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# Introducing a Modified Good Samaritan Reduced-Price Mechanism to Combat Hunger and Food Waste

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## Introduction

The federal government has long recognized the unfortunate truth that hunger and food waste are pressing issues in the United States. Besides providing and funding a litany of direct federal assistance programs (e.g., SNAP) to address the problems, the government has also recognized the importance of promoting the roles of individuals, corporations, and nonprofits in this common endeavor.

To that effect, under section 2135 of the Tax Reform Act of 1976, Congress put forth special, enhanced tax deductions for corporate business donations of food inventory to nonprofit entities.<sup>1</sup> Two decades later, President Clinton signed into law the Bill Emerson Good Samaritan Act of 1996. The law provided strong liability protection, under a clearly outlined framework, for businesses and individuals donating food inventory to nonprofits serving the needy.<sup>2</sup>

Together, these pieces of legislation incentivized companies in the food and grocery sector to receive certified tax deductions for donating, instead of writing down, surplus inventory. The tax-deduction rules were temporarily expanded by the Katrina Emergency Tax Relief Act (KETRA) in 2006.<sup>3</sup> This expansion, which extended the donation deductions to all taxpayer groups (including farmers and small businesses), was made permanent as part of the Protecting Americans from Tax Hikes (PATH) Act of 2015.<sup>4</sup> According to Feeding America, a nationwide food bank network consisting of more than two hundred members, this legislation drastically increased restaurant food donations (jumping 137 percent in 2006) to its member institutions.<sup>5</sup>

Under the law (current as of September 2019), for every \$1 of fair-market value foods or produce donated, a company can receive a deduction on its tax burden of 25 cents. This allowance, which can be rolled over the succeeding five years, is capped at 15 percent of taxable income in the case of C corporations, or 15 percent of aggregate net income for all other taxpayer classifications.

## The Problem

Despite its successes, the federal government can do more to effectively ensure that unwanted but still edible food ends up on people's plates instead of in the landfill. There are still gaps in current law open for improvement.

1. First, donors can only (for good reasons) donate to 501(c)(3) nonprofit entities exempt under section 501(a).<sup>6</sup> The indirect consequence is that food dona-

tions can only benefit communities that are close enough to have a designated food bank, leaving out less-populated rural communities. In 2018, 12.7 percent of rural Americans were found to be food insecure.<sup>7</sup> This has forced many food banks to deploy limited resources towards mobile food pantries in order to serve the needy.<sup>8</sup>

2. Moreover, since such deductions are valid without respect to the type of food donated, donors are incentivized to donate foodstuffs that are **easy to donate**. This means processed foods with long shelf lives are received in higher volume than others. For example, many food banks across the United States are inundated with cereal grains and junk foods while struggling to procure healthier fresh produce.<sup>9</sup> Feeding America, which conducted a survey of about 60,000 food pantry and food bank users across the country, reported in 2014 that fresh fruit and vegetables (55.0 percent), meat (47.1 percent), and dairy products (40.0 percent) were identified by survey respondents as the most unavailable desired products.<sup>10</sup>
3. Yet while demand for these items is high, there is ample evidence that a large amount of this desired produce goes to waste in supermarkets. From 2011 to 2012, the USDA Economic Research Service conducted a nationwide study on a sample of supermarkets (consisting of more than 2,900 stores in 45 states). It found that about 12.6 percent of fruit, 11.6 percent of vegetables, and 22.6 percent of fresh meat were lost. Industry groups cited by the report estimated operational breakdowns to account for 64 percent of this loss in 2012. This represents almost twice the amount these same industry groups pinned on theft (35 percent).<sup>11</sup> In other words, there is still a supply-and-demand mismatch when it comes to donation viability.
4. Data collection is another problem. In order to effectively understand this policy challenge of food waste, policy analysts require a fine-grained understanding of what exactly is wasted, and how much. The best measurement, the **Economic Research Service (ERS) Loss-Adjusted Food Availability** data report, is conducted once per decade and is based only on supermarket shrinkage.<sup>12</sup> This gives policymakers a very fuzzy view of the food waste problem. Other numbers, such as a 40-percent-waste statistic included in a highly cited 2009 paper, are derived from a back-of-the-envelope calculation of calories lost rather than actual edible calories.<sup>13</sup>

