HISPANIC LEADERSHIP FUND

THE CONSEQUENCES OF LIMITING FOOD CHOICE UNDER SNAP

July 2024

KEY FACTS

1 As part of the effort to reauthorize the Farm Bill, there is a push by a handful of lawmakers to include controversial provisions that would restrict consumer choice in the grocery store.

2 The so-called Healthy SNAP Act would prohibit the eligibility of certain foods and beverages within the Supplemental Nutrition Assistance Program – which would disproportionally impact underserved communities.

3 If enacted, this anti-consumer proposal would increase the federal government's reach into people's everyday lives and add new compliance costs and burdens onto businesses without any improvement to health outcomes.

4 It could also effectively raise taxes on some lower-income Americans due to the fact that many states currently exempt SNAP eligible products from sales taxes.

5 Congress should not undermine the success of SNAP with costly and complex regulations that will affect taxpayers at the state and federal levels, increasing costs for all consumers, especially without producing any health benefits to SNAP participants.

INTRODUCTION

Congress has extended the current Farm Bill through September 2024. Democrats and Republicans have ample time to craft a fiscally responsible bill that benefits farmers, consumers, and taxpayers.

Within the context of the Bill's reauthorization, there have been several proposals to limit consumers' choice of foods purchased via the Supplemental Nutrition Assistance Program (SNAP). None of these are new ideas. When the original Food Stamp Act of 1964 was created by Congress, these same concepts were considered and properly dismissed. More recently, similar proposals were given fair consideration but did not make their way into the 2014 and 2018 Farm Bills.

A major concern of free-market and limited government supporters is The effort to overregulate decisions made by consumers in the grocery store is a major concern. The so-called Healthy SNAP Act would put the federal government in between consumers and the products they enjoy by eliminating the ability of SNAP recipients to use their benefits on products like snacks, diet and traditional soft drinks, desserts, and other items. The rationale is that this will encourage Americans to make better decisions with their nutrition-despite the fact that individuals know the importance of a well-balanced diet. Further, doing so would lead to bad policy rife with unintended consequences, such as bigger bureaucracy, added administrative costs, administrative burdens shifting to the states, and fewer benefits for recipients. All for no likely impact on public health.

THE EFFECTS OF LIMITING SNAP CHOICE.

1. CONFLICTS WITH FEDERAL NUTRITION POLICY.

A key tenet of nutrition policy is balancing an overall diet. The U.S. Department of Agriculture (USDA) and the Department of Health and Human Services every five years update nutritional advice under the Dietary Guidelines for Americans (DGA). These guidelines are developed by an advisory panel of experts in the fields of nutrition and health, whose charge is to review the current body of scientific and medical knowledge to provide recommendations. As the most recent guidelines state, its "emphasis is on the importance of a healthy dietary patterns as a whole - rather than on individual nutrients, foods, or food groups in isolation."

All foods can be part of a healthy diet. Restricting SNAP choices is based on the misguided notion of "good" and "bad" foods, contrary to the science-based, balanced, and comprehensive nutrition policy under the Dietary Guidelines for Americans authorized by the 1990 National Nutrition Monitoring and Related Research Act. Sound nutrition is based on an overall diet, not on the ingredient content of each and every foodstuff that goes into that diet.

2. LEADS TO A NANNY STATE FOOD POLICY AND INCREASES BUREAUCRACY.

Regulating SNAP food choices would take proper federal role of nutrition research and guidance to an extreme level of bureaucratic red tape. The Healthy SNAP Act of 2023 (S.1485/HR 4058) requires the Secretary of Agriculture, to "designate by regulation the foods and food products that shall be included in the definition of the term 'food' under section 3(k)(1)" of the 2008 Farm Bill. That extremely broad command certainly underscores the fact that this legislation's main impact will be to increase the size, scope—and thus cost—of the bureaucracy at USDA.

Furthermore, required regulations under the legislation are to ensure that each and every product declared SNAP eligible contain, "nutrients lacking in the diets of people in the United States" and "ensure that the fat, sugar, and salt content of the food and food products is appropriate."

Imagine the highly plausible case where one gram per serving of more or less of fat, sugar, or salt, would determine one brand's eligibility and another brand's ineligibility, even though they are essentially the same product. That certainly is what USDA was pointing out in 2018 in its statement that the agency didn't want to, "be in the business of picking winners and losers among food products in the marketplace, or in passing judgment about the relative benefits of individual food products."

