutrition Program, Breastfeeding Promotion, *available at* http://www.doh.wa.gov/cfh/WIC/bf_promo.htm.

¹⁷⁸ Many states are developing such programs, for which FNS is distributing funds under the *Loving Support* model, including Washington, California, and Minnesota. See Food and Nutrition Service, WIC Breastfeeding Peer Counseling Study Final Implementation Report, Report No. WIC-10-BPC, June 2010, *available at* <http://www.fns.usda.gov/ora/menu/published/wic/FILES/WICPeerCounseling.pdf>.

breastfeeding; supporting a telephone hotline or warmline (i.e. a number that is not staffed around the clock) to answer questions and address concerns about breastfeeding; providing scholarships to allow WIC staff members to become certified lactation consultants; supporting classes or support group meetings for WIC participants about breastfeeding; providing funds for local agencies to sponsor community wide breastfeeding promotion workshops; participating in public events including health fairs and World Breastfeeding Week events to improve public acceptance of breastfeeding; enlisting community wide involvement in removing barriers to breastfeeding; developing and disseminating educational materials on the benefits of breastfeeding; and funding statewide breastfeeding promotion training for WIC staff and other community health staff.

(5) Expansion and enhancement of the WIC Farmers' Market Nutrition Program.

As discussed above, the purpose of WIC FMNP is to provide WIC participants with fresh, nutritious, and locally grown fruits and vegetables. Under Mississippi WIC FMNP, WIC recipients are issued separate FMNP coupons, currently valued at \$15 per recipient per year, which may be used to buy foods from eligible farmers, farmers markets, and roadside stands approved by the state.¹⁷⁹ Mississippi FMNP suffers from low participation rates of WIC beneficiaries and a small number of participating farmers markets. Accordingly, WIC participants are not receiving these nutritious foods and farmers are not receiving the economic benefits to the extent possible under the program. While the state does face hurdles to improving the program – namely the limited federal funds available – there are steps that can be taken to strengthen the current program. The following suggestions aim to increase redemption rates and predictability through higher administrative efficiency.¹⁸⁰ These suggestions apply to the program as it is currently implemented, existing in conjunction with the WIC food center distribution system. However, as noted below, many of these recommendations would prove equally applicable if regular WIC does move to a retail system.

First, develop state-specific policy goals for WIC FMNP administration in Mississippi. The stated policy goals in the federal enabling legislation are broadly to “provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers’ markets” to WIC participants and to “expand the awareness, use of and sales at farmers’ markets.”¹⁸¹ These goals, while laudable, do not provide sufficient direction to Mississippi in the implementation of WIC FMNP. We recommend the development, either legislatively or administratively, of state-specific policy goals for the program. Such policy goals, for instance, could outline the manner in which the state would prioritize the distribution of its limited FMNP resources – i.e. prioritize urban areas due to economies of scale or conversely prioritize rural areas to target food deserts. In doing so, Mississippi WIC and MDAC would benefit from additional guidance in how to more efficiently and effectively utilize their limited funding, and farmers and farmers markets would benefit from a greater understanding of how MDAC makes its WIC FMNP funding decisions.

¹⁷⁹ Harvard Law School Mississippi Delta Project & Delta Directions, Food Assistance Programs and Mississippi Farmers Markets, Prepared May 2010, Updated November 2010, *supra* note 94 at 21.

¹⁸⁰ These recommendations come from the Harvard Law School Mississippi Delta Project & Delta Directions, Food Assistance Programs and Mississippi Farmers Markets, Prepared May 2010, Updated November 2010, *supra* note 94. Please refer to that report for more specific recommendations and considerations on the WIC FMNP (and other food assistance/farmers market programs and interactions).

¹⁸¹ 7 C.F.R. § 248.1 (2010).

Second, utilize the flexibility of the framework of “administrative costs” in the regulation’s statutory language. Unlike the regular WIC program, under WIC FMNP, the federal government provides one hundred percent of the food costs but only seventy percent of the “administrative costs.”¹⁸² The statutory definition of “administrative costs” is rather broad, and Mississippi should use that to its advantage.¹⁸³ MDAC and MSDH should work to expand the idea of administrative costs in the annual State Plans submitted to the federal government for review and approval. For example, Mississippi could include money spent in providing short-distance transportation to participating farmers markets in their submitted administrative costs.

