United States General Accounting Office

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Report to the Chairman, Committee on Labor and Human Resources U.S. Senate

December 1991

HOMELESSNESS

Policy and Liability Issues in Donating Prepared Food

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Resources, Community, and
Economic Development Division

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December 9, 1991

The Honorable Edward M. Kennedy
Chairman, Committee on Labor
and Human Resources
United States Senate

Dear Mr. Chairman:

Section 641 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (P.L. 101-645), enacted in November 1990, directed GAO to review the extent to which federal laws, regulations, or policies hinder federal facilities, such as cafeterias, from making prepared food that is not consumed available to the homeless and to examine the related issue of liability. We have addressed this report to you because this section of the legislation originated in your Committee.

As agreed with your office, this letter provides information on (1) any barriers (legal or administrative) that exist in the policies of the 14 federal Departments[1] regarding donations of prepared foods to homelessness assistance providers and (2) the issue of liability if someone becomes ill after eating donated food. In addition, we are providing information on the availability of unconsumed food from federal food service facilities.

To obtain information on food donation policies, we discussed these policies with the 14 Departments as well as the General Services Administration (GSA). Generally, GSA manages food service contracts for Departments that employ contractors; however, some Departments and field offices manage their own food service contracts. We also discussed food donation policies with federal food service contractors, including the three with the largest number of GSA-managed contracts (according to GSA), to determine if contractors were donating unconsumed foods on their own initiative.

Results in Brief

The 14 federal Departments maintain food service facilities, such as cafeterias, in their office buildings for employees and serve meals in their hospitals or on military facilities. Unconsumed prepared food from these

[1]The Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs.

facilities could be donated to organizations serving the homeless. Thirteen of the 14 Departments informed us that they had little unconsumed food to donate. The remaining agency, the Department of Defense (DOD), has only recently begun its donation program, and DOD officials could not estimate how much food might be made available.

Of the 14 Departments, only DOD has a specific policy authorizing prepared food donation. These donations were authorized in 1990 by the National Defense Authorization Act for Fiscal Year 1991 (P.L. 101-510). Furthermore, only VA has food safety policies that preclude the donation of most of its prepared foods. The reasons for this are that (1) most VA meals are served in patients' rooms and food returned from patients unconsumed is regarded as contaminated and (2) VA's internal food safety standards require the immediate discarding of unconsumed ground meats or creamed foods.

The remaining 12 Departments have no policies regarding food donation. They employ food service contractors to operate their facilities and allow each contractor to use its own discretion. As a result, these Departments neither encourage nor deter contractors from donating food to homelessness assistance providers. In addition, the General Services Administration (GSA), which manages many of these contracts for the federal Departments—both at headquarters and regional offices—does not specify a donation policy for these contractors. None of the contractors we contacted had written policies related to donating unconsumed food, but they told us they donate some food on an ad hoc basis.

States have enacted food donation statutes, called good samaritan laws, to address the extent to which a food donor would be held liable if someone becomes ill after eating donated food. These laws provide various degrees of immunity from civil and/or criminal liability. Federal food service facilities that choose to donate food are covered by these good samaritan statutes. Although good samaritan laws vary from state to state, they do provide some measure of protection for food service facilities that wish to donate prepared food.

Background

Hunger is one of the most pressing problems facing the homeless—particularly children and youth. Because most shelters do not have cooking facilities or refrigerators, it is difficult to get good, wholesome, hot cooked meals or keep foods. If they cannot get meals from soup kitchens or other charitable organizations, homeless persons usually rely on canned foods, dry cereals, or similar types of food for nutrition.

To address this problem, food service professionals nationwide are participating in programs that recycle unconsumed food into meals for the homeless. In the private sector, unconsumed prepared food is donated from restaurants, hotels, and caterers, while the federal government could donate unconsumed prepared food from its cafeterias, hospitals, or military facilities. Unconsumed food from these facilities could provide aid to the homeless beyond that provided by the McKinney Act.

To facilitate recycling food that otherwise would have been thrown away, organizations solicit donations from food service professionals to benefit homeless and low-income persons. These organizations pick up salvageable, perishable food from restaurants, caterers, and other food producers and redistribute it to local soup kitchens, shelters, and emergency food programs. These organizations provide a link between food service professionals, such as restaurants or cafeterias, and a community's homeless population.