Additionally, proposed SNAP regulations would be required to, "take into consideration food and food products" by "cultural eating patterns." The cultural origin of a food seems to have very little nexus with nutrition goals. And the further one reads the legislation, the more confusing it gets.

Under a section entitled "Cultural Cuisines," the language states, "To allow for different cultural eating patterns, State agencies may, with the approval of the Secretary, substitute different food for food designated under paragraph (1) subject to the condition that the different food is nutritionally equivalent to the substituted food."

This language raises key questions important for implementation. For example, how could two foods which are in fact nutritionally equivalent—if not apparently considered culturally equivalent—end up with one on the Secretary's qualified-for-SNAP list, and the other not? Second, what does the reference to one product substituting for another mean? Is the SNAP eligible list a zero-sum game—that is to add one product, another must be removed?

3. CREATES A SLIPPERY SLOPE.

The above regulatory process under the proposed Heathy SNAP Act of 2023 would be updated every five years, substantially increasing the potential for regulatory creep. Few food products appear to be safe from what would be ongoing scrutiny. The chance for politization of the decision-making process is also real. Today, sugar, salt, and fat are out of favor in certain circles. But foodstuffs like caffeine, low nutrition bottled water, and food that some are allergic to—like nuts or seafood—could also become unpopular with regulators. In a future iteration of the Farm Bill some lawmakers could demand new restrictions on red meat, perhaps citing claims of high carbon emissions from raising cattle. With imposing new product restrictions comes the potential for a slippery slope in the future.

The inclusion of cultural eating patterns has already betrayed the fact that regulation would not be limited to purely nutritional considerations. The Obama Administration already tried to integrate sustainability into the 2015 Dietary Guidelines. The result was that the proposed guidelines did not recommend, for the first time ever, meat as part of a well-balanced diet. That proposed regulation was clearly outside the statutory authority of the National Nutrition Monitoring and Related Research Act, not to mention the body of nutrition science. USDA Secretary Tom Vilsack and then-Secretary of Department of Health and Human Services Sylvia Burwell had to correct that misstep in the final guidelines.

4. STATE TAXPAYERS.

Within a new regulatory framework as proposed by The Healthy SNAP Act of 2023, the increase in administrative costs to SNAP would be significant – with no added benefits to the program's recipients.

That point is made clear by language in the FY 2024 House Agriculture Appropriations bill which provides funding to USDA to administer pilot programs to, "allow the use of Supplemental Nutrition Assistance Program benefits to purchase only nutrient dense foods and beverages" subject to the restriction of not "increasing household benefit allotments."

Half of these new costs would be forced on the states. While the federal government pays for SNAP's food assistance cost, the administrative expenses are split equally between federal and state governments. Thus, all the administrative work it would take to manage eligible versus ineligible products, track them, and communicate that information to retailers would certainly burden to the state agencies, and thus taxpayers.

Then there are added costs to retailers. There can be as many as 40,000 items in a grocery store. In addition, about 20,000 new food and beverage products are introduced each year. All existing and new products would have to be categorized by their eligibility status under SNAP, and the in-store product inventory data managed, likely with computer systems for check out registers that will need to be updated at a cost to the business and very likely to all consumers, not just those using SNAP. The timeline for Farm Bill reauthorization of every five years also virtually guarantees that retailers would need to account for a new set of USDA guidelines after each reauthorization.

5. INCREASES THE COMPLEXITY AND LEVEL OF COMPLIANCE ENFORCEMENT.

Based on the complexity and scope of the proposed rules and restrictions, adding a roster of thousands, to potentially tens of thousands, of ineligible products would certainly lead to unwitting violations.

The current penalties for intentional fraud are quite severe. Recipients can be permanently banned or face criminal charges and prosecution resulting in fines or imprisonment, and retailers face the same plus civil monetary penalties. Would states be obligated to investigate each case of non-compliance as if it were suspected fraud? If not, why not? Routine or widespread non-enforcement and under-enforcement would undermine the integrity of the program. The Healthy SNAP Act of 2023 does not specify details about penalties and the standard of enforcement standards. This is a gaping oversight.

6. FAILS TO CHANGE LONG TERM DIETARY PATTERNS.

SNAP is, as its name signifies, a "supplemental" assistance program. Estimates are that up to 75 percent of all recipients use SNAP benefits in addition to their own cash to make food purchases. Prohibiting certain foods won't affect significant change in overall consumption patterns.