## The Proposed Policy

As a first step toward resolving these issues, Congress should consider the passage of a Good Samaritan reduced-price mechanism to spur point-of-sale establishments (e.g., restaurants, grocery stores, and wholesalers) to discount foodstuffs sold to low-income individuals and 501(c)(3) non-profit entities. Specifically, it should do the following:

1. Allow food establishments and grocery stores to receive the existing enhanced deductions for the discounted sale of “apparently wholesome” foods

(as defined under the 1996 Bill Emerson Good Samaritan Act) at prices no more than 25 percent of fair-market value (as outlined by the 2015 Protecting Americans from Tax Hikes Act) to persons in these two groups:

- a. Individuals and households approved to receive federal SNAP food stamp benefits.
  - b. 501(c)(3) nonprofit entities that will use the donations for the purpose of serving individuals and families in need.
2. In order to qualify for this treatment of sales, the retailer must ensure the following:
- a. That it (the retailer) allows for the sale of all food items in accordance with federal and state law via the federal Electronic Benefits Transfer (EBT) system.
  - b. That the annual fair-market value total of such reduced-price sales does not exceed the annual fair-market value the same retailer made in accepted food donations to a 501(c)(3) nonprofit organizations.
  - c. That it cooperates, to a reasonable degree, with federal agencies on data collection and surveys of inventory waste.
3. Qualifying retailers shall be entitled to receive, unless in the case of gross negligence, full liability protections under all relevant conditions set forth by the Bill Emerson Good Samaritan Food Donation Act.<sup>14</sup>
4. An additional \$10 million should be allocated annually, beyond the existing \$25 million designated in the 2018 Farm Bill,<sup>15</sup> to the USDA ERS to fund annual studies encompassing research of the food distribution chain and food bank inventories in the United States. In addition, the USDA shall track the sale and donations made by participating Good Samaritan reduced-price retailers, and the ERS shall summarize these findings in annual reports to Congress and the general public.
5. An allocation of \$25 million should be made annually, for the next five fiscal years, to inform qualified retailers of the Good Samaritan reduced-price sale mechanism.

## Analysis

The proposed reduced-price mechanism allows qualified businesses to take already pre-existing tax deductions in a different manner. It lowers barriers to distribution in two ways: First, with up to 50 percent of the fair-market value of surplus foodstuffs up for grabs, retailers such as grocery stores are incentivized to try to sell them and are rewarded for innovating and expanding their logistics capability. Second, a large percentage of the needy can purchase from a grocery store instead of finding a food pantry.

As a consumer choice-based approach, this discount program will offer recipients access to better nutritional balance. On the demand side, it allows needy end consumers, as well as the intermediary nonprofits, to exert their preferences on what

they receive. On the supply side, it alleviates friction due to economies of scale. Small grocers that are currently not able to carry certain fresh produce (due to the risks in filling a large minimum supply order), may find the accounting to be a bit more in their favor. This spillover effect benefits all customers.

It is not expected that retailers would significantly decrease current donations of their surplus food under the passage of this policy. This is because the proposed policy only allows for the sale of fully “wholesome” food, while baseline requirements for donations to nonprofits remain laxer. Moreover, as a last-line safeguard against “switching” behavior, section (2) directly ties total sales under the reduced-price mechanism to the value of straightforward donations.

The budget cost of this policy will likely be minimal and may actually be net positive for federal revenues. First, because retailers will need to accept EBT, this means federal SNAP dollars are stretched to provide more value to recipients. Secondly, because the reduced-price sales are treated as revenue, participating retailers may wind up with a higher taxable net income. This is especially relevant as grocery stores and restaurants are notoriously low-margin businesses, with average industry margins estimated to be 1.5 percent in 2016.<sup>16</sup> Finally, according to the Congressional Budget Office, the 2016 PATH Act provision that expanded the cap on charitable food deductions from 10 to 15 percent of income amounted to only \$2.2 billion over ten years.<sup>17</sup> This policy should cost even less, as it merely attempts to increase the ability of retailers to receive the deduction rather than increasing the cap any further.