Third, recognize the situational factors that affect redemption rates and compensate for them through the administrative framework of the FMNP. There is a clear correlation between market accessibility and voucher redemption rates, thus Mississippi could increase voucher redemption rates by making farmers more accessible to its recipients. For instance, Mississippi could work to bring farmers markets to its WIC food centers, directly to its participants. Thus, WIC recipients would pass directly by farmers markets when picking up their monthly food packages. The coordination costs of bringing the markets to the distribution centers could be funded as administrative costs and therefore covered by the federal government. Voucher redemption rates could also be improved through outreach and education, again provided directly at the food distribution centers. For example, WIC recipients could be encouraged through a variety of media and/or personal interactions when at the food centers detailing the benefits and values of the WIC FMNP program.

Finally, consider over-issuance of FMNP benefits in order to increase the program’s participation rate. Mississippi has a relatively stable FMNP redemption rate (between 40-50%) and has consistently been required to return money to FNS as a result. Therefore, MDAC should consider over-issuing FMNP benefits based on the expected redemption rate. Although over-issuing can be risky, if over-redemption does occur the costs can be covered through extra administrative funding, which other states have done. The value in over-issuing is in providing the maximum benefits to the community, including the WIC participants and the farmers. This would allow WIC FMNP to operate in more areas of the state beyond the few counties in which it currently operates. The benefits of over-issuing outweigh the risks. Furthermore, if Mississippi continues returning money to FNS, Mississippi will hurt its chances at gaining additional federal funding in the future.

VII. Conclusion

The Special Supplemental Nutrition Program for Women, Infants, and Children has been in existence for close to forty years, providing supplemental nutritious food, nutrition education, and referrals to health care and other social services to those in our society who need it most. Mississippi WIC currently has a unique and ripe opportunity for reform – reform that would

¹⁸² 7 C.F.R. § 248.2 (2010).

¹⁸³ The definition of administrative costs is as follows: “. . . those direct and indirect costs, exclusive of food costs . . . which states determine to be necessary to support FMNP operations. Administrative costs include, but are not limited to, the cost of administration, start-up, training, monitoring, auditing, the development of and accountability for coupon and market management, nutrition education, outreach, eligibility determination, and developing, printing and distributing coupons.” *Id.*

enable the agency to more fully and efficiently meet its programmatic purpose and benefit all stakeholders involved.

Our main recommendation for Mississippi WIC is to transform the food delivery system from a direct distribution system to a retail food system. In making such a change, Mississippi WIC will address the serious and wide-reaching problems that currently exist in its program. A retail food system will better serve WIC participants and better fulfill the health and nutrition purpose of WIC, stimulate small grocer and retailer growth as well as economically aid farmers markets, improve the access to healthy foods for rural and low-income non-WIC Mississippians, and prove more efficient and cost-effective for Mississippi as a state. In making such a change to their food delivery system, Mississippi should also consider the implementation of WIC EBT. WIC EBT is undoubtedly the future of the WIC program and already has proven reliable, convenient, and popular with stakeholders. Although there are clearly barriers to a transition to a retail system and retail EBT system, it is equally clear that Mississippi can overcome those barriers.

Even if Mississippi chooses not to move to a retail food system, the current distribution center system itself can be modified in various ways to improve the experience of Mississippians receiving WIC benefits. We recommend that Mississippi WIC increase the selection and availability of fresh fruits and vegetables, improve the food center refrigeration equipment to ensure its ability to stock fresh foods, explore ways to facilitate participant access to food centers, consider extending the hours and days of operation of WIC food centers, and consider creating a home delivery system for those WIC recipients who prove hardship. In these ways, Mississippi could greatly improve the current direct distribution system for WIC participants.

Finally, whether or not the distribution system is modified, we recommend various changes that would work to improve other portions of the WIC program. Specifically, Mississippi WIC should continue to improve on its marketing and outreach strategies in order to improve participation rates and decrease the number of early program dropouts, work to create a stronger and more comprehensive nutrition education program (including around the benefits of breastfeeding), and work to expand and enhance WIC FMNP through various means. In all of these areas, programs and initiatives in other state WIC agencies can serve as valuable inspiration and guidance.

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Appendix A: Overview of Steps to Take to Implement an EBT Retail Distribution System¹⁸⁴

This Appendix presents a broad overview of the steps necessary to implement a retail system and a WIC EBT system. Mississippi WIC has already begun this process, having applied for an EBT Planning Grant and started the process of conducting a feasibility study.