SNAP is not a permanent source of income. Benefits help recipients, generally temporarily, to maintain access to food when income is lost. Depending on various eligibility factors, benefit periods can range from one month to three years but averages about nine months. Banning certain food items to SNAP users during the months in which they receive benefits is not likely to change long-term purchasing patterns, especially when those purchase patterns are similar to consumer spending overall.

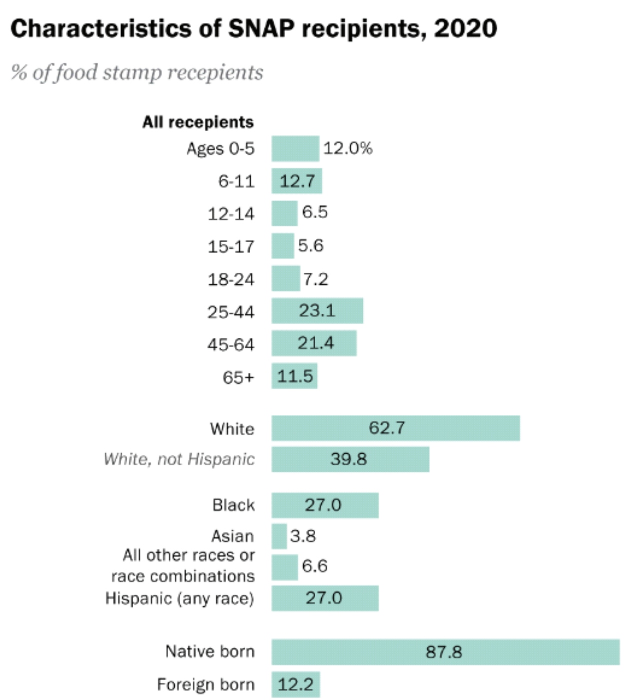
Many of the proposals to limit SNAP purchases cite a 2016 study from USDA, Foods Typically Purchased by SNAP Households, regarding the percent of food spending for certain, perceived unhealthy food items. However, for proper context, that report analyzes food purchases by SNAP households versus non-SNAP households. The study concluded that food spending is very similar between the two, finding specifically, There were no major differences in the expenditure patterns of SNAP and non-SNAP households, no matter how the data were categorized. Similar to most American households:

- About 40 cents of every dollar of food expenditures by SNAP households was spent on basic items such as meat, fruits, vegetables, milk, eggs, and bread.
- Another 20 cents out of every dollar were spent on sweetened beverages, desserts, salty snacks, candy and sugar.
- The remaining 40 cents were spent on a variety of items such as cereal, prepared foods, dairy products, rice, and beans.
- The top 10 summary categories and the top 7 commodities by **expenditure were the same for SNAP and non-SNAP households**, although ranked in slightly different orders.
- Expenditure shares for each of the USDA Food Pattern categories (dairy, fruits, grains, oils, protein foods, solid fats and added sugars (SoFAS), and vegetables) **varied by no more than 3 cents per dollar when comparing SNAP and non-SNAP households.**
- **Protein foods represented the largest expenditure share** for both household types, while **proportionally more was spent on fruits and vegetables than on SoFAS**, grains, or dairy.

7. HARM TO UNDERSERVED COMMUNITIES

The SNAP program is designed to support low-income individuals and families by providing them with financial assistance to purchase food. This aid is crucial for many people who are facing economic hardship, including, for example, a significant number of Hispanic households. Hispanics are one of the largest minority groups in the U.S., and they often face higher rates of poverty and food insecurity compared to other demographic groups.

The next enacted version of the Farm Bill will ultimately impact millions of lower-income Americans from all backgrounds, but the impact on underserved communities will be disproportionate. As shown in Figure 1, a plurality of all recipients of SNAP are people of color. A more granular analysis of the data indicate non-Hispanic White Americans accounted for 40 percent of recipients, Black Americans 27 percent, Hispanic Americans 22 percent, and Asian Americans 4 percent.



Source: Pew

8. TAX INCREASE ON CONSUMERS

Many states exempt groceries from sales tax or tax them at a lower rate. In some states, the definition of exempted foods is whether the food is a SNAP-eligible food. So, if Congress were to change the SNAP eligibility of certain food and beverages, that would mean higher tax burdens on all consumers in states that align their sales tax policy to federal definitions. This would have the unintended consequence of a tax increase on millions of Americans when they purchase items like snacks and beverages they enjoy.

According to HLF's review of state tax codes, it would raise grocery taxes in the following states: Alabama, Arizona, Colorado, District of Columbia, Iowa, Missouri, New Mexico, South Carolina and Virginia.