### **Differences with Similar Proposals**

An earlier iteration of the proposed Good Samaritan reduced-price mechanism was introduced by Representative Chellie Pingree of Maine in the Food Recovery Act of 2017.<sup>18</sup> Pingree’s legislation, which failed to gain traction, differs with this paper’s proposed policy in two major ways:

1. It does not make applicable the enhanced deductions (as provided by the 2015 PATH legislation) to reduced-price sales.
2. It defines the Good Samaritan reduced price as “an amount not greater than the cost of handling, administering, and distributing” the food as opposed to this paper’s proposal of using 25 percent of the food product’s fair-market value.

Without the additional tax deduction qualification, this bill will alleviate only the burdens of nonprofits. It will not be as effective at drawing in private retailers to participate. In addition, by tying the price to operational cost rather than the actual value of the product, the Pingree bill inadvertently disallows a key incentive for innovation and cost reduction.

## Expected Result and Evaluation

This policy sets out to do three things:

1. Decrease food waste by restaurants, grocery stores, and other retailers by increasing the proportion of unsold inventory that is diverted to needy end consumers.
2. Increase the nutritional diversity of foods offered by nonprofits and given or purchased by low-income and needy Americans.
3. Making point-of-sale businesses aware of the Good Samaritan reduced-price mechanism in order to accomplish the above two points.

Through Section (5)'s study of food waste in the United States, policymakers will have the measurements to evaluate the impact of the proposal's first objective. Next, by tracking food bank inventories as well as reduced-price purchases made through EBT, policymakers can evaluate the nutritional impact post-policy enactment. Finally, to ensure this policy is deployed effectively, marketing to qualified businesses is required. The popularity of this option can be measured in terms of the number of businesses enrolled as well as the amount in sales of reduced-price food sold.

## Conclusion

Food waste in the United States is a major problem. Every year, up to \$218 billion a year, or 1.3 percent of GDP, is spent on growing, processing, transporting, and disposing food never eaten.<sup>19</sup> This waste occupies 21 percent of US landfill content and releases greenhouse gases equivalent to that of 37 million cars.<sup>20</sup> Yet at the same time, hunger persists as well, with 11.1 percent of US households deemed food insecure in 2018.<sup>21</sup> Through the expansion of donor incentives and food waste research funding, this policy will lay the groundwork for tackling both issues together.

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<sup>1</sup> Tax Reform Act of 1976, Pub. L. No. 94–955, § 2135, 90 Stat. 1520 (1976), 410, <https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg1520.pdf>.

<sup>2</sup> Bill Emerson Good Samaritan Food Donation Act, Pub. L. No. 104–210, 110 Stat. 3011 (1996), <https://www.congress.gov/104/plaws/publ210/PLAW-104publ210.pdf>.

<sup>3</sup> Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109–73, 119 Stat. 2016 (2005), <https://www.congress.gov/109/plaws/publ73/PLAW-109publ73.pdf>.

<sup>4</sup> This was part of negotiated 2016 federal omnibus spending bill Consolidated Appropriations Act of 2016, Pub. L. No. 114–113, § Division Q: Protecting Americans From Tax Hikes Act of 2015, 129 Stat. 3040 (2015), <https://www.congress.gov/114/plaws/publ113/PLAW-114publ113.pdf>.

<sup>5</sup> “Feeding America Urges Swift Vote On Expired Tax Provisions,” Feeding America, June 8, 2012, <https://web.archive.org/web/20170913220301/http://www.feedingamerica.org/about-us/press-room/feeding-america-urges-swift-vote-on-expired-tax-provisions.html>.

<sup>6</sup> Internal Revenue Code of 1986, 26 USC § 170(e)(3)(C) (1986), <http://uscode.house.gov/quicksearch/get.plx?title=26&section=170>.

<sup>7</sup> Alisha Coleman-Jensen, Matthew P. Rabbitt, Christian A. Gregory, and Anita Singh, *Household Food Security in the United States in 2018*, ERR-270, US Department of Agriculture, Economic Research Service, 2019, <https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=963.1>.