Most Federal Departments Do Not Have Policies That Hinder Food Donation

Twelve of the 14 Departments have no policies that hinder or encourage food donation; these Departments rely on contractors to operate their food service facilities. Several Department and GSA officials told us that in these federal Departments, the contractors actually own the unconsumed food, and the decision to donate or not is left up to the individual contractor. In addition, GSA, which contracts with food service suppliers for many federal Departments, both at headquarters and regional offices, does not specify a food donation policy for its contractors. Contracts could be altered to include a suggestion that the contractor donate unconsumed food; however, GSA informed us that the contractors generate little excess prepared food.

Federal food service contractors generally do not have policies that address the food donation issue. GSA provided us a list of nationwide food service contractors. These contractors provide food service to various headquarters and field offices of these 12 federal Departments as well as to other federal agencies housed in GSA-managed buildings across the nation. We contacted 15 federal food service contractors, including the three contractors with the largest number of GSA-managed contracts, according to GSA. None of these contractors had a food donation policy.

Even though the contractors did not have written policies, only one said that it would not donate food if asked. Several contractors said that

they voluntarily donate meals on an ad hoc basis to charitable organizations or give complimentary food tickets that the homeless can exchange for a meal. According to one contractor, his firm is developing a food donation policy. He said that little excess food is available daily to donate but that large catered events, such as departmental receptions or other special occasions, often result in a substantial amount of excess food.

The remaining two Departments—DOD and VA—manage and operate their own food service facilities. DOD has a policy of donating unconsumed food, while VA's existing policies that control food quality preclude food donations, according to VA officials. First, because 99 percent of VA meals are served to VA hospital patients, all food returning from the patients' rooms that is not prepackaged and unopened is thrown away. Second, according to VA officials, most excess unconsumed food would not meet VA's internal food safety standards, such as the immediate discarding of unconsumed ground meats or creamed foods.

DOD has only recently begun to donate prepared food. In 1990 the National Defense Authorization Act for Fiscal Year 1991 (P.L. 101-510) authorized DOD to donate prepared and perishable food to homelessness assistance providers. Prior to the act's passage, DOD was prohibited from donating unconsumed prepared food.

Currently, DOD is drafting a memorandum of understanding with the Federal Emergency Management Agency (FEMA), which will facilitate food distribution. FEMA will identify and certify donees eligible to receive prepared food through this program. FEMA manages the Emergency Food and Shelter Program, one of the largest McKinney Act programs, and maintains a list of over 9,500 assistance providers who can benefit from food donations. In addition, the United Parcel Service has agreed to fund local organizations operating perishable food programs who will distribute DOD food donations. DOD could not estimate how much food will be available for donation through this program because not all of its 485 bases prepare food on-site.

In addition to excess prepared food, DOD is donating over $300 million of meals ready to eat and bulk foods from Operation Desert Storm. GSA will distribute this food to the homeless and needy under a program called "Operation Desert Share." By September 1991 GSA had transferred $34 million worth of meals ready to eat and bulk foods through the Interagency Council on the Homeless, an independent organization within the

executive branch charged with coordinating federal homelessness programs. Most of this food went to the Second Harvest Food Bank Network, which is distributing it to member food banks. According to GSA, Second Harvest is a nationwide organization of 180 member food banks supporting 42,000 soup kitchens, church pantries, senior and other day care centers, homeless shelters, drug and alcohol treatment centers, and other nonprofit food programs. The remainder of the food will be distributed after DOD inventories its meals ready to eat at its various depots to determine how much and what food will be declared excess for distribution to federal and state agencies.

VA does not donate excess prepared food mainly because most excess unconsumed food would not meet existing VA standards that control food quality. Unless prepackaged and unopened, unconsumed food returning from patients' rooms is considered contaminated and thrown away. Other VA food quality standards include the immediate discarding of ground meats or creamed foods and minimal holding periods for hot cooked foods. In addition, VA officials are concerned over the possibility of incurring bad public relations if contaminated or spoiled food from the Department was inadvertently distributed. An official in VA's Dietetic Service said VA's concern about the safety of unconsumed prepared food deters the Department from participating in a donation program. According to this official, the temperatures of excess unconsumed food must be carefully monitored to ensure that it remains safe for human consumption. Food often sits in service bins for long periods as patients and visitors are being served and, in some cases, food service employees may not be as careful as they should be, thus making unconsumed prepared food unsafe for human consumption.

Good Samaritan Laws Provide Some Protection for Food Donors

States have enacted food donation statutes, called good samaritan laws, to protect food donors. The laws are aimed at serving a twofold purpose—indirectly encouraging restaurants and other food service facilities to donate their unconsumed food instead of wasting it and ensuring the safety and fitness for consumption of the food that is donated. Although good samaritan laws vary from state to state, they encourage donations by providing some measure of protection against lawsuits for food service facilities, acting in good faith, that wish to donate prepared food. These statutes also establish a standard of care for food donors, such as requiring the donee to reasonably inspect food and find it apparently fit for consumption at the time of distribution. This standard of care helps to ensure the safety of food served to the homeless.