This would be a costly burden for millions of consumers.

CONCLUSION

As a general principle, adding more rules and regulations to a federal program only serves to make the program more costly and less efficient. That certainly would be the case with SNAP.

During the 2018 Farm Bill debate, Diane Schanzenbach, a senior fellow in economics at the Brookings Institute and professor of social policy and economics at Northwestern University testified before the House Agriculture Committee that:

> A key reason for SNAP's success is that it relies on the private sector to provide efficient access to food through grocery stores and other retail outlets. The reliance of the program on the free market system has been a feature of the program since the beginning. With few restrictions, recipients have been able to optimize which items to purchase and from what retail stores, subject to prevailing prices and their own tastes, preferences and nutritional needs.

Congress should not undermine the success of SNAP with costly and complex regulations that will affect taxpayers at the state and federal levels, increase business expenses and costs for all consumers, and produce no health benefits to SNAP participants.

HISTORY OF SNAP

A World War II era temporary food stamp program was implemented from 1939 to 1943 by President Franklin Roosevelt's Agriculture Secretary, Henry Wallace. That program was in fact structured to influence food purchases, but irrespective of nutrition. Instead, it was meant to ease the adverse economic impact on the food industry that free commodity distribution had caused. Paradoxically, hunger was endemic as commodity surpluses grew and farms and food processors fell into, or teetered on, bankruptcy.

At the time food stamps came in two colors, orange and blue. For every $1 worth of orange stamps participants purchased with their unemployment benefits, a bonus of 50 cents worth of blue stamps were issued. Orange stamps could be redeemed for any type of food product, while blue stamps could only be used to buy foods that USDA deemed at the time to be in surplus. As would be expected, this scheme was complex and inefficient, and the list of eligible products proved to be a moving target.

That temporary program ended in 1943. But for the next 16 years, there were various studies and reports on how to make food assistance more efficient and effective. A key lesson learned from the temporary program, which is applicable to today: putting the government in the middle of picking and choosing food items diverts resources away from actual food assistance and into bureaucracy.

In 1959, Congress gave discretionary authority to USDA to create a new pilot food stamp program. Two years later, in 1961, that pilot was launched and the first ever purchase was made – a can of pork and beans at Henderson's Supermarket in Paynesville, West Virginia.

Based on the success of that pilot, Congress enacted the Food Stamp Act of 1964 – the precursor of today's SNAP. The long title of that legislation lays out the fundamental goals: "An Act to strengthen the agricultural economy; to help achieve a fuller and more effective use of food abundances; to provide for improved levels of nutrition among low-income households through a cooperative Federal-State program of food assistance to be operated through normal channels of trade."

The original Food Stamp program, which came to be known as SNAP per the 2008 Farm Bill, established eligibility for all items intended for human consumption, except alcoholic beverages. Congress rightfully considered limiting product eligibility for food stamps "an insurmountable administrative problem," embedding consumer food choice into the program.

Two other key foundations have also remained in SNAP: its structure as a federal-state cooperative program and its operation through normal channels of trade. Limiting food choices under SNAP would significantly weaken both those pillars.

Because of the statutory authority for the program, over the past 20 years, USDA's Food and Nutrition Service (FNS) has rejected various state requests to restrict purchases of certain types of foods. For example, Maine has twice requested the ability to ban candy and sugar sweetened beverages under SNAP in the state, first in 2015 and then again in 2018. Notably, then-Gov. Paul LePage made this administrative request of USDA even though the state legislature had voted down his proposal to limit SNAP benefits not once, but twice.

In 2018, USDA laid out a cogent argument supporting its denial of Maine's request, which remains relevant to the current legislative proposals:

> When considering waiver requests, USDA focuses on moving people into self-sufficient lives, protecting the integrity of the program, and improving customer service. We don't want to be in the business of picking winners and losers among food products in the marketplace, or in passing judgment about the relative benefits of individual food products.

ABOUT

The Hispanic Leadership Fund advocates on Capitol Hill and state legislatures, before regulatory agencies, and in the courts, to further its core principles and work with policymakers to defend and strengthen the American Dream. HLF executes communication campaigns in English and Spanish to educate constituents about where candidates for public office and elected officials stand on critical issues. Since its inception in 2008, HLF has successfully completed millions of constituent contacts across all mediums. HLF is the first free-market non-partisan national advocacy organization governed exclusively by Latino political and public policy professionals.