<sup>8</sup> Elaine S. Povich, “Mobile Food Banks Roll to Isolated, Rural Poor,” *Pew Charitable Trusts, Stateline*, July 16, 2018, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/07/16/mobile-food-banks-roll-to-isolated-rural-poor>.

<sup>9</sup> Small food banks struggle to source fresh produce, meat, and dairy, and find places to store it. Caitlin Dewey, “Charities are realizing that poor people also deserve healthy food,” *Washington Post*, May 12, 2017, <https://www.washingtonpost.com/news/wonk/wp/2017/05/12/charities-are-finally-realizing-that-poor-people-also-deserve-healthy-food/>.

<sup>10</sup> Nancy S. Weinfield, Gregory Mills, Christine Borger, Maeve Gearing, Theodore Macaluso, Jill Montaquila, and Sheila Zedlewski, “Hunger in America 2014: National Report,” prepared by Westat and the Urban Institute for Feeding America, 30, <http://help.feedingamerica.org/HungerInAmerica/hunger-in-america-2014-full-report.pdf>.

<sup>11</sup> Jean C. Buzby, Jeanine T. Bentley, Beth Padera, Jennifer Campuzano, and Cara Ammon, *Updated Supermarket Shrink Estimates for Fresh Foods and Their Implications for ERS Loss-Adjusted Food Availability Data*, EIB-155, US Department of Agriculture, Economic Research Service, June 2016, <https://www.ers.usda.gov/webdocs/publications/44100/eib-155.pdf?v=0>.

<sup>12</sup> Buzby et al, *Updated Supermarket Shrink Estimates*. See also Jean C. Buzby, Jeanine T. Bentley, Beth Padera, Jennifer Campuzano, and Cara Ammon, “Estimated Fresh Produce Shrink and Food Loss in U.S. Supermarkets,” *Agriculture* 5, no. 3 (August 4, 2015): 626–46, <https://doi.org/10.3390/agriculture5030626>.

<sup>13</sup> Kevin D. Hall, Juen Guo, Michael Dore, Carson C. Chow, “The Progressive Increase of Food Waste in America and Its Environmental Impact,” *PLOS ONE* 4, no. 11 (2009):e7940, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0007940>.

<sup>14</sup> 42 USC 1791.

<sup>15</sup> “Agriculture Improvement Act of 2018,” Pub. L. No. 115–334, 132 Stat. 4490 (2018), <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

<sup>16</sup> Madeline Hurley, *IBISWorld Industry Report 44511: Supermarkets & Grocery Stores in the US*, IBISWorld, May 2016, <https://www.scribd.com/document/325830175/44511-Supermarkets-Grocery-Stores-in-the-US-Industry-Report>.

<sup>17</sup> Note: the CBO scored these specific provisions when they were part of a standalone bill. See Nathaniel Frentz, “Congressional Budget Office Estimate for H.R. 644,” Congressional Budget Office, February 4, 2015, [https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr644\\_0.pdf](https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr644_0.pdf); America Gives More Act of 2015, H.R. 644, 114th Cong. (2015), introduced by Rep. Tom Reed, <https://www.gop.gov/bill/h-r-644-fighting-hunger-incentive-act-of-2015>.

<sup>18</sup> Food Recovery Act of 2017, H.R. 3444, 115th Cong. (2017), introduced by Rep. Chellie Pingree, <https://www.congress.gov/bill/115th-congress/house-bill/3444>.

<sup>19</sup> “A Roadmap to Reduce US Food Waste by 20 Percent”, ReFed, March 2016. [https://www.refed.com/downloads/ReFED\\_Report\\_2016.pdf](https://www.refed.com/downloads/ReFED_Report_2016.pdf).

<sup>20</sup> Dana Gunders and Jonathan Bloom. “Wasted: How America is losing up to 40 percent of its food from farm to fork to landfill.” Natural Resources Defense Council, 2017. 4. <https://www.nrdc.org/sites/default/files/wasted-2017-report.pdf>.

<sup>21</sup> Alisha Coleman-Jensen, Christian A. Gregory, and Matthew P. Rabbitt, “Food Security Status of U.S. Households in 2018,” US Department of Agriculture, September 2019.