A 50-state survey of good samaritan laws prepared for Share Our Strength, a nationwide network of food service professionals, revealed that states vary greatly in their approaches and the language used in the statutes to achieve these goals. The organization found that because none of these laws has been tested in court, it is difficult to ascertain what level of protection is accorded by each statute. They concluded that the most effective food donation statutes protect food donors from liability by presenting a clear definition of the kind of immunity provided by the statute as well as specifying the standard of care required of donors and donees. In 1990 the Congress passed the Good Samaritan Food Donation Act (title IV of P.L. 101-610), which outlined a donation law, to serve as a model for state laws. The Congress provided the model to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals and submitted copies to the 50 states, the District of Columbia, Puerto Rico, and the territories. According to Share Our Strength, all 50 states and the District of Columbia have enacted some form of good samaritan law.

Federal food service facilities fall under the good samaritan laws in the jurisdiction in which they are located.[2] DOD maintains food service facilities nationwide, and a DOD official in charge of the donation program told us that the Department believes that it is reasonably well protected by these laws.

Federal Facilities Indicate They Generate Little Excess Unconsumed Food

Even though federal food service contractors are protected through good samaritan laws and are not hindered by restrictive federal policies, representatives from both the contractors and GSA say that contractors generate little unconsumed food to donate. According to GSA, contractors' food cost is usually 40 percent of gross sales; therefore, they cannot afford to have excess unconsumed food. One contractor noted that production is scheduled and meals planned to minimize excess food. If excess prepared food is generated, it can usually be recycled for the next day.

Likewise, GSA and VA noted that food service facilities operate on a progressive or batch cooking basis. This term refers to the process of making limited quantities of food at a time to minimize excess prepared

[2]The good samaritan laws would directly cover the contractors that provide food service to 12 of the 14 federal Departments. These laws would cover DOD and VA food service facilities through the operation of the Federal Tort Claims Act (P.L. 80-773, as amended). This act provides that the United States shall be liable in the same manner and to the same extent as a private citizen under similar circumstances.

food. According to VA, its food service is beginning to use a computerized menu planner that is responsive enough to adjust to a change in the number of patients to be served from one meal to the next, thus further minimizing excess prepared food.

In addition, although VA prepared over 71 million meals in fiscal year 1990, less than 1 percent was for nonpatient needs, such as meals served to employees and visitors. Menu planning for a relatively stable population, like patients, generates less unconsumed food. Because meals for patients are served in wards, all unconsumed food—excluding prepackaged, unopened items—is regarded as contaminated and is thrown away. Those items that are returned prepackaged and unopened are served at the next meal.

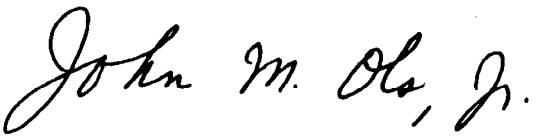
To determine if barriers exist in federal Departments regarding food donations, we interviewed headquarters officials in charge of food service from the 14 federal Departments and GSA officials responsible for managing federal food service contracts. We also discussed food donation policy with 15 nationwide GSA food service contractors to ascertain if contractors were donating unconsumed foods on their own initiative. These contractors operate federal food service facilities in Department headquarters and offices across the nation and include the three largest contractors in terms of the number of GSA-managed food service contracts, according to GSA. To address the liability issue, we reviewed the 50-state survey of good samaritan laws prepared for Share Our Strength and examined several state good samaritan laws. In addition, we reviewed laws addressing the liability of federal entities acting within local jurisdictions.

We discussed the information in this report with officials at DOD, VA, and GSA. They generally agreed with the facts as presented, and their comments have been incorprated where appropriate. These are the three principal agencies affected by information in this report. As agreed with your office, we did not obtain written agency comments on this report. We conducted our review from July 1991 to September 1991 at the responsible agencies' headquarters in Washington, D.C., and performed our work in accordance with generally accepted government auditing standards.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from

the date of this letter. At that time, we will send copies to the Secretaries of the 14 Departments, the Administrator of GSA, the Executive Director of the Interagency Council on the Homeless, and other interested parties. We will also make copies available to others upon request. If you have any questions, please contact me at (202) 275-5525. Major contributors to this report are listed in appendix I.

Sincerely yours,



John M. Ols, Jr.
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