Initial Planning Activities to Transition to a Retail System

- *Get help:* It will be crucial for Mississippi WIC to consult with FNS and the Southeast Regional Office in beginning its transition from direct distribution to retail. They will be able to provide helpful guidance and support in making the transition.
- *Apply for funding:* Consider various funding options (including NSA grant funds and regional operational adjustment funds, for example) offered by FNS to support the costs of the transition. The state agency may also be able to use portions of the WIC administrative costs to help cover the transition costs.
- *Determine feasibility:* While the move to a retail distribution system will be feasible for Mississippi, the state agency will still need to engage in a feasibility analysis to determine the exact barriers that do exist in such a transition in order to effectively and efficiently address them. Such a study would include analyzing the barriers to implementing a retail system in the state, the technological environment, staff capabilities, effects on resources and workflow, effects on stakeholders and how they will be engaged in the transition, risks in making such a transition, and transition implementation approaches.
- *Consider changes to policy, procedures and workflow:* The move to a retail system will affect the roles and responsibilities of local and state agency staff and personnel and therefore policy and procedure manuals will have to be updated. Reviewing other WIC state agencies' manuals and documents will be helpful here and serve as a model for the updating.
- *Engage stakeholders:* Mississippi WIC should engage all stakeholders who will be affected by the retail transition, including potential retailers, WIC recipients, and state and local agency staff. It will be crucial for the state to have the support of all these stakeholders in making the transition. All stakeholders will need to be trained in their new roles and responsibilities. For example, retailers will need training on how to accept WIC benefits, the redemption process, and WIC approved foods; WIC recipients will need to learn how to use their new WIC food instruments, where they can use them, how to find WIC approved foods; and WIC staff will need to be trained in their new roles in issuing food instruments, working with retailers, and learning the new operating procedures.

¹⁸⁴ The information on the transition to an EBT system is compiled from various FNS training presentations given to states in preparation for their transition to EBT, all available on the FNS website. Clearly this is an attempt to provide a basic outline of the process, and detailed information can be found through FNS and Regional Offices including in documents such as WIC EBT Operating Rules Document and Technical Assistance Guide, the WIC EBT Policy Memo, and FNS Handbook 901.

Many other state WIC agencies have very user-friendly and helpful documents that could aid Mississippi in engaging and communicating with stakeholders. For example, states have colorful and easy-to-understand brochures for WIC recipients to help them pick out their approved foods and have checklists of clear steps for vendors to follow when processing a WIC transaction.

- *Consider existing contracts and agreements that will no longer be needed:* In a retail system, Mississippi will no longer be required to rent food center space or food center equipment and will not need to contract with food distributors. The state agency, therefore, will need to exit or not renew these and other related contracts as applicable.

Pilot Project for a Retail Distribution System

- *Implement in a chosen location:* Because movement to a retail system is a major change in the current Mississippi WIC system, it is recommended that the transition first occur in one part of the state prior to statewide implementation. Factors in considering which location to choose include: the number and type of existing retailers, the willingness of retailers to participate, the willingness and enthusiasm of the WIC staff, and the number of WIC recipients. Other factors many include local contracts (building rental, staff contracts) that may be coming to an end and thus would be conducive to a move to the new system at that time, rather than engaging in new long-term contracts.
- *Learn from the pilot:* After the initial transition, evaluate the pilot to consider how the procedures, policies, and operations may need to change based on experience. Stakeholder focus groups of vendors and participants will help in this evaluation.

Statewide Expansion of Retail

- *Implement retail system statewide.*

Initial Planning Activities for WIC EBT

- *Get educated:* Mississippi WIC should ensure that it knows the basics of EBT before beginning the planning process. This includes understanding the various EBT technology options and components (i.e. online vs. offline; POS devices), implementation approaches, and project activities to ensure that it fully understands the choices that it has in implementing this change. Mississippi WIC will also have to pay attention to the tasks that are required to complete the change so that it is able to create a workable and realistic timeline for that change, and so that it is able to determine which tasks require outsourcing. The FNS website and officials provide extremely useful guidance on all of these topics (for instance the WIC EBT Operating Rules Document and Technical Guidance Guide, the WIC EBT Policy Memo, FNS Handbook 901, and the FNS approved costs analysis models), but guidance can also be provided by the Southeastern Regional Office as well as WIC agencies in states that already have gone through the EBT transition process. For example, Texas, Michigan, New Mexico, Wyoming and Nevada have all recently completed the entire EBT transition process, and Kentucky is currently in the statewide transition process. Finally, Mississippi WIC should also consult with and learn from the Mississippi Department of Human Services, as they have made the transition to and currently manage SNAP EBT in the state.

- *Complete a Planning Advance Planning Document and request funding/apply for grants:* Mississippi WIC must submit a Planning Advance Planning Document (“PAPD”) to FNS before the state agency expends funds for EBT planning activities. The PAPD must outline all planning activities to be conducted by the state agency (or outside contractors). There will be various funding options available to implement EBT including NSA grant funds, regional operational adjustment funds, planning EBT grants, implementation EBT grants, and technical standardization grants.
- *Determine feasibility:* Mississippi WIC must complete a feasibility study, including a cost analysis based on an FNS-approved model. The feasibility study and analysis must consider factors including barriers to implementing EBT in the state, the technical environment, staff capabilities, effect on resources and workflow, effect on stakeholders and how they will be engaged in the project, project risks, implementation approaches, and procurement options.
- *Determine how planning activities will be completed:* Mississippi WIC must identify and appoint a project manager, which should be someone who has time to commit to the project. The agency must also consider whether other agencies and/or departments within the state need to be involved and how much resources and expertise the agency has in-house. Mississippi WIC may want to consider procuring an outside planning contractor, doing so via a request for proposals.
- *Engage stakeholders:* Mississippi WIC must engage all involved stakeholders including retailers (it is crucial to get support from major chain grocery stores early on; retailer buy-in is needed to establish a vendor advisory group for EBT), people within the state (i.e. other necessary state officials, relevant IT department officials, consider whether legislative requirements exist), and local WIC agencies (consider soliciting input from the local staff, ensure that the state agency has a way to be in constant communication with the local staff about changes). Note that engaging, communicating with, and informing stakeholders is crucial through the entire process.

As noted above, guidance from other state agencies can be helpful in the process; in engaging stakeholders, for example, New Mexico’s experience in interacting with vendors is instructive. The New Mexico WIC agency stated after the fact that it would have “set up a grocery advisory council much earlier in the [transition] process and advise this to be in place no later than one year before implementation.”¹⁸⁵ New Mexico also stressed the importance of communication with vendors: “[a]curate communications should be distributed to vendors as early as possible,” and found that for chain stores, copies of communications should be sent to corporate offices as well as to the individual store.¹⁸⁶

- *Consider changes to policy, procedures and workflow:* The transition to EBT will affect policies and policy manuals (i.e. benefit issuance, use and replacement of cards, etc.), client rights and responsibilities, staff responsibilities and procedures (i.e. vendor and client training, financial reconciliation), and relationships and agreements with vendors.

¹⁸⁵ New Mexico State Department of Health, Women, Infant, and Children, Grocers Working with WIC, “EBT Frequently Asked Questions,” available at

http://www.health.state.nm.us/phd/wicsite//grocers/pdf/EBT_Offline_FAQ_8-26-10.pdf.

¹⁸⁶ *Id.*

Again, other state agencies that have already gone through the process can be helpful here and Mississippi should review other states' operating EBT manuals and procedures for sample language and documentation.

- *Define system requirements:* Defining system requirements enables the state to have a guideline of what the system will do and will be an important component both in the planning of the system and in the implementation phase. Again, looking to other state agencies and the requirement documents they have developed would be very helpful.
- *Determine what, if any, functions or services will be outsourced:* Mississippi WIC will need to consider whether the state agency or some outside agent will provide project management and technical expertise, system hosting, quality assurance, and EBT components such as processing services, retailer equipment, and support services. If Mississippi does decide to implement online EBT, the state agency will most likely need to outsource at least some responsibilities. While all offline projects are currently in-house operations, that possibility is much less feasible for online operations, which require 24/7 support services. Currently, there are no online, in-house projects. Again, consulting with the Mississippi Department of Human Services would be helpful, and some resources may be able to be shared between the two agencies.
- *Identify/hire state project resources:* At this point, Mississippi will need to have a project manager identified and hired. The state agency will need to ensure that the project manager has sufficient capability, time, and knowledge for this project, but also that there is adequate additional staff and resources devoted to the project. The manager and supporting staff will need to have knowledge in areas including policy, the state management information system ("MIS"), the retail environment, financial management, state and local training, system testing, and technology.
- *Development and approval of Implementation Advance Planning Document:* Approval by FNS of the state agency Implementation Advance Planning Document ("IAPD") is required before the agency expends any funds for a pilot program. An IAPD should contain information regarding the goals and objectives of the project, how and what services will be procured, how the project will be staffed and managed, project schedule/milestones/deliverables, project cost, how retailers will be equipped and prepared for EBT, how clinics will be prepared for EBT, who will be trained and with what methods, how security will be maintained, and project risks and mitigation.
- *Development and approval of procurement documents (if outsourced).*
- *Vendor selection (if outsourced).*
- *Approval of vendor contracts (if outsourced).*

Pilot Project Implementation of EBT

- *Implement pilot program in chosen location:* When determining where to conduct the initial pilot program for EBT consider various factors such as: store readiness, staff readiness, the number of clinics in the rollout area, the number of clients in rollout area, as well as other potentially complicating factors, such as the grocer's holiday schedule (i.e. ensure that WIC EBT is not implemented in the middle of key busy times such as

Thanksgiving or Christmas). It is also important to consult with the vendor and/or grocery advisory group with which the state agency is working to determine the initial pilot program.

- *Ensure that pilot vendors, staff and WIC recipients are trained and knowledgeable on EBT:* The amount of training and communication in preparation of the transition to EBT cannot be understated. All retailers, WIC agency staff members, and WIC recipients should understand EBT and their role in the process. Development of PowerPoint presentations, handouts, and videos can be very helpful. Once again, experience from other states can prove helpful. For example, New Mexico noted that it would have significantly increased the amount of training for grocers – on top of the trainings provided by the makers of the POS system when the hardware/software is installed – including topics such as knowing the cashier’s responsibilities, downloading the WIC Approved Product List, downloading the WIC Hot Card List, implementing the process and procedures for adding new items to a store’s inventory, mapping in-store UPCs (Unit Product Costs) to the national PLUs (Price Look-Ups) for fruits and vegetables, managing daily reconciliation/balancing tasks, and utilizing dispute policy and procedure mechanisms.¹⁸⁷
- *Reevaluate and refine cost analysis, procedure manuals, and other operating documents:* As the pilot program demonstrates successes and challenges in calculations and the realities of the on-the-ground functioning of WIC EBT, changes and updates to the operating and guidance documents of WIC EBT will be required. Stakeholder feedback and input continues to be crucial.

Statewide Expansion of EBT

- *Implement EBT statewide according to revised documents.*

¹⁸⁷ *Id.*

Appendix B: General Resources:

Information regarding the USDA Food and Nutrition Service “FNS” WIC program:

- <http://www.fns.usda.gov/wic/>
- [FNS WIC Laws and Regulations](http://www.fns.usda.gov/wic/lawsandregulations/default.htm), including the Healthy, Hungry-Free Kids Act of 2010:
<http://www.fns.usda.gov/wic/lawsandregulations/default.htm>
- [FNS WIC Policy and Guidance](http://www.fns.usda.gov/wic/policyandguidance/default.htm):
<http://www.fns.usda.gov/wic/policyandguidance/default.htm>
- [FNS EBT WIC Guidance](http://www.fns.usda.gov/wic/EBT/wicebt.htm) (including WIC EBT Funding Awards, WIC Operating Rules, WIC Technical Implementation Guide, WIC EBT 5 Year Plan):
<http://www.fns.usda.gov/wic/EBT/wicebt.htm>

States using WIC EBT:

- [Texas](http://www.dshs.state.tx.us/wichd/ebt/ebt1.shtm):
<http://www.dshs.state.tx.us/wichd/ebt/ebt1.shtm>
- [New Mexico](http://www.health.state.nm.us/phd/wicsite/grocers/index.php):
<http://www.health.state.nm.us/phd/wicsite/grocers/index.php>
- [Nevada](http://health.nv.gov/WIC.htm):
<http://health.nv.gov/WIC.htm>
- [Michigan](http://www.michigan.gov/mdch/0,1607,7-132-2942_4910---,00.html):
http://www.michigan.gov/mdch/0,1607,7-132-2942_4910---,00.html
- [Wyoming](http://wdh.state.wy.us/):
<http://wdh.state.wy.us/>

U.S. Government Accountability Office (“GAO”) Reports:

- <http://www.gao.gov/browse/date/week>

The Food Trust:

- <http://www.thefoodtrust.org/>

The Food Research and Action Center:

- <http://frac.org/>

The Southern Rural Development Center:

- <http://srdc.msstate.edu/>

The Healthy Food Finance Initiative (HFFI):

- General information:
<http://www.hhs.gov/news/press/2010pres/02/20100219a.html>
- Business and Industry Loans:
http://www.rurdev.usda.gov/rbs/buspb&i_gar.htm
- Rural Business Opportunity Grants:
<http://www.rurdev.usda.gov/rbs/coops/rbog.htm>
- Community Economic Development Grants:
http://www.acf.hhs.gov/programs/ocs/ced/fact_sheet.html